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May 11, 2021

The Honorable Ronald L. Wyden
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United States Senate
219 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Michael D. Crapo
Ranking Member
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United States Senate
219 Dirksen Senate Office Building
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The Honorable Richard E. Neal
Chairman
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United States House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

The Honorable Kevin P. Brady
Ranking Member
Committee on Ways and Means
United States House of Representatives
1139 Longworth House Office Building
Washington, D.C. 20515

Re: Guideposts for Tax Policy in the 117th Congress

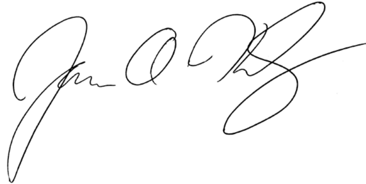
Dear Sirs:

On behalf of Tax Executives Institute ("TEI"), I am pleased to present the enclosed *Guideposts for Tax Policy*—a series of priority principles intended to inform the burgeoning tax reform debate in the 117th Congress and Biden administration. As the preeminent association of in-house tax professionals worldwide, TEI represents a cross-section of the business community and is well positioned to provide practical, consensus-based input on significant issues of corporate tax policy and administration. TEI members possess deep experience with the day-to-day application and consequences of the federal tax laws and thus can serve as valuable sources of balanced, objective information to policymakers during this critical time.

TEI's *Guideposts for Tax Policy* were developed jointly under the aegis of TEI's Tax Reform Task Force, whose chair is Jason Weinstein. Principal responsibility for drafting the enclosed comments was exercised by Watson M. McLeish, TEI Tax Counsel. TEI would welcome the opportunity to engage with committee members or their staffs to discuss these guideposts in further detail and,

in particular, their application to specific legislative proposals. To that end, please do not hesitate to contact Mr. Weinstein at [redacted] or [redacted], or Mr. McLeish at (202) 470-3600 or wmcleish@tei.org. I encourage you, your colleagues, and your staffs to view TEI as an important, unbiased resource in your tax policy deliberations going froward.

Respectfully submitted,



James A. Kennedy
International President

Enclosure

Copies: Thomas A. Barthold, Chief of Staff, Joint Committee on Taxation, United States Congress
Mark J. Mazur, Acting Assistant Secretary (Tax Policy), U.S. Department of the Treasury
The Honorable Charles P. Rettig, Commissioner, Internal Revenue Service
William M. Paul, Acting Chief Counsel, Internal Revenue Service
Andrew C. Strelka, Senior Tax Counsel, The White House

Tax Executives Institute
Guideposts for Tax Policy

As the preeminent association of in-house tax professionals worldwide, Tax Executives Institute ("TEI") is pleased to present our *Guideposts for Tax Policy*—a series of priority principles intended to inform the tax policymaking process in the 117th Congress and Biden administration. TEI members are responsible for administering the tax affairs of their companies and must contend daily with the provisions of the tax law relating to the operation of business enterprises. The diversity and experience of our membership enables TEI to bring a balanced, practical perspective to some of the most challenging issues facing business taxpayers—and policymakers—today, which we hope will inform your deliberations.

About TEI

TEI was founded in 1944 to serve the professional needs of in-house tax professionals. Today, the organization has 57 chapters with over 7,000 members representing 2,800 of the leading companies in North and South America, Europe, and Asia. TEI represents a cross-section of the business community and is dedicated to the development of sound tax policy, compliance with and uniform enforcement of tax laws, and minimization of compliance and administrative costs to the mutual benefit of taxpayers and government. As a professional association, TEI is committed to fostering a tax system that works—one that is easily administrable and with which taxpayers can comply in a cost-efficient manner.

Guideposts for Tax Policy

TEI commends the Congress for enacting a series of targeted tax relief measures to help businesses weather the economic downturn associated with the coronavirus disease 2019 ("COVID-19") pandemic. As the White House and Congress pivot toward a new agenda, including a range of potentially significant tax law changes, however, we encourage policymakers to adopt the following guideposts as pillars of a sound analytical framework for evaluating those proposed changes.

1. **Simplicity & Administrability**

Simplicity and administrability are two of the most fundamental, well-established principles of sound tax policy.[1] Simplicity is a gauge of compliance burden—the value of the time and other resources, including any out-of-pocket costs paid to tax preparers and other tax advisors, that taxpayers expend to comply with the tax laws.[2] This includes the value of time and resources devoted to (1) record keeping, (2) learning about the law and planning, (3) preparing and filing returns, and (4) responding to Internal Revenue Service ("IRS") notices and audits.[3] According

[1] *See, e.g.*, 1 U.S. Dept. of the Treas., *Tax Reform for Fairness, Simplicity, and Economic Growth* 15–16 (Nov. 1984).

[2] U.S. Gov't Accountability Off., *GAO-05-1009SP, Understanding the Tax Reform Debate - Background, Criteria, & Questions* 5, 45 (2005).

[3] *Id.* at 46.

to a recent report published by the National Taxpayers Union Foundation, businesses are estimated to have devoted a total of 3.344 billion man-hours to tax compliance in 2019 and suffered a net business income tax compliance burden of $177.7 billion.[4] These figures are staggering, especially when one considers that they represent non-productive expenditures—what economists vividly call "deadweight loss."[5]

Administrability is a concomitant principle that refers to the costs incurred by the tax authority—ultimately borne by taxpayers—in processing tax returns and payments, enforcing the tax laws, and providing taxpayer assistance.[6] Administrable tax systems allow the government to collect taxes as cost effectively as possible. And even though tax administration is generally considered to be the IRS's responsibility, taxpayers, employers, and financial intermediaries such as banks and tax professionals also play important roles in administering the Internal Revenue Code.[7]

TEI believes tax laws should be simple to understand and apply, so that taxpayers know where they stand and can reasonably determine the tax consequences of contemplated transactions. As a corollary, TEI also maintains that changes in the tax law generally should not be applied retroactively.[8] Simpler tax laws foster increased and more cost-efficient compliance by taxpayers and reduce the likelihood of errors or disputes with the IRS regarding the accuracy of returns, thereby facilitating the latter's administration and enforcement mandates. It follows, therefore, that simplicity and administrability should be essential tests for policymakers when evaluating proposed changes or additions to existing law.

2. Competitiveness & Economic Growth

In enacting the CARES Act and its progeny,[9] Congress appropriately focused on measures intended to provide as much liquidity as possible, as quickly as possible to employers facing widespread business restrictions and a range of other virus-related disruptions. As that focus now shifts toward ensuring the long-term, sustainable recovery of the U.S. economy, however, new priorities emerge. Lawmakers must pursue responsive policies that not only consider how U.S. businesses can efficiently access liquidity, without unnecessarily increasing corporate debt, but also instill confidence in the nation's fiscal and regulatory environments such that

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[4] Demian Brady, Nat. Taxpayers Union Found., *Tax Complexity 2020: Compliance Burdens Ease for Second Year Since Tax Reform* 7–8 (Apr. 15, 2020). This accounts for corporations, partnerships, and other pass-through businesses.

[5] Joel Slemrod, *Tax Minimization ad Corporate Responsibility*, 96 Tax Notes 1523, 1527 (2002).

[6] U.S. Gov't Accountability Off., *GAO-05-1009SP, Understanding the Tax Reform Debate - Background, Criteria, & Questions* 5–6, 49–50 (2005).

[7] *Id.* at 49.

[8] Imbedded in the principle that tax laws should be simple to understand and apply is the premise that taxpayers should be able to understand the law at the time they are making economic decisions. Such understanding is impossible, however, if the law is subsequently changed by Congress or reinterpreted by the IRS. *See* J.D. Foster, Tax Found., *Sound Tax Policy vs. Retroactivity* (Aug. 16, 1997), https://taxfoundation.org/sound-tax-policy-vs-retroactivity/; *see also* Tax Exec. Inst., *State and Local Tax Policy Statement Regarding Retroactive Legislation* (Sept. 20, 2016), *reprinted in* Tax Exec., Nov.–Dec. 2016, at 103.

[9] Pub. L. No. 116-136, 134 Stat. 281 (2020); Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, 134 Stat. 1182 (2020); American Rescue Plan Act of 2021, Pub. L. No. 117-2, 135 Stat. 4 (2021).

businesses feel comfortable proceeding with projects and investing now to stimulate increased economic activity and employment in the United States.

We live in a world of increasing capital mobility due to increasing trade and decreasing communication and transportation costs, and the effect of taxes on the location of investment is more important today than ever before. For U.S. businesses to compete effectively in the global marketplace, the price of operating in the United States cannot be disproportionally higher than it would be abroad. Currently in the United States, corporations are subject to a federal statutory income tax rate of 21% and an additional average state statutory rate of about 6% for a combined rate of 25.8%—slightly above the current OECD average of 23.4%.[10] Any proposal to increase the federal corporate income tax rate would necessarily increase the U.S. federal-state combined tax rate and, therefore, should contemplate the impact to American economic competitiveness of potentially increasing the relative cost of investment in the United States. Policymakers should also recognize that frequent changes to the tax laws reduce their stability and can erode competitiveness by making business planning more difficult and increasing uncertainty about future tax liabilities.

TEI believes the tax laws should neither impede nor reduce the productive capacity of the U.S. economy, nor should they pose competitive disadvantages for U.S.-headquartered businesses relative to their non-U.S. headquartered competitors. TEI strongly supports maintaining, if not improving, the competitiveness of the U.S. business tax system as a whole, and we respectfully urge policymakers to adopt a similar posture in their deliberations.

3. Avoidance of Double Taxation

Double taxation—when the same item is subject to income tax under the rules of two or more jurisdictions—has harmful effects on the international exchange of goods and services, as well as on cross-border movements of capital, technology, and persons.[11] Since 1918, Congress has repeatedly recognized the perils of double taxation in enacting and amending the foreign tax credit—a cornerstone of the U.S. international tax system. The legislative history of the foreign tax credit evidences Congress's belief not only that American prosperity depends on the competitiveness of U.S. companies operating abroad but also that double taxation would unfairly impede this competitiveness.[12]

As policymakers contemplate different proposals to reform the U.S. international tax system anew, TEI urges renewed vigilance in safeguarding U.S. multinational businesses against the looming specter of double taxation. To the maximum extent practicable, policymakers should ensure that contemplated reforms to the U.S. international tax system will not increase the incidence of unrelieved double taxation.

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[10] Garrett Watson & William McBride, Tax Found., *Fiscal Fact No. 751, Evaluating Proposals to Increase the Corporate Tax Rate and Levy a Minimum Tax on Corporate Book Income* 2–3 (2021). According to OECD data, the current U.S. federal corporate income tax rate *less deductions for state and local taxes* is estimated to be 19.73% and the average state corporate income tax rate is estimated to be 6.03%, which produces a combined corporate income tax rate of 25.77%.

[11] OECD, *Addressing the Tax Challenges of the Digital Economy, Action 1: 2014 Deliverable* 36 (2014).

[12] *See, e.g.*, H.R. Rep. No. 65-767, at 91 (1918), *reprinted in* 1939-1 C.B. (pt. 2) 86, 93; S. Rep. No. 94-938, at 233 (1976).