August 7, 2017

Internal Revenue Service
CC:PA:LPD:PR (Notice 2017-38)
Room 5205
P.O. Box 7604
Ben Franklin Station
Washington, DC 20224

RE: Notice 2017-38

To Whom It May Concern,

On behalf of the Financial Accountability and Corporate Transparency (FACT) Coalition, we are writing to support the Department of the Treasury's **Final and Temporary Regulations under Section 385 on the Treatment of Certain Interests in Corporations as Stock or Indebtedness.**[1] We believe that a robust implementation of this rule will help curb abusive corporate tax avoidance practices, including the incentive for companies to engage in corporate inversions.

The FACT Coalition is a non-partisan alliance of more than 100 state, national and international organizations working toward a fair and honest tax system that addresses the challenges of a global economy and promoting policies to combat the harmful impacts of corrupt financial practices. [2]

The corporate tax avoidance practice known as earnings-stripping has undermined the honesty and fairness of our tax code by allowing multinational corporations to artificially shift income from jurisdictions with a typical tax system to jurisdictions that are tax havens. Earnings-stripping allows foreign multinationals to shift income out of their U.S. subsidiaries by loading up their U.S. subsidiary with excessive amounts of debt and then transferring income out of the U.S. through interest payments to low- or zero-tax foreign jurisdictions. This practice is one of the most significant incentives behind the recent slew of inversions because it gives foreign or inverted companies a huge tax advantage not available to U.S.-owned corporations.

Using its broadly granted authority under Section 385, Treasury has appropriately proposed to restore some honesty to cross-border transactions by curbing the incentive for companies to use intercompany debt to artificially shift their income. These regulations will have a significant impact, with the Treasury Department estimating that the rule will raise about $7.4 billion over ten years.[3] The rule will also help level the playing field between purely domestic businesses and the multinational companies with which they compete.

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1 See: https://www.treasury.gov/press-center/press-releases/Pages/jl0580.aspx

2 For a full list of FACT Coalition members, visit https://thefactcoalition.org/about/coalition-members-and-supporters/

3 *Internal Revenue Service*, "Internal Revenue Bulletin: 2016-45, November 7, 2016, T.D. 9790: Treatment of Certain Interests in Corporations as Stock or Indebtedness." November 7, 2016, accessible at https://www.irs.gov/irb/2016-45_IRB/ar09.html.

Recent attempted or completed inversions — such as those by Pfizer, IHS, and Johnson Controls — show the importance of the Section 385 regulations and the need for additional anti-inversion regulations.

A recent study by the Institute for Taxation and Economic Policy found that U.S. companies likely owe as much as $767 billion on the $2.6 trillion in earnings they hold offshore.[4] Given the substantial sum owed in taxes by these companies, allowing them to avoid taxes entirely through earnings-stripping and related strategies could have negative implications on the U.S. tax base moving forward.

Given the scope of the tax avoidance problem, the 385 regulations should be strengthened, rather than weakened or repealed. To this end, Treasury should reexamine whether to undo some of the changes made between its initial stronger draft regulations versus those in its final regulations.

The gaming of our international tax system shifts responsibility for taxes onto individuals and small and wholly domestic businesses; creates inefficiencies in international commerce; drains revenue from our communities and hurts families; and undermines our country's ability to function properly. It is time we eliminate these egregious offshore loopholes to make sure that the corporations that benefit from all of the resources, protections, and markets in the United States cannot continue to game the system and dodge the taxes they otherwise owe.

Should you have any questions, do not hesitate to contact Richard Phillips (rphillips@itep.org) or Clark Gascoigne (cgascoigne@thefactcoalition.org).

Thank you for your careful consideration of this matter.

Sincerely,

Gary Kalman
Executive Director
The FACT Coalition

Clark Gascoigne
Deputy Director
The FACT Coalition

Richard Phillips
Policy & Communications Co-Chair
The FACT Coalition

[4] *Institute on Taxation and Economic Policy*. "Fortune 500 Companies Hold a Record $2.6 Trillion Offshore." Washington, DC: March 2017 (accessible at http://www.itep.org/pdf/pre0327.pdf).