February 5, 2019

The Honorable Charles Rettig
Commissioner
Internal Revenue Service
1111 Constitution Ave., N.W.
Washington, D.C. 20224

**Re: Guidance Related to the Foreign Tax Credit, Including Guidance Implementing Changes Made by the Tax Cuts and Jobs Act [REG–105600–18]**

Dear Commissioner Rettig,

We are writing on behalf of the Financial Accountability and Corporate Transparency (FACT) Coalition to share our views on the Internal Revenue Service's (IRS) proposed guidance regarding the foreign tax credit and related changes made by the Tax Cuts and Jobs Act (TCJA) [REG–105600–18].

The FACT Coalition is a non-partisan alliance of more than 100 state, national, and international organizations working toward a fair tax system that addresses the challenges of a global economy and promoting policies to combat the harmful impacts of corrupt financial practices.[1]

We believe that implementation of the foreign tax credit changes should, whenever possible, prioritize the base-protection role over competitiveness concerns. The general structure of the international tax system under the TCJA creates a significant risk that multinational corporations will continue or even expand their profit-shifting efforts to avoid paying taxes. At the same time, the cut to the corporate tax rate and additional restructuring of the system guarantee that U.S. multinational corporations will face a U.S. tax regime that is more generous than many of its competitors, even with strict anti-base erosion rules.

We appreciate the efforts of the IRS to strike a balance between competitiveness and base erosion concerns in this latest regulation and believe that it did so in most cases.

One area where the IRS regulation goes beyond what is mandated in the law and errs in favor of encouraging aggressive tax avoidance is the decision to not require the full allocation of expenses in calculating foreign tax credits for purposes of reducing the amount of U.S. taxes owed on global intangible low-taxed income (GILTI). While some corporations would prefer that no expenses be allocated, the law was clearly written to use foreign tax credits, not some other measure of foreign taxes or income, as the base for reducing the amount owed under the tax on GILTI. One core provision contained within the foreign tax credit rules — and a reason to favor this base over any other alternative — is precisely that it contains rules to prevent base erosion through the misallocation of expenses for tax purposes. Given the clear intent of the language of the Tax Cuts and Jobs Act and the potential for

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

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base erosion, we strongly recommend that the expense allocation rules remain in place at their full rate, not at the reduced rate of 50 percent, as proposed in the regulation.

While tighter rules would help prevent gaming of the foreign tax credit regulation and provide better protection against base erosion, the approach in the proposed rule — except for the allocation rules mentioned above — is a minimally acceptable way to implement the provision. We do, however, oppose any additional effort to carve out or weaken anti-abuse rules proposed by the IRS and the Department of the Treasury in this regulation.

Thank you for taking into consideration our concerns. Should you have any questions, please feel free to contact Clark Gascoigne at +1 (202) 810-1334 or cgascoigne@thefactcoalition.org.

Sincerely,

**Gary Kalman**
Executive Director
The FACT Coalition

**Clark Gascoigne**
Deputy Director
The FACT Coalition