AFL-CIO
AMERICA'S UNIONS

American Federation of Labor and Congress of Industrial Organizations

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Submitted to www.regulations.gov

CC:PA:LPD:PR (REG-135734-14)
Mr. John Koskinen
Commissioner
Internal Revenue Service
1111 Constitution Avenue
Washington, D.C. 20224

Re: Treatment of Certain Interests in Corporations as Stock or Indebtedness (REG-108060-15)

Dear Commissioner Koskinen:

On behalf of the American Federation of Labor and Congress of Industrial Organizations (the "AFL-CIO"), I appreciate the opportunity to comment on the Treasury Department's proposed rule under Section 385 of the tax code that limits the ability of foreign multinational corporations to shift corporate profits from the United States, where they would be fully taxed, to offshore locations (often tax havens) through a technique commonly referred to as "earnings stripping."

The AFL-CIO is the umbrella federation for U.S. labor unions, including 56 unions representing 12.5 million union members. Tax dodging hurts working people and the economy, generally, because it reduces corporate contributions to the federal budget and decreases federal funds available for building and maintaining the nation's roads, bridges, schools and other infrastructure, as well as providing public services.

The AFL-CIO strongly supports the efforts by the Treasury Department ("Treasury") to crack down on tax dodging by multinational companies, including former U.S. companies that have changed their tax residence to low tax countries through a corporate inversion. Profit shifting by U.S. multinationals costs the U.S. government tax revenues of more than $100 billion a year, according to a recent study.[1] Another academic study notes that the tax rate of U.S. multinationals has dropped to 20

[1] Kimberly A. Clausing, *Profit Shifting and U.S. Corporate Tax Policy Reform*, May 10, 2016. Available at: http://equitablegrowth.org/report/profit-shifting-and-u-s-corporate-tax-policy-reform/

percent in recent decades, down from 30 percent in the late 1990s.[2] A large part of this decline is due to increased profit-shifting to low-tax countries.[3]

Typically, in profit-shifting transactions, a U.S. firm purports to borrow money from its foreign parent company, then pays "interest" to the parent at a rate high enough to offset a portion of the company's U.S. income. The interest paid to the parent company is usually tax deductible, which shelters some of the firm's U.S. income from taxes. Then the profits are taxed at a much lower rate, if taxed at all, in the foreign jurisdiction.

We applaud Treasury for proposing to shut down some of the most abusive profit-shifting practices. The proposal would generally treat an interest in a corporation as equity for tax purposes unless the debt was a new capital investment in the U.S., and the so-called interest issued to the foreign parent company would instead be treated as taxable dividends.

We are pleased that the rule applies broadly, and includes all international transactions where a U.S. company is owned by a foreign corporation. We also believe the proposal correctly extends to foreign companies that set up a U.S. subsidiary and use that American subsidiary to engage in earnings stripping.

While we applaud the proposal, we urge Treasury to issue regulations to stop earnings stripping through the use of tax-deductible interest, royalties, rent, premiums and management fees. For example, Treasury should expand the bifurcation approach to limit the excessive characterization of an instrument as debt based on standard financial measures such as interest expense to earnings before interest, taxes, depreciation and amortization or EBITDA.

We appreciate the opportunity to comment on this rulemaking. If the AFL-CIO can be of further assistance, please contact me at (202) 637-5318.

Sincerely,

Heather Slavkin Corzo, Director
Office of Investment

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[2] Gabriel Zucman, *Taxing Across Borders: Tracking Personal Wealth and Corporate Profits,* Journal of Economic Perspectives—Volume 28, Number 4—Fall 2014—Pages 128-148. Available at: http://gabriel-zucman.eu/files/Zucman2014JEP.pdf

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