**AFL-CIO • American Federation of School Administrators • American Federation of State, County and Municipal Employees • American Federation of Teachers • Bakery Confectionery Tobacco Workers & Grain Millers • Communications Workers of America • International Association of Machinists and Aerospace Workers • International Brotherhood of Teamsters • International Federation of Professional and Technical Engineers • The International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) • National Education Association • Service Employees International Union • UNITE HERE • United Steelworkers • Utility Workers Union of America**

May 17, 2021

The Hon. Ron Wyden, Chair
The Hon. Sherrod Brown
The Hon. Mark Warner
Senate Committee on Finance
219 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chair Wyden and Senators Brown and Warner:

The undersigned unions write to respectfully offer comment and feedback on your very useful framework for "Overhauling International Taxation". We commend you for leadership in addressing our country's convoluted, ineffective and ultimately destructive system for taxing the foreign profits of U.S. corporations. The current rules not only cost our country enormous sums in lost tax revenue but threaten good-paying jobs and national productive capacity. American corporations dodge an estimated $60 billion a year in U.S. taxes by shifting profits and production offshore, in the process depriving vital public services of needed funding and costing American jobs.

Partly as a result of offshore tax dodging, in 2018 over 1,500 U.S.-based multinational corporations paid an average U.S. tax rate of just 7.8%. The tax code encourages corporations to also move actual production and jobs offshore. Up to one-third of the six million manufacturing jobs lost in the last decade of the 20th century and first decade of the 21st can be attributed to offshoring by multinational corporations. Unfortunately, the Tax Cuts and Jobs Act will likely make matters worse if left unaddressed, as perverse incentives to invest overseas could increasingly factor into multinational investment decisions over time.

Our unions' approach to international taxation starts with a simple but important principle: American corporations should pay the same U.S. tax rate on offshore profits as on domestic ones. That's the only way to ensure firms have no tax-based incentive to shift profits, offshore production and outsource jobs.

As you are aware, the No Tax Breaks for Outsourcing Act, S. 714 (NTBOA), based on this principle that has our wholehearted support. We hope in your deliberations you will closely consult this legislation since we believe it would best achieve your aim of successfully overhauling our international tax system.

Though it does not completely eliminate the U.S. tax advantage given to offshore profits, President Biden's Made in America Tax Plan (MATP) sharply reduces it, a marked improvement over the status quo that also deserves your attention. Biden's plan to save (and even increase) American jobs and domestic production by curbing offshore corporate tax dodging will raise at least $700 billion over 10 years, according to the Treasury Department.

These revenues form the backbone of the President's American Jobs Plan, which Moody's Analytics estimates would create an additional 2.7 million jobs. Moody's Analytics also noted: "The plan calls for higher corporate taxes to help pay for the increased infrastructure and the government will experience larger budget deficits, but the economic benefits of the plan substantially outweigh these negatives. Passage of the American Jobs Plan would ensure that the economy quickly returns to full employment, and the plan would provide a meaningful boost to long-term growth."

Following are our recommendations on the three provisions of 2017's Tax Cuts and Jobs Act (TCJA) that are the focus of your framework:

## Global Intangible Low-Taxed Income (GILTI)

*Reduced Tax Rate*

The TCJA unwisely exempts foreign income of American corporations from U.S. taxation. In a feeble attempt to limit the rush of profits, jobs and production offshore such an incentive naturally invites, the law created a special category of corporate offshore earnings it called Global Intangible Low-Taxed Income (GILTI). GILTI is taxed by the U.S., but effectively at only half the rate of domestic profits.

The NTBOA eliminates the tax discount on GILTI, taxing offshore profits at the same rate as domestic ones and thereby eliminating the incentive for offshoring jobs and profits. The MATP reduces the discount from 50% to 25%, essentially creating a 21% tax rate on offshore profits (assuming President Biden's 28% rate on domestic profits gets enacted) reducing the offshoring incentive. Your framework questions which approach is better, saying the answer depends on related corporate-tax reforms. In our view, regardless of other reforms, equalizing the U.S. tax rates on foreign and domestic corporate profits is absolutely necessary. Completely eliminating the GILTI discount is the right policy.

*Profits Exempted from GILTI Based on Foreign Investment*

GILTI is defined as the offshore profits of American corporations that exceed what's deemed a "normal" 10% return on their physical investments in foreign countries. Therefore, the more factories, stores, offices and other facilities—along with the workforce to staff them—that U.S.

firms maintain offshore, the greater dollar amount of their profits are exempt from the GILTI tax.

As your framework puts it, this "irrational incentive to put new investment abroad…should be repealed." Both the NTBOA and the MATP support accomplishing this essential policy goal.

*How to Apply Foreign Tax Credits*

To avoid double taxation, American corporations are granted a credit on their U.S. taxes for foreign taxes paid. Credits are not considered from each country individually, however, but instead all grouped together into a single credit. The result is that the parts of credits from high-tax nations that exceed U.S. tax liability effectively shield from some U.S. tax the profits from no- or low-tax nations. This shielding function greatly reduces the effectiveness of the GILTI tax as a tool to reduce tax avoidance.

Both the NTBOA and MATP mandate applying GILTI tax credits country by country, so that excess credits from high-tax countries no longer shield profits booked in tax havens. Your framework endorses that system and also suggests an alternative: allowing exclusively credits from "low-tax" countries, excluding excess credits from "high-tax" countries. We support the approach taken by the NTBOA and MATP to apply the foreign tax credit limitation on a country-by-country basis, which we believe best ensures the profits of American firms booked in tax havens are appropriately taxed by the U.S.

Your framework also proposes to stop allocating a portion of U.S. expenses for research and management to the foreign income it helped generate, for the purposes of calculating the foreign tax credit limitation. We are concerned that this change could unintentionally reduce tax paid by corporations without leading to domestic job creation.

**Foreign Derived Intangible Income (FDII)**

The TCJA attempted to encourage exports of high-profit goods, services and intangibles by cutting the tax rate on such so-called Foreign Derived Intangible Income (FDII). The current FDII rate is 13.125%, scheduled to rise to 16.83% in 2026.

The share of income designated FDII is arbitrarily determined as the excess over a deemed "ordinary" return of 10% on a corporation's physical assets in America. Just as the GILTI 10% exemption encourages more foreign investment because it lowers the dollar-amount of profits subject to tax, so the FDII 10% exemption *discourages domestic* investment because the fewer tangible assets here, the higher the dollar-amount of profits qualify as lower-taxed FDII.

Both the NTBOA and MATP would eliminate FDII, with the MATP pledging the revenue gained would be used for tax credits to encourage research and development. Your framework suggests that, properly modified, something like FDII could be usefully retained.

Specifically, you propose replacing the concept of foreign derived intangible income with "deemed innovation income" (DII), which like FDII would be eligible for a reduced U.S. tax rate.

The difference is that DII would be figured as a percentage of domestic investments that encourage innovation, such as research and development, and worker training. Thus, unlike the dampening of U.S. investment caused by the FDII regime, the DII system would actually encourage domestic investment. To further guard against offshoring incentives, you would equalize the DII rate with the GILTI rate, in contrast to the lower rate now afforded foreign GILTI compared to domestic FDII.

While DII is an interesting idea, our unions feel most comfortable eliminating all tax-rate discrepancies on different kinds of corporate income to avoid gaming of the system. Innovation could instead be encouraged with the kind of tax credits proposed by the MATP. Since you acknowledge that the FDII rate should equal the GILTI rate, there would be no need (and no room) for a FDII tax break in case the GILTI rate is increased up to the domestic rate as we call for.

**Base Erosion and Anti-Abuse Tax (BEAT)**

The Base Erosion and Anti-Abuse Tax (BEAT) is an alternative minimum tax meant to prevent American corporations from shifting U.S. profits to tax havens through unnecessary payments to offshore subsidiaries. Large corporations (revenue over $500 million) that make more than 3% of their interest and other tax-deductible payments to related overseas companies must figure their U.S. tax liability twice: once the normal way at the ordinary 21% rate, and then again with those excess deductions disallowed but at a 10% rate (scheduled to rise to 12.5% in 2026). They owe the larger amount.

The MATP would replace the BEAT with a different check on earnings stripping, the Stopping Harmful Inversions and Ending Low-tax Developments (SHIELD) system. It would also disallow interest and other tax-deductible payments to subsidiaries in low-tax nations, but then tax the adjusted income at the ordinary tax rate instead of a discounted rate. “Low tax” would be defined through international agreement, but until it was so established, the SHIELD restriction would apply to any payments made to countries whose tax rates were lower than the U.S. GILTI rate.

Your framework suggests keeping the BEAT, but with two amendments. You would restore the full value of certain investment tax credits that are currently undercut by the BEAT; and you would apply a second, higher tax bracket to income associated with abusive offshore payments.

We support the Administration’s goal to end the race to the bottom on corporate tax through an international agreement. The SHIELD is an essential element of that plan, as it would prompt other countries to adopt a global minimum tax. The BEAT would undermine that plan and has been shown to raise little revenue.

**Inversions**

The NTBOA and MATP take the same approach to making it harder for corporations to abandon America by becoming a “foreign” corporation for tax purposes. We support these proposals to deem certain mergers between a U.S. corporation and a smaller foreign corporation to be U.S.

taxpayers, regardless of where the new corporation claims to be headquartered, and urge you to include them in your reform proposal.

We thank you for considering our comments on this important issue. We look forward to working with you in the coming months to overhaul our country's international tax system to ensure America's hugely profitable multinational corporations pay their fair share of taxes and stop offshoring production and jobs.

Sincerely,

AFL-CIO

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American Federation of State, County and Municipal Employees

American Federation of Teachers

Bakery Confectionery Tobacco Workers & Grain Millers

Communications Workers of America

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