July 29, 2019

The Honorable Steven Mnuchin
United States Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Dear Secretary Mnuchin:

Business Roundtable, representing CEO members from America's leading companies, strongly supports efforts to ensure that the Tax Cuts & Jobs Act (TCJA) is implemented in a way that drives economic growth and greater opportunity for American workers.

We remain concerned that implementation of the Global Intangible Low-Taxed Income (GILTI) provision in TCJA will impose additional tax on U.S. companies already paying high rates of foreign tax. Business Roundtable urges Treasury to avoid that result and ensure GILTI does not place U.S. companies and workers at a competitive disadvantage in the global economy.

Treasury made a welcome improvement to GILTI rules in proposed regulations that provide an elective exclusion for certain high-taxed income (REG-101828-19). Business Roundtable urges Treasury to further refine the proposed GILTI high-tax exclusion (HTE) to eliminate the need for companies to incur costly transactional planning to qualify for existing exceptions to GILTI. In particular, we urge you to:

- <u>Eliminate the requirement that the GILTI HTE applies to all controlled foreign corporations (CFCs) with high-taxed income</u>. This restriction in the proposed regulations is inconsistent with the existing HTE in Subpart F, which is available on a CFC-by-CFC basis. As a result, companies will likely continue to undertake costly transactional planning to utilize the Subpart F HTE in lieu of the more restrictive GILTI HTE.

- <u>Permit the GILTI HTE election on an annual basis</u>. The circumstances for making a GILTI HTE election can vary dramatically from year to year in the course of normal business operations and in a dynamic global economy. Thus, the proposed 60-month binding period for GILTI HTE elections and revocations is overly restrictive and limits its usefulness for many companies. The absence of foreign tax credit carryforwards under GILTI further underscores the need for a year-by-year election to avoid unintended and potentially punitive results for U.S. companies.

- <u>Permit the GILTI HTE election to apply back to the effective date of the statute</u>. Certain companies who would make the GILTI HTE election face significant GILTI costs in tax years 2018 and 2019, so retroactive application of the regulations will ensure neutral and consistent results.

We believe Treasury has full authority to make these refinements, which will increase the usefulness of the GILTI HTE and improve the competitiveness of U.S. businesses.

Even with such changes to the GILTI HTE, the GILTI rules will continue to place many U.S. businesses at a competitive disadvantage in the global economy. As Business Roundtable noted in our letter to you dated March 28, 2019, Congress intended that no residual U.S. tax should be owed on GILTI when companies are subject to foreign tax rates in excess of 13.125 percent. In various fact scenarios, U.S. companies subject to high rates of foreign tax will be subject to GILTI, with no relief from the GILTI HTE, due to application of prior-law expense allocation rules. We therefore renew the request that Treasury exercise its regulatory authority to mitigate the negative effects of expense allocation, which undermine the competitiveness of U.S. businesses and run contrary to legislative intent.

Business Roundtable joins the call for Treasury to prevent the allocation of domestic expenses to GILTI in situations where the allocation would cause additional tax to be imposed on U.S. companies with foreign tax rates of 13.125 percent or higher. In the absence of expense allocation relief in future foreign tax credit regulations, U.S. businesses and workers will face adverse effects on their global competitiveness.

TCJA was a significant step forward in strengthening the economy and increasing opportunity for American workers. Business Roundtable urges Treasury to promote these objectives and fulfill Congressional intent by refining the GILTI HTE and mitigating the harmful effects of expense allocation to ensure the competitiveness of U.S. companies. We thank you for your ongoing engagement with us on these matters.

Yours sincerely,

Joshua Bolten

Joshua Bolten
President & CEO
Business Roundtable