CAL DOOLEY
PRESIDENT AND CEO

December 7, 2017

The Honorable Orrin Hatch
Chairman, Committee on Finance
United States Senate
Washington, DC 20510

The Honorable Kevin Brady
Chairman, Committee on Ways and Means
United States House of Representatives
Washington, DC 20515

Dear Chairman Hatch and Chairman Brady:

The American Chemistry Council (ACC) congratulates Congressional leaders for their historic progress toward modernizing our nation's tax code. We eagerly anticipate enactment this year of a fair, simpler and internationally competitive system that promotes U.S. economic growth. We look forward to being a resource during the conference committee process.

We applaud House and Senate lawmakers for including a substantial reduction in the corporate tax rate, and for making it permanent. We're pleased that both bills would move the U.S. to a territorial system, and that they maintain "last in, first out" (LIFO) accounting methods. We welcome the use of a bifurcated rate for deemed repatriation of historical foreign earnings – one with a significantly lower rate for earnings reinvested in plants and equipment than for cash/cash equivalents.

As you and other conferees work to reconcile the House and Senate versions of H.R. 1 into a final bill, we would urge you to:

- Maintain the 20 percent corporate rate, included in both versions, and make any corporate rate reduction effective for 2018.
- Drop the corporate AMT provision in the Senate bill, in order to preserve the value of the R&D tax credit (a key driver of domestic innovation and investment) and the new territorial system.
- Adjust the House and Senate limits on the deductibility of corporate debt interest, in order to help support U.S. investment in large-scale manufacturing projects (e.g., grandfather existing debt plus debt that will be incurred in connection with a transaction that has already been publicly announced and awaiting approval, using GAAP or IFRS financial book values instead of tax basis in the worldwide limitation, using EBITDA instead of EBIT in the thin cap limitation). (Further details attached).
- If the BEAT in the Senate bill is adopted, ensure no double counting by adjusting the use of foreign tax credits. (Further details attached).

The business of chemistry is an advanced manufacturing industry and essential to our economy. We provide 811,000 skilled American jobs and account for 14 percent of U.S. exports. Over 25 percent of U.S. GDP is generated from industries that rely on chemistry, from agriculture and electronics to textiles, vehicles, and energy-efficient materials and technologies used in building and construction. Thanks to domestic shale gas – a key source of energy and feedstock for our industry – American chemistry is in growth mode, with $185 billion in investment announced since 2010. Fully 62 percent of this is foreign direct investment. In 2016, the chemical industry accounted for 48 percent of all manufacturing construction spending, outpacing even transportation and health care.

We are excited to see policymakers on the cusp of a once-in-a-generation opportunity to enact comprehensive tax reform. We provide the attached technical corrections and suggestions for your consideration as you craft the final reform package. The decisions Congress makes will be critical to ensuring a strong and competitive U.S. chemical industry and manufacturing sector for the long term.

Sincerely,

Cal Dooley

Cal Dooley

cc: Members of the Senate Committee on Finance and the House Committee on Ways and Means

American Chemistry Council

Technical Comments on New Section 163(n) of the Senate Passed Version of H.R.1 "Tax Cuts and Jobs Act"

December 7, 2017

The American Chemistry Council lauds and supports the House and Senate in their efforts to enact a fair, internationally competitive tax system that promotes economic growth in the United States.

Business tax reform needs to recognize the importance of American manufacturing and the jobs it creates. We support a substantial rate reduction to reflect rates at least comparable to OECD averages, a competitive territorial system and transition rules that avoid financial dislocation, contraction or reduction in jobs. Reform must produce a more level playing field for U.S. and foreign companies when they invest at home or abroad.

Lawmakers must enact a reasonable, bifurcated rate for deemed repatriation of historical foreign earnings – one with a substantially lower rate for earnings reinvested in plants and equipment than for cash/cash equivalents. We support permanent reform in order to drive sustained economic growth in the 21st century.

Senate Section 163(n) Proposal

The current Senate tax reform bill (Section 14221) contains a new Section 163(n) interest deduction limitation for U.S. corporations which are members of worldwide affiliated groups and which have "excess domestic indebtedness." This provision keys off debt-equity calculations for both the domestic corporate group and the worldwide affiliated group. The Senate statutory language calculates equity based on assets less indebtedness, and values the assets based on "the adjusted basis thereof for purposes of determining gain[.]" See Proposed Section 163(n)(3)(D)(i)(I). This interest limitation provision would apply immediately to tax years beginning after December 31, 2017.

Problematic Technical Aspects

1. *Accelerated U.S. tax cost recovery skews the analysis.* The calculation of "excess domestic indebtedness" would require a taxpayer to determine the worldwide affiliated group's adjusted tax basis of its non-U.S. assets (less indebtedness) using regular U.S. tax methods and compare that with the domestic corporate group's adjusted tax basis of its assets (less indebtedness). Given the reductions for MACRS, accelerated tax depreciation, bonus depreciation and the new expensing provisions, the regular tax adjusted basis of the U.S. assets will be comparatively lower than the adjusted tax basis of similar foreign assets, which will reflect only straight line depreciation over the longer applicable class life. See I.R.C. § 168(g). This reference in Section 163(n)(3)(D)(i)(I) to adjusted tax basis therefore will typically result in lower equity for a corporation with U.S. assets than for a foreign corporation with otherwise identical foreign assets. A corporation making substantial investments in new U.S. assets eligible for expensing would be especially disadvantaged by the provision. Accordingly, valuing assets using U.S. regular tax methods disproportionately

reduces the resulting equity of a U.S. corporation relative to the equity of the worldwide group. The value of foreign and U.S. assets should instead be determined on a comparable basis, such as using GAAP or IFRS financial book values or the adjusted tax basis that is used for purposes of computing earnings and profits, in order to eliminate the disproportionate effect of accelerated cost recovery on U.S. assets.

2. *Burdensome Recreation of Adjusted Tax Basis of Foreign Corporate Assets*
   a. Proposed Section 163(n) provides an absolute limitation on interest deductions without any safe harbors. For taxpayers that are part of worldwide affiliated groups, this new Section 163(n) limitation must therefore be determined before the taxpayer can claim any interest deduction on a tax return, even if it eventually might be determined that such a 163(n) limitation would be higher than the new Section 163(j) limitation. This may inefficiently result in taxpayers overpaying tax because of an initial inability to calculate the new Section 163(n) limitation and claiming large subsequent refunds when they are finally able to determine the amount of the Section 163(n) limitation.
   b. Many taxpayers are not required to calculate the adjusted tax basis for foreign assets held by the foreign affiliate corporations using U.S. tax methods. For non-US parented groups, the foreign corporations would not have had any previous need for any US method determinations of the adjusted tax basis of foreign assets. However, given the limitations of Section 163(n)), such non-US corporations will have to start from scratch to create new systems, books and records in order to go back retroactively to recreate the adjusted tax basis in foreign assets using US tax methods before the US affiliate corporation may deduct any interest in the US. This is extremely burdensome as well as time consuming for worldwide affiliated groups, but will be necessary if Section 163(n) requires that US tax methods be applied to determine the asset values of all foreign corporate affiliates.

3. *Inadequate time for Treasury regulation guidance.* The Senate bill correctly contemplates that Treasury regulations will be necessary to fully implement the new Section 163(n) provisions and resolve certain issues. For instance, at what point in time must the taxpayer make the debt-equity calculations in order to determine the debt-equity ratios applicable to a taxable year, or how is the term “indebtedness” defined and determined? These are just a few of the complex determinations that will need to be made, and it will take time for the U.S. Treasury Department to finalize appropriate guidance. Meanwhile, taxpayers will be immediately subject to these uncertainties when making estimated tax payments and reporting periodic after-tax financial results. Sound tax administration requires that such guidance be available at the time such material tax changes become effective.

American Chemistry Council

Proposed Interest Limitations Contained in the Senate Approved Version of H.R. 1 "Tax Cuts And Jobs Act"

December 7, 2017

The American Chemistry Council lauds and supports the House and Senate in their efforts to enact a fair, internationally competitive tax system that promotes economic growth in the United States. ACC represents the leading companies engaged in the business of chemistry, an essential part of the U.S. economy and a critical engine for growth. Over one quarter of the U.S. GDP is generated from industries that rely on chemistry. We provide 811,000 skilled American jobs. Our industry is investing $185 billion in new facilities and expanded production in the United States, of which 62 percent is foreign direct investment. In 2016, the chemical industry accounted for 48 percent of all manufacturing construction spending. Clearly chemical industry investment creates jobs and helps grow the U.S. economy.

A key concern for an industry considering multi-billion dollar investments is reliable access to new capital and the cost of that capital. Unsurprisingly, tax provisions that reduce the after-tax cost of capital are the most effective in promoting growth. Limits on interest deductions have the opposite effect. They *directly* increase the cost of capital, reducing the viability of new investment projects. Because of their negative impact on investment and growth, any limitations on the deductibility of interest should be fashioned with caution and with due consideration of the financing needs of businesses in the United States.

We therefore urge the Conference Committee to reconsider the proposed dual limits on interest deductions contained in the Senate bill. Any interest restrictions based on arbitrary, fixed ratios necessarily ignore the wide variation among and within industries with respect to credit profiles, the maturity of the business, volatility of earnings, business cycles, and efficient capital structures. Any single limitation intended to distinguish between the debt needed to support the growth and operations of a business from supposedly tax-motivated, "excessive" debt, will necessarily be wholly unsuitable to the business needs of significant segments of our economy, erecting barriers to their growth. Further, concerns about the use of tax-motivated debt to erode the tax base are already being addressed (without imposing new barriers to growth) by the corporate rate cut at the center of the Committee's Tax Reform. With the drop in the U.S. corporate rate from 35% to 20%, a rate more in line with the 22.5% average rate of our OECD trading partners, the comparative tax benefit of U.S. interest deductions will be reduced dramatically, removing much of the incentive for any tax-motivated debt.

ACC is also concerned that the specific limitations currently proposed in the Senate construct would be more restrictive than comparable base erosion measures implemented by our OECD and G20 trading partners, and as such, would work against the goal of enhancing the competitiveness of the U.S. tax code and U.S. businesses. The Committee's current proposal would impose an interest limitation set at *the lower of* a fixed ratio interest limitation of 30% of

EBIT, or a group ratio based on the group debt to equity ratio. These provisions are both inconsistent with, and harsher than the best practices for "Limiting Base Erosion Involving Interest Deductions" recommended under Action 4 of the OECD/G20 Base Erosion and Profit Shifting Project (BEPS), putting U.S. companies at a competitive disadvantage, while inviting our trading partners to impose more stringent measures against U.S. companies operating overseas. In particular, U.S. companies that grow through acquisition or invest in significant capital projects would be at a particular disadvantage because the equity ratio is determined by reference to "adjusted tax basis" that is reduced by depreciation.

Although it is within the BEPS guidelines for interest to be limited by a fixed percentage of taxable earnings within a country (tying the tax deduction to income that is taxed), the BEPS report recommends that such a fixed ratio be based on a fixed percentage of EBITDA (calculated on a tax basis). EBITDA is more suitable than EBIT for this purpose both because EBITDA is more widely used by lenders in judging an entity's debt capacity and because by excluding the two main non-cash expenses, depreciation and amortization, EBITDA more closely measures the ability of an entity to repay its debt. Accordingly, if the Committee's proposal includes a 30% fixed ratio, it should be set at 30% of *EBITDA*, not EBIT, so that it falls with the BEPS recommended best practice.

Further the BEPS report acknowledges that the fixed ratio rule is a "blunt tool" that would unduly hamper the financing of businesses that are more highly leveraged for legitimate non-tax reasons. Accordingly, the report recommends that an alternate group ratio test be used in conjunction with the fixed ratio rule *to provide greater flexibility*. The group ratio test would permit an entity in a highly leveraged multinational group to deduct its interest expense—even if higher than the fixed percentage of its earnings—provided its interest expense or debt level remained within the comparable group ratio. The group ratio test provides an outlet when the fixed ratio limitation would be inappropriately low for the leverage of the group. In line with the stated purpose of the group ratio test, the BEPS report explicitly states that "a group ratio should *never* operate to impose a stricter limit than the fixed ratio rule." [emphasis added] [Report, Paragraph 304, p. 119]

The group ratio test is still a blunt tool that does not address the different degrees of leverage appropriate for different entities within the group, entities which may have different credit profiles or be in different stages of business maturity, or which may do business in different industries. But, because it provides some relief for entities within highly leveraged groups, ACC supports using a group ratio test to serve as a type of safety valve, like the "equity escape" rule adopted by some of our trading partners. It should be applied only when it provides a less restrictive (higher) limitation than provided by the fixed ratio rule. Applying the more restrictive of the two limitations would use the group ratio counter to its intended purpose, and in express violation of the BEPS recommendation. It would unduly restrict the use of debt to support economic growth and put U.S. businesses at a competitive disadvantage. Accordingly ACC recommends that the group ratio, if used, should be applied only when it would impose a limit higher than the fixed ratio.

Finally, ACC asks the Conference Committee to remove the Senate's third interest limitation it has proposed: the prohibition on a U.S. affiliated group from allocating interest expense based on the fair market value of assets. We do not understand the rationale for this proposal, because allocating interest by fair market value has not been considered abusive, and prohibiting fair market value allocation would undermine the pro-growth effects of expensing. With fair market allocation prohibited, affiliated groups would be required to allocate interest according to the relative tax basis of assets. Because of expensing, the tax basis of U.S. assets would fall more quickly than the tax basis of non-U.S. assets, and less of the tax benefit of interest would be allocated to the United States. This loss would offset the tax benefit of expensing, imposing an additional cost on U.S. investment. A third interest limitation is unnecessary, would add undue complexity, and would reduce the benefit of U.S. investments, while raising a relatively immaterial $0.2 billion of revenue over 10 years. We recommend the proposal be dropped.

Base Erosion and Anti-Abuse Tax ("BEAT") Should Permit Foreign Tax Credits

December 7, 2017

Under the Senate BEAT tax proposal, companies that (1) operate through foreign branches in high tax jurisdictions which generate foreign tax credits, (2) have significant current year section 78 inclusions, or (3) else have an Overall Domestic Loss carryforward and prior year foreign tax credit forwards, face double taxation on foreign earnings due to the decision to not exclude Foreign Tax Credits from the comparison of the BEAT minimum tax calculation to the regular tax liability (as currently presented the regular tax liability is presented net of the foreign tax credits whereas the minimum tax does not consider such credits while taxing foreign source earnings) .

If these foreign tax credits are not taken into account in the BEAT calculation the result will be massive double taxation on foreign earnings due to the disparity in the two tax bases that are compared under the BEAT provision.

Proposal: In addition to the research and development credit, the BEAT calculation should take into account foreign tax credits to avoid double taxation. The Senate TCJA's language on page 451, lines 13 – 19 should be amended to read:

- i) "(i) the credits allowed under this chapter against such regular tax liability, over
- ii) "(ii)the sum of:

    1. "(I) the credit allowed under section 38 for the taxable year which is properly allocable to the research credit determined under section 41(a), and
    2. "(II) the credit allowed under section 27(a)."

Comment to H.R. 1 "Tax Cuts and Jobs Act"

House Bill Sec. 4004. Treatment of Deferred Foreign Income upon Transition to Participation Exemption System of Taxation and

Senate Bill Sec. 14103. Treatment of Deferred Foreign Income upon Transition to Participation Exemption System of Taxation.

December 7, 2017

The American Chemistry Council lauds and supports the House and Senate in their efforts to enact a fair, internationally competitive tax system that promotes economic growth in the United States. We observed the need for a technical correction at Section 4004 of HR1 and Section 14103 of the Senate "Tax Cuts and Jobs Act," which inadvertently creates a tax liability for taxpayers in 2017.

U.S. taxpayers with foreign subsidiary corporations that have tax years different from U.S. parent would not have certainty around the characterization of dividend payments during their 2017 fiscal year. Earnings and profits (E&P) of the foreign entity that would have been distributed to its U.S. parent taxpayer would be previously taxed income (PTI) under the current proposal, and therefore those taxes associated with the E&P would be diminished in 2017 (instead of 2018 when the territorial regime is intended to start). The application of the transition rule therefore would have implications in advance of the anticipated effective date for territoriality on January 1, 2017.

In other words, dividend distributions that take place prior to the end of December 31, 2017 with a U.S. parent corporation that has a December 31, 2017 tax year end would be subject to rules applicable in 2018 during 2017.

We therefore respectfully submit the following as a technical clarification:

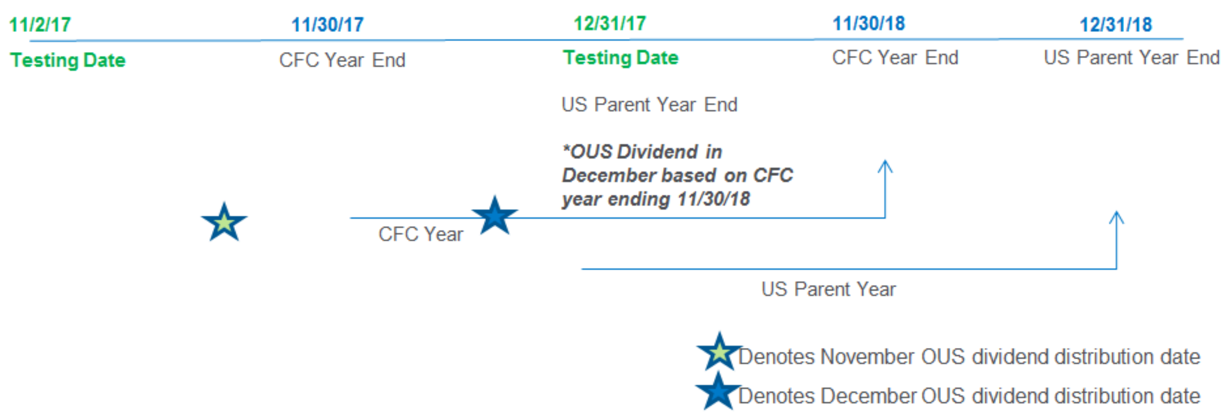
1. Pages 325-326 of the House Passed bill, strike "before" and insert "after":
"(a) TREATMENT OF DEFERRED FOREIGN INCOME AS SUBPART F INCOME. In the case of the last taxable year of a deferred foreign income corporation which begins after ~~before~~ January 1, 2018…"

2. Page 352 of the Senate Passed bill, strike "before" and insert "after":
"(a) TREATMENT OF DEFERRED FOREIGN INCOME AS SUBPART F INCOME. In the case of the last taxable year of a deferred foreign income corporation which begins after ~~before~~ January 1, 2018…"

This change would align the last taxable year of a deferred foreign income corporation to ensure the application of the rule would not adversely impact the 2017 tax year of U.S. parent taxpayer.

A depiction of the timelines follows at page 2.

House Testing Dates & Timeline



Senate Testing Dates & Timeline