Bipartisan Ways and Means contingent tells Yellen of taxpayer concerns about foreign tax credit regs

A bipartisan group of House taxwriters wrote a letter to Treasury Secretary Janet Yellen on April 29 asking her to work with companies and other stakeholders to provide further guidance and safe harbors for recently finalized regulations on foreign tax credits (FTCs) and to extend the March 7, 2022, deadline for implementing the new rules.
URL: https://hern.house.gov/uploadedfiles/schneider-hern_ftc_letter_to_treasury_final_4.29.22.pdf
URL: https://www.federalregister.gov/documents/2022/01/04/2021-27887/guidance-related-to-the-foreign-tax-credit-clarification-of-foreign-derived-intangible-income

The letter, led by House Ways and Means Committee members Brad Schneider, D-Ill., and Kevin Hern, R-Okla., urged Treasury to continue discussions with multinational businesses to develop a "productive outcome" on issues such as:

- "[T]he potential impact these new regulations will have on US companies operating in foreign countries with no US tax treaty in place";
- [T] he development of safe harbors "to make clear the regulations do not disallow credits for taxes that are clearly imposed on net income attributable to the taxing country"; and
- [T]he timely development of guidance.

The letter was also signed by Reps. Jodey Arrington, R-Texas; Ron Estes, R-Kan.; Drew Ferguson, R-Ga.; Ron Kind, D-Wis.; Stephanie Murphy, D-Fla.; Jimmy Panetta, D-Calif.; Stacey Plaskett, D-USVI; and Jackie Walorski R-Ind.

The FTC regulations, filed December 28, 2021, affect taxpayers that claim credits or deductions for foreign income taxes, or that claim a deduction for foreign-derived intangible income (FDII). (A summary of the regulations is available from Deloitte Tax LLP.) Numerous trade associations have argued that the final regulations included new and dramatically different provisions from earlier draft regulations released in November 2020 but the government did not provide an opportunity for stakeholders to comment. Industry groups also say the regulations serve to deny FTCs for foreign taxes that have long been creditable and will lead to double taxation and a competitive disadvantage for US groups.
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/TNV/220506_3_suppA.pdf

Some practitioners have also questioned whether the new regulations are compatible with the global tax reform plan being developed through the OECD that the US and nearly 140 other countries signed on to last October.

Noting the complexity involved in coordinating all the moving pieces related to international taxation, the House members wrote in their letter that "[a]s the Biden administration develops tax policy impacting US-based multinational corporations, it is crucial for Treasury to keep our global competitiveness at the top of its considerations while we work together to put our economy on the road towards long-term growth and recovery."

"FTCs play a critical role in the international tax system by preventing double taxation of income that is properly subject to tax in another jurisdiction. Denying credits for foreign taxes that were previously creditable may lead to unintended consequences with compounding effects for US businesses, such as double-taxation or US firms making decisions to offshore intellectual property. While we appreciate Treasury's role in issuing these final regulations, misaligned US policy could also dissuade investment by US companies in emerging markets where we need to stay competitive with China," the letter said.

At a Federal Bar Association tax law conference on March 3, several senior staff members to the congressional taxwriting committees addressed the FTC regulations and the concerns they have heard from industry, saying they too are working to understand the implications and believe Treasury is cooperating with both Congress and the business community on implementation.

"None of this is happening in isolation," said Derek Theurer, chief tax counsel for House Ways and Means Republicans, referring to the global negotiations taking place though the OECD. "Our members are very concerned about where that stands. How these foreign tax credit regs fit into Treasury's negotiations there, and what they want to be the final result, I think, is pretty important and not clear at this stage, so we're still kind of in information-gathering territory."

Andrew Grossman, chief tax counsel for the Ways and Means Democrats, also said Treasury was engaged in discussions with the committee's members about industry concerns but added some criticism of companies weighing in this year.

"If the new regs caused alarm in their final form, I think the business community would have been a little bit wiser to have reacted with a bit more alarm in their draft form," Grossman said.

— Storme Sixeas
Tax Policy Group
Deloitte Tax LLP