AFL-CIO

AMERICA'S UNIONS

American Federation of Labor and Congress of Industrial Organizations

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Submitted Electronically to: notice.comments@irscounsel.treas.gov

Internal Revenue Service
CC:PA:LPD:PR (Notice 2017-38)
Room 5205, P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20224

Re: Notice 2017-38

To Whom It May Concern:

On behalf of the American Federation of Labor and Congress of Industrial Organizations (the "AFL-CIO"), I write to urge the Treasury Department ("Treasury") and the Internal Revenue Service ("IRS") to resist the extreme deregulatory agenda being advanced by President Trump's Executive Order 13789 (April 21, 2017) and to retain common sense tax regulations passed since the beginning of 2016. In particular, we strongly support retaining or strengthening the Treatment of Certain Interests in Corporations as Stock or Indebtedness (T.D. 9790; 81 F.R. 72858), also known as the "earnings-stripping" rule, which curbs tax dodging by American companies that move their legal residence offshore after merging with a smaller company in a low tax country.

The AFL-CIO is the umbrella federation for U.S. labor unions, including 56 unions representing 12.5 million union members. Our members are taxpayers bearing an ever-increasing proportion of the tax-burden as multinational corporations and the richest Americans use their influence to avoid paying their fair share. Finally, we are members of communities across our country that depend on public services from roads to water to schools.

The current administration's war on regulation is nothing short of a war on working people. Relying on bogus claims about job creation and economic growth, powerful private and moneyed interests seek to leave the public unprotected and corporations unaccountable. These interests undermine the voice of working people and corrupt the very foundation of our democracy. Treasury's move towards repealing common sense tax rules is more of the same, enriching the rich and powerful at the expense of working people.

Among the specific regulations that the Treasury identified as significant per the EO and possibly in need of reform or repeal, we are especially concerned about the preservation of the earnings-stripping rule. Earnings stripping occurs when US companies merge with a smaller foreign company and relocate their headquarters in a tax haven. The foreign parent then issues significant amounts of debt to its US subsidiary, which then makes tax-free interest payments back to the parent, thus avoiding US taxes.[1]

Offshore profit shifting enables companies to avoid approximately $100 billion in taxes each year.[2] The average tax rate of U.S. multinationals has dropped by one third since the late 1990s, largely due to these practices.[3] Fortune 500 companies now hold more than $2.6 trillion in accumulated earnings offshore on which they currently owe $750 billion in taxes.[4]

The effects of tax dodging on our domestic economy cannot be understated. It decreases federal funds available for building and maintaining the nation's roads, bridges, schools and other infrastructure, and providing essential public services. It disadvantages US companies that keep their headquarters here while giving an advantage to companies that game the system and don't pay their fair share.

The current earnings-stripping rule is effective at curbing these abuses. By the Treasury Department's own estimation, the rule will raise an estimated $7.4 billion in revenue over 10 years.[5] Furthermore, it would ensure an equal playing field for US companies. The rule should be retained or strengthened

Thank you for your consideration of the AFL-CIO's views on this matter. Protecting our country's tax base, leveling the playing field for US domiciled companies, and holding the biggest multinational corporations accountable is crucial for the success of working people and our economy. If the AFL-CIO can be of further assistance, please contact Corey Klemmer at (202)637-5379 or cklemmer@aflcio.org.

Sincerely,

Heather Slavkin Corzo, Director
Corporations and Capital Markets
AFL-CIO

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[1] Citizens for Tax Justice, "The Problem of Corporate Inversions: The Right and Wrong Approaches for Congress" May 14, 2014. Available at: http://www.ctj.org/pdf/inversionfactsheet.pdf.

[2] 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/

[3] 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

[4] Institute on Taxation and Economic Policy, "Fortune 500 Companies Hold a Record $2.6 Trillion Offshore" March 29, 2017. Available at: https://itep.org/fortune-500-companies-hold-a-record-26-trillion-offshore/.

[5] https://www.federalregister.gov/documents/2016/10/21/2016-25105/treatment-of-certain-interests-in-corporations-as-stock-or-indebtedness