September 3, 2021

The Honorable Ron Wyden
Chairman, Senate Finance Committee
219 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Mike Crapo
Ranking Member, Senate Finance Committee
219 Dirksen Senate Office Building
Washington, DC 20510

Dear Senators Wyden and Crapo:

On behalf of the members of the National Retail Federation, I am writing to offer comments on the International Tax Reform Framework Discussion Draft that was released by Senators Wyden, Brown, and Warner on August 25. Our comments join in some of the concerns that have been raised by others with respect to the Global Intangible Low-Taxed Income (GILTI) and Foreign Derived Intangible Income (FDII) proposals, but also offer some different perspectives on behalf of the retail industry, especially with respect to Qualified Business Asset Investment (QBAI). The retail industry locates stores and distribution centers outside the United States **based on where the consumer is located**, not based on tax factors.

NRF, the world's largest retail trade association, passionately advocates for the people, brands, policies and ideas that help retail thrive. From its headquarters in Washington, D.C., NRF empowers the industry that powers the economy. Retail is the nation's largest private-sector employer, contributing $3.9 trillion to annual GDP and supporting one in four U.S. jobs — 52 million working Americans. For over a century, NRF has been a voice for every retailer and every retail job, educating, inspiring and communicating the powerful impact retail has on local communities and global economies.

Retailers are one of the highest effective taxpaying industries and are not among the companies that Chairman Wyden seems to be targeting when he says that his international taxation overhaul is meant to end incentives to move jobs overseas and close loopholes that allow companies to stash profits in tax havens. When retailers place stores in foreign markets, it is for the purpose of *expanding* their selling base to foreign customers, not to replace U.S. stores and U.S. jobs. Retailers are required to understand the consumer in each global market and meet our consumer where they shop by providing country specific efficient and seamless omni-channel experiences in-store, online and in Apps. When retailers expand and grow their businesses internationally, it means more jobs at U.S. headquarters, not less.

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GILTI

The timing and substantive proposals for changes to the GILTI regime in the Discussion Draft do not fully consider the OECD efforts with respect to a global minimum tax. The purpose of these efforts is to try to remove tax avoidance as a competitive factor for multinational businesses and ensure that all multinational enterprises pay a minimum level tax in jurisdictions in which they operate. Currently, the U.S. is the only country with a global minimum tax regime – GILTI. The NRF supports the OECD "Pillar Two" global minimum tax project, which is intended to create a level international tax playing field for business.

The Discussion Draft leaves open the specific tax rate at which the U.S. minimum country-by-country tax would be applied. The US should not implement a county-by-county effective tax rate greater than the 15% expected minimum effective tax rate anticipated to be agreed upon by OECD member countries because it would place U.S. retailers at a competitive disadvantage with foreign retailers.

We have concerns about the proposal to move to a country-by-country minimum tax regime based on the current GILTI regime. We believe a country-by-country minimum tax system should not include a reduction, or haircut, to the amount of foreign taxes eligible for credit against GILTI (as is the case with the current GILTI regime). We believe this would create unfair double taxation.

Additionally, the determination of income subject to the country-by-county minimum taxes and high and low tax jurisdictions should take into account permanent and timing differences for losses and foreign tax credits. For example, as retailers expand in new markets, they often incur startup losses, and it may take a few years to earn normal levels of profits. Locally, these losses generally are carried forward to reduce the taxes when profitability is achieved. A mechanism should be developed so there is an offset or carryover of losses and foreign tax credits in the GILTI country-by-country income calculation. Otherwise, a taxpayer who is in a high tax jurisdiction, for example, could get whipsawed. The taxpayer could have no cumulative income in a foreign country because of the losses but end up paying a U.S. tax under the proposal.

Another timing issue that should be considered is depreciation. A taxpayer can be in a high tax jurisdiction but will be more likely to now pay a U.S. country-by-country minimum tax because of the way depreciation is calculated. Under local country income tax and financial reporting rules, income is often lower, especially in the early years of a company, than under U.S. tax principles due to depreciation calculation differences. As a result, one may pay U.S. income tax early on under the proposal and then more local country tax when depreciation differences reverse, but there is no ability to get a U.S. offset or relief under the proposal. Over time, a company could get double taxed or end up paying a very high rate far exceeding the country-by-country minimum tax rate.

QBAI

The Discussion Draft includes repealing the QBAI exemption to GILTI purportedly because they believe it is an incentive for U.S. manufacturers to build foreign factories and ship jobs overseas. As stated above, retailers place stores and distribution facilities in foreign countries to expand their markets. It is necessary to do this to expand their sales base, and it does not move jobs that would otherwise be in the United States. Again, the OECD proposal for an exempt return recognizes companies with substance, including significant payroll, rents, and operating expenses, in countries in order to serve local customers, like retailers. We urge the Finance Committee to retain the exemption provision for retailers that must locate where their customers are.

FDII

The Discussion Draft proposes to replace FDII with a different incentive that targets the benefit to expenses that meet traditional tax code definitions of research and development. FDII was designed to not only encourage R&D in the United States, but also to provide an incentive for creating and/or re-locating intellectual property to the United States. The intangibles created by the retail industry often do not meet the tax code definition of R&D, but they are created by highly compensated workers. FDII provides an incentive to create that intellectual property in the United States, including the high-paying jobs associated with that activity.

For our global retail and restaurant members, FDII provides an incentive for developing technology, global marketing programs, designs and other innovations in the United States. High-paying jobs are associated with development of these intangibles. If FDII is repealed, it will encourage new technology to be developed outside the United States.

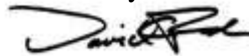
Some of our retail members manufacture their own branded products in the United States for sale both in the United States and for export markets. In these cases, the FDII incentive helps offset the higher cost of manufacturing in the U.S. than in another country. Repeal of FDII would make foreign manufacturing locations more attractive.

U.S. Corporate Tax Rate

Although not part of the International Taxation Discussion Draft, we cannot overemphasize how important the U.S. corporate tax rate is to the competitiveness of U.S. businesses. Raising the corporate rate to 28 percent would once again make the U.S. corporate tax rate among the highest in the industrialized world, which is a disincentive to investment in the United States and would impose further harm to a U.S. economy that continues to struggle recovering from the pandemic. The retail industry would particular be impacted by a raised corporate rate. Retailers are high effective taxpayers and cannot avail themselves of many of the tax incentives or credits in the Internal Revenue Code. If retailers have to pay a higher rate, it will result in a loss of jobs, closing of stores, and inability to invest in expanded e-commerce capability needed to compete in the post-pandemic marketplace.

Thank you for the opportunity to comment on the current policy discussion on the US international tax system.

Sincerely,



David French
Senior Vice President
Government Relations

cc: Members of the Senate Finance Committee