April 15, 2015

The Honorable John Thune
Co-Chairman
Business Income Tax Working Group
511 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Ben Cardin
Co-Chairman
Business Income Tax Working Group
509 Hart Senate Office Building
Washington, D.C. 20510

Dear Co-Chairmen Thune and Cardin:

On behalf of Associated Builders and Contractors (ABC), a national construction industry trade association with 70 chapters representing nearly 21,000 chapter members, I am writing to you in your capacity as leaders of the Senate Finance Committee's Business Income Tax working group. With roughly 80 percent of the commercial construction industry comprised of pass-through entities, we appreciate your attention to the vast majority of American businesses whose rates are determined by the individual side of the tax code.

As millions of business owners struggle this month with the increasingly onerous burden of tax compliance, the U.S. corporate tax rate remains the highest in the industrialized world. Worse yet, the fiscal cliff opened a yawning gap between Main Street and the Fortune 500, with many small businesses now facing combined marginal rates up to 25 percent greater than those paid by the country's largest companies. With the construction unemployment rate nearly double that of the broader economy, tax relief is critical for these businesses to spur reinvestment, create jobs and grow.

ABC's top priorities for reforming the tax system are parity, simplicity and certainty. Parity in terms of closing the emerging rate gap between corporations and pass-throughs via comprehensive reform; simplicity in the sense of moving toward a less complex structure with minimal brackets and fewer loopholes; and certainty by way of long-term tax policy, elimination of temporary gimmicks and permanent extension of worthy tax expenditures.

First and foremost, tax reform must be done in a comprehensive way that keeps rates low and similar for small businesses and large corporations alike. Not only would a revenue-neutral, corporate-only plan further tilt the playing field in favor of big business, its base-broadening elements would in fact amount to a substantial tax hike on Main Street companies. According to a 2011 Ernst & Young study, the elimination of widely used business tax expenditures would result in a $27 billion annual tax increase on the pass-through community, which comprises 95 percent of all U.S. businesses entities and employs the majority of the private sector workforce. The study showed that construction would be among the industries hardest hit by such a move, with four out of five businesses absorbing a 9 percent tax increase totaling $2.3 billion per year. While the projections have changed along with the top pass-through rates, this further stratification makes the elimination of these shared deductions all the more perilous. Bipartisan boosters aside, this approach to reform is political pyrite- a corporate rate cut subsidized by small business would have troubling implications for the tax code and must not be entertained as a viable alternative.

While low, equitable statutory rates are the linchpin of reform, simplification is also imperative. In this sense, the corporate-centric approach once again falls flat. Leaving aside the obvious arithmetic challenge of a steep corporate rate cut, any non-rate consolations or accommodations for pass-throughs will inherently add more complexity to the code, and in all likelihood create arbitrary winners and losers based on size or business activity, precisely the direction we wish to move away from in seeking truly fair effective rates.

One immediate way for Congress to relieve the significant compliance challenges within the construction industry is to reform Section 460(e) to allow more small commercial construction firms to use the Completed Contract Method (CCM) of accounting on multi-year contracts. As an historical accident of the 1986 overhaul, new limits on this traditionally favored method of accounting were not indexed for inflation. In the 28 year interim, tens of thousands of Small Business Administration-defined small businesses have fallen into the administrative trap of "look-back" accounting required by the Percentage of Completion Method. By raising the current $10 million CCM eligibility threshold in Section 460(e) to a more contemporary $40 million per year level, these small and mid-sized companies would be spared the many hours and thousands of dollars per job spent on look-back calculations, with no net change in the contractor's liability to the Treasury.

Finally, in order to achieve a truly efficient and effective tax system, we must end the annual practice of short-term and retroactive tax expenditures make tough decisions as to which preferences deserve permanent status, and give business owners the certainty they need to hire and invest. In construction and other capital-intensive industries, businesses rely on the ability to expense major equipment purchases under Section 179. While the increased deduction has encouraged big-ticket investment in the immediate term, uncertainty over future levels prevents any degree of sensible planning. To this end, ABC supports the permanent Section 179 expensing up at the current level as recently passed by the House. Likewise ABC members often reduce their federal burden via bonus depreciation, the Section 199 deduction, deduction of state and local taxes and other perennial extenders, but the efficacy of these provisions is often undercut by their inherent transience. Depending on their relative merits, tax extenders should be acknowledged as permanent elements of the code or used to finance lower marginal rates.

The ultimate barometer for tax reform should be fair effective tax rates regardless of business sector, size, or structure. This balance can only be achieved through fundamental restructuring of the code, and would be significantly hampered by a corporate-only rate cut, hypothetical non-rate concessions to certain pass-through businesses notwithstanding.

ABC remains committed to advancing fundamental tax reform, and we appreciate the opportunity to share our perspective. Thank you for your consideration, and we look forward to working with the committee to build a fair and effective tax code.

Sincerely,

Geoffrey Burr
Vice President, Government Affairs