Software Finance & Tax Executives Council

www.softwarefinance.org

April 15, 2015

Via Email

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

The Honorable Ron Wyden
Ranking Member
Committee on Finance
United States Senate
Washington, DC 20510

The Honorable Rob Portman
Co-Chair International Working Group
Committee on Finance
United States Senate
Washington, DC 20510

The Honorable Charles Schumer
Co-Chair International Working Group
Committee on Finance
United States Senate
Washington, DC 20510

Re: International Tax Working Group Comments

Dear Chairman Hatch, Ranking Member Wyden and Co-Chairs Portman and Schumer:

This letter represents comments of the Software Finance and Tax Executives Council (SoFTEC) with respect to reform of the international aspects of the U.S. income tax system. SoFTEC fully supports efforts to overhaul the current outdated corporate income tax system, making it more competitive with the tax systems of our major trading partners. SoFTEC believes any reform of the current system should include two major components: (1) a reduction of the corporate tax rate to an internationally competitive rate, in-line with our trading partners, and (2) a shift from the outdated system of worldwide taxation to a competitive territorial system. SoFTEC understands the need to consider appropriate base erosion provisions for such a system, but it is critically important that such provisions be broad-based and not impose a higher rate of tax on any particular industry or type of foreign income, such as active income from intangible property, than would be imposed on other industries or types of foreign income.

SoFTEC is a trade association providing software industry focused public policy advocacy in the areas of tax, finance and accounting. SoFTEC is the voice of the software industry with regard to tax policy. Because SoFTEC members sell their products and services to customers at home and abroad, they have an interest in the tax reform work of the Finance Committee in general and the International Working Group in particular.

Intangible property is broadly defined as including patents, trademarks, copyrights and other assets that have value apart from the value of other physical assets a business might own. Copyright and patent law are the primary forms of legal protection for the computer software industry's products and services. As such, any changes to the U.S. tax system as part of tax reform that imposed a higher rate of tax on income from intangible property would necessarily fall more heavily on the software industry.

The outdated U.S. international tax system has not kept pace with significant changes in the global economy over the past quarter century. Our major trading partners have significantly lower corporate tax rates and tax systems that impose minimal residual home country taxation on foreign earnings. Those tax systems provide a competitive advantage to companies headquartered in those countries, which operate in both foreign and U.S. markets, making it more difficult for U.S. companies to grow and compete.

We are encouraged that the Finance Committee may consider tax reform in the near term that would lower the corporate tax rate and move to a competitive system of taxing foreign profits. However, we are concerned proposals that would limit “base erosion” would also subject intangibles-related foreign earnings to a higher rate of tax than other foreign earnings. If Congress is concerned about base erosion, it should consider approaches that do not single out any particular type of foreign earnings, such as active intangible property income.

The U.S. software industry is the envy of the world and an economic driver for U.S. jobs and the U.S. economy. Other countries are actively enticing software development to their shores with stable and predictable R&D incentives, competitive corporate income tax rates, territorial tax systems and innovation boxes. Like those other countries, Congress should consider and enact policies that encourage, instead of discourage, the development of software in the U.S..

We also believe, given developments overseas, specifically the recommendations coming out of the OECD with regard to base erosion and profit shifting, consideration should be given to tax reform options that would tax domestic source income from intangible property at a lower rate than other forms of income. This would encourage the location of intangible property and associated R & D in the U.S. and permit domestic taxation of the profits flowing from foreign exploitation.

SoFTEC thanks the Chairman, Ranking Member and the Co-Chairs of the International Tax Working Group for the opportunity to provide these comments and look forward to working with the Committee as tax reform progresses through the Congress. I can be reached at (202) 486-3725 or mnebergall@softwarefinance.org with any questions for requests for further information.

Respectfully submitted,

Mark E. Nebergall
President
Software Finance and Tax Executives Council