BACKGROUNDER
No. 3724 | AUGUST 31, 2022
GROVER M. HERMANN CENTER FOR THE FEDERAL BUDGET

Treasury's Unjustifiable New Foreign Tax Credit Rules Will Cause Double Taxation

Preston Brashers

KEY TAKEAWAYS

New IRS regulations require foreign income taxes to adhere more closely to U.S. sourcing rules and cost-recovery rules to qualify for foreign tax credits.

These rules will subject taxpayers to double taxation and financial uncertainty, reduce the competitiveness of U.S. companies, and harm American workers.

Such expansive changes to the foreign tax credit rules overstep Treasury's rulemaking authority, hinging on a strained definition of what qualifies as income tax.

On December 28, 2021, the U.S. Department of Treasury and the Internal Revenue Service (IRS) issued updated foreign tax credit (FTC) regulations (the 2021 final FTC regulations).[1] These FTC regulations finalized and made certain substantive changes to proposed regulations released on September 29, 2020 (the 2020 proposed FTC regulations).[2] The 2021 final FTC regulations went into effect on March 7, 2022.[3] These regulations have created financial uncertainty for many businesses that operate overseas, as well as individual U.S. taxpayers living abroad who potentially face double taxation under the new rules.[4]

The 2021 final FTC regulations redefine what qualifies as a foreign income tax and, by extension, which taxes are creditable against U.S. income tax. Under the newly finalized rules, for a foreign country's tax to qualify as creditable, that country's rules for attributing income between countries must be similar to U.S. rules. The 2021 final FTC regulations add other important limitations on the creditability of foreign taxes. Many foreign taxes that were creditable under the old tax regime do not, it appears, qualify for credits under the new rules.[5]

Allowance of Foreign Tax Credits

U.S. tax law has allowed taxpayers to claim FTCs in certain situations almost since the inception of the federal income tax in 1913. Congress first created the FTC in the Revenue Act of 1918.[6] The purpose of FTC laws, generally, is to prevent situations in which taxpayers are subject to tax in multiple countries on the same income. A U.S. citizen living and working abroad who pays income tax in his country of residence can credit qualifying foreign taxes paid against his U.S. income tax liability.[7] So, for example, if the taxpayer paid $2,000 of qualifying foreign taxes, he could reduce a $3,000 U.S. tax liability on the same (foreign) income to $1,000.[8] Likewise, FTCs ensure that multinational businesses are not subject to double taxation on the same income.

Foreign Tax Credits Under a Worldwide Business Tax System

Until 2017, the United States was one of a small number of countries in the world whose business tax system mostly followed worldwide tax principles instead of territorial tax principles.[9] Under the territorial tax systems of most countries, businesses are only subject to tax on activity performed in that country. A company's foreign income would only be subject to tax in the foreign jurisdiction and would not face a second round of taxation in the parent company's country.

By contrast, under the U.S.'s old worldwide tax system, a U.S.-headquartered business was subject to U.S. taxation on income earned worldwide, not just in the United States. Therefore, absent a system of FTCs, U.S.-based multinational companies would face double taxation on foreign income, and multinational companies would face a massive disincentive against setting up their headquarters (and the accompanying jobs) in America.[10] Absent FTCs (and sometimes even with FTCs), U.S.-based multinationals would pay tax twice on the income earned on their foreign operations: once at the full tax rate of the foreign country and a second time in the U.S.[11]

U.S. multinational companies relied (and continue to rely) on FTCs to limit double taxation of both *foreign branch income* and income earned by *foreign subsidiaries*. Foreign branch income refers to income earned by a U.S. business's direct overseas business operations (i.e., activities performed overseas not carried out by a separate legal entity).[12] Foreign branch income is generally treated the same as U.S.-earned income for federal tax purposes. In contrast, the U.S. tax code generally treats income earned by the foreign subsidiaries of a U.S. company as distinct from the income earned by the U.S parent, though such income becomes taxable in the U.S. upon the foreign company distributing profits or dividends to the U.S. parent.[13]

FTCs allow U.S.-headquartered companies to offset the foreign taxes already paid against their U.S. tax liability. Particularly under the old worldwide tax system, the allowance of FTCs eliminated a substantial amount of double taxation and allowed U.S.-headquartered companies to operate on more equal footing with their foreign-based competitors than if FTCs were not allowed.

Even with FTCs, though, U.S.-based multinationals were (until 2018) still at a major tax disadvantage compared to foreign-based multinationals, as U.S. companies still owed U.S. tax on foreign income if the foreign tax paid was less than would have been paid on the income if it had been earned in the United States.[14] Since the U.S.'s pre-2018 corporate tax rate of 35 percent (not including state and local taxes) was extremely high by international standards, this usually meant U.S. multinationals had to make up the difference on foreign income between the higher U.S. corporate tax rate and a lower foreign tax rate.[15]

Tax Reform's Changes to the U.S. International Tax System

With the passage of the 2017 Tax Cuts and Jobs Act (TCJA), the United States moved closer to a territorial system that only taxes businesses on domestic income.[16] The TCJA exempted from U.S. tax most foreign income and qualified dividends paid to U.S. companies by their foreign subsidiaries. However, certain categories of foreign income remain taxable post-TCJA, though in some cases at a reduced tax rate.[17]

Foreign branch income remains subject to U.S. taxation, and foreign taxes paid on such income therefore remains creditable under FTC rules.[18] Likewise, the activities of foreign disregarded entities (foreign businesses with a single owner that are not recognized as corporations for U.S. federal tax purposes) are treated like the activities of foreign branches and remain subject to U.S. taxation if the disregarded entity has a U.S. owner.[19]

After the TCJA, foreign subpart F income (typically passive income like interest, rents, royalties, dividends, and other investment income) remains taxable in the United States.[20] Also, the global intangible low-taxed income (GILTI) provisions[21] provide for the taxation of the foreign earnings of certain multinational companies whose foreign operations earn more than a 10 percent "deemed tangible income return."[22] U.S. income tax also continues to apply to the foreign-earned income of U.S. citizens living and working abroad. Because the U.S. did not move to a pure territorial tax system, the FTC rules continue to be an important element of the tax system to prevent double taxation.[23]

Statutory Restrictions and Limitations on Foreign Tax Credits

Under U.S. tax law, FTCs are allowable on foreign taxes paid on income and profits.[24] The U.S. tax code denies FTCs in some specific situations, but nothing in the tax code indicates that Congress intended that FTCs should only be creditable if the foreign income tax takes a specific form. Based on U.S. statute, to be creditable under the U.S. income tax:

- **The foreign tax must be a tax on income or profits.**[25] The amount of the FTC is "the amount of any income, war profits, and excess profits taxes paid or accrued during the taxable year to any foreign country or to any possession of the United States."[26] Taxpayers cannot, for example, take a credit for foreign property taxes, value-added taxes, or tariffs.[27]

- **The foreign tax must be an actual tax imposed on the taxpayer, and U.S. tax must have been imposed on the same income.** The tax code and existing IRS regulations include a few restrictions to prevent FTCs in cases in which, in effect, the taxpayer does not truly owe (on net) foreign taxes. For example, if the foreign government uses the income tax revenue received to then subsidize the taxpayer, such taxes paid are not creditable under the U.S. income tax.[28] Similarly, long-standing IRS regulations disallow FTCs in the case of opportunistic "soak-up taxes."[29] Soak-up taxes are foreign taxes that only apply depending on the availability of another country's tax credit to offset them. Certain rules are also in place to deny credits where the U.S. taxpayer does not have U.S. tax liability on the foreign income.[30]

- **The foreign tax must not be paid to an adversarial or illegitimate government.** The tax code disallows FTCs paid to governments that the United States does not recognize, that are designated as foreign sponsors of terrorism, or with which the United States does not have diplomatic relations.[31]

- **The foreign tax must meet certain minimum holding periods in the case of withholding taxes.** Foreign withholding taxes on stock dividends and other income and property are not creditable if the recipient of the dividend held the stock for 15 or fewer days in the 31-day period beginning on the ex-dividend date.[32]

- **The FTC cannot exceed the amount of U.S. tax liability on the same foreign income.** The tax code limits the FTC to the amount of U.S. income tax liability the taxpayer would have owed on the foreign income in the absence of the credit.[33] If the U.S. tax liability on the foreign income would have been higher than the foreign tax liability, the taxpayer owes the difference as a U.S. tax on the foreign income.

Under the U.S. tax code, the creditability of a foreign tax hinges largely on whether a foreign tax qualifies as a tax on income and profits. These seemingly generous rules for determining creditability are tempered by the limitation listed in the final bullet point above. Since the FTC cannot exceed the amount of U.S. tax liability on the same income, even if a taxpayer owes an exorbitant amount of foreign tax because of an unusual foreign income tax design, the FTC is effectively bounded by U.S. principles. Under normal circumstances, the FTC rules cannot reduce taxpayers' tax liability on foreign income below what the liability would be if it was taxed as it would be in the United States.

Treasury's Prior Interpretation of Creditable Foreign Taxes

Since the FTC rules are written broadly and Congress did not substantially restrict FTCs to specific kinds of income taxes, the IRS regulations also were not (until at least the 2020 proposed FTC regulations) overly stringent about what qualifies as a creditable foreign income tax.[34] As of 2018, under Section 1.901–2, the regulations provided that:

> A foreign levy is an income tax if and only if:
>
> (i) It is a tax; and
>
> (ii) The predominant character of that tax is that of an income tax in the U.S. sense.[35]

The form of a foreign tax did not need to closely mirror the U.S. income tax to be creditable.[36] When judged based on the tax's predominant character (i.e., the normal manner in which it applies), if the tax acted like an income tax, the foreign levy was generally creditable subject to the limits laid out in statute. The Treasury Department further stipulated that to qualify as a creditable foreign income tax, the tax must be a compulsory payment (ruling out penalties, fines, interest, and similar obligations) to a foreign tax authority that satisfies three requirements based on the tax's predominant character:[37]

1. **The Realization Test.** The tax must be imposed on events that would cause taxpayers to realize income under U.S. tax law (even if the timing of the realization under the foreign rules differs from U.S. rules);[38]

2. **The Gross Receipts Test.** The amount included in the tax base (before allowing deductions) must be based on gross receipts or a method designed to approximate (but not exceed the fair market value of) gross receipts;[39] and

3. **The Cost Recovery Test.** The tax must allow for the recovery (deduction) of significant costs and expenses associated with the taxed gross receipts, including capital expenses (even if the timing of such deductions under the foreign rules differs from U.S. rules).[40]

These three requirements generally captured the concept of the nature of an income tax.[41] Since these tests were determined based on a tax's *predominant character*, the U.S. rules allowed some latitude in the design of the foreign income taxes.

New, More Stringent Standards for Creditable Foreign Taxes

Treasury began a multi-year process of revisions to the FTC rules with December 7, 2018, proposed rules (the 2018 proposed FTC rules) dealing with the implementation of FTCs in light of the changes to international tax law under the 2017 TCJA. The 2018 rulemaking was far less controversial than the 2020 proposed FTC regulations or the 2021 final FTC regulations. The 2018 proposed FTC rules on FTCs focused mostly on the application of FTC rules with respect to new or transitional features of the international tax system under the TCJA. These changes included clarifying the application of FTC rules with respect to GILTI, foreign-derived intangible income, separate FTC limitation buckets for GILTI and foreign branch income, Section 965 deemed repatriations, and various transition issues.[42]

Even though no subsequent congressional acts have redefined what qualifies as a creditable foreign tax, Treasury proposed to substantially alter what constitutes a creditable tax with the 2020 proposed FTC regulations, and those changes were included the 2021 final FTC regulations.[43] (The 2018 proposed FTC regulations did not include these changes.) The new regulations impose significantly more stringent standards as to what qualifies as a creditable foreign tax. To be considered creditable under the 2021 final FTC regulations, a foreign tax now must be sufficiently similar to U.S. income tax. Treasury enumerated several specific costs that must be fully recoverable to meet the requirements of the cost recovery test, including capital expenditures, interest, rents, royalties, wages and payments for services, and research and experimentation costs.[44] Also, as discussed further below, Treasury has dropped *predominant character* language from its rules, allowing less leeway for taxpayers to claim an FTC when a foreign tax's form differs from that of the U.S. income tax.

While the regulations include numerous changes, new rules related to attribution are perhaps the most controversial.[45] In addition to the realization, gross receipts, and cost recovery tests mentioned above, Treasury will now also require foreign taxes to meet an attribution (sourcing) test for taxpayers to receive FTCs.[46] To qualify as a creditable tax under the attribution test, the 2021 final FTC regulations require that the foreign country's rules for attributing income across countries follow "reasonable principles" or be "reasonably similar" to U.S. tax law. The 2021 final FTC regulations provide three ways that the attribution test may be met for nonresident businesses.[47]

1. **Income attribution based on activities.** When income is attributed based on activities, both the income and costs must be attributable "under reasonable principles" to the country imposing the tax.[48] The allocation of the taxpayer's income to activities in the foreign country cannot consider, as a significant factor, the location of customers, users, or any similar destination-based criterion.[49]

2. **Income attribution based on source.** Income attributed based on source-of-income rules must be based on rules that are "reasonably similar to the sourcing rules that apply under the Internal Revenue Code."[50] A foreign-law source rule for services will only be considered reasonably similar if it is based on where the services are performed, and a foreign law source rule for royalties will only be considered reasonably similar if it is based on the place of use of (or the right to use) the intangible.[51]

3. **Income attribution based on site of property.** A foreign tax imposed on a nonresident's gain from the sale of property that is based on the site of the property must be based on income attribution rules for the disposition of real property under rules that are "reasonably similar" to U.S. sourcing rules.[52]

In other words, the attribution test requires that for foreign taxes to be creditable, the taxes must follow origin-based principles as in the United States. Most income taxes are origin-based, meaning companies' income is attributed to countries based on where the taxpayer performs the income-earning activity or from where the income is derived. However, there are valid reasons for countries to design taxes with different attribution rules. Indeed, every U.S. state with a corporate income tax apportions income based on destination-based principles that factor in (at least to some extent) the location of company sales.[53] The 2021 final FTC regulations seem to imply U.S. states do not attribute income using "reasonable principles."

The Rationale for the Change

A major catalyst for the change in FTC rules was the recent move by foreign governments to impose digital services taxes (DSTs). Treasury sought to deny credits in the case of DSTs. Most DSTs are thinly veiled attempts by foreign governments to tap into tax revenue that, under traditional rules, is mainly subject to tax in the United States.[54] Countries imposing DSTs (predominantly in Europe) tax the income of companies in specific digital industries (such as online advertising and other Internet-based services), typically on companies exceeding a sizable global revenue threshold. By so limiting the tax, the foreign governments specifically target large, predominantly U.S.-based technology companies like Amazon, Facebook, and Google for foreign taxation. In effect, DSTs act very much like tariffs against U.S. companies. (And, notably, tariffs are not creditable foreign taxes.)[55]

Given the questionable nature of these taxes, Treasury wished to ensure that FTCs could not offset DSTs and thereby accommodate countries that impose them. According to the IRS:

> Recently, many foreign jurisdictions have disregarded international taxing norms to claim additional tax revenue, resulting in the adoption of novel extraterritorial taxes that diverge in significant respects from U.S. tax rules and traditional norms of international taxing jurisdiction. These extraterritorial assertions of taxing authority often target digital services, where countries seeking additional revenue have chosen to abandon international norms to assert taxing rights over digital service providers.[56]

DSTs deviate substantially from traditional income taxes. DSTs are imposed on businesses' gross receipts earned on digital activity within the taxing country. Because DSTs generally do not allow for cost recovery (they are taxes on gross income, not net income), these taxes generally do not qualify as income taxes, even under the rules that preexisted the 2021 final FTC regulations. However, the U.S. tax code allows FTCs in the case of "a [foreign] tax paid in lieu of a tax on income, war profits, or excess profits."[57] To qualify as an in-lieu-of tax, a foreign tax must be imposed on the taxpayer as a clear replacement for (not in addition to) an income tax applying to taxpayers more generally. Under the old in-lieu-of tax rules, DSTs could qualify as creditable foreign taxes. The 2021 final FTC regulations, however, added the additional requirement that the in-lieu-of foreign taxes must be origin-based and satisfy the attribution test described in the previous section, thus denying creditability to DSTs.[58]

Given that DSTs act like tariffs by targeting the tax to services provided by U.S. companies, it is not an unreasonable position that they should be uncreditable. If the U.S. allowed FTCs to offset tariffs, this would encourage foreign countries to impose taxes that target U.S. companies. Ideally, however, Congress should make the judgment that DSTs are not creditable—not the Treasury Department. Since Treasury imposed the attribution test on all creditable foreign taxes, many other valid taxes that were previously creditable will no longer be, even if differences in sourcing rules do not affect the amount of tax due in the foreign country.[59] Because the sourcing rules for withholding taxes vary widely by country, the source-based attribution rules may especially deny creditability to many foreign withholding taxes.[60]

Increased Uncertainty, Reduced U.S. Competitiveness

The 2021 final FTC regulations have cast uncertainty and the risk of double taxation on U.S. companies across a broad range of industries. While DSTs may have helped motivate the update to the FTC rules, the scope of the new regulations clearly extends far beyond companies that provide digital services. This is illustrated by a June 3 letter penned by a group of chief financial officers of major U.S. companies to Treasury Secretary Janet Yellen expressing their serious concerns about the 2021 final FTC regulations. The 28 signatories of the letter represented a wide variety of industries including agriculture, cameras, chemicals, communication products, elevators, energy, fast food, hardware and software, health care, industrial products, insurance, paper, robotics, and soft drinks. These executives described the regulations as a "radical departure from well-established law [that would] potentially deny the creditability of many conventional foreign income taxes that have been properly creditable for over a century."[61]

The 2021 final FTC regulations are most likely to lead to double taxation in countries where the United States does not have an existing tax treaty. As the executives note, this will particularly affect U.S.-headquartered companies operating in countries like Brazil and other South American countries—and will put such companies at a competitive disadvantage against the China-based multinationals that are now heavily investing in South America.[62]

The misaligned incentives created by the 2021 final FTC regulations may harm American workers and consumers in several ways. Double taxation may push U.S.-based companies to restructure their supply chains to avoid the tax, shifting operations out of non-treaty countries and into treaty countries. Such tax-driven (instead of efficiency-driven) decisions will add to business costs and will ultimately add to consumer prices. Also, by reducing the competitiveness of U.S.-headquartered companies relative to foreign-headquartered companies, the double taxation of U.S. companies will reduce demand for American workers, pushing down U.S. employment and real wages.

A Troublesome Move by the Department of Treasury

The inherent double taxation, perverse incentives, and potential unintended consequences of the 2021 final FTC regulations are all cause for concern. The process that led to the regulations is also troubling. The Department of Treasury and the IRS have gone beyond merely interpreting the law as provided by Congress in the Internal Revenue Code and have stepped into the legislative domain. The tax code places only a few specific, limited restrictions on what qualifies as a creditable foreign income tax, other than it being an actual tax on foreign income or profits. Yet the 2021 final FTC regulations impose a definition of foreign income taxes that is considerably narrower.

For most taxpayers and most foreign taxes, the FTC regulations worked before Treasury updated the rules.[63] Treasury could have narrowly updated the regulations to address the new DSTs and clarify their creditability. Treasury did not have a congressional mandate to upend the whole FTC system.

Indeed, Treasury received public comments arguing that the adoption of new attribution rules would require congressional action. Treasury dismissed these concerns, claiming that "the addition of a jurisdictional nexus requirement is a valid exercise of the government's rulemaking authority."[64] To justify this stance, Treasury stated:

> [Judicial decisions and administrative guidance] have consistently followed the principle, introduced by the Biddle court, that the determination of whether a foreign tax is creditable under section 901 is made by evaluating whether such tax, if enacted in the United States, would be an income tax (in other words, whether the foreign tax is an income tax in the "U.S. sense").[65]

The *Biddle v. Commissioner of Internal Revenue* Supreme Court case referenced by Treasury hinged on whether a British tax paid by a corporation prior to distributing a dividend to its shareholder could be counted as a tax paid by the shareholder if the foreign country's tax rules treated it that way. In *Biddle*, the court stated:

> The power to tax and to grant the credit resides in Congress, and it is the will of Congress which controls the application of the provisions for credit.[66] The expression of its will in legislation must be taken to conform to its own criteria unless the statute, by express language or necessary implication, makes the meaning of the phrase "paid or accrued," and hence the operation of the statute in which it occurs, depend upon its characterization by the foreign statutes and by decisions under them.[67]

As described in the *Biddle* case, the U.S. rules took the more conventional view that a shareholder would not be counted as paying a tax if it was actually paid by the corporation.[68] Since U.S. and British rules differed in how they defined "paid or accrued," the court determined that U.S. rules applied.

The implication here is that concepts and definitions in foreign tax rules have no bearing on how actions or payments should be viewed under U.S. tax law. When determining the creditability of foreign income taxes, Treasury should look to the U.S. tax code (not foreign tax rules) to understand what Congress meant when it wrote that tax credits shall be allowed for income taxes paid or accrued to foreign countries.[69]

The Implied Meaning of "Income Tax" in the Internal Revenue Code

Although the tax code does not specifically define income tax in the sections dealing with FTCs, there are some clues in the tax code that strongly suggest that the 2021 final FTC regulations are overly strict in their interpretation of what constitutes a foreign income tax.

First, one subtle point is worth noting. The tax code describes the amount allowed for domestic corporations as an FTC as "the amount of *any* income, war profits, and excess profits taxes paid or accrued during the taxable year to any foreign country or to any possession of the United States" (emphasis added).[70] The inclusion of "*any*" conveys or at least suggests a lack of restriction on taxes that might be reasonably considered income taxes.

An important clue that lawmakers did not intend "income tax" to exclude taxes that do not follow U.S. sourcing principles lies in Section 164 of the Internal Revenue Code, which deals with the deductibility of taxes for federal income tax purposes. This section begins by listing certain taxes that may be deducted and certain taxes that may not be deducted when determining federal taxable income.[71] In a list of four types of taxes that taxpayers may deduct under certain circumstances, the third bullet point lists "state and local, and foreign income, war profits, and excess profits taxes."[72] Notice that income, war profits, and excess profits taxes are grouped together in the same way as in the code section dealing with FTCs (Section 901), except that Section 164 includes the additional references to the type of taxing jurisdiction (state and local and foreign).

This suggests that lawmakers view state and local income taxes as legitimate income taxes in the same category as foreign income taxes. This is a key point because, as noted above, no state and local corporate income taxes adhere to the origin-based sourcing principles required under the attribution test in the 2021 final FTC regulations. If "income tax" in the tax code carries the implication that a tax follows U.S. sourcing principles, then no state and local taxes on business income would qualify for the state and local tax deduction. So, if Treasury were to apply the same strained definition of income tax in Section 164 as it is now applying in Section 901, it could lead to the denial of federal deductions for the more than $90 billion of state corporate income taxes paid each year, as well as some pass-through income.[73] The author is unaware of any notable attempt to argue for such an interpretation in the context of Section 164.

Sections 164 and 901 deal with closely interconnected issues, so it is exceedingly unlikely that Congress intended for a different definition of income tax to apply in the two sections. The sections are inherently interconnected because taxpayers have the option to either claim a deduction on foreign taxes paid or to claim an FTC (to the extent they qualify).[74] Taxpayers cannot claim both. Therefore, the meaning of "income, war profits, and excess profits taxes" in one section bears directly on the meaning in the other. Section 901(n)(1) explicitly cross references Section 164: "For deductions of income, war profits, and excess profits taxes paid to a foreign country or a possession of the United States, see sections 164 and 275."[75]

Treasury should not arbitrarily interpret "income tax" to mean something entirely different in the context of two closely interconnected sections of the tax code, as it does in the 2021 final FTC regulations.

Predominant Character: Now You See It, Now You Don't

In justifying the changes in the 2021 final FTC regulations, Treasury also cited another Supreme Court decision, *PPL Corp. v. Commissioner of Internal Revenue*,[76] as an example of a judicial decision that evaluated the creditability of foreign taxes based on whether they are "income taxes in the U.S. sense."[77] However, Treasury omitted the operative words here.[78] The *PPL Corp.* decision cites the IRS regulations that were in effect at the time as saying that "a foreign tax is creditable if its *predominant character* is that of an income tax in the U.S. sense" (emphasis added).

No foreign income tax conforms exactly to the U.S. income tax. Based on a strict interpretation of the phrase, arguably no foreign tax would qualify as an income tax in the "U.S. sense."[79] No business owners would argue that the state income taxes they pay are not actually income taxes because the apportionment rules follow destination-based principles instead of origin-based principles. Requiring foreign taxes to meet the attribution test to qualify for the FTC is an arbitrary imposition on taxpayers that runs directly counter to the purpose of FTC rules—to prevent double taxation.

In the *PPL Corp.* decision cited by Treasury, the Supreme Court ruled:

> First, the "predominant character" of a tax, or the normal manner in which a tax applies is controlling.... Under this principle, a foreign tax that operates as an income, war profits, or excess profits tax in most instances is creditable, even if it may affect a handful of taxpayers differently.[80]

The court went on to rule in the 2013 *PPL Corp.* case that a U.K. windfall tax, which acted like an excess profits tax "for most of the relevant companies" was a creditable foreign tax. Now, several years after the *PPL Corp.* court ruling, the 2021 final FTC regulations have removed all references to the *predominant character* of taxes.

Like many changes in the 2021 final FTC regulations, removing *predominant character* language puts taxpayers at a greater disadvantage. The change places more burden on taxpayers to be able to demonstrate a foreign tax clearly passes the IRS's rigid tests for determining what constitutes an income tax.

Treasury Reversal?

After receiving a flood of outcry from taxpayers, it appears that Treasury recognizes that the 2021 final FTC regulations have issues that must be resolved.[81] Comments from officials indicate they are specifically interested in issuing a new regulation to allow a safe harbor rule for certain royalty withholding taxes. Treasury Deputy Assistant Secretary for International Tax Affairs, Jose Murillo, commented:

> We are hearing a lot of very sympathetic cases being made and considering a safe harbor...that if there is a license in place and the license only includes the right to use [intellectual property] in a particular jurisdiction and that's what actually happens, then you can deem the attribution rule to be met...and the credit would be allowed.[82]

The safe harbor rule described would eliminate double taxation in some cases where a country's attribution rules for certain royalty income clearly had no bearing on the amount of foreign tax owed by the taxpayer. It would be a step in the right direction, but it does not go far enough in reversing these harmful new regulations. Other foreign taxes would remain subject to double taxation under the 2021 final FTC regulations, including withholding taxes that would not qualify under the described safe harbor and income taxes in developing nations (which are less likely to conform to U.S. or Organization for Economic Co-operation and Development tax principles or to benefit from U.S. tax treaties).

At a minimum, any safe harbor rule should provide that *in any case* that taxpayers can demonstrate that differences between the U.S. and foreign attribution rules did *not* affect the amount of foreign tax owed, the IRS would deem the attribution rule to be met. Murillo also noted that Treasury is considering providing clarifications to the cost recovery rule but no change to the rules.[83]

Treasury and the IRS should reverse or at least pause implementation of the 2021 final FTC regulations until the unintended problems they are creating are resolved. Unfortunately, it does not appear that Treasury officials plan to delay implementation. When pressed by Finance Committee Member James Lankford (R–OK), Treasury Secretary Janet Yellen said, "I don't think it will be delayed, but we will work to address issues with [the final 2021 FTC regulations]."[84]

Yellen also told the Senate Finance Committee that if there are changes to the FTC rules, they can be applied on a retroactive basis.[85] This, of course, leaves taxpayers to deal with financial uncertainty through no fault of their own.

Recommendations

Treasury and the IRS should:

- **Delay implementation of the 2021 final FTC regulations.** Treasury and the IRS should delay implementation of the 2021 final FTC regulations until at least January 1, 2023. Ideally, implementation should be delayed indefinitely until new proposed regulations can be written that address taxpayers' myriad concerns.

- **Issue new proposed regulations to reverse most changes under the 2021 final FTC regulations.** Revised FTC rules should largely reverse the recent changes in the FTC system. Some limited rule changes may have been warranted to address the creditability of DSTs, though it would be most appropriate for those changes to be made by an act of Congress. However, to the extent the IRS regulations must address the new issue of DSTs, instead of attempting to create a narrow, mechanical definition of an income tax, it would be more appropriate for Treasury to simply stipulate that DSTs do not qualify as creditable income taxes or creditable in-lieu-of taxes (similar to IRS regulations that deny creditability for soak-up taxes). Alternatively, instead of broadly applying the new attribution rules, Treasury could propose rules that only limit the creditability of in-lieu-of taxes (other than withholding taxes) that follow destination-based principles where they replace an income tax that uses origin-based principles.

- **Extend safe harbor rules and reinsert predominant character language.** If Treasury does not reverse most of the 2021 final FTC regulation, it should at least extend safe harbor rules for the attribution test beyond just a limited set of royalty withholding taxes. Treasury should deem attribution tests to be passed if taxpayers can show that their foreign tax liability would be the same or higher if the foreign country's attribution rules followed the U.S. rules. At a minimum, Treasury should also reinsert language that allows taxes to be evaluated based on their predominant character.

- **Avoid retroactivity.** Treasury should avoid issuing retroactive rules, and, to the extent such rules are necessary, the rules should give maximum leeway to taxpayers navigating the upheaval caused by Treasury's issuance of the poorly considered 2021 final FTC regulations.

Congress should:

- **Clarify ambiguities in tax laws.** To keep Treasury's rulemaking to a minimum, Congress should avoid ambiguities in any new tax legislation.[86] In instances such as the 2021 final FTC regulations—in which Treasury has already made questionable interpretations—Congress should consider legislation to settle the matter in question. Specifically for the 2021 final FTC regulations, Congress could enact legislation that clarifies that to qualify as an income tax, a foreign tax must meet the realization test, gross receipts test, and cost recovery test (based on the old predominant-character standard), but *not* the attribution test. Such legislation could also specify that digital services taxes do not qualify as creditable income taxes or in-lieu-of taxes.

Conclusion

In the 2021 final FTC regulations, Treasury imposed more stringent requirements for determining whether a foreign tax is creditable against the U.S. income tax. For taxpayers to claim FTCs against U.S. income taxes, the foreign tax must closely adhere to U.S. rules. Among other changes, the new rules enumerate specific costs that must be recoverable to qualify as an income tax, and they impose a new attribution test that foreign taxes must meet to qualify as creditable.

The new rules impose a significant burden on multinational taxpayers who will have to reevaluate on a country-by-country, tax-by-tax basis whether formerly creditable foreign taxes qualify under the new rules.[87] After complying with that administrative burden, many taxpayers will face the more direct burden of paying taxes twice on the same dollar of income. In response to double taxation, some businesses may move or restructure their operations. In other cases, ambiguity in how the new rules will be applied will lead to disputes between taxpayers and the IRS. All of this distracts businesses from their actual function in society, which is to provide goods and services to their customers.

Treasury issued these new rules despite lacking a clear congressional mandate to do so. In 2017, Congress designed the international provisions of the Tax Cuts and Jobs Act to reduce the incidence of double taxation on U.S.-based businesses with foreign operations. A few years removed from the passage of the TCJA, Treasury has issued FTC regulations that work directly counter to the objective of alleviating double taxation—and instead impose double taxation where it was previously alleviated.

Preston Brashers is Senior Analyst for Tax Policy in the Grover M. Hermann Center for the Federal Budget at The Heritage Foundation.

Endnotes

1. *Federal Register*, Vol. 87, No. 2 (January 4, 2022), pp. 276–376.
2. Some important changes were added in the 2021 final FTC regulations that were not included in the 2020 proposed FTC regulations, although many of the significant changes to the FTC rules originated in the 2020 proposed FTC regulations. Throughout this report, references to the changes made by the 2021 final FTC regulations should be understood to also include proposed rules introduced in the 2020 proposed FTC regulations that were made final in the 2021 final FTC regulations, unless the context clearly suggests otherwise.
3. *Federal Register*, Vol. 87, No. 2, p. 276.
4. David D. Stewart, Carrie Brandon Elliot, and Raymond J. Stahl, "Interview: The Final Foreign Tax Credit Rules: Complaints and Confusion," Tax Notes, June 14, 2022, https://www.taxnotes.com/opinions/interview-final-foreign-tax-credit-rules-complaints-and-confusion/2022/06/14/7dkqk (accessed June 30, 2022).
5. David L. Forst et al., "Treasury Finalizes Foreign Tax Credit Regulations, Including New Jurisdictional Nexus (Attribution) Rule," Fenwick, January 31, 2022, https://www.fenwick.com/insights/publications/treasury-finalizes-foreign-tax-credit-regulations-including-novel-jurisdictional-nexus-attribution-rule (accessed June 30, 2022).
6. Philip R. West and Amanda P. Varma, "The Past and Future of the Foreign Tax Credit," *Taxes–The Tax Magazine*, March 2012, https://www.steptoe.com/a/web/2648/4391.pdf (accessed June 30, 2022).
7. U.S. citizens living abroad are subject to U.S. income tax. Refer to 26 U.S. Code § 911.
8. 26 U.S. Code § 901.
9. Adam Michel, "The U.S. Tax System Unfairly Burdens U.S. Business," Heritage Foundation *Backgrounder* No. 3217, May 16, 2017, https://www.heritage.org/taxes/report/the-us-tax-system-unfairly-burdens-us-business.
10. Ibid.
11. In practice, the worldwide tax system led many multinationals with U.S. headquarters to avoid repatriating foreign income back to the United States as the act of repatriating the income to the U.S. parent triggered U.S. tax liability. U.S.-based multinationals were thus incentivized to defer U.S. tax liability by keeping their capital overseas rather than reinvesting it in the United States. See, for example, Curtis Dubay, "A Repatriation Holiday Would Not Create Jobs," Heritage Foundation *Issue Brief* No. 4078, October 31, 2013, https://www.heritage.org/taxes/report/repatriation-holiday-would-not-create-jobs.
12. 26 Code of Federal Regulations § 1.904–1(f).
13. Refer to 26 U.S. Code §§ 301 and 316.
14. Michel, "The U.S. Tax System Unfairly Burdens U.S. Business."
15. The U.S.'s combined statutory corporate tax rate, including federal and average state and local taxes, was the highest in the Organization for Economic Co-operation and Development and the fourth-highest in the world as of 2017. See Kari Jahnsen and Kyle Pomerleau, "Corporate Income Tax Rates Around the World, 2017," Tax Foundation, September 7, 2017, https://taxfoundation.org/corporate-income-tax-rates-around-the-world-2017/ (accessed June 30, 2022).
16. An Act to Provide for Reconciliation Pursuant to Titles II and V of the Concurrent Resolution on the Budget for Fiscal Year 2018, H.R. 1, 115th Cong., 1st Sess., https://www.congress.gov/bill/115th-congress/house-bill/1 (accessed July 6, 2022).
17. Technically, when a U.S. corporation receives subpart F income or global intangible low-taxed income, it is subject to U.S. tax at the standard 21 percent corporate rate. However, corporations are allowed to deduct a percentage of this income, effectively allowing the taxpayer to pay a reduced rate on these categories of income.
18. Rules for foreign branches predate the TCJA. However, the TCJA did classify foreign-branch income as a separate "bucket" of income for FTC purposes. Therefore, now FTCs earned in the foreign branch bucket cannot be used to offset foreign taxes paid on other buckets of income, including general-category income, passive-category income, or GILTI income. Refer to 26 U.S. Code § 904(d).
19. See Code of Federal Regulations §§ 1.301–7701–2 and 1.301–7701–3.
20. 26 U.S. Code §§ 951 and 952.
21. See 26 U.S. Code § 951A.
22. Despite being branded "low-taxed" income, the U.S. tax on global intangible low-taxed income can and does apply to businesses paying high foreign tax rates. See Daniel Bunn, "U.S. Cross-Border Tax Reform and the Cautionary Tale of GILTI," Tax Foundation, February 17, 2021, https://taxfoundation.org/gilti-us-cross-border-tax-reform/#Key (accessed June 23, 2022).
23. A separate FTC and tax credit limitation is calculated for different categories of income. See 26 U.S. Code § 904(d).
24. 26 U.S. Code § 901(b)(1).

25. Under 26 U.S. Code § 901, the tax code allows taxpayers to claim FTCs on taxes in lieu of income taxes. IRS regulations stipulate certain requirements for taxes to qualify as taxes in lieu of income taxes in 26 CFR § 1.903–1.
26. 26 U.S. Code § 901(b)(1).
27. Foreign taxes on wages, dividends, interest, and royalties generally qualify for the credit. Internal Revenue Service, "Foreign Taxes That Qualify for the Foreign Tax Credit," https://www.irs.gov/individuals/international-taxpayers/foreign-taxes-that-qualify-for-the-foreign-tax-credit (accessed June 23, 2022). The tax code also explicitly disallows FTCs for excess taxes levied on foreign mineral income and certain sales of oil and gas in which the sale price differs from the fair market value. See 26 U.S. Code § 901(e)–(f).
28. 26 U.S. Code § 901(i). Note that 26 Code of Federal Regulations § 1.901–2(e)(2) stipulates that an amount remitted to a foreign country is not a foreign income tax to the extent that it is expected to be refunded, rebated, or forgiven. The tax code also denies FTCs on withholding taxes on dividends received in situations in which taxpayers are obligated to make related payments to someone else on the same property (e.g., a short sale). See 26 U.S. Code §§ 901(k)(1)(A) and 901(l)(1)(B). Also, refer to § 901(m) for the rules on the denial of FTCs with respect to foreign income not subject to U.S. taxation by reason of covered asset acquisitions.
29. 26 Code of Federal Regulations § 1.901–2(d)(6).
30. Refer to 26 U.S. Code § 901(g) for rules on the denial of FTCs where the taxpayer did not effectively owe U.S. tax on the foreign income because of a dividends-received deduction.
31. 26 U.S. Code § 901(j).
32. 26 U.S. Code § 901(k). Other holding periods apply in the case of certain specified securities or situations.
33. 26 U.S. Code § 904(a).
34. See U.S. Department of the Treasury, "2017 Instructions for Form 1116," Internal Revenue Service, https://www.irs.gov/pub/irs-prior/i1116--2017.pdf (accessed June 30, 2022).
35. 26 Code of Federal Regulations § 1.901–2(a)(1), April 1, 2017, https://www.govinfo.gov/content/pkg/CFR-2017-title26-vol11/pdf/CFR-2017-title26-vol11-sec1-901-2.pdf (accessed July 25, 2022).
36. See U.S. Department of the Treasury, "2017 Instructions for Form 1116." Specifically refer to the "Foreign Taxes Not Eligible for a Credit" section.
37. 26 Code of Federal Regulations § 1.901–2(a)(2)–(3).
38. 26 Code of Federal Regulations § 1.901–2(a)(3)(ii)(b)(2).
39. 26 Code of Federal Regulations § 1.901–2(a)(3)(ii)(b)(3).
40. 26 Code of Federal Regulations § 1.901–2(a)(3)(ii)(b)(4).
41. IRS regulations also stipulate that to qualify for the FTC, taxpayers may not receive economic benefits from the foreign tax authority in exchange for their payment of the tax. See 26 Code of Federal Regulations § 1.901–2(a)(2).
42. REG–105600–18, *Federal Register*, Vol. 83, No. 235 (December 7, 2018), pp. 63061–63066.
43. The 2017 passage of the TCJA provided some impetus to make certain updates to the FTC regulations. However, a key goal of the TCJA was to move away from the worldwide system of taxation that all too frequently led to double taxation. The 2021 final FTC regulations' limitation on the creditability of foreign taxes does precisely the opposite, increasing the incidence of double taxation. The TCJA made certain specific changes related to FTCs, but none of these changes could be construed as narrowing the definition of what qualifies as a creditable foreign income tax. The TCJA's changes related to FTCs were as follows: (i) The TCJA specified that foreign branch income and the newly created "GILTI" category each constituted separate buckets of income for purposes of computing FTCs (26 U.S. Code § 904(d)); (ii) The TCJA clarified that certain foreign dividends that it exempted from U.S. income tax would not simultaneously earn FTCs (§ 904(b)(4)); and (iii) The TCJA specified that in the specific case of income in the GILTI category, foreign income taxes would be credited at 80 percent of the amount of foreign tax paid (§ 960(d)). Also note the repeal of § 902 (related to certain deemed paid credits) on foreign distributions and dividends simply ensured that no tax credits could be received on foreign income that was no longer subject to U.S. taxation. The TCJA exempted a significant amount of previously taxable foreign income from U.S. taxation. By limiting the situations in which foreign income is taxable, it necessarily also limited the situations in which FTCs would apply. However, where foreign income remains taxable, foreign taxes should generally remain creditable, as they were prior to the TCJA.
44. 26 Code of Federal Regulations § 1.901–2(b)(4)(i)(A). The enumeration of specific costs did not appear in the 2020 proposed FTC regulations and was added to the 2021 final FTC regulations.
45. Tightened cost recovery rules are also a major source of concern for taxpayers.
46. 26 Code of Federal Regulations § 1.901–2(b)(5)(i)(A).
47. The 2021 final FTC regulations allow foreign taxes on resident businesses to be based on the taxpayer's worldwide income, but foreign taxes that follow destination-based principles are not creditable. The regulations also require that income allocated between countries follow arm's length principles. This is a reference to the Organization for Economic Co-operation and Development's (OECD) transfer pricing guidelines. Taxes in countries that fail to adhere closely enough to the OECD's rules for allocating profits between countries may not be creditable. See 26 Code of Federal Regulations § 1.901–2(b)(5)(ii).

48. 26 Code of Federal Regulations § 1.901–2(b)(5)(i)(A).
49. This includes a requirement that attribution be based on the concept of effectively connected income under § 864(c).
50. 26 Code of Federal Regulations § 1.901–2(b)(5)(i)(B).
51. Ibid.
52. 26 Code of Federal Regulations § 1.901–2(b)(5)(i)(C). U.S. sourcing rules for the disposition of investment in U.S. real property are contained in 26 U.S. Code § 897.
53. Federation of Tax Administrators, "State Apportionment of Corporate Income," January 2022, https://www.taxadmin.org/assets/docs/Research/Rates/apport.pdf (accessed June 30, 2022).
54. Adam Michel, "The Treasury Should Disengage from the OECD Digital Tax Process," Heritage Foundation *Backgrounder* No. 3445, October 29, 2019, https://www.heritage.org/taxes/report/the-treasury-should-disengage-the-oecd-digital-tax-process.
55. Office of the United States Trade Representative, "Section 301 Investigation Report on France's Digital Services Tax," December 2, 2019, https://ustr.gov/sites/default/files/Report_On_France%27s_Digital_Services_Tax.pdf (accessed July 6, 2022).
56. *Federal Register*, Vol. 87, No. 2, p. 285.
57. 26 U.S. Code § 903.
58. DSTs typically use destination-based principles (attributing revenues between countries based on where users are located) while the income taxes they replace use origin-based principles (based on where the income-earning activities are performed).
59. Forst et. al, "Treasury Finalizes Foreign Tax Credit Regulations."
60. Jennifer Williams-Alvarez, "CFOs Express 'Serious Concerns' About Changes to Foreign Tax Credits in Letter to Yellen," *Wall Street Journal*, June 6, 2022, https://www.wsj.com/articles/cfos-express-serious-concerns-about-changes-to-foreign-tax-credits-in-letter-to-yellen-11654507801 (accessed August 22, 2022). The 2021 final FTC regulations added changes to withholding sourcing rules that were not present in the 2018 proposed FTC rules.
61. Williams-Alvarez, "CFOs Express 'Serious Concerns' About Changes to Foreign Tax Credits." The letter is available at Monish Patolawala et al., letter to Janet Yellen, June 3, 2022, https://actontaxreform.com/media/wrxdsixm/ftc-regulations-cfo-letter-signed.pdf (accessed July 25, 2022).
62. Ibid.
63. The Treasury Inspector General for Tax Administration (TIGTA) issued a 2017 report on compliance efforts to identify unsupported claims for FTCs during the 2013–2015 period. Most notably, the TIGTA estimated that a total of 134 FTCs were allowed without proper forms, and 38 FTCs were improperly transcribed by the IRS. This could indicate up to $70.5 million of improperly granted FTCs (assuming all such claimed FTCs could not be verified upon examination). This is less than 0.1 percent of the total amount of FTCs that were claimed in each of those years. Such problems with the IRS's internal processes will not be solved by overhauling the FTC system. The TIGTA's report did not indicate that more scrutiny was needed to disallow credits in the case of foreign taxes that were paid but that should not be considered creditable. The TIGTA did recommend changes to ensure that more large corporation's FTCs be referred to international examination specialists. However, based on the data reported by the TIGTA, over 90 percent of the FTCs that should have been referred to international examination specialists were so referred. See Treasury Inspector General for Tax Administration, "Improvement Is Needed in Compliance Efforts to Identify Unsupported Claims for Foreign Tax Credits," September 26, 2017, https://www.treasury.gov/tigta/auditreports/2017reports/201730084fr.pdf (accessed July 7, 2022). Compliance issues for other credits, especially refundable credits, far outweigh any FTC compliance issues. For example, the TIGTA's examination of earned income tax credit compliance revealed that between 2018 and 2020, the IRS issued an estimated $17.3 billion of improper payments per year (more than 200 times the amount that the TIGTA potentially identified for FTCs). See Treasury Inspector General for Tax Administration, "The Earned Income Tax Credit Examination Strategy Can Be Improved," September 2, 2021, https://www.treasury.gov/tigta/auditreports/2021reports/202130051fr.pdf (accessed July 7, 2022).
64. *Federal Register*, Vol. 87, No. 2, p. 283.
65. Ibid.
66. Amusingly, in arguing for its own unilateral rulemaking authority to redefine what constitutes an income tax, Treasury cites a case in which the court affirms that the power to tax and grant tax credits *resides in Congress*.
67. *Biddle v. Commissioner of Internal Revenue*, 302 U.S. 578 (1938).
68. Ibid., p. 581.
69. As some public comments noted, the 1918 Revenue Act provided the additional limitation that to be creditable a foreign tax had to be a tax paid to a foreign country *upon income derived from sources therein*. Congress then removed the phrase "upon income derived from sources therein" in the 1921 Revenue Act. The 1921 Revenue Act also introduced the FTC limitations (ensuring that the amount of the FTC claimed on foreign income could not exceed the amount of U.S. tax that would be owed on the same income). As noted earlier in this report, FTC limitations help ensure that excess credits are not granted simply because a foreign tax follows different sourcing rules than the United States, so Congress may have intended the new limitations to replace the 1918 source requirement.
70. 26 U.S. Code § 901(b)(1).

71. Unfortunately, there is no explicit definition of the term income tax in § 164. This section does define "personal property taxes" and "general sales tax," imposing few limitations. The definition of personal property taxes simply states, "The term 'personal property tax' means an ad valorem tax which is imposed on an annual basis in respect of personal property." The definition of general sales tax merely states, "The term "general sales tax" means a tax imposed at one rate with respect to the sale at retail of a broad range of classes of items." Given the generally inclusive definitions of other types of taxes, it is unlikely that Congress intended "income, war profits, and excess profits taxes" to be narrowly defined as in the 2021 final FTC regulations.
72. 26 U.S. Code § 164(a)(3).
73. U.S. Census Bureau, "State Government Tax Tables," https://www.census.gov/data/tables/2021/econ/stc/2021-annual.html (accessed July 20, 2022).
74. 26 U.S. Code § 275(a)(4).
75. 26 U.S. Code § 275 deals with non-deductible taxes for federal income taxes. Specifically, § 275(a)(2) prevents taxpayers from deducting federal income taxes paid from federal taxable income, and § 275(a)(4) disallows deductions for foreign income taxes where the taxpayer chooses to claim a foreign income tax credit.
76. *PPL Corp. v. Commissioner of Internal Revenue*, 569 U.S. 329 (2013).
77. *Federal Register*, Vol. 87, No. 2, p. 283.
78. Elsewhere, the court states that "'the predominant character' of a tax, or the normal manner in which a tax applies is controlling.... Under this principle, a foreign tax that operates as an income, war profits, or excess profits tax in most instances is creditable, even if it may affect a handful of taxpayers differently."
79. It should be emphasized that Congress never specified in the U.S. tax code that to be creditable a tax must be an income tax in the "U.S. sense."
80. *PPL Corp v. Commissioner*, pp. 12–43.
81. Stewart, Elliot, and Stahl, "Interview: The Final Foreign Tax Credit Rules: Complaints and Confusion."
82. Andrew Velarde, "Treasury Likely to Issue FTC Regs' Royalty Withholding Carveout," Tax Notes, May 23, 2022.
83. Ibid.
84. Doug Sword, "Yellen Nixes Foreign Tax Credit Reg Delay, Defends OECD Talks," Tax Notes, June 8, 2022, https://www.taxnotes.com/tax-notes-today-federal/budgets/yellen-nixes-foreign-tax-credit-reg-delay-defends-oecd-talks/2022/06/08/7dk58 (accessed July 25, 2022).
85. Ibid.
86. Preston Brashers, "Taxes in the Build Back Better Act: Five Ways Congress Is Dodging Accountability and Three Ways It Could Take Responsibility," Heritage Foundation *Issue Brief* No. 5244, January 27, 2022, https://www.heritage.org/taxes/report/taxes-the-build-back-better-act-five-ways-congress-dodging-accountability-and-three.
87. News release, "Hern Leads Bipartisan Letter Voicing Concerns on Foreign Tax Credit Regulations," Office of Kevin Hern, April 29, 2022, https://hern.house.gov/news/documentsingle.aspx?DocumentID=542 (accessed July 20, 2022), and Kevin Brady et al., letter to Janet Yellen from Members of the Committee on Ways and Means, U.S. House of Representatives, June 16, 2022, https://gop-waysandmeans.house.gov/wp-content/uploads/2022/06/Letter-to-Sec.-Yellen-on-FTC-Regs-2022.06.1635.pdf (accessed July 20, 2022). In an April 29, 2022, letter to Yellen, a bipartisan group of 10 members of the House Ways and Means Committee expressed concerns about the administrability of the 2021 final FTC regulations and the compliance burden placed on businesses, especially those operating in countries that do not have a U.S. tax treaty. Subsequently, in a June 16, 2022, letter to Yellen a group of 18 Members of the House Ways and Means Committee requested that Treasury extend the implementation window for the 2021 final FTC regulations due to similar concerns.