



VIA ELECTRONIC DELIVERY

September 3, 2021

The Honorable Ron Wyden, Chairman, Senate Committee on Finance  
221 Dirksen Senate Office Building  
Washington, DC 20002

Honorable Sherrod Brown  
503 Hart Senate Office Building  
Washington, DC 20510

Honorable Mark Warner  
703 Hart Senate Office Building  
Washington, DC 20510

Dear Chairman Wyden, Senator Brown, and Senator Warner,

We are writing in response to your request for comments on the International Tax Reform Framework Discussion Draft (“Draft”) released on August 25, 2021. We appreciate your leadership role in ensuring that we have a corporate and international tax regime that encourages domestic job and wage growth and continues to allow the U.S. to be the leader in research and innovation.

The Association of Clinical Research Organizations (ACRO) represents the world's leading clinical research organizations (CROs) and technology providers. Our member companies provide a wide range of specialized services across the entire spectrum of development for new drugs, biologics, and medical devices—from pre-clinical, proof of concept and first-in-human studies through post-approval, pharmacovigilance, and health data research. CROs and technology providers dispense these services to the pharmaceutical, biotechnology and medical device industries (referred to herein as “Sponsors”), which are increasingly outsourcing their clinical development activities to ACRO members to enable them to bring new life-saving drugs, treatments, therapies, and medical devices through the development and approval process as safely and efficiently as possible.

ACRO member companies manage or otherwise support the majority of all biopharmaceutical-sponsored clinical investigations worldwide. With more than 200,000 employees engaged in research activities in 114 countries, the member companies of ACRO advance clinical outsourcing to improve the quality, efficiency, and safety of biomedical research. Throughout the COVID-19 pandemic, ACRO member companies are providing clinical trial services to completed and ongoing COVID vaccine trials, as well as many of the more than 250 COVID treatment studies running around the world. But this continues to be an industry that started in the United States and continues to provide high-paying research jobs throughout the country.

It is important for the US to remain an industry leader in clinical trials. The industry provides good, high wage jobs and a significant multiplier for other industries. CROs are heavy research and technology dependent companies that spend millions each year in hiring and training research staff and investing in labs and other infrastructure to support complex drug development. As the US works towards continuing to be the world’s leader in the creation and development of intellectual capital and ideas, clinical research will remain an important component and a strong sign of the ability of our country to effectively compete in a global market.

Most ACRO members are domestically-headquartered companies but have operations by necessity throughout the world. While expenses such as taxes and labor costs are a factor, the selection of where research occurs is generally a result of where the underlying medication or device is being approved and where we need to run trials. Accordingly, the decision to operate in a particular country is rarely a result of choosing a country because of its tax rate, but more because of the specific needs it addresses for the underlying service. It is important that our tax laws appreciate this distinguishing feature and provide for a tax regime that recognizes service industries like ours and our need to remain competitive in an increasingly global world.

**Global Intangible Low-Taxed Income (GILTI)** – We encourage you to keep the nominal GILTI rate lower than the OECD proposed 15% minimum rate on foreign earnings. The Administration is proposing a 21% nominal GILTI rate that could be an effective rate over 26% after taking into account GILTI’s foreign tax haircut and the proposed elimination of the existing QBAI exemption. It is important to note that the proposed OECD 15% rate also has an exemption similar to the amount exempted under the current GILTI QBAI rules. Additionally, U.S. companies generally pay an additional 3-5% in state and local tax, while foreign companies generally are not subject to subnational taxes on their income.

Accordingly, the effective rate on GILTI could exceed 30% for U.S. companies in many instances, giving U.S. companies a significantly higher cost of capital than foreign competitors. Consequently, these companies could become targets for takeovers or, in any case, not be able to effectively compete with foreign-based MNCs in the M&A market for foreign targets.

**Domestic Innovation Income (DII)** – ACRO would suggest you consider modifying the new DII calculation to reflect the benefits of domestic contract research. Under current law, contract research sponsors are only allowed to include 65% of their qualifying expenses as part of their R&E calculation. This limitation was created at a time when almost all contract research was being done by not-for-profits like universities and federal and state research facilities. To encourage continued growth in domestic contract research, you should consider expanding the new DII to include contract research providers and allow them to claim 35% of the Sponsors qualifying contract research expenses. This would give CROs some of the benefit for domestic research that is currently lost.

**Allocation of Research and Stewardship Expenses** – We support an improvement to the expense apportionment system in which expenses incurred in the U.S. are not a limiting factor for a U.S. company to claim foreign tax credits.

**Qualified Business Asset Investment (QBAI)** – ACRO encourages you to reconsider eliminating QBAI and instead to modify it to reflect that, for many service-driven industries like ours, foreign investments in tangible property and real estate is only one indicia of ensuring that real business activity is occurring. The determination of when CROs are generating profits is generally based on business and regulatory reasons for operating in that country and not based on the jurisdiction’s tax rate. The valuation of the tangible property owned in that country is not always a true reflection of the activities occurring in that country. We encourage you to modify QBAI to reflect services industries like ours that have high wage and expense costs in foreign countries that often outweigh our investment in foreign tangible assets.

**Allowing Business Credits for BEAT** – We support modifications to the BEAT calculation to allow adjustments for business credits that reduce regular tax liability for purposes of the BEAT comparison. Additionally, we support improvements to the BEAT mechanism to allow a company with pre-TCJA loss carryforwards to have an adjusted BEAT formula to prevent such an entity with losses from the prior tax regime being unfairly punished by BEAT (i.e., if taxable income is zero because of pre-TCJA losses, it will be in BEAT unless below the 3% threshold).

We look forward to working with you as you move forward with your proposals so that the result is a tax regime that encourages increased domestic investment in research and development and does not unfairly penalize CROs for research done in other countries for uncontrollable non-tax reasons.

Sincerely,



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