September 13, 2024

The Honorable Jason T. Smith
Chairman
Committee on Ways and Means
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Richard E. Neal
Ranking Member
Committee on Ways and Means
U.S. House of Representatives
Washington, D.C. 20515

Re: H.R. 8184, Growing and Preserving Innovation in America Act

Dear Chairman Smith and Ranking Member Neal:

The undersigned organizations, collectively representing the interests of tens of thousands of businesses from across the economy, strongly support H.R. 8184, the "Growing and Preserving Innovation in America Act." This important, bipartisan legislation would permanently preserve a critical pro-innovation tax policy introduced in 2017, the deduction for foreign-derived intangible income ("FDII"), which is otherwise scheduled to phase down at the end of next year. The FDII deduction has proven remarkably effective at furthering its policy aims and should be made a permanent, undiluted feature of the U.S. international tax system.

In December 2017, Congress passed the landmark Tax Cuts and Jobs Act (TCJA), the most comprehensive tax reform legislation to be enacted since 1986. The TCJA lowered and simplified the federal tax burden on American families and workers, and it substantially modernized the United States' approach to taxing business income—particularly with respect to cross-border transactions. A key component of those reforms was the allowance of a 37.5% deduction to U.S. corporations for properties sold or services rendered outside the United States (FDII). Under a 21% corporate tax rate, this deduction effectively reduces the tax rate on FDII to approximately 13.125%. Absent congressional intervention, however, the effective tax rate on FDII will increase to more than 16.4% at the end of 2025.

By subjecting FDII to a reduced effective rate of U.S. tax through this deduction, Congress sought to encourage U.S. corporations to locate and derive income from intangible property—and increase potentially valuable economic activity—in the United States. Congress also believed that establishing a deduction for FDII would help the United States compete with countries offering preferential tax regimes for income related to certain forms of intellectual property, such as "patent box" regimes. Owning valuable intellectual property in the United States gives the

United States the primary right to tax the economic returns associated with that property, boosting U.S. tax revenue.

Consistent with lawmakers' intent in enacting the FDII deduction, several major U.S. technology companies have responded by transferring their high-value intellectual property to the United States.[1] Since the TCJA's enactment, these companies have invested tens of billions more of their worldwide profits in the United States, including in domestic research and development (R&D), capital improvements, and hiring. Furthermore, data since 2017 demonstrate a meaningful increase in the share of domestic pretax profits earned by profitable multinational companies across the board. Profitable multinational companies (accounting for 160 companies encompassing 61% of all S&P 500 domestic pretax earnings) increased their domestic share of global pretax earnings from 53.4% in 2017 to 63.1% in 2022—an increase of nearly 10%.[2] And economists have used the data from financial statements to demonstrate that the tax relief attributable to the FDII deduction tripled over four years, underscoring that this tax incentive is working as intended.[3]

Congress believed that increasing intellectual property ownership in the United States would lead to concomitant increases in U.S. employment and innovation. The development of intellectual property represents the first step in the manufacturing or services lifecycle, and businesses often establish R&D centers and supply chains around where their high-return intellectual property is located. These activities create well-paying jobs. And recent economic research confirms that the FDII deduction incentivizes multinational corporations to cultivate a new R&D workforce in the United States, as opposed to merely recruiting seasoned R&D personnel from other firms.[4]

As the technological race with our global competitors, including China, intensifies, it becomes increasingly important that multinational companies are encouraged to develop and keep their high-value intellectual property in the United States. The FDII deduction supports this goal by fostering U.S. innovation and maintaining America's competitive position in an increasingly competitive global marketplace. Congress must act to prevent its dilution.

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[1] *See, e.g.*, Martin A. Sullivan, *Big Tech SEC Filings Tell Two Different Stories*, 178 Tax Notes Fed. 1103 (Feb. 20, 2023).

[2] UF Tax Incubator, *Taxation of Foreign-Derived Intangible Income*, 115 Tax Notes Int'l 711, 715 (July 29, 2024).

[3] *See, e.g.*, Martin A. Sullivan, *Latest SEC Filings Show FDII Benefits Continue to Climb*, 179 Tax Notes Fed. 169 (Apr. 10, 2023).

[4] Jing Huang et al., *The Effect of U.S. Tax Reform on U.S. R&D-Intensive Multinational Companies* (June 3, 2023), https://ssrn.com/abstract=4468276.

The FDII deduction serves a multitude of U.S. public policy interests, furthering broader economic and national security goals. We therefore call on your committee to support the Growing and Preserving Innovation in America Act as a commonsense, bipartisan solution to preserving its benefits and ensuring the United States remains a premier destination to develop global solutions and technologies for the future.

Sincerely,

Footwear Distributors & Retailers of America
Information Technology Industry Council
Motion Picture Association
NCTA – The Internet & Television Association
Sports & Fitness Industry Association
U.S. Chamber of Commerce

cc: Members of the House Committee on Ways and Means
Members of the Senate Committee on Finance