Congress of the United States
JOINT COMMITTEE ON TAXATION
Washington, DC 20515–6453

March 2, 2021

Honorable Bernard Sanders
United States Senate
SD-332
Washington, D.C. 20510

Dear Senator Sanders:

This letter is a partial response to your request of January 4, 2021, for a revenue estimate of several proposals. This letter provides a revenue estimate of Title VIII ("Corporate Tax Dodging Prevention") of the Corporate Fair Share Act (MCG21033). Your proposal makes several changes to the taxation of multinationals. In particular, the proposal: (1) taxes worldwide foreign earnings of controlled foreign corporations ("CFCs") currently by including all foreign-source income in subpart F income of their U.S. shareholders; (2) imposes a country-by-country limitation on the use of foreign tax credits; (3) repeals the CFC look-through rule and generally treats foreign business entities as corporations; (4) introduces an additional limitation on interest deductions; (5) introduces stricter anti-inversion rules; (6) generally increases (a) the base and the rate of the base erosion and anti-abuse tax ("BEAT") and (b) the number of taxpayers subject to the tax; (7) limits the foreign taxes that taxpayers receiving specific economic benefits from a foreign country may claim under the foreign tax credit; (8) limits treaty benefits in certain cases; (9) repeals the interest-free deferral of section 965 liabilities; and (10) eliminates the deduction for foreign-derived intangible income ("FDII").

Under your proposal, all income of CFCs derived from any foreign country is subject to current U.S. tax. The proposal achieves this by expanding the definition of subpart F income to include all income derived from any foreign country. For corporate U.S. shareholders, subpart F income is subject to the statutory corporate tax rate (21 percent).

In addition, the proposal limits the ability of multinationals to cross-credit foreign taxes paid on income earned in high-tax countries to offset income earned in low-tax countries. The proposal achieves this by imposing a country-by-country limitation on the use of foreign tax credits.

The proposal also repeals the CFC look-through rule and generally treats foreign business entities as corporations.

The proposal imposes a new limitation on the deductibility of interest expense. This limitation is determined at the level of the international financial reporting group ("IFRG").[1] In

---

[1] An IFRG is defined as a group which includes (i) (x) at least one foreign corporation engaged in a U.S. trade or business or (y) at least one domestic corporation and at least one foreign corporation, (ii) prepares

general, a domestic corporation that is a member of an IFRG may deduct interest expense only up to an amount equal to the member's interest income, plus 105 percent of its allocable share of IFRG net interest expense, which is its pro rata share of worldwide earnings before interest, taxes, depreciation, and amortization ("EBITDA").

The proposal tightens the anti-inversion rules by (1) treating inverted companies as domestic corporations if the historic shareholders of the inverted company own more than 50 percent of the inverted firm,[2] unless the inverted company has "substantial business activities" in its home country; and (2) treating certain public foreign corporations with gross assets of $50 million or more as domestic corporations if managed and controlled in the United States.

The proposal makes several changes to the BEAT. In general, the BEAT functions as a minimum tax and applies to large corporate taxpayers making deductible payments to foreign related parties. First, the proposal increases the BEAT rate to 12.5 percent from 10 percent and expands the base to which the BEAT applies by (in effect) disallowing all credits (including busines credits and the foreign tax credit).[3] Second, the proposal reduces the gross revenues threshold to $25 million from $500 million and repeals the requirement that the BEAT applies only to taxpayers with a certain percentage of base erosion tax benefits as compared to total deductions and tax benefits. Finally, the proposal exempts any item that would be a base erosion tax benefit if the item is included currently in income of the taxpayer (either as effectively connected income or under subpart F).

The proposal limits the foreign taxes that taxpayers receiving specific economic benefits from a foreign country may claim under the foreign tax credit. In certain cases, foreign countries may seek to charge taxpayers a fee or a royalty for a specific economic benefit bestowed on a foreign company. Instead of doing so directly, however, the foreign country may try to disguise the charge as a tax, knowing that in many cases a multinational may receive a foreign tax credit from its home country. The proposal limits the amount that such multinational (a "dual capacity" taxpayer) may claim as a foreign tax credit.

---

consolidated financial statements, and (iii) reports gross receipts annually over the past three years of at least $25 million.

[2] This prong of your proposal applies to relevant combination transactions completed after May 8, 2014, and also reduces the continuity of ownership threshold for treating inverted corporations as domestic corporations from 80 percent to 60 percent.

[3] The proposal thus accelerates those two changes, which under current law are set to apply to taxable years beginning after 2025.

The proposal limits treaty benefits with respect to certain deductible payments in situations in which a foreign multinational (resident in Country X) attempts to use a related party in a third country (Country Y) to claim the benefits of a U.S.-Country Y tax treaty. While most U.S. tax treaties include limitation-on-benefits clauses that prevent this abuse, at least one notable exception exists. The proposal would not allow the related party to claim the benefits of the treaty unless the foreign parent would have been able to claim the benefit directly.

In a related change, the proposal denies treaty benefits with respect to certain income attributable to a permanent establishment in a third country. In particular, the proposal denies benefits under the U.S.-Country A tax treaty when U.S.-source income of a foreign person (resident in Country A) is attributable to a permanent establishment in Country B. The proposal denies treaty benefits when (1) the income is not subject to tax in Country A, (2) the income is subject to a low tax rate (less than 15 percent or 60 percent of the general statutory tax rate in Country A), and (3) the United States does not have a tax treaty with Country B.

Your proposal repeals the interest-free deferral of deferred tax liability under section 965 and ends the potentially indefinite deferral of an S corporation shareholder's payment of section 965 net tax liability.

Finally, your proposal repeals the deduction for FDII.

For purposes of this estimate, we generally have assumed the proposal is effective for taxable years beginning after December 31, 2020. In addition, we have assumed the date of enactment is June 1, 2021. The table below presents our estimates of the Federal fiscal year budget receipts of your proposal relative to the July 2020 CBO baseline. These estimates are preliminary and subject to change as we update our models and data.

Fiscal Years
[Billions of Dollars]

Item	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2021-26	2021-31
Worldwide country by country at 21%..............	16.1	50.0	68.7	71.5	76.2	75.0	69.9	67.5	65.8	65.3	66.1	357.5	692.1
Interest expense limitation…...	1.7	3.2	3.0	3.0	3.0	3.2	3.6	4.0	4.5	5.1	5.5	17.1	39.8
Anti-inversion provisions and limitation on treaty benefits……..	1.3	1.9	2.3	2.3	2.3	2.1	2.1	2.2	2.2	2.4	2.6	12.1	23.5
Changes to BEAT………	1.9	4.0	4.1	3.9	4.0	2.8	1.5	1.6	1.6	1.6	1.7	20.6	28.6
Dual capacity taxpayers…...	0.3	0.6	0.7	0.8	0.9	1.3	1.6	1.5	1.6	1.9	2.0	4.6	13.1
Repeal of interest-free deferral for Sec. 965……	--*Presently Unavailable*--												
Repeal FDII..	7.4	12.2	12.3	17.4	22.9	20.9	17.9	22.1	25.7	30.5	35.1	93.0	224.2
Total……...	**28.7**	**71.8**	**91.0**	**98.8**	**109.3**	**105.3**	**96.5**	**98.8**	**101.5**	**106.8**	**112.9**	**504.9**	**1,021.4**

NOTE: Details may not add to totals due to rounding.

I hope this information is helpful to you. If we can be of further assistance in this matter, please let me know.

Sincerely,

Thomas A. Barthold

Thomas A. Barthold
Chief of Staff