

Congress of the United States
House of Representatives
Washington, DC 20515-1501

August 29, 2023

The Honorable Christian Lindner
Minister of Finance
Federal Ministry of Finance, Federal Republic of Germany
Wilhelmstraße 97
10117 Berlin, Germany

Dear Minister Lindner,

As members of the U.S. House of Representatives serving on the Ways and Means Committee, we write to you to express our concerns over the portions of Section 49 of the German Tax Code that were retained after the repeal in 2022. In our view, it is a discriminatory and extraterritorial tax that uniquely burdens U.S. companies and hampers their ability to compete fairly in the globally marketplace. This sort of discriminatory taxation is contradictory to the important political and economic relationship between our two nations, and we respectfully urge you to repeal the remaining portions of Sec. 49 that discriminate against U.S. companies.. We plan to discuss the harmful impact of section 49 during our upcoming later this month.

On June 8, 2023, we communicated our concerns in a letter to U.S. Treasury Secretary Yellen. As we discussed in that letter, Section 49 imposes a withholding tax on royalty payments for patent and trademarks registered in Germany. Mere registration of IP is deemed German-source income without any permanent establishment or other traditional taxable nexus.

As a result of the OECD's Base Erosion and Profit Shifting (BEPS) initiative and the 2017 tax reforms, many U.S. companies brought their intellectual property back to the U.S. During these transactions, German advisors informed U.S. companies that Section 49 may apply and instructed them to submit a voluntary disclosure. These disclosures applied to prior year transactions involving royalty payments between non-German affiliates who had portions of their IP registered in Germany. The German government began assessing tax on U.S. companies based on these disclosures, and the German Finance Ministry issued guidance and extended deadlines to review these claims.

We appreciate the Finance Ministry's recommendations at the end of 2022, to repeal the provision going forward except as it relates to transactions with certain tax-havens. However, the retroactive application of the provision for related party transactions was retained. This approach effectively continues to subject U.S. multinationals to the withholding tax while excluding

German multinationals, raising concerns about the disparate tax treatment for U.S. companies through companies headquartered in Germany.

Generally, tax jurisdiction over intangible returns should be allocated according to the location of relevant functions and economic risks, both of which are absent in the case of simple IP registration. Additionally, assessment of the tax fails to value the transactions using the OECD's generally accepted transfer pricing guidelines and IP valuation principles, leading to overvaluations that inflate the amount of tax assessed.

It is important to note that the U.S. has the primary right of taxation on these earnings through the U.S. transition tax and GILTI tax provisions. In light of continuing negotiations within the Inclusive Framework, the imposition of new (or resurrected) extraterritorial taxes targeting U.S. companies is particularly concerning. We are deeply concerned that, despite U.S. engagement on Pillar One, Digital Services Taxes and other discriminatory taxes such as this continue to proliferate. As you are aware, there are already significant concerns over Pillar Two within the U.S. Congress, and with the Undertaxed Profits Rule in particular. The continued targeting of U.S. companies in manners such as this only exacerbate these concerns. In response to the discriminatory nature of elements in Pillar Two, as well as provisions such as Sec. 49, all Republican members of the Ways and Means Committee introduced H.R. 3665, the Defending American Jobs and Investment Act. This legislation would increase statutory tax rates by up to 20 percentage points on the U.S. income of investors and corporations who are based in countries with discriminatory and extraterritorial taxes on U.S. companies.

We value the strong economic, military, and political ties between our two nations, and hope to continue to build on this important partnership. Both the economy of the U.S. and Germany stand to benefit from expanding our economic cooperation, but disputes over unfair taxation are creating unnecessary challenges. We again urge you to repeal the retroactive application of Sec. 49 for related party transactions and look forward to working with you towards a resolution.

Sincerely,



Randy Feenstra
Member of Congress



Ron Estes
Member of Congress

Carol D. Miller

Carol D. Miller
Member of Congress

Michelle Steel

Michelle Steel
Member of Congress

Claudia Tenney

Claudia Tenney
Member of Congress

Kevin Hern

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Member of Congress

David Schweikert

David Schweikert
Member of Congress

Beth Van Duyne

Beth Van Duyne
Member of Congress

A. Drew Ferguson IV

A. Drew Ferguson IV
Member of Congress

cc:

The Honorable Anthony J. Blinken, U.S. Secretary of State
The Honorable Janet L. Yellen, U.S. Secretary of the Treasury
The Honorable Amy Gutmann, U.S. Ambassador to Germany
The Honorable Katherine Tai, U.S. Trade Representative
The Honorable Nils Weith, Head of the Tax Directorate, German Ministry of Finance