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Prudential Financial Inc.
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January 15, 2024

Mr. Peter Blessing
Associate Chief Counsel (International)
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20220

Re: Notice 2024-10

Dear Mr. Blessing:

The Alliance for Competitive Taxation (“ACT”) is a coalition of leading American companies from a wide range of industries that supports a globally competitive corporate tax system.

Set forth below are ACT’s comments on the treatment of dividends from foreign corporations for purposes of the corporate alternative minimum tax (“CAMT”), as requested by Section 6.01 of Notice 2024-10.

Yours sincerely,

Alliance for Competitive Taxation

cc: Lily Batchelder, Asst. Secretary for Tax Policy, U.S. Department of the Treasury
William M. Paul, Principal Deputy Chief Counsel, Internal Revenue Service
Scott Levine, Acting Deputy Assistant Secretary (International Tax Affairs), U.S. Department of the Treasury



**ALLIANCE FOR COMPETITIVE TAXATION RECOMMENDATIONS REGARDING
THE TREATMENT OF DIVIDENDS FROM FOREIGN CORPORATIONS UNDER
THE CORPORATE ALTERNATIVE MINIMUM TAX (CAMT)**

ACT commends Treasury and the IRS for providing the additional interim guidance in Notice 2024-10 with respect to the application of CAMT to certain distributions from controlled foreign corporations (“CFCs”). Notice 2024-10 helpfully adopts an approach that applies existing U.S. tax principles to these distributions, thereby dramatically reducing the potential for economic double taxation and administrative complexity that would arise if CAMT-specific rules were applied to these distributions.¹ This guidance greatly reduces the likelihood that taxpayers within the scope of the CAMT will be discouraged from repatriating CFC earnings to the United States because of the potential for triggering a CAMT liability. Because the approach taken in Notice 2024-10 is consistent with the statutory text and Congressional intent of the CAMT² and represents a sound tax policy-based approach to the treatment of CFC distributions, ACT strongly recommends that future guidance incorporate the general approach taken in Notice 2024-10.

Although the approach taken in Notice 2024-10 generally aligns the treatment of dividends for CAMT purposes and regular tax purposes, we note that the Notice does not extend this treatment to all distributions from foreign corporations that may warrant comparable treatment. Specifically, CFC distributions that are within the scope of Notice 2024-10 may generally be grouped into the following three categories that are treated as follows:

1. Distributions of PTEP, within the meaning of section 959, both from a CFC to its US shareholder and from a CFC to another CFC, do not result in additional AFSI.
2. Non-PTEP distributions from a CFC to another CFC are excluded from AFSI to the extent such distributions are excluded from subpart F income (under the same country exception or CFC look-through rules) and from tested income.

¹ ACT submitted comments on October 12, 2023, requesting an approach to the treatment of CFC distributions that generally aligns with the approach taken in Notice 2024-10. As discussed in our prior letter, the potential for economic double taxation on CFC distributions arises in several common fact patterns, including (i) distributions of earnings that were previously included in income for regular tax purposes and therefore qualify as previously taxed earnings and profits (“PTEP”) under section 959, (ii) distributions of CFC earnings that were previously included in adjusted financial statement income (“AFSI”) under section 56A(c)(3) when earned by the CFC, and (iii) distributions of CFC earnings that qualify for the dividends received deduction under section 245A for regular tax purposes. In the case of distributions that qualify for section 245A, as we noted in our prior letter, because there is no mechanism provided in the CAMT statute to permit a foreign tax credit for taxes associated with such earnings, inclusion of these earnings in AFSI would be very likely to result in unrelieved double taxation.

² This analysis is set out more fully in ACT’s prior comments submitted on October 12, 2023.



3. Dividends received by a U.S. shareholder from a first-tier CFC, provided that such dividends qualify for the dividends-received deduction under section 245A, will not give rise to additional AFSI.

The above three groups of distributions address the most immediate concerns for most taxpayers within the scope of the CAMT and, therefore, it is understandable that Treasury and the IRS opted to provide the much-needed guidance for these types of distributions before the end of the 2023 calendar year. Nevertheless, certain intercorporate distributions not described in Notice 2024-10 may also give rise to concerns with respect to economic double taxation. Accordingly, ACT respectfully recommends that future guidance address several other categories of distributions, in each case to align the treatment of such distributions for regular tax purposes and for purposes of the CAMT. In particular, ACT recommends that the following distributions also be excluded from AFSI:

- Non-PTEP distributions from one CFC to another CFC that are not treated as related party exclusions within the meaning of Notice 2024-10;
- Distributions from a specified 10-percent owned foreign corporation that is not a CFC of the U.S. shareholder that qualifies for the dividend received deduction under section 245A;
- Distributions received by a partnership to the extent such distributions would be excluded from AFSI if the partnership was treated as an aggregate of its partners and the partners of the partnership were treated as owning the CFC stock; and
- Any amounts resulting from the disposition of CFC stock that are treated as a dividend, including any amounts that are treated as a deemed dividend under section 964(e) or section 1248.³

In summary, ACT commends Treasury and the IRS for providing affected taxpayers with timely and important guidance in Notice 2024-10 and strongly recommends that future guidance follow a similar approach with respect to the actual and deemed distributions described immediately above. ACT representatives would be happy to discuss these recommendations or any other matters addressed in Notice 2024-10 at your convenience.

³ As discussed more fully in our October 12, 2023 letter, there is no mechanism in the CAMT statute to provide a foreign tax credit for foreign taxes associated with distributions of pre-CAMT earnings that qualify for section 245A for regular tax purposes. As a result, the inclusion of such (actual or deemed) distributions in AFSI will frequently result in economic double taxation of these earnings. Further, in the case of deemed distributions described in section 1248 or section 964(e), inclusion of these amounts in AFSI is likely to encourage affected taxpayers to undertake strategies to avoid the potential imposition of CAMT on these amounts (e.g., by distributing the relevant earnings prior to a sale of the stock). ACT does not believe such an approach is required by the language of the statute or consistent with Congressional intent.