



September 29, 2015

The Honorable Charles Boustany
1431 Longworth House Office Bldg
Washington D.C., 20515

The Honorable Richard Neal
341 Cannon House Office Bldg
Washington D.C., 20515

Dear Mr. Boustany and Mr. Neal:

On behalf of the Information Technology Industry Council (ITI), the global voice of the tech sector representing more than 60 of the world's most innovative and dynamic technology companies, I am submitting comments on your Innovation Promotion (IP) Act draft.

Comprehensive tax reform is critical to our members' ability to innovate and thrive. We have long called for lowering the corporate rate, modernizing our international tax rules and putting in place permanent innovation incentives. We view all of these pieces as essential to America's future strength in the global economy, and we urge you to act on each of them quickly.

As you know, the Organisation of Economic Co-operation and Development (OECD) Base Erosion and Profit Shifting (BEPS) process, which has been ongoing for the last two years, is soon to complete its work in October. I anticipate the final report to have significant implications for ITI member companies. Many of our trading partners are aggressively using tax policy to boost their tax base by attracting income and operations of U.S. and international companies with significant intellectual property (IP) and the associated well-paying jobs that accompany it. Increasingly, for companies to take advantage of these incentives, there will need to be significant economic activity linked to the location of the IP income. These so-called nexus requirements mean that U.S. companies face growing pressure to place key U.S. research and development (R&D) work offshore. In response to these global trends, we believe the U.S. should reform its current tax framework, including moving forward with an innovation box regime.

Therefore, we recognize and appreciate your efforts to create such a policy and support the general direction of your draft. For example, tech companies have long argued that an innovation box should apply to a wide array of innovation IP and include a method for companies to onshore IP currently sitting in foreign affiliates in a tax-efficient manner. We applaud these aspects of the IP Act.

Moving beyond these points and keeping your questions in mind, there are a few issues our member companies would like to bring to your attention. First, companies have voiced concerns about the breadth of operating costs included in the calculation. Specifically, the denominator includes total costs, including expenses not directly tied to innovation, which greatly dilutes the impact of the incentive. Our members believe a more narrowly tailored definition of qualifying costs, perhaps tied to worldwide R&D costs, would increase the effectiveness of the incentive. Digging further into the definition of qualified activity, a number of ITI members have raised concerns over the exclusion of IT services, which leaves cloud-based software and other products outside the four corners of qualified activity. In your draft, you



apply the reduced rate to gross receipts from the “sale, lease, license, or other disposition of qualified property,” leaving services outside the benefit. I encourage you to expand the definition of qualified activity to include these activities.

Lastly, we have received a number of questions about how this policy interacts with current and prospective tax law. In terms of current law, ITI members are interested in learning how you see the innovation box interacting with the Research and Development (R&D) credit. As you know, many countries that have adopted similar innovative box regimes also have generous R&D tax incentives at the “front end” of the research and innovation continuum. ITI has long supported making the R&D credit permanent, which we strongly believe continues to be a critical component of the innovation landscape. Looking forward, our members feel strongly that support of this proposal cannot occur without an understanding of the overall tax landscape. Analyzing the current draft relied on using a number of assumptions, which may or not be accurate in assessing the value of the proposal to individual firms. Before making a final determination, our members would like to see additional details.

Thank you for your leadership on this important issue.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Garfield", is positioned above the typed name.

Dean C. Garfield
President & CEO

Cc: Members, House Ways and Means Committee