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Internal Revenue Service
CC:PA:LPD:PR (Notice 2025-04)
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National Foreign Trade Council Comments on Notice 2025-04

The National Foreign Trade Council (the "NFTC") is writing to provide comments on Notice 2025-04 ("the Notice") regarding the Application of the Simplified and Streamlined Approach ("SSA") under Section 482 released by the Department of the Treasury ("Treasury") and the Internal Revenue Service ("IRS") on December 18, 2024.

The NFTC, organized in 1914, is an association of U.S. business enterprises engaged in all aspects of international trade and investment. Our membership covers the full spectrum of industrial, commercial, financial, and service activities. Our members support establishing and maintaining international tax norms that provide certainty to enterprises conducting cross-border operations.

General Comments

The NFTC applauds the IRS and Treasury for putting forth the Notice and taking the lead on this important policy. We support simplifying and streamlining the pricing of marketing and distribution activities in market jurisdictions. We request that the SSA is expanded to include services and other baseline activities, which would allow more taxpayers to utilize the simplification and certainty offered.

NFTC supports Option 1 in that the SSA can apply only if, among other considerations, a taxpayer elects for it to apply. We do not support the approach that would allow the IRS to apply the SSA sua sponte or during audit. NFTC requests additional guidance on segmentation, the definition of pass-through costs, and the interpretation of industry groups.

Specific Comments

Section 4

NFTC strongly recommends that the SSA continue as a taxpayer elective measure and/or a safe harbor. In order to achieve the goal of simplification, we suggest that the documentation requirements be reduced. The requirement to include "a description of the taxpayer's organizational structure (including an organization chart), including the name(s), employee identification number(s)" is beyond the scope of current transfer pricing documentation. These additional requirements are not only onerous, but also cause privacy concerns. The use of the OECD excel model would allow for a reduction of documentation.

Section 7

Whether application of the SSA should be determined solely by an election by taxpayers, or whether other considerations should also be taken into account, such as the ability of the IRS to apply the SSA in the absence of a taxpayer election (as described in section 3.01 of this notice) and whether the availability of the SSA for U.S. taxpayers should depend on whether the SSA has been implemented by the counterparty jurisdiction in order to ensure symmetry of tax treatment;

We recommend that the SSA be implemented solely as a taxpayer elective safe harbor. If the SSA is solely taxpayer elective, then the symmetry of tax treatment can be a taxpayer consideration rather than an IRS consideration. Therefore, the availability in the counterparty jurisdiction should not determine the availability of the SSA for the taxpayer.

Whether the possibility posed in section 4.05 of this notice of requiring elections other than on a transaction-by-transaction and taxable year-by-taxable year basis should be subject to any limitations that serve the interests of simplicity or sound tax administration.

As the Notice acknowledges, the SSA is a safe harbor, and the regulations under Section 482 prescribe two others: the safe harbor interest rates and the services cost method. Neither of those safe harbors includes any requirement for consistency across taxable years or transactions. NFTC has not identified any technical or policy distinction that would support a more circumscribed approach for the SSA safe harbor. Moreover, more flexibility also will tend to increase take-up among taxpayers, which would further the simplicity and sound tax administration interests that motivated the issuance of the Notice in the first place.

The selection of 30% as the upper boundary of the operating expense-to-net revenue ratio scoping criterion pursuant to section 3.2 of the Report.

NFTC recommends the IRS adopt the 30% expenses-to-revenue ratio for the scoping criterion to allow as many eligible taxpayers as possible to benefit.