FACTCOALITION
Financial Accountability & Corporate Transparency

November 27, 2017

The Honorable Mitch McConnell
Majority Leader
United States Senate
317 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Chuck Schumer
Democratic Leader
United States Senate
322 Hart Senate Office Building
Washington, D.C. 20510

RE: Tax Cuts and Jobs Act (TCJA)

Dear Leader McConnell and Leader Schumer,

On behalf of the Financial Accountability and Corporate Transparency Coalition (FACT) Coalition, we write to urge you to oppose the **Tax Cuts and Jobs Act (TCJA)**. This bill would create significant new tax incentives to move U.S. jobs, profits, and operations overseas, while exploding the deficit. The bill's complicated structure also creates multiple new loopholes to allow for expanded tax avoidance by large, multinational companies at the expense of small businesses and wholly domestic companies.

The FACT Coalition is a non-partisan alliance of more than 100 state, national, and international organizations working toward a fair tax system that addresses the challenges of a global economy and promoting policies to combat the harmful impacts of corrupt financial practices.[1]

The Senate bill would move the country to a territorial tax system. The primary goal of a territorial system is to permit offshore corporate profits to escape U.S. tax. Taxpayers already lose an estimated $100 billion every year to aggressive tax avoidance by multinational companies.[2] These changes would further incentivize corporate profit shifting abroad — leaving regular taxpayers to pick up the tab.[3]

The recently released "Paradise Papers" uncovered a series of corporate tax avoidance schemes including at least one in which a company declared billions in "stateless income" that has no tax residency in any country anywhere in the world.[4] The leak exposed tens of billions of dollars in corporate profits that were moved out of the U.S. to tax havens. Instead of preventing a repeat of that tax-dodging behavior, the TCJA would facilitate some of that profit shifting.[5] Worse, certain provisions would create new incentives to move jobs and operations overseas.

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1 For a full list of Coalition members, visit https://thefactcoalition.org/about/coalition-members-and-supporters/.

2 Kimberly A. Clausing, "Profit Shifting and U.S. Corporate Tax Policy Reform," *Washington Center for Equitable Growth*, May 10, 2016, http://equitablegrowth.org/report/profit-shifting-and-u-s-corporate-tax-policy-reform/.

3 *Institute on Taxation and Economic Policy*, "Fact Sheet: The Consequences of Adopting a Territorial Tax System," September 18, 2017, https://itep.org/territorial_factsheet/.

4 Simon Bowers, "How Nike Stays One Step Ahead Of The Regulators." *International Consortium of Investigative Journalists*, November 6, 2017, https://www.icij.org/investigations/paradise-papers/swoosh-owner-nike-stays-ahead-of-the-regulator-icij/.

5 Richard Phillips, "The Senate Tax Plan's Big Giveaway to Multinational Corporations," *Institute on Taxation and Economic Policy*, November 21, 2017, https://itep.org/the-senate-tax-plans-big-giveaway-to-multinational-corporations/.

That is one reason Senator Ron Johnson voiced his concerns about the bill saying, "With a territorial system, there will be a real incentive to keep manufacturing overseas."[6] He is correct.

Tangible assets located overseas and doing business around the world will not be taxed by the United States at all. Intangible assets (e.g. logos, patents, rights to the name of the company) would be taxed at a low rate of between 10 and 12.5 percent. If tangible assets are shifted from the U.S. to an offshore affiliate, a formula would recalculate a company's taxes using a 10 percent rate. Only those tangible assets in the U.S. would be taxed at the 20 percent rate.

In short, the TCJA would create a tax regime that incentivizes companies to do everything possible to minimize their physical presence in the United States. It would be a significant setback for U.S. workers already struggling to compete globally as well as propel a devastating increase in the deficit.

The bill also establishes low rates for companies that have engaged in the offshoring of profits in the past. A small number of very large multinational companies currently have $2.6 trillion in profits booked offshore. [7] The bill rewards that limited number of companies by giving them a $562 billion tax break on their offshore profits — profits that are already earned.[8]

There is no economic justification for tax breaks on past corporate profits. In theory, tax policy incentivizes future behavior. Taxing companies using the rate at the time the profits were earned (35 percent) does not reduce or take away any future incentives to invest in jobs or factories or other operations. Promises that cutting taxes on those foreign profits would boost the U.S. economy are disproved by history. When Congress last passed a so-called "tax holiday" for multinational corporations in 2004, the companies used the money for executive bonuses and stock buybacks.[9] The 15 companies that took the greatest advantage of a special 5 percent tax rate proceeded to lay off 21,000 workers in the succeeding two years.[10] They made no additional investments in research and development or facilities here at home.[11] Nothing suggests a new tax giveaway would lead to different results. In fact, Goldman Sachs analysts recently wrote that they do not believe the tax holiday would have much of an impact on the economy.[12]

The bill and its shift to a territorial system also do nothing to level the playing field for small business. Just the opposite: The bill would further tilt the field in favor of large, multinational firms by giving them preferential tax rates. Large corporations already have built-in advantages over small businesses that are inherent in a free market system. But Congress must not put its thumb on the scale of multinationals over main street businesses.

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[6] Hughes, Siobhan, "Republican Sen. Ron Johnson Opposes GOP Senate Tax Package," *The Wall Street Journal*, November 15, 2017, http://on.wsj.com/2hL7xlF.

[7] Phillips.

[8] Ibid.

[9] Dhammika Dharmapala, C. Fritz Foley, and Kristin J. Forbes, "Watch What I Do, Not What I Say: The Unintended Consequences of the Homeland Investment Act," *National Bureau of Economic Research*, June 2009, pg. 19, https://www.nber.org/papers/w15023.pdf.

[10] Permanent Subcommittee on Investigations, "Repatriating Offshore Funds: 2004 Tax Windfall for Select Multinationals." *U.S. Senate Committee on Homeland Security and Governmental Affairs*, October 2011, http://www.hsgac.senate.gov/download/report-psi-majority-staff-report_-repatriating-offshore-funds-oct-2011.

[11] Ibid.

[12] Emily Stewart, "Most of the $3 Trillion in Overseas Holdings Is Already in the U.S." *The Street*, October 31, 2017, https://www.thestreet.com/story/14367746/1/repatriation-tax-economy.html.

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Public opinion polls consistently demonstrate that lowering the U.S. tax rate on corporate foreign profits is deeply unpopular across the political spectrum.[13] We urge you to oppose the Tax Cuts and Job Act.

For questions or additional information, please contact Clark Gascoigne at cgascoigne@thefactcoalition.org.

Sincerely,

Gary Kalman
Executive Director
The FACT Coalition

Clark Gascoigne
Deputy Director
The FACT Coalition

cc Members of the United States Senate

[13] Hart Research Associates, "Study #12120, Tax Reform Survey," *Americans for Tax Fairness*, June 2-7 2017, https://americansfortaxfairness.org/wp-content/uploads/ATF-Poll-TOPLINES.pdf.