ORGANIZATION *for* INTERNATIONAL INVESTMENT
Global Investment Grows America's Economy

House Committee on Revenue
Hearing on H.B. 2099
April, 2, 2015

Dear Committee Members,

The Organization for International Investment (OFII) welcomes the opportunity to comment on H.B. 2099. OFII has significant concerns with this bill and believes it would jeopardize investment and job creation in Oregon from global companies. We strongly oppose H.B. 2099 as drafted. The state's efforts to address tax evasion and remain competitive for business investment would be better served by adopting OFII's recommended changes to H.B. 2099.

OFII is a non-profit business association representing the U.S. subsidiaries of many of the world's leading global companies (membership list attached as addendum A). OFII advocates for non-discriminatory treatment of U.S. subsidiaries and promotes policies that will encourage them to expand U.S. operations, increase American employment and wages, and boost U.S. economic growth. These firms employ 5.8 million Americans nationwide, and help drive American manufacturing, innovation, and exports. In Oregon, the U.S. subsidiaries of global companies employ 46,300 employees, with more than a third of these jobs in the manufacturing sector.[1]

OFII recognizes the importance of state efforts to address tax evasion. However, Oregon's tax haven policy targets legitimate corporate actors, failing to distinguish perceived tax avoidance from legitimate transactions. The mere fact that a foreign affiliate is incorporated in one of these countries does not equate to tax avoidance, as firms often operate in jurisdictions to manufacture products, engage in research and development, streamline supply chains, or reach new customers.

H.B. 2099 exacerbates these concerns by labeling the Netherlands and Switzerland (if added) as tax havens. H.B. 2099 would penalize any company with unitary foreign affiliates in these jurisdictions based on a flawed, overly-broad assumption of tax evasion. As alarming, all "taxable income" of these non-U.S. firms would be subject to Oregon tax, including income that has absolutely no connection to U.S. business activities.

In summary, Oregon's tax haven list approach would create significant negative outcomes for the state, including:

- **Hurt state's efforts to attract and retain FDI:** This tax policy would misalign with economic development efforts to attract investment directly from any company based in or with affiliates in the listed nations. No state has ever blacklisted the Netherlands or Switzerland (if added), major U.S. trading partners and sources of FDI. Firms from these

[1] All statistics in this testimony are the latest data from the U.S. Department of Commerce's Bureau of Economic Analysis (BEA) released January 2015 regarding the U.S. subsidiaries of internationally-headquartered companies. See Addendum's B and C for additional statistics at national and Oregon levels

countries employ 841,000 U.S. workers, produce over $21 billion in annual exports, and are responsible for nearly a quarter of cumulative FDI from Europe into the U.S. It is impossible to predict which foreign-based company will make the next million or billion dollar investment in Oregon, but the state would be erecting barriers to known sources of investment and job creation. Additionally, the uncertainty of which jurisdictions will be added to the list and the tax treatment other global companies receive in Oregon could hurt the state's outreach efforts across the globe.

- **Undermines U.S. bilateral tax treaties and leads to double taxation:** The Netherlands, Switzerland and Luxembourg have tax treaties with the United States, and many nations on the list may negotiate treaties in the future. The agreements provide a reliable tax environment for companies operating across borders. They prevent double taxation and provide important sharing of information between governments to ensure appropriate taxes are paid. Oregon's tax haven policy imposes tax on the very income streams that these treaties explicitly protect from double taxation.

- **Invites retaliatory legislation:** Since pursuit of this income by the state would undermine the U.S. treaty network, this perceived encroachment could lead to retaliation by United States' trading partners. Oregon's policy is not far removed from California's aggressive tax approach in the 1980's that pursued all income of non-U.S. companies – including that which had nothing to do with U.S. business activities. As a result, many countries, including Japan and Canada, called for significant retaliatory actions, and the United Kingdom went so far as to enact retaliatory legislation.

- **Damages Oregon's competitiveness among other states**: No other state except Montana has a tax haven list, and no state has ever deemed the Netherlands or Switzerland (if added) as tax havens. Additionally, Montana ranks last of all states in total job creation from FDI. Thus, this bill would threaten Oregon's ability to continue to successfully compete for FDI when 48 other states do not impose punitive taxation on firms simply because they have affiliates located in certain jurisdictions.

- **Leads to Constitutional disputes**: The Supreme Court has previously struck down state laws that frustrate Congress's ability to "speak with one voice" in its foreign dealings as regulated by the Foreign Commerce Clause. For example, the Court struck down a unique California tax practice based partially on concerns it would interfere with the ability of Congress to speak with one voice, see *Japan Lines, Ltd. V. Los Angeles County*, 441 U.S. 434 at 450 (1979). Oregon's law which taxes corporations based solely on the fact that they are engaging in business in a certain country could frustrate and interfere with the federal government's ability to regulate and maintain its relations with those foreign governments and thus may be unconstitutional.

The legislation also overlooks Oregon's mechanisms already in place to combat tax evasion and to distinguish tax motivated transactions from transactions that have significant business purpose. Specifically, Oregon statutes follow IRS Sec. 482, relating to intercompany income and transfer pricing, and UDITPA Sec. 18, relating to alternative apportionment to accurately reflect income.

To address these concerns, we recommend the following changes, including alternative language provided in addendum D. These proposed changes would ensure that legitimate corporate actors are not deemed tax evaders and subject to punitive taxation. Thus, maintaining Oregon's ability to both attract foreign direct investment (FDI) and pursue perceived tax evasion.

Recommended Changes:

- **Amend Section (a) to include only "effectively connected income" (ECI) instead of all "taxable income" of unitary firms incorporated in deemed tax havens.** This proposed change would ensure that only income that is effectively connected (ECI) to the United States is subject to tax in Oregon and align Oregon's tax methodology with the standard used by the Internal Revenue Service and other states. For example, in Governor Cuomo's enacted FY 2014-2015 Budget, the state adopted ECI as a starting point for foreign companies.[2] Additionally the District of Columbia[3] and West Virginia[4], to name a few, use ECI in taxing non-U.S. companies. This standard is easier for the state to audit since it is more objective and commonly understood.

  Without this change, Oregon could pursue all income of a foreign affiliate located in a tax haven jurisdiction, even if such income has absolutely no connection to the United States. This all-encompassing approach that targets all income is a backdoor approach to worldwide combined reporting, which was rejected twenty years ago after the United Kingdom enacted retaliatory legislation, and Japan and Canada threatened similar actions.

- **Amend Section (b) by striking the "tax haven list" approach and replacing it with a "tax haven factor test."** A state tax haven list is blunt instrument to counter perceived corporate tax evasion, which many states have acknowledged by adopting alternative approaches. Out of all states, only Montana has a tax haven list similar to Oregon's, and Montana ranks last in total job creation from FDI. Every other state with tax haven policy uses a "factor test." These states include Rhode Island[5], West Virginia[6], the District of Columbia[7], and Alaska[8].

  The factor test allows the state to pursue bad corporate actors by applying certain criteria to transactions that demonstrate tax evasion. This is preferable to listing countries because it would not indiscriminately target all firms in listed nations and would prevent disputes with U.S. allies. Additionally, these states do not have to pass legislation each year revising outdated lists to reflect changes foreign jurisdictions are making, including changes to align themselves with international norms.

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[2] S.B. 6359, A.8559, (Chapter 59), enacted 3/31/2014, available at http://assembly.state.ny.us/leg/?default_fld=&bn=S06359&term=2013&Summary=Y&Actions=Y&Memo=Y&Text=Y
[3] District of Columbia § 47-1810.07(a)(2)(D), available at http://dccode.org/simple/sections/47-1810.07.html
[4] West Virginia § 11-24-13f(a)(4), available at http://www.legis.state.wv.us/wvcode/ChapterEntire.cfm?chap=11&art=24&section=13F
[5] Rhode Island § 44-11-1(1)(c)(8), available at http://webserver.rilin.state.ri.us/Statutes/title44/44-11/44-11-1.HTM
[6] West Virginia § 11-24-3a(a)(38), available at http://www.legis.state.wv.us/wvcode/ChapterEntire.cfm?chap=11&art=24
[7] District of Columbia § 47–1801.04(49)., available at http://dccode.org/simple/sections/47-1801.04.html
[8] Alaska § 43.20.073(a)(5), available at http://codes.lp.findlaw.com/akstatutes/43/43.20./02./43.20.073.

Additionally, the factors we recommend adopting are already being used by Oregon's Department of Revenue in determining whether or not a country should be added to the tax haven list. Therefore, this amendment would dramatically improve the optics of the state's tax policy by removing the blacklist, while still allowing the state to pursue tax evasion.

- **Adopt a new Section (c) to ensure legitimate corporate actors are not inadvertently labeled as tax evaders and subject to additional taxation.** We recommend that the state consider three commonly used safeguards to provide the necessary certainty to taxpayers that legitimate transactions will not be inadvertently targeted. At the same time, it would allow the state to pursue perceived tax evaders. Rhode Island enacted similar protections last year in its tax haven policy. Importantly, this amendment would align Oregon with commonly seen state tax norms in their international tax methodologies.

    - First, most states provide for an 80/20 rule, which sets a widely understood threshold that non-U.S. companies must meet in order to demonstrate a viable, taxable U.S. presence. Therefore, only non-U.S. companies that meet this level of activity in the United States will be included. Additionally, if a non-U.S. company does not have this level of activity in the United States, it is unlikely that there is a reduction of U.S. taxable income due to abusive transactions. This test is consistent with Illinois[9] and California[10], two states that include this important threshold in their international tax methodology.

    - Second, some states, such as Massachusetts,[11] the District of Columbia[12], and Rhode Island,[13] exempt the inclusion of income from companies organized in countries with whom the United States has a comprehensive income tax treaty. This policy ensures that a state's tax methodology aligns with U.S. obligations under such agreements.

    - Third, firms' intercompany transactions that meet objective arm's length standards are widely understood to be legitimate transactions by the Internal Revenue Service, other states, and governments around the world. Such transactions meet widely understood norms, which reflect legitimate business activities that are not abusive.

Conclusion:

The tax haven country list is a flawed approach that fails to distinguish perceived tax avoidance from legitimate business transactions. It misaligns with state, federal and international tax norms, and erects a significant barrier to FDI. Therefore, we urge the Committee to oppose H.B. 2099 and consider the proposed language to address our business community's concerns.

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[9] Illinois 35 ILCS 5/1501(a)(27), available at http://ilga.gov/legislation/ilcs/documents/003500050K1501.htm

[10] California, § 25110(a)(1)(B), available at http://www.leginfo.ca.gov/cgi-bin/displaycode?section=rtc&group=25001-26000&file=25110-25116

[11] Massachusetts, § 63-32B(c)(3)(iv) , available at https://malegislature.gov/Laws/GeneralLaws/PartI/TitleIX/Chapter63/Section32B

[12] District of Columbia § 47-1810.07(a)(2)(E), available at http://dccode.org/simple/sections/47-1810.07.html

[13] Rhode Island Title 44, § 44-11-4.1(d), available at http://webserver.rilin.state.ri.us/Statutes/TITLE44/44-11/44-11-4.1.HTM

Thank you for your consideration. For any additional questions, please contact Evan Hoffman, Senior Manager of State Government Affairs at ehoffman@ofii.org or 202-659-1903.

Sincerely,

Nancy McLernon
President & Chief Executive Officer
Organization for International Investment

Addendum A

ORGANIZATION *for* INTERNATIONAL INVESTMENT
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OFII is the only business association in Washington D.C. that exclusively represents U.S. subsidiaries of foreign companies and advocates for their non-discriminatory treatment under state and federal law.

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Boehringer Ingelheim Corp.
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Brother International Corp.
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Bunzl USA, Inc.
Cemex USA
CNH Industrial
Cobham
Compass Group USA
Credit Suisse Securities (USA)
Cristal USA Inc.
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Daimler
Dassault Falcon Jet Corp.
DENSO
Deutsche Telekom
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DPx Patheon
DSM North America
Electrolux North America
EMD Serono Inc.
E.ON North America
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Evonik
Experian
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Food Lion, LLC
FUJIFILM Holdings America
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GDF SUEZ Energy North America, Inc.
GKN America Corp.
GlaxoSmithKline
Global Atlantic Financial Company
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Honda North America
HSBC North America Holdings
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Hyundai Motor America
Iberdrola Renewables
InterContinental Hotels Group
JBS USA
John Hancock Life Insurance Co.
Kering
Kia Motor Corporation
Lafarge North America
Lenovo
L'Oréal USA, Inc.
Louisiana Energy Service (LES)
Louis Dreyfus Commodities
Louisville Corporate Services, Inc.
LVMH Moet Hennessy Louis Vuitton
Macquarie Aircraft Leasing Services
Maersk Inc
Magna International
Mallinckrodt
Maquet
Marvell Semiconductor
McCain Foods USA
Medtronic, Inc.
Michelin North America, Inc.
Miller Brewing Company
Morton Salt, Inc.
National Grid
Nestlé USA, Inc.
Nissan
Nomura Holding America, Inc.
Novartis Corporation
Novo Nordisk Pharmaceuticals
Oldcastle, Inc.
Panasonic Corp. of North America
Pearson Inc.
Pernod Ricard USA
Philips Electronics North America
QBE the Americas
Randstad North America
RELX Group
Restaurant Brands International
Rexam Inc
Rio Tinto America
Roche Holdings, Inc.
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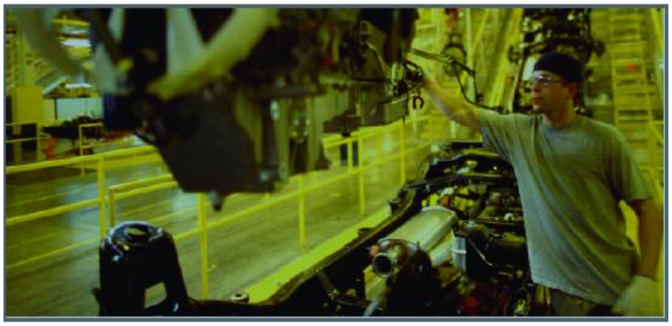
Samsung
Sanofi US
SAP America
Sasol Chemicals (USA) LLC
Schlumberger
Schneider Electric USA
Schott North America
SCOR
Shell Oil Company
Shire Pharmaceuticals
Siemens Corporation
Smithfield
Smith & Nephew, Inc.
Solvay America
Sony Corporation of America
SSAB Americas
Sumitomo Corp. of America
Swiss Re America Holding Corp.
Syngenta Corporation
Takeda North America
Tate & Lyle
TD Bank
TE Connectivity
Teva Pharmaceuticals USA
Thales USA, Inc.
The Nielsen Company
The Tata Group
Thomson Reuters
ThyssenKrupp North America, Inc.
Toa Reinsurance of America
TOTAL Holdings USA, Inc.
Toyota Motor North America
Transamerica
Tyco
UBS
UCB
Umicore
Unilever
Vivendi
Vodafone
Volkswagen of America, Inc.
Volvo Group North America
Westfield LLC
White Mountains, Inc.
Wipro Inc.
Wolters Kluwer U.S. Corporation
WPP Group USA, Inc.
XL Global Services
Zurich Insurance Group

Addendum B

INSOURCINGFACTS

THE ROLE OF U.S. SUBSIDIARIES OF GLOBAL COMPANIES IN THE AMERICAN ECONOMY.



Jobs - Employ 5.8 million Americans, or 5 percent of private sector employment.

Payroll - Support an annual payroll of $456 billion, paying U.S. workers an average of $78,927 - more than 33 percent higher than the economy-wide average.

GDP - Add $774 billion in value to the U.S. economy annually, or 5.5 percent of U.S. GDP.

Manufacturing - Provide over 2.2 million manufacturing jobs, accounting for over 18 percent of America's manufacturing workforce.

Manufacturing Payroll - Pay an average salary of $85,807 to employees in manufacturing sector, higher than the nation-wide manufacturing average of $76,863.

Exports - Produce over 21 percent of U.S. exports, providing $334 billion in American goods and services annually to customers around the world.

Taxes - Pay 16 percent of federal corporate income taxes. *Source: IRS*

Research and Development - Spend $48 billion annually on U.S. research and development activities, or 15 percent of all R&D performed by U.S. companies.

Capital Investment - Invest $201 billion annually, or over 10 percent of all such business investment in the U.S. economy.

Bricks and Mortar - Spend an annual $201 billion on plant construction and new equipment.

Purchase Locally - Purchase hundreds of billions in goods and services every year from local suppliers and small businesses in the U.S.

Reinvestment - Reinvest an annual $100 billion of their earnings into their U.S. operations.

Unions - Employ a higher percentage of union workers than the national average. 12.4 percent of employees at U.S. subsidiaries are covered by a union collective bargaining agreement, compared to 8.2 percent at all U.S. businesses. *Source: BEA November 2009 data*

All statistics unless otherwise noted are the latest data from the Department of Commerce's Bureau of Economic Analysis (BEA) released August 2012 regarding the U.S. subsidiaries of internationally-headquartered companies.

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Addendum C

ORGANIZATION *for* INTERNATIONAL INVESTMENT
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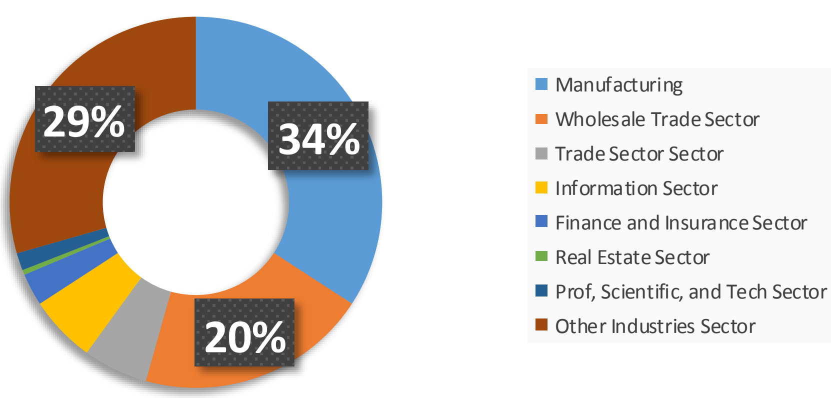
Foreign Direct Investment in Oregon

MEASURING THE IMPACT OF GLOBAL COMPANIES INVESTING IN THE BEAVER STATE

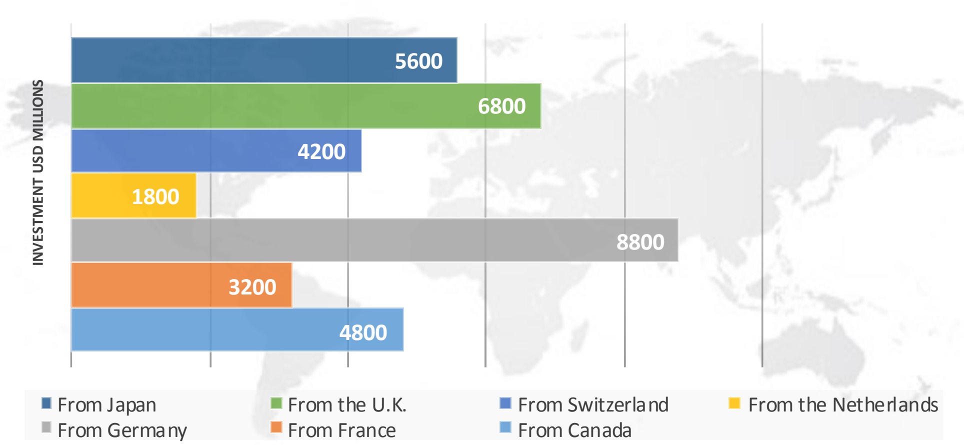
FDI Trends for Oregon

- Total employment by U.S. subsidiaries in OR did not change in 2012
- Between 2002 and 2012, total employment by U.S. subsidiaries decreased by 10 percent
- Manufacturing employment by U.S. subsidiaries increased by 7 percent in 2012

Employment by Industry



Top Countries Investing in Oregon



46,300

Workers employed by insourcing companies

3.3

Percentage of private-sector workforce

34

Percentage of jobs at insourcing manufacturers

15,800

Number of workers employed by insourcing manufacturers

46

National rank in share of workforce supported by U.S. subsidiaries

597

Total Number of Insourcing Companies

(in-sòrs-ing) v.
When companies based abroad invest in the United States and create jobs for Americans.

About OFII Created more than two decades ago, OFII is a non-profit business association in Washington, D.C. representing the U.S. operations of many of the world's leading foreign companies, which insource millions of American jobs. OFII works to ensure the United States remains the top location for global investment. As such, OFII advocates for fair, non-discriminatory treatment of foreign-based companies and promotes policies that will encourage them to establish U.S. operations, increase American employment, and boost U.S. economic growth.

OFII Members in Oregon

ACE INA Holdings
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Balfour Beatty
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Boehringer Ingelheim
BP
Bunge Ltd
Bunzl USA
Daimler
Diageo
E.ON North America
Ericsson
Evonik
Ferguson Enterprises
Flextronics International
Garmin International
Hanson North America
Henkel Corporation
Honda North America
Hyundai Motor America
Iberdrola Renewables
John Hancock Life Insurance
Kering
Marvell Semiconductor
Novartis Corporation
Oldcastle, Inc.
Pearson Inc.
Philips Electronics North America
QBE the Americas
Randstad North America
Rexam
Roche Holdings, Inc.
Sanofi US
SAP America
Schneider Electric USA
Shell
Siemens
Solvay America
Sumitomo Corp. of America
Syngenta Corporation
ThyssenKrupp North America
T-Mobile USA
TOTAL Holdings USA
Toyota Motor North America
Transamerica
Tyco
UBS
Vodafone
Volkswagen of America
WPP Group USA, Inc.
Zurich Insurance Group

Addendum D

ORGANIZATION *for* INTERNATIONAL INVESTMENT
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Proposed language to amend HB 2099

a) For purposes of determining Oregon taxable income, the income that is effectively connected, or treated as effectively connected under the provisions of the Internal Revenue Code, with the conduct of a trade or business within the United States ~~taxable income or loss~~ of any corporation that is a member of a unitary group and that is incorporated in a tax haven ~~any of the following jurisdictions~~ shall be added to federal consolidated taxable income:

(b) ~~Andorra, Anguilla, Antigua and Barbuda, Aruba, the Bahamas, Bahrain, Barbados, Belize, Bermuda, the British Virgin Islands, the Cayman Islands, the Cook Islands, Cyprus, Dominica, Gibraltar, Grenada, **Guatemala,** Guernsey-Sark-Alderney, **Hong Kong,** the Isle of Man, Jersey, **the Kingdom of the Netherlands,** Liberia, Liechtenstein, Luxembourg, Malta, the Marshall Islands, Mauritius, [*Monaco*], Montserrat, Nauru, *[the Netherlands Antilles]*, Niue, Samoa, San Marino, Seychelles, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, **Trinidad and Tobago,** the Turks and Caicos Islands, the U.S. Virgin Islands and Vanuatu.~~

For purposes of this section, “tax haven" means a jurisdiction that, during the tax year in question has no or nominal effective tax on the relevant income and;

(i) has laws or practices that prevent effective exchange of information for tax purposes with other governments on taxpayers benefiting from the tax regime;

(ii) Has a tax regime which lacks transparency. A tax regime lacks transparency if the details of legislative, legal or administrative provisions are not open and apparent or are not consistently applied among similarly situated taxpayers, or if the information needed by tax authorities to determine a taxpayer's correct tax liability, such as accounting records and underlying documentation is not adequately available;

(iii) Facilitates the establishment of foreign-owned entities without the need for a local substantive presence or prohibits these entities from having any commercial impact on the local economy;

(iv) explicitly or implicitly excluded the jurisdictions resident taxpayers from taking advantage of the tax regime benefits or prohibits enterprisers that benefit from the regime from operating in the jurisdiction's domestic market; or

(v) Has created a tax regime which is favorable for tax avoidance, based upon an overall assessment of relevant factors, including whether the jurisdiction has a significant untaxed offshore financial/other services sector relative to its overall economy.

(c) However, no such income shall be added to federal consolidated taxable income if either: (1) the corporation’s property, payroll and sales factors within the United States is less than 20 percent; (2) the income of a corporation incorporated in a tax haven is subject to the provisions of a federal income tax treaty; or (3) the income is the result of transactions conducted between unitary members on an arm’s length basis without the principal purpose to avoid the payment of taxes. For purposes of this chapter, "federal income tax treaty" means a comprehensive income tax treaty between the United States and a foreign jurisdiction.