



February 2, 2023

The Honorable Vanessa E. Atterbeary
House Office Building, Room 131
6 Bladen Street
Annapolis, MD 21401

Re: GBA Opposes U.S. Source Income Provision in HB 46

Dear Chair Atterbeary, Vice Chair Washington and Members of the Ways and Means Committee:

On behalf of the Global Business Alliance (GBA), I am writing in opposition to certain provisions within HB 46 that would create an unfavorable tax environment that will deter investment and growth and make Maryland an outlier from other states that have adopted combined reporting.

GBA represents nearly 200 U.S. companies with a global heritage. Nearly 800 international companies employ over 111,000 workers in Maryland.¹ Nationally, on average, these firms pay American workers more than \$84,000 annually in wages and benefits, which is 10 percent higher than the economy-wide average.

Despite the fact that over twenty states have implemented combined reporting, **none** has required the inclusion of foreign entities solely based on receipt of U.S. source income. HB 46 in its current form would create an extraterritorial water's edge tax system that imposes unfair and inappropriate double taxation for international businesses located in Maryland.

The most concerning provision in HB 46 is section 10-402.1(E)(2)(VI)(1), which asserts foreign unitary corporations that derive income from sources within the United States ("U.S. source income") would be required to be included in the Maryland water's edge combined group. Water's edge combined reporting in other states generally limits the unitary group to only U.S. affiliates, with very specific limited exceptions. This approach would have the following negative consequences:

Damage Competitiveness: Taxing U.S. source income would differ from the "effectively connected income" (ECI) standard utilized by the Internal Revenue Code and many states to tax non-U.S. companies.² If adopted, Maryland would be an outlier with other states and at odds with federal tax norms, which would generally not tax such income. Taxing U.S. source income would lead to extraterritorial double taxation, as this income is

¹ Bureau of Economic Analysis (BEA), Survey of Current Business, Activities of U.S. Affiliates of Foreign Multinational Enterprises in 2020, released August 2022.

² To name a few states that use the ECI standard, see West Virginia § 11-24-13f(a)(4); District of Columbia §47- 1810.07(a)(2)(D); and New York S.B. 6359, A.8559 (Chapter 59).

already taxed by the country in which it is received. This hurts efforts to attract and retain international companies in the state.

Create Disputes with Treaty Partners: Bilateral tax treaties ensure Maryland employers do not face double taxation on U.S. source income. In the past, some foreign governments have even enacted retaliatory action in response to states seeking to adopt a tax structure without a true water's edge system.

Increase Complexity: As written, this bill would distort traditional norms of the water's edge methodology by including foreign affiliates with U.S. source income in a combined group. Every state with combined reporting has opted for a true water's edge methodology which does not include all unitary foreign companies simply because they have U.S. source income. This approach creates significant complexity and compliance burdens.

Lastly, Maryland already addresses abusive related party transactions with expense deduction addback rules.³ These rules provide specific exceptions for legitimate business transactions, including companies' operations that may be located in treaty countries. The U.S. source income provision effectively overrides the exceptions to the expense deduction addback rules.

To ensure Maryland remains an attractive destination for investment, we encourage the removal of the U.S. source income section in HB 46. If you have questions, please contact me at mbeeson@globalbusiness.org or at (202) 770-5141.

Sincerely,



Meredith Beeson
Senior Director, State Affairs
Global Business Alliance

Cc Members of the House Ways and Means Committee

³ Maryland Tax- General Article Section 10-306.1.