February 9, 2022

The Honorable Vanessa E. Atterbeary
Chair, House Ways and Means Committee
House Office Building, Room 131
6 Bladen Street
Annapolis, MD 21401

Subject: GBA Opposes U.S. Source Income Provision in HB 457

Chair Atterbeary and Members of the House Ways and Means Committee:

On behalf of the Global Business Alliance (GBA), I urge the committee to consider the negative impacts of HB 457, which would create an unfavorable tax environment that will deter growth and investment in the state and make Maryland an outlier from every other state in the United States that has implemented combined reporting.

GBA represents more than 200 U.S. companies with a global heritage. Nearly 800 international companies employ over 116,000 workers in Maryland and have grown their employment by 13 percent over the last ten years.[1] Nationally, on average, these firms pay American workers nearly $84,000 annually in wages and benefits, which is 18 percent higher that the economy-wide average. While nearly half of our members expect employment growth in the United States over the next six months, they also indicated that a less competitive tax environment is a key external factor that could deter investment.[2]

The provision of most concern in HB 457 is section 10-402.1(E)(2)(VI)(1) that 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 states generally limits the unitary group to only U.S. affiliates, with very specific limited exceptions. Over twenty states have implemented combined reporting, but **none** has required the inclusion of foreign entities solely based on receipt of U.S. source income.

If HB 457 is adopted in its current form, it would create an extraterritorial water's edge tax system that imposes unfair and inappropriate double taxation for international businesses located in Maryland. This approach makes the state uncompetitive and would result in 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.[3] If adopted, Maryland would be an outlier with other state and at odds with federal tax

[1] All statistics in this testimony are the latest available data from the U.S. Department of Commerce, Bureau of Economic Analysis (BEA) data released November 2020.
[2] Inbound Investment Survey, Global Business Alliance: January 2022.
[3] 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

norms which would generally not tax such income. Taxing U.S. source income would lead to extraterritorial double taxation, as this income is 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.[4] 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 457. Please let us know if we can be of further assistance and see our fact sheet for more information on how international companies support Maryland.

Thank you for your consideration,

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New York S.B. 6359, A.8559 (Chapter 59).

[4] Maryland Tax- General Article Section 10-306.1.