



December 11, 2017

**RE: Interest Deductibility Tax Provisions Impacting Foreign Investment in the United States**

Dear Conferees,

AIMCO, bcIMC, CAAT, CDPQ, CPPIB, PSPIB, OMERS, Teachers', OPTrust, and New Zealand Super Fund, represent a group of global institutional investors, with combined assets under management of approximately \$US 1 trillion. We invest in asset classes that include infrastructure, public equities, private companies, fixed income and real estate. We recognize your efforts to enact meaningful tax reform designed to spur investment and promote economic growth. We acknowledge these objectives and look forward to continuing to invest in important projects and companies in the United States. As you continue to shape a final Tax bill, we wanted to bring to your attention one provision that could complicate and limit foreign investment: we urge you to adopt the House version of proposed section 163(n). We believe that the Senate version of proposed section 163(n) would have an adverse effect on U.S. companies owned by institutional investors and impact such companies' competitiveness and capital market efficiency.

**Background**

The Senate and House Bill both include an interest deductibility limitation under section 163(n). The limitation requires interest expense to be adjusted to reflect a U.S. corporation's pro rata share of interest expense of a broader worldwide group. The worldwide group is defined differently under the House and Senate Bills. This definition could pose significant challenges to U.S. companies owned in part by either U.S. or non-U.S. institutional investors. This is due to the fact that institutional investors are generally not required to consolidate investments for financial statement purposes since they invest in assets on a standalone basis and do not acquire assets to create synergies across their portfolio.

**Issue**

In the Senate Bill, the worldwide group is referred to as the "worldwide affiliated group" which is defined to include U.S. and Foreign corporations linked by common ownership to a common parent provided that more than 50% of the vote and value of any corporation included in the group (other than the common parent) is owned by one or more member of the group. If this definition were to become law an institutional investor would need to create a pro forma consolidated financial statement that would include all of its portfolio companies around the world to determine the interest deductibility limitation under 163(n). These portfolio companies typically belong to very different industries, operate in different markets, have a unique credit profile and an independent business model, as well as a separate and independent governance and management structure. Compiling this data would represent a costly administrative burden. The alternative to this approach would be to assume all US interest deductions are denied at the U.S. portfolio company level. This would effectively increase the cost of financing for these U.S. companies. We do not believe this to be the intent of the Legislator. The House version of 163(n) eliminates undue complexity by applying interest deductibility limitation only to U.S. corporations that are members of a group that prepares consolidated financial statements. In the House Bill, the worldwide group is referred to as "international financial reporting group". The "international financial reporting group" is proposed to be defined to include groups that prepare consolidated financial statements in accordance with U.S. Generally Accepted Accounting Principles ("U.S. GAAP"), International Financial Reporting Standards ("IFRS"), or any other comparable method identified by the Treasury Secretary .

**Ask**

Institutional investors would prefer that the definition of worldwide group contained in the version of the House Bill be maintained. We also ask that appropriate financial accounting standards be referred to in the legislation. It would be advisable not to leave the latter point open or subject to clarification in the Regulations. As an example, similar to the OECD's Country-by-Country reporting principles, the definition could also allow the group to use local GAAP of the jurisdiction of the ultimate parent entity of the group (as an alternative to the US GAAP or IFRS). We would be happy to further discuss this issue with you at your earliest convenience.