



March 10, 2022

The Honorable Janet Yellen
Secretary
Department of Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Dear Secretary Yellen:

On behalf of the American Council of Engineering Companies (ACEC) – the business association of the nation’s engineering industry – I am raising concerns over the potential impact on certain S corporations owned by employee-stock ownership plans (ESOPs) resulting from the Organisation for Economic Cooperation and Development’s (OECD) Pillar Two Model Rules.

Founded in 1906, ACEC is a national federation of 52 state and regional organizations representing more than 5,600 engineering firms and 600,000+ engineers, surveyors, architects, and other specialists nationwide. ACEC member firms drive the design of America’s infrastructure and built environment.

Most engineering firms are privately owned by the engineers and other professionals they employ, and many engineering firms have formal ESOPs. Since ESOPs were created as part of the Employee Retirement Income Security Act of 1974 (ERISA), thousands of companies employing over 10 million workers have set up ESOPs to promote broad-based employee ownership and provide retirement benefits.

As you know, under the Pillar Two Model Rules of the Base Erosion and Profit Shifting (BEPS) project, multinational enterprises with more than 750 million euros in revenues must pay a minimum level of tax on the income arising in each jurisdiction where they operate. These taxpayers calculate their effective tax rate for each jurisdiction and pay the difference between their effective tax rate per jurisdiction and the 15% minimum tax rate.

The OECD undertook the BEPS project with important guardrails respecting the authority of the U.S. Treasury Department and the tax policy decisions of countries that agree to participate in the new system. However, we are concerned that the December

2021 revisions to the Pillar Two Model Rules could undermine the tax policies that underlie S corporation ESOPs.

Congress created S corporation ESOPs as an additional avenue for broad-based employee ownership and to build retirement security for these employee-owners. Profits attributable to an ESOP's ownership of stock in an S Corporation are not subject to federal income tax at the entity level in the United States. Instead, the employee-owners pay ordinary income tax rates when they realize their share of the ESOP distributions. This is not a tax avoidance structure contributing to international tax base erosion that the OECD is trying to address—it was instead an intentional policy decision by Congress, and one that has been supported by thoughtful agency regulation.

We are concerned that under Article 7.1 of the Pillar Two Model Rules, S corporation ESOPs could be viewed as multinational enterprises that are undertaxed, instead of understanding that the taxes are deferred. This would result in double taxation that Congress did not intend. We would like to work with you and Congress on modifications to the rules so that S corporation ESOPs are viewed as the employee ownership and retirement savings vehicle that they are intended to be.

ACEC appreciates the opportunity to share our members' concerns and we urge the Treasury Department to work with the OECD to clarify these rules so that they do not undermine legitimate U.S. tax policy. Thank you for your consideration and please let us know how we can assist in this matter.

Sincerely,

A handwritten signature in black ink, reading "Linda Bauer Darr". The signature is fluid and cursive, with the first name "Linda" being the most prominent.

Linda Bauer Darr
President & CEO