API's Vision for American Energy Leadership: Recommendations for the U.S. Department of the Treasury

The Department of the Treasury ("Treasury") plays a vital role in implementing the U.S. tax code, which has enormous implications for the oil and gas sector's ability to drive economic growth, ensure energy security, and maintain global competitiveness. Through the Internal Revenue Service (IRS), Treasury is responsible for regulations and guidance that are essential for maintaining a globally competitive corporate tax rate, supporting robust cost recovery, and defining eligibility for pro-investment tax provisions for pre-commercial technologies. Treasury's role in operationalizing the tax code is critical to aligning tax policy with the unique needs of the capital-intensive oil and natural gas sector. This includes avoiding double taxation, ensuring effective implementation of deductions and credits, and creating a stable framework for reinvestment.

Treasury protects U.S. interests within international tax frameworks, ensuring the Organization for Economic Co-operation and Development (OECD) global tax regimes do not impose extraterritorial or discriminatory burdens on American companies. The industry looks forward to collaborating with Treasury to strengthen the U.S. position and counter aspects of the OECD Pillar I and Pillar II regimes that lead to unfair taxation of oil and natural gas companies.

API has submitted comments on several relevant regulations, which we encourage the transition team to review for additional insights and recommendations.

Included below are the following priorities:

- Pro-Growth Tax Provisions Relevant to Oil & Gas
- Organization of Economic Co-operation and Development (OECD) & Global Tax Regimes
- Guidance on Corporate Alternative Minimum Tax (CAMT) *(IRS)*
- Regulation of Section 45V – Hydrogen Production Tax Credit *(IRS)*
- Emissions Rate Table and Regulation for Section 45Z – Clean Fuel Production Credit *(IRS)*

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Domestic & International Tax Policy

Key Issues:

- **Pro-Growth Tax Provisions Relevant to Oil & Gas**
  API Ask: Along with Congress, work to maintain and reinstate pro-growth provisions of the 2017 Tax Cuts and Jobs Act (TCJA), including:
  - A corporate tax rate that does not exceed 21%;
  - Dual capacity, FDII deduction, GILTI and its FOGEI exclusion;
  - 100% Bonus Depreciation;
  - Maintaining the immediate deduction of intangible drilling costs (IDCs) and revising the current calculation for the Corporate Alternative Minimum Tax (CAMT) so that it includes IDCs.

  Context: A competitive tax environment is vital to ensuring the U.S. remains a global leader in energy production and economic growth. A 21% corporate tax rate should be maintained to support long-term investments in the oil and gas industry. Reinstating 100% bonus depreciation (full expensing) facilitates greater investment, while maintaining the immediate deductibility of intangible drilling costs supports increased production of U.S. oil and gas. Combined, these provisions enhance cash flow, create jobs, and advance energy leadership across the entire industry value chain. Domestic regulations and international tax regimes must not hinder the industry's ability to compete in global markets. The industry is already highly taxed, with U.S. multinational oil and gas companies paying the highest average foreign tax rate. TCJA provisions like GILTI should maintain global blending instead of country-by-country reporting to prevent double taxation and targeted tax increases.

- **Organization of Economic Co-operation and Development (OECD) & Global Tax Regimes**
  API Ask: Exert the strongest possible U.S. influence internationally to ensure that the OECD Pillar I and Pillar II tax regimes maintain U.S. tax sovereignty and do not disadvantage oil and gas companies. Specifically, Treasury should advocate for the OECD to confirm that nonrefundable credits are treated like qualified refundable tax credits (QRTCs) and support reducing the compliance burden on U.S. multinational taxpayers.

  Context: Unlike industries with intangibles that can facilitate profit-shifting, the oil and gas industry's profits are tied to the geographic location of oil and natural gas and production and refining investments in these locations. The OECD’s 2024 Administrative Guidance recognizes that the oil and gas industry is highly taxed globally and needs flexibility in determining tax allocation. OECD Pillars I and II aim to prevent tax avoidance and profit reallocation; however, the industry's reliance on physical investment and localized production inherently prevents tax avoidance. The Guidance clarifies that restricting deferred tax allocation to subsidiaries or foreign branches is not punitive and that transferable tax credits cannot lower a U.S. company’s effective tax rate below 15% to trigger punitive top-up taxes.

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Internal Revenue Service (IRS)

Key Issues:

- **Guidance on Corporate Alternative Minimum Tax (CAMT)**
  API Ask: Revise the definition of "eligible taxes" in the CAMT Proposed Regulations to exclude the adoption of regular tax foreign tax credit (FTC) disallowance and suspension rules, as this may conflict with the statutory framework and increase taxpayer CAMT liability. Additionally, Treasury should treat repair costs related to section 168 property as depreciation for purposes of section 56A(c)(13), allow taxpayers subject to CAMT to irrevocably elect tax basis over CAMT basis for determining asset gain or loss, and clarify that a partner's adjusted financial statement income (AFSI) under section 56A from a Subchapter K partnership election is deemed their financial statement income (FSI).

  Context: By not including repair costs into the AFSI calculation, oil and natural gas taxpayers are unfairly punished as depreciable repairs are part of the standard business practice throughout the industry. The oil and natural gas industry is characterized by large investments that inherently have high costs of repair. AFSI calculations are unduly burdensome and economically strenuous. Allowing taxpayers to determine gain or loss of an asset by tax basis, rather than CAMT basis, provides taxpayers much needed flexibility.

- **Regulation of Section 45V – Hydrogen Production Tax Credit**
  API Ask: Ensure that the final 45V regulation is technology neutral and allows hydrogen producers to use facility-specific, EPA-verified greenhouse gas (GHG) emissions data for carbon intensity calculations.

  Context: The development of low-carbon hydrogen can create new markets for natural gas, diversify and bolster energy resources, and enable the U.S. to compete in the global energy marketplace, especially as China seeks to dominate the supply chains for emerging, low-carbon technologies. Allowing producers to demonstrate hydrogen production differentiation ensures hydrogen produced with natural gas -- including renewable natural gas (RNG) -- qualifies for incentives without undue disadvantage. The oil and gas industry is a major producer, transporter, and consumer of hydrogen and is well-positioned to lead its expansion in the U.S. with the support of the 45V credit. Hydrogen from natural gas with carbon capture and sequestration (CCS) -- or "blue hydrogen" -- offers GHG reductions, efficiency at scale, and low costs. However, the previous Administration's proposed Hydrogen Production Tax Credit rules were overly restrictive and raised concerns about qualifying pathways for natural gas.

- **Emissions Rate Table and Regulation for Section 45Z – Clean Fuel Production Credit**
  API Ask: Release, as soon as possible, the Emissions Rate table that governs what fuels are eligible for the tax credit. Ensure that the final 45Z regulation is technology- and feedstock-neutral.

  Context: The 45Z tax credit can contribute to the continued growth of clean transportation fuels, including advanced biofuels, which benefits consumers, fuel producers, and the agricultural economy. The timely release of an Emissions Rate table by Treasury and the IRS is critical to advancing projects and fuel commitments. In its absence, project development is effectively paused because of the lack of this fundamental guidance on fuel type eligibility. The Emissions Rate table should contain a broad list of qualifying transportation fuels, including those that may require additional processing before their ultimate use in vehicles or aircraft. Taxpayers who have submitted timely registrations with the IRS need to know as soon as possible whether their registration has been approved. Undertaking fuel production in 2025 without this certainty will impact all aspects of the value chain.