DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.

SECRETARY OF THE TREASURY

June 4, 2021

The Honorable Mike Crapo
United States Senate
Washington, DC 20510

Dear Senator Crapo:

Thank you for your May 24, 2021 letter regarding the Biden-Harris Administration's proposals in the international tax negotiations at the Organization for Economic Cooperation and Development (OECD). Because these negotiations are ongoing, I believed it was important to respond to you as soon as possible. My objectives and yours on this matter are aligned. We strongly agree that any international tax agreement reached at the OECD must neither harm U.S. businesses and workers nor undermine the United States' tax sovereignty. Any agreement must also recognize Congress' constitutional role in setting domestic tax policy and ultimately protect the U.S. fisc. The Administration's proposals on OECD Pillars 1 and 2, as well as the international tax proposals in the newly released Greenbook, are aligned with these goals.

With regard to the well-being of our businesses and workers, the Administration's proposed improvements to the U.S. minimum tax on global intangible low-taxed income (GILTI) are designed to eliminate incentives to shift profits to low-tax jurisdictions by undoing the ability of firms to shield capital and corporate profits in such jurisdictions from U.S. taxation. These changes would help to ensure that investments are made and remain in the United States and would create a more level playing field between domestic and foreign businesses. Our proposals would help to eliminate offshore corporate tax shelters, ensuring that corporations pay their fair share of U.S. tax and that U.S. workers no longer bear a disproportionate share of the overall tax burden.

The global minimum tax proposed in OECD Pillar 2 pairs well with our domestic corporate income tax proposals and has the special virtue of helping level the playing field for U.S. business. Ending tax competition through a robust global minimum tax ensures that countries compete with one another on more positive bases, such as the education and training of the labor force, stability of the legal system, and ability to innovate – areas in which the United States has a comparative advantage.

We have also crafted our negotiating positions on OECD Pillar 1 with American competitiveness in mind. Our comprehensive scope proposal under Pillar 1 ensures that multinational corporations around the world – not just American companies – will participate in the reallocation of profits. The scope of the prior OECD proposal advocated a qualitative facts and circumstances approach that would have asked tax technicians to engage in multilateral discussions to determine, on a company-by-company basis, which companies were in scope of Pillar 1. We concluded that such a system risks discrimination with respect to U.S. businesses given the company-by-company determination. Our comprehensive scope proposal based on quantitative metrics eliminates this concern.

Like you, Treasury is also concerned about U.S. tax sovereignty and Congress's role in setting domestic tax policy. Indeed, our Stopping Harmful Inversions and Ending Low-tax Developments (SHIELD) proposal ensures that a race to the bottom on corporate tax rates no longer erodes U.S. sovereignty by tying U.S. domestic tax policy to the beggar-thy-neighbor priorities of low-tax jurisdictions. The SHIELD proposal would function as a strong incentive for other countries to adopt global minimum taxes, thus protecting the U.S. minimum tax on global intangible low-taxed income and the competitiveness of U.S. businesses. Specifically, the SHIELD rule would disallow deductions when payments are made to low-tax affiliates, and in doing so encourages foreign jurisdictions to adopt a strong minimum tax along the lines we are proposing at the OECD. The SHIELD proposal would thus improve the deduction disallowance mechanism of the Base Erosion and Anti-abuse Tax (BEAT), which, in its current form, is less effective for protecting the U.S. fisc and over-inclusive in its impact on certain types of U.S. businesses.

More generally, Treasury is concerned that the current international tax system has eroded national sovereignty in ways that have real and measurable impacts on American workers and families. For too long, harmful tax competition has starved governments of necessary resources, preventing them from delivering for their citizens. Although national sovereignty is invoked to justify this dynamic, we think the race to the bottom on corporate income tax rates actually impedes national sovereignty by preventing governments from funding urgent fiscal priorities.

We see OECD Pillar 2 as protecting national sovereignty by stopping the pressures that have forced the race to the bottom on corporate tax rates, and thereby creating more scope for independent national tax policymaking in a globalized world. By collaborating with other governments via the OECD/G20 negotiations, we can put our economy, as well as those of other countries, on a pathway to a sustainable and inclusive recovery more effectively than if we had acted alone. Multilateral collaboration to stabilize the international economy is particularly appropriate in this year, when the pandemic, like the global financial crisis of 2008, reminded us that in the globalized economy our country's well-being is tied to developments at home and abroad.

Treasury also takes seriously the protection of the U.S. fisc. Our Greenbook proposals will bring corporate tax revenue as a share of our economy closer to its 21st century average before the 2017 corporate tax cut. Meanwhile, our Pillar 1 comprehensive scope proposal will be largely revenue neutral for the United States since we will be on both the receiving and giving end of the proposed profit reallocations. Indeed, one interesting feature of Pillar 1 estimates is that they demonstrate the extent to which both U.S.- and foreign-headquartered corporations have managed to shift profits derived from sales to U.S. customers outside the United States for years, including under the 2017 tax act.

Thank you for your engagement in our work on this issue, and the many issues before your committee that affect the Treasury. I very much look forward to continuing this discussion with you and your team. We look forward to keeping you updated on the progress of the OECD negotiations and to working with you on implementing our proposals on international tax and in other areas.

Sincerely,

Janet L. Yellen