

Congress of the United States

Washington, D.C. 20515

June 9, 2015

The Honorable Jacob Lew
Secretary of the Treasury
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Dear Secretary Lew:

As the leaders of the Congressional tax-writing committees, we are writing to you about the need for the Treasury Department to remain engaged with Congress as you and your colleagues negotiate and develop proposals with member countries of the Organisation for Economic Co-operation and Development (OECD) and others on fundamental changes in international tax rules under the OECD's Base Erosion and Profit Shifting (BEPS) project.

Congress is tasked with writing the tax laws of the United States, including those associated with cross-border activities of U.S. companies. Regardless of what the Treasury Department agrees to as part of the BEPS project, Congress will craft the tax rules that it believes work best for U.S. companies and the U.S. economy. Close consultation between Congress and the Treasury Department should inform the BEPS discussions. We expect that as we move forward on U.S. tax reform, U.S. tax policy will not be constrained by any concessions to other nations in the BEPS project to which Congress has not agreed.

As your BEPS discussions continue and proposals are considered, we strongly encourage you to continue engagement with us and to solicit input from the tax-writing committees. We have been monitoring, and continue to monitor, the BEPS project, and we understand the significance it carries in the global community and its potential impact on U.S. workers and their multinational employers. We stand ready to work with you as the BEPS discussions conclude and final reports are issued this year so that we reach good outcomes for the United States and U.S. companies and provide an atmosphere within which we can continue to work towards U.S. tax reform.

We appreciate some of the work that your team has done as part of the OECD's BEPS project, especially efforts to defend and advocate certain long-standing tax principles, such as the arm's-length transfer-pricing standard. However, we are troubled by some positions the Treasury Department appears to be agreeing to as part of this project. For example, we are concerned about the country-by-country (CbC) reporting standards that will contain sensitive information related to a U.S. multinational's group operations. We are also concerned that Treasury has appeared to agree that foreign governments will be able to collect the so-called "master file" information directly from U.S. multinationals without any assurances of confidentiality or that the information collection is needed. The master file contains information well beyond what could be obtained in public filings and that is even more sensitive for privately-held multinational companies. We are also concerned about interest-deductibility limitation proposals on the basis of questionable empirics and metrics.

Some recent press reports have indicated that the Treasury Department believes it currently has the authority under the Internal Revenue Code to require CbC reporting by certain U.S. companies and that Internal Revenue Service (IRS) guidance on this reporting will be released later this year. We believe the authority to request, collect, and share this information with foreign governments is questionable. In

addition, the benefits to the U.S. government from agreeing to these new reporting requirements are unclear, particularly since the IRS already has access to much of this information to administer U.S. tax laws. Therefore, we request that, before finalizing any decisions, the Treasury Department and IRS provide the tax-writing committees with a legal memorandum detailing its authority for requesting and collecting this CbC information from certain U.S. multinationals and master file information from U.S. subsidiaries of foreign multinationals. We also request that you provide a document: (i) identifying how the CbC reporting and other transfer pricing documentation obtained by the IRS on foreign multinationals operating in the United States will be utilized, and; (ii) providing the justification for agreeing that sensitive master file information on U.S. multinationals can be collected directly by foreign governments. In the event we do not receive such information, Congress will consider whether to take action to prevent the collection of the CbC and master file information.

We also have significant concerns about many of the provisions included in several other proposals of the BEPS project, including, among others, modifying the permanent establishment (PE) rules, using subjective general anti-abuse rules (GAAR) in tax treaties, and collecting even more sensitive data from U.S. companies to analyze and measure base erosion and profit shifting. These are but a few of the areas where we recommend that we work together to find consensus and identify a path forward for consideration as part of the BEPS negotiations and, if necessary, Congressional actions.

In the coming months, we look forward to working with you with respect to the BEPS project. In the interim, we want to remind the Treasury Department that it has the ability to refrain from signing on to the BEPS final reports, and we expect you to do just that if doing so protects the interests of the United States and of U.S. persons. Many of the OECD's BEPS project objectives are sound, and international cooperation – as well as competition – in tax policies is desirable. We trust that you agree, however, that precipitous decisions to impose constraints on U.S. tax policy and added burdens on U.S. companies, especially on the basis of weak empirics and metrics, are not desirable.

Thank you for your attention to these important matters. Please direct any questions and comments, including the memorandum and document described above, to our staff at the following email addresses: Eric Oman, Senior Policy Advisor for the Senate Finance Committee (eric_oman@finance.senate.gov), and George Callas, Chief Tax Counsel for the House Ways and Means Committee (george.callas@mail.house.gov).

Sincerely,



Orrin G. Hatch
Chairman
Senate Finance Committee



Paul D. Ryan
Chairman
House Ways and Means Committee