UNITED STATES SENATE
COMMITTEE ON FINANCE
U.S. SENATOR ORRIN HATCH (R-UT), CHAIRMAN
FINANCE.SENATE.GOV

FOR IMMEDIATE RELEASE **CONTACT:** Katie Niederee, Julia Lawless
Oct. 3, 2017 (202) 224-4515

Hatch Opening Statement at Finance Committee Hearing on International Tax Reform

WASHINGTON – Senate Finance Committee Chairman Orrin Hatch (R-Utah) today delivered the following opening statement at a hearing on reforming the international code. The goal of the hearing is to examine how Congress can update the United States' system of taxing cross-border income to level the playing field for American companies and keep more jobs and investment here at home.

Today's hearing will focus on another piece in the complex tax reform puzzle. But before I get to details of international tax reform, let me briefly address the elephant in the room.

Last week, I joined with the Secretary of the Treasury, the National Economic Council director, the Senate Majority Leader, the House Speaker, and the Chairman of the Ways and Means Committee to put forward a broad unified framework for tax reform.

As the document makes clear, this is just one step in the larger tax reform effort. But, let's not mince words: It is a big step.

I would be hard-pressed to remember the last time the White House and House and Senate leadership were in agreement on an issue as complicated as tax reform. We began discussions earlier this year, and, at that time, there were a number of high-profile differences among us. I'm very pleased that we have been able to bridge so many divides and I am optimistic about our chances going forward.

I want to express my gratitude to the others who worked on the framework and to the members of this committee who have helped us move the tax reform effort forward. I particularly want to acknowledge the work of Senator Grassley, who, as a former chairman and ranking member of the committee, laid much of the groundwork for the ideas we're discussing and for the progress we've made. It was under Senator Grassley's chairmanship that the Finance Committee, in 2003-2004, initiated the last package of international tax reforms.

Now, as some have already pointed out, the framework released last week is not, by design, a complete plan. Of course, that hasn't stopped think tanks and analysts from speculating about its fiscal and distributional impact. We've already seen groups attempting to reverse-engineer a completed tax plan from the framework, generally filling in blanks with their own ideas and assumptions, and reaching conclusions about a plan they've essentially written themselves. Generally speaking, it seems that the blank-filling exercise is designed to cast the framework in the worst possible light.

The framework does not include any specific information about things like the break points for the individual tax brackets, the value and indexing of the enhanced Child Tax Credit, or the precise rate for the top bracket. Without those and other key pieces of information, there is simply no way for any outside party to produce a credible analysis of the framework, let alone a detailed estimate of revenue and the distribution of tax burden.

But, that didn't stop a certain think tank from issuing a "preliminary analysis" of the framework at the end of last week, nor did it stop any of the framework's critics from citing that analysis as authoritative. It's odd, however, that the analysis came with a disclaimer that it was expressing only the views of the authors, not the think tank itself. Even more unusual, no specific authors were listed on the analysis, probably because no respectable academic or researcher was willing to have their name associated with something so haphazardly cobbled together.

But, I digress.

As the framework makes clear, this committee will be responsible for writing the Senate tax reform bill and I'm going to work with members of the committee to make sure we are successful. For now, everyone should take every estimate or analysis about the plan from outside groups with an exceptionally large grain of salt.

Moving on, I also want to say that my preference has always been for this to be a bipartisan effort, and I think there are several elements in the framework where Democrats and Republicans can work together and hope we will be able to do so.
The subject of today's hearing is a great example of an area where both parties are largely in agreement.

Under our current system, U.S. multinationals that accrue overseas earnings can defer U.S. tax on those earnings until they are brought back to the United States. In 1962, due to concerns that businesses were moving passive and highly-mobile income-producing assets offshore, Congress enacted Subpart F of the Internal Revenue Code. Under Subpart F, income *from these sources is immediately subject to U.S. tax, while taxes on active and less-mobile offshore income remain deferred until the earnings are repatriated.*

This is a bit confusing in the abstract, so let me provide a hypothetical.

Imagine that an American Company– headquartered in the United States and subject to our corporate tax rates – opens a factory in Germany, incorporating a subsidiary there. The income generated by the subsidiary – legally a German company – will be subject to German taxes paid to German authorities.

So long as the American Company doesn't bring that income back to the United States, its income from the German subsidiary will not be subject to U.S. taxes. And, in fact, we are finding that many American companies have been keeping this type of income offshore in order to avoid our punitive corporate taxes.

Now, imagine if the American Company parked its money in stocks, bonds, or other passive investments and moved the income generated from those assets to an offshore, low-tax jurisdiction. Under Subpart F, that type of passive and highly-mobile income is immediately subject to U.S. tax, without any deferral.

Now, I know this is a bit arcane. And frankly, I'd be nodding off if I didn't know how this story ended.

As a result of Subpart F, American companies have engaged in a number of sophisticated and complex tax planning schemes to keep earnings offshore to avoid the U.S. corporate tax.

According to the Joint Committee on Taxation, American companies are currently holding more than $2.6 trillion in earnings offshore, thanks, in large part, to our worldwide tax system—something often referred to as the "lock-out" effect.

That's $2.6 trillion held by foreign subsidiaries of U.S. corporations that the parent companies are unable to invest here at home. That is income that could be used to create more American jobs and grow wages for American workers. And, that income has attracted the interests of foreign tax authorities, particularly in Europe, who wish to tap into what is, by all rights, part of the U.S. tax base.

I know some of my colleagues have proposed to solve this problem of earnings being locked out of the United States by transitioning to a pure worldwide system with no deferral. And while that would rid us of the lock-out problem, it would significantly increase pressures for American multinationals to invert, or be acquired by foreign-based multinationals.

Many of us have talked at length about inversions in recent years and the problems they pose for our economy and our tax base. Perhaps even worse than an inversion is when a larger foreign corporation simply acquires a smaller American corporation. Either way, the result is the same – a foreign corporation becomes the parent of the restructured multinational group.

Companies take these routes for a number of reasons.

First, they want to escape the high corporate tax rate in the United States, which, as we heard in our last hearing, is the highest in the industrialized world.

Second, they want to minimize the damage caused by our worldwide tax system. If an American multinational can successfully move its tax situs out of the U.S., it will only owe taxes on the earnings accrued here.
There is also the matter of earnings stripping, which is another complicated topic that I look forward to our witness panel discussing today.

All of these problems are key for today's hearing because they highlight the shortcomings of our outdated worldwide tax system.

The solution to these and other problems, to put it very simply, is to transition to a territorial-based system like virtually all of our foreign competitors. Under such a system, an American company would owe taxes only on income earned in the United States. Income earned in foreign jurisdictions would only be taxed by those jurisdictions, not here.

This type of reform would have to be accompanied by enforceable anti-base-erosion rules to make sure companies – both domestic and foreign – do not exploit loopholes in order to unduly avoid paying taxes here.
That approach is endorsed in the united framework.

It was also suggested in the last Congress by our committee's bipartisan working group on international tax, which was co-chaired by Senator Portman and by current Senate Minority Leader Schumer.
Other members of the committee have also made significant contributions in the area of international tax reform, including both Senator Wyden and Senator Enzi.

Finally, as many of you know, I've been interested for some time in the idea of better integrating our individual and corporate tax systems. I continue to believe that corporate integration, by means of a dividends paid deduction, can significantly help with some of our existing problems and I look forward to talking more about that today as well.

Once again, international tax reform is an area that is rife for bipartisanship, if we're willing to work together on goals that members from both parties share. I hope people will note that the international portion of the framework is particularly short on details. That's because these problems can't be solved in a nine-page framework document. That will require the work and effort of this committee.