PepsiCo, Inc.
Submission to Senate Finance Committee Tax Working Groups on Business Income Tax and International Tax

April 15, 2015

PepsiCo, Inc. ("PepsiCo") welcomes this opportunity to provide comments to the Senate Finance Committee's Tax Working Groups on Business Income Tax and International Tax regarding how best to improve the nation's tax code. We believe the tax code should and can be made simpler, fairer and more efficient, and that tax reform should be designed to foster job growth and improve the economic well-being of the broadest possible spectrum of workers and families in the United States.

PepsiCo is the largest food and beverage business in the United States and the second-largest in the world. We manufacture, market and sell a variety of foods and beverages in approximately 200 countries and territories around the world, with the United States as our largest market with approximately 50 percent of our sales. We compete for business with both U.S.-based and many non-U.S-based companies. With that profile, we consider ourselves a good barometer of how the existing tax code is operating for American consumer products companies, and more importantly what the potential impact would likely be of corporate income tax reform proposals.

We believe tax reform should be designed to contribute to the creation of more jobs and an increase in the economic well-being of workers and families in the United States. To achieve those goals, comprehensive corporate income tax reform should reduce the competitive disadvantage global American companies face under the current tax code relative to foreign-based competitors, and promote an increase in U.S. investment by all businesses, whether based in or outside the United States.

To promote an increase in U.S. investment, and in turn create more U.S. jobs, comprehensive corporate income tax reform should include a meaningful reduction in the U.S. corporate income tax rate. Among other considerations in today's globalized world, companies need to consider their overall return on investment when making investment decisions. While tax costs are just one element of that consideration, the more of an outlier U.S. tax rates are relative to other countries, the greater impact those rates likely have on decisions about where to locate investment. A meaningful reduction in the U.S. corporate income tax rate will make U.S. investment more attractive not only to U.S.-based companies, but to companies based outside the United States as well. Tapping into the potential for those additional investments will drive the creation of additional jobs in the United States, and will ultimately increase the economic well-being of American workers and families.

Comprehensive corporate income tax reform should also be designed to reduce the competitive disadvantage U.S.-based companies currently face relative to their foreign competitors when making investments around the world. To grow and remain strong, global U.S. businesses must build upon their U.S. presence and continue to expand and invest in markets outside the United States, where the vast majority of the world's population and consumers are located. The removal of the competitive hurdles to making investments around the world will enhance the strength and durability of U.S.-based companies and will foster their continued growth and their need for workers in the United States. The growth of jobs in the United States will include headquarter jobs, as investment around the globe often generates additional headquarter jobs, many of which are located in the country where a company's headquarters are located.

To improve the international tax rules in a manner that fosters job growth in the United States, the U.S. should move to a territorial/dividend exemption system that generally leaves taxation of foreign profits to the country in which profits are earned, and eliminates the high U.S. tax cost of repatriating foreign profits to the United States. Such a modern, globally competitive tax system more aligned with the rest of the world would help American companies compete with non-U.S-based competitors and provide the foundation for creating more jobs in the United States to support the resulting global investments. In addition, if done properly, a territorial/dividend exemption system would make foreign profits available for additional investment in the United States, thereby creating even more jobs in the United States.

While a territorial/dividend exemption system is needed to support the relative competitiveness of global American companies, we recognize the U.S. tax base must also be protected. And while a territorial tax system generally does not impose a home country tax on foreign-earned profits, one approach to protecting the U.S. tax base is through the use of "base erosion" rules that are effectively exceptions to that general approach by imposing U.S. tax on a targeted subset of foreign profits.

However, for international tax reform to be successful in achieving the goals of job creation and an increase in the economic well-being of workers in the United States, the benefit of being able to repatriate foreign profits to the United States without significant U.S. tax should exceed the financial impact of any new base erosion rules. Therefore, any base erosion rules that are incorporated as part of a territorial/dividend exemption system should be limited in scope and reasonably tailored to target specific revenue concerns associated with the adoption of a territorial/dividend exemption system. For example, profits associated with foreign to foreign transactions, or profits generated as a result of foreign acquisitions with no associated U.S. business, should not be a concern in a territorial/dividend exemption system and, therefore, should not be captured by base erosion rules. Broadly applicable base erosion rules would essentially expand the current worldwide system of taxation under the name of "territorial" or "dividend exemption" and would not achieve the goal of increasing U.S. jobs and increasing the economic well-being of American workers.

In connection with moving to a territorial/dividend exemption system, there has been much discussion of a transition tax on pre-existing unrepatriated foreign cash or earnings held outside the United States. To align any transition tax costs with anticipated benefits from tax-free or low-tax repatriation under the new system going forward, it is important to distinguish between foreign cash and non-cash balances. Consumer products companies, as well as companies in many other industries, are often compelled by the nature of their business to maintain substantial business activity in the international markets where their products are sold and consumed, which requires continual investment of international cash into those markets. Failing to distinguish between foreign cash and non-cash balances under any transition tax would impose a disproportionate burden on many such companies, which often have international cash balances that are only a portion of reported unrepatriated foreign earnings. To mitigate this concern, the transition tax could be imposed only on international cash balances. Alternatively, unrepatriated international earnings in excess of cash could be taxed at a significantly lower rate than unrepatriated international cash.

Further, as various revenue options are considered, we urge that deductions for ordinary and necessary expenses that are fundamental to the successful operation of a business (for example, interest costs to fund investment or the costs of advertising and marketing a product for sale) be maintained and respected. If incurred in the U.S., those business expenses will not be deductible outside the United States, so to limit their deductibility is to create a new competitive disadvantage that will undermine the success of the very companies the new reformed tax system relies upon to create more jobs and increase the economic well-being of workers in the United States.

In addition, any tax preferences retained or introduced as part of a new reformed tax system (such as domestic manufacturing incentives or an innovation/knowledge box regime) should be structured to have broad applicability so as to benefit a wide cross-section of industries and promote the greatest possible investment and job growth in the United States. Limiting the scope of taxpayers or nature of jobs that benefit from those regimes effectively limits the very investment and job growth the new reformed tax system is intended to achieve.

Finally, the tax code should be simplified and certain tax rules and attributes historic to the current tax system that will no longer retain the same significance should be eliminated, particularly where complex rules would run counter to the goals of a new reformed territorial/dividend exemption system. For example, foreign tax credits play a much less important role in a dividend exemption system since most dividends are excluded and not entitled to a foreign tax credit. A streamlining of the foreign tax credit rules to more simply accomplish their more limited purposes under the new system would be sensible, including eliminating overall foreign loss ("OFL") balances and repealing the OFL rules.

We recognize that corporate income tax reform can have many goals. We believe tax reform designed to spur U.S. investment, create more U.S. jobs and increase the economic well-being of U.S. workers would maximize the benefits of tax reform. We appreciate the work and undertaking of the Senate Finance Committee Tax Working Groups and thank them for this opportunity to be part of this important process.