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United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

December 22, 2021

The Honorable Janet Yellen
Secretary
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Dear Secretary Yellen,

We remain focused on ensuring the agreement reached at the Organisation for Economic Co-operation and Development (OECD)/G20 regarding international taxation allows U.S. businesses and workers to remain globally competitive. Because this Administration has failed to provide us with the detail necessary to evaluate the agreement, we renew our request for this information.

U.S. engagement in the OECD negotiations has historically received broad, bipartisan support given the key objective of eliminating discriminatory digital services taxes (DSTs). Rather than prioritizing this shared goal, this Administration's focus shifted to its domestic agenda of increasing taxes on American businesses, including through a higher global minimum tax. The Administration's rush to reach a political agreement, tied to its domestic spending plans and pursuit of revenue, has come at the expense of thorough analysis and meaningful engagement with Congress and the business community, and may ultimately put U.S. businesses at risk.

Given this agreement's potential to jeopardize U.S. competitiveness, we continue to have concerns with the lack of detail underlying the approach being proposed under Pillar One and its lack of foundation in any discernible tax principles. Although you have stated that Pillar One will be "largely revenue neutral" to the United States, you have refused to provide us with an analysis substantiating your claim. You have also undercut this assertion by acknowledging that open design features may "materially impact American companies and the fiscal position of the United States relative to other countries."

We are also concerned the Pillar One implementation timeline agreed to by this Administration is not realistic. The Administration's recent agreements allow existing DSTs to remain in place, pause all U.S. retaliatory options, and require implementation by December 31, 2023 in order for DSTs to be removed. Given the number of open issues remaining and the need for all countries to achieve consensus, implementation by 2023 is likely unachievable. These agreements appear

to eliminate any U.S. leverage, while attempting to manipulate Congress to act—potentially to the detriment of U.S. businesses and revenue—in order for DST relief to be achieved.

Of further concern is Treasury's continued insistence that the United States once again move first on a global minimum tax – this time by significantly increasing the U.S. global intangible low-tax income (GILTI) minimum tax in line with Pillar Two. The United States already acted first four years ago when it enacted the GILTI minimum tax. Yet the United States remains the only country that imposes a global minimum tax on its companies. As Pillar Two does not require other countries to adopt a global minimum tax, we are not confident that our biggest foreign competitors, like China, will enact and implement a global minimum tax on the same terms or on the timeline agreed to at the OECD.

Finally, precedent indicates that any multilateral tax agreement that achieves the stated goals of Pillar One would need to be submitted to the Senate as a treaty, yet Treasury suggests that the United States could fully implement Pillar One without the advice and consent of two-thirds of the Senate through the treaty process. Beyond constitutional concerns, any suggestion of implementation through a congressional-executive agreement at this stage is inappropriate: this Administration chose not to engage with Congress to establish a legislative procedure defining OECD negotiating objectives or providing a detailed oversight and consultation process. Without subsequent congressional authorization, the Administration does not have the power to give effect to such an agreement. Overall, any suggestion that Pillar One can be implemented absent treaty ratification is a dramatic shift from past precedent and calls into question the binding nature of any such agreement, thereby threatening the very tax certainty that many of our companies, and this Administration, claim to seek under Pillar One.

Any opportunity for a bipartisan outcome will require greater transparency and engagement. We ask that you provide prompt answers to the following questions surrounding these proposals:

1. Please provide your estimate of the number of U.S. companies that would be in scope under Pillar One.
2. While we understand there are open design issues, Treasury has clearly performed an analysis and identified a range of possible outcomes. Please provide point estimates of the following, and describe the key design issues on which these estimates depend:
 - a. The amount of profit that would be reallocated between the United States and foreign countries, including a breakdown of estimated amounts by country.
 - b. The net revenue impact of Pillar One to the United States.
3. The Joint Committee on Taxation (JCT) has long been engaged with the OECD negotiations at the request of both Congressional tax-writing committees. If you are unwilling to share this information directly with us, will you commit to provide JCT with this information so it may provide an independent and confidential analysis?
4. Please provide a proposed plan for Pillar One implementation, including:
 - a. Treasury's proposed approach for implementation, including the expected treaty actions, domestic legislation, and changes to our competent authority agreements.
 - b. Treasury's proposed timeline for the United States to implement Pillar One.

- c. If it is Treasury's position that treaty action will not be necessary to implement Pillar One, by what means and under what authority could the United States enter into a multilateral convention? Please provide a detailed analysis regarding how each of the United States' bilateral tax treaties' permanent establishment provisions could be modified through means other than the formal treaty approval process. Please also provide a detailed analysis regarding how dispute resolution could be established through means other than the formal treaty approval process.
 - d. If Pillar One is not implemented by December 31, 2023, will U.S. companies have any recourse for DSTs collected between now and that date? Will other countries be free to enact DSTs at that time?
 - e. What are the OECD's plans for public consultation with stakeholders, including Congress and the U.S. business community, before design and implementation plans are finalized? What efforts is the Treasury Department taking to ensure meaningful public consultation takes place?
5. What, if any, commitments has China made regarding its timing for implementation of a 15 percent global minimum tax? Have any of the other 135 countries joining the agreement provided you with a commitment regarding implementation?

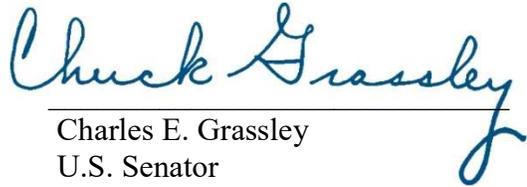
We will continue to engage in good faith to evaluate the effects of this agreement on American workers, businesses, and revenue. However, this Administration's current posture of stonewalling our requests for relevant, material information has made it impossible to make this determination.

We appreciate your attention to these issues and look forward to your timely response to our questions.

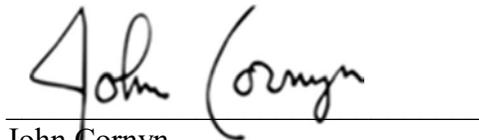
Sincerely,



Mike Crapo
U.S. Senator



Charles E. Grassley
U.S. Senator



John Cornyn
U.S. Senator



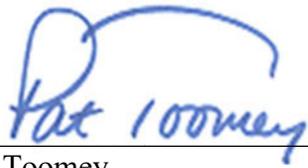
John Thune
U.S. Senator



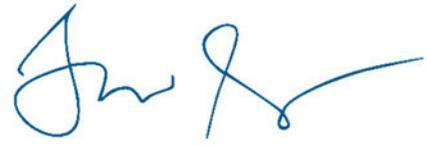
Richard Burr
U.S. Senator



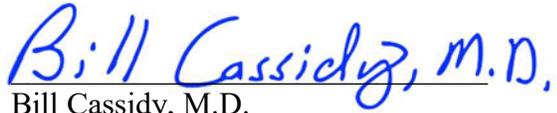
Rob Portman
U.S. Senator



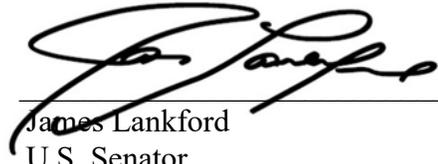
Pat Toomey
U.S. Senator



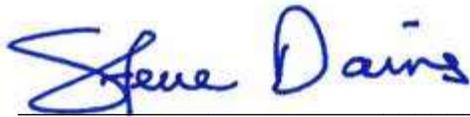
Tim Scott
U.S. Senator



Bill Cassidy, M.D.
U.S. Senator



James Lankford
U.S. Senator



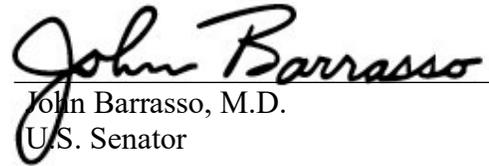
Steve Daines
U.S. Senator



Todd Young
U.S. Senator



Ben Sasse
U.S. Senator



John Barrasso, M.D.
U.S. Senator