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United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

March 31, 2022

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

Dear Secretary Yellen,

While we appreciate the responses to our December 22, 2021, and February 16, 2022, letters, we would like to again bring your attention to the insufficient level of engagement and consultation we have received from this Treasury Department both before and after the Administration entered into the Organisation for Economic Co-operation and Development (OECD)/G20 tax agreement. In response to our December 22, 2021, letter, the Assistant Secretary for Legislative Affairs stated that “Congressional input is a priority for Treasury.” Despite this assertion, we believe Treasury has continuously failed to engage with us in a meaningful manner.

In support of his claim, the Assistant Secretary asserts there has been appropriate engagement through briefings provided by Treasury to certain Congressional staff. However, these briefings merely informed certain staff of negotiations after they had occurred, and in most cases, after developments were publicly announced and the corresponding documents were publicly released. After-the-fact briefings with committee and leadership staff do not constitute meaningful consultation. Treasury has also declined to provide a thorough analysis and the important data that would allow us to properly evaluate the effect of this agreement on the U.S. business community and U.S. revenue. This level of engagement does not convey that Treasury views our input as necessary or critical.

Further, the Assistant Secretary’s letter states that Congressional engagement has been “valuable in crafting [Treasury’s] negotiating stances and is ultimately reflected in the substance of the current agreement.” We struggle to see how this is true. In a reversal from the prior Administration, the Biden Treasury Department failed to negotiate for current U.S. law to be deemed compliant under Pillar Two, in direct opposition to comments received from us and our staff. Additionally, we, along with many of our Democratic colleagues, have voiced support for the foreign-derived intangible income (FDII) provision, yet Treasury has conveyed to OECD countries that FDII will be “abolished.” Similarly, had the Administration actually consulted Congress (rather than merely point to a 2020 “blueprint” after the fact) on whether the

agreement's provision of more favorable treatment to refundable tax credits than to nonrefundable tax credits was an acceptable negotiating outcome, we clearly would have said it was not and advised you to protect U.S. tax incentives to ensure our businesses and workers do not face a competitive disadvantage.

Despite the Assistant Secretary's request for input on the marketing and distribution safe harbor in his recent letter, the Assistant Secretary does not provide any data on the "tradeoffs," specific options on the table, or any meaningful information to allow us to provide constructive feedback. Such actions do not reflect a Treasury Department that believes Congress should play a meaningful role in these negotiations, or that its views should be taken into account.

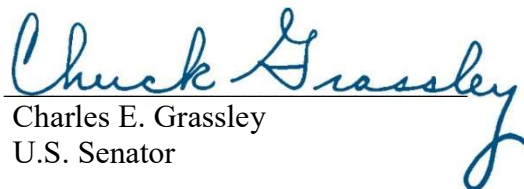
While Treasury may have accepted an OECD agreement that will put U.S. companies and jobs at risk, there is still time to change course given the significant amount of detail and work that remains to be done. As the recently proposed EU directive acknowledges, the clearly unrealistic timeline is already slipping, and there is ample time for Treasury to begin taking into account what Congress, which has sole tax-writing authority under the U.S. Constitution, is willing and able to enact into law.

Establishing Congress's legislative prerogatives is critical to the domestic viability of any OECD tax agreement. As we have stated many times, implementation of this agreement would require Congressional action, including Senate approval of a multilateral tax treaty. We urge you and your chief negotiators to begin fully engaging and consulting with us going forward, starting with in-person briefings and hearings to discuss these important issues.

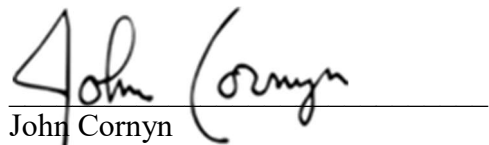
Sincerely,



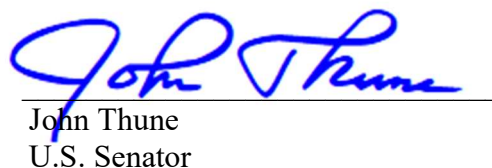
Mike Crapo
U.S. Senator



Charles E. Grassley
U.S. Senator



John Cornyn
U.S. Senator



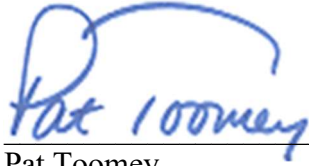
John Thune
U.S. Senator



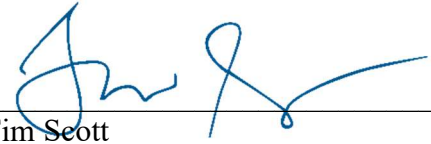
Richard Burr
U.S. Senator



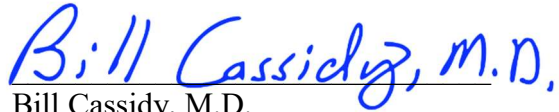
Rob Portman
U.S. Senator




Pat Toomey
U.S. Senator



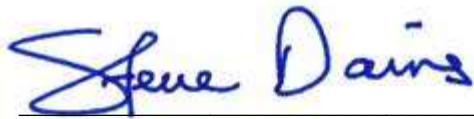
Tim Scott
U.S. Senator



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



James Lankford
U.S. Senator



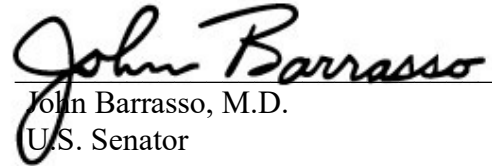
Steve Daines
U.S. Senator



Todd Young
U.S. Senator



Ben Sasse
U.S. Senator



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