Congress of the United States
Washington, DC 20515

July 8, 2021

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

Dear Secretary Yellen,

As work continues on the Organisation for Economic Co-operation and Development (OECD) digitalization tax project, we write to share our concerns with the current state of negotiations. There has been consistent bipartisan, bicameral support in Congress for the OECD as the appropriate venue to address the digitalization of the economy, potentially including changes to longstanding global tax rules. However, the OECD project would be counterproductive if the Administration's negotiating position concedes ground to foreign counterparties and harms the U.S. economy.

Congressional support for an agreement at the OECD will hinge on protecting American workers and the U.S. tax base. Other countries have shown that they will aggressively seek to gain market share and strip away our tax base, so U.S. negotiators must be equally aggressive in defending American interests. The Administration should not surrender jobs, growth, or tax revenues to other countries in order to advance a partisan tax increase agenda at home.

Below are three key areas where the Administration must take a strong position in favor of American interests:

1. **The global minimum tax must be fair to American workers and companies – any special rates or exemptions offered to foreign competition must be available to Americans.** The United States enacted GILTI in 2017, a first-of-its-kind global minimum tax, and many U.S. companies already pay GILTI at effective rates above 15 percent. Yet the Administration seeks to increase the GILTI rate paid by U.S. companies to 26.25 percent or more, while allowing foreign companies based anywhere else in the world to pay just 15 percent. The Administration calls for repeal of GILTI's "substance-based carve-out" while permitting other countries to create an even more generous carve-out for themselves. The resulting framework would be discriminatory against the United States. Congress will not accept a deal that makes it better to be a foreign worker or company than an American one.

2. **The global profit allocation formula, including any carve-outs and special inclusions, must not disproportionately affect Americans.** Congress has been open to a modest global profit allocation formula, applied neutrally, to replace the patchwork of unilateral digital taxes that target Americans. Yet the proposed allocation formula would send up to 30 percent of companies' global profits to so-called "market jurisdictions," and Americans remain in the crosshairs. While Treasury has failed to provide the requested information about the effect of this proposal on American companies, experts say the United States will represent nearly half of the companies affected and over half of the profits to be reallocated.

   Worse, foreign countries are demanding industry carve-outs to protect their strongest sectors, as well as special inclusion rules to target American firms not caught up in the proposed formula. Given the nature of the carve-outs being considered, data suggest that a significant amount of the downside from the global profit allocation will be shifted away from China and onto the United States. All of these concessions undermine our competitiveness and tax base. Congress will not accept a global profit allocation formula that results in fewer American jobs or a net loss in U.S. tax revenues.

3. **The targeting of American workers and companies by foreign governments must end immediately.** Allowing foreign governments to continue collecting discriminatory digital taxes perpetuates their bad-faith negotiation tactics and removes pressure to implement an OECD agreement quickly and fairly. For example, not only has France continued collecting its discriminatory digital services tax from U.S. companies, even while the United States has suspended retaliatory tariffs against France, the French finance minister stated this week that France will continue to collect those taxes until the OECD agreement is implemented, which the OECD term sheet indicates will be no earlier than 2023.

   Further, the EU still refuses to back down from the new digital levy planned for introduction this month. Allowing a new EU digital levy to be layered on top of an OECD agreement would negate the very purpose of the project: to repeal and replace unilateral digital taxes with an agreed global profit allocation formula. The Administration must not leave the door open to digital taxes remaining in place for years to come – they must be repealed immediately, and countries must agree to discard plans for any new similar levies.

Many other critical issues remain unresolved. For example, reports of the "agreement" on a 15 percent global minimum tax generally failed to note that three veto-carrying EU member states, along with the largest economy in Africa, refused to sign the term sheet. Even if agreement were reached on the rate, equally important is the tax base to which the global minimum tax rate will apply, a question that has eluded consensus at the OECD as China and other countries vie for exemptions and exclusions.

With significant work needed before reaching a final OECD agreement, we reiterate the need for active consultation with Congress on the specific policy options and detailed analytics being considered.

Sincerely,

Mike Crapo
Ranking Member
Senate Committee on Finance

Kevin Brady
Republican Leader
Committee on Ways and Means