

**Congress of the United States**  
Washington, DC 20515

September 2, 2021

Senator Ron Wyden  
Chairman, Committee on Finance  
United States Senate  
Washington, D.C. 20510

Congressman Richard Neal  
Chairman, Committee on Ways and Means  
United States House of Representatives  
Washington, D.C. 20515

Chairman Wyden and Chairman Neal,

We write to share our concerns with the Administration's strategy to compel specific Congressional action on U.S. tax legislation, a matter over which the Senate Finance Committee and House Ways and Means Committee have clear jurisdiction. We urge you to join us in safeguarding against infringement of Congress's authority to set U.S. tax policy by this or any administration.

Soon after negotiating an agreement at the Organisation for Economic Co-operation and Development (OECD), Treasury Secretary Yellen acknowledged that Congress would be required to enact significant domestic tax law changes in order to comply with the agreement. Whereas prior administrations took the position that Treasury cannot bind Congress, this Administration has taken the approach of using the global stage to attempt to force Congress's hand. This concerning development suggests the Administration has represented to our global partners that it can unilaterally compel changes in tax law, a significant infringement on Congressional authority.

Prior negotiations at the OECD were premised on the principle that the U.S. global minimum tax would be treated as compliant under the global minimum tax introduced by an OECD deal. That approach recognized our first-mover status on a global minimum tax and protected American workers and companies without the need for additional legislative action. Yet Treasury has reversed course and is now pursuing an agreement at the OECD that would impose severe penalties on American companies unless significant changes are made to U.S. law.

It also appears that Treasury negotiators committed in April to "abolish" the U.S. foreign-derived intangible income (FDII) provision. FDII was designed to meet the bipartisan goal of encouraging American companies to develop and retain intangible property in the United States. While Treasury has no authority to repeal legislation enacted by Congress, it appears the agency committed to do just that, according to an OECD report published on August 5, 2021.

Treasury's approach to these negotiations makes clear that the Administration has substituted its own political priorities – presented in its Fiscal Year 2022 Revenue Proposals – for the bipartisan, bicameral objectives historically pursued at the OECD. Democrats and Republicans alike have denounced digital services taxes (DSTs) that discriminate against American workers and companies and strip away U.S. tax revenues. Any agreement at the OECD should eliminate DSTs and similar measures. However, Treasury has yet to secure that key condition, instead hoping that flexibility will facilitate an agreement that advances the Administration's broader tax agenda.

Instead of moving forward unilaterally with its own priorities, Treasury should engage in meaningful, bipartisan consultation with both sides of Congress. As Secretary Yellen has acknowledged, certain components of the agreement must be implemented through a multilateral treaty to be ratified by the Senate, requiring significant bipartisan consensus. By pursuing the Administration's tax agenda at the OECD and assuming that Congress will use reconciliation to enact certain changes, the Administration is risking the future success and durability of the agreement. If the current Administration can unilaterally compel tax changes consistent with its priorities, future administrations have the ability to unilaterally unwind them, leading to an ultimate failure to generate international tax certainty.

While we do not agree on the policies being promoted by the Biden Administration, the Administration's strategy raises far more fundamental questions about the authority of Congress and our tax-writing committees. Please consider the precedent that would be set if Congress were to concede to an administration's efforts to undermine the authority of Congress, and our committees, to set U.S. tax policy.

Sincerely,



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Mike Crapo  
Ranking Member  
Committee on Finance



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Kevin Brady  
Ranking Member  
Committee on Ways and Means