

Congress of the United States
Washington, DC 20515

November 3, 2022

The Honorable Janet Yellen
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Ave. NW
Washington, D.C. 20220

The Honorable Antony Blinken
Secretary
U.S. Department of State
2201 C St. NW
Washington, D.C. 20520

Dear Secretary Yellen and Secretary Blinken:

As Ranking Members of the Congressional committees with jurisdiction over tax and treaty matters, we write to highlight the manner in which the Biden Administration has once again sidelined Congress in its pursuit of the OECD global tax agreement. In July, the Administration provided notice to Hungary that it was terminating the 1979 U.S./Hungary tax treaty (the “Treaty”) with no outreach to, or consultation with, Congress prior to publicly announcing an intention to terminate. This decision was a transparent act of retaliation for Hungary’s opposition to the agreement, setting a regrettable precedent that calls into question the reliability of the United States as a treaty partner. As we approach the end of the six-month advance-notice period to terminate the Treaty, we urge the Administration to reverse this decision and reengage with our treaty partner to ensure the United States upholds our treaty commitments.

The network of U.S. bilateral tax treaties is a critical tool for promoting cross-border investment, avoiding double taxation, and expanding economic growth and prosperity. Tax treaties benefit tax administrators, businesses, and workers in signatory countries by providing consistent international tax treatment and a framework for dispute resolution. A stable tax treaty network demonstrates our commitment to the international obligations approved by the Executive Branch and Congress. The Biden Administration should seek to expand and strengthen our important tax treaty network, rather than chip away at it.

Given the Administration’s stated commitment to strengthen the U.S. tax treaty network, Treasury’s decision to unilaterally withdraw from a longstanding U.S. treaty without any meaningful Congressional consultation is particularly alarming. While Treasury has stated the termination occurred due to long-held concerns with the terms of the Treaty, including the absence of a limitation on benefits (LOB) provision, the timing of Treasury’s abrupt termination following Hungary’s stated opposition to Pillar Two of the agreement confirms this justification is pretense. Notably, Treasury apparently no longer supports the pending 2010 tax treaty, which

contains a LOB provision, and has not engaged with Congress to propose any changes to the current Treaty. Instead, Treasury's actions suggest an impulsive attempt to pressure a country that has raised legitimate concerns with the agreement to fall in line.

This decision is even more remarkable given the Administration has taken no steps to withdraw from tax treaties with countries that have engaged in egregious activities in the recent past. For example, the Administration must view the actions of countries like Russia and Belarus as more offensive than a country's mere opposition to a global tax agreement that tax administrations and experts have openly questioned and criticized. The Administration's inconsistent treatment of our current treaty partners further highlights the flaws in Treasury's stated justification.

If the Administration believes the terms of the Treaty (or the pending 2010 treaty) require changes, the proper course of action is to renegotiate the Treaty with appropriate, bipartisan Congressional consultation. While the Senate has faced procedural delays in the approval of tax treaties in the past, the overwhelming bipartisan Senate votes in 2019 on several tax treaty protocols signifies the tax treaty approval process is effective if the Majority Leader is willing to dedicate the appropriate amount of Senate floor time to the effort.

In its negotiations of the OECD global tax agreement, this Administration has repeatedly overstepped its bounds without appropriate Congressional consultation as part of its "at all costs" approach. However, U.S. tax treaties should not be used as a unilateral, retaliatory tool by an Administration to advance its domestic agenda. The Administration's frustration with a country that opposes Pillar Two, a flawed set of rules that no country has attempted to implement in its current form, is not a justifiable reason to unilaterally terminate a tax treaty or more severely undermine the U.S. tax treaty network. We urge the Administration to withdraw its termination of the Treaty and promptly consult with Congress on a bipartisan basis to address any concerns with the Treaty or any other of the United States' current bilateral tax treaties.

Sincerely,



Mike Crapo
Ranking Member
Senate Finance Committee



James E. Risch
Ranking Member
Senate Foreign Relations
Committee



Kevin Brady
Ranking Member
House of Representatives
Ways and Means Committee