U.S. Chamber of Commerce

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July 25, 2023

The Honorable Mike Kelly	The Honorable Mike Thompson
Chairman	Ranking Member
Committee on Ways and Means	Committee on Ways and Means
Subcommittee on Tax Policy	Subcommittee on Tax Policy
U.S. House of Representatives	U.S. House of Representatives
Washington, D.C. 20515	Washington, D.C. 20515

Re: Tax Subcommittee Hearing: "Biden's Global Tax Surrender Harms American Workers and Our Economy"

Dear Chairman Kelly and Ranking Member Thompson:

The U.S. Chamber of Commerce commends the Subcommittee on Tax Policy for convening last week's timely hearing on the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting's global tax reform negotiations. In October 2021, the United States and 135 other countries approved an agreement on a "two-pillar solution" to address the tax challenges arising from the digitalization of the economy. The result was a high-level, multilateral pact to devise a new means of allocating certain income of large multinational corporations (Pillar One) and coordinate the implementation of a new global minimum tax (Pillar Two). As the details of this agreement have emerged, however, it has become clear that global implementation of Pillar Two would both impair the competitiveness of U.S.-based multinationals and erode U.S. corporate tax revenues.

Prejudicial Treatment of Nonrefundable Tax Credits

As the Chamber and others have repeatedly warned, a global minimum tax based on the Pillar Two (GloBE) model rules would hinder the competitiveness of U.S. companies in global markets and subject them to unmitigated double taxation of U.S.-source income by foreign governments. Repeated concerns have been raised about the more favorable treatment granted to refundable tax credits than nonrefundable tax credits under the model rules, even though U.S. business tax credits are traditionally nonrefundable. In this regard, the model rules would directly contravene well-established, bipartisan public policy to responsibly incent domestic research and development activity through nonrefundable tax credits.

OECD and Treasury Department officials have said that the GloBE model rules cannot be changed, but recent developments prove otherwise. Administrative guidance released by the OECD in February created a new special rule for "Qualified Flow-through Tax Benefits" to accommodate the use of tax equity structures relevant to U.S. low-income

housing credits and legacy renewable energy credits. And a second package of administrative guidance released just last week establishes a brand new category of tax credits eligible for favorable treatment under the model rules, "Marketable Transferable Tax Credits," to account for the size and scale of transferable credits arising under the Inflation Reduction Act of 2022. The United States must seize the opportunity demonstrated by these recent changes to renegotiate the treatment of nonrefundable, nontransferable U.S. tax credits under the GloBE model rules.

Detrimental Effect on U.S. Tax Revenues

Another untenable outcome of the Pillar Two negotiations for the United States involves the treatment of our global intangible low-taxed income (GILTI) regime—the prototypical global minimum tax. Despite initial intimations by OECD and Treasury officials that GILTI would be respected as a qualifying income inclusion rule (IIR) under Pillar Two, the administrative guidance released in February provided otherwise. That guidance also established an ordering rule whereby a source country's qualified domestic minimum top-up tax (QDMTT) takes priority over any U.S. GILTI taxes allocated thereto for Pillar Two purposes. As a result, the administrative guidance effectively permits—indeed, encourages—every other country to enact a QDMTT and collectively "soak up" the U.S. GILTI tax base. In other words, the United States effectively negotiated an arrangement to indirectly subsidize foreign tax receipts. The only way to avoid this result under the current rules would be to deny U.S. taxpayers foreign tax credits for their QDMTT liabilities, which would subject many to unmitigated double taxation—an equally untenable result.

A congressional inquiry into how and why the administration would have negotiated such a conspicuously unfavorable deal for U.S. taxpayers and the U.S. fisc is entirely appropriate. With more than 50 countries now in various stages of implementing Pillar Two, however, time is of the essence to mitigate Pillar Two's harshest impacts on U.S. interests. We therefore call on Congress and the Biden administration to prioritize meaningful, constructive reengagement in a concerted effort to address these critical issues and ensure America's economic competitiveness.

Sincerely,

Watson M. McLeish
Senior Vice President, Tax Policy
U.S. Chamber of Commerce

cc: Members of the Subcommittee on Tax Policy, House Committee on Ways and Means