

Congress of the United States

Washington, DC 20515

July 31, 2023

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

Dear Secretary Yellen,

We write to you today to express our continued frustration and grave concerns with the Biden Administration's unprecedented and anti-America concessions throughout the OECD global tax negotiations. Rather than consult with Congress, you have chosen to go it alone, undermining American sovereignty and making commitments that you have no authority to effectuate.

It is unacceptable that the Treasury Department has repeatedly failed to consult with Congress on a matter that puts at risk jobs and U.S. tax revenues. The neglect of this constitutional duty undermines the principles of transparency and democratic governance upon which our nation is built. As elected representatives and members of the Ways and Means Committee, we must vehemently protest this disregard for the checks and balances that ensure responsible decision-making and the protection of American interests.

Worse, you have abandoned your sworn duty to protect U.S. interests both domestically and throughout the world. At virtually every step in the negotiations process you have chosen America last. Your concessions during Pillar Two negotiations will result in U.S. companies paying more tax overall, but less to the United States. According to the Joint Committee on Taxation (JCT), the U.S. fisc will lose between \$56 billion and \$122 billion in tax revenue if Pillar Two is adopted globally.¹ The message that you and the Administration are sending is clear: foreign governments win, while U.S. companies and taxpayers lose.

The United States was the first—and until very recently, the only—country to adopt a global minimum tax, known as Global Intangible Low-Taxed Income (GILTI). Rather than protect or grandfather GILTI as an acceptable minimum tax under Pillar Two, the Administration made promises to the OECD on GILTI changes that were not even possible under unified Democrat control. What's more, Treasury made a series of inexplicable concessions that would: (1) allow foreign governments to impose a tax on an American company's U.S. profits under the Undertaxed Profits Rule (UTPR), which violates tax treaties and disregards U.S. sovereignty; (2) fail to protect congressionally provided tax incentives including the research and development tax credit, the low-income housing tax credit, the new markets tax credit, and the foreign derived intangible income deduction, while condoning corresponding European credits; and (3) encourage foreign countries to use a "top-up tax" known as the Qualified Domestic Minimum Top-up Tax (QDMTT) to capture significant portions of tax that is subject to U.S. GILTI.

Congress will not tolerate the Biden Administration's undermining of American tax sovereignty, American businesses, and the American economy, as evidenced by the recent introduction² of the *Defending American Jobs and Investment Act* (H.R. 3665). This Act protects the United States by enacting provisions which would increase withholding taxes on corporations and wealthy individuals from countries that impose extraterritorial taxes including, but not limited to, the UTPR. We will not stand idly by and allow our congressionally approved tax incentives to be undermined or allow our

¹ https://www.finance.senate.gov/imo/media/doc/118-0228b_june_2023.pdf

² This Act was introduced by all 25 Ways and Means Republican Members.

GILTI tax collections to disappear – adding to the deficit – as attempted in a shocking February 2023 Model Rule ordering change³ that relegates GILTI to the back of the line.

Just as with Pillar Two, in Pillar One negotiations the Biden Administration is again ignoring the reality that the Constitution provides Congress with the sole authority “to lay and collect taxes”⁴.

You have ignored numerous congressional requests for estimates of the economic impacts on U.S. companies and U.S. tax collections due to reallocating profits to jurisdictions based on end market sales rather than based on where the profit is earned, as required under current law renewed most recently during the Tax Subcommittee’s Hearing on *Biden’s Global Tax Surrender Harms American Workers and our Economy*⁵. The failure to provide these economic impact estimates can mean only one of two things. First, you are recklessly negotiating a novel global agreement of unprecedented proportions without knowing its impact on U.S. businesses, U.S. tax collections, and the U.S. economy. Alternatively, you are intentionally withholding the information from Congress. Either way, it is an egregious dereliction of your sworn obligation to confer with Congress and undermines your ability to best represent the interests of the United States and its citizens.

We are equally disturbed that the Biden Administration appears poised to again put America last in its Pillar One negotiations, as it did with Pillar Two. It is our understanding that if implemented, Pillar One would reallocate the profits of approximately 100 companies – the majority of which are U.S. companies. It is unproductive that the Biden Administration would consider agreeing to replace discriminatory digital service taxes with something that so disproportionately targets U.S. businesses.

Furthermore, it is our understanding that Pillar One’s marketing and distribution safe harbor (MDSH) is hardly safe for U.S. businesses operating under franchise or split-ownership structures. The failure to adequately account for all taxes paid in market jurisdictions under franchise or split-ownership structures would result in U.S. companies over-allocating profits to market jurisdictions with the same appalling result: U.S. businesses will pay more taxes to foreign jurisdictions, and the U.S. government will collect less in tax revenue.

Given the gravity of the issues raised in this letter, it is imperative that the Treasury Department engage in robust consultations with Congress, provide Congress with previously and repeatedly requested revenue and economic impact data, and reverse Treasury’s many anti-U.S. business, anti-U.S. tax collection, and anti-U.S. economy concessions.

We eagerly await your immediate response. The future of American businesses and our economy hangs in the balance, and decisive action is required to protect the livelihoods of millions of hardworking Americans.

Sincerely,



Ron Estes
Member of Congress



Carol D. Miller
Member of Congress

³ <https://www.oecd.org/tax/beps/agreed-administrative-guidance-for-the-pillar-two-globe-rules.pdf>

⁴ The Constitution of the United States, Article I, Section 8, Clause 1

⁵ Wednesday, July 19, 2023, at 2:00 PM in Room 1100 of the Longworth House Office Building



Adrian Smith
Member of Congress



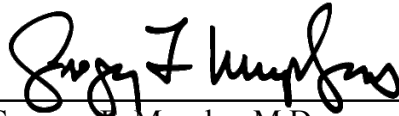
Brad R. Wenstrup, D.P.M.
Member of Congress



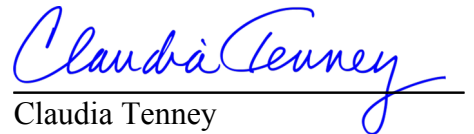
A. Drew Ferguson IV
Member of Congress



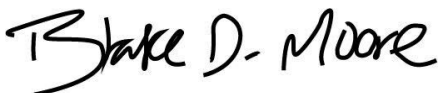
Lloyd Smucker
Member of Congress




Gregory F. Murphy, M.D.
Member of Congress



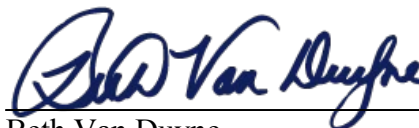
Claudia Tenney
Member of Congress



Blake D. Moore
Member of Congress



Michelle Steel
Member of Congress



Beth Van Duyne
Member of Congress



Randy Feenstra
Member of Congress

A handwritten signature in black ink, appearing to read 'Mike Carey', written over a horizontal line.

Mike Carey
Member of Congress