March 28, 2022

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

Dear Secretary Yellen:

The undersigned organizations represent thousands of U.S. businesses and nonprofit organizations actively engaged in a broad range of economically and socially desirable activities encouraged by Congress and the Administration through the tax system.

Our members' activities include investing in research and development, investing in affordable housing, hiring disadvantaged workers, investing in distressed communities, investing in renewable energy, exporting high-value goods and services, and funding state and local infrastructure projects. These activities — which both Republican and Democratic Administrations and Congresses have consistently promoted through targeted tax credits, deductions, and exemptions — result in significant benefits to the economy and to society at large.[1] In the absence of these tax incentives, the economic return from these activities would be insufficient to sustain the current level of investment despite their high economic and social value.

To sustain these activities, immediate action is needed to modify recent OECD Model Rules for implementing a 15-percent global minimum tax.[2] Under the Model Rules calculation for Effective Tax Rates (ETR), non-qualified tax incentives or tax credits could reduce the effective corporate tax rate of a company on its U.S.-source income below 15 percent, even though the statutory tax rate is well above 15 percent. This would result in the application of the Model Rules' "UTPR" for these companies, causing additional taxes to be payable on U.S.-source income in countries that have enacted the rule.[3] In the absence of modifications to the Model Rules, the tax incentive to perform these targeted U.S. activities will be sharply diminished, resulting in less investment and diminished economic and social benefits for the United States.[4]

The absence of protection in the Model Rules for these tax incentives stands in stark contrast to actions taken by the Administration and Congress to protect these incentives in other legislation.

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[1] Examples of these long-standing and bipartisan tax incentives include the tax-exemption of interest paid on state and local government debt (included in the 1913 income tax), accelerated depreciation (enacted in 1954), the research credit (enacted in 1981), the low-income housing credit (enacted in 1986), the renewable energy production credit (enacted in 1992), the work opportunity tax credit (enacted in 1996 to replace an earlier version enacted in 1978), the New Markets Tax Credit (enacted in 2000), the carbon sequestration tax credit (enacted in 2008), and the deduction for foreign-derived intangible income (enacted in 2017).

[2] OECD, *Tax Challenges Arising from the Digitalisation of the Economy: Global Anti-Base Erosion Model Rules (Pillar Two)*, December 2021.

[3] For a U.S. company with a foreign parent, the Model Rules' Effective Tax Rate computation would result in application of the foreign country's income inclusion rule, which would also negate the U.S. tax incentive.

[4] The Model Rules do not extend this disadvantageous treatment to refundable tax credits. However, none of the existing U.S. business tax credits are refundable, unlike the business credits offered in some other countries.

For example, the 15-percent minimum tax on the book earnings of large corporations proposed by the Administration and adopted by the House of Representatives in H.R. 5376, the Build Back Better Act, preserves the full value of incentive tax credits. Likewise, in consideration of revisions to the Base Erosion and Anti-Abuse Tax (BEAT) in H.R. 5376, the House of Representatives expanded on the current-law exemptions of incentive tax credits from the BEAT, thereby preserving the full value of these credits.

Based on recent IRS data, U.S. companies within scope of the OECD Model Rules claim approximately 70% of the incentive tax credits and 80% of the tax-exempt interest reported by all companies.[5] If the OECD Model Rules discourage companies that currently are making these investments from continuing to do so, there is not an alternative pool of capital from other companies or investors to make these investments. Any companies and investors that continue to make these investments will demand a higher return to compensate them for the potential loss of tax benefits from these incentives. Further, to the extent these targeted investments continue to be made by taxpayers, U.S. tax incentives that are recaptured by the UTPR would not end up increasing U.S. tax revenues but would instead increase foreign tax revenues as a result of higher foreign taxes being imposed on the foreign operations of U.S. companies.

The OECD Model Rules directly contravene the intent of current and past Administrations and Congresses to encourage targeted investments and activities that generate high economic and social benefits in the United States.

We strongly urge the Treasury Department to negotiate modifications to the OECD Model Rules that will preserve the full value of these important, bipartisan, and long-standing tax incentives.

Sincerely,

Alliance for Competitive Taxation
American Bankers Association
American Chemistry Council
American Council of Life Insurers
American Forest and Paper Association
American Petroleum Institute
American Property Casualty Insurance Association
Business Roundtable
Global Business Alliance
Information Technology Industry Council
Institute of International Bankers
National Association of Manufacturers
National Foreign Trade Council
Securities Industry and Financial Markets Association
Silicon Valley Tax Directors Group
Software Finance and Tax Executives Council
TechNet
U.S. Chamber of Commerce
United States Council for International Business

[5] Companies within the scope of application of the OECD Model Rules are those with global revenues of EUR 750 million or more.

C: Assistant Secretary Batchelder
Deputy Assistant Secretary Grinberg
Deputy Assistant Secretary Murillo
Rebecca Kysar
Kevin Nichols
Chairman Neal
Ranking Member Brady
Chairman Wyden
Ranking Member Crapo