DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.

ASSISTANT SECRETARY
FOR LEGISLATIVE AFFAIRS

March 29, 2022

The Honorable Mike Crapo
United States Senate
Washington, DC 20510

Dear Senator Crapo:

Thank you for your February 16, 2022, letter regarding the Organisation for Economic Co-operation and Development/G20 political agreement on reforming the international tax system.

The OECD agreement is a once-in-a-generation accomplishment for economic diplomacy that stabilizes the eroding international tax system, levels the playing field for American business, and ends the race to the bottom on corporate tax rates that has disadvantaged workers and families.

As your letter mentions, the Pillar 2 Model Rules as released in December 2021 contain an enforcement rule, known as the UTPR, which ensures that countries follow through with their commitment to enact the global minimum tax. This rule also acts as a powerful incentive to join the global minimum tax regime. UTPR has been a feature of Pillar 2 for a number of years, and was detailed in the publicly available 2020 Pillar 2 Blueprint, with input by and support from the prior administration. To the extent that a multinational entity (MNE) and its subsidiaries in any country do not pay an effective tax rate of 15 percent, countries that have enacted a global minimum tax, including the UTPR, can allocate among themselves a top up tax to bring the effective tax rate to that level if the MNE has operations in their jurisdictions.

At the same time, the Pillar 2 Model Rules recognize that jurisdictions must be able to continue implementing important incentives through the tax system. Indeed, in the 2020 Pillar 2 Blueprint as negotiated by the prior administration, refundable tax credits increase the taxpayer's income rather than reduce the taxes treated as paid by the taxpayer. This general rule is included in the recently released Model Rules and its Commentary, with this Administration insisting on clarification that credits, like the direct pay energy credits in the House-passed Build Back Better legislation, mitigate the reduction of a corporation's effective tax rate, and therefore generally do not give rise to liability under other countries' UTPRs.

The Biden Administration remains committed to implementing the international agreement and to ensuring that U.S. companies continue to benefit from important tax incentives that promote U.S. jobs and investment. This commitment is further evidenced in our recently released General Explanations of the Administration's Fiscal Year 2023 Revenue Proposals (also known as the "Greenbook"). Similar to the BEAT reforms in the House-passed Build Back Better

legislation, the Greenbook's UTPR proposal would enforce the global minimum tax against foreign MNEs by denying U.S. tax deductions to low-taxed entities. It would do so to the extent an MNE is not paying an effective tax rate of at least 15 percent in each jurisdiction in which the MNE has profits. Furthermore, the Greenbook's UTPR proposal would apply a domestic minimum tax (a qualified domestic minimum top-up tax or QDMTT under the Pillar 2 framework) that would ensure that if an in-scope U.S. company had an effective tax rate below 15 percent, the United States alone would collect the revenue on our own companies, thereby turning off any other country's UTPRs.

The Greenbook UTPR proposal would ensure that when another jurisdiction adopts a UTPR, taxpayers would continue to benefit from important tax incentives that provide U.S. jobs and investment, in a manner consistent with the framework outlined by the Pillar 2 Model Rules and Commentary. The direct pay structure of the green credits as mentioned above is one model. Some form of refundability or monetization is another. It is also worth noting that the number of U.S. taxpayers even potentially affected by UTPR is quite small. The global agreement provides that a UTPR may only apply to the largest and most profitable multinational companies that are paying less than a 15 percent effective tax rate in each jurisdiction in which they operate. Only 0.02 percent of U.S. C Corporations are in the scope of Pillar 2 as a percentage of U.S. Corporate returns.

We very much look forward to working with Congress on implementing these important proposals, which would bring the historic achievement of a level playing field for U.S. businesses, all while preserving the benefits of incentives for U.S. jobs and investment.

I appreciate that you are concerned about the revenue effects of the agreement for the U.S. fisc. One important way that the agreement affects U.S. corporate tax policy is by reducing the competitiveness concerns associated with the U.S. corporate tax rate. Prior to the agreement, any country could choose a zero (or single digit) corporate tax rate, and many did. Now, with the "bottom" tax rate raised to 15 percent, the differential between any U.S. rate and the lowest foreign rates will be smaller, reducing the base erosion and inversion concerns that some raise regarding higher U.S. tax rates, because the tax differential between our rate and rates abroad will be smaller.

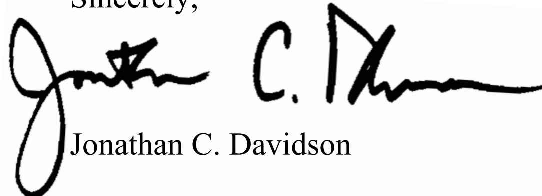
In addition, as you can see from the General Explanations of the Administration's Fiscal Year 2023 Revenue Proposals, Treasury projects that replacing the Base Erosion Anti-Abuse Tax (BEAT) with the above proposals would raise more than $200 billion above and beyond the substantial revenue raised by the BEAT reforms in the House-passed Build Back Better legislation. This is a significant amount of revenue over the ten-year budget window. At the same time, U.S. companies will benefit from competing on a level playing field.

I also appreciate your engagement with the literature on the global tax deal. I would note that the Oxford University Centre for Business Taxation paper cited in your letter concludes that, although Pillar 2 could incentivize some countries to reduce their pre-existing corporate tax, it also incentivizes them to replace it with a QDMTT, which is another form of corporate income taxation. In other words, according to the authors, Pillar 2 creates a floor on effective tax rates,

tax competition, and total tax collections, even if accomplished through a new type of corporate income tax consistent with Pillar 2.

We appreciate your continued engagement on the OECD negotiations. We look forward to keeping you updated and consulting with you throughout the remainder of this process, as we have over the course of the Administration. We also look forward to working together to implement this historic deal. If you have any questions, please direct your staff to contact Aruna Kalyanam, Deputy Assistant Secretary for Legislative Affairs, at (202) 622-9733.

Sincerely,



Jonathan C. Davidson

cc: The Honorable Charles E. Grassley
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The Honorable Bill Cassidy, M.D.
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