



DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C.

ASSISTANT SECRETARY  
FOR LEGISLATIVE AFFAIRS

March 1, 2022

The Honorable Mike Crapo  
United States Senate  
Washington, DC 20510

Dear Senator Crapo:

Thank you for your December 22, 2021 and February 16, 2022 letters regarding the Organisation for Economic Co-operation and Development/G20 political agreement on reforming the international tax system. This letter responds to the December 22, 2021 letter, as it primarily relates to Pillar One. A response to the February 16, 2022 letter, which speaks to Pillar Two, is forthcoming.

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. Congressional input is a priority for Treasury and yours has been critical to this process. Our Office of Tax Policy has briefed congressional staff on a bipartisan, bicameral basis six times during 2021 and has provided multiple bipartisan briefings on the negotiations with the Senate Finance Committee. That engagement has been valuable in crafting our negotiating stances and is ultimately reflected in the substance of the current agreement. It is also critical for the Administration to work closely with Congress in determining the best approach to implementing any Pillar One agreement. As the OECD releases consultation drafts for the building blocks of the multilateral instrument, we have begun and will continue to undertake more detailed discussions. Pillar One implementation should respect the prerogatives of the two branches of government and should be bipartisan – particularly in light of the policy objectives that Pillar One meets.

Your letter notes that a key bipartisan objective in Pillar One is the withdrawal of digital services taxes (DSTs) to ensure a level playing field for U.S. businesses. Treasury shares this goal and believes that improving the stability and certainty of the international tax system will allow U.S. businesses to compete and win on a level playing field. Treasury has held the position that the scope of Pillar One must not be limited to businesses or sectors in which U.S. businesses are dominant. Indeed, a key element in the political agreement was a comprehensive scope for Pillar One, that went beyond the sectors targeted in the 2020 Pillar One Blueprint, which was published with the support of the prior Administration.

In an accomplishment largely viewed as unachievable, the administration has also secured commitments from 137 countries that the agreement will require all parties to remove DSTs and any similar measures, and not introduce such measures in the future. These commitments will

protect all companies, not just those within the scope of Pillar One. We have also negotiated transitional agreements with seven countries to ensure that U.S. businesses that are in scope of Pillar One will receive credit against their Pillar One liability for taxes paid under existing DSTs. These aspects of the agreement should put an end to tax and trade disagreements with our European allies that could otherwise hamper American economic growth and business investment.

Regarding your request for additional clarity on the impact of Pillar One on U.S. revenues, we continue to believe that any U.S. revenue impact would be relatively small to non-existent. As we have noted, the U.S. is a large headquarters jurisdiction, but it is also a large market jurisdiction, and many factors affect the baseline for the Pillar One estimates. As you have indicated, important design elements remain open in the negotiations, and it is premature to provide a precise impact assessment. For example, the negotiations regarding revenue sourcing and elimination of double taxation are ongoing. The parameters for elimination of double taxation are particularly fluid. Several methods are under discussion, and the design of a related element, the so-called marketing and distribution safe harbor (MDSH), is also unresolved. Many possible permutations remain, and the amount of profit that would be reallocated into and out of the United States turns on the outcome of these negotiations.

To our knowledge, no country has published interim data of its estimates of Pillar One reallocation, or provided such estimates to its parliament before Pillar One negotiations are complete, presumably because doing so could undermine that country's national interests and its negotiating position. We have previously communicated this concern to your staffs in discussions and bipartisan briefings and remain committed to provide comprehensive estimates around these issues when doing so would not undermine leverage.

We do want to highlight one area where tradeoffs arise between the interests of American businesses and the U.S. fisc and want to solicit input from you as to the most appropriate path forward in connection with these tradeoffs. Specifically, decisions are required and tradeoffs turn on the interaction between the MDSH and the methodology chosen for the elimination of double taxation. We understand that a robust MDSH is important to the U.S. business community, as evidenced in U.S. submissions to the Treasury. Moreover, the MDSH can protect the US fisc over the long term by limiting aggressive transfer pricing positions taken by foreign sovereigns. Both the Senate and the House have heard testimony from independent experts that aggressive transfer pricing audits are increasing every year. However, depending on the design of the MDSH, when compared with the current international tax environment baseline, the MDSH may reduce U.S. revenue. Deciding whether a robust MDSH is important therefore requires weighing the interests of the U.S. business community and the longer-term benefit of stabilizing the international tax system against static revenue estimate consequences.

Several other important issues remain open in the Pillar One negotiations. We have initiated a public consultation process at the OECD intended to bring these issues to light. Moreover, as the Pillar One workstreams begin to bear fruit, we will continue to reach out to the Hill and have also encouraged stakeholders to participate robustly in the public consultation process.

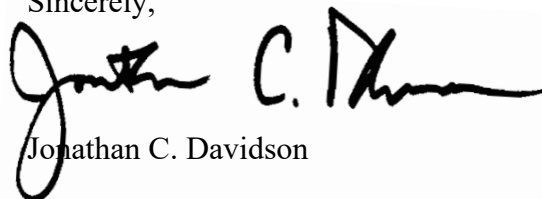
Although there is much to resolve, there is a high level of political agreement among relevant countries. Treasury remains committed to doing our utmost to meet the implementation timeline agreed upon in October. As you note in your letter, the objectives of the Pillar One agreement are important to U.S. businesses, and Treasury is committed to delivering on those objectives as quickly as possible.

We also appreciate your acknowledgement of the importance of Pillar Two and other countries' commitment to implement it. In particular, your letter notes that the United States has already implemented a global minimum tax and efforts to renegotiate the Pillar Two agreement would disadvantage U.S. businesses. In that regard, you asked specifically about China. China and all other sovereigns have made the same agreement regarding implementation of the two pillars. Moreover, the agreement includes China's acquiescence that if it does not impose a qualifying income inclusion rule, foreign sovereigns will impose an enforcement tool – the undertaxed payment rule -- against all Chinese MNCs to the extent they are not paying tax at an effective rate that levels the playing field. This is not the status quo and represents major progress on competitiveness concerns expressed by Senators from both parties.

Lastly, we note that the European Commission has released a proposed directive for European Union (EU) Member States to implement Pillar Two. We also note that there is a high level of political commitment within the EU to implement the directive. Moreover, Pillar Two is designed to ensure that if one or more countries do not implement the rules, multinationals parented in those countries are still subject to the minimum tax under the under-taxed payments rule (UTPR). As a result, there will not be an advantage for businesses parented in a jurisdiction that does not implement the rules.

We appreciate your engagement on the OECD negotiations. We look forward to keeping you updated and consulting with you throughout the remainder of this process, as the Pillar One and Two rules and instruments come into focus. 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,

A handwritten signature in black ink, appearing to read "Jonathan C. Davidson". The signature is fluid and cursive, with the first name "Jonathan" being particularly prominent and stylized.

Jonathan C. Davidson

cc: The Honorable Charles E. Grassley  
The Honorable John Cornyn  
The Honorable John Thune  
The Honorable Richard Burr  
The Honorable Rob Portman  
The Honorable Pat Toomey  
The Honorable Tim Scott  
The Honorable Bill Cassidy, M.D.  
The Honorable James Lankford  
The Honorable Steve Daines  
The Honorable Todd Young  
The Honorable Ben Sasse  
The Honorable John Barrasso, M.D.