May 22, 2017

Secretary Steven T. Mnuchin
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

Dear Secretary Mnuchin,

We, the undersigned U.S. trade associations representing businesses employing millions of U.S. workers, are writing to request that the Administration take immediate action to ensure that tax principles that would adversely affect U.S.-based multinational companies and the rights of the United States to tax the income earned by such companies are not encouraged or endorsed by international bodies focusing on taxation rules, particularly those applicable to businesses operating in the digital economy. The necessary actions relate to the upcoming leaders' meetings of the G7 (May 26-27 in Taormina, Italy) and the G20 (July 7-8 in Hamburg, Germany) and to the nomination by May 30 of a U.S. delegate to participate in the UN's Committee of Experts on International Cooperation in Tax Matters.

As you know, considerable pressure has been applied by other countries to modify the existing international framework of taxation laws in a way that would enhance the taxation rights of other countries at the expense of the United States and its interests. We are concerned that recently proposed "special measures" targeted at the digital economy, could reduce tax payments to the United States by U.S.-headquartered international companies and disadvantage U.S. companies attempting to compete overseas by increasing their tax obligations to the jurisdictions that adopt such measures.

We have been constructively engaged in the OECD/G20 Project on Base Erosion and Profit Shifting (BEPS) since that project began in 2013. That project resulted in a 2015 package of recommendations to improve internationally agreed corporate tax principles, and we favor consistent implementation of the outcomes recommended under the various BEPS action items. The G20 has committed to implementing the BEPS action items; their 2016 Leaders' Communiqué provided: "We support a timely, consistent and widespread implementation of the BEPS package"[1]. At this juncture, we are concerned that rather than consistently implementing the BEPS recommendations, the BEPS implementation process and related activities are leading to a reconsideration of the newly agreed international tax principles in multiple forums. The proliferation of these forums, as well as the deep engagement therein of many of the United States' economic competitors, underscores the need for the United States to participate in all of these debates to ensure that in all cases the outcome protects the interests of the United States and U.S.-based companies.

Recent developments at the G7 substantiate these concerns. Specifically, the recent G7 Finance Ministers Communiqué[2] could be interpreted by other countries as expanding the U.S. commitment by setting a goal of a "global level playing field".

The United States needs to be vigilant to ensure that nuanced changes in the wording of the communiqués emanating from bodies such as the G7 and the G20 do not commit the United States to support changes to the international tax system that run counter to U.S. interests. For example, the 2016 G7 Leaders' Declaration[3] provided:

> Steady, consistent and concerted implementation of the G20/OECD Base Erosion and Profit Shifting (BEPS) package is critical to restore public trust in tax systems and to achieve a global level playing field for all engaged in economic activities.

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[1] G20 2016 Leaders' Communiqué, paragraph 19.
[2] G7 2017 Finance Ministers' Communiqué
[3] G7 2016 Leaders' Declaration,

By contrast, paragraph 16 of the May 2017 G7 Finance Ministers' Communiqué provides:

> We remain committed to work for globally fair and modern tax systems and to achieve a global level playing field for all engaged in economic activities. To this end, timely, consistent and widespread implementation of the G20/OECD BEPS (Base Erosion and Profit Shifting) package is crucial.

In the 2016 Declaration, achieving a global level playing field is clearly the consequence of implementing the BEPS package. There is not a separate obligation to achieve a global level playing field. By contrast, the 2017 Finance Ministers' Communiqué does establish such a separate obligation, with implementation of the BEPS package merely a step towards that end. The 2017 G7 Leaders' Declaration should clarify that the obligation to achieve a global playing field is inseparable from timely, consistent, and widespread implementation of the BEPS package, so that the United States cannot be deemed to have undertaken an obligation to endorse tax changes not covered by the BEPS package. Without such clarity, there is a risk that the goal of achieving a global level playing field could be used to justify taxes that discriminate against persons that operate outside of a particular jurisdiction.

It is also important to be clear about the developments with respect to the taxation of the digital economy. At the conclusion of the most recent G20 Finance Ministers' meeting in March of this year, the finance ministers issued a communiqué which provided:

> As part of the BEPS project, we have undertaken a discussion on the implications of digitalisation for taxation in the OECD Task Force on the Digital Economy (TFDE). We will further work on this issue through the TFDE and ask for an interim report by the IMF and WBG Spring Meetings 2018.[4]

The recently issued G7 Finance Ministers' Communiqué also makes reference to the work of the TFDE. That communiqué provides:

> We recognise the importance of monitoring and evaluating the developments related to the digitalization of the economy, and, depending on conclusions of the work by the OECD Task Force on the Digital Economy (TFDE), developing policy options, as appropriate, to address related tax challenges with a consistent approach. In this context, we look forward to the interim report of the OECD TFDE in 2018.

We are concerned that the 2018 interim report will recommend special measures with respect to the taxation of the digital economy – well in advance of the completion by the TFDE of the evaluation of the impact of the other 14 BEPS actions items on the digital economy. The BEPS reports were issued at the end of 2015. BEPS implementation is ongoing and important pieces – the multilateral instrument, for example – have not yet been adopted. It is difficult to see how the interim report could reach conclusions on whether the BEPS changes deal effectively with the challenges of the digital economy when many of those changes have not even begun to take effect. It is essential that this evaluation take place before conclusions are reached or recommended are made.

These issues will be addressed in upcoming meetings. As you know, a G7 Leaders' meeting is scheduled for May 26-27 in Taormina, Italy, and a G20 Leaders' meeting is scheduled for July 7-8 in Hamburg, Germany. The communiqués for these meetings are presumably already under negotiation. We ask for your immediate attention to these matters to prevent language adverse to U.S. taxation rights and U.S. business interests from being included in these communiqués, including language with respect to taxation of the digital economy.

The digital economy continues to be the primary focus of the BEPS project and has the "honor" of being addressed in BEPS Action 1. Digital economy businesses based in the United States, because they are the most successful and profitable digital economy businesses in the world, are primary targets for foreign jurisdictions seeking to raise additional tax revenue without the fear of commensurate reciprocal taxation by the United States on their resident companies. The Administration needs to act immediately to protect against the potential adverse consequences caused by this imbalance.

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[4] G20 2017 Finance Ministers' Communique, paragraph 10.

A first step would be to require the OECD, its member countries, and non-member countries participating in the OECD's Inclusive Framework[5] to abide by the guidance contained in the BEPS Action 1 report on The Tax Challenges of the Digital Economy, which requires monitoring the general impact of the other 14 BEPS action items and the preparation of a report on the results of that monitoring by 2020. No special tax measures adversely impacting the digital economy should be considered until that report is completed and business input is requested and evaluated.

The OECD is also initiating a major horizontal project on the digital economy, which will include taxation issues as well as trade and intellectual property issues of significant economic importance to the United States. The United States must also ensure that this process does not adversely impact U.S. interests.

In addition, the UN Committee of Experts on International Cooperation in Tax Matters has put the taxation of the digital economy on its agenda for its next 4-year term, beginning in July 2017. It is critical that the United States nominate a U.S. government official to participate in the UN committee by the May 30, 2017 deadline and that the United States take an active role in any discussions on the taxation of the digital economy. The intense focus on taxation of the digital economy puts U.S.-based companies and the U.S. tax base at greater risk. We expect that some countries hope to use the UN's focus on the digital economy to shift the balance of taxing rights between so-called "source" and "residence" countries. Such a shift would shift taxing rights away from the United States and towards developing and emerging markets, as well as towards other developed countries that are greater consumers than exporters of digital economy goods and services. Numerous foreign jurisdictions, ranging from Australia to India to the United Kingdom, are already enacting domestic laws imposing special measures primarily impacting U.S. digital economy companies selling into those markets. These unilateral changes, as well as inconsistent or non-reciprocal changes – changes that countries only institute when they work to their advantage – will impose significant adverse taxes abroad on U.S.-based digital economy companies and reduce revenues for the U.S. Treasury.

We believe the U.S. government should continue to support the existing international tax framework against attempts to shift taxing jurisdiction. It is therefore very important that the U.S. government remain engaged in these forums to ensure that taxation of U.S.-based businesses, including digital economy businesses, is based on common application of internationally agreed standards – including standards that do not single-out U.S.-based digital economy companies.

The OECD acknowledged in its BEPS Action 1 report on The Tax Challenges of the Digital Economy that the digital economy reflects the broader economy and that the digital economy cannot be ring-fenced from the broader economy. Thus, special measures for the digital economy, whether developed by the G7, the G20, the OECD, the UN, or individual countries, should be rejected. We urge you to ensure that the upcoming G7 and G20 Leaders' Communiqués do not encourage or recommend any special measures for the digital economy or other measures adverse to U.S. interests. We also urge you to ensure continued active U.S. participation in OECD and UN committees responsible for ongoing discussions of taxation of the digital economy.

Sincerely,

Information Technology Industry Council
National Foreign Trade Council
U.S. Chamber of Commerce
U.S. Council for International Business

cc: Thomas West, Acting Assistant Secretary (Tax Policy)
Shahira Knight, National Economic Council and Special Assistant to the President for Tax and Retirement Policy

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[5] The Inclusive Framework is the group of over 100 countries and jurisdictions that have been brought together by the OECD to collaborate on the implementation of the BEPS package (http://www.oecd.org/tax/beps/beps-about.htm).