



February 15, 2018

The Honorable Steven Mnuchin
Secretary, United States Department of the Treasury
1500 Pennsylvania Ave, NW
Washington, DC 20220

Dear Secretary Mnuchin:

On behalf of National Taxpayers Union's (NTU's) supporters across the nation, I write first to offer our sincere thanks for your diligent attention to many issues surrounding the implementation of the Tax Cuts and Jobs Act (TCJA). Your announcement at today's hearing of the House Ways and Means Committee that a new online withholding calculator will be made available next week is a welcome development for communicating to the American people the benefits of this landmark law.

I also write to commend you for your remarks at yesterday's hearing of the Senate Finance Committee regarding Treasury's vital role in defending American taxpayers from predatory tax administration policies of other nations, especially the European Union (EU), the Organization for Economic Cooperation and Development (OECD), and their members. Specifically, when Chairman Hatch expressed the concern of some of his colleagues over an "emerging aggressive posture targeting American companies" on the part of the EU, you replied that Treasury was engaging with European officials and "making sure that we fairly represent U.S. companies from being unfairly targeted." We are most encouraged by your response, which has been long overdue from the U.S. Government.

As you may know from our recent communications [to you](#) and [to Acting IRS Commissioner Kautter](#), NTU often focuses on the administrative details of the tax system, and to a much greater degree than many of our peers in the tax policy world. For this reason, we have been greatly concerned not only over the behavior of the European Commission (EC) toward "state aid" cases, but also EU member nations' harsh tactics against U.S. companies operating to various degrees in the region.

The latest schemes, apparently led by France, would contemplate exotic new approaches to taxing what is called "stateless income," despite the fact that TCJA thoroughly and forthrightly addressed this issue through deemed repatriation provisions and a new levy on Global Intangible Low-Tax Income. Such approaches could include creating taxable "nexus" in countries where U.S. firms have no physical presence, conjuring up a taxable definition of "value" companies gain from European residents, and heaping gross receipts levies upon the existing burdensome tax structure. All of these proposals amount to enrichment of European treasuries as well as protectionism of European businesses.

NTU has both a global and a domestically-oriented perspective on the ominous direction that EU and OECD proposals have taken. As a founder and Executive Committee member of the World Taxpayers Associations (WTA), a consortium connecting taxpayer protection organizations from 60 countries, we appreciate the damage this sort of mischief on the part of foreign tax officials could inflict on rule of law around the world. WTA's European members, many of whom have already voiced opposition to proposals for massive supranational EU taxes, are in my opinion likely concerned about the implications for their own tax levels of allowing EU officials such massive grants of power.

Furthermore, [as I wrote](#) in October 2016, the activities of the European Commission, the EU, and the OECD all ultimately have a direct impact on the well-being of our own citizens:

For more than two years, EU politicians have, [through many types of harassment](#), set their sights on the properly established tax arrangements between member countries and a number of U.S. firms such as

Amazon, Coca-Cola, Disney, Facebook, Google, McDonald's, Microsoft and Starbucks. ... Globally engaged U.S. businesses, including large multinationals, [directly account for](#) 23.3 million jobs in our country; when they hurt, the rest of us are impacted. Regardless of whatever feelings Americans may have toward particular corporations or brands, they need to start worrying over the EU's penchant for finding deep pockets and picking them. [Millions of] U.S. shareholders will see lower returns, customers will see higher prices, and both job-seekers and current workers will suffer from lost opportunities or smaller compensation increases.

Even prior to my commentary, your predecessors at Treasury voiced objections in a [white paper](#) asserting the EU was using circular logic and "previously unarticulated theories" to build its case for "recoveries" retroactively, which would "undermine the G20's efforts to improve tax certainty." Today, the "theories" under contemplation overseas are far more deleterious than those criticized in that white paper. We believe the time has come for this Administration to consider every tool at its disposal for defending our nation's taxpayers -- and in doing so, ultimately defend the interests of taxpayers around the world. These steps include:

1. Signaling that the U.S. could suspend or minimize participation in new international tax compliance projects, pending an evaluation of their fairness to all taxpayers;
2. Express the U.S.'s prerogative against publication of OECD's soon-to-be-released interim report on "Tax Challenges Raised by the Digitalization of the Economy," should that report contain such egregious trespasses on established conventions of taxation.
3. Communicate in strongest possible terms to the EU and OECD that the United States considers base erosion concerns these entities expressed prior to passage of TCJA to have been substantially addressed. Furthermore, the proposals currently being considered by these entities are entirely unjustified in a post-TCJA environment.
4. Reserve the right to invoke Section 891 of the Tax Code, which permits the president to double the tax rate on the income earned here by any individual or corporation of a foreign country found to be subjecting our own citizens or businesses to "discriminatory or extraterritorial taxation."

NTU does not make this fourth point lightly. As in trade policy, the U.S. must guard against overzealous responses to other countries' decisions. Unfortunately, should the EU's threats become reality, we believe public officials must have every means at hand to mount an effective defense. Indeed, a [thorough analysis](#) in 2016 from Georgetown University law Professor Itan Grinberg determined that Supreme Court precedent in U.S. tax law could allow Section 891 to apply to the EU's actions collectively, not just toward one country. He also noted that the "collateral damage" of prying open tax treaties, a suggested alternative, "would be very substantial" – actually much *harsher* than applying Section 891. His conclusion was that the Executive Branch should be "reluctant to invoke" this law, but it "constitutes a plausible source of leverage."

In closing, Mr. Secretary, we understand that Treasury will very soon formulate a policy response to the proposals reportedly under advisement in Europe. Please know that you have NTU's full support for the stance you expressed earlier this week at the Senate Finance Committee hearing, and that we wish to offer all advice and assistance we can in the coming days. Thank you for your consideration.

Sincerely,



Pete Sepp
President