Ministerio de Hacienda
Y Función Pública

**Peter Altmaier**
Federal Minister of Finance

**Bruno Le Maire**
Minister of Economy
and Finance

**Philip Hammond**
Chancellor
of the Exchequer

**Pier Carlo Padoan**
Minister of Economy
and Finance

**Cristóbal Montoro Romero**
Minister of Finance
and Civil Service

**Secretary of the Treasury**
**Mr. Steven Turner Mnuchin**
Department of the Treasury
1500 Pennsylvania Avenue, NW
WASHINGTON, D.C. 20220
USA

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*Copies:*

*Senator Orrin Hatch*
*Chairman of the U.S. Senate Finance Committee, Chairman of the Joint Committee on Taxation*

*Congressman Kevin Brady*
*Chairman of the House Committee on Ways and Means, Vice-Chairman of the Joint Committee on Taxation*

*Senator Mike Crapo*
*Chairman of the U.S. Senate Committee on Banking, Housing, and Urban Affairs*

*Congressman Jeb Hensarling*
*Chairman of the House Financial Services Committee*

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*Congressman Paul Ryan*
*Speaker of the U.S. House of Representatives*

*Senator Ron Wyden*
*Ranking Member of the U.S. Senate Finance Committee*

*Senator Sherrod Brown*
*Ranking Member of the U.S. Senate Committee on Banking, Housing, and Urban Affairs*

*Congressman Richard Neal*
*Ranking Member of the House Committee on Ways and Means*

*Congresswoman Maxine Waters*
*Ranking Member of the House Financial Services Committee*

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*Gary Cohn*
*Director at the National Economic Council*

*Andrew J. Olmem*
*Deputy Director at the National Economic Council*

Dear Secretary Mnuchin,

We approach you in busy times, knowing that you are deeply involved in the legislative process to find a compromise for a major tax reform. The United States is Europe's single most important trade and investment partner, so we are following the debates in your country with utmost interest. While the establishment of a modern, competitive and robust tax system is one of the essential pillars of a state's sovereignty, it is important that the U.S. government's rights over domestic tax policy be exercised in a way that adheres with international obligations to which it has signed-up. The inclusion of certain less conventional international tax provisions could contravene the U.S.'s double taxation treaties and may risk

having a major distortive impact on international trade. We would therefore like to draw your attention to some features of the proposals being discussed that cause significant concerns from a European perspective.

- The excise tax (House bill)

  This proposal provides for an excise tax of 20% on payments to foreign affiliated companies, unless the related foreign corporation elected to treat the payments as income is effectively connected with the conduct of a U.S. trade or business. Given that this measure would impact on genuine commercial arrangements, and would do so only where payments are being made for foreign goods and services, it could discriminate in a manner that would be at odds with international rules embodied in the WTO. The measure would also be inconsistent with existing double taxation agreements on the basis that it would impose a tax on the profits of a non-U.S. resident company that does not have a US permanent establishment. Bearing in mind that almost half of transatlantic trade is intra-company trade, this risks seriously hampering genuine trade and investment flows between our two economies, which remain a central artery of the world economy.

- Base erosion and anti-abuse tax (BEAT, Senate bill)

  This provision would also be poorly targeted at erosion of the U.S. tax base, and would impact on genuine commercial arrangements involving payments to foreign companies that are taxed at an equivalent or higher rate than the U.S. This is most evident in the financial sector where the provision appears to have the potential of being extremely harmful for international banking and insurance business, as cross-border intra-group financial transactions would be treated as non-deductible and subject to a 10% tax. This may lead to significant tax charges and may harmfully distort international financial markets.

  Preventing base erosion is an important goal. However, if the proposals are implemented as currently proposed, they would impact on genuine commercial arrangements which pose minimal risk to the US tax base. By taxing foreign payments on substantial gross payments that underlie more modest net positions, the proposals may result in U.S. operations of foreign financial institutions operating in the U.S. being subject to a greater than 100% effective tax rate or a double taxation, which would have a serious impact on the functioning and development of international financial markets. Moreover, foreign financial institutions are already subject to strict regulatory parameters on the amount of borrowing they can have in the U.S. which limits their scope for artificial profit shifting and base erosion. It should be avoided that the U.S. government taxes intra-group payments necessary to comply with their regulatory obligations (e.g. interest on TLAC debt in the banking industry). In our view, it is of vital importance to ensure that the final version of the provisions will not

impact non-U.S. groups more than U.S. groups. We also see the possibility that some of the proposed measures could constitute unfair trade practice and may discourage non-U.S. financial institutions from operating in the U.S..

- GILTI (Senate bill)

  The Senate proposal provides for a preferential tax regime for "foreign-derived intangible income". In essence, income from the sales or licensing of goods and the provision on services for use outside the US that is deemed to be in excess of the return from tangible assets will benefit from a reduced corporate tax rate of 12.5%. The proposed incentive would subsidize exports compared with the domestic consumption. It could therefore face challenges as an illegal export subsidy under WTO Subsidies and Countervailing Measures Agreement rules. The design of the regime is notably different from accepted IP regimes by providing a deduction for income derived from intangible assets other than patents and copyright software, such as branding, market power, and market-related intangibles. It would not be compatible with the BEPS consensus that has been approved by more than 100 states and jurisdictions worldwide. Furthermore, in deviation of the agreed nexus approach, the proposal will provide benefits to income from IP assets that are in no direct connection with R & D activity.

We explicitly welcome U.S. action in the fight against base erosion and profit shifting. However, we have strong concerns if this is done via measures that are not targeted on abusive arrangements as this would impact on genuine business activities. This may lead to distortions in the international tax consensus as well as the trade and investment environment. In recent years, we have experienced an outstanding level of international cooperation. With the BEPS compromise, we have opened up a new chapter of international cooperation in tax matters and fair taxation worldwide. The OECD and the BEPS Inclusive Framework are the relevant forums for working on the evolution of international tax principles on a multilateral basis. Such dialog ensures consistency, which is crucial for states and businesses.

We would be very grateful, if you kept these concerns in mind during your further proceedings. We are confident that you will find a wise and well-balanced compromise in your mission to create a modern and robust new U.S. tax code.

Yours sincerely,

Peter Altmaier    Bruno Le Maire    Philip Hammond    Pier Carlo Padoan    Cristóbal Montoro Romero