



FOR IMMEDIATE RELEASE

December 1, 2015

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Hatch Statement at Finance Hearing on OECD BEPS Reports

WASHINGTON – Senate Finance Committee Chairman Orrin Hatch (R-Utah) today delivered the following opening statement at a committee hearing examining the Organisation for Economic Co-Operation & Development’s (OECD) Base Erosion and Profit Shifting (BEPS) reports, and the European Union’s (EU) State Aid investigations regarding member-countries’ tax rulings:

I want to welcome everyone here this morning and thank you all for attending this important hearing on international taxation, focusing particularly on the Organisation for Economic Co-operation & Development, or OECD’s, project on base erosion and profit shifting, or BEPS.

The overall discussion about international tax is very timely.

Just a couple of weeks ago, we were informed that a major American pharmaceutical company had decided to invert – merging with another drug company, with the headquarters of the newly-formed corporation to be located in a foreign country.

Of course, this is nothing new. We’ve been seeing these types of transactions take place for some time.

Inversions like these are some of the clearest examples of base erosion and are largely motivated by tax considerations, as American companies determine that they can reduce their overall operating costs if they become foreign corporations. Given the burdensome and anti-competitive nature of the U.S. tax code, these companies are, unfortunately, not acting irrationally.

The administration’s response to the wave of inversions has, in my opinion, been short-sighted, focusing only on the symptoms rather than the underlying illness. While the latest proposed guidance from Treasury might very well stem the tide of inversions, it will leave other – potentially more harmful – avenues for tax avoidance – like foreign takeovers – wide open, and perhaps even make them more attractive.

Long story short, any steps we take to address inversions should focus on fixing the shortcomings of the underlying system and make the U.S. a better place for companies to do business.

The BEPS project is another effort aimed at addressing international tax problems and base erosion, but on a more global scale. The purpose of the project was to provide OECD member countries with recommendations for both domestic tax policy changes and amendments to existing tax treaties to address business practices that result in base erosion. After several years of discussion, the OECD released its final reports earlier this year and, last month, leaders from the G-20 countries endorsed the recommendations.

Throughout this process we have heard concerns from large sectors of the business community that the BEPS project could be used to further undermine our nation's competitiveness and to unfairly subject U.S. companies to greater tax liabilities abroad. Companies have also been concerned about various reporting requirements that could impose significant compliance costs on American businesses and force them to share highly sensitive proprietary information with foreign governments.

I expect that we'll hear about these concerns from the business community and others during today's hearing.

In addition, throughout the BEPS negotiations, I urged the Obama Administration to both acknowledge the limits of their authority under the law and to cooperate with Congress on any and all efforts to implement the recommendations. While the U.S. was a party to the BEPS negotiations, Congress had neither a seat at the negotiating table nor a meaningful opportunity to weigh in with the administration on the substance of the proposals.

However, it is Congress – and Congress alone – that has the ultimate authority to make changes to the U.S. tax code. While the Treasury Department does have broad regulatory authority under the law, that power is not without limits. Even in those areas where authority clearly exists for the administration to promulgate regulations, it is virtually always better if Congress is viewed as a partner in this process rather than an adversary. And, in those instances where the regulatory authority is less clear, congressional involvement and approval is even more important to ensure that policy changes are viewed by the public as legitimate.

Of course, most of this should go without saying. It is, after all, basic lesson in government and I don't think anyone here is in need of a civics refresher from me.

However, I think it also goes without saying that the current administration hasn't always viewed Congress as a necessary or even important part of its efforts to develop and implement policy changes. So, I think it is, at the very least, helpful to offer a brief reminder to everyone that Congress has a role to play on these issues that cannot be overlooked.

That's another set of concerns that I expect we'll discuss during this hearing. We have a representative from Treasury here today – so, I'm looking forward to getting a better sense of what elements of the BEPS recommendations the administration believes it can implement unilaterally and where they believe congressional action will be necessary.

I also want to note that I have asked the Government Accountability Office to provide its own analysis on the BEPS recommendations, taking into account all of the complex elements – both domestic and global – that are implicated with these types of policy changes. I expect their work will take some time, but gathering this type of information is, in my view, an essential part of our overall evaluation of the BEPS project.

There are other topics that I expect will come up today, including a discussion of so-called "state aid" remedies and recent activities in the Eurozone that, to me, look like attempts to impose retroactive taxation on multinational enterprises, including a number of U.S.-based companies.

Speaking more broadly, I just want to say that, when it comes to international tax issues, I hope we all have the same goals in mind.

I would hope that we all want to improve conditions for American businesses.

I would hope that we all want to make our country more competitive on the world stage.

And, to the end, I would hope that we all want to improve the overall health of the U.S. economy. That's why all of us are here today, or at least it should be.

Any regulations promulgated by the administration to prevent businesses from moving offshore should have these goals in mind.

At the same time, while international efforts to align tax systems are worth exploring, we shouldn't be negotiating agreements that undermine our own interests for the sake of some supposedly higher or nobler cause. The interests of the United States – our own economy, our own workers, and our own job creators – should be our sole focus.

So, throughout today's discussion – whether we're talking about BEPS, inversions, or any other international tax issues – I am most interested in hearing views as to how various policies and proposals will or will not serve our nation's interests and advance these important goals.

Long story short, we have quite a bit to talk about today. And, we have a distinguished panel of witnesses that should be able to shed some light on these complicated issues. I look forward to their testimony.

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