United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510–6200

July 16, 2015

Honorable Gene L. Dodaro
Comptroller General of the United States
Government Accountability Office
441 G Street NW
Washington, DC 20548

Dear Comptroller General Dodaro,

As you are probably aware, the Organisation for Economic Co-operation and Development (OECD), with urging from finance ministers and central bank governors of the "G20," recently launched a project to try to measure and recommend best practices to address alleged base erosion and profit shifting (BEPS) activities. Those activities encompass, according to the OECD's somewhat provocative description, "tax planning strategies that exploit gaps and mismatches in tax rules to make profits 'disappear' for tax purposes or to shift profits to locations where there is little or no real activity but the taxes are low, resulting in little or no overall corporate tax being paid." Of course, a reasoned assessment of so-called BEPS finds that international tax rules across countries are responsible for any such activities, including the atypically high corporate tax rate in the United States.

In its attempt to address BEPS, the OECD's project has set forth 15 "actions" intended to generate fundamental changes in international tax standards and administration. The OECD's BEPS Action Plan has continued along a very aggressive timeline, raising questions about hasty analysis possibly being utilized to put forward suggested changes in international tax rules to unelected G20 authorities later this year.

According to the OECD, the 15 actions in its BEPS Action Plan are to:

1. Address tax challenges of the **digital economy**;
2. Neutralize effects of **hybrid mismatch arrangements**;
3. Strengthen **CFC rules**;
4. Limit base erosion via **interest deductions** and other financial payments;
5. Counter **harmful tax practices** more effectively, taking into account transparency and substance;
6. Prevent **treaty abuse**;
7. Prevent the artificial avoidance of **permanent establishment (PE) status**;
8. Assure that transfer pricing outcomes are in line with value creation/**intangibles**;
9. Assure that transfer pricing outcomes are in line with value creation/**risks and capital**;
10. Assure that transfer pricing outcomes are in line with value creation/**other high-risk transactions**;

11. Establish methodologies to collect and **analyze data** on BEPS and the actions to address it;
12. Require taxpayers to disclose their **aggressive tax planning arrangements**;
13. Re-examine **transfer pricing documentation**;
14. Make **dispute resolution** mechanisms more effective; and
15. Develop a **multilateral instrument.**

The OECD also reports the following, regarding implementation of its BEPS agenda: "In February 2015, OECD and G20 countries agreed three key elements that will enable implementation of the BEPS Project:

- a mandate to launch negotiations on a multilateral instrument to streamline implementation of tax treaty-related BEPS measures (Action 15);
- an implementation package for country-by-country reporting in 2016 and a related government-to-government exchange mechanism to start in 2017 (Action 13):
- criteria to assess whether preferential treatment regimes for intellectual property (patent boxes) are harmful or not (Action 5)."

The OECD has requested public comments on "discussion drafts" related to its various action items, and has received input from around the world, including from many U.S. interests who have often expressed concerns.

The OECD continues on its aggressive timeline for completing and ultimately attempting to somehow implement its optional "multilateral instrument," with a target closing date possibly as soon as the end of this year. Reportedly, countries participating in the OECD's BEPS project have already agreed to implement some of the OECD's recommendations, such as so-called "country-by-country" reporting, which would potentially have our Internal Revenue Service (IRS) responsible for additional sharing of sensitive private tax information with foreign tax authorities and would also impose costs on American businesses, with only speculative benefits having been identified. How or whether the IRS will shoulder any concomitant additional workload has not, to my knowledge, been identified. Moreover, benefits of additional country-by-country reporting could accrue principally to the coffers of foreign tax collectors anxious to tap the U.S. tax base and could also lead the way for more invasive information demands from foreign governments in the future.

While the OECD has laid out in detail benefits that tax collectors in OECD countries could derive from addressing so-called BEPS in terms of higher revenues, it is not clear whether the BEPS recommendations would be a net benefit to the United States economy, our businesses, and our workers. I believe that it is necessary that we have better information using independent, nonpartisan analysis.

As Chairman of the Finance Committee, it is prudent for me to compile as many independent analyses as possible on the OECD's tax-related activities and how they might impact the United States economy, including employment, investment, and federal revenues. Given the tax-analysis capabilities available at the nonpartisan Government Accountability Office (GAO), I ask that the relevant analysts at GAO engage with my tax staff to discuss GAO analysis of effects of adoption of OECD BEPS recommendation. The engagement will allow your staff and mine to refine the set of questions that your analysts would address, and set forth any parameters that are mutually acceptable to you and me.

I look forward to hearing from your team, and hope that our staffs can initiate an engagement this month. Given the breadth and wide reach of the OECD's BEPS initiative, covering virtually every aspect of international taxation, any GAO analysis will require a great deal of time and attention. It may be useful to set a timeline under which GAO could provide provisional reports to the Finance Committee as its analysis proceeds and as the OECD attempts to complete its initiative at breakneck speed, but I am sure that we can work out a mutually agreed upon timeline.

Sincerely,

Orrin Hatch

Orrin G. Hatch
Chairman
Senate Committee on Finance