



July 16, 2009

The Honorable Charles Rangel
Chairman
Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20510

The Honorable Dave Camp
Ranking Member
Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20510

Dear Chairman Rangel and Representative Camp,

On behalf of the Organization for International Investment (OFII), I am writing to express serious concern with a tax provision included as Section 451 of H.R. 3200, "America's Affordable Health Choices Act." We fully recognize the importance of healthcare reform and understand the need for revenue. However, we must oppose Section 451 as an offset because it represents a clear and harmful override of our existing U.S. income tax treaties. Although positive changes were made to this proposal since it was originally introduced as an offset to the 2007 Farm Bill (H.R. 2419), OFII remains opposed because it still discriminates against U.S. subsidiaries of companies headquartered abroad, clearly violates many of our international agreements and significantly harms non-U.S. based investors who have no control over whether or not their home country has a tax treaty with the United States.

OFII is the largest association of U.S. subsidiaries of companies headquartered abroad. U.S. subsidiaries play an important role in the growth and vitality of the U.S. economy. They provide high-paying jobs for over five million Americans and account for almost one-fifth of all U.S. exports. A discriminatory tax increase sends a negative signal to international investors and may dissuade these companies from choosing the United States as a location for job creating investment.

As drafted, Section 451 would unilaterally override many of our bilateral income tax treaties and could lead to retaliatory actions by other countries or withdrawal by our treaty partners from existing treaties, harshly affecting international business transactions. The Senate has opposed this and similar provisions twice in the past two years for these reasons.

Congress has not held any hearings to examine this issue and whether the proposal is the appropriate remedy to address any perceived concerns. In this regard, there is no evidence that existing safeguards, including the substantial and restrictive anti-treaty shopping provisions (so-called "Limitation on Benefits" (LOB) provisions) contained in most of our current U.S. income tax treaties, are ineffective. Further, if material tax abuses were evident, the Treasury could implement changes to the U.S. Model Tax Treaty which would avoid the negative consequences of violating our international agreements.

Since a similar proposal was introduced in 2007, the Treasury has taken great strides to update the three bilateral tax treaties without LOB provisions (Iceland, Hungary, Poland). A protocol adding an LOB provision to the Iceland treaty was negotiated by Treasury and ratified by the Senate in 2008. A similar protocol with Hungary has been negotiated and initialed and could be ratified this year. Treasury is expected to pursue a similar amendment to the treaty with Poland during 2009-2010.

Consistent with the conclusions in the Treasury Report that was released in November 2007 that reviewed potential abuse of income tax treaties, OFII believes re-negotiation of existing income tax treaties without LOB provisions is a more appropriate way to address the concerns underlying this provision and we urge you to oppose including Section 451 in the final version of H.R. 3200. We would be glad to discuss our concerns with your staff in greater detail.

Sincerely,



Nancy McLernon
President & CEO