United States Senate
WASHINGTON, DC 20510

February 25, 2016

The Honorable Secretary Jack Lew
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

Dear Secretary Lew:

We write to request an update on the Department's plans to release further guidance on efforts to limit tax inversions and earnings stripping. In the wake of more and more corporations shirking their tax responsibility, we urge you to expedite your rulemaking process to stop these companies from abusing the U.S. tax system using tax inversion and earning stripping schemes.

Inversions are corporate tax deals that allow U.S. companies to move their tax domicile overseas – but only on paper – to avoid paying U.S. taxes. Because of weak earnings stripping rules, large multinationals can also concentrate their debt in U.S. subsidiaries and then claim huge interest deductions that strip out profits from the U.S without paying taxes. These schemes are deeply unfair to the American taxpayers that fund the programs and protections many corporations use to grow and thrive as they make significant profits. In return, these corporations choose to abandon their tax responsibility here at home, further eroding the U.S. tax base. In its *Budget and Economic Outlook: 2016 to 2026* report released in January, the Congressional Budget Office projects that inversions and other tax-avoidance strategies will only increase, resulting in a significant decrease in corporate tax receipts over the next 10 years. Limiting the ability for these companies to engage in earnings stripping is an important step in limiting tax inversions and preserving the U.S. tax base and tax fairness.

In 2004, Congress acted to prevent these types of deals. Since then, more than 40 corporations have used a loophole in the law to avoid U.S. taxes, with the trend expected to continue and worsen over the next few years. The Department's September 2014 announcement that regulatory action was forthcoming to reduce incentives or outright stop corporate inversions and earnings stripping was welcomed news. Since that announcement, a number of companies rightly abandoned their inversion efforts, but several companies continued to pursue inversion deals. We were pleased to see the Department issue further guidance to restrict inversions at the end of last year, but disappointed that earnings stripping, one of the main benefits of inversions, was not addressed in the November 2015 announcement, despite the Department having the authority to do so.

Last fall, it was reported that U.S.-based drugmaker Pfizer, Inc. is in ongoing discussions with Irish pharmaceutical company Allergan Plc about an acquisition that would, if successful, move Pfizer's tax domicile to Europe in the largest inversion deal to date. Earlier this year, manufacturing firms Johnson Controls and Tyco International, both with deep roots here in the United States, announced they plan to merge and house their global headquarters thousands of miles off shore in Ireland. As Congress continues to weigh reform of the nation's broken tax system, the seemingly endless tide of corporate inversions requires immediate action. While we applaud the Department for its work on this important issue, more must be done to put an end to these reckless practices. In particular, guidance on earnings stripping has yet to be issued despite Treasury's assurances.[1]

In their article titled "Treasury's Unfinished Work On Corporate Expatriations" published this week, tax law scholars Stephen Shay, J. Clifton Fleming, Jr., and Robert Peroni point to another deal, the proposed inversion of fertilizer manufacturer CF Industries Holdings and Dutch manufacturer OCI N.V., as an example of the need for immediate executive action. CF's CEO W. Anthony Will has said as recently as December of last year that they will pursue this deal involving earnings stripping so long as that option is available. Analysts estimate that this one deal alone could cost the Treasury and taxpayers $800 million over the next decade.[2] Shay et al also points to Treasury's ability to prevent accumulated earnings from permanently escaping U.S. tax by addressing abusive hopscotch loans and decontrol transactions.

Therefore, we urge you to expedite your earnings stripping rulemaking process so that we can begin to restore some fairness to our tax system on behalf of the American people. If a company benefits from the United States and all that it has to offer, it should pay its fair share of taxes here at home.

Sincerely,

Dick Durbin

Richard J. Durbin
United States Senator

Jack Reed

Jack Reed
United States Senator

Elizabeth Warren

Elizabeth Warren
United States Senator

Sheldon Whitehouse

Sheldon Whitehouse
United States Senator

[1] https://www.politicopro.com/tax/story/2015/11/pro-tax-inversions-odonnell-078702
[2] http://www.taxnotes.com/tax-notes-today/base-erosion-and-profit-shifting-beps/treasurys-unfinished-work-corporate-expatriations/2016/02/22/18245336

Dianne Feinstein
United States Senator

Al Franken
United States Senator

Martin Heinrich
United States Senator