March 25, 2021

The Honorable Pedro Siza Vieira
Minister of State for the Economy
and the Digital Transition of Portugal,
Chair of the EU Competitiveness Council
Rua da Horta Seca, n°15
PT – 1200-221 Lisboa

Re: Proposal to amend Directive 2013/34/EU as regards disclosure of income tax information by certain undertakings and branches

Dear Minister Vieira:

The U.S. Chamber of Commerce (Chamber) submits this letter in advance of trilogue negotiations among the Commission, Parliament, and Council during which they will consider changes to current rules surrounding income tax information whereby country-by-country reporting information would be made public.

The Chamber is the world's largest business federation, representing the interests of more than three million enterprises of all sizes and sectors. The Chamber is a longtime advocate for strong commercial ties between the United States and the European Union. According to a recent Chamber study, the U.S. and EU are jointly responsible for more than one-third of global gross domestic product, and transatlantic trade and investment supports more than 16 million jobs on both sides of the Atlantic. In the U.S. and globally, we advocate for balanced policy frameworks that support economic growth, promote consumer protection, and foster innovation.

The Chamber's members, many of whom are heavily invested in Europe and maintain global operations, are very concerned with Europe's decision to deviate from the OECD's Base Erosion and Profit Shifting (BEPS) initiative on tax disclosure and to instead move to require the public disclosure of commercially sensitive tax data.

U.S. Position on BEPS

The U.S. has long maintained that country-by-country reporting information, as with all other information provided to tax authorities, should remain confidential. Country-by-country reporting arose as a result of Action 13 of the OECD / G20's BEPS initiative that began in 2013. We believe there is a global consensus that country-by-country tax information should only be made available to and exchanged among governments. In particular, the U.S. agreed to the inclusion of country-by-country reporting in Action 13 contingent on this confidentiality requirement.

Importantly, the current rules surrounding country-by-country reporting have established the right balance between meaningful corporate transparency and protection of commercially sensitive information. Global tax authorities already have access to the relevant tax information of multinational enterprises (MNEs) in order to address issues such as tax fraud. Such information does not need to be made public for global tax authorities to do their jobs effectively.

Disclosing Sensitive Information / Undermining Competition

We are highly concerned that Europe is taking steps to move away from the global consensus on sharing of MNE tax information only at the government level. We understand trilogue negotiations will seek to reach an agreement on rules surrounding the proposed public country-by-country reporting directive, which would require "multinational enterprises or standalone undertakings with a total consolidated revenue of more than €750 million in each of the last two consecutive financial years, whether headquartered in the EU or outside, to disclose publicly in a specific report the income tax they pay in each member state, together with other relevant tax-related information."[1]

Making country-by-country tax information public through rules with a strong extraterritorial effect would jeopardize the proprietary information of U.S. companies which should be protected from global competitors. Companies understand that they must share tax information on a confidential basis with the relevant tax authorities, where it can be explained in context. Making country-by-country tax information public would only succeed in allowing third-parties access to highly sensitive information about a firm's business and operations that could be misinterpreted and misused. In addition, the public disclosure of sensitive data raises serious competitiveness concerns for companies that operate and invest in Europe as they seek to compete in both Europe and the rest of the world.

Support for a Safety Clause

We understand that the Council's negotiating mandate on this directive provides for a safety clause exempting MNEs from the disclosure of commercially sensitive information, but only for a period of 6 years. Meanwhile, the European Parliament also recognizes the need for a safety clause, but only on a temporary basis.

Given the risks to MNEs from the disclosure of commercially sensitive tax data, we request that the negotiating parties adopt a robust, permanent safety clause without a restricted timeframe.

Since a company's tax data can remain commercially sensitive for many years, an arbitrary expiration of a safety clause would not provide adequate protection to businesses who have legitimate competitive concerns about public disclosure of their tax information. As a result, the Chamber supports the adoption of a robust, permanent confidentiality safety clause (1) without a defined expiration related to the confidentiality of the information, and (2) that requires competent tax authorities to examine and approve the request for continued confidentiality of the information.

[1] European Council, Council approves greater corporate transparency for big multinationals, 3 March 2021, https://www.consilium.europa.eu/en/press/press-releases/2021/03/03/council-approves-greater-corporate-transparency-for-big-multinationals/

We thank you for considering our input as negotiations proceed on this highly sensitive matter. For follow-up questions please contact Kristen Malinconico, Director, Center for Capital Markets Competitiveness, at kmalinconico@uschamber.com and Garrett Workman, Senior Director, European Affairs, at gworkman@uschamber.com.

Sincerely,

Tom Quaadman	Myron Brilliant
Executive Vice President	Executive Vice President
Center for Capital Markets Competitiveness	Head of International Affairs
U.S. Chamber of Commerce	U.S. Chamber of Commerce

cc: Mairead McGuinness, European Commissioner for Financial Services, Financial Stability, and Capital Markets Union
Paolo Gentiloni, European Commissioner for the Economy
Evelyn Regner, MEP
Iban García del Blanco, MEP
Gerassimos Thomas, Director-General for Taxation and Customs Union
John Berrigan, Director-General for Financial Stability, Financial Services, and Capital Markets Union
H.E. Stavros Lambrinidis, Ambassador of the European Union to the U.S.
H.E. Domingos Fezas Vital, Ambassador of Portugal to the U.S.
H.E. Nuno Brito, Permanent Representative of Portugal to the European Union