

# United States Senate

WASHINGTON, DC 20510

May 16, 2006

The Honorable John W. Snow  
Secretary  
Department of the Treasury  
1500 Pennsylvania Avenue, N.W.  
Washington, D.C. 20220

Dear Mr. Secretary:

It has come to our attention that the Organisation for Economic Co-operation and Development (OECD) is considering changes to its Model Tax Treaty that would authorize a secret international arbitration court to decide certain tax disputes involving multinational corporations.

Based on the information we have received so far, we have concerns about the advisability of this proposed international tax court. We are concerned that the decisions of the arbitrators would be binding on the United States and other governments, possibly superseding our and their domestic courts. We are also concerned that this tax arbitration court could be invoked only at the impetus of a multinational corporation, and the court's decisions would be kept secret unless the corporation seeking the court's help expressly authorizes disclosure.

Furthermore, we are also told that many of the disputes that the secret court would be likely to hear would involve aggressive use of transfer pricing by multinational corporations. In fact, some international tax experts suggest that decisions by the court in favor of multinational corporations could result in profits taxed by no country - - what is commonly referred to as "nowhere income."

To more fully understand the scope of this secret court, we would like your answers to the following questions:




1. Would multinational companies be able to bypass public domestic courts and get their tax claims adjudicated by a secret panel independent of national tax authorities?
2. Would the activities of the court be kept entirely secret, so that not even the names of the multinational companies whose claims are being adjudicated by the court would be disclosed, either to national legislative bodies or to the public at large?
3. Is it possible that no report explaining the basis for a decision by the secret court or the amount of revenue given up by the countries involved would be released to government taxing authorities or other stakeholders if a corporation subject to the decision withholds its written consent?

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4. Would the court's judges be required to disclose conflicts of interest? Would they be prevented from going to work for the multinational company under review immediately after a proceeding has concluded?
5. Would the OECD's proposal offer multinational corporations new opportunities to game tax systems, enabling the production of "nowhere income" taxed by no country, as some international tax experts have suggested?
6. The OECD proposal says that the arbitration provision should be included only in treaties where each country concludes that the national law, policy and administrative considerations allow and justify the type of arbitration. Do you believe the United States should consider including such a provision in its future treaties?

We have attached a detailed analysis of the OECD's secret court proposal by Professor Michael J. McIntyre of Wayne State University Law School, a well-known expert in international tax law. If the important questions raised in Professor McIntyre's article and in our letter cannot be resolved, we believe that the United States should consider opposing the OECD secret tax court proposal.

Sincerely,

		
Byron L. Dorgan United States Senator	Russ Feingold United States Senator	Carl Levin United States Senator

Enclosure

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