BIDEN'S GLOBAL TAX SURRENDER HARMS AMERICAN WORKERS AND OUR ECONOMY

HEARING

BEFORE THE

SUBCOMMITTEE ON TAX

OF THE

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HOUSE OF REPRESENTATIVES

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United States House Committee on
Ways & Means
CHAIRMAN JASON SMITH

FOR IMMEDIATE RELEASE CONTACT: 202-225-3625
July 12, 2023
No. TAX-01

Chairman Smith and Tax Subcommittee Chairman Kelly Announce Subcommittee Hearing: Biden's Global Tax Surrender Harms American Workers and Our Economy

House Committee on Ways and Means Chairman Jason Smith (MO-08) and Tax Subcommittee Chairman Mike Kelly (PA-16) announced today that the Subcommittee on Tax will hold a hearing on the Biden Administration's botched global tax negotiations, which will destroy American jobs and reduce economic growth and tax revenues. The hearing will take place on **Wednesday, July 19, 2023, at 2:00pm in 1100 Longworth House Office Building**.

Members of the public may view the hearing via live webcast available at https://waysandmeans.house.gov. The webcast will not be available until the hearing starts.

In view of the limited time available to hear the witnesses, oral testimony at this hearing will be from invited witnesses only. However, any individual or organization not scheduled for an oral appearance may submit a written statement for consideration by the Committee and for inclusion in the printed record of the hearing.

DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:

Please Note: Any person(s) and/or organization(s) wishing to submit written comments for the hearing record can do so here: WMSubmission@mail.house.gov.

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All submissions and supplementary materials must be submitted in a single document via email, provided in Word format and must not exceed a total of 10 pages. Please indicate the title of the hearing as the subject line in your submission. Witnesses and submitters are advised that the Committee relies on electronic submissions for printing the official hearing record.
All submissions must include a list of all clients, persons and/or organizations on whose behalf the witness appears. The name, company, address, telephone, and fax numbers of each witness must be included in the body of the email. Please exclude any personal identifiable information in the attached submission.

Failure to follow the formatting requirements may result in the exclusion of a submission. All submissions for the record are final.

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The Committee seeks to make its facilities accessible to persons with disabilities. If you require accommodations, please call 202-225-3625 or request via email to WMSubmission@mail.house.gov in advance of the event (four business days' notice is requested). Questions regarding accommodation needs in general (including availability of Committee materials in alternative formats) may be directed to the Committee as noted above.

Note: All Committee advisories and news releases are available on the Committee website at http://www.waysandmeans.house.gov/.

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BIDEN'S GLOBAL TAX SURRENDER HARMS AMERICAN WORKERS AND OUR ECONOMY

WEDNESDAY, JULY 19, 2023

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON TAX,
COMMITTEE ON WAYS AND MEANS,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:03 p.m. in Room 1100, Longworth House Office Building, Hon. Mike Kelly [Chairman of the Subcommittee] presiding.

Chairman KELLY. The committee will come to order for this Tax Subcommittee hearing, and thank you, Mr. Plowgian, for joining us today.

We are here to discuss a matter critical to our nation's economic success. Perhaps it became, innocently enough, the U.S. had just enacted a historic reform of our tax laws, including the world's first Global Minimum Tax, which only applied to U.S. companies. Now, at the same time, a few European countries were beginning to target some of our largest and fastest-growing companies with discriminatory taxes known as Digital Service Taxes, or DSTs.

And I got to tell you, I have a glossary here for those of you that are fans of acronyms. I am not. I wish we could just say exactly what we are talking about. But to save time, I won't go through all that.

Look, the original idea of engaging in negotiations at the OECD was this: other countries could join the U.S. with their own Global Minimum Taxes, and we could stop the proliferation of DSTs. Unfortunately, that is not what happened. With active encouragement from the Biden Treasury Department, the OECD, in its Pillar Two agreement, failed to recognize our pioneering Global Minimum Tax as a qualifying tax. Instead, the agreement they came back with is so inconsistent with our tax laws that it would tilt the playing field in favor of foreign firms.

Now, it also destabilizes a network of constitutionally ratified bilateral tax treaties negotiated over the past half of a century. Now, for the first time, through Undertaxed Profit Rules, or UTPRs, the Pillar Two agreement authorizes foreign governments to tax income generated outside its border, including U.S.-sourced income. Now, this is all based on an arbitrary set of rules approved by the OECD, foreign governments, and international accounting bureaucrats where the U.S. has minimal representation. Congress has absolutely no say.

It also favors the tax incentives Europe likes: refundable tax credits, over the non-refundable business credits more common in the U.S. In this sense, it would constrain the ability of the U.S. Congress to write tax laws that promote growth and jobs, as Congress has done since the beginning of our republic.

Now, this agreement is totally unacceptable, and it is no wonder the Biden Administration sought to avoid consulting with Congress, because they knew Congress would never approve it.

OECD Pillar One, intended to stop DSTs, is no better. Under Pillar One, U.S. companies would pay far more than any other country and more than all of Europe. Now, that is right, the U.S. pays more than Europe. That is according to an analysis by a European Union think tank.

Now, 60 percent of the revenue divided up under the Pillar One agreement would come from U.S. firms—60 percent. Our own Treasury Department acknowledges that about 50 percent of the firms are subject to the Pillar One agreement would be U.S. companies. Republicans have repeatedly requested a detailed analysis of how the agreement would impact American companies and workers, but Treasury has rejected those requests. All the while, foreign governments continue to collect DSTs from American companies.

Now, given the economic stagnation in Europe since 2008, these DSTs should come as no surprise. The U.S. will continue to be a revenue target.

Now, going into these OECD negotiations, Treasury should have recognized that governments in Europe would be looking for ways to rein in successful American companies and extract additional tax revenue to prop up their own poor domestic finances. As one author in Tax Notes put it, "this effort has to be understood as a primarily European project and, in the larger picture, a way to sustain the euro." The Biden Administration has called for additional business taxes to fund their own domestic spending agenda.

So why, then, would Treasury negotiate an OECD deal that surrenders over $120 billion? That is $120 billion in U.S. tax revenues to foreign countries. This makes absolutely no sense.

Now, the OECD Global Tax Project is effectively controlled by Europe. Why? Because Europe controls one-third of the seats on the steering committee, and the broader inclusive framework includes over 30 tiny former European colonies. Members of this group include the Cook Islands, the Bahamas, Saint Lucia, and the Samoa.

The bottom line is the deck is stacked against America at the OECD. That is why it has never made sense for Treasury to negotiate behind closed doors with a group of 140 nations on a one-country/one-vote basis when the U.S. accounts for 25 percent of global GDP and pays almost that percentage of dues at the OECD.

I am going to close with this. My whole life has been in the retail automobile business, and I spent a lifetime negotiating. And it just doesn't take a rocket scientist to understand that the U.S. has signed up for a bad deal. It is a bad deal for the American taxpayers, it is a bad deal for American workers, it is a bad deal for American businesses just trying to keep their doors open for the next generation of U.S. workers.

I am trying to figure what are we trying to accomplish by doing something like this? I have never seen an instance where we are always so willing to give up market share and pick up the tab for other places that can't pay their own bills. It all falls on the American people.

It is bizarre that we even have to discuss this today, but we do. And I would like to know—I am not sure that I understand, constitutionally, that what the Administration has done is even possible. There is a reason we are here. There is a reason why all of this starts in the House. There is no reason why Treasury has not sat down and talked with us about what they have done and failed to be able to answer any questions on it.

So, with that, I welcome Mr. Plowgian, and I want to thank you. You are giving up a day to come here and talk with us, and I think this is not a Democrat issue or a Republican issue. I said earlier, this is about jobs and companies and our ability to sustain market share, globally.

Why would the United States hamper itself to be successful? It makes no sense to me.

Chairman KELLY. Now, I am pleased to recognize the gentleman from California, Ranking Member Mr. Thompson, for his opening statements.

Mr. THOMPSON. Thank you, Mr. Chairman, and thank you, Mr. Plowgian, for being with us today.

Mr. Chairman, our economic recovery from the pandemic has not only broken all of our own records, it has put us far and above the world's major economies. Despite naysayers and wish-casters betting against the American worker, we have been able to defy all odds. Thanks to President Biden and congressional Democrats investing in workers and families, over 13 million jobs have been added, inflation has declined consecutively for the last 12 months, and we have had the strongest economic growth of all the world's major economies.

And instead of building on this success, in the first Tax Subcommittee hearing of the 118th Congress my colleagues are choosing to double down on their race to the bottom in protecting multinational corporations. From examining how we can extend the Child Tax Credit to looking at how our tax code treats victims of disasters, there is much on the individual side for our committee to discuss, and I regret that my colleagues didn't want to start there.

American workers and taxpayers have paid the price for a system that rewards large, multi-national corporations that do business in one country and then park their profits in the country with the lowest tax rate they can find. Republicans' desperate attempts to preserve this system is more of the same: sparing the largest, most profitable companies from paying their fair share, while honest taxpayers are left with the bill.

The Global Minimum Tax is designed to level the playing field and put an end to underhanded profit shifting. For one, it brings parity to our small businesses, those who don't have the ability to move their profits offshore, who have already been paying their fair share. Second, it will encourage businesses to keep their incomes in the United States of America.

There is widespread agreement around the world that the wealthiest corporations have an obligation to pay their fair share, and they won't wait for us to move forward in the process. More than 50 countries, large economies, are already implementing the Global Minimum Tax. This is not the time to wish away reality. And the longer my colleagues take a head-in-the-sands approach, the more damage will be done to our taxpayers, our businesses, and our treasury. While we have led the other large economies around the world in our recovery, our economy does not exist in isolation. And coordination will strengthen our commerce ties around the world.

The truth is that abandoning these negotiations would be unambiguously worse for Americans and American businesses than continuing to negotiate and to ensure that we get the details right. Pulling out of this process puts other countries in charge of our fate and abandons American companies, American workers, and, ultimately, American taxpayers.

Too much is at stake for our businesses and economy to let this train leave the station without American leadership and input.

Mr. THOMPSON. Thank you, and I yield back.

Chairman KELLY. Thank you, Mr. Thompson. Now, I would like to introduce the first panel for today's hearing.

Michael Plowgian is the deputy secretary for international tax affairs at the Department of Treasury.

Mr. Plowgian, I want to thank you for being here. You have five minutes to deliver your oral remarks. And thank you, sir, again, for being here. We appreciate it.

STATEMENT OF MICHAEL PLOWGIAN, DEPUTY ASSISTANT SECRETARY FOR INTERNATIONAL TAX AFFAIRS, DEPARTMENT OF TREASURY

Mr. PLOWGIAN. Chairman Kelly, Ranking Member Thompson, and members of the subcommittee, I am Michael Plowgian, deputy assistant secretary for international tax affairs at the Department of the Treasury's Office of Tax Policy.

Chairman KELLY. Is your mic on?

Mr. PLOWGIAN. I think so, yes.

Mr. THOMPSON. Maybe get a little closer.

Mr. PLOWGIAN. Okay.

Chairman KELLY. There you go.

Mr. PLOWGIAN. Thank you.

Chairman KELLY. Okay.

Mr. PLOWGIAN. I appreciate the opportunity to testify before the Ways and Means Tax Subcommittee regarding U.S. engagement on the two-pillar solution in the G20 OECD inclusive framework on BEPS.

I would like to begin by placing the work that we are doing on the two-pillar solution, and particularly on Pillar Two, in context. The two-pillar solution grew out of the Organization for Economic Cooperation and Development project known as BEPS, for Base Erosion and Profit Shifting. The BEPS project began in 2012 at the request of the Group of 20 who were concerned about the ability of multi-national corporations to avoid tax by shifting profits into low or no-tax jurisdictions.

Since the BEPS project began over a decade ago, the United States has had a strong interest in its success. The active participation of the executive branch and the support of Congress has been crucial in protecting our tax base from being eroded by multinational businesses. Prior to our engagement in BEPS, multi-nationals' ability to shift paper profits to low-tax jurisdictions resulted in an unproductive race to the bottom in corporate tax rates. Unilateral attempts to address this problem led to uncertainty and instability for both U.S. taxpayers and the U.S. Government.

The BEPS project led countries to enact changes to international tax rules to limit profit shifting. In the United States, the BEPS project provided the foundation for several Tax Cuts and Jobs Act provisions, including the global intangible, low-tax income, or GILTI, provisions; the interest deduction limitation; and the anti-hybrids provisions.

However, starting in 2018, it became clear that further work was needed to stabilize the international tax system and enable U.S. businesses to compete on a level tax playing field. That work has continued across multiple congresses and administrations. As part of that process, this Administration has pushed to reach a global framework on a two-pillar solution to reform the international tax system.

Pillar One, when implemented, will get rid of the unilateral and discriminatory Digital Services Taxes that largely impact U.S. businesses and will reallocate a portion of taxing rights to reflect the way business is done in the 21st century.

Pillar Two will level the playing field between U.S. and foreign businesses and end the race to the bottom in corporate tax rates by establishing a Global Minimum Tax on the earnings of large multi-nationals, regardless of where they are headquartered or where they operate. It will ensure the United States can tax U.S. multi-nationals at reasonable levels without being undercut by other countries using their tax systems to induce our multi-nationals to shift their profits, operations, or residency offshore.

Over the past two years, the Administration has engaged in the inclusive framework to work through the details of this package. The inclusive framework has reached consensus on model rules on Pillar Two, and many countries are implementing those model rules. Continued U.S. engagement in the inclusive framework is essential to ensure consistent interpretation of those rules. Discussions in the inclusive framework have resulted in additional guidance, including guidance issued this week that would treat transferable credits appropriately as equivalent to refundable credits.

Treasury negotiators have also been working in the inclusive framework to develop a complete Pillar One agreement, though there are still important elements of Pillar One that remain open.

The Executive Branch and Congressional Partnership on International Tax is a longstanding, important relationship with a shared goal of protecting U.S. taxpayer interests and providing certainty and stability in the international tax system. It goes without saying that Pillar One and Pillar Two can only be implemented in the U.S. with the support of Congress. We hope to have a complete Pillar One package soon and intend to continue to seek input.

Similarly, with respect to Pillar Two, we stand ready to work with Congress to enact the reforms proposed in the President's budget to implement Pillar Two, which would increase U.S. revenue and strengthen our tax system.

We will also continue to work with Congress to prioritize issues for interpretive guidance.

As always, we would like to offer our technical assistance to any relevant legislative effort. And with that I would be pleased to respond to any questions.

[The statement of Mr. Plowgian follows:]

Testimony of Deputy Assistant Secretary Michael Plowgian

Before the Tax Subcommittee of the House Ways & Means Committee

July 19, 2023

Chairman Kelly, Ranking Member Thompson, and Members of the Subcommittee.

I am Michael Plowgian, Deputy Assistant Secretary for International Tax Affairs in the Department of the Treasury's Office of Tax Policy. I appreciate the opportunity to testify before the Ways and Means Tax Subcommittee regarding U.S. engagement on the Two-Pillar solution in the G20/OECD Inclusive Framework on BEPS ("Inclusive Framework").

I would like to begin by placing the work that we are doing on the Two-Pillar solution, and particularly on Pillar 2, in context. The Two-Pillar solution grew out of the Organisation for Economic Co-operation and Development (OECD) project known as BEPS – for Base Erosion and Profit Shifting. The BEPS project began in 2012 at the request of the Group of 20 (G20), who were concerned about the ability of multinational corporations to avoid tax by shifting profits into low- or no-tax jurisdictions.

Since the BEPS project began over a decade ago, the United States has had a strong interest in its success. The active participation of the Executive Branch and the support of Congress has been crucial in protecting our tax base from being eroded by multinationals. Prior to our engagement in BEPS, multinationals' ability to shift paper profits to low-tax jurisdictions resulted in an unproductive race to the bottom in corporate tax rates. Unilateral attempts to address this problem led to uncertainty and instability for both U.S. taxpayers and the U.S. government.

The BEPS project led countries to enact changes to international tax rules to limit profit shifting. In the United States, the BEPS project provided the foundation for several Tax Cuts and Jobs Act (TCJA) provisions, including Global Intangible Low Tax Income (GILTI), the interest deduction limitation, and the anti-hybrids provisions. However, starting in 2018, it became clear that further work was needed to stabilize the international tax system and enable U.S. businesses to compete on a level playing field. That work has continued across multiple Congresses and Administrations.

As part of that process, this Administration has pushed to reach a global framework on a Two-Pillar solution to reform the international tax system. Pillar 1, when implemented by the countries and jurisdictions that participated in the development of the framework, will get rid of the unilateral and discriminatory digital services taxes ("DSTs") that largely impact U.S. businesses and will reallocate a portion of taxing rights to reflect the way business is done in the 21st century. Pillar 2 will level the playing field between U.S. and foreign businesses and end the race to the bottom in corporate tax rates by establishing a global minimum tax on the earnings of large multinationals, regardless of where they are headquartered or where they operate. It will ensure the United States can tax U.S. multinationals at reasonable levels without being undercut by other countries using their tax systems to induce our multinationals to shift their profits, operations, or residency offshore.

Over the past two years, the Administration has engaged in the Inclusive Framework to work through the details of this package. The Inclusive Framework has reached consensus on Model Rules under Pillar 2, and many countries are implementing those Model Rules. Continued U.S. engagement in the Inclusive Framework is essential to ensure consistent interpretation of those rules. Discussions in the Inclusive Framework have resulted in additional guidance, including guidance issued this week that would treat transferable credits appropriately as equivalent to refundable credits.

Treasury negotiators have also been working in the Inclusive Framework to develop a complete Pillar 1 agreement, though there are still important elements of Pillar 1 that remain open.

The Executive Branch and Congressional partnership on international tax is a long-standing, important relationship with a shared goal of protecting U.S. taxpayer interests and providing certainty and stability in the international tax system. It goes without saying that Pillar 1 and Pillar 2 can only be implemented in the U.S. with the support of Congress. We hope to have a complete Pillar 1 package soon and intend to continue to seek input. Similarly, with respect to Pillar 2, we stand ready to work with Congress to enact the reforms proposed in the President's Budget to implement Pillar 2, which would increase U.S. revenue and strengthen our tax system. We will also continue to work with Congress to prioritize issues for interpretive guidance. As always, we would like to offer our technical assistance to any relevant legislative effort.

With that, I would be pleased to respond to any questions.

Chairman KELLY. Mr. Plowgian, Ms. Gordon, in the concluding paragraph of her testimony, raises the analogy of the USMCA to the current situation Congress finds itself in.

Now, my friend, the ranking member, Mr. Thompson, may recall the Trump Administration, on that trade agreement, took the same position as this Administration in taking on Pillar Two. That is the deal, as negotiated, and Congress should consider the deal signed, sealed, and delivered. As members will recall, that agreement was reopened and renegotiated largely at the direction of my Democrat friends on this committee.

Now, Mr. Plowgian, in your testimony you state the Administration wants to work with Congress to take Pillar Two process to conclusion. I appreciate the constructive tone, but if you want this agreement to become domestic law, as you just stated in your statement, are you willing to go back to the negotiating table and take care of the issues of importance to members of this committee?

Mr. PLOWGIAN. Thank you, Chairman.

So only Congress has the authority to implement or not implement changes to U.S. law. That is true with respect to Pillar Two, it is true with respect to Pillar One. We have received a lot of input from Congress, from the tax writing committees, as well as from U.S. businesses and other stakeholders. We take that input very seriously. We take that into the negotiations, and we would like to continue to work with Congress to take that input and take that into the discussions.

Chairman KELLY. You know, and I appreciate your tone because we went through this same thing with the USMCA.

My question is, if there is this willingness to work through the Congress, why is the Congress denied information when they try to find out what exactly was negotiated, how it was negotiated, and why we considered it a done deal?

Now, I would like to see this go back. I think members of this panel—not the panel, but us up here—including both sides of the aisle, should be more involved with this. I just—I don't like it whether it was the Trump Administration, or the Biden Administration forgoing and going around the—taking an end run on Congress. There is a reason for that structure to be in place, and I would like to see it taken care of.

So, I am going to yield now to my friend from California, Mr. Thompson.

Mr. THOMPSON. Thank you, Mr. Chairman.

Mr. Plowgian, thank you again for being here. You mentioned in your testimony that the changes you have been able to secure are thanks to congressional input. Could you provide more details on the issues that Treasury has negotiated that will benefit the United States?

Mr. PLOWGIAN. Thank you, Ranking Member Thompson. Yes, I am happy to.

Protecting U.S. interests has been a consistent priority for the multiple administrations that have been involved in these negotiations. And the Pillar Two model rules and interpretive guidance reflect that. I can't speak to every decision that has been made, but a few examples, I think, will paint the picture.

Many important U.S. provisions, including accelerated depreciation, are specifically identified in the model rules as book tax differences that do not give rise to adjustments to the effective tax rate, and do not give rise to top-up tax under Pillar Two.

Treasury negotiators have also been able to secure a GILTI coordination rule that reduces the burden for U.S. businesses in allocating taxes paid under GILTI for purposes of Pillar Two.

On Monday, there was also guidance that was released that provides for a safe harbor on the UTPR that provides temporary taxpayer relief and time to resolve outstanding issues in the application of the UTPR, two parent jurisdictions.

I also want to highlight the guidance on the treatment of credits. So credits through tax equity partnerships, structures that are commonly used in the Low-Income Housing Tax Credit context, as well as for certain green energy credits, have also been protected under administrative guidance.

Monday's guidance also, as I mentioned, protects the value of transferable credits like those enacted under the Inflation Reduction Act by treating them appropriately as refundable tax credits. And I think that administrative guidance really demonstrates that the U.S. should remain at the table as the world moves forward and implements Pillar Two.

Mr. THOMPSON. Thank you, and I think the transferable credits provision speaks loudly about the importance of us being at that table. I appreciate that. It seems to me that your recent accomplishments are proof of the importance of remaining at that table.

One thing is really clear to me, and that is that the OECD is going to forge ahead, and the United States can't just put our head in the sand and pretend that it isn't, as some of my colleagues on the other side of the aisle seem to think we should be doing. I am glad that, notwithstanding some resistance from my colleagues on the other side, the Biden Administration, Secretary Yellen, and you have been steadfast in your commitment to representing the United States at the OECD. I appreciate that, and I want you to know that you have the full support of folks on my side of the aisle.

A lot has been said about the JCT revenue estimates. It seems to me that estimating the revenue effects of adopting or not adopting Pillar Two is an extremely difficult exercise, even for the most qualified economists at JCT. In your opinion, what should we take away from these estimates that we have seen?

Mr. PLOWGIAN. Well, I think that is a really important issue, and I think there are several things to keep in mind when reviewing the JCT revenue estimates.

First is the modified baseline that JCT uses. The JCT analysis says that if the 40-plus jurisdictions that have announced plans to implement Pillar Two do, in fact, adopt Pillar Two and the U.S. does nothing, then the impact of Pillar Two on U.S. revenues could vary by $400 billion, depending on their assumptions on profit shifting. If you just look at the midpoint of that range, what they are saying is that Pillar Two adoption by those 40-plus jurisdictions and no action by the U.S. is an increase in U.S. tax receipts of $25 billion.

In addition, I think it is important to note that in every scenario that the JCT analyzed, U.S. adoption of Pillar Two increases U.S.

tax receipts as compared to inaction by the U.S. For instance, scenario five, which shows U.S. adoption of Pillar Two and adoption by those 40 baseline countries, would increase U.S. revenue by $236.5 billion.

So overall, the takeaway is, if other major members of the global economy are moving ahead, and they are moving ahead to implement Pillar Two, it is better from a revenue perspective for the U.S. to take action than to remain on the sidelines.

Mr. THOMPSON. Thank you very much.

I yield back, Mr. Chairman.

Chairman KELLY. Thank you, sir. Mr. Schweikert from Arizona is recognized for five minutes.

Mr. SCHWEIKERT. Thank you, Mr. Chairman.

Mr.—is the proper term Deputy Secretary?

Mr. PLOWGIAN. Deputy Assistant Secretary.

Mr. SCHWEIKERT. Deputy Assistant. That gets a little long, doesn't it?

Mr. PLOWGIAN. It does.

Mr. SCHWEIKERT. Forgive me for—because I think you actually have one of the most fascinating jobs someone could have if you are a tax geek. But I think, actually, one of the things you just said was a little duplicitous, so forgive me for being cruel.

So we are here two years from now, after what you are calling the victory has functionally timed out. What is the effect 24 months or 36 months from now—then, compared to today? Not what our friends across the other parts of the world—on tax receipts. What is good for America?

Mr. PLOWGIAN. Well, I think, as I mentioned, the JCT analysis shows——

Mr. SCHWEIKERT. No, no, no, no, stop, Mr.—what you said is the JCT analysis. If we did nothing—I am just asking, ceteris paribus, then until 36 months from now, do we have more tax receipts or less?

Mr. PLOWGIAN. I am sorry, what is the hypothetical? If the U.S. does nothing?

Mr. SCHWEIKERT. Today, three years from now.

Mr. PLOWGIAN. Three years from now?

Mr. SCHWEIKERT. It is not hard.

Mr. PLOWGIAN. And the U.S. does what?

Mr. SCHWEIKERT. Nothing. No, no, no, just from today's tax receipts——

Mr. PLOWGIAN. Right.

Mr. SCHWEIKERT [continuing]. To this new scheme, as we will call it. What happens to U.S. tax receipts? Are they up or down?

Mr. PLOWGIAN. The JCT analysis——

Mr. SCHWEIKERT. The JCT analysis was based on the concept that if we did nothing and our trading partners did something. I am just asking, are we up or down?

Mr. PLOWGIAN. The JCT analysis does not answer that question. It shows a range——

Mr. SCHWEIKERT. Actually, it alludes to it.

Mr. PLOWGIAN. I am sorry.

Mr. SCHWEIKERT. Please, go on.

Mr. PLOWGIAN. It does not answer that question. It shows a range, a variable range of $400 billion. Again, the midpoint of that range is an increase in U.S. tax receipts of $25 billion.

Mr. SCHWEIKERT. Really? Because we white-boarded this last night, and we actually had just the opposite, that once we got beyond the two-year reprieve that seemed so joyful, we actually had the U.S. receipts going down. Why do you believe we see the difference?

I mean, I am not asking for you to talk about JCT. You have smart people over with Treasury. What are you seeing?

Mr. PLOWGIAN. I am not an estimator. The Treasury estimators have estimated the effects of enacting the President's budget proposals, which would enact Pillar Two, and those raise considerable revenue for the U.S.

Mr. SCHWEIKERT. Okay, so we agree to this, and that is with the two years, and even with what you have also done in regards to R&D tax credits and how that amortization is treated, and you actually see receipts going up. And do you think that is what the next panel is going to tell us?

Mr. PLOWGIAN. I don't know what the next panel is going to tell you.

Mr. SCHWEIKERT. So you haven't read any of their testimony?

Mr. PLOWGIAN. I have not.

Mr. SCHWEIKERT. Really? I am glad for the level of professionalism we are dealing with.

You are making our job more difficult because, for many of us, we are trying to just defend. Are we taking in receipts? Does this increase U.S. economics and opportunity and jobs? Are we basically giving it away? Because we have other analysts coming to us and saying this is not actually good for the robustness of the American economy.

Okay. In the last minute we have here or so, walk me through what is happening in R&D credits.

Mr. PLOWGIAN. So, with respect to R&D credits, this is an issue that we have heard quite a bit of input from Congress and from U.S. businesses and other stakeholders on. It is an issue that we have raised——

Mr. SCHWEIKERT. What is happening with them?

Mr. PLOWGIAN. By what is happening with them, you mean how are they treated under Pillar Two?

Mr. SCHWEIKERT. What—how are they being treated and how does it affect U.S. economic expansion?

Mr. PLOWGIAN. Yes, so U.S. R&D credits generally are non-refundable. There is a small portion that is refundable, but typically for taxpayers who are within scope of Pillar Two, they would be non-refundable. That would reduce the effective tax rate. It would be treated as a reduction in taxes with respect——

Mr. SCHWEIKERT. And therefore, it would be subject to?

Mr. PLOWGIAN. It would depend on the effective tax rate of the taxpayer. So it would reduce the effective tax rate of the taxpayer.

Mr. SCHWEIKERT. And so therefore, it would be subjected to the—functionally, the OECD sanction.

Mr. PLOWGIAN. It could be. It could be——

Mr. SCHWEIKERT. It could be? Or——

Mr. PLOWGIAN. The taxpayer could be subject to top-up tax——

Mr. SCHWEIKERT. All right.

Mr. PLOWGIAN [continuing]. Depending on the effective tax rate of——

Mr. SCHWEIKERT. Mr. Chairman, I am sorry it took so long to get there, but something we all claim we sort of agree upon is now somewhat put at risk on how it is being modeled, particularly in the tax rate. So, with that, I yield back.

Mr. THOMPSON. Mr. Chairman, are you going to point out that the witness's testimony has been embargoed?

Chairman KELLY. No, I am glad you pointed it out. Thank you.

Mr. THOMPSON. Thank you.

Chairman KELLY. I recognize the gentleman from Texas, Mr. Doggett.

And also, Mr. Plowgian, if you could, could you get a little closer to the mic, so it comes across a little bit louder? Okay?

Mr. PLOWGIAN. I will try.

Chairman KELLY. Okay. Thank you, sir.

Mr. DOGGETT. Thank you.

Chairman KELLY. Mr. Doggett.

Mr. DOGGETT. Thank you, Mr. Chairman.

Since first joining this Ways and Means Committee more than 20 years ago, one of my top priorities has been shutting down abusive offshore tax havens. In all that time, Republicans have been doing all that they can to protect that tax evasion.

Back in 2001, then-Republican leader Dick Armey was castigating the OECD in almost the very same words we have just heard today. They favor allowing the biggest corporations to dodge their responsibility to fairly contribute to our national security and other vital public services.

When these profitable multi-nationals can shift profits, profits they have earned designing new products right here in America, profits they have earned selling to American consumers, and move that into tax havens, we all lose. Small businesses and other domestic businesses like a car dealer cannot secret their earnings in some offshore tax haven. International tax dodging shifts more of the tax burden to those businesses like that, and to working Americans, to a nurse, to a firefighter, to a teacher, many of whom end up paying a greater proportion of their earnings into our treasury than the largest, most profitable multi-nationals in the world.

The Joint Committee on Taxation looked at the facts, at the effect of the 2017 Trump Republican tax scam, what impact it had on the 88 largest American multi-nationals. Before their scam was enacted, those 88 multi-nationals averaged an effective tax rate of only 16 percent. After the tax scam, their rate was cut to 7.8 percent. Certainly, a rate any police officer would be delighted to pay but is unable to do so.

Now we can understand why Republicans are working so hard to shield these profitable companies from a 15 percent tax minimum. Last year U.S. multi-nationals booked $325 billion in profits in the top 7 offshore tax havens. This contrasts with their reporting only $50 billion in 7 of the world's largest economies where they were doing business. IRS data shows that American firms reported far more earnings in the Cayman Islands, population 65,000, than they did in China and Canada combined.

Indeed, American multi-nationals reported $60 billion in profits in the Cayman Islands in 2019. This, of course, is impossible, since the total economic output of the Cayman Islands is only $6 billion. Just think about that $60 billion on which they paid an effective rate of 6/10 of 1 percent. This is a fraud on the American people, pure and simple. And those that defend it are aiding and abetting that fraud.

Thankfully, because of the leadership of Secretary Yellen, the Biden Administration has been a leader. They have led the world, more than 140 countries, in what even the Wall Street Journal has reported as the most important tax deal to be agreed upon by such a large group of countries within a century. In none of the top 10 countries where U.S. multi-nationals employ workers are they paying less than a 20 percent tax rate, and in none of the 10 countries where they book their profits do they pay more than 7 percent, with rates going down to the 6/10 of 1 percent in the Caymans.

Mr. Plowgian, what is required to stop this outrage and this fraud on small businesses and individual American taxpayers?

Mr. PLOWGIAN. One straightforward way to address the issue of profit shifting in—by multi-nationals would be to reform our GILTI rules so that they apply on a country-by-country basis. The current law, GILTI, applies on a globally-blended basis, which means that foreign tax credits for taxes paid in high-tax jurisdictions shield the profits in low-tax jurisdictions.

Mr. DOGGETT. And how would other countries increasing their taxes to make these multi-nationals pay at least 15 percent minimum tax, how would that actually make America more competitive?

Mr. PLOWGIAN. Yes, it makes America more competitive in multiple ways. It allows the U.S. to maintain a robust corporate tax system because it prevents the shifting of profits offshore and allows the U.S. to tax multi-nationals at reasonable rates.

Mr. DOGGETT. And to compete based on our education system, our workforce, our justice system, our national security.

Thank you so much for your service and your testimony.

Chairman KELLY. I thank the gentleman. Now I am recognizing Mr. Arrington from Texas. Now we are going to go in accordance with committee practice. We are going to go on a two-to-one questioning.

Mr. Arrington.

Mr. ARRINGTON. Thank you, Mr. Chairman.

Mr. Plowgian, you just said that American companies will be more competitive if we tax them at a higher rate. We are at a 12 percent Global Minimum Tax. And you think it is going to make American companies more competitive to levy more taxes—taxes, by the way, corporate taxes that are passed through in higher cost of goods and services to consumers, which will exacerbate inflation. It will also impact wages by reducing wages and income.

So, tell me again how America is more competitive if we increase taxes on American companies, just kind of taking off where you all left off in the last Q&A.

Mr. PLOWGIAN. Right, right, thank you. So Pillar Two levels the playing field for U.S. multi-nationals, which were up to this point, the only multi-nationals that face a minimum tax on their foreign earnings.

Pillar Two ensures that all multi-nationals, wherever they are headquartered, wherever they operate, are subject to a minimum level of tax.

Mr. ARRINGTON. Shouldn't other sovereign nation states decide what their tax system should be, and what their international tax policy should be? Why are we—why do we need this one world order of tax regime?

Well, let me ask you a more direct question. You had Democrat control of the Senate, Democrat control of the House in last Congress, and a Democrat President. Did you increase the Global Minimum Tax from 12 to 15 percent in the Democrat—all Democrat, total partisan Democrat tax policy—that is, the so-called Inflation Reduction Act, did you raise the Global Minimum Tax?

Mr. PLOWGIAN. Changes consistent with Pillar Two were passed in the House, and were——

Mr. ARRINGTON. Did you raise the tax rate from 12 to 15? It is a simple question.

Mr. PLOWGIAN. And they were close to being passed in the Senate——

Mr. ARRINGTON. Did it pass from 12 to 15, yes or no?

Mr. PLOWGIAN. But one of the concerns that was raised with——

Mr. ARRINGTON. Just——

Mr. PLOWGIAN [continuing]. Other countries——

Mr. ARRINGTON. Listen, if I may, if I may reclaim my time, you won't answer the question. It is a simple question. And if the American people were sitting here wondering why in the world we would allow our companies to be less competitive in the global market, and why we would cede our sovereignty in terms of tax policy to other countries along with our tax base—what you are doing is a backdoor coercive strategy to force Congress to have to raise taxes from the 12 percent Global Minimum Tax to the 15.

If we don't, here is what you are setting up. Here is what the Biden Administration is setting up. Other countries will tax not just U.S. operations in their jurisdiction, they will tax U.S. companies. They will take our revenue to support their policies, their programs, their people without any say, without any say in the matter.

Well, I guess they did have a say. They rejected the Global Minimum Tax increase. They rejected it, even with Democrat control. And in addition to other countries, this is the set-up, this is the back door scheme. They not only take the taxes from this country—and JCT says, in one estimate, $56 billion, $56 billion—are you going to tax more to offset that loss? President Biden's budget includes almost $5 trillion of new taxes. So we are going to tax the American people more?

I think the most outrageous aspect of this whole thing—not to mention the fact that we have pleaded with you all to consult with Congress, and we got nothing, no response—is the fact that the tax base will be ceded to foreign jurisdictions for their people, their programs, and their policies, that we will subsidize, that United States hardworking taxpayers will subsidize, but we will also undermine our sovereignty.

We have set policy, Mr. Chairman and Ranking Member. We have set policies. Whether I agree with them or not, they are the law of the land, and they are tax policies to incentivize behavior like we want to encourage investment in R&D or the Work Opportunity Tax Credit. That is—so if a company takes their liability lower than 15 percent because they are taking advantage of the Work Opportunity Tax Credit to help veterans, to help people on food stamps and other public assistance to get jobs, they are penalized for that because of the top-up tax.

This thing is completely off the rails and upside down. It is absurd, and it is demeaning to the Tax Policy Subcommittee that you didn't even respond to our request for consultation.

I apologize. Thanks for the indulgence.

Chairman KELLY. That is okay, that is okay. You are deserving of the indulgence. Thank you, Mr. Arrington.

Now the gentleman from Georgia, Dr. Ferguson, is recognized for five minutes.

Mr. FERGUSON. Thank you, Mr. Chairman.

Mr. Plowgian, I will start with a simple question. Why do you think that you and your colleagues in the Administration are so gifted and talented that you can override the Constitution and write tax policy and usurp our authority there?

Mr. PLOWGIAN. I do not think that.

Mr. FERGUSON. Well, good. Then you should stop doing it.

Tax policy belongs with this committee of jurisdiction, not a rogue administration running out and cutting deals with foreign countries that make America less competitive. This whole notion that somehow or another we need to be in bed with the same tax rate as the rest of the world is absolute lunacy. It is lunacy. Our mission, our goal every single day should be defending those things that make America great, and making sure that we are the most competitive place in the world to invent, innovate, manufacture, and sell around the globe.

Americans today really care about their jobs and being able to provide for their families. Americans today care about being able to afford a decent, safe place to live. Americans today really care about their kids' education. And most importantly, they care about their freedoms, deeply. And our entire philosophy should be around preserving those four things, not putting us on par with a bunch of other countries that don't share our values or our competitive nature.

Why in the world would you allow countries with higher and more generous R&D credits have an advantage over Americans? Why would you do that?

Mr. PLOWGIAN. Congressman, we share your concerns about making sure that America remains a competitive place to do business. In fact, we think it is the best place in the world to do business. Pillar Two is about leveling the playing field for U.S. businesses.

Again, Pillar Two——

Mr. FERGUSON. Leveling the playing field for U.S. businesses? Wait a minute. We are about the American people, the American workers, and American businesses and innovators and creators. We are not about leveling the playing field with the rest of the country. We are about being number one day in and day out.

This whole business of leveling the playing field is a—it is a farce. We are either going to be number one in the world or we are not. I don't want to be number one tied with 5 other countries or 20 other countries. We need to be number one. We need to be doing things that increases productivity, that allows Americans to have better jobs. We need to be doing things that allow Americans to live in decent, safe housing. We need to be doing things that make sure that our children are educated in a way that can—they can compete on the global stage. And we need to be defending our freedoms. The only way that we can do that is to have a vibrant, strong economy, and we should be drawing treasure from around the world, not sending our treasure across our borders.

How in the world can you justify sending American tax dollars to foreign jurisdictions?

How can you justify France being able to tax a U.S. company? That is absolutely crazy. We have real problems. We have real challenges in making sure that we can meet the needs of the American people, and all of a sudden you are going to suck billions of dollars of taxes out of the U.S. economy and send it to people that don't necessarily share our values. Why in the world would you do that?

Mr. PLOWGIAN. I share your concerns.

Mr. FERGUSON. I don't care if you share them or not. I don't care if you like them or not. I am asking you, why would you do it?

Mr. PLOWGIAN. We believe that, on a level playing field, American businesses and American workers will win. We believe that, when there is a level tax playing field, U.S. businesses will be able to compete and win. We believe——

Mr. FERGUSON. How—wait, stop. Stop right there, sir. Let me reclaim my time.

How is—again, I don't think this is leveling the playing field. I think this puts us behind the eight ball, and here is why. If all of a sudden, here in America, if we are sending our tax dollars overseas, and our spending continues to go up because we have got some real challenges with the population, if we continue to go down that road then we are going to have to tax our traditional taxpayers more. It is going to put more of a burden on our job creators and our American workers. As that happens, our productivity goes down, our ability to invest in new technologies and training goes down. We don't have the resources to take care of our most vulnerable. The only way you can do it is to raise taxes. As you raise taxes, that makes us less competitive.

I do not see the logic. I do not understand how in the world that you can go through the mental gymnastics—you or anybody else in the Administration—to land where you have. If you are taking revenue out of the U.S. and delivering it to other countries, then how does that help us meet the needs of the American people?

Mr. PLOWGIAN. Pillar Two reduces the incentive to shift profits offshore, and it allows the U.S. to maintain a robust corporate——

Mr. FERGUSON. But you didn't really care about that a couple of years ago. You didn't really fight for GILTI. As a matter of fact, you kind of delayed everything, putting us behind the eight ball.

I would ask you to do this. Think about the things that American families wake up and think about every day: a job, a house, an education for their kids, safety, and security, and think about the freedoms that we have. And ask yourself, does this policy make—put—advance those goals or not? And the answer is no.

With that, Mr. Chairman, I yield back.

Chairman KELLY. I thank the gentleman. The gentleman from Connecticut, Mr. Larson, is recognized for five minutes.

Mr. LARSON. Thank you, Mr. Chairman.

And Mr. Plowgian, thank you, and I hope you get to speak now. We have heard a lot of speeches.

I didn't think we were going back to isolationism, but apparently that is the new road that we are setting out on, is that we are going to stand isolated and alone.

Also, just for the record, you know, about the Democratic majorities. They have this body called the Senate and they have something called the cloture vote. I am sure all of you are aware of that, where it takes 60 votes. Where in the Constitution does it say you need 60 votes to pass a bill? But Mitch McConnell swears by that, that that is exactly what is needed for things to happen and transpire. The House of Representatives should wake up. More than 500 of our bills, Democrat and Republican and non-partisan, don't get taken up in the United States Senate—I wish the press would write about that—because of the cloture vote. So let's have that for the record.

Now, Mr. Plowgian, apparently in the age of isolationism, apparently the United States exists alone in a global economy. And these other 50 countries, as has been articulated by Mr. Thompson and was also articulated by Mr. Doggett, are they simply going to—if nothing happens, if the United States doesn't approve this, does Pillar Two just simply goes away?

Mr. PLOWGIAN. No, Congressman, that is not what would happen. There are jurisdictions that have already implemented Pillar Two, South Korea and Japan being two of those. And all EU member states——

Mr. LARSON. South Korea and Japan. Are they pretty active economies?

Mr. PLOWGIAN. They are.

Mr. LARSON. Oh, all right. And so South Korea and Japan. What other economic impacts would that mean?

Mr. PLOWGIAN. Well, the——

Mr. LARSON. Because we want to be isolationist, right?

Mr. PLOWGIAN. Right. All EU member states are also obligated to implement Pillar Two, and most have legislation at this point. And there are many of our other major trading partners—the UK, Canada, Australia—that are moving forward——

Mr. LARSON. UK, Canada, Australia.

Mr. PLOWGIAN [continuing]. As well.

Mr. LARSON. Boy, those sound like awful partners for us. Do you really—you know, don't you think we ought to isolate from them, and—no?

Mr. PLOWGIAN. I don't think so, Congressman. I think we need to be at the negotiating table in order to represent U.S. interests in these discussions. And as you know, the Administration has proposed reforms to implement Pillar Two in the United States, as well.

Mr. LARSON. And you kept on talking about a level playing field and allowing the U.S. to compete. How is that to our advantage, especially given this great nation of ours and our ability, as is demonstrated in the global economy, to compete?

Mr. PLOWGIAN. Absolutely. So up to now, U.S. multi-nationals have been the only multi-nationals that are subject to a minimum tax on their foreign earnings. Now, under Pillar Two, all multi-nationals, wherever they are headquartered, wherever they operate——

Mr. LARSON. So previously it was only U.S. internationals, and now everyone is subject to that. Hmm, that seems like it is leveling the playing field to me.

Mr. PLOWGIAN. It does. And we believe that U.S. businesses will be able to compete and win in that environment.

It also levels the playing field for small businesses and purely domestic firms who cannot shift their profits offshore to avoid paying tax, and so they can compete better——

Mr. LARSON. And why is that important?

Mr. PLOWGIAN. That is important because they also need to be able to compete and grow our economy. Small businesses are major employers in the U.S., and that benefits American workers.

Mr. LARSON. So it is the small businessman that really is going to be advantaged as much as the large multi-national is going to be advantaged through competition, as well, because it will be the first time that the other global multi-nationals will be subject to the same tax. Is that correct?

Mr. PLOWGIAN. That is correct.

Mr. LARSON. And that is why the Administration is pursuing this policy——

Mr. PLOWGIAN. That is——

Mr. LARSON [continuing]. For business in general to level the playing field and allow the United States to compete and succeed and to grow jobs and grow this economy.

Mr. PLOWGIAN. That is exactly right.

Mr. LARSON. Thank you. I yield back.

Chairman KELLY. Thank you. I now recognize the chairman of the Ways and Means Committee, Mr. Smith.

Chairman SMITH. Let me begin by thanking Chairman Kelly for allowing me here, and for your leadership. We are incredibly grateful that you are at the realm [sic] of this committee with your experience, your knowledge, and your passion. And I am glad to have you leading our tax-writing committee.

Mr. Plowgian, no one in the Biden Administration has the power to write U.S. tax policy. The Supreme Court has said that the power to tax involves the power to destroy. It is among the most solemn responsibilities of government, and, under the Constitution, it is strictly controlled. The power to tax demands the highest level of accountability to the American people, especially when masses of jobs are at risk. And, while every member seated here today is accountable to voters, you and Secretary Yellen are not.

I have eight specific questions on Treasury's engagement with the tax-writing committees over the OECD negotiations, and I ask that you please just answer yes or no.

Was Congress consulted prior to Treasury agreeing to a UTPR surtax that would allow foreign governments to tax the U.S. operations of U.S. companies?

Mr. PLOWGIAN. We did receive input from Congress on the UTPR during the——

Chairman SMITH. So that is a yes.

Mr. PLOWGIAN [continuing]. Negotiations.

Chairman SMITH. That is a yes?

Mr. PLOWGIAN. We did receive input from Congress, yes.

Chairman SMITH. Okay. I have followed this issue very closely over the past three years, and I don't think that is the case. I know that Treasury has never consulted with Republican members prior to a decision. And unless you would like to revise your testimony, please provide to this committee in writing the date of the consultation, the names of Treasury personnel involved, and the names of Members of Congress that Treasury met with. Can you give me that information?

Mr. PLOWGIAN. We get input from Congress in many different ways, from hearings——

Chairman SMITH. Can you give me that information?

Mr. PLOWGIAN [continuing]. From letters, from consultation with staff, as well.

Chairman SMITH. Yes or no, can you provide this committee that information?

Mr. PLOWGIAN. I do not have that information currently.

Chairman SMITH. So how do you know what you just testified before Congress is accurate?

Mr. PLOWGIAN. We receive input from Congress in multiple ways, as I said, through——

Chairman SMITH. What are those multiple ways, and from what Members?

Mr. PLOWGIAN. Through hearings, through letters from Congress from Members.

Chairman SMITH. What hearings?

Mr. PLOWGIAN. Treasury is called before House Ways and Means. Secretary Yellen has testified before Ways and Means.

Chairman SMITH. Testified after she made the negotiations in regards to it.

Mr. PLOWGIAN. We receive letters from Members, as well.

Chairman SMITH. Let me ask you another question. Was Congress consulted prior to Treasury accepting this recent offer by foreign countries to delay the UTPR surtax by just one year?

Mr. PLOWGIAN. Again, we received input from Congress and from taxpayers with concerns——

Chairman SMITH. You did not consult with the chairman of the tax-writing committee. So who did you consult with?

Mr. PLOWGIAN. We received input from the tax-writing committees on the UTPR, and concerns about——

Chairman SMITH. No one from our committee on the Republican side. So was it only the Democrat side you spoke with?

Mr. PLOWGIAN. We speak with staff of the tax-writing committee on a bipartisan basis on a regular basis.

Chairman SMITH. Did you, in regards to this delay for one year, did you speak to the majority in the tax-writing committee of Ways and Means?

Mr. PLOWGIAN. We received input on concerns about the UTPR and concerns about application of the UTPR to parent jurisdictions, especially in the early years of——

Chairman SMITH. You received letters from us——

Mr. PLOWGIAN [continuing]. The Pillar Two.

Chairman SMITH [continuing]. But did you consult with us before this decision? Yes or no.

Mr. PLOWGIAN. We speak with the tax-writing committees on a regular basis.

Chairman SMITH. Well, I am the chairman of this committee, and it is almost crickets. So you might want to do a little bit better in regards to that.

Was Congress consulted prior to Treasury agreeing that the U.S. R&D credit would be disadvantaged versus the R&D credits of other countries like the UK?

Mr. PLOWGIAN. I cannot speak to that decision. This has been an ongoing process for multiple years, and that is a longstanding distinction in the Pillar Two rules.

Chairman SMITH. Yes, it is pretty detrimental to U.S. businesses. Were you part of the negotiation?

Mr. PLOWGIAN. I joined—rejoined Treasury in October of 2021. The Pillar Two negotiations have been going on since 2018.

Chairman SMITH. So since 2021, when you were in the negotiations, R&D hasn't been discussed around you?

Mr. PLOWGIAN. We have raised the R&D credit as an important issue in the negotiations.

Chairman SMITH. Did anyone in Congress sign off on the decision to give generous refundable corporate tax credits and Chinese state subsidies an advantage over more typical tax incentives like those enacted by Congress on a bipartisan basis? Yes or no?

Mr. PLOWGIAN. Again, I was not part of the negotiations when that decision was made. That has been an issue in the Pillar Two negotiations. That is longstanding.

Chairman SMITH. Can you find that answer out for me?

Mr. PLOWGIAN. I will check on that and come back to you.

Chairman SMITH. I would love that to be submitted.

Did Treasury consult with Congress prior to Treasury conceding that the U.S. GILTI rule would not receive full grandfathering status as the only Global Minimum Tax in the world? Yes or no?

Mr. PLOWGIAN. I was not part of the negotiations at that juncture.

Chairman SMITH. So once again, can you provide me the answer to that question with whoever at Treasury that was?

Mr. PLOWGIAN. I will check on that.

Chairman SMITH. Did anyone in Congress sign off on Treasury's decision to surrender U.S. tax revenues from GILTI and Subpart F because of the OECD's preference for local corporate minimum taxes?

Mr. PLOWGIAN. You are speaking about the qualified domestic minimum taxes. So we, again, received input on that. The qualified domestic minimum taxes are consistent with all international tax rules that provide the primary taxing rights to a jurisdiction when it taxes its residents on income that arises——

Chairman SMITH. I understand what it is.

Mr. PLOWGIAN [continuing]. In that jurisdiction.

Chairman SMITH. But my question was did anyone in Congress sign off on Treasury's decision?

Mr. PLOWGIAN. Again, we receive input from Congress in many ways.

Chairman SMITH. Once again I ask, unless you would like to revise your testimony, please provide to the committee in writing the date of the consultation with the Members of Congress, the names of Treasury personnel involved, and the names of Members of Congress that Treasury met with.

Did anyone in Congress sign off on the decision for a 15 percent Global Minimum Tax rate to replace the 12 to 13 percent rate that the OECD was considering prior to President Biden taking office?

Mr. PLOWGIAN. I was not part of the negotiations at that stage.

Chairman SMITH. Can you get that information for the committee?

Mr. PLOWGIAN. I will check on that.

Chairman SMITH. Was Congress consulted prior to Treasury agreeing on the scope of the Pillar One profit allocation, which skews heavily against U.S. companies while exempting their foreign-headquartered competitors?

Mr. PLOWGIAN. I am sorry. What was the question?

Chairman SMITH. Was Congress—once again, was Congress consulted prior to Treasury agreeing on the scope of the Pillar One profit allocation which skews heavily against U.S. companies while exempting their foreign-headquartered competitors?

Mr. PLOWGIAN. I don't think that it exempts foreign MNEs under Pillar One, so I am not sure I understand the——

Chairman SMITH. From my understanding——

Mr. PLOWGIAN [continuing]. The question.

Chairman SMITH [continuing]. It does. So would you be opposed to it if it did not exempt those foreign-headquartered competitors?

Mr. PLOWGIAN. Sorry, I don't——

Chairman SMITH. Would Treasury be opposed to it?

Mr. PLOWGIAN. I don't think that it does exempt foreign-headquartered multi-nationals in Pillar One.

Chairman SMITH. So in regards to Pillar One profit allocation period, did Treasury consult with any Members of Congress?

Mr. PLOWGIAN. We continue to consult with Congress about Pillar One. Pillar One remains open. There are many open issues on Pillar One.

Chairman SMITH. So it goes back to my simple question. You said yes, you have. I would love for you all to provide in writing to this committee who you consulted with, what members of Treasury that consulted with us, and what date.

If Treasury had consulted with Congress, we would have avoided the multitude of Biden Administration losses in the OECD negotiations.

My final question: Most observers are skeptical that China will ever truly comply with this OECD agreement. Secretary Yellen recently traveled to China to meet with the Chinese Communist Party officials. During that trip was she able to obtain commitments from China that it would adopt the OECD agreement and implement it fairly?

Mr. PLOWGIAN. Secretary Yellen did meet with her Chinese counterparts, and in an attempt to reset the relationship with China. I do not know whether they spoke about Pillar Two, but the UTPR is an important part of Pillar Two that ensures that China and other jurisdictions do not gain an advantage if they do not adopt Pillar Two. And that is why the UTPR is an important part of Pillar Two. It ensures—it provides an enforcement mechanism that ensures that Chinese multi-nationals will be subject to the same minimum tax as other multi-national——

Chairman SMITH. We know China is really not that great of following rules and agreements. We have seen that with our country. That is why I was hopeful that the Treasury Secretary, in her long visit to China, would definitely have talked to them about whether they would adopt OECD and the agreement and implement it fairly. Since it is so important, I figured that would be top of her list.

Whether by manipulating financial statements or by creating new state subsidies, China will find ways to evade these OECD rules. And allowing CCP-supported companies to gain a competitive advantage against the United States is yet another failure in these negotiations by the Biden Administration.

I yield back, Mr. Chairman.

Chairman KELLY. Thank you, Chairman Smith. I now recognize Mr. Hern from Oklahoma.

Mr. HERN. Thank you, Mr. Chairman, for holding this important meeting.

Mr. Plowgian, I want to piggyback a little bit off what the chairman had to talk about, but I am glad to hear you have been here for a year-and-a-half, so we know we are talking to the person that would have the answer. So I appreciate the chairman asking you for resolve in the conversations that you have specifically had or your team has had with Congress or with Ways and Means, specifically the tax-writing committee that you are speaking to today.

You mentioned that you and—the chairman mentioned about responding in writing. In November of last year, Chairman—or Ranking Member Brady and I wrote a letter together asking you for modeling data and estimates on how U.S. companies and Federal tax revenue would be impacted by the OECD Pillar One agreement, and how does the Treasury plan to achieve ratification of an MLC by December 31 without sharing essential information with the Congress that has not been involved in the Treasury's unilateral negotiations.

I know you say you have talked about this, I mean, the response to the November letter by myself and Ranking Member Brady and then again from myself solely in March of this year. I mean, the responses could be, you know, what do you want for Christmas. They were not responding to the letters at all. So I am not sure who is writing you letters. I find it hard to believe, until you prove us all differently, that you have been dialoging with the committee that has jurisdiction over this in Congress.

I am asking again. Please share these projections with the Ways and Means Committee. And will you commit to sharing this information?

I will be nice, but, you know—there wasn't a timeframe put on it, but within 30 days. That is not too much to ask.

Mr. PLOWGIAN. Congressman, first of all, I want to say that Pillar One cannot be approved without congressional support.

Mr. HERN. Oh, we are keenly aware of that. But I am just asking why couldn't you have responded to the letters in November and March of this year?

Mr. PLOWGIAN. There are open issues that I mentioned in the Pillar One discussions. And specifically, those open issues as mentioned in the outcome statement last week that was issued by the inclusive framework relate to issues that have to do with the economics of Pillar One, and specifically issues around how the Pillar One taxing right is coordinated with the existing international tax system.

So, for example, there are issues around how much should existing taxes offset the Pillar One taxing right. There are questions about how withholding taxes imposed by jurisdictions should be treated. There are questions about what is the threshold for residual profits on which the Pillar One taxing rights should be made.

And so the Pillar One agreement is not complete, and we are concerned that providing estimates would not provide Congress with a complete picture of the Pillar One negotiations.

Mr. HERN. So, Mr. Plowgian, again, following up on what the chairman said about China and its—and actually, I asked Secretary Yellen this specifically sitting in your seat when she was here last. What assurances do we have that China is going to follow these model rules to do the things that you are talking about as you related to the UTPR?

What are the punishments?

You know, Secretary Yellen went to China and said the world is big enough for both of us to play in in a level playing field. Do we honestly believe, based on our relationship right now with China, that they are going to play by the rules when their whole mission in life, as stated by the president of their country, the general secretary of the communist Chinese people, has said time and time again that their goal in life is to become the number-one nation in the world, both economically and militarily, do we honestly think that their goal in life is to be on a level playing field with us?

Mr. PLOWGIAN. Well, we know, Congressman, as you suggest, that China does often try to undermine or circumvent international institutions, international partnerships and agreements. And we go into negotiations with our eyes open about that.

Mr. HERN. So we don't have a—we don't have any way to be punitive to that.

I just want to say a couple last things here, and then I will yield back.

You know, the EU Tax Observatory released an EU-funded report this month that goes into detail on the country-by-country breakdown of covered groups and their Amount A profits. Treasury's argument that any release of impact analysis or modeling data—would undermine current negotiation is a facade, and is not sufficient for the tax writers on this committee. Do you have a better reason for not complying with my request?

You just alluded to the fact that there was—it was incomplete, but you didn't share it quite like that. Could you—do you have any way of fulfilling my request?

Mr. PLOWGIAN. Once again, there are open issues in the Pillar One negotiations. Once we can resolve those issues, we plan to share estimates with Congress.

Mr. HERN. And you will follow up in writing to the questions that we asked in those letters, both Kevin Brady and myself, and then again me. I would really appreciate those in writing, as the chairman said.

I yield back.

Chairman KELLY. Thank you, Mr. Hern. Now we recognize the gentlelady from California, Ms. Sánchez, for five minutes.

Ms. SÁNCHEZ. Thank you, Mr. Chairman.

Today, Republicans are once again demonstrating their unfailing commitment to shielding large corporations from paying their fair share in taxes. Rather than working towards real solutions, Republicans want to let massive multi-national corporations move their profits to no-tax or low-tax jurisdiction so that they can avoid paying their fair share. And rather than working towards real solutions, Republicans are willing to put nearly nine million U.S. workers out of a job.

In contrast, Democrats recognize that we must remove profit-shifting incentives from our international tax system. We support the Biden Administration's work to protect domestic tax incentives. Those incentives include many of the Inflation Reduction Act's green tax credits that represent the largest single climate investment in American history. Protecting those green energy tax incentives would deliver lower costs for working families and take a huge step in the right direction in protecting our planet. And anybody who doubts that we are in dire need to protect our planet only must look to the extreme heat that we are currently experiencing to understand what exactly is at stake.

I want to focus on a crucial part of the Inflation Reduction Act, which are the transferable tax credits. Firms that don't have the tax capacity to claim non-refundable credits can still benefit from the IRA's transferable credits spurring green energy development. The OECD guidance released on Monday was certainly favorable on the transferable credits issue. This is going to help protect billions of dollars that Democrats invested in clean manufacturing, for instance.

Assistant Secretary Plowgian, thank you for being here. Despite the way that you have been badgered a bit, you are answering, I think, as honestly as you can. And I just want to say I assume that the favorable guidance on the transferable credits wasn't a result of your staying home and watching reruns of the Golden Girls. So, I want to thank you for your service, and I want to thank you for taking multiple trips across the Atlantic to advocate on behalf of the United States in these negotiations.

I think it is important for the committee to get a sense of the type of work that goes into your advocacy here on behalf of the United States. Can you describe some of the opposition that you faced, and how did the United States' persistence at the negotiating table pay off?

Mr. PLOWGIAN. Thank you, Congresswoman. Yes, so this was an issue on which we received a lot of input from Congress and from U.S. businesses about the importance of these credits and their treatment under Pillar Two.

As you suggest, approximately nine months ago many countries opposed treating transferable credits as refundable. There were a few allies early on who were very important to building momentum, but the majority view was, you know, deep skepticism of this position. The process of changing the view in the room is really a multi-pronged one.

So Secretary Yellen spent time with her counterparts explaining the importance of these credits economically and from a climate perspective, as well. International affairs engaged with their counterparts in other countries. The rest of the Administration engaged, as well. I certainly spent time with the lead tax negotiators from key jurisdictions building support.

And then my team and—I just cannot say enough good things about my team. They have been amazing and tireless through this whole process. They have to convince negotiators that our position is the right policy one, the right technical one, and come up with a technical solution. They have been working nights, weekends, holidays, early mornings, and just really have been tireless and amazing throughout the entire process.

And of course, none of that would have been possible if we were not at the table in the inclusive framework representing U.S. interests in these discussions.

Ms. SÁNCHEZ. And how favorable was that ultimate guidance to U.S.?

Mr. PLOWGIAN. I think it was very favorable. So it addressed two main issues for the originators of these credits, the taxpayers who engage in the projects that give rise to the credits. It treats the credits as refundable, meaning that they are treated as income, rather than as a reduction in tax expense, which helps protect the value of the credits. With respect to the purchasers, they treat just the net amount—so the difference between the value of the credit and the amount paid for the credit—as a benefit, and that was a huge request from stakeholder community with respect to these credits.

Ms. SÁNCHEZ. Again, I thank you for your service.

And I yield back.

Chairman KELLY. I thank the gentlelady. I now recognize the gentleman from Kansas who is celebrating his birthday today.

Mr. Estes, five minutes, please.

Mr. ESTES. Thank you, Mr. Chairman. And I am grateful you are holding this hearing. We need to take every opportunity to re-mind the Biden Administration that the Constitution provides that Congress, not the executive branch, with the sole authority to lay and collect taxes.

With that in mind, I introduced legislation with Chairman Smith last night that builds upon the first retaliation [sic] bill that we passed, or that we dropped in May. It increases the exposure that foreign companies have on Base Erosion and Anti-abuse Tax, the so-called BEAT, if their home country introduces the OECD's so-called Undertaxed Profit Rule, or UTPR. I just want to jump right into questions.

Mr. Plowgian, do you think U.S. businesses should pay more taxes to other countries?

Mr. PLOWGIAN. First of all, Congressman, happy birthday.

Mr. ESTES. Thank you.

Mr. PLOWGIAN. I think it is important to, as I have mentioned, level the playing field for U.S. businesses. And Pillar Two does level that playing field by ensuring that other countries' multi-nationals pay a minimum level of tax, as well.

Mr. ESTES. So I think a level playing field, a more level playing field would be introduce GILTI and BEAT in other countries' tax codes, as opposed to this process.

With the addition of the UTPR, I mean, the 10-year projections are that the U.S. Treasury will lose $120 billion and that corporations, U.S. corporations, will pay more in taxes that will go to other companies and—or other countries. I am trying to understand why the Administration would do a deal that would take taxes over a 10-year period out of the U.S. Treasury, and it would cause U.S. businesses to have to pay more in taxes.

I mean, what value do we get out of that over the 10-year period that—I mean, my colleague, Mr. Schweikert, talked about the first two years, as you would mentioned. But over this 10-year estimate from JCT, it is $120 billion loss of Treasury—to the Treasury if we do not change our laws. And if we do change our laws, it is almost a $60 billion loss to the U.S. Treasury.

Mr. PLOWGIAN. Well, I think it is important to look at the JCT analysis as an entire picture, right?

So as I mentioned, the JCT analysis describes its baseline as being 40-plus jurisdictions that it has identified that have announced plans to implement Pillar Two, and what would happen if those jurisdictions implement Pillar Two and the U.S. does not. And that is a, as I mentioned, a $400 billion swing, depending on the profit shifting assumptions that JCT uses.

And again, the midpoint of that range is an increase in U.S. tax revenue from other countries implementing Pillar Two.

Mr. ESTES. So what—but what the JCT projected is that we would—that the U.S. Treasury would lose roughly $120 billion, and that is the piece that concerns us the most when we look at UTPR and the impact on this.

And so let me go—we have limited time, let me go. The next question on there is why didn't Treasury focus on getting credit, full and complete credit, for the current U.S. tax code? Things like an R&D depreciation, and GILTI, and BEAT, and some of the other provisions that are in the current U.S. tax code? Why wasn't that included in the complete negotiations through this process?

Mr. PLOWGIAN. Well, I can't speak to the negotiations prior to when I rejoined Treasury. This has been an ongoing process for several years.

One of the things that is clear from the Pillar Two blueprint is that a common tax base was needed in order to be able to have a level playing field among jurisdictions. And so that is why—as far as I understand it, that is why a financial accounting tax base was adopted for Pillar Two purposes.

Mr. ESTES. But you are supportive of those provisions that were negotiated before you came on board. Otherwise, you would work to correct those. So you believe they are okay?

Mr. PLOWGIAN. We are engaged in ongoing discussions on Pillar Two. And again, I think it is very important for us to continue to be engaged in those negotiations. We think it is important to take congressional input into those negotiations to interpret the rules under Pillar Two.

Mr. ESTES. So I am glad to hear you say that, because I think there is a strong consensus not just in this committee, but across the country, and certainly in the taxpaying community, that provisions such as UTPR are something that we don't want to agree with going forward, and that it is punitive and anti-American in terms of the approach, that it misses that.

And so there is going to be some additional work done before this is ever implemented. Thank you.

And my time is expired, and I will yield back, Mr. Chairman.

Chairman KELLY. I thank the gentleman. I now recognize Mr. Kustoff from Tennessee.

Mr. KUSTOFF. Thank you, Mr. Chairman.

Thank you, sir, for appearing today. I kind of want to follow back up on Mr. Estes's question about JCT, and maybe Mr. Arrington's.

So we have heard the JCT estimate about the loss of $120 billion. You have disputed that, or you gave your argument against that. Has Treasury presented its argument to JCT to challenge their assumption?

Mr. PLOWGIAN. Well, Congressman, I am not challenging JCT's assumptions. All I am doing is pointing out the totality of JCT's analysis, which, again, assumes a baseline of 40-plus jurisdictions implementing Pillar Two, and then analyzes five scenarios. And in each of those, again, adoption of Pillar Two by the U.S. increases U.S. tax revenue as compared to not adopting.

But I do think it is important to take into account the baseline adoption by 40 major economies in the world and many of our largest trading partners.

Mr. KUSTOFF. Well, let me ask it a different way. Do you dispute JCT's assertion about the loss of $120 billion?

Mr. PLOWGIAN. All I am pointing out is that the JCT analysis is for multiple scenarios, many of which show U.S. tax revenue increases.

Mr. KUSTOFF. You would agree with me that JCT is non-partisan, correct?

Mr. PLOWGIAN. Yes.

Mr. KUSTOFF. All right. And I asked you a question; I don't think I got a direct answer. Treasury has not disputed or gone to JCT and disputed their analysis, have they?

Mr. PLOWGIAN. I——

Mr. KUSTOFF. Has Treasury disputed that with JCT?

Mr. PLOWGIAN. I am not aware of Treasury disputing that analysis with JCT.

Mr. KUSTOFF. All right. So let's assume Pillar Two goes into effect. What I have heard from different businesses and companies is the issue of compliance and compliance cost—I mean, a real, practical, pragmatic matter—and if I could, Deloitte, from their website, when they talk about Pillar Two—I want to read you this quote and see if you can help me figure it out. "Completing the new OECD Pillar Two information return represents a global undertaking requiring hundreds of data points, many of which are complex composites of underlying data. The size and complexity of the data requirements are further complicated by timing. While in many cases the first return has an 18-month lead time following the accounting period end, subsequent returns must be filed in less time. So even before you complete your first return, you will need to make decisions about ongoing compliance and reporting."

Mr. Plowgian, has the Treasury Department conducted any study or any analysis on the compliance—I must say burden—compliance burden or cost as it relates to Pillar Two for U.S. businesses?

Mr. PLOWGIAN. We share the concern about compliance burden, and this has been a central issue for our team in these discussions, and we are seeking to reduce compliance burden wherever possible.

So, for example, there is a country-by-country reporting safe harbor for two years that provides that no top-up taxes due with respect to a jurisdiction if the country-by-country reporting shows an effective tax rate in a jurisdiction above a certain threshold. That is intended to provide taxpayers with time to phase in their compliance in various jurisdictions, focusing first on the highest risk jurisdictions.

Mr. KUSTOFF. Right.

Mr. PLOWGIAN. There is also a—in the globe information return, so the Pillar Two tax return that was released on Monday, there is a five-year transition period that provides for jurisdictional reporting as opposed to entity-by-entity reporting. That, again, was intended to reduce compliance burden for taxpayers by reducing the amount of specific information that needs to be provided.

Mr. KUSTOFF. Thank you, I appreciate the answer. Let me ask my question again. Has Treasury conducted any study as it relates to the issue of compliance or compliance cost?

Mr. PLOWGIAN. I am not aware of any such study.

Mr. KUSTOFF. Okay, fair enough. So, Treasury—let me just ask as my time expires—Treasury has no data as it relates to the issue of compliance or compliance cost, correct?

Mr. PLOWGIAN. Again, I am not aware of any study in that regard.

Mr. KUSTOFF. If there was, would you agree to share that with this committee?

Mr. PLOWGIAN. I can check on that and get back to the committee.

Mr. KUSTOFF. Can you let us know, one way or the other, whether that exists? Will you agree to that?

Mr. PLOWGIAN. I will check on that and get back to you.

Mr. KUSTOFF. Thank you. I yield back.

Chairman KELLY. I thank the gentleman. I now recognize the gentlelady from California, Ms. DelBene, for five minutes.

Ms. DELBENE. From the great state of Washington, Mr. Chairman. Yes, not California. [Laughter.]

Chairman KELLY. From the great state of Washington.

Ms. DELBENE. There you go, there you go. Thank you, thank you, Mr. Chairman.

And Mr. Plowgian, thank you so much for being here today and for your time. You have highlighted the many reasons why the United States needs to stay engaged in the Pillar Two negotiations. And, given that the treatment of various tax credits has been a key part of the conversation, I wondered if you could talk specifically about a particular credit that I know has been strongly supported in a bipartisan fashion as very supported in our communities, which is the Low-Income Housing Tax Credits, and kind of how Pillar Two would treat LIHTC.

Mr. PLOWGIAN. Absolutely. So this was an issue that, when the model rules were released, we received input from Congress and from stakeholders about the need for additional guidance about economic development credits and, in particular, the Low-Income Housing Tax Credit. And, certainly, the Administration has shared those concerns.

And we have been able, through the negotiations, to secure administrative guidance that was released in February that provides that what is known as qualified flow-through tax benefits are protected under the Pillar Two rules. And what that means is that tax credits that are used in tax equity partnerships, which are the common structure for investments in Low-Income Housing Tax Credits, are protected. They are treated as qualified, flow-through tax benefits. And this was definitely something that is unique to the U.S., these structures.

And so it took a while to explain, really, to our counterparts what these were, why they were needed. But it is something that was very important to us. And the LIHTC is the largest and most effective Federal program that we have that encourages development of affordable housing.

Ms. DELBENE. Thank you. Thank you very much. Also, we saw the announcement last week that more than 130 countries have agreed to refrain from imposing Digital Services Taxes for an additional year, while work continues on the implementation of global tax reform. But Canada was one of five countries who did not agree to the moratorium extension.

Mr. Plowgian, I wondered if you could describe the steps that U.S. Treasury and the Administration are taking to address the Canadian Government's continued interest in pursuing a Digital Services Tax that targets U.S. companies and workers, given that this would have serious tax and trade implications for us going forward. And so I wondered if you could address that, and what steps you might be taking.

Mr. PLOWGIAN. Absolutely. This is a critical issue. And as you stated, the outcome statement, 138 countries joined in extending the standstill on DSTs.

Treasury is engaged with Canada at all levels, including Secretary Yellen, to dissuade them from implementing a discriminatory DST. The Administration more broadly is engaged with Canada, as well, through the interagency process, and other agencies have raised this issue with their Canadian counterparts.

Implementation of a DST by Canada would seriously undermine the Pillar One negotiations. And as you saw, actually, Canada was isolated on this issue. The other countries were not necessarily objecting to DST standstill; it was other issues that caused them not to join the outcome statement. But, with respect to Canada, we are exploring all options, and we would like to work with Congress to address that issue.

Ms. DELBENE. Thank you. Thank you again for being with us today.

I yield back, Mr. Chairman.

Chairman KELLY. I thank the gentlelady from Washington. I now recognize the gentlelady from Texas, Ms. Van Duyne.

Ms. VAN DUYNE. Well, I appreciate the time, Mr. Chairman.

I continue to be shocked that this Administration would cede U.S. sovereignty to allow other countries to dictate changes to the U.S. tax code. And this Administration could not convince Congress to pass its extremist tax hike agenda, so it has basically given the keys to our tax writers to Paris. You know, whoever drafted this plan has to understand that this attacks our tax base, our economic strength, and it transfers wealth from the U.S. to countries abroad, and it benefits countries abroad. It benefits workers abroad, not American workers. So we have talked about this, but I am not sure I have really gotten an answer.

So the Joint Commission on Taxation estimates that the U.S. would lose over $120 billion in tax revenues. Do you agree with that number?

I mean, you have given reasons why it may or may not, but do you agree with how they got to that number?

Mr. PLOWGIAN. Well, as I have mentioned, the JCT analysis looks at multiple scenarios, right?

And again, I think it is important to look at the baseline in the JCT analysis. The JCT analysis baseline is adoption of a Pillar Two by 40-plus jurisdictions, many of our largest trading partners and major economies. And again, the midpoint of their range for the impact of adoption by other countries of Pillar Two on U.S. tax receipts is a $25 billion increase in U.S. tax receipts.

Ms. VAN DUYNE. So that is the midpoint. But that is—as you mentioned, I mean, they are looking at a number of different scenarios, which I would hope that our own Treasury would look at.

So can you tell me what the U.S. Treasury has defined as would be the loss or the gain?

Mr. PLOWGIAN. The Treasury Department has provided estimates on the adoption of the Administration's Green Book proposals to enact Pillar Two, and those would——

Ms. VAN DUYNE. So you have done an independent analysis.

Mr. PLOWGIAN. On the adoption of the Administration's proposals to enact Pillar Two, yes.

Ms. VAN DUYNE. Okay. So have those been shared with Congress?

Mr. PLOWGIAN. Those have been shared with Congress, and have been made publicly available.

Ms. VAN DUYNE. Okay. So what was your number?

Mr. PLOWGIAN. I, unfortunately, do not recall off the top of my head, but it is multiple hundreds of billions of dollars.

Ms. VAN DUYNE. So the Treasury is saying that, as a result of this, we are going to make a ton of more money, even though what we are doing is allowing foreign nations to be able to define our tax codes. And we are so sure that European countries are going to be so favorable to U.S. companies and not want to be competitive at all?

Mr. PLOWGIAN. I am sorry, I don't understand the question.

No, the Treasury has provided estimates of U.S. adoption of Pillar Two, yes.

Ms. VAN DUYNE. And this is based on which of the scenarios that JCT used?

Mr. PLOWGIAN. This is based on U.S. adoption of Pillar Two.

Ms. VAN DUYNE. Correct. But JCT used a number of different variables. What is Treasury's variables?

Mr. PLOWGIAN. I don't think it aligns perfectly with JCT's analysis.

Ms. VAN DUYNE. So how could they be so far off?

Mr. PLOWGIAN. Well, I think they do analyze different scenarios.

Ms. VAN DUYNE. But you just said that you are using the same. So which is it?

Mr. PLOWGIAN. I——

Ms. VAN DUYNE. Is it similar or is it not similar? And what is the different numbers that they are using that you are not using?

Mr. PLOWGIAN. I did not say that they were the same.

So our—Treasury's analysis assumes no change in foreign law, which is the——

Ms. VAN DUYNE. Okay.

Mr. PLOWGIAN [continuing]. Convention for revenue estimating.

Ms. VAN DUYNE. So we are expecting that they are not going to change anything in that. We are just going to have a freefall of dollars. Okay. Makes sense.

I mean, no offense to our European friends, but the U.S. has taken a much more aggressive approach when it comes to corporate tax rates. And we have seen that we have been rewarded with growth. In 2008 the U.S. and EU were equally the same size. By 2022 the U.S. economy had grown to $25 trillion, whereas the EU and the UK together had only reached $19.8 trillion. America's economy is now nearly one third bigger. It is more than 50 percent larger than the EU without the UK.

So to be—this tax deal seems like a race to the bottom, and not what Republicans have been accused of at all. We continue to hear from the other side of the aisle that TCJA was a tax scam and created corporate loopholes. Yet in 2022 corporate tax revenues reached a record high of $425 billion, or 43 percent higher than the final year of the Obama Administration. And on top of that, the TCJA included the world's first Global Minimum Tax.

So can you please define what is meant for companies by the phrase “pay their fair share” that continues to be used to justify this continued attack on U.S. corporate base?

Mr. PLOWGIAN. Well, I think the goals of the Pillar Two project are to level the playing field for——

Ms. VAN DUYNE. No, I am asking can you define “pay their fair share”? Is there a percentage that the Administration would deem fair? Is there an amount, a dollar amount?

Mr. PLOWGIAN. Again, I can speak to the Pillar Two project, which is to level the playing field for U.S. businesses——

Ms. VAN DUYNE. Well, maybe——

Mr. PLOWGIAN [continuing]. Including——

Ms. VAN DUYNE. But you are repeating the same talking points. Specifically, the phrase “pay their fair share” continues to be used. And I am asking, is there a dollar amount? Is there a percentage that is “fair”?

Mr. PLOWGIAN. I do not have a dollar amount.

Ms. VAN DUYNE. Do you have a percentage?

Mr. PLOWGIAN. No.

Ms. VAN DUYNE. Okay, I yield back. Thank you.

Chairman KELLY. I thank the gentlelady. The gentleman from Iowa, Mr. Feenstra, is recognized for five minutes.

Mr. FEENSTRA. Thank you, Mr. Chair.

As you know, Mr. Plowgian, we don’t live in a parliamentary system like many of our negotiating partners, and the Treasury does not have the authority to rewrite tax law and our system, and we just noted that. But you noted that we—that you think it is a need for a common international tax base to exist, and yet you don’t have any authority.

Did you tell our counterparts that you guys have really no authority, that you can negotiate but you have no authority to pass this?

Mr. PLOWGIAN. I think it is well known that only Congress has the authority to change U.S. tax laws. And, certainly, my counterparts are aware of that.

Mr. FEENSTRA. Okay, thank you for saying that. So how does this move forward if we can’t get it through Congress?

Mr. PLOWGIAN. Well, other countries are moving forward with Pillar Two——

Mr. FEENSTRA. Yes, but——

Mr. PLOWGIAN [continuing]. And implementing them, and——

Mr. FEENSTRA. But if they go down that path and a government says—you know, they say we are not going to pay the tax, I mean, don’t you see this as a massive lawsuit just waiting to happen?

You guys are trotting down this path. But if I am a multi-national corporation or a business, whatever, I am going to say, wait a minute, no.

Mr. PLOWGIAN. They would not comply with foreign countries’ laws? I am not sure I understand the question.

Mr. FEENSTRA. Well, we already have GILTI, all right? I mean, that was passed through Congress. So the multi-national companies would simply say, no, we are not going to pay, you know, this extra—I mean, it could happen that we don't have to do the top-up tax or whatever it might be.

Mr. PLOWGIAN. The Pillar Two rules are taxes imposed by a jurisdiction on residents——

Mr. FEENSTRA. Correct.

Mr. PLOWGIAN [continuing]. In that jurisdiction.

Mr. FEENSTRA. I fully understand.

Mr. PLOWGIAN. Yes.

Mr. FEENSTRA. Okay, so let me push this a little further. Did Treasury recognize that the UTPR's treatment of non-refundable credits would disproportionately harm U.S. competitiveness?

I mean, what you are doing here is Treasury is favoring cash grants and refundable credits over non-refundable credits, which, in essence, uniquely harms U.S. Is that a fair statement?

Mr. PLOWGIAN. Well, the Pillar Two rules, again, level the playing field for U.S. multi-nationals by ensuring that all multi-nationals pay a minimum level of tax.

Mr. FEENSTRA. Right, right. Refundable credits do. But how about all the non-refundable credits, right?

Again, we have got a massive problem here that you didn't take into consideration that everything—you know, from Europe, they do a lot of refundable credits. We don't, and so we are at a dramatic disadvantage. Correct?

I mean, look at the R&D credit. You know, we don't have a refundable R&D credit. So now that can't be used. That puts us at a dramatic disadvantage, correct?

Mr. PLOWGIAN. The——

Mr. FEENSTRA. Correct?

Mr. PLOWGIAN. So certainly we share the concerns about the R&D credit. We think that is an important incentive for——

Mr. FEENSTRA. But it is not only the R&D credit, it is many of our credits, right? We have very few refundable credits. A lot of European nations, they have gone down that path of refundable credits. We haven't. I mean, it dramatically puts us at a competitive disadvantage?

Why did Treasury agree to allow UTPR to stack on top of the corporate minimum tax and the U.S. GILTI tax rules—why did the Treasury allow this to happen? Why did the Biden Administration de-prioritize the fair treatment of GILTI?

Mr. PLOWGIAN. Again, the Pillar Two rules are necessary in order to create a level playing field, and——

Mr. FEENSTRA. But you are—again, so we are not—really care about GILTI? I mean, we are de-prioritizing GILTI, then?

Mr. PLOWGIAN. Then the UTPR, which you asked about, is necessary as an enforcement mechanism to ensure that there is not a competitive advantage that could be gained by China or other jurisdictions.

Mr. FEENSTRA. So, what you are doing is you are giving the middle finger to all our corporations and saying, you know what? We are going to stack these things on top of each other. In essence, that is what you are doing.

Why did the Treasury agree to allowing Pillar Two domestic top-up taxes with their special carve-outs to the CCP state subsidiaries take priority over U.S. anti-abuse rules of subpart F and GILTI?

Mr. PLOWGIAN. The qualified domestic minimum top-up tax rules are consistent with all other international tax rules which provide a primary taxing right to a jurisdiction, taxing its own residents on income that is sourced to that jurisdiction.

The way our foreign tax credit rules work, we provide a foreign tax credit for taxes paid to foreign jurisdictions.

Mr. FEENSTRA. So China gets special privilege, but not the U.S. I mean, this is my great concern, is every time we look at this Pillar Two we are at a disadvantage. And I just laid out three different things, how we are at a disadvantage, not to say that it is non-binding. I mean, you have no jurisdiction to allow this to occur.

Thank you, and I yield back.

Chairman KELLY. I thank the gentleman. The gentlelady from Wisconsin, Ms. Moore, is recognized for five minutes.

Ms. MOORE of Wisconsin. Thank you so much, Mr. Chairman and colleagues, and thank you, Mr. Deputy Assistant Secretary, for your patience here today.

I had one compliment for the Republicans regarding their Tax Cut and Jobs Act, and it was that they imposed GILTI to make sure that we were not contributing or leading a race to the bottom. I thought it was a very bold move on their part.

Many of our colleagues have already asked you today of why you didn't find GILTI—or why the OECD didn't find GILTI to be totally compliant with what is now the proposed GloBE rule. Is it because it continues to blend those tax rates, and still creates the incentive to seek out low-tax jurisdictions?

Mr. PLOWGIAN. Well, as I mentioned, I cannot speak precisely to the negotiations before my arrival. The October 2021 statement does suggest that the global blending of GILTI was a significant consideration in that regard.

Ms. MOORE of Wisconsin. I am sorry, it was a consideration? It was—but, I mean, my question to you was—okay, I will just move on, since you don't seem to know.

Let me ask you it this way. Does GILTI still provide the opportunity for the United States multi-national enterprises to blend, and still incentivizes them to place their profits in low-tax jurisdictions?

Mr. PLOWGIAN. Yes, absolutely.

Ms. MOORE of Wisconsin. So the race to the bottom is still on. Thank you.

Mr. PLOWGIAN. Yes.

Ms. MOORE of Wisconsin. I want to ask you a series of questions about the JCT report with the wide $400 billion swing.

And so many here just say we just should do nothing. And if we do nothing, there is no indication that the rest of the world is not going to adopt GloBE. And that is when we would lose hundreds of billions of dollars by not participating. Is that right?

Mr. PLOWGIAN. Yes. In every scenario that the JCT analyzes——

Ms. MOORE of Wisconsin. Okay, thank you.

Mr. PLOWGIAN [continuing]. It is better for the U.S. to adopt Pillar Two.

Ms. MOORE of Wisconsin. Okay. Then they also talked about, even if we comply, that there would be a loss. Is the reason that you can't tease out these differentiations is because if you leave, you know, your taxing authority in Ireland or your product in Ireland versus France, which has a 25 percent corporate tax rate versus Ireland, which has 12 percent, that that matters with regard to how much profit you will earn?

Mr. PLOWGIAN. Yes. And in fact, the—one of the major assumptions that drives the range is the effect of Pillar Two on profit shifting. And the analysts that have looked at this have concluded that Pillar Two would reduce the profit shifting by multi-nationals in——

Ms. MOORE of Wisconsin. So in other words, if you kept the profit in the United States, that is when you get to those upper limits——

Mr. PLOWGIAN. Yes.

Ms. MOORE of Wisconsin [continuing]. Of revenue.

Mr. PLOWGIAN. Absolutely.

Ms. MOORE of Wisconsin. Keeping money here, in the great, old USA. Thank you.

Other members have questions about providing monies to other places. I am thinking now of, like, so-called third-world countries. Does this legislation, the GloBE framework, incentivize other countries—not forcing them, but incentivize them to raise their corporate taxes to inure to the benefit of their country?

And, of course, we would get a foreign tax credit for having to pay that. Is that correct?

Mr. PLOWGIAN. That is right that—you know, especially as you mentioned, developing countries do rely heavily on the corporate income tax, and they rely on corporate income tax incentives to attract investment analysts——

Ms. MOORE of Wisconsin. So it could really help out a lot, huh?

Mr. PLOWGIAN. Absolutely. Analysts expect——

Ms. MOORE of Wisconsin. Okay, thank you.

Mr. PLOWGIAN [continuing]. Pillar Two will help with that.

Ms. MOORE of Wisconsin. Thank you. You know, I don't have as much time as the chairman, so let me move on. [Laughter.]

Ms. MOORE of Wisconsin. The UTPR, there is a lot of focus on that. And so my question is that there is a lot of rage about it, but if we are compliant with the regimen, is there some scenario where, you know, countries all over willy-nilly will be grabbing our money if we are compliant? Isn't the point of this to make sure that people comply?

Mr. PLOWGIAN. Yes. If the U.S. companies are subject to a 15 percent minimum tax in the U.S., they would not pay the——

Ms. MOORE of Wisconsin. So if I have got two children, and I tell two sisters, and I say, "Look, I am going to give your allowance to your sister if she has to make up your bed every day. You make your bed up," and then the other sister just decries, "Oh, she is going to take my allowance away, take it away, take it away"—if you just make your bed up, that wouldn't happen.

Thank you, and I yield back.

Chairman KELLY. I thank the gentlelady. I now recognize the gentlelady from New York, Ms. Malliotakis, for five minutes.

Ms. MALLIOTAKIS. Thank you, Mr. Chairman. First, I want to echo my colleagues' concerns and opinions, which is the truth, which is that Treasury is taking Congress's tax-writing authority and giving it to unelected bureaucrats in Paris. They are giving it to foreign governments. It really doesn't make any sense, and it is not something I think that this committee will be tolerating. Congress is giving our opinion.

And, you know, in response to Chairman Smith, you said that you take our input. Well, I hope you actually listen to it. And I hope you are listening to the input of American businesses all across the country that are concerned about what this means in terms of compliance, how they are going to be able—it is very complicated. It sounds like it is going to be a complete accounting nightmare that will require them to divulge proprietary information, a massive number of data points to comply.

And there has been no regulations put out so far for—you know, there is some guidance that came out earlier this week, but I think there is a lot of people all across the country that are concerned that this will certainly put American businesses at a disadvantage.

And look, the deal is just a bad deal for the United States, no matter how you look at it, as my colleague just laid out a couple of points. It eliminates our competitive advantage, and our government can lose $120 billion in tax revenue to foreign governments. And that is not according to Republicans on this committee. That is according to the Joint Committee on Taxation.

And Treasury does not protect our status as the first country to enact a Global Minimum Tax, and the U.S. will be targeted with 40 percent of the tax burden under Pillar Two and 60 percent of the tax pillar—under Pillar One. I don't know how you can agree to that.

China's state subsidies are more protected than ordinary tax incentives like R&D tax credits here in the United States. And I think that we have all alluded to this, and we believe it, that China will, you know, avoid these higher taxes that are under Pillar Two because the CCP will use direct state subsidies to hide the true tax rate paid by, you know, Chinese-controlled entities.

So how does—how do you intend to enforce this UTPR tax rule, both for—domestically, with American companies, but also with our competitors like communist China?

Mr. PLOWGIAN. Well, I would like to say that we do take congressional input very seriously. We do meet with U.S. businesses and other stakeholders regularly in the Office of Tax Policy, and we take that input into the negotiations.

And with respect to the UTPR——

Ms. MALLIOTAKIS. I find it hard to believe that you are taking input from American businesses and from Members of Congress that would put us at such a disadvantage and would really put American companies at a disadvantage.

But go on with the communist China. How would you—how are you going to make sure that they commit to their end?

And I guess I will add a second part to that question. What about the countries that have not joined this agreement? Aren't there concerns that now America will be less competitive with them?

Mr. PLOWGIAN. Well, I think that is exactly the point that you raise with the UTPR. The UTPR is the enforcement mechanism for the Pillar Two rules, and the UTPR provides that implementing jurisdictions will impose tax on their residents. And if—the multi-national group is not subject to a 15 percent minimum rate in each jurisdiction in which it operates. And so that is how the rules work. That is how they ensure a level playing field. That is how we ensure that China and other jurisdictions that don't implement the rules do not have a competitive advantage by staying outside of the deal.

Ms. MALLIOTAKIS. Okay. That doesn't really, I don't think, make sense to most people.

But Secretary Yellen has yet to share Treasury's economic analysis of Pillar One with Congress. Why? What is she—why does she refuse to share this information with Congress, when she knows that all tax treaties must be ratified by two-thirds of the Senate?

I mean, how do you expect a deal to be ratified if she won't even share this critical information to be able to evaluate it on its merits?

All we have seen so far is generic guidance adopted in France.

Mr. PLOWGIAN. Yes. So the Pillar One negotiations, as I mentioned, continue to have important economic terms that remain open. And those include how the Pillar One taxing right is coordinated with the existing international tax system. And when we are able to resolve those issues, we plan to share estimates with Congress.

Ms. MALLIOTAKIS. When do you anticipate that?

Mr. PLOWGIAN. I don't know exactly when that will be. I need to—obviously, those issues need to be resolved with negotiating partners.

Ms. MALLIOTAKIS. Okay. Well, my time is expired. Thank you.

Chairman KELLY. I thank the gentlelady. I now recognize the gentlelady from West Virginia, Mrs. Miller.

[Pause.]

Chairman KELLY. Gentlelady, turn your mic on, please.

Mrs. MILLER. Can you hear me?

Chairman KELLY. Carol, we still can't hear you.

Mrs. MILLER. We will try a different one then.

Chairman KELLY. There we go.

Mrs. MILLER. I will have to get a real long neck going here. Okay. Thank you, Chairman Kelly and Member Thompson.

I am pleased that you, Mr. Plowgian, have come here today to answer some of our questions. However, I am really incredibly disappointed and, quite frankly, disgusted by the Biden Administration's abject failure to negotiate in America's best interests at the OECD. In my view, you and your colleagues have completely failed your fiduciary responsibility to the American taxpayers, American workers, and American companies.

I realize that you haven't been involved in all of this, but you are here now, and this Administration's failure is shameful. It is reprehensible and downright outrageous. It is really hard for me to believe. The American people empower you to negotiate on their behalf. And instead you have surrendered to a global socialist tax scheme that will ultimately make America poorer and less competitive, placing our children and grandchildren—our children and our grandchildren—their future at risk, not to mention that you have denigrated our nation's status as a beacon of strength, democracy, and capitalism in an increasingly dangerous world.

There are two news headlines just this week. On July 17 the Wall Street Journal wrote that Europeans are becoming poorer. "Yes, we are all worse off," says the Bank of England's chief economist. And from The Washington Post just yesterday, "Britain should stop pretending it is a rich country." These articles drive into how Europe's heavy subsidies, over-promised social spending, and the lack of innovation have led to slow growth, lower wages, and less spending and prosperity.

Mr. Chairman, I would like to submit these two articles for the record.

Chairman KELLY. So approved.

The Washington Post
Democracy Dies in Darkness

BUSINESS

Britain Should Stop Pretending It's a Rich Country

Analysis by Adrian Wooldridge | Bloomberg
July 18, 2023 at 12:46 a.m. EDT

The most important thing to grasp about Britain is that it is nowhere near as rich as it thinks it is.

There are good reasons for the wealth illusion. The country has inherited a magnificent legacy from its industrial and imperial past. A handful of elite universities and companies keep Britain on the cutting-edge of new technologies such as AI and vaccines. The wealth is highly concentrated in the much-visited southeast, and many members of the elite float through life in a bubble of affluence — from nice country houses to posh schools to well-endowed Oxbridge colleges to well-paid jobs working for global companies.

But look outside this golden world and you discover a different picture. Real household income hasn't increased for the past 15 years. The average UK household is 20% poorer than its peers in northwestern Europe. A survey for the Resolution Foundation in January found that 11% of Britons (the equivalent of 6 million people) hadn't eaten when hungry because they didn't have enough money for food.

The reason for all this is that Britain's growth machine has stalled. During his "budget for growth," Chancellor of the Exchequer Jeremy Hunt celebrated without a touch of irony that the Office for Budget Responsibility had predicted that Britain's economy would only shrink by 0.2% rather than the predicted 1.3%.

Britain's low-growth economy is not only relentlessly reducing the country's living standards (on current trends, the average Polish family will be richer than the average British family by the end of the decade). It is also forcing everyone to pay higher taxes for worse public services: The great British Middle Class live in a world of petty crime that goes un-investigated let alone punished, over-crowded emergency health services, and ever-lengthening NHS waiting lists (Britain has one of the lowest ratios of doctors and hospital beds per patient in the whole of the OECD).

We tend to think of our current public-sector woes as being the result of a temporary breakdown in the system. It's more accurate to think of them as early warning signs that we are trying to run the infrastructure of a rich country with the income of a poor one.

The Tory government bears much of the responsibility for these dismal facts — it has presided over the biggest fall in labor productivity growth in 260 years of data. Brexit has clearly done direct economic harm: The Bank of England has estimated that Brexit reduced investment by 25% during the five years to 2021, largely due to uncertainty. It also distracted politicians from the mundane work of fixing day-to-day economic problems. The natural state of the civil service is inertia unless it is directed by knowledgeable and experienced politicians: All the institutional penalties are for doing something rather than doing nothing.

But politics has been a noisy merry go-round: Britain has had four prime ministers since 2016 and secretaries of state have moved on before they learned where the bathroom is. To cap it all, one of those prime ministers — Liz Truss — did her best to torch the case for growth with some of the worst-designed policies in the post-war era.

The Tory Party also increasingly rests on an anti-growth coalition. Tory voters (and particularly Tory members) are older and richer than the average voter. This means that they are much more likely to own their own homes and have index-linked pensions. They are much more like Hobbits comfortable in their sandy burrows than Margaret Thatcher's self-reliant entrepreneurs. They routinely oppose the building of new houses that might spoil their views and new shops and stores that might clog their roads. The price for their comfortable lives is paid by the rest of society and future generations.

Can anything be done to fix the growth machine? It's easy to be pessimistic. Britain's productivity growth has been poor for much of the post-war period — perhaps because its first-mover advantage as the first industrial nation turned into a first-mover disadvantage. And growth rates have slowed significantly across the advanced world in recent decades. But, despite its depressing title, a summit on "the great stagnation" last week, organized by Civic Future, an organization dedicated to encouraging talented people to enter public life, and held in Cambridge, gave some grounds for hope.

One of the paradoxes of growth is that we have a good idea of how to improve it: Ensure that ordinary Britons capture more of the benefits of the frontier technologies in which Britain excels; make it easier to build houses, particularly in highly productive bits of the economy such as Oxford, Cambridge and London; make planning faster, easier and more predictable; improve education and training and make it more relevant to the economy; improve transport infrastructure (Andy Haldane, chief executive officer of the Royal Society of Arts and former chief economist to the Bank of England, quips that "Britain has the world's first intercity rail network that doesn't connect cities"); loosen the dead hand of the Treasury and devolve decision-making to the regions. The problem is that we don't know how to mobilize political support for pushing through a pro-growth agenda.

The very existence of the summit was evidence that a pro-growth coalition may be forming. The event attracted some 150 people from across the political spectrum, including MPs, think-tank people, entrepreneurs, civil servants, and academics such as Tyler Cowen (also a Bloomberg Opinion columnist). The most striking thing about the attendees was how young many of them were.

Young people have been forced to live in sub-standard houses on the periphery of cities and forced to accept low wages for decades as their elders have got fat and happy on the proceeds of asset-price inflation and triple-locked pensions. There are admirable signs that they are fighting back by organizing pro-growth organizations (e.g., The Entrepreneurs Network, Collective Intelligence, Britain Remade) and writing pro-growth publications (e.g. Works in Progress). The YIMBs are on the march.

A future Labour government may have a chance of unblocking the system, not least because Labor attracts support from poorer and younger people who don't have such a stake in the status quo. The Labour Party has anti-growth elements such as (usually tenured) academic "degrowthers" who think that we need to stop growth in order to save the planet. But the conference suggested that there is also a lot of support for "pro-growth progressivism."

The conference mentioned some good ways of making growth more palatable — or, in the words of one delegate, "helping us to fall in love with the future again." Top of the list is making new buildings more beautiful and new developments more livable. Nicholas Boys Smith, the founding director of Create Streets, argues that Britons have fallen out of love with growth not just because they are Hobbits but because growth has often taken the form of ugly buildings and horrible developments (try visiting Euston Station or any post-war housing estate). But new developments don't have to be ugly: The Victorians covered the country with elegant public buildings, fine-looking factories and comfortable houses for workers.

Other ideas include presenting the case for growth in less abstract terms (Victorian tariff reformers talked about "cheap food" rather than "free trade"); presenting growth (or "progress") as a continuation of Britain's glorious heritage rather than a negation of it; devolving decision-making from the Treasury to local mayors; giving regular people more of a stake in supporting growth by providing them with better services; and perhaps giving well-loved institutions, such as the NHS, grants to build houses for their workers.

Britain has endured too many wasted years since the 2008 financial crisis. It's not foreordained that the next decade will be equally futile.

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Adrian Wooldridge is the global business columnist for Bloomberg Opinion. A former writer at the Economist, he is author, most recently, of "The Aristocracy of Talent: How Meritocracy Made the Modern World."

https://www.wsj.com/articles/europeans-poorer-inflation-economy-255eb629

EUROPE

Europeans Are Becoming Poorer. 'Yes, We're All Worse Off.'

An aging population that values its free time set the stage for economic stagnation. Then came Covid-19 and Russia's war in Ukraine.

By Tom Fairless Follow
July 17, 2023 12:00 am ET

Europeans are facing a new economic reality, one they haven't experienced in decades. They are becoming poorer.

Life on a continent long envied by outsiders for its *art de vivre* is rapidly losing its shine as Europeans see their purchasing power melt away.

The French are eating less foie gras and drinking less red wine. Spaniards are stinting on olive oil. Finns are being urged to use saunas on windy days when energy is less expensive. Across Germany, meat and milk consumption has fallen to the lowest level in three decades and the once-booming market for organic food has tanked. Italy's economic development minister, Adolfo Urso, convened a crisis meeting in May over prices for pasta, the country's favorite staple, after they jumped by more than double the national inflation rate.

With consumption spending in free fall, Europe tipped into recession at the start of the year, reinforcing a sense of relative economic, political and military decline that kicked in at the start of the century.

Europe's current predicament has been long in the making. An aging population with a preference for free time and job security over earnings ushered in years of lackluster economic and productivity growth. Then came the one-two punch of the Covid-19 pandemic and Russia's protracted war in Ukraine. By upending global supply chains and sending the prices of energy and food rocketing, the crises aggravated ailments that had been festering for decades.

Governments' responses only compounded the problem. To preserve jobs, they steered their subsidies primarily to employers, leaving consumers without a cash cushion when the price shock came. Americans, by contrast, benefited from inexpensive energy and government aid directed primarily at citizens to keep them spending.

In the past, the continent's formidable export industry might have come to the rescue. But a sluggish recovery in China, a critical market for Europe, is undermining that growth pillar. High energy costs and rampant inflation at a level not seen since the 1970s are dulling manufacturers' price advantage in international markets and smashing the continent's once-harmonious labor relations. As global trade cools, Europe's heavy reliance on exports—which account for about 50% of eurozone GDP versus 10% for the U.S.—is becoming a weakness.

Private consumption has declined by about 1% in the 20-nation eurozone since the end of 2019 after adjusting for inflation, according to the Organization for Economic Cooperation and Development, a Paris-based club of mainly wealthy countries. In the U.S., where households enjoy a strong labor market and rising incomes, it has increased by nearly 9%. The European Union now accounts for about 18% of all global consumption spending, compared with 28% for America. Fifteen years ago, the EU and the U.S. each represented about a quarter of that total.

Adjusted for inflation and purchasing power, wages have declined by about 3% since 2019 in Germany, by 3.5% in Italy and Spain and by 6% in Greece. Real wages in the U.S. have increased by about 6% over the same period, according to OECD data.

A elderly woman leaves a food-distribution center at a Berlin church. PHOTO: MARKUS SCHREIBER/ASSOCIATED PRESS

The pain reaches far into the middle classes. In Brussels, one of Europe's richest cities, teachers and nurses stood in line on a recent evening to collect half-price groceries from the back of a truck. The vendor, Happy Hours Market, collects food close to its expiration date from supermarkets and advertises it through an app. Customers can order in the early afternoon and collect their cut-price groceries in the evening.

"Some customers tell me, because of you I can eat meat two or three times per week," said Pierre van Hede, who was handing out crates of groceries.

Karim Bouazza, a 33-year-old nurse who was stocking up on half-price meat and fish for his wife and two children, complained that inflation means "you almost need to work a second job to pay for everything."

Similar services have sprung up across the region, marketing themselves as a way to reduce food waste as well as save money. TooGoodToGo, a company founded in Denmark in 2015 that sells leftover food from retailers and restaurants, has 76 million registered users across Europe, roughly three times the number at the end of 2020. In Germany, Sirplus, a startup created in 2017, offers "rescued" food, including products past their sell-by date, on its online store. So does Motatos, created in Sweden in 2014 and now present in Finland, Germany, Denmark and the U.K.

Spending on high-end groceries has collapsed. Germans consumed 52 kilograms of meat per person in 2022, about 8% less than the previous year and the lowest level since calculations began in 1989. While some of that reflects societal concerns about healthy eating and animal welfare, experts say the trend has been accelerated by meat prices which increased by up to 30% in recent months. Germans are also swapping meats such as beef and veal for less-expensive ones such as poultry, according to the Federal Information Center for Agriculture.

Thomas Wolff, an organic-food supplier near Frankfurt, said his sales fell by up to 30% last year as inflation surged. Wolff said he had hired 33 people earlier in the pandemic to handle strong demand for pricey ecological foodstuffs, but he has since let them all go.

Ronja Ebeling, a 26-year-old consultant and author based in Hamburg, said she saves about one-quarter of her income, partly because she worries about having enough money for retirement. She spends little on clothes or makeup and shares a car with her partner's father.

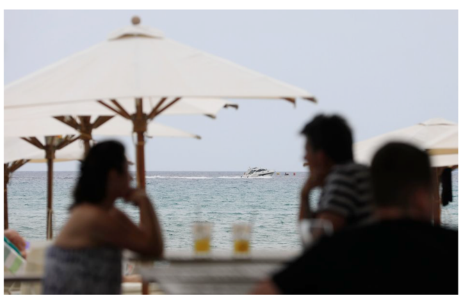
Weak spending and poor demographic prospects are making Europe less attractive for businesses ranging from consumer-goods giant Procter & Gamble to luxury empire LVMH, which are making an ever-larger share of their sales in North America.

"The U.S. consumer is more resilient than in Europe," Unilever's chief financial officer, Graeme Pitkethly, said in April.

The eurozone economy grew about 6% over the past 15 years, measured in dollars, compared with 82% for the U.S., according to International Monetary Fund data. That has left the average EU country poorer per head than every U.S. state except Idaho and Mississippi, according to a report this month by the European Centre for International Political Economy, a Brussels-based independent think tank. If the current trend continues, by 2035 the gap between economic output per capita in the U.S. and EU will be as large as that between Japan and Ecuador today, the report said.

On the Mediterranean island of Mallorca, businesses are lobbying for more flights to the U.S. to increase the number of free-spending American tourists, said Maria Frontera, president of the Mallorca Chamber of Commerce's tourism commission. Americans spend about €260 ($292) per day on average on hotels compared with less than €180 ($202) for Europeans.

"This year we have seen a big change in the behavior of Europeans because of the economic situation we are dealing with," said Frontera, who recently traveled to Miami to learn how to better cater to American customers.



People enjoy the warm temperatures in a beach bar in the seaside resort of S'Arenal on Mallorca. PHOTO: CLARA MARGAIS/DPA/ZUMA PRESS

Weak growth and rising interest rates are straining Europe's generous welfare states, which provide popular healthcare services and pensions. European governments find the old recipes for fixing the problem are either becoming unaffordable or have stopped working. Three-quarters of a trillion euros in subsidies, tax breaks and other forms of relief have gone to consumers and businesses to offset higher energy costs—something economists say is now itself fueling inflation, defeating the subsidies' purpose.

Public-spending cuts after the global financial crisis starved Europe's state-funded healthcare systems, especially the U.K.'s National Health Service.

Vivek Trivedi, a 31-year-old anesthesiologist living in Manchester, England, earns about £51,000 ($67,000) per year for a 48-hour workweek. Inflation, which has been about 10% or higher in the U.K. for nearly a year, is devouring his monthly budget, he says. Trivedi said he shops for groceries in discount retailers and spends less on meals out. Some colleagues turned off their heating entirely over recent months, worried they wouldn't be able to afford sharply higher costs, he said.

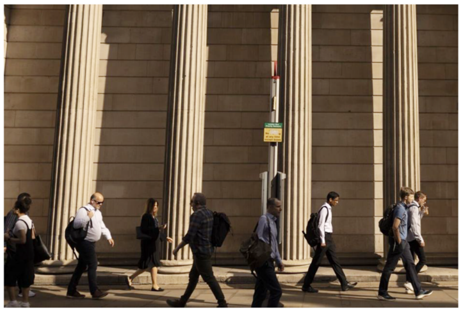
Noa Cohen, a 28-year old public-affairs specialist in London, says she could quadruple her salary in the same job by leveraging her U.S. passport to move across the Atlantic. Cohen recently got a 10% pay raise after switching jobs, but the increase was completely swallowed by inflation. She says friends are freezing their eggs because they can't afford children anytime soon, in the hope that they have enough money in future.

"It feels like a perma-freeze in living standards," she said.

Huw Pill, the Bank of England's chief economist, warned U.K. citizens in April that they need to accept that they are poorer and stop pushing for higher wages. "Yes, we're all worse off," he said, saying that seeking to offset rising prices with higher wages would only fuel more inflation.

With European governments needing to increase defense spending and given rising borrowing costs, economists expect taxes to increase, adding pressure on consumers. Taxes in Europe are already high relative to those in other wealthy countries, equivalent to around 40-45% of GDP compared with 27% in the U.S. American workers take home almost three-quarters of their paychecks, including income taxes and Social Security taxes, while French and German workers keep just half.

The pauperization of Europe has bolstered the ranks of labor unions, which are picking up tens of thousands of members across the continent, reversing a decadeslong decline.



The Bank of England has been raising interest rates to combat inflation. PHOTO: JASON ALDEN/BLOOMBERG NEWS

Higher unionization may not translate into fuller pockets for members. That's because many are pushing workers' preference for more free time over higher pay, even in a world of spiraling skills shortages.

IG Metall, Germany's biggest trade union, is calling for a four-day work week at current salary levels rather than a pay raise for the country's metalworkers ahead of collective bargaining negotiations this November. Officials say the shorter week would improve workers' health and quality of life while at the same time making the industry more attractive to younger workers.

Almost half of employees in Germany's health industry choose to work around 30 hours per week rather than full time, reflecting tough working conditions, said Frank Werneke, chairman of the country's United Services Trade Union, which has added about 110,000 new members in recent months, the biggest increase in 22 years.

Kristian Kallio, a games developer in northern Finland, recently decided to reduce his working week by one-fifth to 30 hours in exchange for a 10% pay cut. He now makes about €2,500 per month. "Who wouldn't want to work shorter hours?" Kallio said. About one-third of his colleagues took the same deal, although leaders work full-time, said Kallio's boss, Jaakko Kylmäoja.

Kallio now works from 10 a.m. to 4.30 p.m. He uses his extra free time for hobbies, to make good food and take long bike rides. "I don't see a reality where I would go back to normal working hours," he said.

Igor Chaykovskiy, a 34-year-old IT worker in Paris, joined a trade union earlier this year to press for better pay and conditions. He recently received a 3.5% pay increase, about half the level of inflation. He thinks the union will give workers greater leverage to press managers. Still, it isn't just about pay. "Maybe they say you don't have an increase in salary, you have free sports lessons or music lessons," he said.

Mathias Senn, right, a butcher in Germany's wealthy Black Forest region, couldn't find local applicants to replace four workers who are preparing to retire, so he hired an apprentice from India, Rajakumar Bheemappa Lamani. PHOTO: DOMINIC NAHR FOR THE WALL STREET JOURNAL

At the Stellantis auto factory in Melfi, southern Italy, employees have worked shorter hours for years recently due to the difficulty of procuring raw materials and high energy costs, said Marco Lomio, a trade unionist with the Italian Union of Metalworkers. Hours worked have recently been reduced by around 30% and wages decreased proportionally.

"Between high inflation and rising energy costs for workers," said Lomio, "it is difficult to bear all family expenses."

Appeared in the July 18, 2023, print edition as 'Europeans Become Poorer As Americans Get Wealthier'.

Mrs. MILLER. Mr. Plowgian, I just can't comprehend why the Treasury would put the United States in a position to be forced by unelected global bureaucrats to give up our strong economy to match the failures of our allies abroad. Is the Biden Administration willing to reverse course and fight at the OECD to ensure our proven tax incentives like the Research and Development Credit or the Low-Income Housing Tax Credit are fully protected?

Mr. PLOWGIAN. It has been a shared and consistent priority across the administrations that have participated in these negotiations to protect U.S. interests, to protect U.S. businesses, and to protect American workers.

Mrs. MILLER. That sounds like "no" to me.

Mr. PLOWGIAN. We continue to take input from Congress and from U.S. businesses into these discussions and continue to raise these important issues for the United States.

Mrs. MILLER. Like our chairman, I would like to have proof of that, please.

Do you consider socialism to be a key goal of the Biden Administration?

Mr. PLOWGIAN. Congresswoman, I——

Mrs. MILLER. I guess that is a no.

The OECD Tax Project is a thinly veiled attempt to neuter the U.S. economy and drive America into the arms of global socialism. Europe's economy struggles to adapt to the modern year—world, and these countries aim to capture our U.S. dollars to fund their socialist programs and government handouts.

So I am just really concerned. While the OECD's proposed deal would protect refundable tax credits, also known as direct subsidy, most U.S. tax credits are not refundable, and for good reason. The U.S. is the most innovative nation on the planet, and we attract the best and brightest to start and grow their businesses here. We do not need direct government checks payable to industry, nor should we offer them. Many countries in Europe don't prize innovation or competitiveness like we do, and that is why so many of them come to the United States.

So these countries have the sovereign right to determine their own tax code, incentive structures, and national agendas. They do not have the right to try and fund themselves with U.S. tax dollars, no matter what the Treasury Department might think. Congress writes the rules, the administration administers them.

I will yield back my time.

Chairman KELLY. I thank the gentlelady. I now recognize the gentleman from Virginia, Mr. Beyer.

Mr. BEYER. Mr. Chairman, thank you very much.

Mr. Plowgian, thank you for sitting through this. I greatly appreciate all of your work negotiating.

And I have great affection and respect for my Republican friends on this committee, but I think, in my only four-and-a-half years on this committee, this is the greatest misunderstanding of what this legislation does that I have ever seen.

I was ambassador U.S. ambassador to Switzerland for four years in the midst of all the fights over taxes. And one of the things I saw there is that there was an enormous amount of tax evasion and tax cheating by major global corporations, not just American, hiding assets or putting all of their costs in the high-tax states like the United States and the UK and the like, and putting all of their revenues in the low-tax places, three percent, zero percent, one percent. I won't do ad hominem attacks on countries, but, you know, you don't have to be really creative. I will be happy to tell you who they were.

And this is the entire world community coming together and saying we need to stop the tax cheating. We need to make sure that we stand up to those small little countries, many of them just islands who take all the revenue, don't charge any taxes at all, but that one percent or two percent is enough to make them happy.

In the meantime, my family business—we just celebrated our 50th anniversary Sunday morning—has been paying 37 percent for years. And before that, as Mike knows, 39.6 percent. And it makes me upset that somebody much, much bigger than I am is paying three percent, five percent, six percent.

This lack of sovereignty—the sovereignty thing is the emptiest issue I have ever seen. Mr. Plowgian and Janet Yellen cannot impose this tax on us. We can do it. We are the only people who can raise the tax from 10.5 percent to 15 to 20, whatever. We have complete autonomy. We have not given our sovereignty away to anybody else.

When we say those other people will be able to tax us, they are just looking at undertaxed jurisdictions and saying we are now going to charge them more in Poland, in Ukraine, in France, in India, because—for the country that is undertaxed itself. That is designed not to go after U.S. at 10.5 or 11 percent, it is designed to go after the country that is at 3 percent and 2 percent and 1 percent. We are not changing. They are changing their own tax policies for U.S. companies that are doing business in their countries and are being undertaxed.

Most of these arguments just have not made any sense at all. The one that has—Mrs. Miller brought up—is the concern that we should have about our tax incentives, things like the housing tax credit, the green energy tax credit, things like that.

Mr. Plowgian, I have been told by Administration officials that we are working hard to make sure that our tax incentive structures we put in place are not going to hurt our companies, because that is not a matter of us hiding revenues in low-tax jurisdictions. That is taking advantage of everything. Can you assure me that we are going to work as hard as we can to make sure that this new GILTI regime—we are going to do our best to avoid them affecting our tax credits?

And before you answer, one last point. LPTR is not a decision we make. These are decisions that other countries around the world are making to tax—increase their own taxes on revenues in their country to penalize the tax havens that are under-taxing. And to the extent that we are under by 1.5 percent, 3 percent, it is a relatively small amount.

By the way, that is taxes that we were not collecting anyway. We weren't collecting it, which is—and now we are—they are saying they are going to collect it because we won't. We are not shifting tax revenue at all.

Mr. Plowgian, I give the floor to you.

Mr. PLOWGIAN. Yes, absolutely. We continue to prioritize U.S. incentives in these discussions. We have been able to agree on interpretive guidance that protects many of the incentives that we have been talking about today: the Low-Income Housing Tax Credit, green energy credits, other transferable credits. And we continue to raise these in the discussions.

Mr. BEYER. Yes, I also want to make the point, Mr. Plowgian, that in no way is insisting that international corporations who have been purposefully cheating on their taxes, avoiding taxes through great manipulation, is a move to global socialism. It just doesn't make any sense at all. What we are trying to do is make sure that everybody is playing by the same rules, and at least that U.S. corporations are being treated fairly at all times.

Mr. Chairman, thank you for leading this. I yield back.

Chairman KELLY. I thank the gentleman. I now recognize the gentlelady from New York, Ms. Tenney.

Ms. TENNEY. Thank you, Mr. Chairman and Ranking Member. I am grateful that we are holding this hearing today to examine President Biden's global tax surrender.

Ways and Means Republicans have been sounding the alarm over the framework negotiated between President Biden's Treasury Department and Janet Yellen and the OECD. This comprehensive rewrite of global tax rules championed by the Administration would result in fewer U.S. tax revenues, reduce the global competitiveness of U.S. companies, and erode our overall economic strength. It amounts to nothing more than surrendering American tax sovereignty with U.S. taxpayers, sending a check to the tune of billions and billions of dollars to foreign countries.

In fact, according to analysis from the Joint Committee on Taxation, the United States could stand to lose as much as 120 billion in tax revenue under the Global Minimum Tax negotiated by the Biden Administration. On top of that, OECD released recent guidance which substantiated Republicans' concerns. President Biden's tax deal is unworkable, and it is ill conceived. This guidance does nothing to address my concerns, it only to only serves to underscore the deal's fatal flaws, particularly on the Undertaxed Profits Rule, which will send critical research and development abroad.

Had Treasury consulted with Congress instead of completely neglecting the American people, perhaps they would have avoided these pitfalls. And I want to make sure I emphasize what the chairman had talked about earlier. Just accepting letters from the majority is not negotiating or working with us in terms of consulting.

So I want to turn my questions to you and thank you, sir, for your service and for being here. But Mr. Plowgian, the United States is the world's economic superpower, but we represent just 25 percent of the global GDP—15 percent, if adjusted for purchasing power. Multiple independent economic experts have found that the OECD deal would disproportionately impact the United States.

My first question is why would Treasury agree to a Pillar One framework where U.S. companies face 60 percent of the total burden of profit reallocation?

Mr. PLOWGIAN. I am sorry, Congresswoman. With respect to your question, are you—which pillar are you referring to?

Ms. TENNEY. Pillar One.

Mr. PLOWGIAN. Pillar One. So a consistent priority across the administrations, the different administrations that have been involved in these negotiations, has been to protect U.S. interests, to protect U.S. businesses, and to protect U.S. workers.

In particular with respect to Pillar One, the—one of the main purposes behind the negotiations—and this is based on input on a bipartisan basis from Congress—is to get rid of and prevent——

Ms. TENNEY. Hang on. Okay, go ahead. Let me ask you, so do you think it is beneficial to the United States companies to pay more in taxes?

I guess that is—was that the decision that was made in implementing this?

Mr. PLOWGIAN. Well, I don't think that Pillar One necessarily does that. So what——

Ms. TENNEY. Well, let me—can I ask you, do you disagree with the Joint Committee on Taxation's assessment of the $120 billion tax revenue loss under the Global Minimum Tax negotiated by Janet Yellen, Secretary Yellen?

Mr. PLOWGIAN. So under Pillar Two, the JCT analysis actually shows multiple different scenarios. And again, with respect to the baseline that the JCT analysis uses, which is implementation of Pillar Two by more than 40 of our largest trading partners, the midpoint of their range is an increase in U.S. tax revenue from other countries implementing Pillar Two.

And indeed, in scenario 5, which shows implementation by those same 40-plus jurisdictions plus implementation by the U.S., they show——

Ms. TENNEY. So let me ask—you didn't answer my question. Do you think that the Joint Committee on Taxation's numbers are wrong, regardless?

So, in your opinion, the U.S. companies will net a greater tax revenue and will not be penalized under the entire plan?

Mr. PLOWGIAN. The JCT analysis shows that the U.S. gains revenue in multiple of those scenarios.

Ms. TENNEY. But——

Mr. PLOWGIAN. And——

Ms. TENNEY. A net, they net gain——

Mr. PLOWGIAN. Yes.

Ms. TENNEY [continuing]. Revenue.

Mr. PLOWGIAN. Yes, and it is——

Ms. TENNEY. How do you come up with that conclusion?

Mr. PLOWGIAN. Scenario 5 by the JCT shows an increase in U.S. tax revenues of $236.5 billion over the 10-year window.

Ms. TENNEY. And what is that analysis based on?

Mr. PLOWGIAN. That analysis is based——

Ms. TENNEY. Is that an assumption that there is going to be greater trade, or we are not sure of that?

Mr. PLOWGIAN. That—the assumptions that the JCT uses for scenario 5 is adoption by the 40-plus jurisdictions, and adoption by the U.S. of Pillar Two.

Ms. TENNEY. But don't you think that is a surrender of our sovereignty to give the right of other countries to tax our own entities in a way that we are not even doing ourselves and then to put this in an unfair trading position in the end?

Mr. PLOWGIAN. Well, all countries have the sovereign right to tax their residents under their corporate tax——

Ms. TENNEY. Right, but aren't we surrendering our right? We are letting—we are subjecting our U.S.-based companies, who are competing abroad, to this unfair scheme.

Mr. PLOWGIAN. The Pillar Two rules are taxes imposed by jurisdictions on their own residents.

Ms. TENNEY. I understand. So—but overall, we are going to end up losing because we are penalizing our own U.S.-based companies when they try to compete in the foreign market.

And I think my time has expired, so I will have to talk to you about it further in another time. Thank you.

Chairman KELLY. I thank the gentlelady. We now recognize the gentlelady from California, Mrs. Steel.

Mrs. STEEL. Thank you, Mr. Chairman, for hosting this important hearing. I love to yield my colleague—to my colleague from Oklahoma, Mr. Hern.

Mr. HERN. Mr. Plowgian, just to follow up on my two letters, and then what Ms. Tenney just responded to, are the JCT assumptions based on information, work product that you have given them to do an analysis on their assumptions of revenue loss or gain?

Mr. PLOWGIAN. So certainly, the Treasury estimates——

Mr. HERN. That is a yes or no, if you have given them information or not.

Mr. PLOWGIAN. My understanding is that the Treasury estimators do speak with their JCT colleagues on a regular basis.

Mr. HERN. So then it is a yes, you have given it to JCT then. I was just curious because, again, we haven't seen it in Congress. So as long as they have it, and we are basing these estimates off of your work product, that would be interesting to know.

Thank you. I yield back.

Mrs. STEEL. I am very generous with my time today, so I am yielding to my colleague from Georgia, Mr. Ferguson.

Mr. FERGUSON. I thank the gentlelady.

Mr. Plowgian, is it appropriate to allow one state or country to collect income tax on income earned outside its border?

Mr. PLOWGIAN. So the way the international——

Mr. FERGUSON. Yes or no.

Mr. PLOWGIAN [continuing]. Tax rules——

Mr. FERGUSON. Is it appropriate to allow one state or country to collect income tax earned on income outside its border?

Mr. PLOWGIAN. Well, the United States collects income tax on the income of CFCs that operate outside of the U.S. So the——

Mr. FERGUSON. So our treaties allow that?

Mr. PLOWGIAN. Our treaties allow that, yes.

Mr. FERGUSON. So if that is so, couldn't we just tax foreign companies here on income earned outside the U.S.?

Mr. PLOWGIAN. The saving clause in our treaties allows the parties to the treaty to tax their residents, generally, without regard to the treaty. And so we have always taken the——

Mr. FERGUSON. I mean, if——

Mr. PLOWGIAN [continuing]. Position that GILTI and subpart F are consistent with our treaties.

Mr. FERGUSON. But wouldn't that—if we start taxing companies and other countries on income that they have earned outside of the U.S., don't you think that would lead to tax or trade disputes with the home country?

Mr. PLOWGIAN. We currently do tax income earned by entities in other jurisdictions. So we tax the U.S. entity with respect to income earned by CFCs in other jurisdictions under GILTI and subpart F.

Mr. FERGUSON. Okay. Thank you.

Mrs. STEEL. Thank you, Mr. Chairman.

You know, this is very important discussions that we are having. And thank you, Deputy Assistant Secretary, that, you know, you are coming out. And I hope that Treasury, moving forward, will work with this committee and fight for U.S. businesses.

But having said that, your—on your statement you said Pillar Two, which would increase U.S. revenue and strengthen our tax system, and Pillar Two will be fairer—if I said something that you didn't say, please let me know—on the world stage, so better be in Pillar Two than not in Pillar Two.

So my concern on Pillar Two is—actually, all the members already stated—that 60 percent of total—actually, that is the Pillar One. Pillar Two, that total burden—that nearly 40 percent of additional tax burden for Pillar Two that—for U.S. companies.

So could you explain, then, why you are saying that without any detailed technical issues that we resolve before we implement this, that you already saying that, that—how it can increase U.S. revenue and strengthen, and then why it has to be fairer, and then why we have to be in Pillar Two, not in Pillar Two.

Mr. PLOWGIAN. Yes, absolutely. The JCT analysis shows that in all scenarios that they analyzed, that U.S. adoption of Pillar Two increases U.S. revenue as compared to not adopting Pillar Two.

Similarly, the Treasury estimates for the Administration's Green Book proposals to adopt reforms consistent with Pillar Two show a significant revenue increase for the U.S. of adopting those reforms.

Mrs. STEEL. Thank you. I still have a problem with double taxation for our corporations here.

Having said that, I don't have enough time, so I am going to just say really quick statement here. I was born in Korea and raised in Japan. And it is great that we live in a global world that allows international commerce. But I am here to advocate for my constituents from southern California.

And could you and will you—you and Treasury—commit today to negotiate with OECD rules that are equitable across countries on behalf of my constituents?

And I can't in good faith sign off on policies without knowing how it would affect our constituents and communities. Will you commit today to provide Congress and—critical details going forward, and bring all the important issues on Pillar Two before we implement Pillar Two? Just yes-and-no question, because my—I am already over my time.

Mr. PLOWGIAN. Yes, we do take U.S. interests and U.S. business interests into the negotiations. And I can commit to taking those into the negotiations, and we have provided estimates on Pillar Two to Congress and made them publicly available.

Mrs. STEEL. Thank you, Mr. Chairman. I yield back.

Chairman KELLY. I thank the gentlelady, and now would turn to Mr. Schneider from Illinois for five minutes.

Mr. SCHNEIDER. Thank you, Mr. Chairman.

And Mr. Plowgian, thank you for your patience. I know it has been a long afternoon. I am going to review some of the things.

In your testimony we talked about the BEPS project, or the Base Erosion and Profit Shifting project that was the genesis of this whole initiative. What was the motivation for that project?

Mr. PLOWGIAN. It was concern about the ability of multi-nationals to shift profits into low-tax jurisdictions, essentially.

Mr. SCHNEIDER. And what was [sic] the goals that the countries participating set for the project?

Mr. PLOWGIAN. The basic idea was to try to develop reforms to the international tax rules to prevent multi-nationals from being able to shift profits into low-tax jurisdictions.

Mr. SCHNEIDER. And as we sit here now more than a decade later, and we are talking about Pillar One and Pillar Two—that often gets confusing, we have got initials like UTPR—what is your sense of the commitment to the G20 countries to actually moving forward and addressing the original motivations of the BEPS project and what they are trying to achieve with Pillar One and Pillar Two?

Mr. PLOWGIAN. Well, the G20 finance ministers this—earlier this week reiterated their support for the two-pillar solution, and the—in particular, the steps that countries are taking to implement Pillar Two.

Mr. SCHNEIDER. So is it fair to say that, irrespective of what we might do in the United States, countries around the world, developed countries around the world are going to move forward here?

Mr. PLOWGIAN. Yes, absolutely.

Mr. SCHNEIDER. Okay. Now, we have also talked about this JCT analysis, and my colleagues have been focusing on one of the scenario numbers. But there are multiple scenarios. What is the key distinction between each of the different scenarios?

Mr. PLOWGIAN. The key distinctions between the different scenarios are assumptions about which jurisdictions implement. There are several scenarios in which the U.S. implements Pillar Two. There are several scenarios in which the U.S. does not implement Pillar Two. And then there is this distinction between just the 40 baseline—or 40-plus baseline jurisdictions adopting versus every single country in the world adopting.

Mr. SCHNEIDER. Okay. And what happens if the rest of the world moves forward—and, as you noted, the leading economies are committed to moving forward—and the United States stays on the sidelines, what happens then?

Mr. PLOWGIAN. Yes. So if the entire rest of the world adopts Pillar Two, which is the JCT scenario 1, and the U.S. stays on the sidelines, that is the $122 billion number that has been talked a lot about in this hearing. They find that the U.S. would lose $122 billion of revenue.

Mr. SCHNEIDER. And the logic behind that is that—and one of the numbers I saw is an estimate of 75 percent of the profits that are now located in low-tax jurisdictions like the Canary Islands, or the—or Bermuda is going to move to more business, the G20 economies. The assumption is it would all move to these other economies, not to the United States. Is that correct?

Mr. PLOWGIAN. I think that is a large driver of the numbers.

Mr. SCHNEIDER. Okay. But are things that the United States could do to make it more attractive for these companies to move their profits from Bermuda back to the United States?

Mr. PLOWGIAN. Yes. And in fact, we believe that Pillar Two does make it more attractive for companies to move their profits back to the United States because it reduces the tax incentive to shift profits out of the U.S. to low-tax jurisdictions.

And in fact, OECD and IMF analysis has suggested that reducing the tax rate differentials between the U.S. and offshore centers would significantly increase investment in the U.S.

Mr. SCHNEIDER. So if instead of fighting amongst ourselves we put our heads together and came up with strategic actions as a body to make sure that the United States remains as the innovative place in the world, actually, we wouldn't see a decline in taxes, but, by the JCT model, we would see an increase in revenues to the United States. Is that correct?

Mr. PLOWGIAN. That is correct. And certainly, Pillar Two is part of that. In every scenario, if the U.S. adopts Pillar Two, the JCT shows an increase in U.S. tax revenue as compared to the U.S. not adopting.

Mr. SCHNEIDER. Okay. And let me finish on one other thing, because I am worried about R&D, and I know we talked about it a little bit. And this wasn't my observation, but I think it is an important observation.

Two-and-a-half years ago we entered into what was a dark moment for the country with the pandemic, for the world, as the world shut down. All of the scientists around the world gathered together or worked together to try to come up with some response treatments for COVID, vaccines for COVID. And countries tested some. As we sit here, two-and-a-half years later, there are three vaccines that are standing that are desired by the world. All three of those were invented here in the United States because we have the greatest innovation R&D system. We incentivize it, we motivate it, we support it.

I do want to make sure as we go forward—and I think it is a fair concern—that whatever we do with Pillar Two makes sure that we protect those incentives, those reasons for companies, the best companies in the world, to base their research and development in the United States, to bring the smartest people and hire the smartest people in the United States, and make sure, God forbid, if there is another pandemic or we have the next revolution of AI, or whatever is coming next, that those innovations are happening in the United States.

And with that, I yield back.

Chairman KELLY. I thank the gentleman.

Mr. Plowgian, I want to take a moment to thank you for being here today, and for being patient, and enduring as we go through this, because I got to tell you I think the main thing that has bothered me since the beginning of when this—it is the constitutionality of what the Administration is doing.

There is three distinct parts of our government. And I just think, when we look at trade policy, when we look at tax policy, all that begins in the House. And I am just trying to understand why the Administration would go outside that model and decide to do something on its own. So I am going to encourage you to keep in touch with us. And the people that asked you to get back with them, they asked you some questions that you said you would get back with them, please do that. And thank you so much for being here today.

Mr. PLOWGIAN. Thank you.

Chairman KELLY. We are now going to move to the second panel.

[Pause.]

Chairman KELLY. I now recognize the second panel, and I want to thank you all for going through this process. And I saw you out in the back seats, but thank you all for staying with us.

First of all, Ms. Mindy Herzfeld serves as a professor of tax practice at the University of Florida, Levin College of Law. She is also a counsel for the Potomac Law Group and a contributing editor for the publication, "Tax Notes."

Ms. Herzfeld, thank you for being here.

Adam Michel is the director of tax policy studies at the CATO Institute.

Mr. Michel, thank you so much for being here.

Anne Gordon is the vice president for international tax policy at the National Foreign Trade Council.

Ms. Gordon, thank you so much for being here.

Mr. David Schizer is a dean emeritus and Harvey R. Miller professor of law and economics at Columbia Law School.

Mr. Schizer, thank you for being here.

And Mr. Peter Barnes is an international tax adviser and the counsel at Caplin & Drysdale. He is also a senior fellow at Duke University.

It is nice to have the Blue Devils here. Thank you so much.

Thank you all for being here today, and I hope we can continue on.

I just want to make sure that we understand the whole purpose of what we are trying to do today. And I think that sometimes we get caught up in the floor speeches. The real problem—and I just addressed at the end of the first—is the constitutionality of the Administration and the movement that they are making without being the counsel of the Congress. And so we will begin now.

Ms. Herzfeld, each of you, please, you have five minutes. Mr. Hern is going to take over as the chairman. Thank you so much.

STATEMENT OF MINDY HERZFELD, PROFESSOR OF TAX PRACTICE, UNIVERSITY OF FLORIDA, LEVIN COLLEGE OF LAW

Ms. HERZFELD. Chairman Kelly, Ranking Member Thompson, and members of the subcommittee, thank you for the opportunity to testify here today on this important topic.

The background to my testimony is the Joint Committee on Taxation's recent analysis estimating that Pillar Two of the OECD agreement for a Global Minimum Tax will impose significant costs on the U.S. Government.

To put the two-pillar project in perspective, I will start by sketching out the international tax principles that have been in place since the early 20th century, followed by changes introduced by the OECD's project to crack down on cross-border Base Erosion and Profit Shifting, known as BEPS, and the U.S. Tax Cuts and Jobs Act. Together, BEPS and the TCJA set the stage for the 2021 two-pillar agreement. I will explain why certain aspects of that agreement negatively impact U.S. revenues, but then turn to what might be done to fix it.

From its earliest days, the U.S. income tax system, as applied to taxing U.S. persons' foreign earnings, can be characterized by three principles: first, U.S. persons are taxed on all of their income, regardless of where earned; second, the United States provides U.S. taxpayers with a credit for foreign taxes paid; and third, in general, U.S. tax law respects corporate entities as separate taxpayers, and historically has not subjected foreign companies' earnings to U.S. tax until repatriated.

Now, beginning in 2013, the G20 and the OECD undertook a project to address cross-border profit shifting and digitalization of the economy. This BEPS project fell short, though, in two respects. One, it didn't develop concrete proposals for taxing the digitalized economy. And two, a U.S. push to encourage expanded adoption of controlled foreign corporation regimes mostly failed. But these missed opportunities have been revived in the OECD's current work.

Now, partly in response to the same pressures that prompted BEPS, the TCJA introduced a number of important changes to U.S. international tax rules. Most importantly, in enacting GILTI, the U.S. became the first mover in adopting a Global Minimum Tax.

Now, unfinished business from the BEPS project led other countries to propose and enact Digital Services Taxes. To limit such efforts, the OECD undertook what is sometimes referred to as BEPS 2.0, which includes the two pillars. Pillar One remains focused on taxing large, highly profitable multi-nationals, disproportionately impacting U.S. tech companies, and reallocates a share of their profits to market economies. Pillar Two, meanwhile, morphed into a Global Minimum Tax.

At a high level, other countries were trying to copy GILTI. But in the OECD's hands, the scope of the idea has grown.

Now, if Pillar Two was simply a platform for other countries to mimic GILTI, we wouldn't be here today. But three changes made between the 2021 agreement and the release of the OECD model rules turned the OECD minimum tax into a U.S. revenue loser.

The first was that the UTPR, the Undertaxed Profits Rule, provides other countries full rein to tax the domestic earnings of U.S. multi-nationals.

Second, many U.S. general business credits, because they are not refundable, are treated as reducing taxes paid and increase the risk of a top-up tax being imposed.

And third, Pillar Two now encourages other countries to enact their own qualified domestic minimum taxes, QDMTTs. The details are complicated, but the principle is not. When other countries increase taxes on U.S. multi-nationals, the U.S. loses money because of the foreign tax credit. This is the landscape we face today.

I would like now to sketch out possibilities for fixing the deal to minimize its harmful impacts.

One, the U.S. could modify its domestic rules so that they conform to Pillar Two. But this is unlikely to make up the revenues lost to other countries, while also costing the U.S. fisc.

Two, the U.S. could threaten other countries with retaliation, but this could have harmful impacts on cross-border trade.

Three, the U.S. could encourage the OECD to modify some of the worst of its arbitrary rules. I think the guidance released earlier this week suggests that this is a viable path.

And four, the OECD rules are based on financial accounting, but it is Congress, through the SEC, that retains the ultimate authority for the accounting guidelines, followed by publicly-traded companies.

Over the longer term, the two-pillar agreement highlights a failure in Treasury's interaction with Congress when pursuing international tax negotiations. Congress could and should be providing Treasury with clearer guidance here. A model could be the Trade Promotion Authority, which guides the executive branch when it is pursuing and negotiating trade agreements.

Thank you again for inviting me to testify. I would be happy to answer any questions you may have.

[The statement of Ms. Herzfeld follows:]

Statement of Mindy Herzfeld before the House Ways & Means Committee Subcommittee on Tax at a hearing on "Biden's Global Tax Surrender Harms American Workers and Our Economy" (July 19, 2023)

Chairman Kelly, Ranking Member Thompson, and distinguished members of this subcommittee, thank you for the opportunity to testify here today on this very important topic – the international agreement brokered by the OECD on the tax challenges arising from the digitalization of the economy, also known as the two-pillar solution.

The background to my testimony is a recent analysis by the Joint Committee on Taxation showing that Pillar Two alone of this agreement will likely impose significant costs on the U.S. government, in the form of reduced revenue collections.[1] Most of my testimony will focus on the Pillar Two agreement for a global minimum tax, but I will also touch briefly on Pillar One – a timely topic, given the OECD' release last week of an Outcome Statement on Pillar One and additional guidance earlier this week.[2]

To put the two-pillar project in perspective, I will start by sketching out the international tax principles in place since enactment of an income tax in the early 20th century. I'll then summarize some of the changes the 2017 tax law – the Tax Cuts & Jobs Act – made to that system. It's also important to place these changes within the context of global tax developments and proposals to modify international tax rules made by the OECD as part of its effort to crack down on cross-border base erosion and profit shifting, known as BEPS.

Together, the BEPS project and the TCJA set the stage for the 2021 OECD 2-pillar agreement, of which the United States was one of approximately 140 signatories, and which it played a key role in negotiating. I'll explain why certain aspects of that agreement – specifically, some of the provisions introduced at a late stage in the negotiations – are predicted to have such a harmful effect on U.S. tax revenues – as quantified by the Joint Committee on Taxation. But I would then like to turn to thinking about what might be done to address those harmful effects, both in the short term and over the longer term as well.

<u>Pre-2017 international tax law.</u>

From its earliest days, the U.S. income tax system, as it applied to taxing U.S. persons' foreign earnings, can be characterized by 3 basic principles:

1. *Worldwide taxation.*

Unlike most other countries – which impose a territorial system, or limit their taxing rights to income earned within their own jurisdictions -- the United States imposes worldwide taxation. That is, U.S. persons are taxed on all of their income, regardless of where earned.

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[1] Jt. Comm. on Tax'n, *Possible Effects of Adopting the OECD's Pillar Two, Both Worldwide and in the United States (*Jun. 2023).
[2] OECD/G20 Base Erosion and Profit Shifting Project, Outcome Statement on the Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy (Jul. 11, 2023) at https://www.oecd.org/tax/beps/outcome-statement-on-the-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-july-2023.pdf ; OECD Secretary-General Tax Report to G20 Finance Ministers and Central Bank Governors (July 2023) at https://www.oecd.org/tax/oecd-secretary-general-tax-report-g20-finance-ministers-india-july-2023.pdf.

2. The Foreign Tax Credit.

In order to address concerns over double taxation of non-U.S. source income, the United States – in what has been described as an act of unprecedented generosity by Congress[3] – has since 1918 provided U.S. taxpayers with a dollar-for-dollar credit for foreign taxes paid (the foreign tax credit), subject to various limitations. This credit is not entirely gratuitous on Congress' part – the foreign tax credit has encouraged U.S. businesses to access and serve foreign markets, and so benefited both corporate America and the American economy as a whole.

3. Deferral.

In general, the U.S. tax law respects corporate entities as separate taxpayers, and has refrained from subjecting the earnings of foreign corporations owned by U.S. persons to taxation in the United States until repatriated. This principle of deferral stands in contrast to a system that would require full and immediate U.S. tax on U.S. shareholders on the foreign earned income of the foreign corporations in which they own shares. Together with the high U.S. corporate tax rate prior to 2017 -- as compared to other OECD countries[4] -- the principle of deferral encouraged U.S. headquartered companies to keep their earnings offshore rather than repatriating them back to the United States.[5] Deferring repatriation eventually led to approximately $1 trillion in cash held offshore by U.S. companies prior to enactment of the Tax Cuts & Jobs Act.[6]

Combined, the principles of worldwide taxation and the large differential between the U.S. corporate rate and other countries' tax rates prior to 2017 also led to the phenomenon of inversions, whereby U.S. companies had strong incentives to reincorporate overseas in order to avoid being stuck in the U.S. tax net.[7]

The BEPS Project

Several trends combined to put increasing pressure on the long-standing international rules for taxing cross-border income during the early 2000s. These included distortions introduced by the increase in the differential between the U.S. corporate tax rate and that of other countries, the growth of U.S. companies' overseas profits, the rise of globalization and global supply chains, and the pressures that digital business models created for local businesses and the tax revenues generated by those local businesses. Related to these global trends were the distortions introduced by EU integration efforts – which required free movement of people and capital within EU borders – with the limitations of the EU Treaty, which left corporate tax systems

[3] See Michael J. Graetz and Michael M O'Hear, *The 'Original Intent' of U.S. International Taxation*, 46 Duke L. J. 1020 (1997) (describing enactment of the foreign tax credit as representing "what was an extraordinarily generous measure for its time: the United States was assuming sole responsibility for the costs of reducing the double taxation of its residents and citizens."
[4] See Kari Jahnsen and Kyle Pomerleau, *Corporate Income Tax Rates Around the World, 2017*, Tax Foundation (Sept. 7, 2017), at https://taxfoundation.org/corporate-income-tax-rates-around-the-world-2017/.
[5] See Jt. Comm. on Tax'n, Background and Selected Policy Issues on International Tax Reform, JCX-45-17 (Sept. 28, 2017).
[6] See Michael Smolyansky, Gustavo Suarez & Alexandra Tabova, *U.S. Corporations' Repatriation of Offshore Profits: Evidence from 2018*, FEDS Notes (Aug. 6, 2019) at https://www.federalreserve.gov/econres/notes/feds-notes/us-corporations-repatriation-of-offshore-profits-20190806.html.
[7] See Donald Marples & Jane Gravelle, *Corporate Expatriation, Inversions, and Mergers: Tax Issues*, Cong. Rsch. Rep. No. R43568 (updated Jun. 17, 2021).

within the sole purview of EU member countries. These countervailing doctrines allowed for maximum cross-border profit shifting within the EU but also limited the tools EU countries could use to address that concern, leading them to look outside the EU for solutions.

In short, developments in the United States, the EU, and around the world prompted the G20 and the OECD to undertake a mammoth project focused on creating new rules for addressing cross-border profit shifting and the digitalization of the economy. The resulting BEPS project fell short in 2 respects:

The first is that it didn't manage to come up with concrete proposals for taxing the digitalized economy.

The second is that despite U.S. efforts to convince other countries to adopt expanded rules for taxing foreign earned income – in the form of expanded controlled foreign corporation regimes – most other countries declined to move forward with this idea.[8]

Both of these ideas and missed opportunities have been revived in the current OECD work on Pillars One and Two.

<u>TCJA Changes</u>

The same pressures that led to the OECD's BEPS work, together with the unique challenges posed by an outdated set of rules in the United States for taxing cross-border income, helped prompt passage of the TCJA. That law introduced a number of important changes to the U.S. international tax rules, alleviating some of the distortions described above. I'll highlight four of them below, as particularly relevant to the current OECD project.

1. *Territorial taxation.*

In theory, the TCJA introduced a territorial system by allowing for a 100 percent dividends received deduction on dividends from foreign companies to U.S. corporate shareholders.[9] (In practice, this territoriality is very limited.)

2. *Taxation of Global Intangible Low-Taxed Income.*

To ensure that enactment of an exemption for dividends paid out of foreign earnings wouldn't further encourage U.S. taxpayers to shift profits and assets overseas, the TCJA introduced a broad anti-abuse measure which subjects to U.S. tax on a current basis much of controlled foreign corporations' foreign earnings.[10] In enacting GILTI, the United States was essentially a first mover in adopting a global minimum tax. To minimize the distortions created by the fact that U.S. was proposing a minimum tax on the foreign earnings of U.S. headquartered companies, whereas other countries mostly retained full territorial (exemption) systems, GILTI generally taxes foreign earnings of CFCs at a lower rate than domestic earnings.

3. *Foreign Derived Intangible Income.*

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[8] See OECD, *Designing Effective Controlled Foreign Company Rules, Action 3 - 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project, (2015), at https://doi.org/10.1787/9789264241152-en.
[9] I.R.C. § 245A.
[10] I.R.C. § 951A.

The TCJA introduced a new deduction for foreign derived intangible income, intended to bring parity to the U.S. tax rate on foreign earnings, regardless of whether earned by a U.S. or foreign company.[11] The FDII deduction was intended to incentivize U.S. companies to repatriate their intellectual property to the United States and minimize incentives for such IP to be transferred overseas.[12]

4. The BEAT

Because GILTI arguably put U.S. companies at a competitive disadvantage relative to foreign companies with U.S. operations, TCJA also included a base erosion and anti-abuse tax, the BEAT, a complex rule that was supposed to target foreign companies' U.S. operations' base stripping activities. In practice, this rule has proved both overly broad and too circumscribed in scope.

Global Responses

The unfinished business from the BEPS project – particularly the failures to address concerns about taxation of the digitalized economy – led some countries to propose, and others to enact, gross-basis digital services taxes, widely understood to be inefficient taxes that primarily target U.S. tech companies. Partly to limit the spread of such efforts, the OECD – with the willing participation of U.S. Treasury – undertook what is sometimes referred to as BEPS 2.0, which includes two pillars. Pillar One remains focused on the efforts of taxing very large, highly profitable multinational companies (with the end result that it disproportionately impacts U.S. tech companies) and reallocates a share of those profits – in contrast to the historical rules – to market economies. There's been no formal agreement so far on the details of that proposal.

Meanwhile, the other part of BEPS 2.0 -- Pillar Two – morphed into a plan for a global minimum tax. At a high level, the agreement over global minimum tax represented other countries' efforts to copy the U.S. idea of taxing foreign earnings enacted as GILTI in 2017. But once the OECD took up the project, the idea for a global minimum tax began to grow in scope and reach.

The OECD Deal

If Pillar Two was simply a platform for other countries to mimic and modify the U.S. approach to addressing cross-border profit shifting by taxing foreign earnings on an immediate basis, we wouldn't be here today. But three changes were made between the time the broad terms of the 2021 deal were agreed to, and the details of the OECD model rules were released last year that has turned the OECD agreement for a global minimum tax into the U.S. revenue loser that the Joint Committee on Taxation has estimated that it likely will be.

1. The UPTR.

While the U.S. GILTI tax only imposes tax on the U.S. shareholders of CFCs on their share of the CFCs' earnings, Pillar 2 goes much further. Introduced as part of the model rules in 2022, the OECD version of a global minimum tax has been expanded to include a provision under which all countries in a which a multinational has a presence are entitled (and obligated) to tax the

[11] I.R.C. § 250.

[12] There are some suggestions that this benefit could be working as intended. See Martin Sullivan, *Latest SEC Filings Show FDII Benefits Continue to Climb*, 110 Tax Notes Int'l 164 (Apr. 10, 2023).

(undertaxed) domestic earnings of parent companies. This rule – the UTPR (undertaxed profits rule) – gives other countries full rein to tax the domestic earnings of U.S. multinationals.

2. *Credits.*

The U.S. statutory corporate rate of 21 percent is higher than the 15 percent rate agreed to as part of the OECD deal. So one could think that granting other countries the right to tax low-taxed domestic earnings of U.S. headquartered companies shouldn't pose a problem. One has to get deep into the rules to figure out why this is so. One reason relates to how tax credits – including business credits such as the R&E tax credit – are treated under the OECD model rules.

The OECD global minimum tax – known as GLOBE – operates by first requiring companies to calculate the effective tax rate paid in each jurisdiction. To the extent that this rate is below 15 percent, a top-up tax then may be imposed. There are special rules for calculating GLOBE income for this purpose, and these rules treat some types of credits as reducing the tax rate (thereby creating additional risk of triggering a top-up tax), and other types of credits as income instead. Under these rules, many U.S. general business credits – because they are not refundable – are treated as reducing taxes paid, and so increase the risk of a top-up tax being imposed on U.S. companies' domestic income under the UTPR. (A similar principle applies to companies that benefit from the FDII deduction, described above).

But refundable credits – such as the UK's R&E credits – generally are treated as income rather than a reduction to tax under the OECD model rules, and so are less likely to trigger a top-up tax. In the past, the OECD has explained that this distinction is due to the different accounting treatment of refundable v. non-refundable credits.[13]

3. *The Qualified Domestic Minimum Top-up Tax, or QDMTT.*

The most important reason why the OECD agreement on Pillar Two is likely going to end up costing the U.S. significant revenues is an aspect of the model rules that appeared late in the game. This is the encouragement the OECD is providing to other countries to enact their own qualified domestic minimum taxes, designed to prevent other countries' adoption of a global minimum tax from stripping away their tax base. The details here are complicated but the principle is not: when other countries increase their corporate tax rates, it costs the United States money, because the U.S. continues to provide a foreign tax credit for foreign taxes paid. An international agreement that encourages other countries to increase their tax rates will necessarily reduce the residual U.S. tax that can be collected on that income.

<u>What Can be Done?</u>

This is the landscape the U.S. government and U.S. businesses face today. I'd like now to shift to sketch out some possibilities for fixing the deal to minimize its harmful impacts on the United

[13] Administrative guidance released July 17 walks back the reliance on the accounting treatment in favor of "uniform and mandatory" treatment of tax credits, which it says "is necessary to ensure that different financial accounting rules do not advantage or disadvantage some" multinationals. OECD, *Tax Challenges Arising from the Digitalisation of the Economy – Administrative Guidance on the Global Anti-Base Erosion Model Rules (Pillar Two)*, (July 2023) at www.oecd.org/tax/beps/administrative-guidance-global-anti-base-erosionrules-pillar-two-july-2023.pdf .

States. I expand upon these possibilities in the attached article, published this week in Tax Notes International. None of them is a cure-all.

1. *Domestic law changes.*

The United States could modify its domestic rules so that they conform to Pillar Two, including by modifying its tax credits or by enacting its own qualified domestic minimum tax. This is unlikely to make up the revenue lost due to other countries' adoption of QDMTT, while modifying the U.S. regime for business credits could also end up as a revenue loser.

2. *Retaliation*

The United States could threaten other countries with retaliation in order to get them to drop or scale back implementation of Pillar Two. For a number of reasons – in particular, the fact that the EU has already adopted a Pillar Two directive – this is unlikely to have the desired effect, and could have harmful effects on cross-border trade.

3. *Modifications to GLOBE*

The United States could work with the OECD to encourage modification of some of the more arbitrary rules that have the worst effects on US businesses and revenues, such as the definition of qualifying credits. This approach may be the most promising, but may require a shift in tactics.

4. *Accounting Rule Changes*

Although Congress has handed over authority for drafting and oversight of accounting principles for financial reporting generally to the Securities and Exchange Commission, which in turn has given over its authority to the private organization the Financial Accounting Standards Board, Congress retains the ultimate authority here. Perhaps the OECD, the SEC, and FASB might be reminded of that fact in considering the extent to which the GLOBE rules harm the U.S. government.

Longer-term Solutions

Over the longer term, the OECD Pillar Two agreement – and most importantly, the details of the model rules - highlight a failure in the way Treasury interacts with Congress in pursuing international tax negotiations. Congress could and should be working more closely with Treasury to provide it with clearer direction as to what position to adopt in international tax negotiations, most importantly when the negotiations would significantly affect the United States' jurisdiction to tax or would require statutory changes. Doing so would avoid the situation we find ourselves in today, where Treasury has negotiated a deal that Congress cannot implement, a result which is not productive, nor does it enhance U.S. standing among its trading partners. I reiterate suggestions made by others to consider as a model in this regard that adopted by Congress along the lines of the Trade Promotion Authority, which guides the executive branch in pursuing and negotiating trade agreements. Doing so could have the productive result of preventing Treasury from over-promising and giving its negotiating positions greater credence among its partners.

Thank you again for inviting me to testify. I would be happy to answer any questions you may have.

Is There a Way to Fix Pillar 2?

POSTED ON JULY 17, 2023

MINDY HERZFELD

The Joint Committee on Taxation's June analysis of the U.S. revenue impacts of pillar 2 provided stark confirmation of what many had long suspected: that the OECD pillars, negotiated and agreed to by the U.S. Treasury Department, are likely to impose significant costs on the U.S. fisc. And the JCT report considers only the impact of the rules on the government's revenue collection. When the impact on U.S. businesses — and U.S. shareholders, investment, and workers — is taken into account, the negative consequences are probably even higher. Although the questions of how and why the United States participated in getting us here deserve attention, more immediately pressing is how to minimize the harm. The JCT report provides the impetus for constructive thinking about how to modify the regime to lessen the adverse results for the United States.

It would be foolhardy to think that the bad outcomes highlighted by the JCT are limited to the United States. Over the longer term, they also threaten the OECD's role in overseeing and coordinating international tax rules. Although the OECD has 38 members and the inclusive framework has over 140, the United States funds almost 20 percent of the OECD's Part I budget, an amount that nearly totals the contributions of the next three countries combined (Japan, Germany, and the United Kingdom). The OECD's tax function has expanded over the past two decades — both geographically and substantively — but an organization responsible for developing regimes that pose real harm to its leading donor doesn't have long-term viability.

Although the two-pillar project was always in part a revenue grab by other countries of the profits of U.S. tech companies, the harshness of the fallout for the United States depicted by the JCT report shows that other countries — even those nominally depicted as winners — also stand to lose. U.S. legislators have already begun to explore various means of ensuring that U.S. tax revenue lost overseas via pillar 2 is recouped — means that are not likely to strengthen cross-border trade.

The JCT Report

The JCT report depicts five possible scenarios. If the rest of the world adopts pillar 2 — with or without the United States — the United States loses significant revenue over the next 10 years: about $120 billion if it doesn't adopt pillar 2 and about $56 billion if it does. Only in the scenario in which the rest of the world doesn't adopt pillar 2, but the United States does, will the latter stand to increase its revenue collections. The JCT projects that if the United States is the only country that adopts pillar 2 (including adopting the UTPR, formerly known as the undertaxed payments rule), it will see a $236.5 billion revenue gain over 10 years.

The Assumptions

Like any economic model, the JCT conclusions rest on a series of assumptions, which may lead some to question the results.

The report notes that pillar 2 could have a range of effects on federal income tax receipts, with the upper and lower bounds of the effects based on a range of potential behavioral responses from U.S. taxpayers. In both its upper- and lower-bound scenarios, the JCT assumes that U.S. multinationals subject to pillar 2's income inclusion rules and UTPRs shift up to 75 percent of their low-taxed profits to other jurisdictions. The difference between the two — which determines whether the United States is a net revenue gainer or loser — is derived from assumptions about where those profits are shifted. In the lower bound, U.S. multinationals shift up to 75 percent of their low-taxed profits to pillar-2-compliant jurisdictions (namely, jurisdictions with a qualified domestic minimum top-up tax, or QDMTT). The upper bound assumes that those companies shift up to 75 percent of their low-taxed profits to the United States.

In other words, the JCT report is based on assumptions about future behavior of multinational companies that is hard to predict, verify, and quantify, and the validity of those assumptions is important in substantiating its conclusions.

The JCT analysis assumes that the pillar 2 rules will apply in the following order of priority: first, local corporate income taxes (including the U.S. corporate alternative minimum tax, but excluding the corporate AMT on foreign income), then QDMTTs, controlled foreign corporation rules (including the global intangible low-taxed income regime, subpart F, and the corporate AMT on foreign income), IIRs, and finally UTPRs. It follows from this ordering rule that domestic taxes are collected before CFC taxes or the new pillar 2 taxes. The JCT also assumes that Treasury will issue regulations indicating that QDMTTs are creditable and that foreign IIRs and UTPRs are not, and that U.S. state and local income taxes are included in calculating pillar 2 effective tax rates (if they aren't, the revenue costs to the United States would be higher). The JCT also ignores any effects of pillar 1 by assuming that it will not be adopted within the budget window.

While some may be inclined to question the report's assumptions and therefore its conclusions, those doubts fail to consider the weight that the JCT's analyses carry on Capitol Hill.

Who Gains?

Although the JCT report notes the likelihood that the United States will lose revenue if most countries adopt pillar 2, it does not indicate, other than in the broadest of strokes, which countries are likely to benefit.

One can deduce which countries might be expected to gain from the U.S. loss in revenue from the JCT's depiction of behavioral responses to the adoption of pillar 2. In the lower bound of those responses, U.S. companies are assumed to shift their low-taxed profits to QDMTT jurisdictions — meaning that low-tax jurisdictions that enact QDMTTs should expect revenue gains. But the report also says that pillar 2's implementation is expected to produce high heterogeneity in responses.

It's useful to look at how other countries expect pillar 2 will affect their domestic revenue. The Tax Foundation has a helpful roundup that suggests that the United States' largest trading partners are expected to gain from the adoption of pillar 2. Within the EU, France could gain at least €1 billion ($1.1 billion) annually, and Germany could gain between €5.1 billion and €6.7 billion annually ($5.8 billion to $7.6 billion). Belgium projects annual revenue increases of about €330 million ($360 million), Denmark expects similar gains, and the Netherlands slightly higher ones. Switzerland, meanwhile, is looking at an annual increase in revenue in the range of CHF 1 billion to CHF 2.5 billion ($1 billion to $2.6 billion), and the United Kingdom is eyeing an increase of £2.3 billion a year by 2027 and 2028 ($2.7 billion). Outside Europe, Canada projects even larger increases — about C $5.1 billion ($3.8 billion) in fiscal 2025 and 2026, C

$2.8 billion ($2 billion) in fiscal 2027, and C $2.4 billion ($1.8 billion) in fiscal 2028. Australia's latest budget projected revenue gains of AUD 370 million ($250 million) over the next five years. Add up all those revenue gains for other countries, and they look like the flip side of the losses the JCT has projected for the United States.

There is a long history of the United States picking up the tab for European infrastructure costs, and pillar 2 may simply be the latest iteration of that trend.

A Tax Code Aid Program?

Perhaps the projected U.S. revenue loss from pillar 2 would be more palatable if the agreement were viewed as an aid program delivered via the tax rules. But while delivering aid through the tax code would also raise questions, that's not what's going on here. Developing countries are expected to gain little, if any, revenue from pillar 2. (Prior coverage: *Tax Notes Int'l*, July 10, 2023, p. 206.) The country projecting the largest revenue gains, after Germany, is Canada, which has also declined to sign on to the multilateral agreement that would commit it to roll back its digital services taxes. (Related coverage: p. 319.)

Costs Beyond U.S. Revenue

The JCT report attempts to quantify only the costs of lost federal government revenue from pillar 2 implementation. For knock-on costs, the assumptions embedded in the report regarding behavioral responses become relevant — namely, that U.S. companies will pay an overall higher tax burden because of pillar 2. The IMF estimates that pillar 2 would raise global corporate income tax revenues by 5.7 percent before any behavioral responses by firms (IMF, "International Corporate Tax Reform," Policy Paper No. 2023/001 (Feb. 26, 2023)). According to an OECD analysis from earlier this year, the proposed global minimum tax is expected to result in annual global revenue gains of about $220 billion, or 9 percent of global corporate income tax revenues.

The OECD economic impact assessment — revised upward from a previous estimate of $150 billion — shows that the average global marginal ETR is projected to increase by about 1.85 percent. The IMF says that corporate ETRs can be expected to rise because of the direct effect of the global anti-base-erosion (GLOBE) rules, tax increases from reduced competitive pressure, and reduced scope for profit shifting. As a result, it says that in the aggregate, investment by multinationals is predicted to decline modestly in the face of higher tax burdens. Other estimates, such as the U.N. Conference on Trade and Development's "2022 World Investment Report," are that the potential drop in global foreign direct investment from the new rules is about 2 percent. (Prior coverage: *Tax Notes Int'l*, June 13, 2022, p. 1452.)

None of these estimates pinpoints which companies would be ponying up those funds, but presumably — given how many U.S. companies make up the group of large companies that are within scope of pillar 2 — many would be headquartered in the United States. That translates into lower investment by U.S. companies. Although economists debate whether capital or labor bears more of the burden of a rise in corporate tax rates, in either case the U.S. economy may be on the losing end of a global tax increase that is disproportionately borne by U.S. companies.

Potential Responses

What can be done to minimize the harmful effects on the U.S. fisc and U.S. businesses? Potential fixes fall into three categories: changes the United States could make to domestic law to minimize the harmful impact of pillar 2; retaliatory measures; and modifications to the OECD rules. (Prior analysis: *Tax Notes Int'l*, Apr. 3, 2023, p. 7.)

Conformity and Domestic Law Changes

Biden administration officials have generally argued that U.S. adoption of pillar 2 is necessary to eliminate any harmful impact (and ex-officials continue to make these claims). But U.S. adoption of the OECD rules is no panacea, even though the JCT report depicts it as potentially leading to a revenue increase for the United States. There are revenue, efficiency, philosophical, and practical reasons to reject that argument.

On the revenue side, under the JCT's midrange assumptions of behavioral responses, the country still loses revenue from pillar 2 even if Congress fully adopts it (assuming other countries do as well). In terms of efficiency, the Congressional Research Service notes that if GLOBE is widely adopted, changes in U.S. taxes might shift receipt of revenue to the United States, but it also raises concerns about the effects on domestic investment (Jane G. Gravelle and Mark P. Keightley, "The Pillar 2 Global Minimum Tax: Implications for U.S. Tax Policy," Congressional Research Service, R47174, July 6, 2023).

There are other concerns regarding the administration's use of international agreements to pressure Congress into action. In a recent op-ed in *The Wall Street Journal*, David Schizer, former dean of Columbia Law School, makes the case against congressional adoption of pillar 2 for reasons of sovereignty and democracy, urging readers to consider whether "it's really a good idea to establish a precedent for the executive branch to pressure and circumvent Congress through such a deal with an international organization" (David M. Schizer, "Biden and the OECD's Taxation Without Representation," *The Wall Street Journal*, July 2, 2023). (Prior analysis: *Tax Notes Int'l*, Dec. 7, 2020, p. 1264.)

Country-by-Country

Although modifying the foreign income inclusion so that it's calculated on a jurisdictional rather than blended basis is generally highlighted as the primary change needed to bring GILTI into conformity with pillar 2, that likely wouldn't change the results noted in the JCT report. To the extent that the U.S. revenue costs result from other countries' application of the UTPR to U.S.-source profits, amending GILTI wouldn't affect the results. And to the extent the revenue impacts result from other countries' adoption of QDMTTs, modifying GILTI also would make no difference.

Rate

While GLOBE imposes a 15 percent minimum tax, GILTI is imposed at a 10.5 percent rate. Could increasing the rate on GILTI change the conclusions in the JCT report? The U.S. rate is scheduled to rise to 13.125 percent in 2026 (a detail presumably factored into the JCT report), and the expense allocation rules mean that the rate on GILTI is often higher than 10.5 percent. The ordering rule — in which QDMTTs take priority over GILTI — also means that a GILTI rate increase might not make a difference.

Credits

As the CRS report summarizes, the major U.S. business tax credits are not refundable and so could trigger a top-up tax under pillar 2 (and reduce investment in the activities that generate the credits). The CRS notes that one option to preserve these credits' incentives, even under pillar 2, would be to make them refundable. But estimates are that making all general business credits refundable would cost $193 billion from fiscal 2023 to fiscal 2032. (Prior analysis: *Tax Notes Int'l*, Mar. 20, 2023, p. 1627.) It may be worth exploring other alternatives that could allow these credits to receive the necessary accounting treatment without costing the United States too much.

For example, a change in the accounting rules could alter the result under pillar 2 without modifying the substance of the credit. Congress has the power to change the accounting treatment of business tax credits, as does the SEC.

Modifying the Corporate AMT

Congress could also consider modifying the new corporate AMT so that it qualifies as a good QDMTT. That would involve significantly expanding the scope of the law — which now applies to only a few companies — and its base. Whether Congress really wants to do so is unclear — the corporate AMT was narrowed considerably during political negotiations to reduce its impact.

Retaliation

House Ways and Means Committee Chair Jason Smith, R-Mo., in May introduced the Defending American Jobs and Investment Act (H.R. 3665), which would require Treasury to identify extraterritorial and discriminatory taxes that other countries levy on U.S. companies. The bill would increase U.S. tax rates on the U.S. income of investors and corporations in those countries by 5 percentage points annually for four years (up to a maximum of 20 percent). (Prior coverage: *Tax Notes Int'l*, May 29, 2023, p. 1177.)

Increasing the tax rate on foreign businesses with U.S. income in retaliation for pillar 2 taxes is a heavy penalty, one with numerous ripple effects.

Exchange of Information

The GLOBE rules rely on companies to prepare extensive information returns. The rules contemplate that the return could be filed with the jurisdiction of the company's headquarters and then be exchanged with other relevant countries.

Congress could attempt to block the functioning of GLOBE by precluding the IRS from collecting or exchanging the information included in the GLOBE information return. But some countries have already introduced legislation that would require companies to file the return directly with their own tax administrations.

Denial of Credits

The JCT report is based on the assumption that QDMTTs will be considered creditable taxes, while IIRs and UTPRs would not. But it's not at all clear that QDMTTs — which may operate by denying some deductions that U.S. tax law allows — would be considered creditable taxes under reg. section 1.901-2. Congress could modify section 901 so that QDMTTs (and IIRs and UTPRs) are non-creditable taxes.

This would have the effect of reducing the negative revenue impacts on the United States, but at the same time increasing the costs for U.S. businesses operating overseas.

Treaties

OECD and Treasury officials have regularly claimed that pillar 2 can be implemented without a treaty, and that the UTPR is consistent with existing treaties. Those claims are backed up by leading academics. (Prior analysis: *Tax Notes Int'l*, Jan. 23, 2023, p. 445.) Still, much uncertainty remains, with prominent European academics concluding that "the UTPR in its current form likely violates tax treaties." (Prior analysis: *Tax Notes Int'l*, May 15, 2023, p. 857.)

If Treasury or Congress were to set out reasoned arguments why application of the UTPR violates tax treaties and clarify that U.S. rights would be asserted under those treaties if other countries sought to apply the UTPR to the profits of U.S. multinationals, that could have the effect of reducing adoption of the UTPR.

Changes to GLOBE

OECD and Treasury officials have said that the GLOBE rules that have been published can't be revisited. But rules and agreements are always subject to modification. And given the high stakes involved, creative thinking and a more assertive position on the part of the United States could ameliorate the harsh impact of the rules on U.S. revenues.

Credits

The definition of good tax credits in the OECD model rules (and subsequent guidance) is arbitrary, tied to accounting principles that make little sense here. The rules have already been tweaked to clarify that credits delivered via U.S. equity partnerships (the historical means of delivering energy and low-income housing credits) would meet the definition of good credits — showing that with enough at stake, there's room for revising definitions.

There's no reason why more tweaks to the model rules couldn't be made so that U.S. research and development and research and experimentation credits would qualify as good credits.

Priority

The United States loses revenue under GLOBE in large part because under current law, GILTI imposes a residual tax on low-taxed foreign earned income, but countries that adopt QDMTTs — as they are encouraged to do under GLOBE — would soak up that difference.

Can the priority of the ordering rule be tweaked? Perhaps giving greater weight to GILTI could have that result, even without changing the formal ordering rule.

Safe Harbors

The model rules may not be open for revision, but there's another means by which the OECD retains great flexibility to modify them even without explicitly changing the agreement. That's through the adoption of safe harbors that effectively revise the results of the rules without changing them. Examples could be qualifying the corporate AMT as a QDMTT, providing that R&D and R&E credits that meet certain standards qualify as good refundable credits, or granting CFC rules priority over QDMTTs in certain instances.

Deferred Effective Dates

Harmful results could be delayed — perhaps even indefinitely — by deferring the effective dates of some provisions. This may already be happening with the UTPR.

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Mr. HERN [presiding]. Thank you, Ms. Herzfeld.

Mr. Michel, you can start if you are ready.

STATEMENT OF ADAM MICHEL, DIRECTOR OF TAX POLICY STUDIES, CATO INSTITUTE

Mr. MICHEL. Chairman Kelly, Mr. Hern, Ranking Member Thompson, members of the subcommittee, thank you for inviting me to testify today. I will begin by describing how the OECD has abandoned its founding principles, then highlight the costs of the Biden Administration's work with the OECD to overturn domestic tax laws, and conclude with how Congress should respond.

Founded more than a century ago, the Organization for Economic Cooperation and Development was established to preserve individual liberty and increase well-being. It did this by expanding trade and international investment. An important part of this work was the OECD's role in coordinating international tax systems to reduce the double taxation of international income.

In recent decades, the OECD has transformed into an unaccountable, taxpayer-funded special interest group for our government-centric economic policy model. This is a perversion of the principles on which it was founded. Through its project on Base Erosion and Profit Shifting, bureaucrats in Paris have abandoned the pretense of objectivity. They have done this as part of a multi-decade crusade against any country that dares use its tax code to compete for international business.

Its most recent work has culminated in a two-pillar proposal that aims to take domestic sovereignty over tax law away from elected governments around the world, increase economically costly corporate tax rates, raise new revenue from primarily U.S. firms, and redistribute taxing rights away from productive economies to consumer economies.

Pillar One is intended to replace extraterritorial Digital Services Taxes targeted at the United States' most profitable and iconic digital brands. These taxes have been widely criticized on a bipartisan basis.

Pillar One's new digital tax isn't any better. It is designed to redistribute the profits of the largest American businesses to revenue-hungry governments across the world.

Pillar Two's 5-part 15 percent minimum tax is even worse. It includes a new extraterritorial levy that will allow other countries to reach into our borders and claim taxing rights over the U.S. domestic income of U.S.-based companies. Estimates indicate that Pillar Two will reduce U.S. revenues by more than $120 billion, shrink domestic investment, and end hundreds of thousands of American jobs.

Both Pillar One and Pillar Two are bad deals for the United States. Every member on this dais, regardless of where you think our—ultimately our tax laws should end up, should be absolutely outraged at how the Administration has used the OECD to circumvent your constitutional role in policy-making. By side-lining Congress, Treasury's negotiators have colluded with foreign powers to tax American businesses. They have done this after Congress, on a bipartisan basis, rejected the Administration's preferred tax policies.

So, what can Congress do?

First, Congress should instruct the President to immediately withdraw from the OECD convention and stop funding the close to 20 percent of the organization's budget we support. The OECD is not only bad on tax policy, its projects on inequality, labor markets, and climate pursue whole-of-government approaches which seek one-size-fits-all solutions, regularly calling for higher taxes, more redistribution, and greater government subsidies. It is a disgrace that American tax dollars are subsidizing an organization that is actively undermining American competitiveness abroad.

Second, and even more importantly, after rejecting the OECD's tax increases, America needs to be the most attractive place to do business in the world. Building on the reforms in 2017, Congress should lower the corporate tax rate to the OECD and Biden Administration agreed-upon rate of 15 percent or lower; finish the transition to a full territorial international tax system; and make full expensing for all new U.S. business investments permanent. This would be the most powerful message Congress could send to the OECD. We should be playing the tax competition game they are trying to stop.

Your leadership is ultimately necessary to protect American workers from a future dictated by policy-makers in Europe, a future that would include higher taxes, slower growth, and fewer jobs.

Thank you, and I look forward to your questions.

[The statement of Mr. Michel follows:]

Statement

of

Adam N. Michel, Ph.D.

Director of Tax Policy Studies
Cato Institute

before the

Ways and Means Subcommittee on Tax

July 19, 2023

From Global Growth to Redistribution: The OECD's Agenda to Tax American Success

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Chairman Kelly, Ranking Member Thompson, and Members of the Subcommittee: Thank you for inviting me to testify today.[1]

I will make two main points in my remarks and conclude with thoughts on how U.S. policy should respond to the Organization for Economic Cooperation and Development (OECD) Two Pillar proposal:

First, the OECD once served an important role in coordinating international tax systems to reduce the double taxation of income, which facilitated trade and investment. In recent decades, the OECD's mission has shifted towards protecting a government-centric economic model, perverting the principles on which it was founded. This has manifested in the OECD's Two Pillar proposal to seize sovereignty over tax law away from elected governments around the world, increase corporate tax rates, raise new revenues, and redistribute taxing rights from productive economies to consumer economies.

Second, the Two Pillar proposal is particularly costly for the United States. Estimates indicate that the OECD tax increases will likely reduce U.S. revenue, primarily target American firms, and shrink domestic investment and jobs. By working with the OECD and signing on to the plan, the Biden administration is actively circumventing Congress' constitutional authority over tax rules and giving away Congress' ability to set pro-growth tax policy independently.

Congress should withdraw from the OECD and reclaim its constitutional power to set U.S. tax policy. The most powerful message and economically beneficial response would include cutting the corporate tax rate to 15 percent or lower, making full expensing permanent, and finishing the 2017 conversion to an entirely territorial system.

The OECD Two Pillar Approach

In October 2020, the OECD released an outline for a "Two-Pillar" approach to remaking the international tax system—nearly 140 countries have signed on, or at least their executive branches have, including the Biden administration.[2] The proposals are intended to change the taxation of multinational businesses by raising effective tax rates, allowing certain kinds of corporate welfare, and reallocating taxing rights away from some countries to others. Pillar One aims to change where some companies pay taxes, very selectively moving toward a system based on customer location instead of business activities. Pillar Two includes a series of new rules that enforce a global minimum tax of 15 percent.

Pillar One would reallocate an estimated $130 billion to $200 billion of large multinational corporate profits to countries where customers are located and from where the firms have

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[1] The views I express in this testimony are my own and should not be construed as representing any official position of the Cato Institute.

[2] "Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy – 8 October 2021," OECD, https://www.oecd.org/tax/beps/statement-on-a-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-october-2021.htm

a physical and productive presence.[3] This is done with a complicated formula based on a company's sales, marketing, and distribution in each jurisdiction. Amount A of Pillar One, applies to companies with more than €20 billion in revenues (falling to €10 billion after seven years) and a global profit margin above 10 percent. Amount A is intended to replace a patchwork of digital services taxes, which some countries have begun charging to large technology firms based on revenue and users in their country.

Pillar One also includes Amount B, which could provide a more formulaic transfer pricing method for marketing and distribution. On July 12, 2023, the OECD announced an agreement on an outcome statement indicating additional progress on finalizing details of Amount A and further work on Amount B. However, the full agreement on Pillar One is still being negotiated, and many specifics remain subject to disagreements between countries.[4] As Members of Congress, you should request the Administration share the existing drafts of these documents.

Pillar Two comprises five primary new rules that work together to enforce a global minimum tax rate of 15 percent on businesses with more than €750 million in revenues. Pillar Two is estimated to raise about $220 billion in global tax revenue.

The qualified domestic minimum top-up tax (QDMTT) is an alternative minimum tax to allow countries first right to tax their domestic entities at a 15 percent rate on a novel tax base defined by the OECD. The income inclusion rule (IIR) requires parent companies to include in their taxable income the profits of their foreign subsidiaries that have not been taxed at the minimum 15 percent rate.

The under-taxed profits rule (UTPR) allows countries to increase taxes on a business if a related entity in another jurisdiction pays a tax rate below 15 percent. The UTPR creates a backstop for the QDMTT by allowing foreign countries to tax firm profits in other countries if tax rates are lower than the OECD minimum rate. Taxing rights are distributed using a formula if multiple countries make assessments under the UTPR.

The final two components include the denial of tax treaty benefits to companies in non-compliant jurisdictions (called the subject to tax rule (STTR)) and anti-base erosion reporting rules on corporate structure, county-by-county income, taxes paid, and around 150 other similar data points.[5] The agreement mandates that tax authorities automatically exchange this private corporate financial data, including in the technology and defense sectors, with governments worldwide, many corrupt and hostile to Western countries.

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[3] "The Economic Impact Assessment of the Two-Pillar Solution," Webinar, OECD, January 18, 2023, https://www.oecd.org/tax/beps/economic-impact-assessment-presentation-january-2023.pdf

[4] "138 Countries and Jurisdictions Agree Historic Milestone to Implement Global Tax Deal," OECD, July 12, 2023, https://www.oecd.org/tax/138-countries-and-jurisdictions-agree-historic-milestone-to-implement-global-tax-deal.htm

[5] Stephen A. Bonovich, "The U.S.'s Pillar 2 Bargain — What Rough Beast Slouches to D.C. to Be Born?" Tax Notes Federal, Volume 178, March 13, 2023, https://www.taxnotes.com/tax-notes-federal/international-taxation/uss-pillar-2-bargain-what-rough-beast-slouches-dc-be-born/2023/03/13/7g0fz

The in-scope firms are largely U.S.-based businesses. By one estimate, U.S. companies make up 46 percent of in-scope Pillar One firms, representing 58 percent of profits redistributed under Amount A.[6] The rules proposed by the OECD are a dramatic departure from both the agreed-upon current international tax system and the principle that countries have sole sovereignty over domestic activities. For policymakers and businesses alike, they pose more questions than answers.[7] Ultimately, these rules are primarily intended to undermine national sovereignty over tax law, grab revenue from the United States, and reduce the competitiveness of American workers and companies.

Myth of Race to the Bottom: Tax Rates Down, Revenue Up

The OECD aims to remake the international corporate tax system in response to what it terms base erosion and profit shifting (BEPS) by multinational businesses. The reforms are based on the premise that tax competition between countries has resulted in a "race to the bottom" that will "ultimately drive applicable tax rates on certain mobile sources of income to zero for all countries, whether or not this was the tax policy a country wished to pursue."[8] The OECD overstates this dynamic, but tax competition for global businesses and talent benefits free trade and free movement. It often leads to more business investment and employment and better overall economic policies by constraining the government's ability to pursue policies that drive people and businesses from their borders.[9]

So, has the dreaded race to the bottom resulted in starving governments of corporate tax revenue? Data from the OECD shows that tax revenue has trended up, not down, over time. Figure 1 shows that corporate tax revenue as a share of the economy has increased from 2.4 percent in 1981 to 3.5 percent in 2021 across 22 OECD countries, for which we have consistent data. Similarly, corporate tax revenue as a share of all revenue has also trended up since the 1980s.

The solid corporate tax receipts during this period are even more impressive given that the average corporate income tax rate across the same OECD countries was cut in half, falling from about 48 percent in the early-1980s to 24 percent in 2021. Tax competition has not yet eroded tax revenue in the United States or the OECD. With base-broadening in some countries, lower rates have resulted in higher corporate revenue.

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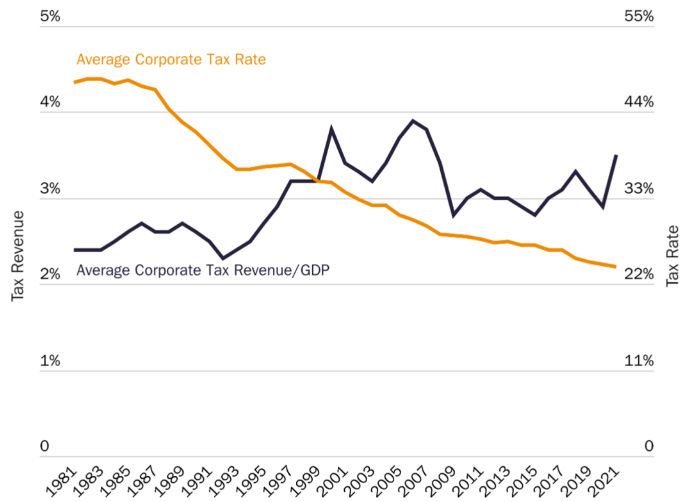
[6] Quentin Parrinello, Mona Barake, and Elvin Pouhaër, "The Long Road to Pillar One Implementation," July 2023, https://www.taxobservatory.eu/wp-content/uploads/2023/07/EUTO_Note_The-Long-Road-to-Pillar-One-Implementation_20230712.pdf

[7] Adam N. Michel, "Questions Congress Should Ask About the OECD Two-Pillar Plan," Cato at Liberty, April 6, 2023, https://www.cato.org/blog/questions-congress-should-ask-about-oecd-two-pillar-plan

[8] "BEPS Frequently Asked Questions," OECD, nd, https://www.oecd.org/ctp/BEPS-FAQsEnglish.pdf

[9] Adam N. Michel, "Domestic Benefits from Foreign Tax Havens," Cato at Liberty, May 31, 2023, https://www.cato.org/blog/domestic-benefits-foreign-tax-havens; Robert F. van Brederode, "The OECD's Tax Cartel Operation: From Coercion to Inclusion," Tax Notes International, Volume 110, May 15, 2023, https://www.taxnotes.com/tax-notes-today-international/base-erosion-and-profit-shifting-beps/oecds-tax-cartel-operation-coercion-inclusion/2023/06/02/7gjzz

Figure 1
Average OECD Corporate Tax Rates and Revenue, 1981-2021



Source: OECD Revenue Statistics Comparative Tables; OECD Tax Database, Table II.1. Corporate income tax rate: Combined Central and Subcentral; Tax Foundation, OECD Corporate Income Tax Rates 1981-2015; author's calculations.
Note: Average corporate tax rate combines national and subnational taxes. Data for 22 OECD countries with consistent historical data.

The OECD Shifts From Growth to Redistribution

The myth of race to the bottom and tax harmonization to stop it has been the elusive task of the OECD since the early 1980s, but fundamentally changing the international tax system and advocating for "whole-of-government strategies" to meet ever-changing economic, environmental, and social goals was not always its focus. The OECD was established in 1961 to preserve individual liberty and increase general well-being through expanded trade and international investment.[10]

As global trade increased through the 1950s, multiple countries claimed the same corporate profits, leading to double taxation and creating obstacles to international trade. In 1963, the OECD published its *Draft Model Convention on Income and Capital*, an ambitious model treaty to resolve the problem of double taxation.[11] Coordinating tax

[10] Convention on the Organisation for Economic Co-Operation and Development, Paris, December 14, 1960, https://www.oecd.org/about/document/oecd-convention.htm
[11] Many multilateral and bilateral treaties, as well as work done by the OECD's predecessor, the Organisation for European Economic Cooperation, had already begun to address some of the issues relating to double taxation when the Draft Double Taxation Convention on Income and Capital was first published in 1963.

systems to address double taxation was the primary tax mission of the OECD for its first three decades.

Every country's tax system is unique. Given different tax codes across countries, businesses should be expected to use these differences to lower their tax burdens. In the late 1970s and 1980s, the growth of global trade and more sophisticated financial products allowed firms to more efficiently plan their taxes, increasing tax competition between governments. Firms that successfully minimize their tax burden across two or more countries often find a way to exempt some portion of their profits from taxation. This has been termed "double non-taxation" or "nowhere income." This income—and the connected economic activity—is often not actually stateless but actively courted by governments with low or no corporate income tax.

Competition for investments, business activity, and jobs is a foundational characteristic of jurisdictional diversity. Countries compete on innumerable margins, including resources, workforce characteristics, infrastructure, regulatory costs, rule of law, and state subsidies. Whether a business moves between tax jurisdictions for a better-educated labor force or a more friendly tax code, the effect on the tax base is the same, shrinking in one place and expanding in another. Given the myriad margins on which countries compete for global investment, it is peculiar to single out tax rates as a margin on which governments should not compete. However, stopping the legal means of lowering tax burdens has been the increasing focus of the OECD through various projects on tax havens, tax competition, and base erosion and profit shifting.

A 1981 Carter Administration's U.S. Treasury report on *Tax Havens and Their Use by United States Taxpayers* (the Gordon Report) launched what has metastasized at the OECD as successive projects to increase taxes on international business.[12] For example, in 1998, the OECD released a report on international tax competition that marked a distinct shift from the OECD's previous work.[13] The report, titled *Harmful Tax Competition*, concludes that taxes should not be used to attract business investments and that tax competition "may hamper the application of progressive tax rates and the achievement of redistributive goals."[14]

The OECD's tax work shifted from primarily working to coordinate tax systems to eliminate double taxation to proposing ever more complicated new tax systems and reporting

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[12] Richard A. Gordon, Tax Havens and Their Use by United States Taxpayers (Report to the Commissioner of Internal Revenue, January 12, 1981), https://archive.org/details/taxhavenstheirus01gord/page/n9/mode/2up

[13] For a more comprehensive history of this shift see Andrew P. Morriss and Lotta Moberg, "Cartelizing Taxes: Understanding the OECD's Campaign against 'Harmful Tax Competition,'" *Columbia Journal of Tax Law* 4, no. 1 (2013), https://scholarship.law.tamu.edu/cgi/viewcontent.cgi?article=1052&context=facscholar; and Jason J. Fichtner and Adam N. Michel, "The OECD's Conquest of the United States: Understanding the Costs and Consequences of the BEPS Project and Tax Harmonization," Mercatus Center Research, March 2016, https://www.mercatus.org/students/research/research-papers/oecds-conquest-united-states-understanding-costs-and-consequences

[14] OECD, *Harmful Tax Competition* (Paris: OECD Publishing, 1998), 14-16.

requirements to ensure every dollar is taxed equally. In a 2012 tax law journal article, Andrew Morriss and Lotta Moberg characterize the OECD's campaign against tax competition as the organization's effort to form an international tax cartel run by a special interest group of tax collectors.[15] Recent events make Morriss and Moberg's argument quite prescient—the OECD's Two-Pillar proposal allows the organization to decide the global tax rate and redistribute taxing rights from one country to another.

It is worth noting that U.S. policymakers are not without blame. Often the OECD builds and encourages other countries to adopt the worst tax ideas that originate in the United States. For example, the United States was the first mover in expanding Controlled Foreign Corporation rules to unrealized foreign income in the 1960s and again through Global Intangible Low Tax Income (GILTI) in 2017. The U.S. *Foreign Accounts Tax Compliance Act* (FATCA), a law that coerces the sharing of international taxpayer information, also spawned the OECD's *Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information*, which has been called the "treaty to end financial privacy."[16]

OECD shifts the goalposts, again

In the early-2010s, the OECD primarily worked to eliminate double non-taxation to ensure higher global effective tax rates on corporate income. The OECD's most recent proposals add a new dimension: centralized reallocation of taxing rights. Pillar One and UTPR are primarily about redistributing existing taxing rights from the countries where the productive activity occurs to countries where goods and services are sold.

Most countries already have consumption-based value-added and sales taxes. If governments want to raise revenue based on consumption, they already have purpose-built tools to meet that goal. Turning part of the corporate income tax into a type of sales-apportioned gross receipts tax betrays the political motives of the project. OECD research from 2008 concludes that "corporate taxes are found to be most harmful for growth," compared to value-added taxes and income taxes—a result that should lead to policies that reduce rather than raise the burden of business taxes.[17] As is clear from the politics of digital services taxes or GAFA taxes (Google, Apple, Facebook, and Amazon), which Pillar One is designed to effectively replicate, domestic European politics incentivizes taxing the most profitable American companies simply because they are American and successful.

OECD mission creep

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[15] Andrew P. Morriss and Lotta Moberg, "Cartelizing Taxes: Understanding the OECD's Campaign against 'Harmful Tax Competition,'" *Columbia Journal of Tax Law* 4, no. 1 (2012-2013), https://scholarship.law.tamu.edu/cgi/viewcontent.cgi?article=1052&context=facscholar

[16] President Obama signed the Protocol, but the Senate has refused to ratify it. David Burton, "The Treaty to End Financial Privacy," The Heritage Foundation, July 15, 2016, https://www.heritage.org/taxes/commentary/the-treaty-end-financial-privacy

[17] Åsa Johansson, Christopher Heady, Jens Arnold, Bert Brys, and Laura Vartia, "Taxes and Economic Growth," Economics Department Working Paper no. 620, July 2008, https://www.oecd.org/tax/tax-policy/41000592.pdf

The OECD's work has served a valuable role in facilitating greater trade and access to capital markets among market-oriented democratic member states and non-member developing countries. This politically neutral work has been unambiguously good for individual liberty and increased general well-being, meeting the OECD's founding mission. However, as I've written before with colleagues, "today's OECD has largely devolved into a taxpayer-funded advocacy group for higher taxes, more intrusive government, burdensome regulation, and climate activism."[18] The OECD's recent work spans numerous projects that recommend very progressive, primarily government-centric interventions in labor markets, housing markets, and private associations.[19] Similarly, their work on inequality and mobility suggests higher inheritance and wealth taxes as an important way to "affect social mobility," advancing the politics of tearing successful people down rather than creating opportunities for the poor.[20] The OECD has indicated that worldwide rules on the taxation of individuals are the next step in order to prevent high-income individuals from escaping high tax rates by moving to countries with low tax rates.[21]

The OECD has also expanded its work on climate policy. In 2016, it created the Centre on Green Finance and Investment to support the transition to a "green, low-emissions and climate-resilient economy."[22] The OECD's Environment Directorate recently launched a new Inclusive Forum on Carbon Mitigation Approaches (IFCMA) based on the inclusive framework model used in the Two Pillar process. The OECD sees carbon leakage—the incentive carbon emitters have to move production to jurisdictions with fewer limits on emissions—as similar to the problem of double non-taxation.[23] Its solution is a centralized multilateral tool to ensure that every country meets the OECD's climate goals. The problem is not the transition to cleaner energy and manufacturing; the problem is OECD's anti-

[18] James Roberts, David Burton, Nicolas Loris, and Adam Michel, "Organization for Economic Co-operation and Development (OECD): What America Should Do," Heritage Foundation Backgrounder no. 3593, March 16, 2021, https://www.heritage.org/markets-and-finance/report/organization-economic-co-operation-and-development-oecd-what-america

[19] Good Jobs for All in a Changing World of Work, OECD, 2018, https://www.oecd.org/els/emp/short%20booklet_EN.pdf; "Building For a Better Tomorrow: Policies to Make Housing More Affordable," Employment, Labour and Social Affairs Policy Briefs, OECD, 2021, https://read.oecd-ilibrary.org/view/?ref=1060_1060075-0ejk3l4uil&title=ENG_OECD-affordable-housing-policies-brief; "OECD Recommendation on the Social and Solidarity Economy and Social Innovation," webpage (accessed July 15, 2023) https://www.oecd.org/cfe/leed/social-economy/social-economy-recommendation/

[20] OECD (2018), A Broken Social Elevator? How to Promote Social Mobility, OECD Publishing, Paris, 318, https://doi.org/10.1787/9789264301085-en

[21] Remarks by Mathias Cormann OECD Secretary-General Brussels, Belgium 28 November 2022, "On the Road to 2050: A Tax Mix Fit for the Future," https://taxation-customs.ec.europa.eu/system/files/2022-11/EU%20Tax%20Symposium_Mathias%20Cormann.pdf

[22] Center on Green Finance and Investment, "About," 2016, https://www.oecd.org/cgfi/about/ (accessed July 15, 2023).

[23] Alex M. Parker, "The OECD and Climate Change," Things of Caesar, April 7, 2023, https://www.things-of-caesar.com/4-7-newsletter/

market tools that require "broader whole-of-government strategies" to achieve their one-size-fits-all climate goals.[24]

American Workers and the Economy

It is widely acknowledged, including by the OECD, that higher taxes under the Two Pillar proposal will reduce investment and shrink global GDP.[25] Because a significant share of the businesses targeted are U.S. firms, domestic investment and American works will face non-trivial economic costs.

Ernst and Young estimates that widespread adoption of Pillar Two outside of the United States could increase the effective tax rate on U.S. multinationals by 2.6 percentage points. The tax rate on foreign income rises by 4.5 percentage points, and the domestic income tax rate increases by 1.4 percentage points. These higher tax rates are estimated to reduce U.S. jobs by about 370,000 (a 1.5 percentage point reduction) and cut annual investment by roughly $22 billion (a 2.4 percentage point reduction). The estimates show that job and investment reductions could be as high as 5 percentage points, representing a significant risk to the American economy.[26] The United Nations Conference on Trade and Development similarly estimates that Pillar Two will reduce foreign direct investment flows by about 2 percent, giving a range of 1.2 percent to 4 percent.[27]

These estimates reflect the complementarity of foreign and domestic investment. Research consistently finds that when multinational businesses invest abroad, they also increase investment at home. For example, Mihir Desai, C. Fritz Foley, and James Hines find that "one dollar of additional foreign capital spending is associated with 3.5 dollars of additional domestic capital spending."[28] The same is true for investments in low-tax countries. Increasing effective tax rates on multinational investments in tax havens reduces both local investment and the connected and complementary investments elsewhere in the world.[29]

Following an effective tax rate increase on income originating in U.S. territories similar in magnitude to the EY estimated increases in effective tax rates on foreign income, Juan

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[24] Tackling the Climate Crisis Together, OECD, webpage (accessed July 15, 2023) https://www.oecd.org/climate-change/

[25] OECD (2020), *Tax Challenges Arising from Digitalisation – Economic Impact Assessment: Inclusive Framework on BEPS*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, https://doi.org/10.1787/0e3cc2d4-en

[26] "Estimated Impacts of Pillar Two and Potential Policy Responses on US Domestic Economic Activity," EY, April 2023, https://taxnews.ey.com/Login/ViewNewsAttachment.aspx?AlertID=152953&AttachmentName=jY2Yd0gwZotKdtpSYanQc5K43q1ndmJtGpVhbYJTjfoMU%2FbG%2B5J33ykUimNCL%2FdB&ualertID=null

[27] World Investment Report 2022, United Nations Conference on Trade and Development, June 9, 2022, https://unctad.org/publication/world-investment-report-2022

[28] Mihir A. Desai, C. Fritz Foley, and James R. Hines, "Foreign Direct Investment and the Domestic Capital Stock," NBER Working Paper 11075, January 2005, https://www.nber.org/system/files/working_papers/w11075/w11075.pdf

[29] Adam N. Michel, "Domestic Benefits from Foreign Tax Havens," Cato at Liberty, May 31, 2023, https://www.cato.org/blog/domestic-benefits-foreign-tax-havens

Carlos Suárez Serrato finds firms operating in Puerto Rico and exposed to the tax increase "reduced their US employment by 6.7%." Areas of the United States that had more firms affected by the change "experienced relative decreases in income, wages, and home values, and these areas also became more reliant on government transfers."[30] Cutting off access to low-tax foreign investments by implementing the OECD's international tax increases will likely reduce affiliated domestic economic activity, harming U.S. workers.

Sovereignty and the U.S. Tax Base

The Biden Administration has used the OECD as an extra-legislative venue to advance policies that do not have congressional support. By working with the OECD to develop their Two-Pillar approach and agreeing to the proposed outline for the new rules, the Administration has effectively sidelined Congress to upend decades of international tax norms. Even more problematic, the OECD plan does not have buy-in among members of the President's own party. In direct refutation of the OECD process, Congress passed an OECD non-compliant U.S. 15 percent corporate alternative minimum tax (CAMT) as part of the *Inflation Reduction Act* in 2022.

We cannot know the true goals of the Treasury's negotiators. Still, the outcomes of the OECD process certainly indicate that little consideration was given to Congress, the U.S. tax base, U.S. employers, or American workers. The negotiators have undermined the U.S. constitutional order by colluding with foreign powers and non-governmental organizations to tax Americans because Congress does not want to enact the Administration's preferred tax policies. Two significant results in the OECD proposal indicate that U.S. interests were poorly represented.

First, the Pillar Two minimum tax is conceptually similar to components of the 2017 tax reform's international rules, most notably GILTI. There could have been a path by which GILTI was included as Pillar Two compliant, likely as a QDMTT or IIR. However, GILTI is disfavored in the OECD ordering rules, leaving U.S. firms with additional complexity and giving other countries first right to tax U.S. firms' low-tax foreign income. Without U.S. legislative reforms, Treasury has two bad options, recognize foreign taxes paid on top-up taxes (undermining U.S. revenue from GILTI) or deny related foreign tax credits and open U.S. firms up to widespread double taxation.

Second, UTPR's 15 percent effective tax rate calculation disfavors U.S.-style non-refundable tax credits compared to refundable credits and direct subsidies. Non-refundable credits lower taxes paid, lowering effective tax rates. Direct subsidies also lower effective tax rates but much less because they show up as income. For example, if a firm makes $100 in profit, pays $16 in taxes, and receives a $5 government subsidy, the firm's post-subsidy effective tax rate is 11 percent if the subsidy is provided as a non-refundable credit, but the effective tax rate is just above 15 percent if the subsidy is a direct payment. In this scenario, the

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[30] Juan Carlos Suárez Serrato, Unintended Consequences of Eliminating Tax Havens," NBER Working Paper 24850, December 2019, https://www.nber.org/system/files/working_papers/w24850/w24850.pdf

firms are economically identical. However, using the U.S.-style credit will push the effective tax rate below the OECD minimum, triggering additional taxes, while the direct subsidy does not.

These two outcomes partly drive recent Joint Committee on Taxation (JCT) estimates which show the United States could lose more than $122 billion in tax revenue if other countries implement Pillar Two and the U.S. does not. Under the scenario in which Congress concedes to the OECD and implements its international tax rules, the U.S. still collects about $57 billion less over nine years. JCT explains that their estimates are highly uncertain because other countries' adoption of the new rules is unclear and behavioral responses of multinationals are hard-to-estimate.[31] Tax reporter Alex Parker also notes that "the OECD allows for a lot of leeway in how the domestic minimum taxes can be designed and implemented. Countries will surely want to look for new ways to grab foreign income, especially if it's coming from U.S. companies."[32] Redistributing taxing rights creates winners and losers, and the U.S. will likely lose.

This tension is even more significant in Pillar One, which would explicitly reallocate about $130 billion in corporate profits each year under Amount A, according to OECD estimates.[33] Treasury Secretary Janet Yellen has written, without evidence, that Pillar One "will be largely revenue neutral for the United States."[34] However, if more than half of in-scope profits are from U.S. companies, it stands to reason that a significant share of the $130 billion in redistributed profits will be redistributed away from the U.S. tax base, further eroding Treasury's revenue collections.

Competition on the wrong margin

The OECD's project will likely not reduce governments' incentive to attract new businesses and expand their tax bases. It will simply shift the margins on which this competition will take place. By setting the tax rate at 15 percent and defining a tax base that denies certain types of tax credits, competition will shift to other kinds of subsidies.

Compared to many other countries, the United States provides comparatively few direct cash or cash-equivalent subsidies to private businesses. When Congress or U.S. states subsidize companies, they tend to do so with non-refundable tax credits, reduced tax rates, and deductions. These incentives offset tax liabilities but do not constitute direct payments from the Treasury. For example, the research and development tax credit subsidizes

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[31] "Possible Effects of Adopting the OECD's Pillar Two, Both Worldwide and in the United States," Joint Committee on Taxation, June 2023, https://www.finance.senate.gov/imo/media/doc/118-0228b_june_2023.pdf

[32] Alex M. Parker, "QDMTTs, CFCs, and Potential Complications," Things of Caesar, May 18, 2023, https://www.things-of-caesar.com/5-18-newsletter/

[33] "The Economic Impact Assessment of the Two-Pillar Solution," Webinar, OECD, January 18, 2023, https://www.oecd.org/tax/beps/economic-impact-assessment-presentation-january-2023.pdf

[34] Letter to the Honorable Mike Crapo from Janet L. Yellen, June 4, 2021, https://mnetax.com/wp-content/uploads/2021/06/Yellen_letter_to_Crapo_on_OECD_tax_negotiations920.pdf

targeted activity by reducing federal corporate income tax payments by $32 billion annually, but it does not constitute direct payments to U.S. firms.

Pillar Two will not eliminate state-subsidized corporations, it will simply shift competition from the economically more neutral competition over tax rates, to competition over tax subsidies and other corporate welfare. Some countries have already begun reforming their fiscal system in response to the OECD's proposal. For example, Reuters reports that Vietnam is considering ways to directly compensate Samsung and other foreign companies for the higher taxes they will be forced to pay under the new 15 percent minimum rate.[35] A similar dynamic is at play in Switzerland.[36] Other tax havens are also likely to impose the new taxes to raise enough revenue to fund other fiscal subsidies to continue attracting businesses. The only substantive change for many countries will be a shift to a less efficient and more corruption-prone system of government favoritism.

The U.S. Response

The OECD has proven it no longer serves the interests of the United States and has abandoned its founding mission to promote international economic growth. Therefore, Congress should withdraw from and stop financially supporting the OECD and reform our domestic tax laws.

First, Congress should instruct the President to immediately notify the depository government (the government of France) under Article 17 of the Convention on the Organisation for Economic Co-operation and Development that the United States will terminate the application of the Convention and the Convention's Protocols. Withdrawal from the OECD should be paired with a prohibition on any U.S. funding for the OECD in future budgets. The House and the Senate should adopt the House Appropriations Committee's recent spending bill, which zeroed out OECD funding following the recommendation of 10 House Republicans on the Ways and Means Committee.[37] The United States currently funds 19.1 percent of the OECD's general Part 1 budget, more than double the next largest contributor.[38] U.S. should work to advance the OECD's original mission of free trade, international investment, and individual liberty.

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[35] Francesco Guarascio and Khanh Vu, "Vietnam Eyes Multi-Million-Dollar Handouts to Samsung, Others to Offset Global Tax," Reuters, May 30, 2023, https://www.reuters.com/world/asia-pacific/vietnam-eyes-multi-million-dollar-handouts-samsung-others-offset-global-tax-2023-05-30/

[36] Jessica Davis Plüss and Jonas Glatthard, "Global corporate tax deal reshapes how Switzerland attracts multinationals," SWI, November 5, 2021, https://www.swissinfo.ch/eng/business/global-corporate-tax-deal-will-reshape-how-switzerland-attracts-multinationals/47078600

[37] Letter to Chairman Diaz-Balart and Ranking Member Lee, March 24, 2023, https://aboutblaw.com/7dH; Doug Sword, "House Appropriators Vote to Defund OECD," Tax Notes Federal, July 13, 2023, https://www.taxnotes.com/tax-notes-today-federal/global-intangible-low-taxed-income-gilti/house-appropriators-vote-defund-oecd/2023/07/13/7gz3h

[38] Member Countries' Budget Contributions, https://www.oecd.org/about/budget/member-countries-budget-contributions.htm

Second, Congress should make America the most attractive place to do business in the world. The Tax Foundation ranks the United States 22nd out of 38 countries on international corporate tax competitiveness.[39] Even after the 2017 tax cut, the United States still has an above-average corporate income tax rate, and full expensing for domestic investments is in the process of expiring.[40]

To benefit American workers and undercut the OECD project by making the United States a more attractive place to do business, Congress should lower the corporate tax to the OECD and Biden Administration's agreed-upon rate of 15 percent and make full expensing for all new U.S. investments permanent, including structures. Rather than adopting the OECD foreign tax rules, Congress should finish converting the U.S. corporate tax to a full territorial system that entirely disregards both foreign profits and foreign taxes. Short of eliminating the corporate income tax—also a worthy goal—this would allow the U.S. to decouple from the OECD tax cartel.

Congress should also increase financial privacy protections, prohibit the automatic exchange of taxpayer information with other countries, further limit the deduction for interest expense, and cut the capital gains tax rate.[41] These reforms would ensure that more multinational firms shift their low-tax profits to the United States. Compared to the status quo, in which the United States is set to lose as much as $122 billion in tax revenue, a true territorial system is not necessarily a significant revenue loss.

The most powerful message Congress could send is to play the game the OECD is trying to stop. Making the United States an international tax haven is better than engaging in retaliatory measures. The United States is big enough and powerful enough to stand up and reject the plan Secretary Yellen and President Biden are trying to force on Congress.

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[39] Daniel Bunn and Lisa Hogreve, "International Tax Competitiveness Index 2022," Tax Foundation, October 17, 2022, https://taxfoundation.org/publications/international-tax-competitiveness-index/

[40] Adam N. Michel, "Expensing and the Taxation of Capital Investment," Cato Briefing Paper no 159, June 7, 2023, https://www.cato.org/briefing-paper/expensing-taxation-capital-investment

[41] Reforms to the treatment of interest should ideally be done holistically so that the denied deduction is paired with a low or zero rate on interest income.

Mr. HERN. I appreciate it. Thank you, Mr. Michel.

Ms. Gordon, you may proceed.

STATEMENT OF ANNE GORDON, VICE PRESIDENT, INTERNATIONAL TAX POLICY, NATIONAL FOREIGN TRADE COUNCIL

Ms. GORDON. Good afternoon, Mr. Chairman, Ranking Member, and members of the Tax Subcommittee. Thank you for inviting me today to testify about this critical issue. I am the vice president for international tax policy at the National Foreign Trade Council.

NFTC is an association of U.S. business enterprises engaged in all aspects of international trade and investment. Our goal is to foster an environment in which U.S. companies can compete globally.

On balance, the work of the inclusive framework fails in several respects and, in too many instances, specifically harms the competitiveness of American businesses. The continued engagement of Congress is essential to creating stability and protecting American interests.

First, let me briefly mention Pillar One. The business community has repeatedly requested a final consultation on the overall Pillar One concept, as there are several major problematic issues still unresolved in both Amount A and Amount B. There must be a cohesive, workable structure for tax administrations and taxpayers on all of Pillar One, one that has the backing of Congress. At this juncture, we feel it would be premature for the U.S. to sign the Pillar One multilateral convention being released later this year.

International tax is a complicated web of U.S. and foreign laws and bilateral income treaties. And Pillar Two is adding to that. With the Tax Cuts and Jobs Act enacted in 2017 by Congress, there is a new international tax system that ensured the foreign operations of U.S. companies were subject to minimum tax under the first-of-its-kind GILTI framework. And U.S. base erosion was prevented under the BEAD.

In short, the United States is not now, nor has ever been a tax haven. Moreover, the notion that additional foreign minimum taxes are needed to prevent the abusive use of the U.S. tax code is unfounded.

The breadth of issues still remaining with the nearly complete Pillar Two agreement is unsettling. The initial rules were created without sufficient or—and at times disregard of input from the business community. The final rules currently contain multiple flaws that will hurt investment in the United States.

More than anything else, what we need is time, time to create a cohesive set of rules that accommodate U.S. tax policies and ensure that U.S. businesses, U.S. workers, and the U.S. economy are not disproportionately harmed. The recently-announced delay in the application of the Undertaxed Profits Rule, UTPR, is a step in the right direction, and is unlikely to have occurred without the attention of Congress on this project.

For many NFTC members, compliance with Pillar Two is a looming reality, whether or not the United States makes any domestic law changes. The more compliant the existing U.S. tax system is deemed to be with Pillar Two rules, the better the result for U.S.

companies and workers. One such fix is the earlier global consensus that current law GILTI is a compliant Income Inclusion Rule, or IIR. In designing the Pillar Two minimum tax, non-refundable credits are disfavored, while refundable credits more commonly used in other countries, and direct cash grants are favored.

In short, the use of many bipartisan credits, such as the R&D credit, could reduce a corporation's tax rate below 15 percent and allow other countries to impose additional tax—effectively, a clawback of U.S. tax credits.

It is extremely troublesome that U.S. negotiators have not succeeded in broadly protecting U.S. credits, while other countries were given specific carve-outs for their incentives and industries. Even the acceptance of refundable credits merely adds them to the denominator of the ratio, which is tax paid over taxable income. This is helpful in many fact patterns, but it can still result in additional tax for those with significant investments, such as the energy credits. The new preferential treatment of transferable credits, similar to that of refundable credits, is not without numerous complexities which may result in limited practical utility.

Above and beyond the policy concerns, the Pillar Two tax return is unworkable and an unadministrable compliance burden. It puts U.S. companies' sensitive financial information and competitive advantage at risk for disclosure or leaking to non-U.S. competitors. NFTC members have estimated the Pillar Two returns, as envisioned, would provide anywhere from 50,000 to 200,000 data points, which is far greater than the 1,000 data points estimated for the EU's country-by-country reporting. One goal of the Pillar Two work was to provide tax certainty and reduce the number of tax disputes, but the opposite is more likely to occur.

I do want to briefly mention the developing countries have expressed concern and dismay with the OECD inclusive framework, preferring the UN. Employing two competing processes or layering a UN regime over the OECD pillars would be disastrous. At this juncture, it appears U.S. companies and the U.S. fisc may lose, whether or not the U.S. adopts a conforming Pillar Two regime. However, the OECD has shown flexibility in interpreting and clarifying its rules, including the provision of numerous temporary safe harbors, with the one under the UTPR just this week.

Congress's attention to this process has been helpful in obtaining this temporary relief. We urge Congress to continue working with the OECD, Treasury negotiators, and foreign counterparts to create a regime that works with the U.S. tax code, protects U.S. companies and workers from an unlevel playing field, and encourages investment and economic growth in the U.S. Thank you.

[The statement of Ms. Gordon follows:]

NATIONAL FOREIGN TRADE COUNCIL

WRITTEN TESTIMONY of ANNE GORDON
THE HOUSE COMMITTEE ON WAYS AND MEANS
SUBCOMMITTEE ON TAX
HEARING
ON
BIDEN'S GLOBAL TAX SURRENDER HARMS
AMERICAN WORKERS AND OUR ECONOMY

July 19, 2023

Good afternoon, Chairman Kelly and Ranking Member Thompson and members of the Tax Subcommittee. Thank you for holding this hearing today about one of the most important matters in international taxation and inviting me to testify. I am the Vice President for International Tax Policy at the National Foreign Trade Council ("NFTC").

The NFTC, organized in 1914, is an association of nearly 100 U.S. business enterprises engaged in all aspects of international trade and investment. Our membership covers the full spectrum of industrial, commercial, financial, and service activities, and we seek to foster an environment in which U.S. companies can be dynamic and effective competitors in the international business arena. To achieve this goal, American businesses must be able to participate fully in business activities throughout the world by the export of goods, services, technology, and entertainment, and through direct investment in facilities abroad. NFTC members play an important role in ensuring a healthy national economy and promoting U.S. global leadership. It is vital to the health of U.S. enterprises and to their continuing ability to contribute to the U.S. economy that they be free from discriminatory foreign taxes, double taxation, and other non-tax barriers to the flow of capital that impede full participation in the international marketplace. NFTC, therefore, seeks to foster a level playing field in which U.S. businesses can be dynamic and effective competitors in the domestic and international business arena.

On balance, the work of the Inclusive Framework on Pillars One and Two fails to achieve this in several respects, and in too many instances specifically harms the competitiveness of American businesses. While some of that harm has been mitigated by recently announced delays in implementation, these delays do not provide fundamental changes to the policy. American businesses have been deeply engaged with the Inclusive Framework through Organization for Economic Co-operation and Development ("OECD") consultations and other discussions with U.S. and foreign officials, with a significant expenditure of time and resources. The business community's deep concerns about these policies are well known and understood. American businesses have also been building systems to comply with impending tax systems that are not yet even fully developed. And while the goal of this work is to bring stability to the international tax system, in reality, the work at its core is destabilizing and increasing uncertainty for U.S. businesses. The continued engagement of Congress is essential to creating that stability and protecting American interests.

As our time today is limited, I won't delve into the technical tax issues and problematic policies which NFTC and other business groups have enumerated in countless comment letters and discussions with the OECD, the U.S. Treasury and Foreign Governments. Instead, I will focus on the high-level impacts on the U.S. business community and how this process has hurt American workers by disadvantaging employers with U.S. headquarters or significant U.S. operations.

Pillar One

At the outset, Pillar One was created to provide a global framework that ensures greater allocation of income tax revenue to "market jurisdictions" for cross-border remote sales in exchange for countries agreeing not to impose their own digital services taxes ("DSTs") and other unilateral policies to impose new taxes on the gross income of (almost exclusively) U.S. technology firms. The deal promised tax certainty for taxpayers potentially subject to DSTs and additional income tax revenue for the market jurisdictions. Pillar One comprises two parts. The first part is Amount A, which is a new taxing right applicable to market countries irrespective of physical presence, and reflects the amount of additional revenue to be taxed by these "market jurisdictions." The second part is Amount B, a safe harbor for returns on certain routine distribution activities which would provide a significant increase in certainty for both taxpayers and tax administrations because controversy over distribution profits comprises the lion's share of controversy between authorities and taxpayers globally. The current consensus requires that countries cease enforcement of existing DSTs and refrain from introducing new DSTs (commonly referred to as "standstill"). DSTs, however, are proliferating around the world – sometimes with slightly different labels but always with the same impact. The initial DST moratorium until the end of 2023 was a welcome development. However, the recent extension until the end of 2024 by most countries is essentially contingent upon the U.S. agreeing to a yet to be finalized plan by signing an Amount A Multilateral Convention (MLC) before the end of 2023. This is the case despite the fact that key elements of the agreement have not been shared with the business community or, indeed, with Congress.

Canada, for example, would like to implement a DST and therefore did not join the OECD statement last week. The NFTC opposes this outlier position by Canada to begin imposition of a new DST despite ongoing conversations at OECD about creating a new taxing right under Pillar One. The rest of the world is refraining from implementing new DSTs for an additional year, and we hope that Canada will remain constructively engaged at the negotiating table to develop that system.

During every consultation over the last year and a half, one unified and clear message from the business community was that we needed to see the entire concept pulled together for a final consultation. Unfortunately, there does not seem to be a final consultation on the overall concept which leaves several major problematic issues, including: whether the exclusion for financial services is properly scoped, how to address distribution activities which involve a franchise type arrangement (particularly problematic when the scope expands to the next tranche of companies), and the impact of withholding taxes.

We understand that the Amount A MLC will be released and opened for signature by the end of 2023 – even as Amount B is still in development with a consultation released this week. Amount B seeks to provide a framework for a simplified and streamlined application of the transfer pricing rules to distribution functions. It is worth mentioning that Amount B is not only for large multinational entities ("MNEs") and could apply to any distribution activities – even those of the smallest companies who have operations abroad. Although Amount B could lead to real simplification, the recent request for input suggests that technical consensus may be a long way off. NFTC would like to ensure there is a cohesive workable structure (for both tax administrations and taxpayers) on all of Pillar One – one that can be expected to receive Congressional support – before any MLC is signed by the U.S.

Pillar Two

International Tax is a complicated web of U.S. and foreign laws and bilateral income tax treaties. U.S. companies spend endless hours and hundreds of millions of dollars on tax and accounting services complying with these rules, preparing tax returns, and often defending audits both here and abroad. Double taxation of the same income is a constant concern. Most U.S. companies pay taxes at several levels (local, state, federal and to foreign jurisdictions) and collect thousands of data points to faithfully comply with the obligations that are due. In order for U.S. companies to grow, it often means expanding operations abroad. This is not a detriment to the U.S., rather, these expansions and investments are supported by U.S. employees, leading to more innovation and U.S. jobs, increased wages for workers and a stronger and more resilient U.S. economy. Whereas widespread foreign adoption of this plan could cost more than 370,000 U.S. jobs.[1]

The Biden Administration's approach to the OECD negotiations seems to have been rooted in a world that existed before many of the tax reforms implemented by Congress in the 2017 Tax Cuts and Jobs Act ("TCJA") in which the project began were in place. In TCJA, Congress enacted a new international tax system that ensured that the foreign operations of U.S. companies were subject to a minimum tax (under the first-of-its-kind GILTI framework) and that U.S. tax base erosion was prevented (under the BEAT). Rather than building on these policies by negotiating an agreement that protected the U.S. companies and the U.S. fisc, the Administration has stood by as foreign tax negotiators have orchestrated a collective raid on the U.S. tax base. According to the Joint Committee on Taxation (JCT)[2], Pillar Two will reduce U.S. tax revenue by over $120 billion under current law. Even with the adoption of a compliant regime, nearly $60 billion will still be lost. The United States is not a tax haven. Moreover, the notion that

[1] *See* Ernst & Young US Quest Report on the Estimated impacts of Pillar Two and potential policy responses on US domestic economic activity, prepared by Koch Industries (April 2023), available at https://globaltaxnews.ey.com/Login/ViewNewsAttachment.aspx?AlertID=152953&AttachmentName=jY2Yd0gwZotKdtpSYanQc5K43q1ndmJtGpVhbYJTjfoMU%2FbG%2B5J33ykUimNCL%2FdB&ualertID=null

[2] The Joint Committee on Taxation's report on the Possible Effects of Adopting the OECD's Pillar Two, Both Worldwide and in the United States (June 2023), available at https://www.finance.senate.gov/imo/media/doc/118-0228b_june_2023.pdf

additional foreign minimum taxes are needed to prevent the abusive use of the U.S. tax code is unfounded. The 2017 law also contained the Foreign-Derived Intangible Income rules ("FDII") to keep intangible property ("IP") in the U.S. and foster economic activity here in the U.S. The data post-TCJA shows just that many U.S. companies repatriated IP and increased their domestic investment, including critical research and development investments, in the U.S. This system is at risk as a result of the Pillar Two work.

The breadth of issues still remaining with a "nearly complete" Pillar Two agreement, as well as its ongoing implementation in countries that are major U.S. partners, is unsettling. The initial rules were created without sufficient, or in some cases directly disregarding input from the business community, and the finalized rules were presented as a *fait accompli*. There are multiple flaws with the "final rules" that will hurt investment in the United States. Many provisions were repurposed and re-proposed by the OECD and Inclusive Framework without any input from business.

The business community has made numerous attempts over the past several years to engage with this process. Several consultations have been held by the OECD after the rules were finalized, but more are needed and, as noted below, some aspects need a fundamental review to align the rules with the facts on the ground as opposed to the unfounded political narratives that appear to be carrying the day.

More than anything else, what is needed is time to create a cohesive set of rules that accommodate U.S. tax policies and ensure that U.S. businesses, U.S. workers, and the U.S. economy are not disproportionately harmed. The recently announced delay in the application of the Under Taxed Profits Rule ("UTPR") is a step in the right direction and is unlikely to have occurred without the attention of the Congress on this project.

Compliance of Current U.S. Rules with Pillar Two Tax Regimes

For many NFTC members, compliance with Pillar Two is a looming reality whether or not the U.S. makes any domestic law changes. The EU Pillar Two directive is in force, and around the world more than 50 countries are moving forward with plans to implement this new regime beginning in 2024, including Korea, the United Kingdom, and Japan, who have enacted legislation. Conversely, other large countries including India, Mexico, Brazil, and China have not yet announced a plan to enact Pillar Two rules. The inconsistent pace of adoption highlights the complexity of the rules that have been developed by the OECD, provides challenges for businesses to comply with inconsistent global rules and increases the risk for double taxation of foreign earnings. The Pillar Two framework must be structured to ensure consistent and transparent adoption. Support from Congress in ensuring the rules do not disadvantage U.S. companies is welcome.

The more compliant the existing U.S. tax system is deemed to be with the Pillar Two rules, the better the result is for U.S. companies and workers. In 2020, it seemed universally accepted that current law GILTI was a more stringent regime than what the proposed Pillar Two rules required and thus would be deemed a compliant foreign minimum tax (in OECD parlance this is called an

Income Inclusion Rule or "IIR"). However, in 2021 the Biden Administration walked back from this agreement and instead conditioned the acceptance of GILTI on a series of changes that required U.S. legislation, most notably raising the minimum rate to at least 15%, if not higher. Foreign governments readily pocketed the U.S. concession and the model rules as they stand today characterize GILTI as a "blended CFC regime," which temporarily gives limited relief to U.S. companies in a worldwide system where GILTI is noncompliant. However, after 2026, our first-of-its-kind minimum tax regime (still the only minimum tax actually in operation anywhere in the world) may not count, and foreign governments will be able to raid the U.S. tax base via foreign UTPRs, while also exposing the foreign subsidiaries and foreign parents of U.S. companies to foreign IIRs and UTPRs.

Application of the UTPR does not require U.S. companies to have economic nexus with the country imposing the UTPR. The UTPR rules conflict with long-standing international tax principles that require a business to have economic nexus with the jurisdiction that is the source of the business profits. The UTPR, if enacted, necessitates a broadly agreed global treaty or negotiated bilateral treaty that clearly defines jurisdictional taxing rights. Foreign jurisdictions should not have the unilateral right to claim taxing rights on U.S. company income earned in the U.S. or in third countries without proper economic nexus.

The most straightforward way to avoid this disastrous result is to return to the earlier agreement that the U.S. tax system is rigorous enough to meet these new international standards. The recently announced two-year delay in the application of UTPRs to income earned in a multinational's home country so long as that country has a statutory income tax rate exceeding 20% is a welcome development, one that would not have been achieved without the attention of Congress to this process. But a more permanent solution is needed to ensure that the U.S. income of U.S. companies is never subject to UTPRs. In addition, we would welcome a return to the earlier global consensus that current law GILTI is a compliant IIR. This would ensure that the foreign operations of U.S. companies are protected from UTPRs and, perhaps more critically, as described further below, dramatically reduce compliance concerns and industrial espionage concerns. This is because a company headquartered in a country with a compliant IIR should be permitted to file their global information return ("GIR") solely with their home tax authority (i.e., the IRS), rather than having to give all that information to every country in which they operate. Finally, more attention is needed to the potential interaction of the technical Pillar Two rules with longstanding U.S. tax rules, including foreign tax credits as well as rules applicable to pass-through entities such as partnerships and S corporations whose income is subject to high rates of U.S. tax at the partner or shareholder level.

More fundamentally, long-term safe harbors that test for a jurisdictional rate of tax above 15% are necessary to mitigate the complexity and compliance burden associated with Pillar Two.

Many jurisdictions, including the U.S., have a rate of tax above 15%. The complex compliance requirements envisioned by the OECD should not be necessary for these jurisdictions.[3]

U.S. Credits & Incentives

The term "legislative grace" is used in case law when describing deductions and credits.[4] Credits are a tool used by Congress to incentivize certain activities. Generally, the U.S. tax code treats business tax credits and other incentives as non-refundable. Non-refundability means that any excess credit can be used against future tax liability – and by default allows businesses that continue to operate and contribute to the economy to utilize excess credits. While not entirely unique, non-refundability, a less generous incentive than the fully refundable credits, is much more prevalent in the U.S. tax code than in the law of other countries. However, in designing the Pillar Two minimum tax, non-refundable credits are disfavored while refundable credits (more commonly used in some other major OECD countries) and outright direct government grants are favored. In short, the use of many bipartisan credits -- including the longstanding research and experimentation (R&E) credit -- could cause a U.S. company to be deemed to pay U.S. tax on U.S. income at a rate below a 15% effective rate, thus allowing other countries to impose additional tax on the U.S. income and therefore claw back some of the value of the U.S. tax credits.

It is extremely troublesome that U.S. negotiators have not succeeded in protecting U.S. credits even while other countries were given specific carve-outs for their incentives and industries, especially considering the vast number of jobs in the U.S. that rely on these credits. Treasury successfully advocated for some of the most recently enacted tax credits (from the 2022 Inflation Reduction Act), which are refundable or transferable, to be Pillar Two compliant – but does not appear to be advocating for the acceptance of all U.S. credits. While the two-year delay on the imposition of UTPRs is helpful, a more permanent solution is needed. Even the "acceptance" of refundable credits for Pillar Two purposes merely adds them to the denominator of the ratio (tax paid over taxable income). While this will be helpful in many fact patterns, it can still result in additional tax due for those considering significant energy investments, because the recently enacted energy tax credits available to companies will be large enough for some companies that even treating these credits as refundable credits will result in these companies falling below the 15% tax threshold. Transferable credits receive preferential treatment similar to refundable credits, but not without numerous complexities which may result in limited practical utility. Confusion also ensues when incentives such as FDII are marked for elimination by the Treasury Department,[5] as they seemingly acquiesce to the OECD's finding that FDII is a harmful tax

[3] In addition, permanent safe harbors for companies with a global effective tax rate ("ETR") based on audited financial statement data (e.g., Form 10-K data) above 15% also helps mitigate the complexity and compliance burdens.

[4] Interstate Transit Lines v. Commissioner, 319 U.S. 590, 593 (1943); INDOPCO, Inc. v. Commissioner, 503 U.S. 79, 84, 112 S. Ct. 1039, 117 L.Ed.2d 226 (1992);Segel v. Commissioner, 89 T.C. 816, 842 (1987).

[5] *See* Department of the Treasury, General Explanations of the Administration's Fiscal Year 2024 Revenue Proposals, available at https://home.treasury.gov/system/files/131/General-Explanations-FY2024.pdf.

practice.[6] From a business perspective, the practical reality is that if there is significant uncertainty about whether a company will ultimately receive the benefit of Congressionally-enacted tax credits, the company will be less willing to allocate capital to investments that generate these credits. Because capital-allocation decisions must often be made years in advance of the time when a credit will actually be generated, the uncertainty about the treatment of U.S. tax credits under Pillar Two is very much a problem now. Reduced investment today will result in fewer U.S. jobs tomorrow.

Compliance Cost Burdens and the GIR

Changes in tax laws result in compliance costs. A new, global tax regime implemented by different countries in different ways results in a massive increase in costs. This includes new systems, calculating new metrics, additional tax staff and support for those resources, as well as an investment of time. One NFTC member company has spent the past two years preparing for these changes and estimates the cost is eight figures, requires an additional 15,000 hours of work, and 6-8 new full-time employees to comply. Many NFTC members are struggling to produce an accurate estimate of what the tax increase might be since there are still many open items. Companies are not the only ones to face challenges; tax authorities will also struggle to accurately and timely interpret the information provided by taxpayers due to the design complexity of Pillar Two. The rules require detailed knowledge of book accounting as well as international tax rules. Many companies and tax authorities do not possess the requisite knowledge to effectively comply with and administer the rules. Additionally, as countries each implement a slightly different variation of the rules, compliance and labor and labor costs required increase exponentially. In the long term, the complexity will challenge the stability of the Pillar Two design.

The GIR (referenced earlier) requires an inordinate amount of information to be compiled and provided to foreign governments to comply with the Pillar Two regimes. This is in addition to the implementation of public Country-by-Country reporting in Europe and elsewhere, which will now require publishing information that they already receive on a confidential basis. The consultation on the GIR at the end of 2022 provided insight into the data required which far exceeds the data requirements of a U.S. corporate tax return. NFTC member companies have estimated that the GIR as envisioned would require them to provide anywhere from 50,000 to 200,000 data points – far greater than the estimated 1,000 data points needed for public country by country reporting. The immediate impacts are an increase in compliance costs and well-founded concerns about the confidentiality and misuse of the data. That dramatic additional compliance cost must come at the expense of more productive uses of taxpayer resources.

[6] *See* OECD Forum on Harmful Tax Practices, Harmful Tax Practices – Peer Review Results (June 2023), available at https://www.oecd.org/tax/beps/harmful-tax-practices-consolidated-peer-review-results-on-preferential-regimes.pdf (noting that the United States has "committed to abolish" FDII).

Furthermore, the data required far exceeds the information necessary to compute any potential tax liability.

There are many helpful changes we have recommended. We have not yet reviewed in detail the updated GIR released on July 17, 2023, and are hopeful that some of these recommendations have been adopted. First, limit the information required to that necessary for the computation of tax, and allow requests for data relating to extraneous items such as group structure and changes in the structure. There is simply no legitimate need to require this volume of information to be provided to tax authorities around the world as a matter of course. Second, require calculations of the effective tax rate at the jurisdictional level (i.e., in each country instead of each entity). Third, as we transition to using the new reporting regime, the current temporary safe harbor that permits taxpayers to report their calculations under the country-by-country safe harbor provisions should continue. Once the safe harbor calculation is provided, no additional data or returns should be required.

Confidentiality

Even more troublesome is the lack of assurance companies have that their data will be protected. As things currently stand, it is conceivable that many of the 140+ countries involved in the Inclusive Framework (some of whom are strategic competitors of the U.S.) would receive the GIR of U.S. companies to enforce their UTPRs. Whereas if, as discussed above, the U.S. is considered to have a fully-compliant Pillar Two tax system, that global data would not be relevant to any other countries and could be provided only to the IRS. Protecting confidential data is a critical issue for NFTC member companies as other countries do not make the same effort to ensure confidentiality of taxpayer data. The IRS is required under section 6103 of the Internal Revenue Code to keep information confidential. Some countries may use the data to gain insight for local competitors or for a state-run entity or share sensitive defense industry data with their military. This is especially true when tax data is combined with other information contained in databases or otherwise publicly available. It is of utmost importance that the U.S. continue to advocate for limited sharing of sensitive taxpayer data and that countries receive the specific data needed to correctly impose tax.

Pillar Two and Dispute Resolution

Another likely impact of widely sharing tax data is increased audits for U.S. companies. One goal of the Pillar Two work was to provide tax certainty and reduce the number of disputes, audits, and litigation for companies and tax authorities. The opposite is more likely to occur when countries receive more data than they need (or can effectively parse) to assess audit risk. The impact is compounded by the fact there is currently no mechanism to address dispute resolution. Even under the current regime, foreign governments can be overly aggressive in audits – especially when targeting U.S. companies. The implementation of Pillar Two without a workable dispute resolution framework would only make this worse. Existing bilateral tax treaties provide dispute resolution mechanisms such as competent authority. Even with those protections, punitive additions to corporate tax or the imposition of criminal penalties on the officers of these companies are occasionally threatened if companies avail themselves of competent authority. Thus, U.S. companies sometimes pay the increased foreign tax instead. The NFTC and other U.S. business groups have asked repeatedly for dispute resolution mechanisms to address Pillar Two, yet these requests have not yet been answered.

Allowing both MNCs and tax authorities to request dispute resolution and then notifying other relevant parties to the transaction and allowing them to participate in the process would help streamline the dispute resolution process. Ideally, Pillar Two requires a broadly agreed multilateral treaty. Absent such an agreement, the approach to achieving advance certainty for Pillar Two calculations and for resolving conflicts should have a clearly defined scope, process, and timeline. Having one central process per transaction flow or tax year could help mitigate double taxation and redundant audits or litigation. Without dispute resolution and a limit on the scope of foreign audits, U.S. companies will be subject to double (or even multiple) taxation on the same income with limited options for a remedy.

United Nations

Recently, Latin American and other developing countries have expressed dismay with the OECD Inclusive Framework. Major concerns include the restriction of withholding taxes that are simply proxies for DSTs, and the accounting for withholding taxes in the Amount A calculation to prevent two bites of the same apple. Using a withholding tax on gross income may be a simple mechanism to collect revenue without complexity, but it is the wrong solution. Further, withholding taxes creates tax liabilities without regard to whether the transaction is profitable at all. Many of these countries expected revenue windfalls that are not materializing and are confounded by the complexity of the Pillar One and Two rules. While the OECD process is imperfect, the technical expertise is unrivaled. If the U.S. completely withdraws from the negotiations, the result may be a new process at the UN saddled by international process and politics and based on majority votes. The U.S. should continue its engagement at the UN, pushing back on the notion that a new process is needed and will yield better results. The UN could add value by providing technical guidance and model treaties for developing nations and facilitating regional alignment. However, employing two competing processes or layering the UN regime over the OECD Pillars would be a disastrous result.

Conclusion

At this juncture, it appears that U.S. companies and the U.S. fisc will be losers whether or not the U.S. adopts a conforming Pillar Two regime. Unfortunately, U.S. companies will have little choice but to comply with the new regime when implemented by other countries. However, the OECD has shown flexibility in interpreting and clarifying its rules. They have also provided numerous temporary safe harbors to account for U.S. rules and the looming 2025 fiscal cliff. And they have recently provided a temporary reprieve from the imposition of UTPRs on the U.S. income of U.S. companies. The attention of the Congress to this process has been helpful in obtaining this temporary relief.

This is not the first time that an Administration has negotiated a “deal” without aligning or consulting with Congress, and U.S. companies are told that it is simply too late to scale back or reconsider. Just a few years ago, the United States-Mexico-Canada Agreement ("USMCA") was a done deal – then suddenly, it was reopened, renegotiated and resulted in better terms. The Congressional leadership and members of this committee asserted their legislative prerogatives to adjust the agreement to reflect their views on how the agreement could better serve American interests. We urge Congress to continue working with the OECD, Department of the Treasury negotiators, and foreign counterparts to create a regime that works with the U.S. tax code, protects U.S. companies and workers from an unlevel playing field, and encourages investment and economic growth in the U.S.

Mr. HERN. Thank you, Ms. Gordon.

Mr. Schizer, you are recognized for five minutes.

STATEMENT OF DAVID SCHIZER, DEAN EMERITUS AND HARVEY R. MILLER PROFESSOR OF LAW AND ECONOMICS, COLUMBIA LAW SCHOOL

Mr. SCHIZER. Representative Hern, Ranking Member Thompson, and distinguished members of the subcommittee, thank you for inviting me to this hearing.

Our international tax system is famously complicated, but some things are simple, or at least they should be. And I am here to make two simple points: first, in the United States, taxes must be imposed by Congress, not the President; second, the tax policy of the United States should be set by the United States, not by other countries.

Unfortunately, in joining the Pillar Two agreement, which imposes a Global Minimum Tax on large corporations, the Biden Administration has strayed from both of these principles. Proceeding without congressional approval, they have given other countries significant influence over our tax system.

So Congress is now under pressure to enact a Global Minimum Tax that satisfies Pillar Two. Technically, the agreement doesn't compel it to do so, but there is a steep price for saying no: other countries will be able to collect and keep this tax. So, if a U.S. company like Apple uses a tax credit to cut tax on its U.S. income, U.S. income below 15 percent, France and Germany will be able to take away this tax savings, even though Congress meant to provide it. This puts Congress in a difficult position.

The message, essentially, is adopt a Pillar Two minimum tax or other jurisdictions will do it for you. This denies Congress the ability to make an independent choice. By analogy, think about a nonprofit that asks for a donation, which is supposed to be voluntary, but then adds, "if you don't give us the money, those big guys over there will take it from you."

This pressure is all the more inappropriate because the U.S. already has three minimum taxes in place. In fact, we led the way in enacting them. But our minimum taxes don't satisfy the OECD. The Biden Administration should have said that we would join Pillar Two if and only if our minimum taxes were sufficient. Instead, the Administration got out ahead of Congress, undercutting Congress's ability to make an independent choice about Pillar Two.

This is not the way taxes are supposed to be imposed in this country. Under the Constitution, only Congress has the power to lay and collect taxes. This is an expression of a fundamental idea: No taxation without representation. The President can't just rewrite the tax law on his own. For example, the U.S. had one of the highest corporate tax rates in the world until Congress cut it from 35 percent to 21 percent 5 years ago. But if Congress had voted down this measure, could the Trump Administration have done this on their own, announcing that they would collect only a 21 percent tax? Obviously not. The same is true for the Biden Administration.

The right way to change our minimum tax regimes is to appeal to Congress or, if they say no, to voters, not to an international organization. This brings me to my second point: Should we really give the OECD so much power?

Unfortunately, the U.S. now has one set of minimum taxes, the OECD has another, and they aren't in sync. This pressures us to revise our rules to spare U.S. businesses from double taxation. According to the Joint Committee, as has already been discussed, we also are going to lose a great deal of revenue.

Some might call it unfair to blame the Biden Administration for what other countries do. For example, if a U.S. multi-national like Apple wants to do business in France, Apple chooses to be subject to whatever taxes France imposes on profits there. But let me emphasize "on profits there." Pillar Two does more than that. With the UTPR [sic], France can collect tax from Apple's French subsidiary based not on the French subsidiary's income in France, but on the U.S. parent's income in the U.S.

To see how aggressive this is, imagine that you live in Virginia and your daughter lives in California. Obviously, Virginia can tax you, since that is where you live and earn money. But should California also be able to tax you, and to do it through your daughter? Is it okay for California to tax your daughter based not on what she earns in California, but on what you earn in Virginia? This is what a UTPR does.

When faced with this sort of overreach, the Administration should push back and threaten retaliation, as the House has done. But in committing to Pillar Two, the Administration essentially pledged not to object to this overreach. Arguably, they encouraged it.

To sum up, the Administration has empowered other countries to reshape our tax law, while curtailing Congress's role. This is not the way our system is supposed to work.

Thank you, and I look forward to your questions.

[The statement of Mr. Schizer follows:]

Statement of David M. Schizer
Dean Emeritus, Columbia Law School
before the House Ways & Means Committee Subcommittee on Tax
at a hearing
"Biden's Global Tax Surrender Harms American Workers and Our Economy"
July 19, 2023

Chairman Kelly, Ranking Member Thompson, and distinguished members of the Subcommittee–

Thank you for inviting me to this hearing on the Pillar Two agreement,[1] brokered by the OECD,[2] which imposes a global minimum tax on large multinationals.[3]

Everyone here knows how complicated our international tax system is, but some things are very simple–or, at least they should be. Today I will make two simple points:

- First, in the United States, taxes must be imposed by Congress, not the President.

- Second, the tax policy of the United States should be set by the United States, not by other countries.

Unfortunately, in joining the Pillar Two agreement in October 2021, the Biden Administration has strayed from both of these simple principles. Proceeding without congressional approval, they have given other countries significant influence over our tax system.

I. Congress's Constitutional Role

As everyone here knows, Congress has not enacted a global minimum tax that satisfies Pillar Two's criteria. In theory, committing to Pillar Two does not actually

[1] This Testimony is adapted from David M. Schizer, Biden and the OECD's Taxation Without Representation, Wall St. Journal, July 2, 2023.
[2] The Organisation for Economic Cooperation and Development ("OECD") is a Paris-based nongovernmental organization. *See generally* OECD, Who We Are, https://www.oecd.org/about/.
[3] As Treasury Secretary Janet Yellen explained when the U.S. joined Pillar Two, the U.S. and other nations "agreed to a new and specific set of provisions to uniformly tax the income of multinational companies, including a global minimum tax." Statement from Secretary of the Treasury Janet L. Yellen on the OECD Inclusive Framework Announcement, Oct. 8, 2021.

require a country to enact this tax, so Congress supposedly is free not to do so.[4] But in practice, there is a steep price for not enacting the right kind of minimum tax: other countries will be able to collect (and keep) this tax when the relevant roles go into effect.[5]

For example, let's say a U.S. multinational like Apple has an effective tax rate of less than 15% on its U.S. income (as measured under Pillar Two's "GloBE rules"), which can happen, for instance, when Apple claims various tax incentives under U.S. law (like bonus depreciation[6] or FDII).[7] In this situation, Pillar Two gives other countries like France or Germany the right to make up the difference, collecting (and keeping) the tax that Congress has chosen not to impose.[8]

These top-up taxes put Congress in a difficult position. The message essentially is, "Adopt a Pillar Two minimum tax, or other jurisdictions will do it for you." Is this a real choice? By analogy, think about a nonprofit that asks for a donation, which is supposed to be voluntary, but then adds: "If you don't give us the money, those big guys over there will take it from you."

This pressure is all the more inappropriate because the U.S. *already has* three minimum taxes in place: GILTI,[9] BEAT,[10] and CAMT[11] Indeed, the U.S. led the way in enacting this sort of minimum tax, but these taxes don't satisfy the OECD's criteria.

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[4] OECD/G20 Base Erosion and Profit Shifting Project, Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy 9 (Oct. 2021) ("The GloBE rules will have the status of a common approach. This means that IF members: are not required to adopt the GloBE rules [and] accept the application of the GloBE rules applied by other IF members . . .").
[5] The UTPR will apply in 2025 in the EU and many other countries. But a "transitional safe harbor," which was announced on July 17, 2023, gives more time to countries with a statutory corporate rate above 20% (including the U.S.). This safe harbor will last through fiscal years beginning on or before the end of 2025. OECD, Tax Challenges Arising from the Digitalisation of the Economy – Administrative Guidance on the Global Anti-Base Erosion Model Rules (Pillar Two) 89-90 (July 2023), www.oecd.org/tax/beps/administrative-guidance-global-anti-base-erosion-rules-pillar-two-july-2023.pdf.
[6] *See* I.R.C. § 168(k).
[7] *See* I.R.C. § 250.
[8] Under a so-called "undertaxed profits rule" or "UTPR," every country where a multinational has a presence is authorized to tax the (undertaxed) domestic earnings of the multinational's parent company. *See* OECD/G20 Base Erosion and Profit Shifting Project, Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two) 12-14 (2021); *see also* OECD/G20 Base Erosion and Profit Shifting Project, The Pillar Two Rules in a Nutshell 4 (2021) (discussing interaction of qualified domestic minimum top-up tax ("QDMTT"), income inclusion rule ("IIR"), and untaxed profit rule ("UTPR")).
[9] *See* I.R.C. § 951A.
[10] *See* I.R.C. § 59A.
[11] *See* I.R.C. § 55 & § 56A.

We would be in a different place if the Biden Administration had insisted that the U.S. would join Pillar Two if–and only if–the minimum taxes we already had were sufficient. After all, the U.S. has significant bargaining power as the world's largest economy and, for that matter, as the OECD's largest contributor.[12] But unfortunately, this is not what happened.

Instead, the Administration has significantly undercut Congress's ability to make an independent choice about Pillar Two. This is not the way taxes are supposed to be imposed in this country.

Under the Constitution, only Congress has the "Power To lay and collect Taxes."[13] Tax bills originate in the House,[14] whose biennial elections help ensure that it reflects the people's will. This division of labor is the expression of a fundamental idea, "no taxation without representation," which has been a sacred commitment since this country was founded.[15]

This means the President can't just rewrite the tax law on his own. For example, the U.S. had one of the highest corporate tax rates in the world until Congress cut it from 35% to 21% in the Tax Cuts and Jobs Act. But if Congress had voted down this measure, could the Trump Administration have done this on their own, announcing that they would collect only a 21% tax? Obviously not. In this situation, all a President can do is make the case to the American people, asking them to elect a different Congress.

The same is true for the Biden Administration. The right way to change our minimum tax regimes is to appeal to Congress–or, if they say "no," to voters–not to an international organization.

II. Sovereignty

This brings us to my second point. Should we really give the OECD so much influence over these decisions? We are now in the awkward position that the U.S. has one set of minimum taxes, the OECD has another, and these regimes aren't in synch. This pressures the U.S. to revise our rules, if only to spare U.S. businesses from double

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12 *See* OECD, Member Countries' Budget Contributions, https://www.oecd.org/about/budget/member-countries-budget-contributions.htm (noting that U.S. contribution represents 19.1% of budget and that next largest contribution comes from Japan, which represents 9% of budget).

13 U.S. Const., art. I § 8.

14 U.S. Const, art. I § 7.

15 This is not to say that the Executive Branch plays no role in tax policy. The Executive Branch proposes budgets, vetoes tax legislation, and enforces the law. Congress also has delegated to the Executive Branch the important responsibility to clarify specific statutory provisions with regulations.

taxation. As the Joint Committee has recently shown, the U.S. also is going to lose a great deal of revenue because of Pillar Two.[16]

Some might call it unfair to blame the Biden Administration for what other countries do. For example, if Apple wants to do business in France, Apple chooses to be subject to whatever taxes France imposes on income earned there.

But Pillar Two does more than that. Under one of the top-up taxes (the “undertaxed profit rule” or “UTPR”), France can collect tax from Apple’s French subsidiary–based not just on the *French subsidiary’s income in France*–but also on the *U.S. parent’s income in the U.S*.

To see how aggressive this rule is, imagine that you live in Virginia (where you earn a good living) and your daughter lives in California (where she doesn’t earn much money). Obviously, it is appropriate for Virginia to tax you, since that's where you live and earn money. But should California also be able to tax you through your daughter? Specifically, should California be able to impose a tax on your daughter, which is not based on what *she* earns in California, but based on what you--who are *not a California resident*--earn *in Virginia*? In essence, this is what a UPTR does.

When faced with this sort of overreach, the Administration should push back and threaten retaliation (as, indeed, the House has done).[17] But in committing to Pillar Two, the Administration essentially pledged *not to object* to this overreach (and arguably encouraged it).[18] So we aren’t just talking about the choices of *other countries*. We are also talking about choices of *this Administration*.

III. A Problematic Precedent

Is it really a good idea for the president to pressure (and, indeed, to circumvent) Congress through a deal with an international organization? No doubt this tactic would appeal less to the Biden Administration if used to advance policies they don’t favor.

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[16] Joint Comm. on Taxation, Possible Effects of Adopting the OECD’s Pillar Two, Both Worldwide and in the United States (June 2023), https://www.finance.senate.gov/imo/media/doc/118-0228b_june_2023.pdf (projecting that U.S. will lose over $120 billion of revenue if rest of world adopts Pillar Two but U.S. does not, and that U.S. will lose $56 billion if U.S. also adopts Pillar Two).

[17] *See Ways and Means Republicans Introduce Bill to Combat Biden’s Global Tax Surrender*, May 25, 2023, https://waysandmeans.house.gov/ways-and-means-republicans-introduce-bill-to-combat-bidens-global-tax-surrender/.

[18] By committing to Pillar Two, countries “accept the application of the GloBE rules applied by other IF members.” OECD/G20 Base Erosion and Profit Shifting Project Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy 9 (Oct. 2021) (observing that Pillar Two is “common approach” and explaining what this involves).

For example, if President Biden is not reelected in 2024, a Republican administration might use the same playbook to undercut legislation the Biden Administration strongly favors: the clean energy tax credits enacted last summer.

Imagine that a U.S. multinational with an effective tax rate of 15% on its U.S. income (as calculated under the GloBE rules) is considering whether to invest in clean energy–and, thus, whether an energy credit would reduce its tax further. Will the energy credit trigger a UTPR, so countries like France or Germany can take back whatever tax savings these energy credits offer? If the answer is "yes," the energy credit will no longer provide any tax benefit. As a result, the credit won't motivate the company to invest in clean energy.

Let's say the next president doesn't like these energy tax credits and asks Congress to repeal them. If Congress refuses, the new president could turn to the OECD and urge it to apply the UTPR to these credits. At least some OECD members might well be pleased to do this; for example, France, Germany, Japan, and South Korea have strongly criticized some of these credits for being available only for technology made in the U.S. (or in a small group of other countries that doesn't include them). So like the Biden Administration, the next president might well persuade the OECD to provide an outcome that Congress won't adopt.[19] As the old saying goes, "what goes around, comes around."

The better course is to respect Congress's constitutional role. If Congress won't adopt the Administration's proposals, the President should seek recourse from voters. This approach—"taxation *with* representation"—is the way our democracy is supposed to work.

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[19] The OECD gave the Biden Administration good news earlier this year, and again earlier this week. *See* OECD/G20 Base Erosion and Profit Shifting Project, Tax Challenges Arising from the Digitalisation of the Economy – Administrative Guidance on the Global AntiBase Erosion Model Rules (Pillar Two) 63 (Feb. 2023), https://www.oecd.org/tax/beps/agreed-administrative-guidance-for-the-pillar-two-globe-rules.pdf (noting that concept of "Qualified Flow-through Tax Benefits" offers neutral treatment to certain tax equity structures); OECD/G20 Base Erosion and Profit Shifting Project, Tax Challenges Arising from the Digitalisation of the Economy – Administrative Guidance on the Global AntiBase Erosion Model Rules (Pillar Two) 25-39 (July 2023) (providing guidance on transferable credits). Yet the OECD might find ways to modify this guidance if the next Administration wants less favorable treatment.

Chairman KELLY. Thank you, Mr. Schizer.

Mr. Barnes, five minutes.

STATEMENT OF PETER BARNES, INTERNATIONAL TAX ADVISOR AND OF COUNSEL, CAPLIN AND DRYSDALE

Mr. BARNES. Representative Hern, Ranking Member Thompson, and distinguished members of this committee, I appreciate this opportunity to speak on Pillar Two. This is a critically important proposal, and how the U.S. responds will have a major impact on our companies, their global competitiveness, and the U.S. fisc.

Yes, Pillar Two represents a significant change in international tax law, but it comes as the next step in decades of efforts to align international tax rules so that corporations can and will run their businesses based on market fundamentals, not taxes. The U.S. competes very successfully in that environment.

The U.S. is the model for much of Pillar Two. Congress deserves credit for enacting GILTI, which demonstrated the soundness of ensuring corporate income earned outside the parent company's home jurisdiction is subject to a minimum tax.

The reason the United States should join this initiative is quite simple. More than 100 countries will adopt Pillar Two in their domestic laws. The proposal is not going to be abandoned. So, the United States faces a choice: join this exercise or stand outside the process. The merits of joining are clear.

First, the U.S. Fisc is better served by joining Pillar Two. The revenue impact on the United States is uncertain, as detailed in the Joint Committee's analysis. But one conclusion from the JCT is clear: the U.S. will earn more tax revenue if it adopts the Pillar Two agreement than if the U.S. stands aside while other countries proceed.

Second, U.S. multi-national companies will benefit, compliance burdens will be reduced, and competitiveness will be improved. Today, U.S. companies are subject to our GILTI tax, but no other country has a similar regime. Competitor companies often pay little or no tax on low-taxed earnings of foreign subsidiaries. The Global Minimum Tax will benefit U.S. companies by subjecting their competitors to a minimum 15 percent tax.

The legislative changes required for conformity with Pillar Two are modest. The Build Back Better legislation approved by this committee in the House of Representatives in 2022 included the changes to U.S. law required to align the U.S. with Pillar Two. The path forward is well marked.

Much of the criticism of Pillar Two has centered on the Undertaxed Profits Rule. Critics argue that the UTPR violates tax sovereignty. This argument, in my view, misunderstands the concept of sovereignty. If a country adopts tax rules into its law, that is the quintessential exercise of tax sovereignty.

Indeed, that is the argument the U.S. has made for three decades when countries object to the use of arbitration for dispute resolution under treaties. Countries complained that allowing arbitrators to decide a tax dispute was a denial of sovereignty. No, the U.S. responded repeatedly. When a sovereign adopts a rule such as tax arbitration, there is no loss of sovereignty because it is the decision of the sovereign to establish that procedure. The argument that Pillar Two undermines U.S. tax sovereignty is not persuasive.

More importantly, the UTPR is an important but diminishing feature of Pillar Two. If a country adopts the key elements of Pillar Two, there will be no undertaxed foreign income earned by that corporation—country's corporation subject to the UTPR. The UTPR safe harbor regarding home country income announced on Monday by the OECD eliminates, at least temporarily, the risk that other countries will tax income earned by U.S. companies from U.S. activities.

Pillar Two is the result of many compromises. Any informed critic can find elements of the proposal that need further work. Fortunately, discussions about the technical issues are still under debate. So far, the United States has had a full voice in those discussions, but there is a limit to what weight the U.S. interests will be given if the U.S. chooses to stand outside Pillar Two. The U.S. must join the initiative so that the U.S. voice will continue to be strong and effective in negotiating these rules.

Some critics of Pillar Two act as if the proposal can still be derailed. At last count, 138 countries indicated their intention to join. The choice facing the U.S. is binary: adopt the proposal or step away from the table with the attendant consequences.

I urge this committee to align the U.S. tax rules with Pillar Two. That will continue our leadership in developing sound international tax practices that benefit our companies and their ability to drive economic growth. Thank you.

[The statement of Mr. Barnes follows:]

Statement of Peter A. Barnes

To the Tax Policy Subcommittee of the House Ways & Means Committee

July 19, 2023

Chairman Smith, Tax Subcommittee Chairman Kelly, Ranking Member Thompson, and distinguished members of the Subcommittee, I appreciate this opportunity to speak to the Committee on the importance of the international tax proposal known as Pillar Two. As the other witnesses today have stated, this is a critically important proposal. How the United States responds will have a major impact on our multinational companies, their global competitiveness and the US fisc.

I appear today on my own behalf and not on behalf of any client. The views I express are my own, shaped by more than 40 years of teaching and practicing international tax at law firms, the US Treasury Department and for more than 22 years as Senior International Tax Counsel at a major US multinational corporation.

Introduction

The Pillar Two proposal to enact a 15 percent minimum tax on all corporate profits must be seen in the context of more than a century of international tax developments. Yes, Pillar Two represents a significant change in international tax law. But it comes as the next step in decades of efforts to align international tax rules so that corporations can and will run their businesses based on market fundamentals, including the location of customers, a talented workforce, raw materials and other inputs.

Pillar Two is an extension of the global effort by governments to limit Base Erosion and Profit Shifting ("BEPS") and thereby reduce the incentive for business decisions to be made solely because of tax considerations.

Significantly, the United States led much of this century-long effort to align tax rules. The US has been the innovator in tax treaty policy, including the rules on treaty abuse (limitation on benefits provisions) and rules for when companies are subject to tax in another jurisdiction (such as permanent establishment protections). The US successfully pushed to make bribes non-deductible for tax purposes, over the objection of major trading partners. And, importantly for Pillar Two, the United States enacted the so-called Subpart F rules in the 1960s to tax US shareholders on certain low-taxed income earned by foreign subsidiaries – exactly the mechanism that is the cornerstone of Pillar Two.

The US is the model for much of Pillar Two, with our Subpart F rules and the GILTI rules (global intangible low-taxed income) enacted in the 2017 Tax Cuts and Jobs Act. The US deserves much credit for the 2017 law change, which demonstrated the soundness of ensuring corporate income earned outside the parent company's home jurisdiction is subject to a current minimum tax. The wise next step, in my opinion, is for the United States to align our existing tax rules with the Pillar Two proposal.

Benefits of Joining the Pillar Two Exercise

The reason the United States should join this initiative is quite simple. More than 100 countries will enact Pillar Two into their domestic laws, with effect from 2024 and 2025. These countries represent 90 percent or more of global GDP (not including the US). The proposal is not going to be abandoned. So, the United States faces a choice: join this exercise or stand outside the process. I believe the merits of joining are clear.

- Participating in Pillar Two will raise significant tax revenues for the US, versus not participating.
- If the US joins the Pillar Two group, we can work with other countries to modify the rules over time, so that key US priorities (including the tax treatment of incentives and of our corporate alternative minimum tax) are better protected. If the US does not participate, our voice in negotiations will be much less influential.
- Joining Pillar Two will strongly benefit US-headquartered corporations. Compliance costs, including the cost of tax disputes, will be sharply lower. And some taxes paid by US multinationals will likely be paid to the US government instead of to other countries.

Tax Revenue

The purpose of Pillar Two is to establish a minimum 15 percent tax rate on corporate income, no matter where that income is earned. As a result, global taxes on corporations will rise. Globally, Pillar Two is estimated to raise as much as $220 billion in additional corporate tax annually (although other revenue estimates are lower.)

US multinational companies will likely pay more foreign tax to jurisdictions that adopt a 15 percent minimum tax. That is the consequence of these countries' sovereign decisions to set higher corporate tax rates. As a result of the higher taxes, US companies will pay less tax to the United States on their foreign-source income, because of foreign tax credits for the additional tax paid to other jurisdictions.

The revenue impact on the United States fisc is uncertain, as detailed in a June analysis by the Joint Committee on Taxation. But one conclusion from the JCT is clear: the US will earn more tax revenue if it adopts the Pillar Two agreement – in a range of $50 billion over 10 years – than if the US stands aside while other countries join.

In addition to the US fisc, US multinational companies will benefit financially from the adoption of Pillar Two. As just one example, temporary guidance from the OECD provides that US GILTI taxes can be used to reduce the taxes levied by other countries under Pillar Two. If the US abandons Pillar Two, there is no assurance that this temporary guidance will continue, with the consequence that US companies may pay double tax (the GILTI tax to the US and the Pillar Two taxes imposed by other countries.)

Apart from the additional tax burden, US companies will face excruciatingly difficult compliance burdens if the US does not conform to Pillar Two. All of the complex US tax rules on foreign income will apply to these companies, plus all the rules under Pillar

Two. Aligning the US rules on GILTI and the corporate AMT with Pillar Two will make the compliance tasks of US multinationals more manageable.

There is an urgency for action by the US to join Pillar Two. During the fourth quarter of 2023, US multinationals must prepare and publish financial forecasts for 2024, including the effects of Pillar Two on 2024 financial earnings. Companies need certainty; the issue of whether the US will adopt Pillar Two injects significant uncertainty into corporate planning.

The tax law changes required are modest

As noted above, the US rules under GILTI and Subpart F are the model for Pillar Two. So, the legislative changes required for conformity with Pillar Two are modest. In simple terms, the US rate on income earned by foreign affiliates of US companies would rise from 10.5 percent to 15 percent, and the calculation would be made on a country-by-country basis, rather than on a blended global basis.

The Build Back Better legislation approved by this Committee and the House of Representatives in the last Congress included the changes to US tax law that would be required to align the US with Pillar Two. So, the path forward is well marked.

In making changes the necessary changes to align with Pillar Two, Congress could sensibly amend other related rules, especially relating to the corporate AMT. The result would be a simpler, more easily administered set of tax rules for US multinational corporations.

Under-taxed profits rule

Much of the criticism of Pillar Two has centered on the under-taxed profits rule (UTPR). This rule – which is complex in its administration – would allow a third country to impose additional tax if the source country did not impose a 15 percent tax on income and the home country of the shareholders did not impose a "top-up tax" to 15 percent on the shareholders.

Criticism has centered on two features of the UTPR. First, the UTPR (and, indeed, all of Pillar Two) is viewed as a violation of tax sovereignty, since the tax rules are developed by the OECD and a third country might step in to impose tax. This argument misunderstands the concept of sovereignty. If a country (the US, or any country) adopts tax rules, then that is the quintessential exercise of tax sovereignty. Aligning the US tax rules with Pillar Two would be an act of sovereignty by our government and the results of those rules would not diminish our sovereignty.

Indeed, that is the argument the US Treasury has made for more than three decades when countries object to the use of arbitration as a tool for dispute resolution in tax cases under the mutual agreement procedure in tax treaties. Many countries historically complained that allowing arbitrators to decide a tax dispute was a denial of sovereignty. No, the US repeatedly argued. When a sovereign adopts a rule, such as the use of tax arbitration, there is no loss of sovereignty because it is the decision of the sovereign to allow a third party to participate. The argument that Pillar Two undermines US tax sovereignty is not persuasive.

Second, and more importantly, the UTPR is a small and rapidly diminishing feature of Pillar Two. If a country adopts the key elements of Pillar Two, including the Income Inclusion Rule and its "top-up tax," then there will be no under-taxed income earned by that country's multinational corporations that could be subject to the UTPR. The US can self-help itself and its corporations out of the UTPR simply by adopting Pillar Two. If, as expected, a major share of the world's trade is conducted by companies subject to Pillar Two in their home countries, then the UTPR will apply to a tiny fraction of global business.

Seat at the table

The Pillar Two proposal is the result of many compromises. Any informed critic can find elements of the proposal that are not satisfying or need additional scrutiny. The tax press is filled weekly, even daily, with criticisms of Pillar Two.

Fortunately, discussions about the technical issues under Pillar Two are still under debate at the OECD and within individual countries. So far, the United States has had a full voice in those discussions. In some cases, as with the treatment of GILTI taxes as qualifying taxes for certain calculations, the US interests have been given strong weight. There are still pending difficult discussions regarding the treatment of credits and tax incentives in the Pillar Two calculation, and the US may or may not prevail in those discussions.

The US benefits from its full participation in these on-going negotiations, and the rest of the world benefits as well. But there is likely a limit to what weight the US interests will be given if the US chooses to stand outside Pillar Two. It is essential that the US join the Pillar Two initiative so that the US voice will continue to be strong and effective in negotiating the terms of these rules.

Summary

Some critics of Pillar Two act as if the proposal can still be derailed. The OECD, of course, cannot dictate to countries that they must adopt Pillar Two. But at last count 138 countries indicated their intention to do so. While some countries – including, possibly, the United States – will not adopt the proposal, a critical mass of major trading countries will do so.

The choice facing the US, both the government and its corporate taxpayers, is binary: adopt the proposal (with the financial and administrative benefits, plus the opportunity to continue to influence the direction of the legislation), or step away from the table, with the attendant consequences.

I urge this committee and Congress to enact legislation to align the US tax rules with Pillar Two. That will continue our country's leadership in developing sound international tax practices that benefit our companies and their ability to drive economic growth.

Thank you.

Mr. HERN. Thank you, Mr. Barnes. I would like to thank each of the witnesses for your expert testimony, and we are going to now move into the question-and-answer session, and so I will recognize myself.

The overall goal of Pillar Two is to ensure that all companies are paying a minimum rate of 15 percent everywhere they operate. It makes no sense to me that non-refundable tax credits are treated worse than refundable tax credits in the OECD Pillar Two rules. The OECD's whack-a-mole approach to eliminate tax competition is ill considered.

Ms. Herzfeld, as you know, the Pillar Two rules favor refundable tax credits. JCT finds that the effectiveness of Pillar Two might be significantly weakened by the introduction of refundable tax credits by low-tax jurisdictions. "The country that introduces them thereby preserves its fiscal competition feature without visibly having a low-tax rate." Ms. Herzfeld, do these rules, these rules that were just stated, do these rules eliminate tax competition, or merely just create a new competition for direct-pay tax-tradeable subsidies?

Ms. HERZFELD. Thank you for the question. Yes, they do, the latter part of your question. They shift tax competition to other areas. One is in the form of the type of tax incentives that countries could offer. And so countries can compete along the lines of credits that are blessed by the model rules.

The other way they can compete are also noted by the Joint Committee. They can compete for—in the substance-based income exclusion, so that allows an exclusion from the top-up tax, and so they can compete in that area, as well.

Mr. HERN. And with that would come negotiations that would get you—as a company or in a country, you would—you would negotiate that with a body like ours, supposedly, or something similar, to be able to get those. And it would be a competition, much like it is today. It would be influence peddling and lobbying, and it would be all of those combined, except in a different world. So, it is the old saying, "Tell me the rules and I can play the game," is that fair?

Ms. HERZFELD. Correct. And also note that they—in addition to tax incentives, this encourages a shift to direct subsidies. And so, there is [sic] lots of different ways that countries can and probably will compete to encourage investment in their jurisdictions.

Mr. HERN. So, it would be credits that would incentivize certain companies to possibly stay there and do business and pick and choose winners and losers for in-country competition, favoring one competitor over another, possibly. All these things come into play that would create a whole other—another set of rules that we would have to put in place and look at. Is that correct?

Ms. HERZFELD. Yes. I mean, the reality is countries compete for investment. And, if one avenue is shut down, then they will likely move to another.

Mr. HERN. Do you see this creating—I think you have alluded to this—creating a sort of a whole new government free-for-all with added complexities and burdens that go along with that? Is that—I believe that is what you are saying.

Ms. HERZFELD. So, these rules squash certain types of investments, and so they will encourage other types of incentives to proliferate, which—yes, you have added complexity in shutting down one area, and—but taxpayers are—and businesses are always creative in trying to maximize their return on their investments in jurisdictions, and countries are creative in trying to encourage businesses to invest there.

Mr. HERN. Mr. Schizer, if I may, I really appreciate your scenario of really bringing it down to what everybody can understand. In your example of Virginia, my colleague here said, yes, they would love for California to be able to tax everybody in every state for all——

Mr. SCHIZER. No, I said your daughter. [Laughter.]

Mr. HERN. Oh, oh, my daughter in your state, even though she has never been there.

Mr. Schizer, can you go into detail how the OECD's favoring of certain credits over others can be problematic in the future as it relates to the sovereignty of this nation, and how the powers of this committee laid out in the Constitution could be usurped?

Mr. SCHIZER. My apologies. Thank you for the question.

Look, the Constitution is clear about this, that this is the prerogative of Congress, and this is a very old idea. We fought a revolution years ago because of concerns about a king and a distant parliament who weren't listening to American voices. And the Declaration of Independence emphasizes that taxes can't be imposed without representation. So it makes sense that revenue bills begin with you. They begin in the House because you are closest to the people.

Now, it is true the President does also partner with Congress in negotiating with foreign countries. But it is a partnership. When there are treaties, the President negotiates, proposes, but it is the Senate that needs to ratify. So we really don't want the President acting unilaterally, and I want to emphasize this is not—and should not—be a partisan point. Sometimes the president is a Democrat, sometimes the president is a Republican, and it should not be the case that a president can partner with an international organization to circumvent the will of Congress.

And I will just give an example that maybe points in the other direction. There has been talk about the energy credits that were passed last summer. If the next President doesn't like them and says, "Please repeal them," it will be up to Congress to decide whether to do that. It should not be possible for the President to go to the OECD and say, hey, trigger a top-up tax to eliminate those, because I don't like them.

Now it is—thank you.

Mr. HERN. Thank you. I am going to—one last question, and we will move on to the ranking member.

Ms. Herzfeld, a few of my colleagues on the other side of the aisle have made a push to modify the U.S. rules for taxing the foreign income of U.S. multi-nationals so that it is calculated on a jurisdictional basis, also known as country-by-country. As you know, this is the primary change to GILTI to come into conformity with Pillar Two.

Would this modification change JCT's outlook for the U.S. fisc? Meaning, if the U.S. modified the GILTI rules to be compliant with the OECD-brokered deal as JCT estimated, the U.S. will still lose billions of dollars in revenue?

Ms. HERZFELD. So I don't have the details behind the Joint Committee's analysis, but it seems to me that the two primary factors that are driving the numbers that showed a loss of U.S. revenues were, one, the fact that if other countries enact new domestic minimum taxes to increase their tax rate to 15 percent, the U.S. has to provide a foreign tax credit for that. So that is an automatic revenue. So other countries increase their taxes, ours goes down. Country-by-country GILTI doesn't change that. And the other is the UTPR that imposes a tax on U.S. domestic source income. And country-by-country GILTI doesn't change that, either.

Mr. HERN. Thank you for your response. I would like to recognize the ranking member, Mr. Thompson.

Mr. THOMPSON. Thank you, Mr. Chairman. Thanks to all the witnesses for being here today.

Mr. Barnes, we have heard quite a bit from our Republican colleagues on the topic of sovereignty, and why they believe that the Pillar Two agreement threatens the United States sovereignty to enact tax laws. But isn't it true that each of the countries in the inclusive framework, including the United States of America, has the right to enact or not to enact domestic legislation that aligns with Pillar Two?

Mr. BARNES. Thank you for the question. Yes, every country retains its authority, and it is an important point to note that there is not a one-size-fits-all. The OECD's agreement is trying to align the rules. It is not prescriptive to say you must do A, B, C, D, E. There is flexibility within the framework for how countries choose to adapt. And that is why modifying the U.S. GILTI rules may be sufficient for the U.S., even though another jurisdiction takes a different approach to aligning with the proposals under Pillar Two.

Mr. THOMPSON. Thank you. And doesn't the fact that we are having this hearing today and the fact that the elected Biden Administration has been negotiating with the OECD mean that we are not ceding our sovereignty?

Mr. BARNES. Well, that certainly would be my view, thank you.

And again, I come back to what I said in the oral statement, which is in arbitration for tax disputes other governments have said, "That is a loss of my sovereignty" and the U.S. has said, "No, you as the sovereign can choose to have certain disputes settled by arbitration, and that does not impede your sovereignty one bit."

Mr. THOMPSON. Thank you very much. Mr. Barnes, again, many of my colleagues across the aisle seem to think the U.S. should abandon these OECD negotiations. As a matter of fact, one of the witnesses mentioned that, too. I mentioned to the chairman that, you know, that old saying that if you are not at the table, you are on the menu, and I think that might hold true here, as well.

In your view, which would be better for American businesses and American workers, remaining at the table to ensure a fair outcome or walking away from the table entirely?

Mr. BARNES. Well, I am a huge believer that we need to be at the table and our voices heard.

One thing that is important—and I spent four-and-a-half years at the Treasury Department—one thing that is important to remember is that our voice is widely respected within the world. We have been a leader in developing international tax principles for a century, and our voice is heard. But if we walk away from Pillar Two, then our concerns will not be taken into account with nearly the same weight as if we are a player in the exercise.

Mr. THOMPSON. Thank you, and thank you for pointing out the time you spent at Treasury. I think we have a very unique witness in you, Mr. Barnes, the fact that you have been at Treasury, you have been a player in negotiations such as these, you have been in the private sector, and you have been a tax consultant to many major corporations and entities. I think you bring a lot of expertise to the witness dais today.

Thank you very much, Mr. Chairman. I yield back.

Mr. HERN. I thank the gentleman. Now I would like to recognize the gentleman from Georgia, Mr. Ferguson.

Mr. FERGUSON. Thank you, Mr. Chairman, and thank you to the witnesses for being here today.

Ms. Herzfeld, I am going to start with you. You may have been here, and you may have heard Mr. Plowgian telling us that our treaties allow us to tax income earned outside its borders. And he cited the example of CFCs. Do you think that this is accurate?

Ms. HERZFELD. So, our CFC regime, which is known as subpart F, has been in place since 1962, and it is widely accepted that treaties allow for taxation of foreign earned income by CFCs. Subpart F—and that is what GILTI does also.

There is a big difference between subpart F and GILTI and the taxing provisions of the UTPR, which allow for extraterritorial taxation in a way that violates existing treaty principles. And so there is—although the U.S. laws that are in place are consistent with treaties, the UTPR is much more questionable.

Mr. FERGUSON. So it is—in your opinion, that would lead to less stability in international tax administration, and probably lead to disputes with our trading and taxing partners?

Ms. HERZFELD. I think there are big, open questions about whether the UTPR is consistent with existing tax treaties. Several European academics have recently written a long article explaining why they think it is not consistent with treaties, and so I don't know what happens when you have a lot of countries enacting a law that conflicts with their existing tax treaties.

Mr. FERGUSON. And we should certainly be having communication with the Treasury Secretary and the Administration, sharing work product. And we should—this committee should be at the forefront of determining that.

Moving on, Mr. Schizer, if I heard you right—we are talking about refundable credits—if a company here in the U.S. has $300 million of taxable income, 400 million, a billion, whatever the number is, and then they decide that they are going to take advantage of the Green Energy Tax Credits, and they take advantage of 300 million of those, and they effectively drive their tax rate here in the U.S. down to 0—yes?

Mr. SCHIZER. Yes.

Mr. FERGUSON. Okay. Now, if that happens, then a European country could say, well, you have an effective tax rate of zero. Therefore, we are going to tax an additional 15 percent to bring you up. Right?

Mr. SCHIZER. That is the risk I was identifying, yes.

Mr. FERGUSON. So, we are going to—let's just think about this for one second. So the corporations that my colleagues on the other side of the aisle and this Administration have railed against about paying their fair share in this example would go from $300 million of taxable income to 0, and then we are going to take 15 percent of their—of that, and we are going to give it to somebody in France or Italy or Germany or wherever.

Mr. SCHIZER. So the OECD has given a bit of guidance giving comfort on this. But I can tell you, as someone who has practiced tax law for 30 years, we have never heard the last word on anything. If they wanted to change the guidance tomorrow, there is a risk that those credits become ineffective because all of a sudden France is nullifying them with a tax.

Mr. FERGUSON. Okay. So we are not collecting tax revenue here, and we are giving tax revenue to a foreign country.

Mr. SCHIZER. Yes, sir.

Mr. FERGUSON. Okay. Mr. Michel, I have heard a witness say here that we are faced with a—what I believe is a false choice, which is either join in the discussions or be left on the sidelines. We are America. We are the world's number-one economy, the number-one place to innovate. We have the most productive workforce. We are in a unique spot.

Instead of being—instead of our voices being heard, shouldn't our policies dictate, and should not we—or shouldn't we be putting America in a place of leading the world and not simply following behind it?

Mr. MICHEL. Thank you for the question. I do believe that America should be setting the tax policy that is right for us and is growing our economy and helping American workers here in the United States. And the way we do that is keeping our taxes low, setting policies that encourage innovation and investment.

And the—we have been at the table as part of this, the ongoing process. And you can see where it has gotten us. The U.S. fisc is about to lose hundreds of billions of dollars, investment in the United States is projected to go down, and members up and down the dais here were just pleading with a representative from Treasury to make sure that companies can still access tax credits that you all put into place.

Mr. FERGUSON. One more quick question for Ms. Gordon.

Ms. Gordon, at the end of the day, American business counts. It counts because it provides jobs for American workers. Do you see this creating more jobs or taking away jobs from America?

Ms. GORDON. As currently envisioned, it seems to reduce the number of jobs in the United States.

Mr. FERGUSON. Thank you. I yield back.

Mr. HERN. I thank the gentleman. The gentleman from Texas, Mr. Doggett.

Mr. DOGGETT. Thank you very much.

Mr. Michel, though you and I have very significant disagreements about most everything you testified to, one thing that I do want to say is that you are to be commended for your candor in your testimony and particularly that portion of your written testimony that you indicate that eliminating corporate taxes is a worthy goal, because I think that is exactly what these folks have been trying to do. They reduced the corporate tax rate by 60 percent in 2017 and, of course, for those multi-nationals that have stashed so much money down in the Cayman Islands, $60 billion in 1 year, and are only paying 0.6 tenths of 1 percent in taxes, they have gotten very close to your goal of just eliminating corporate taxation on those monies. And defending this kind of system assures that we will have more of the same kind of tax scam.

Mr. Barnes, I want to ask you about some of the arguments that I have heard from my colleagues. One of them has been, well, why didn't the Treasury Department just go over there to Europe and get exempt every tax credit that we have? Don't you suppose, Mr. Barnes, that if we ask for that, that every other country would ask to have every credit and preference and loophole in their tax code exempted, as well, so that the idea of a minimum tax and stopping the race to the bottom would be totally meaningless?

Mr. BARNES. Well, I suspect—thank you. I suspect everyone in this room has been involved in negotiations, in tax negotiations, whether it is tax treaties or a negotiation like this, Pillar One/Pillar Two exercise. Every country comes with its sovereign interests. And the idea that the U.S. can completely bully its way through is, I think, a false optimism.

Yes, we have a lot of authority. But if our take-it-or-leave-it is—all of our stuff is good, other countries are going to insist on the same approach.

Mr. DOGGETT. We can't just be a go-it-alone if we want to be a true leader in the world.

And the other argument that they make is, well, we have got this GILTI tax, why didn't they just go over and get it accepted and approved? And I know that some negotiations are still continuing, but the GILTI tax has a few loopholes in it. One of them is that they blend the country-by-country, instead of defining the results country-by-country, and that allows for a great deal of subversion for the whole idea of a minimum tax.

What is your feeling about the failure to just totally exempt GILTI as it exists today? The same GILTI, by the way, which, as I pointed out from the joint tax analysis, those are the 88 multinationals that are now paying under 8 percent as their tax rate.

Mr. BARNES. Well, it is important to recognize that the GILTI tax paid by U.S. corporate taxpayers is counted in the calculation toward the Global Minimum Tax. So it is not like the GILTI tax is on top of the Global Minimum Tax. It simply has not yet been deemed sufficient to eliminate any need to compete and comply with the minimum tax.

Mr. DOGGETT. In your opinion, would the adoption of a Global Minimum Tax the Treasury has been advocating, what is called Pillar Two, would it diminish the competitiveness of U.S. businesses?

Mr. BARNES. I think the answer is no. And I realize I may be an outlier here, but let me give a concrete example.

A U.S. company invests in a low-tax jurisdiction, Switzerland, Singapore, a real business, $500 million, 1,000 very skilled workers. Because of Singapore's tax incentives, there [sic] zero tax. A Singapore-owned Singapore company pays zero. A Dutch-owned Singapore company pays zero. A U.S.-owned Singapore company pays 10.5 percent under GILTI. That is our rules today. The U.S. company is handicapped by 10.5 percentage points. A Global Minimum Tax may cause the U.S. company in Singapore to pay a little more tax, but it will bring up the tax for the Singaporean-owned Singapore company and the Dutch-owned Singapore company to 15 percent. In that environment, I am quite confident the U.S. company's subsidiary in Singapore will be very successful.

Mr. DOGGETT. Well, thank you for your example. Just overall, if we set a reasonable minimum on taxation, we would be competing with other countries not on whether we could have a race to the bottom with the lowest possible taxes, but on things like education, our justice system, our workforce, our ability to do research and development here. And I think the United States would lead that competition.

Thank you very much.

Mr. HERN. I thank the gentleman. The gentleman from Kansas, Mr. Estes.

Mr. ESTES. Well, thank you, acting chairman, or chairman, and thank you to the panelists for being here today. It is important that we talk through this issue.

Just as we saw with the previous panel, the Treasury Department is willfully ignoring the reality by working around Congress, working around the committee, and trying to pave the way for new taxes through these deals with the OECD that are fundamentally un-American, and would give away our tax base to foreign countries.

Throughout the process of the OECD Base Erosion and Profit Shifting, the BEPS 2.0 negotiation, the Administration has repeatedly made commitments that are out of its prerogative to both make and fulfill. Treasury has cut Congress out of the process, even though constitutionally only Congress can write tax laws and commit the United States to the end deal negotiated at OECD.

And why is the Administration repeatedly ignoring the requests of the committee and doubling down on the efforts to give away American tax base? It is all to ram down this bad, anti-American policy. At virtually every step of the negotiation process, the Administration has chosen America last. The deal is so terrible I have to ask which country's interests the Biden Administration negotiated for, because it doesn't seem to be the interests of America that the Treasury is negotiating for.

As a result of Pillar Two, if we follow UTPR, the U.S. Treasury would get less tax revenue, U.S. businesses will pay more in taxes, U.S. businesses will have more administrative costs and work effort to increase, U.S. taxpayers will not have credit for the current tax code provisions that they have to comply with, and it incentivizes businesses, whether located in U.S. or businesses located in other tax countries, to look for the lowest tax district because they will not have to pay the global minimum in addition to what they are already paying.

We have already put the big effort in getting away from inversions with the Tax Cuts and Jobs Act that we passed five years ago.

The concessions during the Pillar Two negotiations will result in U.S. companies paying more tax overall, but less to the United

States. As the Joint Committee on Taxation identified, the U.S. will lose roughly $120 billion in tax revenue if Pillar Two is adopted globally but we don't change our tax code and will still lose 60 billion if we do adopt the OECD Pillar Two.

And furthermore, our share of global gross domestic product is 24 percent, while U.S. country's share is 40 percent of the income exposed to the higher taxes, further evidence that the deal disappropriately affects the United States.

Ms. Herzfeld, can you explain how such a scheme would benefit the United States?

I mean, are [sic] there anything in the deal that benefits us in exchange for what we are giving away?

Ms. HERZFELD. Thank you. I personally have trouble seeing the benefit, and I am often asked the question from people from other countries why the U.S. negotiated this deal.

Mr. ESTES. You know, this week OECD announced the delays in implementation of one of the Pillar Two's most harmful provisions, the one that I think is really the problem, the Undertaxed Profits Rule. But this delay is not a fundamental change in this bad policy and only extends this uncertainty companies are facing.

Ms. Gordon, what are the main concerns you hear from companies about complying with these new rules?

What is the response you are hearing about the delay in implementation?

Ms. GORDON. Congressman, thank you for your question. So, our members welcome the delay but, as you mentioned, it is not a change in policy. And some of the concerns are even with the UTPR safe harbor that only applies to the United States. So most multi-nationals have entities in other countries, as well. And if they are in Ireland, where there is a lot of U.S. investment, the UTPR safe harbor will not count on that income in Ireland, for instance.

Mr. ESTES. So it is problematic. And from my point of view, if it is a bad policy, it is a bad policy next year, it is a bad policy two years later, it is just a bad policy. And that is not what we should implement.

I am really concerned about this policy. I am really concerned about UTPR. I mean, as JCT confirmed, the United States will lose less if we are forced to implement the OECD Pillar Two provisions. It is not that we are going to gain more. And the fact that UTPR and Pillar Two is not really a volunteer tax sovereignty, I mean, if you want to consider extortionary threats of you either change your tax code or you pay this higher rate anyway. So, for that provision, I am really concerned about this process.

Really, we need to fix the bad policy before it gets implemented, ever. And with that, Mr. Chairman, I yield back.

Mr. HERN. I thank the gentleman. I would now like to recognize the gentleman from Connecticut, Mr. Larson.

Mr. LARSON. Connecticut, yes. Thank you, Mr. Chairman, and thank all the panelists. This has been a very interesting session.

We don't often spend as much time on the Constitution as we have today, and I am quite interested in the constitutionality of all this. I actually thought we were in a committee hearing in the United States Congress actually discussing, in the committee of cognizance, tax policy, and discussing the ramifications of that policy. So rather than working around, I kind of feel like this is working directly.

And the way that our system works, four witnesses come with very important and well-established, well-researched views on their feelings, and one is a counterbalance to all of that. For those that are listening in on this, that is how the system works. That is how it is supposed to work.

So, Mr. Barnes, I had to ask you especially, you seem to have a difference of opinion about Pillar Two.

Number one, do you think that the Constitution is being violated here by the Biden Administration or here in Congress?

Mr. BARNES. Well, because any tax legislation to enact Pillar Two will necessarily be started in the House Ways and Means, will go to the Senate, will be signed by the President, it will follow our ordinary course of constitutional progress for tax legislation at the end of the day.

Mr. LARSON. And that was my impression, and that is—I used to be a history teacher in school, so I thought that we were following the Constitution. You can have constitutional concerns, but we are following the Constitution.

Also, there is big disagreement over whether or not the future for this great nation of ours, in these joint agreements with more than 50 countries that are participating in this, it seems as though we should be going it alone, as opposed to working with other nations in a global economy, and in these times where we are in a world where we need to be at the table, seated there. And it seems as though we are saying no, what we need to do is operate alone and by ourselves. That, to me, sounds an awful lot like isolationism.

How are we advantaged by working together with these other nations, Mr. Barnes?

Mr. BARNES. Let me take two examples from tax history that are not directly Pillar Two.

First would be the treatment of corporate bribes. Some of you are familiar with the history. In the 1970s the U.S. said corporate bribes are bad. They should not be tax deductible. Other countries where that is an ordinary course cost of doing business, it took 20 years before some of our major trading partners said bribes are not a good thing, we should make them non-tax-deductible and illegal. U.S. leadership took decades, but we got the right result.

Same thing with bank secrecy. A tax system can only be enforced if there is adequate information. There were countries that said bank secrecy is part of our blood, you shouldn't come in and breach my bank secrecy. The U.S., with the help of Germany and a few other countries, over a period of time led to sufficient information exchange to enforce our laws.

I think U.S. leadership consistently has helped improve global tax rules, and I am confident they did on Monday of this week. And the continued participation by the U.S. will make the ultimate Pillar Two rules much, much better.

Mr. LARSON. And how will that advantage the United States, long run, in terms of our economy?

Mr. BARNES. I hope it will help us. I realize that there are debates over whether Pillar Two ought to exist at all or not, but there are some distinct advantages. I mentioned one, with the Singapore example, to level the playing field.

It will put pressure on countries to reduce their corporate tax rates. Those people who believe that high corporate tax rates—that is, way above 15 percent—are a deterrent to investment should cheer Pillar Two. With a country-by-country analysis, a country like India, Japan, with high corporate taxes will be starkly illustrated as having a rate where the taxpayers bear an excess cost. Today, with the blended rules under GILTI, that pressure doesn't fall entirely on the high-tax jurisdictions because taxpayers can self-help to a lower rate.

The other advantage for the U.S. is one Michael Plowgian mentioned, which is it will reduce the incentives for U.S. businesses to move offshore. That has an advantage for investment in the U.S., U.S. workers, U.S. jobs.

Mr. LARSON. Thank you, sir. I yield back.

Mr. HERN. I thank the gentleman. I would now like to recognize the gentleman from Tennessee, Mr. Kustoff.

Mr. KUSTOFF. Thank you, Mr. Chairman. Thank you for the witnesses for appearing today.

Ms. Gordon, could I go back to you and follow up maybe a little bit on what Mr. Estes asked you? In your written testimony—and this is about compliance—you talked about how businesses are establishing systems right now to try to comply with Pillar Two's extensive reporting requirements. And, in your testimony, you noted that one NFTC member has already spent a lot of money—I think you said eight figures—and 15,000 hours preparing for those Pillar Two requirements.

Can you talk more about the compliance burdens that Pillar Two will impose on U.S. businesses? What type of information are they going to have to submit, and what are the—what are some of the more unique challenges?

Ms. GORDON. Congressman, thank you for your question. So our members have started to update their systems and comply—prepare for compliance with Pillar Two. One member has noted they hired another six to eight people. They have spent 15,000 hours preparing for this, and over $10 million. Other members have noted that the $10 million is probably just the start-up costs to implement these systems.

So this is very labor-intense, and that is really before we even have all of the rules, and before we can see if all the countries enact the exact same rules or if there are slight differences. Every time there is a difference, that is more compliance costs, that is more time, and additional numbers that the country is going to need to—or the company is going to need to report to a different country.

Mr. KUSTOFF. And you may have just talked about this. What about the manpower? What about the labor that goes into that?

Ms. GORDON. Yes, there is a lot of labor. A lot of these numbers that the Pillar Two tax return, the global information return is requesting, are not numbers that my members currently compute. So it is trying to get that information and compute these new numbers because they are on the return, not because they are used to assess the audit risk, or because they are actually needed to compute either the IIR or the UTPR.

Mr. KUSTOFF. Thank you very much.

Ms. Herzfeld, if I can with you, you wrote a column in Tax Notes a couple of months ago in May. You talked about the risks associated with China participating in Pillar Two. Can you expound on that a little bit more? And could China cheat, as it relates to their requirements?

Ms. HERZFELD. Yes. So—and thank you for that question. It is interesting that China, in public, has been mostly silent on its intentions.

So Pillar Two is not mandatory for any country to adopt. It is voluntary, and for complex reasons. It is not clear, although the UTPR is supposed to be this mechanism by which other countries are kind of forced into the system or else it will impose costs.

Many large Chinese companies are actually not Chinese-headquartered, they are Cayman-headquartered. And so, it is not clear, really, how effective the mechanisms that were designed for Pillar Two would impact—would be in impacting Chinese companies.

On Pillar One they have also been pretty silent.

But I don't know what mechanisms there are for ensuring compliance in China. They haven't been so effective in other areas. And so, I thought it was interesting that there was no answer to the question about whether Secretary Yellen got a commitment from China on implementation of this deal.

Mr. KUSTOFF. I am going to ask this very politely. Are there challenges, or would there be challenges to monitoring China's compliance?

Ms. HERZFELD. So we don't know anything right now about—it is the OECD that would be designing a mechanism to ensure countries' compliance with this deal. And we—there are simply no—not even detailed, there is no information at all about how that would be. And so whether that could be effective, I think, is unknown at this point.

Mr. KUSTOFF. Is it fair to say that China could use strategies to try to circumvent the Pillar Two rules?

Ms. HERZFELD. There is lots of mechanisms countries could use, but——

Mr. KUSTOFF. Okay. Thank you very much, Mr. Chairman. I yield back. Thank you.

Mr. HERN. I thank the gentleman. I would like to recognize the gentlelady from California, Ms. Sánchez.

Ms. SÁNCHEZ. Thank you, Mr. Chairman.

Mr. Barnes, one thing that struck me about your testimony was your statement that joining Pillar Two will strongly benefit U.S.-headquartered companies. From hearing my colleagues on the other side of the aisle discuss the Global Minimum Tax, you would think that the sky was falling. In fact, I think my Republican colleagues sometimes are simply panic merchants, just trying to throw everybody into a panic, claiming that calamity is going to strike if we try to enact policies that make wealthy and well-connected multi-national businesses pay their fair share in taxes.

And someone on the other side actually said, what is their fair share? And I would just submit that when you have huge, multinational corporations that make billions of dollars in profit and they are paying less than one percent in taxes, we might want to start at least with what individuals pay. Because in the United States individuals pay, minimally, 10 percent, but up to 37 percent, with most Americans paying between 12 and 32 percent in taxes.

So that would just be kind of a starting point for fairness, I would think, especially when you think about the fact that these multi-national corporations often use our court systems when they have business disputes, they rely on our firefighters and police when emergencies arise, and on our national security. And yet they move their profits overseas to low-tax countries to avoid paying into these same systems that they all use and all rely on. That doesn't seem to me to be a very pro-American way to operate, to take and take and take from the system, and to never pay their fair share into it.

So could you elaborate why signing onto the Global Minimum Tax will strongly benefit our domestic businesses? I am interested in hearing again why it makes sense for us to go with this regime.

Mr. BARNES. Yes, let me make—thank you very much for the question. Let me make two comments preliminarily.

First, no corporation likes to pay $1 more than it is required to pay by the law. And that is why corporations have tax professionals like me to try to make sure they are fully compliant, but not paying more than that.

The second point is I think what is critical here is that the U.S. companies are very capable of competing when the field is fair. And the minimum tax, in my view, helps ensure a fair field. We already have the GILTI rules; other jurisdictions don't. There is a what is called a participation exemption is the way many countries operate, and so they simply exempt the foreign earnings of their domestic companies. And indeed, one of our colleagues here on the panel has urged territoriality for the U.S.

So why do I think it will help the U.S. to have this rule?

First, compliance. The U.S. compliance demands are extraordinarily difficult. I appreciate the comment about the challenges of the GloBE return. If the U.S. is inside the tent—that is, if the U.S. is compliant with Pillar Two—then various safe harbors and other issues can be discussed in a way to reduce the compliance burden. U.S. companies will be subject to Pillar Two regardless of what we do because 130 other countries will adopt it. I think we will substantially reduce the compliance burden.

The second is the competitiveness point. We pay GILTI, other countries don't have a GILTI. And whether the rate is 5 percent, 10 percent, 15 percent, 40 percent, the point would be to have a rate in which the U.S. companies are not disadvantaged. And where there is a level playing field, I think, U.S. companies win.

Ms. SÁNCHEZ. Okay. And given that that is the case, do you have any theories about why these businesses aren't banging down Congress's door demanding that we sign on to Pillar Two?

Mr. BARNES. I do have theories, but I am happy to also yield to my colleagues. I think there are two reasons.

One is it is absolutely out of character for a corporation to say, "raise my taxes." That goes against everything the corporation has stood for and lived for. And to stand up now and say we think increasing taxes on corporations is favorable is just completely antithetical to what corporations are all about.

The second reason, I think, is a belief which I don't share, a belief that the U.S. GILTI regime will be declared fully compliant so the U.S. has nothing else it needs to do. The U.S. GILTI rate will increase in two years, as many of you know. We will still have the blending, but I think corporations are optimistic, I believe incorrectly, but are optimistic that the U.S. GILTI rule will be declared compliant.

Ms. SÁNCHEZ. Thank you so much for your testimony.

And I yield back.

Mr. HERN. I thank the gentlelady. I would like to recognize the gentleman from Iowa, Mr. Feenstra.

Mr. FEENSTRA. Thank you, Mr. Chair, and I just want to say thank you to each of our witnesses today.

In absence of the consultation by the Treasury, we relied on your analysis by those like you to understand this agreement that is being put before us and just a quick, simple one-on-one economics tax lesson.

Individuals and families pay tax, but they don't make goods and services, so they can't pass down the cost of tax, right? They just have to pay it. In corporations—I am talking to my colleagues on the other side of the aisle—on corporations, when you increase their tax, what happens? They pass it down through their goods and services. So goods and services increase, causing inflation, causing the issues that we are currently in. That is actually called economics 101. I just want you to know these processes and agreements that are what we are seeing is when you pursue a partisan domestic tax agenda in an international tax forum, it really is.

Ms. Herzfeld, you pointed out in your article that the two largest benefactors in terms of revenue were Canada and Germany, and yet we saw that Canada declined to sign the recent Pillar One agreement, and Germany is now taxing IP under section 49 of its tax code in what appears to be purely a revenue grab from U.S. firms. So despite being the largest benefactor of Pillar Two, they are moving forward with discriminatory taxes against American businesses. At the same time, these new rules may violate U.S. tax treaties.

So my understanding was that these agreements were intended to stabilize the international tax code. But in essence, am I fair to say that they are—they could and seems to be—realize that they are destabilizing our code? Could that actually happen?

Ms. HERZFELD. Yes, thank you for the question. So I think there is a question about whether the promises about stability that this international agreement is supposed to bring will actually come to fruition.

In addition to the examples you provided, there is also the example of Australia that has proposed a tax that is outside the scope of what was agreed to. And so all of those examples show that—raise questions about the promises of stability that the agreement was supposed to bring.

Mr. FEENSTRA. Thank you. Michael [sic], you noted that also. Can you just note—just 20 seconds on that?

Mr. MICHEL. The beginning of this process started when France and other European Unions started with Digital Services Taxes. So I think the entire project starts with the assumption that you can agitate at the international level by putting these unilateral measures on other countries.

Mr. FEENSTRA. Yes.

Mr. MICHEL. And so that, in and of itself, tells you that the system is unstable——

Mr. FEENSTRA. Thank you.

Mr. MICHEL [continuing]. And we are going to continue to see these types of unilateral actions as people agitate——

Mr. FEENSTRA. Exactly. Thanks for that.

Mr. MICHEL [continuing]. Changes.

Mr. FEENSTRA. Thanks for stating that, because every country is different. We are going to destabilize the international tax system by going down this path.

Ms. Gordon, it is good to see you again. I am glad you are here. The NFTC's members include U.S. businesses that have been impacted by this agreement, many of whom provided comments throughout this negotiating process. And some of these comments, a large part of the comments, were a lot about proprietary information that they will have to give up. You know, it sounds like there could be over 200 data points that they have got to do, compared to GILTI, where they have around 16—14 to 16, somewhere in there.

I mean, this seems very egregious, and makes it very uncompetitive to us when we have to give up all our proprietary information to the international code. Can you comment on that?

Ms. GORDON. Congressman, thank you for your question, and great seeing you, as well. Yes, so the numbers of 50,000 to 200,000 come from multiplying the number 200 or—versus 16—by all the entities.

And yes, so taking all of that data and giving it to countries around the world who do not have the same protections for taxpayer information like the United States is a threat to American businesses. And many of these countries will either share it with state-run enterprises or local competitors and get tax advantages or details and knowledge of how these U.S. companies operate around the world, which is not helpful.

Mr. FEENSTRA. Yes, thank you. I agree 100 percent.

Quickly, Mr. Schizer, I read your Journal piece. I loved it, by the way. And you noted just what I said about economics 101, is when you increase corporate tax it affects the workers, it affects jobs, opportunities, economic growth. So can you explain why that is?

I mean, just a basic economics 101 that you wrote in your journal piece.

Mr. SCHIZER. My apologies. Thank you for the question.

I do think there is a misunderstanding in the general public about who pays the corporate tax. It could be that investors pay some of it, but it is very clear that consumers pay some and that workers pay a lot. And so when we talk about who should pay it, we have to remember that.

Mr. FEENSTRA. Thank you. You just made my point.

I yield back.

Mr. HERN. I thank the gentleman. I would like to recognize the gentlelady from Washington, Ms. DelBene.

Ms. DELBENE. Thank you, Mr. Chairman, and thanks to all of our witnesses for joining us today. I appreciate it.

Mr. Barnes, former President Trump once said it is easy to win a trade war. We all know that is not true. But it seems like our colleagues on the other side of the aisle want to open up a new front in this war by introducing a bill that would certainly wage a tax war. Just this morning the Republicans introduced yet another retaliation proposal intended to punish our trading partners.

And so, Mr. Barnes, I was wondering. Are you aware of any tax wars that have been waged in the past? And in your judgment, is it easy to win a tax war?

Mr. BARNES. It is—thank you for the question. It certainly is not easy to win a tax war. Let me mention a couple of examples.

In the—it is more frequent that the war is waged through administrative measures than through legislation, because it is rare to have legislation that targets one country or two countries. But administratively, it happens quite often.

In the 1990s Korea was administering their tax treaties and their tax laws in a way that went way beyond the words of the statutes and of their authority. When Korea wanted to join the OECD in the 1990s, the OECD, the U.S., and other countries said, "no, you cannot join unless you go back and begin to follow the rules, the written rules, as you agreed to them in your tax treaties. And Korea agreed, and has done so, and joined the OECD.

The most amusing one is probably the effort by India to attack the companies that have invested in India in call centers, 10,000-person, 20,000-person call centers. India has been extraordinarily aggressive—this was particularly in the early 2000s—in taxing—one would say over-taxing—the foreign investors, including U.S. investors, in the call centers.

The Philippines government, in a tongue-in-cheek but very heartfelt letter that was published on the front page of the newspaper in India, said, "Thank you, India, for attacking these taxpayers. You are the best message for why investors should come to us in the Philippines. And it was, in fact, part of the reason that the Philippines grew as a center for call centers.

So, I think when there have been inappropriate administration of taxes—rarely by legislation, more often by administration—it has generally backfired and reduced investment.

Ms. DELBENE. Thank you. It is my understanding that, based on the JCT-provided data, when you look at all of the U.S. employees of firms that are based in countries that are jurisdictions targeted by the chairman's bill, you get 8.9 million employees. So the Republican bill would place 8.9 million U.S. jobs at risk. That is not to suggest that UTPR is necessarily good tax policy, or there aren't legitimate concerns about it. However, it seems that starting a tax war and putting at risk millions of U.S. jobs is not the right answer.

I wondered, Mr. Barnes, in your professional opinion, what is the best way for the United States to move forward so as to make the UTPR less of a concern?

Mr. BARNES. I think the short-term fix on Monday sets a path going forward.

There are countries that I think we can agree are—I will call them full-tax, not necessarily high-tax countries, but full-tax countries. And I think we could either push for—maybe successfully, maybe not—push for a situation in which certain countries are acknowledged as full-tax countries and the UTPR need not apply.

The other would be a mechanical calculation: find ways in which a taxpayer who, because of credits or other reasons, is below 15 percent this year, but over a 3-year average or 5-year average they pay reasonable taxes, they may be exempt from the UTPR.

I think if the U.S. is at the table, then creative tax negotiators can come up with approaches that would fully protect U.S. tax on U.S. income. But we need to be at the table for those negotiations to be successful.

Ms. DELBENE. Thank you so much.

I yield back, Mr. Chairman.

Mr. FEENSTRA [presiding]. Thank you. I now recognize Ms. Moore from Wisconsin.

Ms. MOORE of Wisconsin. Thank you so much, Mr. Chairman, and I just want to thank this entire second panel. This is just like being in graduate school here.

I want to just say to my Republican colleagues that a lot of things that you are raising about the treatment of our tax credits, about how data will be used are really legitimate things to raise. But you can't raise them if you ain't there at the table. And as many of you have discussed and our witnesses have discussed, just last week we won one of those arguments by saying that tax credits that are transferable can be treated that way. We got to stay in the fray in order to benefit from it.

I agree with you, Mr. Barnes. I have never seen a corporation that wants you to raise one penny extra in taxes. I think that this entire panel and all of our colleagues on the other side have forgotten that we just lowered the corporate income tax rate from 35 percent to 21 percent. And we still hear this, you know, plaintive cry about how we just are taxing them to death.

I also want to say that because of the way that the Tax Cut and Jobs Act was written up very quickly, that the 10.5 GILTI tax is actually at about 13 percent, given the lack of consideration about how that would interplay with other deductions and so forth that were not allowable. Am I correct so far, Mr. Barnes?

Mr. BARNES. You are fully correct. Thank you.

Ms. MOORE of Wisconsin. And I also want to say that, if we had just kept that 35 percent corporate tax rate, that would have been so much easier for United States to have complied with the GloBE regimen. And we didn't do that. So I just want some of the whining, some of it, to stop.

Mr. Barnes, we have heard testimony here today about just how—and I have been hearing this for my entire professional life—about how adding or changing any sort of tax regimen creates all of this compliance and bureaucracy. And, you know, all of our graduate schools from the Wharton School aren't going to be able to figure this out. Even if they go to Duke, they can't figure out how to do it.

Can you please give us a comparison of how not joining this global regimen, what the compliance problems will be versus if we join?

Mr. BARNES. Thank you very much. The core problem is that the U.S. tax return, our GILTI regime, operate on what is known as tax accounting principles, and that is because our tax law, as developed by Ways and Means and everyone else, has special provisions for how you go from your income received in the door to a tax number. Under the GILTI regime, our companies will continue to need to use tax accounting to compute the U.S. GILTI liability.

Under Pillar Two, there will be calculations based primarily on financial accounting. That is a different regime. In the U.S. that is GAAP. Outside the U.S. it is IFRS. And interestingly, there is no such thing as IFRS; every country has their own IFRS. So U.S. companies, if the U.S. does not join the Pillar Two exercise, will go through the full tax accounting world for GILTI calculations, plus the full financial accounting world calculations for——

Ms. MOORE of Wisconsin. So it will be harder. Is that what you are saying?

Mr. BARNES. Absolutely.

Ms. MOORE of Wisconsin. It will be worse.

You know, I went to Canada recently and, you know, one of my hosts said, "I just don't—Fahrenheit and Celsius, it—you guys are just stupid. You are the only people in the world who do that.

I just wanted to ask a question about this example we were given about the poor little daughter, you know, that doesn't cash app her parent like most of them do, but it is getting taxed. I just didn't think that was a—I was just trying to process that. It is just not an example of what you are talking about when we start talking about—can you give a better example than that? Because I think that one doesn't work. There is absolutely no tax liability on the daughter. She is more likely asking for Cash App.

Mr. BARNES. This may be satisfying or may not. Let me try. I would go back to a comment Michael Plowgian said, which is that the U.S. today, under subpart F and GILTI, will tax a U.S. company on earnings in Singapore.

So, to use my example before, the Singapore Government says, "U.S. company, invest in Singapore. We are going to give you all these incentives. You will pay no tax.

The U.S. says, "Great, fine, terrific. But we have a GILTI tax, so we are going to collect 10.5 percent. The Singapore Government may not like it because we have undercut the value of their tax incentives, but that is absolutely consistent with international tax law.

Ms. MOORE of Wisconsin. Thank you.

And thank you, Mr. Chairman, for your indulgence. I just didn't want that California daughter to get too worried.

Mr. FEENSTRA. No problem.

Ms. MOORE of Wisconsin. Or the Virginia dad, rather.

Mr. FEENSTRA. I now recognize Mr. Schneider from Illinois.

Mr. SCHNEIDER. Thank you, Mr. Chairman, and I thank the witnesses for being here today.

And, Mr. Barnes, I want to pick up on your Singapore example, since you brought it up. From a business standpoint, the three businesses you mentioned—a Singapore Business, 0 tax; a Dutch business, 0 tax; but the U.S. business in Singapore, 10.5 percent tax—what is the strategic business impact of that disparity?

Mr. BARNES. Well, for—because of the U.S. rules, because of GILTI and our foreign tax credit and our subpart F rules, you are always going to be taxed in the U.S. So I think the issue that comes up goes all the way back to the Base Erosion and Profit Shifting. If the U.S. company has a choice between high-taxed India, lower-taxed Singapore, they are inclined to go to Singapore, all other things being equal.

Now, rarely is everything else equal, but let's assume everything else is equal. Because the lower taxes in Singapore will help you blend down the high taxes in India.

Mr. SCHNEIDER. Got it. Let me turn to Mr. Schizer for a second, because I know we have all shared the concerns about sovereignty.

What is the population of the Cayman Islands?

Mr. SCHIZER. I do not know.

Mr. SCHNEIDER. I will tell you. It is 69,000. How many companies, corporations are registered in the Cayman Islands?

Mr. SCHIZER. Many companies.

Mr. SCHNEIDER. A hundred and sixteen thousand, more than the people in the Cayman Islands. Why do you think that is?

Mr. SCHIZER. Low tax.

Mr. SCHNEIDER. No tax, right? Zero. Correct?

Mr. SCHIZER. There are some costs, but yes.

Mr. SCHNEIDER. The tax is zero. What is the implications for U.S. sovereignty with Cayman Islands' zero tax?

Mr. SCHIZER. I think the answer to that question depends on how the U.S. approaches income earned in the Cayman Islands.

Mr. SCHNEIDER. I think it is zero. It is up to us to make our decisions, and we make choices on how we tax those companies. Is that a fair statement?

Mr. SCHIZER. Yes.

Mr. SCHNEIDER. Okay. What is the impact on U.S. revenues for those 100,000 companies registered in the Cayman Islands?

Mr. SCHIZER. Again, it depends.

Mr. SCHNEIDER. It does?

Mr. SCHIZER. Yes. If we wanted to tax it, we tax it. But if your point is it is an effort to try to reduce the U.S. tax base, that is true.

Mr. SCHNEIDER. It does. In fact, that is BEPS.

Mr. Barnes, isn't that the definition of BEPS?

Mr. BARNES. It is. I would always say, though, you have to look at what the substance is in the Caymans. Is there substance or is there no substance?

Mr. SCHNEIDER. That is a fair point. But isn't the goal of what we are doing here talking about changing the tax regime, trying to eliminate those tax havens, and get companies to register in the countries where they are actually doing business?

Mr. SCHIZER. I am sorry, are you asking me or Mr. Barnes?

Mr. SCHNEIDER. Mr. Barnes, Mr. Barnes.

Mr. SCHIZER. I am sorry.

Mr. BARNES. I think the key of what we are trying to do here is to take tax out of the equation as much as possible. We can't eliminate it completely, but let's get to business fundamentals, where your customers, where your talented workforce, where is your economic inputs.

Mr. SCHNEIDER. So if there is a level playing field, all things being equal, whether you want to say it in Latin or English, in your opinion, do you think it is to the advantage of the United States because of our court systems, because of our universities, because of our workforce, of all of those things, in a level playing field would companies be inclined to at least look at setting up shop here in the United States?

Mr. BARNES. They would. I think you have two things. You have a reduced incentive to move out of the U.S., and you have an improved incentive to move back to the U.S. or to expand in the U.S. instead of expand elsewhere.

Mr. SCHNEIDER. And if we do nothing, and the rest of the world moves forward, do we lose, to some degree, the incentive for those companies that are moving profits from previously tax-haven countries to other countries?

Are they likely to not come to the United States as much as they would go to the other G7 countries?

Mr. BARNES. I think those companies would look at the complexity of complying with the U.S. rules and the Pillar Two rules around the world and be daunted.

Mr. SCHNEIDER. On the other hand, if the United States goes to the table, works to influence—as others have said, we should be at the table influencing, the United States—I think it was Mr. Michel, you said this—we should be exercising the power of our influence.

And Mr. Barnes, you said the rest of the world listens to the United States. Aren't we better served by being at the table and helping set the course of future tax structures in the world?

Mr. BARNES. That is certainly my view, yes.

Mr. SCHNEIDER. Okay. With that I yield back.

Mr. FEENSTRA. I now recognize Mrs. Miller from West Virginia.

Mrs. MILLER. Thank you, Mr. Chairman, and thank you all for being here today.

It is of the utmost importance that we stop the OECD's forced march to socialism. I appreciate the opportunity to talk to our expert witnesses here today on how the Biden Administration has failed the American people and attempted to abdicate key congressional responsibilities to unelected global bureaucrats who do not have our best interest in their heart in the slightest. If the Administration fails to stand up for our workers and taxpayers, then everyone else in the world will be much more happy at eating our lunch while we are standing there with nothing.

Ms. Herzfeld, have experts warned the UTPRs may violate the terms of bilateral tax treaties?

Ms. HERZFELD. Yes, they have.

Mrs. MILLER. Could you describe just how foreign governments could tax U.S.-based companies under UTPR?

Ms. HERZFELD. So the UTPR is a complicated rule, but what it does is it looks at every company, every jurisdiction in which a multi-national operates, and it says, to the extent that anywhere in the world a company is not paying a 15 percent rate, then other countries have the right to tax that income. And it includes also the parent company's income.

So it means that if, because of credits or other incentives, a U.S. company is not paying a 15 percent rate in the U.S., other countries have the right to tax that income. And so taxing another jurisdiction's income is a treaty violation.

Mrs. MILLER. Can you elaborate on what actions countries are taking that might be considered as undermining the global tax deal?

In your opinion, will this deal ever go into effect in countries like China, who are willing to always break the rules?

Ms. HERZFELD. Yes, so I think one of your colleagues brought up before some actions other countries are taking that are not consistent with the global deal. I don't think any country specifically has said we will—we want to undermine it, but they are certainly taking actions that are not fully consistent with it.

Mrs. MILLER. Thank you.

Mr. Michel, the OECD arrangement doesn't stop countries from competing to attract business investment and jobs. It just makes the current U.S. system less competitive. What makes this agreement, as currently written, so lopsided against the U.S. system, and what tools will countries use to compete if it is implemented?

Mr. MICHEL. Well, as we have been discussing, the—I think the agreement shifts competition from tax rates, which ultimately reduce economic inefficiencies—and as we were talking about before, less costs get passed onto workers and consumers and investors—and instead shifts competition to a war over subsidies.

There has already been reporting of countries saying they are going to compensate their largest businesses by passing on direct subsidies to compensate for the higher tax rates, and this just opens up a whole world of cronyism, of this sort of corruption that comes along with attaching specific payments to specific companies, and the lobbying that goes on behind——

Mrs. MILLER. So wouldn't you consider that all these subsidies and incentives is a type of global socialism?

Mr. MICHEL. It certainly incentivizes more government involvement in business decisions than simply lowering tax rates does.

Mrs. MILLER. So why would the United States negotiate our right to be a capitalist country? It just doesn't make sense to me.

Mr. MICHEL. It doesn't make sense to me either.

Mrs. MILLER. Okay, Ms. Gordon, there are likely numerous technical issues with the OECD model rules and guidance that have not received as much attention as the bigger concerns with the deal, which my Republican colleagues and I have been highlighting. Would you provide some examples that you are hearing from companies and your insight?

And would you also tell me what your members' concerns are about sharing information, their information, under Pillar Two?

Ms. GORDON. Congresswoman, thank you for your question. I will start with the second one.

So, there are a lot of concerns with sharing information and having sensitive tax information spread around the world as might be possible if you file a return with the IAR, the UTPR, the global information return.

As to the problems with Pillar Two, I mean, it is almost 6:00, and so I don't want to keep us here all night. That being said, I think there are numbers of technical rules on, you know, where you are filing your return, what information exactly is required when you file it, who gets to claim the UTPR.

I mean, there are so many issues——

Mrs. MILLER. Numerous.

Ms. GORDON [continuing]. And we have written hundreds of pages of comment letters that people can read later. Thank you.

Mrs. MILLER. Thank you so much.

I yield back.

Mr. FEENSTRA. I want to thank all my colleagues. And to each of our witnesses, thank you for having a terrific and wonderful hearing this afternoon.

Please be advised that the members have two weeks to submit their written questions to be answered later in writing. Those questions and your answers will be made part of the formal hearing of record.

With that, the committee stands adjourned.

[Whereupon, at 5:57 p.m., the subcommittee was adjourned.]

MEMBER QUESTIONS FOR THE RECORD

United States House of Representatives
Committee on Ways and Means
Tax Subcommittee
Hearing on "Biden's Global Tax Surrender Harms American Workers and Our Economy"
July 19, 2023
Deputy Assistant Secretary Michael Plowgian
United States Department of the Treasury

For Deputy Assistant Secretary Plowgian From Chairman Smith:

1. With respect to Treasury agreeing to a UTPR surtax mechanism that would allow foreign governments to tax the U.S. operations of U.S. companies, did Treasury discuss with any Members of Congress prior to formalizing that agreement at the OECD?

    - If yes, provide the date, or dates, of the consultation(s) with Congress, the name(s) of Treasury personnel involved, the name(s) of Members of Congress that Treasury consulted with, a characterization of the feedback received from Congress, and how the feedback was incorporated into the final decision to agree.

    - If Treasury did not meet with any Members of Congress, but instead provided only an informational briefing to Congressional staff, please provide the date of the staff briefing and the date of the agreement made at the OECD.

The Treasury Department recognizes the critical importance of congressional input on international tax matters, and we greatly value our strong partnerships with congressional stakeholders on this and other matters. Specifically, throughout the OECD negotiations, we have maintained regular and robust engagement with Congress on a bipartisan and bicameral basis. In addition to formally briefing congressional staff on multiple occasions, we have maintained open lines of communications and have proactively engaged congressional staff, including Committee staff, to share updates, seek feedback, and discuss technical components of the multi-lateral negotiations. The briefings with your staff have been helpful in understanding the concerns of the Committee and views that members across the committees have on the issues surrounding OECD negotiations. The Department deeply values Congressional consultation and will continue such engagement as multilateral discussions continue. The Department looks forward to continuing to work closely with you, your staff, and the Committee on Ways & Means on this and other international tax matters.

2. With respect to Treasury accepting the recent offer by foreign countries to delay the UTPR surtax by just one year, did Treasury discuss with any Members of Congress prior to formalizing that agreement at the OECD?

- If yes, provide the date, or dates, of the consultation(s) with Congress, the name(s) of Treasury personnel involved, the name(s) of Members of Congress that Treasury consulted with, a characterization of the feedback received from Congress, and how the feedback was incorporated into the final decision to agree.

- If Treasury did not meet with any Members of Congress, but instead provided only an informational briefing to Congressional staff, please provide the date of the staff briefing and the date of the agreement made at the OECD.

Please refer to the answer in question #1.

3. With respect to Treasury agreeing that the U.S. R&D credit would be disadvantaged versus the R&D credits of other countries, like the UK, did Treasury discuss with any Members of Congress prior to formalizing that agreement at the OECD?

   - If yes, provide the date, or dates, of the consultation(s) with Congress, the name(s) of Treasury personnel involved, the name(s) of Members of Congress that Treasury consulted with, a characterization of the feedback received from Congress, and how the feedback was incorporated into the final decision to agree.

   - If Treasury did not meet with any Members of Congress, but instead provided only an informational briefing to Congressional staff, please provide the date of the staff briefing and the date of the agreement made at the OECD.

Please refer to the answer in question #1.

4. Which goal is advanced by Treasury agreeing that the U.S. R&D credit would be disadvantaged versus more generous R&D credit of other countries?

The R&D tax credit is important to the United States and to the Administration. We have indicated to our Inclusive Framework negotiating partners that addressing issues related to the treatment of the U.S. R&D tax credit is a priority for the Treasury Department under the current Administration. We hope to work productively with the OECD Secretariat and the Inclusive Framework members to find a consensus path forward that addresses these issues in a way that does not undermine the goals of Pillar 2.

5. With respect to Treasury's decision to give preferential treatment to the generous refundable corporate tax credits and state subsidies by the Chinese Communist Party and other governments-versus more typical tax incentives like those enacted by Congress on a bipartisan basis-did Treasury discuss with any Members of Congress prior to formalizing that agreement at the OECD?

   - If yes, provide the date, or dates, of the consultation(s) with Congress, the name(s) of Treasury personnel involved, the name(s) of Members of Congress that Treasury consulted with, a characterization of the feedback received from Congress, and how the feedback was incorporated into the final decision to agree.

- If Treasury did not meet with any Members of Congress, but instead provided only an informational briefing to Congressional staff, please provide the date of the staff briefing and the date of the agreement made at the OECD.

Please refer to the answer in question #1.

6. With respect to Treasury's decision to agree that the U.S. GILTI rule would not receive full grandfathering status as the only global minimum tax in the world, did Treasury discuss with any Members of Congress prior to formalizing that agreement at the OECD?

    - If yes, provide the date, or dates, of the consultation(s) with Congress, the name(s) of Treasury personnel involved, the name(s) of Members of Congress that Treasury consulted with, a characterization of the feedback received from Congress, and how the feedback was incorporated into the final decision to agree.

    - If Treasury did not meet with any Members of Congress, but instead provided only an informational briefing to Congressional staff, please provide the date of the staff briefing and the date of the agreement made at the OECD.

Please refer to the answer in question #1.

7. With respect to Treasury's decision to have U.S. tax revenues from GILTI and Subpart F eroded due to the OECD's preference for QDMTT top-up taxes, did Treasury discuss with any Members of Congress prior to formalizing that agreement at the OECD?

    - If yes, provide the date, or dates, of the consultation(s) with Congress, the name(s) of Treasury personnel involved, the name(s) of Members of Congress that Treasury consulted with, a characterization of the feedback received from Congress, and how the feedback was incorporated into the final decision to agree.

    - If Treasury did not meet with any Members of Congress, but instead provided only an informational briefing to Congressional staff, please provide the date of the staff briefing and the date of the agreement made at the OECD.

Please refer to the answer in question #1

8. With respect to Treasury's decision to promote a 15 percent global minimum tax rate, to replace the 12-to-13 percent rate that the OECD was considering prior to President Biden taking office, did Treasury discuss with any Members of Congress prior to formalizing that agreement at the OECD?

    - If yes, provide the date, or dates, of the consultation(s) with Congress, the name(s) of Treasury personnel involved, the name(s) of Members of Congress that Treasury consulted with, a characterization of the feedback received from Congress, and how the feedback was incorporated into the final decision to agree.

- If Treasury did not meet with any Members of Congress, but instead provided only an informational briefing to Congressional staff, please provide the date of the staff briefing and the date of the agreement made at the OECD.

Please refer to the answer in question #1.

9. With respect to Treasury's decision to agree on the scope of the Pillar 1 profit allocation, which skews heavily against U.S. companies while exempting their foreign- headquartered competitors, did Treasury discuss with any Members of Congress prior to formalizing that agreement at the OECD?

    - If yes, provide the date, or dates, of the consultation(s) with Congress, the name(s) of Treasury personnel involved, the name(s) of Members of Congress that Treasury consulted with, a characterization of the feedback received from Congress, and how the feedback was incorporated into the final decision to agree.

    - If Treasury did not meet with any Members of Congress, but instead provided only an informational briefing to Congressional staff, please provide the date of the staff briefing and the date of the agreement made at the OECD.

Please refer to the answer in question #1.

Questions for the Record: Ways and Means Tax Subcommittee Hearing on the Biden Administration's failure to protect U.S. interests in the OECD global tax deal.

From Rep. Carol Miller

Deputy Assistant Secretary Michael Plowgian:

1. On June 8th Republican members of the Ways and Means Committee wrote a letter to Secretary Yellen expressing concerns over the German Section 49 extraterritorial tax that is being unilaterally imposed on a number of US companies. The letter requested a briefing on what engagement Treasury has had on this matter and how it plans to protect US taxpayers from it.
   a. Specifically, has Treasury approached its German counterparts on this issue, and if so - has there been any progress made with regard to having the current German interpretation of this tax being withdrawn and/or modified since it is inconsistent with Germany's efforts to advance Pillar One and Pillar Two? As pointed out in the June 8th letter, this is a brazen German revenue grab that will be partially funded by US taxpayers when foreign tax credits are claimed. What is Treasury's plan to mitigate this potential cost to US taxpayers?

I agree that Germany's application of section 49 of the German Income Tax Act is inconsistent with international tax principles due to, among other things, its retroactivity and the arbitrary valuation process used to compute tax liability and has the potential to harm the U.S. fisc. The Treasury Department has repeatedly conveyed its opposition to the tax and offered to work with our German counterparts on many occasions, including at very high political levels. We have also worked with our State Department colleagues to raise the issue with the German government at every opportunity. We continue to believe bilateral dialogue is the best way to resolve the issue and we are grateful for Congress's continued advocacy on the matter.

   b. More generally, I am concerned that the OECD/G20 Inclusive Framework project on Pillar One and Pillar Two will not stabilize the global tax system, as advertised. The German Section 49 extraterritorial tax is just one example of a de-stabilizing action being taken by another country and targeted at US companies. Does the Treasury Department share this concern, and if so, what action will it take to ensure that the Germans withdraw and/or modify Section 49 to eliminate its impact on US businesses and taxpayers.

Overall, the Treasury Department strongly supports the Two-Pillar solution, which, if enacted, would stabilize the international tax system by preventing artificial profit shifting of large, multinational companies and addressing the uncertainty caused by increased unilateral measures and cross-border tax disputes. I agree that Germany's current application of the section 49 tax unfairly impacts U.S. companies, and could have a harmful impact on our ability to build consensus in the OECD/G20 Inclusive Framework. As I mention in my answer to your question 1.a, the Treasury Department and other agencies

are actively advocating that Germany withdraw the section 49 tax. Congressional input has been very helpful to that ongoing dialogue.

2. While answering Member questions during the hearing, you referenced the Joint Committee on Taxation's scenario 5, where the United States implements the Undertaxed Profit Rule, but no other countries do.

    a. Is this a scenario treasury is seriously considering to be possible? With many countries in the European Union, South Korea, and others already moving to implement Pillar 2 and the UTPR, this seems incredibly improbable.

My understanding of the Joint Committee on Taxation's (JCT's) analysis is that Pillar 2 adoption by the jurisdictions you list above, along with roughly 40 additional countries, is already included in the "modified baseline" that JCT uses in the forecasting scenarios, including scenario 5. In particular, on page 9 of the analysis, JCT explains that "[i]n each of these scenarios, the Joint Committee staff compares the results to the modified baseline in which . . . Pillar Two is fully enacted by Pillar Two compliant jurisdictions". The JCT analysis defines "Pillar 2 compliant jurisdictions" as jurisdictions that have "already enacted legislation or proposed legislation" to adopt Pillar 2 (page 5). The JCT analysis also contains an appendix listing the Pillar 2 compliant jurisdictions, which includes South Korea (page 11) and EU Member countries (pages 12-13).

JCT's scenario five does not assume that the U.S. alone implements Pillar 2 and the UTPR. Instead, it assumes that (1) the U.S. adopts Pillar 2; (2) the 40-plus Pillar 2 compliant jurisdictions listed in the Appendix have already adopted Pillar 2; and (3) no other country adopts Pillar 2. We consider this scenario to be possible, or even probable.

    b. If scenario 5 is indeed unlikely, what scenario outlined in the JCT report does Treasury anticipate as most likely to occur?

Please see the answer to your question 2.a.

3. What are the specific actions you are taking to preserve the U.S. tax base and ensure that all of the credits passed by Congress, such as the bipartisan R&D credit, are not adversely treated in computing the minimum tax in Pillar Two?

The R&D tax credit, and other non-refundable credits, are very important to the United States. We have indicated to our Inclusive Framework negotiating partners that addressing issues related to the treatment of the U.S. R&D tax credit is a priority for the Treasury Department. We hope to work productively with the OECD Secretariat and the Inclusive Framework members to find a consensus path forward that addresses these issues in a way that does not undermine the goals of Pillar 2.

4. Beyond participating in political negotiations, what specific legal tools and strategies does the US Treasury have at its disposal today to prevent the imposition of an illegal foreign tax on US Multinational Enterprises.

a. What plans does it have to effectively utilize those tools?

b. What vulnerabilities does the Treasury perceive based upon the currently available tools at its disposal?

c. What would make the Treasury more Confident in its ability to successfully protect US MNEs besides participating in a political negotiation process?

Thank you for raising this issue. While every jurisdiction has a sovereign right to impose or not impose taxes, some foreign taxes and related actions raise significant concerns, as you suggest. In those cases, Treasury has a few formal and informal tools. We often engage directly with our counterparts to express our concerns and try to work out a solution. We also often raise the concerns and are able to negotiate a solution in multilateral fora such as the OECD. In many cases, our bilateral tax treaties are the best tool to address actions taken by our treaty partners. In general, our bilateral tax treaties may create rights that U.S. businesses can assert to the United States Competent Authority in the first instance, and often our bilateral treaties will enable the IRS and foreign tax administration to reach a settlement. Some treaties also provide for binding arbitration. In addition, the United States in its own right has the ability to discuss actions that raise concerns with treaty partners. As you may know, there are also provisions in Internal Revenue Code (in particular, sections 891 and 896) that allow the President to impose higher taxes on the citizens, residents, and corporations of a foreign jurisdiction that imposes discriminatory taxes on U.S. citizens or corporations. However, among many other potential issues, foreign companies could seek to re-route their investment in the United States through other foreign jurisdictions, so the effectiveness of those sections is likely extremely limited.

If you have a specific tax in mind, I would be happy to follow up with you to discuss this question in more detail.

5. Secretary Yellen has testified that the U.S. will advocate for Foreign-Derived Intangible Income at the OECD, in that it is not a harmful tax practice. However, Treasury's green book has included the repeal of FDII for the past two years.

    a. Will Treasury remove the proposal to repeal FDII in the next green book?

The Treasury Department is still in the process of developing proposals for the General Explanations of the Administration's Fiscal Year 2025 Revenue Proposals (the 2025 Greenbook). However, I can confirm that Treasury will argue that the Foreign-Derived Intangible Income deduction is not a harmful tax practice at the OECD's Forum on Harmful Tax Practices.

6. On the morning of our hearing, the staff at OECD held one of their periodic "Tax Talks" public briefings. They announced but provided no additional information about two new rules for Pillar One is an exclusion for "national security" and the other is for "autonomous domestic business exemption". Do you have any information you can now share with Congress on these two new rules?

Both the autonomous domestic business exemption (ADBE) and the defense group adjustment are set forth in the draft OECD/G20 Inclusive Framework Multilateral Convention to Implement Amount A of Pillar One (the MLC) that was released October 11. They have been designed primarily as adjustments to the allocation tax base, rather than as exclusions from the scope of the MLC. But under both adjustments, if the effect of the adjustment is that only a de minimis amount of a group's allocation tax base would remain, then the group would not be in scope at all. These de minimis scope exclusions ensure that American businesses are not disproportionately burdened by MLC compliance costs in comparison with the Amount A attributable to those businesses after the adjustments have been applied.

The ADBE applies in cases where, due to the particular facts of an American business, the mechanics of the MLC will ultimately allocate most or all of its Amount A profits to the United States. This would be the outcome in the case of US businesses in certain industries (such as a utilities, telecommunications, and construction) that operate wholly or mostly within the United States. Because the Amount A allocation would go wholly or mostly to the United States, it would not make sense to require the businesses to enter the MLC process and incur the associated compliance burdens in the first place. In other words, the ADBE is a simplification measure that benefits both American businesses and the Internal Revenue Service.

The defense group adjustment is necessary for obvious national security reasons that are important both to the United States and our allies. It is also consistent with the fact that defense contracts generally are not market transactions but rather are deals between governments. The central role of the United States government in such transactions means that it would not be appropriate for the MLC to allocate profits away from the United States in cases involving US-based defense contractors.

a. Which committees in Congress have you consulted about these new rules?

Treasury has routinely and recently held bipartisan discussions and consultations on the Pillar 1 MLC with various Congressional committees.

b. Further, especially in light of what I hope is a good rule about a national security exclusion, I would like to explore whether state owned enterprises in general are able to gain a competitive advantage over for-profit businesses through insights gained from Pillar 1 filings. Does this Administration have any concerns about American businesses being at a competitive disadvantage when operating in a country where a government-subsidized or owned business is operating?

We share your concerns regarding competition between private American businesses and businesses owned or subsidized by foreign governments, and we are aware of this concern arising specifically with respect to the ADBE. To minimize these concerns, we have ensured that appropriate exchange of information rules have been included in the MLC to limit the use of tax information and prevent its misuse.

7. In 2020, the OECD published a blueprint recognizing the need for the Inclusive Framework to co- exist with U.S. GILTI and GLoBE rules. They wrote “The Inclusive Framework recognizes that an agreement on the co-existence of the GILTI and the GloBE would need to be part of the political agreement on Pillar Two.”

   a. Given this blueprint, why are GILTI and GloBE now not allowed to co-exist with the Inclusive Framework?

   b. Is treasury currently working with the OECD to grandfather GILTI, like they did to address issues with transferable credits?

With respect to the current treatment of GILTI provisions under the GloBE rules, administrative guidance under the GloBE rules issued in February 2023 treats GILTI as a qualifying controlled foreign corporation tax for purposes of Pillar 2. The February 2023 administrative guidance also provides temporary rules related to how multinational companies should allocate GILTI for Pillar 2 purposes.

On the issue of GILTI grandfather, the Treasury Department supports the adoption of reforms consistent with the Pillar 2 rules in the United States.

From: Rep. Tenney

1. Mr. Plowgian, On June 8th Republican members of the Ways and Means Committee wrote a letter to Secretary Yellen expressing concerns over the German Section 49 extraterritorial tax that is being unilaterally imposed on a number of U.S. companies. The letter requested a briefing on what engagement Treasury has had on this matter and how it plans to protect U.S. taxpayers from it.

   Specifically, has Treasury approached its German counterparts on this issue, and if so – has there been any progress made with regard to having the current German interpretation of this tax being withdrawn and/or modified? As pointed out in the June 8th letter, this is a brazen German revenue grab that will be partially funded by U.S. taxpayers when foreign tax credits are claimed. What is Treasury's plan to mitigate this potential cost to U.S. taxpayers?

   More generally, I am concerned that the OECD/G20 Inclusive Framework project on Pillar One and Pillar Two will not stabilize the global tax system, as advertised. The German Section 49 extraterritorial tax is just one example of a de-stabilizing action being taken by another country and targeted at U.S. companies. Does the Treasury Department share this concern, and if so, what action will it take to ensure that the Germans withdraw and/or modify Section 49 to eliminate its impact on U.S. businesses and taxpayers.

I agree that Germany's application of section 49 of the German Income Tax Act is inconsistent with international tax principles due to, among other things, its retroactivity and the arbitrary valuation process used to compute tax liability, and has the potential to harm the U.S. fisc. The Treasury Department has repeatedly conveyed its opposition to the tax and offered to work with our German counterparts on many occasions, including at very high political levels. We have also worked with our State Department colleagues to raise the issue with the German government at every opportunity. We continue to believe bilateral dialogue is the best way to resolve the issue and we are grateful for Congress's continued advocacy on the matter.

Overall, the Treasury Department strongly supports the Two-Pillar solution, which, if enacted, would stabilize the international tax system by preventing artificial profit shifting of large, multinational companies and addressing the uncertainty caused by increased unilateral measures and cross-border tax disputes. I agree that Germany's current application of the section 49 tax unfairly impacts U.S. companies, and could have a harmful impact on our ability to build consensus in the OECD/G20 Inclusive Framework. As I mention in my answer to your question 1.a, the Treasury Department and other agencies are actively advocating that Germany withdraw the section 49 tax. Congressional input has been very helpful to that ongoing dialogue.

Congressman Feenstra Questions for the Record for Deputy Assistant Secretary Michael Plowgian

1. You stated in response to my questioning at the hearing that Pillar Two was designed to "level the playing field", but I listed three examples in which the Pillar Two puts U.S. firms at a unique disadvantage relative to foreign headquartered firms, including:

    i. The disparate treatment of refundable vs non-refundable credits, given the U.S. disproportionate use of non-refundable credits relative to our foreign counterparts. Grants and direct subsidies are similarly given favorable treatment.

    ii. The UTPR applies on top of the U.S. corporate minimum tax and GILTI, after the Trump Administration had made progress towards grandfathering in GILTI, the world's first global minimum tax, and after Pascal Saint Amans had told U.S. companies that it would be grandfathered into the agreement. Even the Biden Administration's corporate minimum tax does not qualify. These exclusions uniquely expose U.S. firms to double taxation.

    iii. Pillar 2 domestic top-up taxes take priority over U.S. anti-abuse rules in Subpart F and GILTI.

    As a result, U.S. tax incentives are uniquely exposed to Pillar 2 top-up taxes, and U.S. firms are uniquely exposed to having fewer tax incentives available to them than their non-U.S. competitors. In addition, U.S. firms are more likely to be double taxed when their competitors are not. Given the lopsided nature of the Pillar Two rules and the inherent disadvantage it puts U.S. firms, the claim that this agreement will "level the playing field" for U.S. firms seems blatantly false. I consider the Biden Administration's apparent response that the U.S. should simply change our laws to align with Pillar 2 – effectively ceding Congressional authority over U.S. tax policy to the OECD – to be entirely unresponsive to these concerns.

    Do you agree that the outlined examples would disadvantage U.S. firms?

    How does Treasury plan to reengage our foreign counterparts to address these concerns?

    As you reengage with our foreign counterparts to remove these disadvantages, will you consult with Congress?

As I discussed in the hearing, Pillar 2 is intended to level the playing field in two significant ways. Pillar 2 addresses the artificial profit shifting to low-tax jurisdictions undertaken by large, multinational companies. This levels the playing field for U.S. workers and our domestic businesses that cannot use tax strategies to shift their profits offshore. In addition, as you note, U.S. multinationals were previously the only multinationals subject to a minimum tax on their foreign earnings. As countries begin to implement Pillar 2, U.S. multinationals will no longer be the only companies that are subject to such a minimum

tax. Moreover, the IIR and UTPR credit U.S. taxes that are paid by U.S. companies to prevent double taxation. With respect to qualified minimum domestic top up taxes, please note that the priority given to domestic top-up taxes over cross-border taxes imposed in parent jurisdictions follows the longstanding international consensus, which is already reflected in the U.S. international tax rules, that the jurisdiction where the income is earned has the primary right to tax the income.

The R&D tax credit is important to the United States and the Administration. We have indicated to our Inclusive Framework negotiating partners that addressing issues related to the treatment of the U.S. R&D tax credit is a priority for the Treasury Department. We hope to work productively with the OECD Secretariat and the Inclusive Framework members to find a consensus path forward that addresses these issues in a way that does not undermine the goals of Pillar 2.

On the issue of the interaction between the Pillar 2 rules and existing U.S. international tax rules, we have been working with the Inclusive Framework members and the OECD Secretariat to negotiate administrative guidance that, among other things, provides clarity with respect to how U.S.-specific provisions are treated under Pillar 2, in order to promote taxpayer certainty and mitigate double taxation concerns.

The Treasury Department recognizes that changes to the U.S. tax code can only be enacted through legislation passed by Congress.

2. On June 8th Republican members of the Ways and Means Committee wrote a letter to Secretary Yellen expressing concerns over the German Section 49 extraterritorial tax that is being unilaterally imposed on a number of US companies. The letter requested a briefing on what engagement Treasury has had on this matter and how it plans to protect US taxpayers from it.

   Specifically, has Treasury approached its German counterparts on this issue, and if so - has there been any progress made with regard to having the current German interpretation of this tax being withdrawn and/or modified since it is inconsistent with Germany's efforts to advance Pillar One and Pillar Two?

   As pointed out in the June 8th letter, this is a brazen German revenue grab that will be partially funded by US taxpayers when foreign tax credits are claimed. What is Treasury's plan to mitigate this potential cost to US taxpayers?

I agree that Germany's application of section 49 of the German Income Tax Act is inconsistent with international tax principles due to, among other things, its retroactivity and the arbitrary valuation process used to compute tax liability, and has the potential to harm the U.S. fisc. The Treasury Department has repeatedly conveyed its opposition to the tax and offered to work with our German counterparts on many occasions, including at very high political levels. We have also worked with our State Department colleagues to raise the issue with the German government at every opportunity. We continue to believe

bilateral dialogue is the best way to resolve the issue and we are grateful for Congress's continued advocacy on the matter.

3. More generally, I am concerned that the OECD/O20 Inclusive Framework project on Pillar One and Pillar Two will not stabilize the global tax system, as advertised. The German Section 49 extraterritorial tax is just one example of a de-stabilizing action being taken by another country and targeted at US companies. As Ms. Herzfeld pointed out during the hearing, there are additional recent examples from Canada and Australia moving forward with discriminatory taxes on U.S. companies.

   Does the Treasury Department share this concern, and if so, what action will it take to ensure that the Germans withdraw and/or modify Section 49 to eliminate its impact on US businesses and taxpayers?

Overall, the Treasury Department strongly supports the Two-Pillar solution, which, if enacted, would stabilize the international tax system by preventing artificial profit shifting of large, multinational companies and addressing the uncertainty caused by increased unilateral measures and cross-border tax disputes. I agree that Germany's current application of the section 49 tax unfairly impacts U.S. companies, and could have a harmful impact on our ability to build consensus in the OECD/G20 Inclusive Framework. As I mention in my answer to your question 1.a, the Treasury Department and other agencies are actively advocating that Germany withdraw the section 49 tax. Congressional input has been very helpful to that ongoing dialogue.

4. The OECD Model Rules create a complex system of international global minimum tax rules. These rules apply to certain multinational groups, including multinational groups with ultimate owners who are individuals. Where a non-US "Constituent Entity" of a multinational group has an effective tax rate lower than 15%, a Pillar 2 country may impose a "Top-Up Tax" on that Constituent Entity. That Top-up Tax can be imposed even where the income of the Constituent Entity is subject to full US tax at individual marginal tax rates of 37%.

   In the above example where the income is already subject to US tax at individual rates, why is it appropriate to impose the Top-Up Tax under Pillar 2?

   If the Top-up Tax applies, is it fair that these American individuals are subject to double tax?

   Will you work with me to ensure that these individuals are not subject to double tax?

The Pillar 2 rules have special provisions for cases where the income of a multinational group is taxed in the hands of an ultimate owner that is an individual. We continue to work in the Inclusive Framework multilateral administrative guidance process to ensure those provisions produce appropriate results when applied to non-U.S. Constituent Entities that are fully taxed in the U.S. on a current basis, such as in the example you provided. Our goal is to obtain administrative guidance on a consensus basis that ensures that income

that is fully taxed in the U.S. on a current basis in cases like the example you outline above is not subject to additional top-up tax under Pillar 2.

5. We are aware that the UK has deviated from the OECD Model Rules in a significant aspect in not permitting income to flow up from tax transparent entities to the owners of those entities who are subject to US tax on the income, including US LLCs. We understand that HMRC has been made aware of this discrepancy and has informally stated it did not intend to deviate from the Rules and intends to conform them going forward. Left unaddressed, the deviation could cost US taxpayers hundreds of millions or even billions in Top-Up Tax owed to Pillar 2 countries in respect of US tax transparent entities.

   How will Treasury ensure that other countries do not deviate from the OECD Model Rules in ways that harm American taxpayers?

   To the extent these deviations are not addressed, they will give rise to instances where the only way to prevent double taxation is by the US granting a foreign tax credit. Isn't this an additional cost to the US government that is not contemplated by the OECD Model Rules?

As Pillar 2 implementation moves forward in many countries, the Treasury Department has been monitoring, and will continue to monitor, the implementation efforts of our Inclusive Framework partners, including the UK. The OECD Secretariat, Inclusive Framework countries, U.S. taxpayers, and other stakeholders are also monitoring those efforts. We are appreciative of the input we've received from all stakeholders with respect to implementation issues that may arise as countries domestically adopt Pillar 2 legislation, including Congressional input. Informed by that input, we frequently engage in informal discussions with other countries to discuss their implementation of the Pillar 2 rules and to encourage consistency with the Model Rules.

The example you provide of the UK legislation represents a success story in terms of this process producing the desired consistency. In July of this year, the UK published draft legislation that included an amendment to its initial legislation that resolves the discrepancy and conformed to the Model Rules.

Ways and Means Committee
Tax Subcommittee Hearing on OECD Matters July 19, 2023
Question for the Record

From Rep. Scheneider

I have heard concerns from businesses that operate in my district regarding the treatment of certain U.S. tax credits under Pillar 2. Congress creates tax credits to incentivize businesses to invest in research and development, green energy, and other important practices. The treatment of nonrefundable credits as a reduction in the effective tax rate (ETR) could counteract these important incentives if the credit were to reduce a taxpayer's ETR below 15% in a given tax year. I, therefore, have the following questions for Mr. Plowgian:

1. Does Treasury believe that the current rules under Section 38 and 39 of the Internal Revenue Code allow taxpayers the flexibility to defer or slow down utilization of certain nonrefundable credits to control the impact on the taxpayer's ETR in a given tax year?

2. If not, which changes to current law would Congress need to make if it wanted to grant taxpayers the flexibility to carry forward certain nonrefundable credits rather than be forced to use or lose them in the context of a global minimum tax regime?

Thank you for raising this issue. I agree that the treatment of non-refundable tax credits, such as the U.S. R&D tax credit, are important to the United States. I also appreciate your engagement on potential ways to address this issue under current Internal Revenue Code provisions. Treasury is looking closely at solutions, both domestically and with our Inclusive Framework partners. I would be happy to discuss this issue with your further as our negotiations at the Inclusive Framework move forward.

CAROL D. MILLER
1ST DISTRICT, WEST VIRGINIA

COMMITTEE ON WAYS AND MEANS
SUBCOMMITTEE ON TRADE
SUBCOMMITTEE ON HEALTH

Congress of the United States
House of Representatives

Questions for the Record: Ways and Means Tax Subcommittee Hearing on the Biden Administration's failure to protect U.S. interests in the OECD global tax deal.

Deputy Assistant Secretary Michael Plowgian:

1. On June 8th Republican members of the Ways and Means Committee wrote a letter to Secretary Yellen expressing concerns over the German Section 49 extraterritorial tax that is being unilaterally imposed on a number of US companies. The letter requested a briefing on what engagement Treasury has had on this matter and how it plans to protect US taxpayers from it.

    a. Specifically, has Treasury approached its German counterparts on this issue, and if so – has there been any progress made with regard to having the current German interpretation of this tax being withdrawn and/or modified since it is inconsistent with Germany's efforts to advance Pillar One and Pillar Two? As pointed out in the June 8th letter, this is a brazen German revenue grab that will be partially funded by US taxpayers when foreign tax credits are claimed. What is Treasury's plan to mitigate this potential cost to US taxpayers?
    b. More generally, I am concerned that the OECD/G20 Inclusive Framework project on Pillar One and Pillar Two will not stabilize the global tax system, as advertised. The German Section 49 extraterritorial tax is just one example of a de-stabilizing action being taken by another country and targeted at US companies. Does the Treasury Department share this concern, and if so, what action will it take to ensure that the Germans withdraw and/or modify Section 49 to eliminate its impact on US businesses and taxpayers.

2. While answering Member questions during the hearing, you referenced the Joint Committee on Taxation's scenario 5, where the United States implements the Undertaxed Profit Rule, but no other countries do.
    a. Is this a scenario treasury is seriously considering to be possible? With many countries in the European Union, South Korea, and others already moving to implement Pillar 2 and the UTPR, this seems incredibly improbable.
    b. If scenario 5 is indeed unlikely, what scenario outlined in the JCT report does Treasury anticipate as most likely to occur?

3. What are the specific actions you are taking to preserve the U.S. tax base and ensure that all of the credits passed by Congress, such as the bipartisan R&D credit, are not adversely treated in computing the minimum tax in Pillar Two?

4. Beyond participating in political negotiations, what specific legal tools and strategies does the US Treasury have at its disposal today to prevent the imposition of an illegal foreign tax on US Multinational Enterprises.
    a. What plans does it have to effectively utilize those tools?
    b. What vulnerabilities does the Treasury perceive based upon the currently available tools at its disposal?
    c. What would make the Treasury more confident in its ability to successfully protect US MNEs besides participating in a political negotiation process?

5. Secretary Yellen has testified that the U.S. will advocate for Foreign-Derived Intangible Income at the OECD, in that it is not a harmful tax practice. However, Treasury's green book has included the repeal of FDII for the past two years.
    a. Will Treasury remove the proposal to repeal FDII in the next green book?

6. On the morning of our hearing, the staff at OECD held one of their periodic "Tax Talks" public briefings. They announced but provided no additional information about two new rules for Pillar 1. One is an exclusion for "national security" and the other is for "autonomous domestic business exemption".
    a. Do you have any information you can now share with Congress on these two new rules?
    b. Which committees in Congress have you consulted about these new rules?
    c. Further, especially in light of what I hope is a good rule about a national security exclusion, I would like to explore whether state owned enterprises in general are able to gain a competitive advantage over for-profit businesses through insights gained from Pillar 1 filings. Does this Administration have any concerns about American businesses being at a competitive disadvantage when operating in a country where a government-subsidized or owned business is operating?

7. In 2020, the OECD published a blueprint recognizing the need for the Inclusive Framework to co-exist with U.S. GILTI and GLoBE rules. They wrote "The Inclusive Framework recognises that an agreement on the co-existence of the GILTI and the GloBE would need to be part of the political agreement on Pillar Two."
    a. Given this blueprint, why are GILTI and GLoBE now not allowed to co-exist with the Inclusive Framework?
    b. Is treasury currently working with the OECD to grandfather GILTI, like they did to address issues with transferable credits?

Anne Gordon:

1. Ms. Gordon, following-up on my question at the hearing, can you please detail some of the technical issues the business community is concerned about in the Pillar Two regime?

Adam Michel:

1. In your written testimony, you discussed the negative impact the OECD Two Pillar proposal will have on investment and jobs in the United States. Can you elaborate on the specific impact this proposal will have on investment, and job creation, in the United States by foreign-headquartered manufacturing firms?

CAROL D. MILLER
1st District, West Virginia

COMMITTEE ON WAYS AND MEANS
Subcommittee on Trade
Subcommittee on Health

Congress of the United States
House of Representatives

Questions for the Record: Ways and Means Tax Subcommittee Hearing on the Biden Administration's failure to protect U.S. interests in the OECD global tax deal.

Adam Michel:

1. In your written testimony, you discussed the negative impact the OECD Two Pillar proposal will have on investment and jobs in the United States. Can you elaborate on the specific impact this proposal will have on investment, and job creation, in the United States by foreign-headquartered manufacturing firms?

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MILLER.HOUSE.GOV

Adam Michel QFR W&M July 19, 2023

Widespread adoption of Pillar Two outside of the United States is projected to increase the effective tax rate on U.S. multinationals by about 2.6 percentage points. The tax rate on foreign income rises by 4.5 percentage points, and the domestic income tax rate increases by 1.4 percentage points. These higher tax rates are estimated to reduce U.S. jobs by about 370,000 (a 1.5 percentage point reduction) and cut annual investment by roughly $22 billion (a 2.4 percentage point reduction). The estimates show that job and investment reductions could be as high as 5 percentage points, representing a significant risk to the American economy. An earlier estimate of Pillar 2 found that some of the most affected industries could include nonmetallic mineral manufacturing, petroleum and coal manufacturing, and computer and electronic manufacturing. Industries that rely on non-refundable tax credits, such as the R&D credit, are also likely to see larger effective tax increases.

NATIONAL FOREIGN TRADE COUNCIL
QUESTIONS FOR THE RECORD for ANNE GORDON
THE HOUSE COMMITTEE ON WAYS AND MEANS
SUBCOMMITTEE ON TAX
HEARING
ON
BIDEN'S GLOBAL TAX SURRENDER HARMS
AMERICAN WORKERS AND OUR ECONOMY

August 23, 2023

Question:

Ms. Gordon, following up on my question at the hearing, can you please detail some of the technical issues the business community is concerned about in the Pillar Two regime?

Response:

Congresswoman Miller, thank you for your question. NFTC, along with many other business groups, have provided formal and informal input on Pillar Two since its inception. The Pillar Two rules are extremely complex. Much of that complexity has arisen as a result of the process by which Pillar Two has been developed and is being implemented. Pillar Two was developed through a centralized process at the OECD, with limited opportunity for feedback from stakeholders or accountability from domestic political processes. That centralized work at the OECD resulted in a set of Model Rules that were released in December 2021 and "agreed" at that time by participating countries. To be effective, however, these rules must be implemented into the domestic law of participating countries. Following the release of the Model Rules and throughout the implementation process, numerous technical and administrative issues have arisen. But, these issues are difficult to resolve because the Model Rules are set. As the rules are implemented into domestic law and begin to be administered by numerous tax authorities around the world, it will be even more difficult to address new issues in an effective way.

Our members have a broad range of concerns about the technical details of the proposal, administrability, compliance burden and ability to relieve double taxation.

Technical GloBE Rules

The Global Anti-Base Erosion Rules ("GloBE rules") consist of a series of interlocking rules intended to impose a "top-up" tax on low-taxed income sufficient to increase the tax on financial statement income to the global minimum rate. In order to simplify and minimize technical issues, NFTC has suggested that the GloBE rules should be simplified, especially with respect to operations that are subject to high rates of tax. The short-term safe harbors provided to date, such as the jurisdictional safe harbor based on country-by-country reporting (CBCr) data, is a good example of needed simplification and should be extended permanently (either at the current rate or a lower rate to align with the Pillar Two rate). This would eliminate the need to compile and report every group's detailed calculations for each entity in each jurisdiction in which it operates. Therefore, tax authorities and taxpayers would save significant time and effort in preparing and reviewing GloBE calculations for entities which are subject to high rates of tax and, therefore, which are unlikely to have a Pillar Two top-up tax liability. The policy objective of reducing the compliance burden on MNEs should not be time limited, and the CBCr safe harbor provides relief from significant compliance burdens for jurisdictions that are highly unlikely to have a top-up tax.

Similarly, countries have agreed to treat the U.S. GILTI rules as a "blended CFC regime" and have agreed to a simplified methodology for allocating GILTI taxes to the income to which they relate for purposes of determining whether additional top-up tax applies. These rules make sense and ensure that foreign top-up tax is not imposed on income that is already subject to U.S. tax. However, these rules apply only on a short-term basis, and it is not clear how the U.S. GILTI system (and the U.S. multinationals subject to that system) will be treated in the long term.

More fundamentally, clarification is still needed on several issues, such as:

- The process (or processes) for determining whether a tax is "qualified" as a QDMTT or IIR regime, including mechanics on the review process, who is involved in the process, and the mechanisms under which the outcomes of the process will be imposed on other countries. The GloBE rules can operate effectively only if all countries imposing such rules have a common view as to whether the tax regime imposed by any particular country is a QDMTT, an IIR, or neither. It is not clear how this necessary feature of the system will work in practice.
- The treatment of tax credits, including nonrefundable tax credits prevalent under U.S. law, under these regimes. The purpose of the GloBE rules is to address low-taxed income, not tax incentives, that are designed to implement non-tax policies such as promoting R&D or low-income housing.
- The treatment of other incentives, such as bonus depreciation, under these regimes.
- The interaction between GloBE taxes and the U.S. foreign tax credit rules.
- The interaction between the GloBE rules and general domestic tax provisions, including anti-abuse rules.
- The treatment of consolidated groups, including when entities leave and enter the group.
- Treatment of entities under common stock control that are not on a consolidated financial statement.
- The interaction and rules for flow-though, hybrid and disregarded entities, especially in relation to the treatment under U.S. tax law.
- The mechanics and dispute resolution for allocating the UTPR between jurisdictions where neither a QDMTT nor an IIR applies.
- Who is permitted to request the dispute resolution - only a country through their tax authority/competent authority or also taxpayers.
- The interaction of payments made under Pillar One for purposes of the minimum taxes in Pillar Two.

Global Information Return ("GIR")

The OECD has developed the GIR to help countries administer the GloBE rules. NFTC has suggested steps to streamline the GIR to reduce administrative and compliance burdens. For instance, there are several elections in the GIR related to the reporting of various aspects of financial statement income and tax expense. NFTC suggests that once an MNE makes an election (e.g., an election to use stock-based compensation tax expense), only the elected data should be reported in GIR. The current rules for safe harbors allow third-party countries to challenge an MNE's use of a safe harbor and requires the MNE to provide supporting details within six months of the request. This provision essentially permits extraneous audits and increases compliance burdens. Additionally, the current GIR requires detailed reporting of a taxpayer's corporate structure, which is not relevant to the determination of top-up tax, and which would be unduly burdensome. The return should be simplified and reduced only to the data points strictly required to ascertain tax liabilities under GloBE. Requiring extraneous information can produce a data overload as well as an increased risk of inadvertent disclosure.

As currently envisioned, the GIR appears to require the reporting of uncertain tax positions in a manner that would be contrary and detrimental to financial accounting policies designed to encourage recognition of tax exposures and tax authority policies and practices concerning tax accruals for financial statement purposes (e.g., the U.S. Internal Revenue Service's "policy of restraint" concerning tax accrual workpapers). Additional disclosure of uncertain tax positions could also lead to jurisdictions requesting information not relevant to the Pillar Two calculation. The disclosure requirements for GloBE returns should be narrowly tailored for Pillar Two purposes without mandating that extraneous information be disclosed.

Double Taxation & Dispute Resolution Concerns

NFTC has also advocated for the system to provide certainty, and that strong dispute resolution mechanisms are essential to that goal. The key design of any dispute resolution mechanisms must be to ensure that the GloBE rules do not result in double taxation or other inconsistent treatment (or, even worse; triple, quadruple, etc., taxation of the same income by multiple jurisdictions). The application of the UTPR, in particular, presents the potential for many jurisdictions to apply top-up tax to the same income, including income to which they have no connection. As each jurisdiction will have its own understanding of the relevant facts, its own relevant law, and motivations, there is a significant potential for multiple assessments. There is no current mechanism to resolve disputes under the GloBE rules.

Any dispute resolution mechanism must not only bring each of the affected jurisdictions to the table for discussion but must contain a binding resolution mechanism for all parties to ensure a single tax is levied on any particular item of income (unless a UTPR applies, in which case the binding resolution is necessary to ensure that the multiple levies in the aggregate do not exceed the top-up tax owed). Non-binding multilateral Mutual Agreement Procedure ("MAP") is unlikely to be effective as there could be too many parties to reach a pragmatic agreement. Failure to mitigate double taxation or other inconsistent treatment will result in taxpayers considering whether continued operations in certain jurisdictions remain economically feasible and increases the likelihood of trade disputes between jurisdictions.

PUBLIC SUBMISSIONS FOR THE RECORD

Congress Can Curtail Executive Overreach by Codifying Procedures for International Accords

Kurt Couchman

Senior Fellow in Fiscal Policy, Americans for Prosperity

Submission for the Record

For the hearing "Biden's Global Tax Surrender Harms American Workers and Our Economy"

Subcommittee on Tax Policy of the House Committee on Ways and Means

July 19, 2023

Dear Chairman Smith, Chairman Kelly, Ranking Member Neal, and Ranking Member Thompson:

Thank you for the opportunity to submit comments for the record related to the hearing of the Subcommittee on Tax Policy of the Committee on Ways and Means entitled "Biden's Global Tax Surrender Harms American Workers and Our Economy" held on July 19, 2023.

The Biden administration's coordination with the Organisation for Economic Co-operation and Development (OECD) to increase taxes on U.S.-based enterprises appears to be an attempt to usurp Congress' revenue-raising powers. The Defending American Jobs and Investment Act by Chairman Smith and the Unfair Tax Prevention Act by Representative Estes[ii] with strong support from their colleagues are important signals that members of Congress oppose this executive overreach.

Unfortunately, President Biden is unlikely to sign such legislation into law. Nor would a sufficient number of his co-partisans be likely to assist in a veto override, if it came to that, particularly on a now-polarized policy.

Presidential overreach is common in international affairs

President Biden is hardly the first president to encroach on Congress' proper roles in international affairs.

President Trump, acting through Secretary Pompeo, abrogated the American commitment to the Intermediate-Range Nuclear Forces treaty with Russia over that country's violations. It was the correct policy, to be sure, but it was a unilateral executive decision. President Trump also leveraged a credible threat to withdraw from NAFTA to force Congress to approve the USMCA despite misgivings among many legislators. Fears that President Trump would withdraw from NATO inspired numerous measures to block withdrawal without the approval of Congress, most recently in July 2023 legislation by a dozen senators led by Senators Kaine and Rubio.[iii]

Many thought that President Obama's Joint Comprehensive Plan of Action with respect to Iran should have been in the form of a treaty. His administration pretended, however, that it was merely an executive agreement, which empowered his successor to scrap the deal unilaterally as well. As legislative director to a House member at the time, I wrote a messaging bill stating that the JCPOA couldn't go into effect until the Senate approved it as a treaty. It went nowhere.

Unilateral presidential action in foreign affairs has become normal. In part, this reflects Supreme Court doctrine to refrain from inserting itself in such matters. In *Goldwater v. Carter* (1979), the Supreme Court declined to rule on the proper balance of powers. The suit challenged President Carter's withdrawal from a 1954 defense treaty with Taiwan after U.S. diplomatic recognition shifted to the People's Republic of China.

The Federal District Court relied on this precedent when dismissing *Kucinich v. Bush* (2003) over the latter's withdrawal from the Anti-Ballistic Missile Treaty. With only constitutional provisions as their guides, the justices lacked solid ground for a judicial decision, and they properly chose not to usurp legislative powers themselves.

Granted, the Senate often adopts resolutions when ratifying treaties. From a legal perspective, however, these resolutions are equivalent to senses of the Senate. They do not constitute the "supreme Law of the Land" that applies to the Constitution, to statutes, and to Senate-approved treaties.

Outcomes could be different under a proper statutory framework, however.

Systemic problems require systemic solutions

Current congressional efforts to push back on President Biden's overreach with a complicit OECD respond directly to the threatened actions. Nearly every president, however, seems to come out ahead when challenging Congress.

Perhaps a structural reform to the balance of powers is needed. Congress has all the tools it needs.

Among the powers that the Constitution grants Congress in Article I, Section 8, are "To lay and collect Taxes," "To regulate Commerce with foreign Nations," and "To define and punish Piracies and Felonies committed on the high Seas, and Offenses against the Law of Nations." To convert those principles into rules of governance, clause 18 empowers Congress "To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States or in any Department or Officer thereof. Article II, Section 2, constrains the President's power "to make Treaties" with the proviso that "two thirds of the Senators present concur."

In other words, the necessary and proper clause gives Congress the explicit power to develop statutory frameworks to give life to the principles stated in the Constitution.[iv] As long as implementing legislation doesn't conflict with the Constitution, the Supreme Court would have a foundation to help Congress check executive overreach.

Designing implementing legislation for international accords

The House Committee on Ways and Means and the Senate Committee on Finance would share jurisdiction with the House Committee on Foreign Affairs and the Senate Committee on Foreign Relations for any such legislation. The former committees have already developed requirements for congressional-executive agreements such as trade agreements and therefore have institutional expertise in drafting and overseeing executive branch compliance with those standards. The latter would likely have primary jurisdiction for the overall package.

The first step is definitions. What exactly are treaties, congressional-executive agreements, and executive agreements, and how do they differ from each other?

The next question is how America enters into agreements. Treaties are clear from the Constitution: two-thirds of senators must approve the executive-negotiated treaty. Congressional-executive agreements require majorities in both houses. Executive agreements, properly defined, may not include Congress other than an appropriate level of oversight.[v]

Exiting, abrogating, or denouncing international accords is entirely unclear so far in statute. Congress can – and does – enact legislation that is inconsistent with America's international agreements, but counterparties don't always have a forum to challenge those actions.

Admittedly, members of Congress often approve legislation without being aware of possible conflicts with treaties and other agreements. Many may value such information, whether it comes from the Congressional Research Service, the committees of jurisdiction, the State Department, or another entity.

A rule-of-law approach would give Congress authority to end U.S. participation in treaties and congressional-executive agreements but perhaps not executive agreements. If a majority of Congress can pass laws that are inconsistent with treaties, a majority of senators is likely appropriate to end participation in a treaty, and a majority of both houses would suffice for a congressional-executive agreement. While a high threshold of senators makes sense before the American people have legal obligations to other countries, a small minority of senators should not be able to maintain bonds that have outlived their value.

It is no objection to observe that treaties and other agreements do not specify the parties' internal mechanisms for approval or disapproval. Every country is different, and each can change its internal procedures. Implementing legislation would simply clarify by statute which U.S. entities have authority within our political system.

Naturally, executive branch officials who overstep their authorities should face sanctions for attempting to usurp the laws. The legislation would need to include punishments on culpable individuals distinct from the possibility of reversal by the Supreme Court.

Finally, the United States has made extensive commitments on a wide variety of topics with a broad range of counterparties throughout the world. The 2020 edition of the State Departments' *Treaties in Force* report simply lists them by counterparty and separately by topic. It is 570 pages long.[vi] A process for regularly reviewing and making recommendations to executive branch negotiators and to Congress would be valuable.

Implementing legislation for international accords would strengthen Congress

The benefits to Congress and to our democracy from legislation codifying roles and responsibilities in agreements with other sovereigns would be profound. No longer could the executive branch impose or rescind legal obligations on the American people without the consent of their representatives in Congress. Congress would be subject to far less leverage by ambitious presidents seeking to make a mark unilaterally.

Presidents would have to negotiate with Congress. Congress would have more freedom to deliberate how best to serve the American people in this dynamic world.

President Biden's collusion with the OECD is merely the latest iteration of executive overreach in the conduct of foreign affairs. It is, of course, particularly appalling that an American president would conspire to help other countries impose tax hikes on American enterprises. Yet without a statutory basis, Congress cannot hope to challenge such actions in the judicial branch and would remain feckless in the face of repeated offenses.

Congress has the latent power to fix the system, rebalance our constitutional order toward Congress as the federal government's premier policymaking body, and restore our democratic ideals. Congress can do this by developing and enacting legislation to govern interbranch relations for international accords.

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[i] House Ways and Means Committee, "Ways and Means Republicans Introduce Bill to Combat Biden's Global Tax Surrender," https://waysandmeans.house.gov/ways-and-means-republicans-introduce-bill-to-combat-bidens-global-tax-surrender/, May 25, 2023.
[ii] House Ways and Means Committee, "Rep. Estes Introduces Legislation to Protect Americans from Unfair Taxes in Global Tax Pact," https://waysandmeans.house.gov/rep-estes-introduces-legislation-to-protect-americans-from-unfair-taxes-in-global-tax-pact/, July 18, 2023.
[iii] Sen. Tim Kaine, "Kaine & Rubio Introduce Bipartisan Bill to Prevent Any U.S. President from Leaving NATO," https://www.kaine.senate.gov/press-releases/kaine-and-rubio-introduce-bipartisan-bill-to-prevent-any-us-president-from-leaving-nato, July 12, 2023.
[iv] Kurt Couchman, "No presidential power is beyond Congress," *The Hill*, https://thehill.com/opinion/white-house/369379-no-presidential-power-is-beyond-congress/, January 17, 2018.
[v] Curtis A. Bradley, Jack Goldsmith, and Oona A. Hathaway, "Congress Mandates Sweeping Transparency Reforms for International Agreements," JustSecurity.org, https://www.justsecurity.org/84443/congress-mandates-sweeping-transparency-reforms-for-international-agreements/, December 23, 2022.
[vi] U.S. Department of State, *Treaties in Force 2020*," https://www.state.gov/treaties-in-force/, 2020.

Comments for the Record for the
U.S. House of Representatives
Committee on Ways and Means
Subcommittee on Tax
Biden's Global Tax Surrender Harms
American Workers and Our Economy
Wednesday, July 19, 2023, at 2:00 PM

Michael Bindner
Center for Fiscal Equity

Chairman Kelly and Ranking Member Thompson, thank you for the opportunity to address this issue. The premise of this hearing is correct, although it may take some time for you to embrace the alternative. We are available to meet with you and your staff to provide a full briefing and answer any questions you will have. If the Fair Tax were to ever pass, what we propose is how it would have to look to be more than a talking point for fundraising.

As we commented to the full committee regarding trade policy, Congress has recently passed corporate minimum taxes to come into compliance with the OECD's agreement on this subject. The President's budget includes further proposals in this area. I am no fan of corporate income taxation when value added taxes (both GST/Invoice VAT and Subtraction VAT) are available.

We are in total agreement - and then some. Not only should the global minimum capital gains tax be repealed, corporate income taxes as a whole should be abolished and a two stage Fair Tax enacted in its place. Please see our first attachment on consumption taxes.

Our OECD trading partners provide more generous subsidies to their workers, funded in part from their corporate and value added taxes. We propose channeling a Fair Tax style subsidy through two taxes, a (credit) invoice value added tax (turning the deduction for sales taxes paid into a full credit - which is essential the difference between a VAT and income tax based collections) and a subtraction value added tax to channel subsidies for health care and the child tax credit through employers rather than the Social Security Administration (as proposed for the Fair Tax).

Our second attachment, concerning trade, specifies that invoice VAT payments be zero rated at the border (and fully burdened at import), while subtraction VAT payments not be - because these payments benefit families, and therefore final consumers. To make these employer provided subsidies zero rated discourages their use by firms with high exports.

Such a rule should be universal so that U.S. workers are not put at a disadvantage - both due to inadequate pay and unfair price competition. Such unfair competition occurs whenever an OECD nation funds its family and health care subsidies using VAT collections. Standardization does not diminish sovereignty - it simply regularizes trade and does not dictate rates.

Our proposal for an **Asset Value Added Tax** will require international cooperation, however. Please see the third attachment. Part of trade is moving money around - including financial assets. An asset VAT as a replacement for capital gains and inheritance taxes must go farther than the border. It is too easy to shift to offshore stock exchanges where such taxes do not exist. International agreements on rates and enforcement structures are vital for such a tax to work.

The model for negotiating the CMT on a multi-national basis can be used for this effort, however it should be by treaty, not agreement, and the rate structure needs to be tighter. Again, please see the second attachment, which has been recently updated.

Taxation of dividends will be included in surtaxes to the Subtraction VAT for payments over $85,000 in taxes plus dividends in a given year, however individual filing for wage. dividend and interest income under $425,000 will not be required. Again, the capital gains tax will be abolished.

Small dollar dividend payments will not be taxed, although they will be reported so that the very wealthy do not use diversification for tax avoidance. Low dollar dividends are already taxed through the subtraction VAT base rate (which is mostly returned to employees). Having a great many diversified investments in order to avoid what would be a small tax on dividends received would cost more in brokerage fees than the taxes being avoided.

Dividend payments to employee retirement accounts would be taxed as higher incomes, but there would be no taxation of such accounts on the other end, just as Roth IRAs are not taxed.

Thank you, again, for the opportunity to add our comments to the debate. Please contact us if we can be of any assistance or contribute direct testimony.

Consumption Taxes

Subtraction Value-Added Tax (S-VAT). Corporate income taxes and collection of business and farm income taxes will be replaced by this tax, which is an employer paid Net Business Receipts Tax. S-VAT is a vehicle for tax benefits, including

- Health insurance or direct care, including veterans' health care for non-battlefield injuries and long term care.
-
- Employer paid educational costs in lieu of taxes are provided as either employee-directed contributions to the public or private unionized school of their choice or direct tuition payments for employee children or for workers (including ESL and remedial skills). Wages will be paid to students to meet opportunity costs.
-
- Most importantly, a refundable child tax credit at median income levels (with inflation adjustments) distributed with pay.

Subsistence level benefits force the poor into servile labor. Wages and benefits must be high enough to provide justice and human dignity. This allows the ending of state administered subsidy programs and discourages abortions, and as such enactment must be scored as a must pass in voting rankings by pro-life organizations (and feminist organizations as well). To assure child subsidies are distributed, S-VAT will not be border adjustable.

Invoice Value-Added Tax (I-VAT). Border adjustable taxes will appear on purchase invoices. The rate varies according to what is being financed. If Medicare for All does not contain offsets for employers who fund their own medical personnel or for personal retirement accounts, both of which would otherwise be funded by an S-VAT, then they would be funded by the I-VAT to take advantage of border adjustability.

I-VAT forces everyone, from the working poor to the beneficiaries of inherited wealth, to pay taxes and share in the cost of government. As part of enactment, gross wages will be reduced to take into account the shift to S-VAT and I-VAT, however net income will be increased by the same percentage as the I-VAT. Inherited assets will be taxed under A-VAT when sold. Any inherited cash, or funds borrowed against the value of shares, will face the I-VAT when sold or the A-VAT if invested.

I-VAT will fund domestic discretionary spending, equal dollar employer OASI contributions, and non-nuclear, non-deployed military spending, possibly on a regional basis. Regional I-VAT would both require a constitutional amendment to change the requirement that all excises be national and to discourage unnecessary spending, especially when allocated for electoral reasons rather than program needs. The latter could also be funded by the asset VAT (decreasing the rate by from 19.25% to 13%).

Attachment – Trade Policy

Consumption taxes could have a big impact on workers, industry and consumers. Enacting an I-VAT is far superior to a tariff. The more government costs are loaded onto an I-VAT the better.

If the employer portion of Old Age and Survivors Insurance, as well as all of disability and hospital insurance are decoupled from income and credited equally and personal retirement accounts are not used, there is no reason not to load them onto an I-VAT. This tax is zero rated at export and fully burdens imports.

Seen another way, to not put as much taxation into VAT as possible is to enact an unconstitutional export tax. Adopting an I-VAT is superior to it's weak sister, the Destination Based Cash Flow Tax that was contemplated for inclusion in the TCJA. It would have run afoul of WTO rules on taxing corporate income. I-VAT, which taxes both labor and profit, does not.

The second tax applicable to trade is a Subtraction VAT or S-VAT. This tax is designed to benefit the families of workers through direct subsidies, such as an enlarged child tax credit, or indirect subsidies used by employers to provide health insurance or tuition reimbursement, even including direct medical care and elementary school tuition. As such, S-VAT cannot be border adjustable. Doing so would take away needed family benefits. As such, it is really part of compensation. While we could run all compensation through the public sector.

The S-VAT could have a huge impact on long term trade policy, probably much more than trade treaties, if one of the deductions from the tax is purchase of employer voting stock (in equal dollar amounts for each worker). Over a fairly short period of time, much of American industry, if not employee-owned outright (and there are other policies to accelerate this, like ESOP conversion) will give workers enough of a share to greatly impact wages, management hiring and compensation and dealing with overseas subsidiaries and the supply chain – as well as impacting certain legal provisions that limit the fiduciary impact of management decision to improving short-term profitability (at least that is the excuse managers give for not privileging job retention).

Employee-owners will find it in their own interest to give their overseas subsidiaries and their supply chain's employees the same deal that they get as far as employee-ownership plus an equivalent standard of living. The same pay is not necessary, currency markets will adjust once worker standards of living rise. Attachment Three further discusses employee ownership.

Over time, ownership will change the economies of the nations we trade with, as working in employee-owned companies will become the market preference and force other firms to adopt similar policies (in much the same way that, even without a tax benefit for purchasing stock, employee-owned companies that become more democratic or even more socialistic, will force all other employers to adopt similar measures to compete for the best workers and professionals).

In the long run, trade will no longer be an issue. Internal company dynamics will replace the need for trade agreements as capitalists lose the ability to pit the interest of one nation's workers against the others. This approach is also the most effective way to deal with the advance of robotics. If the workers own the robots, wages are swapped for profits with the profits going where they will enhance consumption without such devices as a guaranteed income.

Asset VAT - The President's Fiscal Year 2023 Budget, June 7, 2022

There are two debates in tax policy: how we tax salaries and how we tax assets (returns, gains and inheritances). Shoving too much into the Personal Income Tax mainly benefits the wealthy because it subsidizes losses by allowing investors to not pay tax on higher salaries with malice aforethought.

Asset Value-Added Tax (A-VAT) is a replacement for capital gains taxes and the estate tax. It will apply to asset sales, exercised options, inherited and gifted assets and the profits from short sales. Tax payments for option exercises, IPOs, inherited, gifted and donated assets will be marked to market, with prior tax payments for that asset eliminated so that the seller gets no benefit from them. In this perspective, it is the owner's increase in value that is taxed.

As with any sale of liquid or real assets, sales to a qualified broad-based Employee Stock Ownership Plan will be tax free. This change would be counted as a tax cut, giving investors in public stock who make such sales the same tax benefit as those who sell private stock.

The repeal of capital gains taxes in the United States will lead to their repeal worldwide. If Asset Value Added Taxes are adopted, the rate should be negotiated so that investors who are able do not market shop for the lowest rate. The recent OECD compact on minimum rates is an example of how tax cooperation on capital can work for other types of asset taxation.

This tax will end Tax Gap issues owed by high income individuals. The base 20% capital gains tax has been in place for decades. The current 23.8% rate includes the ACA-SM surtax), while the Biden proposal accepted by Senator Sinema is 28.8%. Our proposed Subtraction VAT would eliminate the 3.8% surtax. This would leave a 25% rate in place.

Settling on a bipartisan 22.5% rate (give or take 0.5%) should be bipartisan and carried over from the capital gains tax to the asset VAT.A single rate also stops gaming forms of ownership. Lower rates are not as regressive as they seem. Only the wealthy have capital gains in any significant amount. The de facto rate for everyone else is zero.

With tax subsidies for families shifted to an employer-based subtraction VAT, and creation of an asset VAT, taxes on salaries could be filed by employers without most employees having to file an individual return. It is time to TAX TRANSACTIONS, NOT PEOPLE!

The tax rate on capital gains is seen as unfair because it is lower than the rate for labor. This is technically true, however it is only the richest taxpayers who face a marginal rate problem. For most households, the marginal rate for wages is less than that for capital gains. Higher income workers are, as the saying goes, crying all the way to the bank.

In late 2017, tax rates for corporations and pass-through income were reduced, generally, to capital gains and capital income levels. This is only fair and may or may not be just. The field of battle has narrowed between the parties. The current marginal and capital rates are seeking a center point. It is almost as if the recent tax law was based on negotiations, even as arguments flared publicly. Of course, that would never happen in Washington. Never, ever.

Compromise on rates makes compromise on form possible. If the Affordable Care Act non-wage tax provisions are repealed, a rate of 26% is a good stopping point for pass-through, corporate, capital gains and capital income.

A single rate also makes conversion from self-reporting to automatic collection through an asset value added tax levied at point of sale or distribution possible. This would be both just and fair, although absolute fairness is absolute unfairness to tax lawyers because there would be little room to argue about what is due and when.

Ending the machinery of self-reporting also puts an end to the Quixotic campaign to enact a wealth tax. To replace revenue loss due to the ending of the personal income tax (for all but the wealthiest workers and celebrities), enact a Goods and Services Tax. A GST is inescapable. Those escapees who are of most concern are not waiters or those who receive refundable tax subsidies. It is those who use tax loopholes and borrowing against their paper wealth to avoid paying taxes.

For example, if an unnamed billionaire or billionaires borrow against their wealth to go into space, creating such assets would be taxable under a GST or an asset VAT. When the Masters of the Universe on Wall Street borrow against their assets to avoid taxation, having to pay a consumption tax on their spending ends the tax advantage of gaming the system.

This also applies to inheritors. No “Death Tax” is necessary beyond marking the sale of inherited assets to market value (with sales to qualified ESOPs tax free). Those who inherit large cash fortunes will pay the GST when they spend the money or Asset VAT when they invest it. No special estate tax is required and no life insurance policy or retirement account inheritance rules will be of any use in tax avoidance.

Tax avoidance is a myth sold by insurance and investment brokers. In reality, explicit and implicit value added taxes are already in force. Individuals and firms that collect retail sales taxes receive a rebate for taxes paid in their federal income taxes. This is an intergovernmental VAT. Tax withheld by employers for the income and payroll taxes of their labor force is an implicit VAT. A goods and services tax simply makes these taxes visible.

Should the tax reform proposed here pass, there is no need for an IRS to exist, save to do data matching integrity. States and the Customs Service would collect credit invoice taxes, states would collect subtraction VAT, the SEC would collect the asset VAT and the Bureau of the Public Debt would collect income taxes or sell tax-prepayment bonds.

Contact Sheet

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Committee on Ways and Means
Subcommittee on Tax
Biden's Global Tax Surrender Harms American Workers and Our Economy
Wednesday, July 19, 2023, at 2:00 PM

All submissions must include a list of all clients, persons and/or organizations on whose behalf the witness appears:

This testimony is not submitted on behalf of any client, person or organization other than the Center itself, which is so far unfunded by any donations.

U.S. Chamber of Commerce

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July 25, 2023

The Honorable Mike Kelly Chairman Committee on Ways and Means Subcommittee on Tax Policy U.S. House of Representatives Washington, D.C. 20515	The Honorable Mike Thompson Ranking Member Committee on Ways and Means Subcommittee on Tax Policy U.S. House of Representatives Washington, D.C. 20515

Re: Tax Subcommittee Hearing: "Biden's Global Tax Surrender Harms American Workers and Our Economy"

Dear Chairman Kelly and Ranking Member Thompson:

The U.S. Chamber of Commerce commends the Subcommittee on Tax Policy for convening last week's timely hearing on the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting's global tax reform negotiations. In October 2021, the United States and 139 other countries approved an agreement on a "two-pillar solution" to address the tax challenges arising from the digitalization of the economy. The result was a high-level, multilateral pact to devise a new means of allocating certain income of large multinational corporations (Pillar One) and coordinate the implementation of a new global minimum tax (Pillar Two). As the details of this agreement have emerged, however, it has become clear that global implementation of Pillar Two would both impair the competitiveness of U.S.-based multinationals and erode U.S. corporate tax revenues.

Prejudicial Treatment of Nonrefundable Tax Credits

As the Chamber and others have repeatedly warned, a global minimum tax based on the Pillar Two (GloBE) model rules would hinder the competitiveness of U.S. companies in global markets and subject them to unmitigated double taxation of U.S.-source income by foreign governments. Repeated concerns have been raised about the more favorable treatment granted to refundable tax credits than nonrefundable tax credits under the model rules, even though U.S. business tax credits are traditionally nonrefundable. In this regard, the model rules would directly contravene well-established, bipartisan public policy to responsibly incent domestic research and development activity through nonrefundable tax credits.

OECD and Treasury Department officials have said that the GloBE model rules cannot be changed, but recent developments prove otherwise. Administrative guidance released by the OECD in February created a new special rule for "Qualified Flow-through Tax Benefits" to accommodate the use of tax equity structures relevant to U.S. low-income housing credits and legacy renewable energy credits. And a second package of administrative guidance released just this week establishes a brand new category of tax credits eligible for favorable treatment under the model rules, "Marketable Transferable Tax Credits," to account for the size and scale of transferable credits arising under the Inflation Reduction Act of 2022. The United States must seize the opportunity demonstrated by these recent changes to renegotiate the treatment of nonrefundable, nontransferable U.S. tax credits under the GloBE model rules.

Detrimental Effect on U.S. Tax Revenues

Another untenable outcome of the Pillar Two negotiations for the United States involves the treatment of our global intangible low-taxed income (GILTI) regime—the prototypical global minimum tax. Despite initial intimations by OECD and Treasury officials that GILTI would be respected as a qualifying income inclusion rule (IIR) under Pillar Two, the administrative guidance released in February provided otherwise. That guidance also established an ordering rule whereby a source country's qualified domestic minimum top-up tax (QDMTT) takes priority over any U.S. GILTI taxes allocated thereto for Pillar Two purposes. As a result, the administrative guidance effectively permits—indeed, encourages—every other country to enact a QDMTT and collectively "soak up" the U.S. GILTI tax base. In other words, the United States effectively negotiated an arrangement to indirectly subsidize foreign tax receipts. The only way to avoid this result under the current rules would be to deny U.S. taxpayers foreign tax credits for their QDMTT liabilities, which would subject many to unmitigated double taxation—an equally untenable result.

A congressional inquiry into how and why the administration would have negotiated such a conspicuously unfavorable deal for U.S. taxpayers and the U.S. fisc is entirely appropriate. With more than 50 countries now in various stages of implementing Pillar Two, however, time is of the essence to mitigate Pillar Two's harshest impacts on U.S. interests. We therefore call on Congress and the Biden administration to prioritize meaningful, constructive reengagement in a concerted effort to address these critical issues and ensure America's economic competitiveness.

Sincerely,

W. M. McLeish

Watson M. McLeish
Senior Vice President, Tax Policy
U.S. Chamber of Commerce

cc: Members of the Subcommittee on Tax Policy, House Committee on Ways and Means