Comments of

National Taxpayers Union

to the

OECD Centre for Tax Policy and Administration

Regarding the Public Consultation Document for the

Report on the Pillar One Blueprint and Report on the Pillar Two Blueprints

December 14, 2020

Dear Director Saint-Amans and Distinguished Members of the Centre for Tax Policy and Administration:

On behalf of National Taxpayers Union's (NTU) supporters across the United States and around the world, I am honored to submit these comments regarding the Public Consultation Document you have issued in connection with the Reports on the Pillar One and Pillar Two Blueprints for a multilateral tax framework designed to address global digitalization issues. I wish to acknowledge here the major contributions to these comments from my colleagues Joseph Bishop-Henchman, Vice President of Policy & Litigation at NTU Foundation, and Bryan Riley, Director of the Free Trade Initiative at NTU Foundation.

I. Introduction – The Taxpayers' Stake.

Since its founding in the year 1969, NTU has taken a major interest in tax policy beyond U.S. borders. We have keenly followed the evolution of the Base Erosion and Profit Shifting (BEPS) initiative, its subsequent relaunch as "BEPS 2.0," and its development into the larger Pillar One and Pillar Two projects we now have before us today. Throughout this process, NTU has urged OECD to hew closely to the laudable goals in Article 1 of its 1960 Convention, which include:

- "[T]o achieve the highest sustainable economic growth and employment and a rising standard of living in Member countries, while maintaining financial stability, and thus to contribute to the development of the world economy;" and
- "[T]o contribute to the expansion of world trade on a multilateral, non-discriminatory basis in accordance with international obligations."

At the same time, we have urged policymakers from the OECD member country of the United States ensure that the Organisation is not distracted by parochial aims that may yield short-term revenue advantages, but ultimately harm rising standards of living everywhere. NTU has expressed increasing concern over unilateral decisions among individual OECD member countries as well as other states to impose "Digital Services Taxes" (DSTs) that have contravened many of the long-accepted taxation maxims of nexus, situs, business profit, and income allocation. Nearly three years ago, when the European Commission was being urged by a few of its member countries to enact a DST covering the Eurozone, we wrote:

> Creating a set of tax rules that is ungrounded in solid principles, complex in its implementation, and discriminatory in its application should be troubling to all taxpayers, wherever they reside. Slapping a special tax on vaguely defined financial flows, targeting companies based on worldwide revenue, and conjuring up a new definition of physical presence for tax purposes are all hallmarks of an arbitrary approach that violates sound tax administration and threatens to raise tensions among countries that should be engaging in mutually beneficial commerce. If these ill-advised policies can be inflicted upon any group of taxpayers, no one is safe.[1]

At that time, we advised EC to heed OECD's words of caution against such a scheme, noting the Organisation's warnings that "it would be difficult, if not impossible, to ring-fence the digital economy from the rest of the economy" and that "the tax issues raised by digitalisation are technically complex." These warnings remain prescient today.

Among taxpayer advocacy organisations around the world, we are in wide company expressing such concerns. In 1988, NTU joined with 18 entities from several continents to form Taxpayers Associations International, which later became World Taxpayers Associations (WTA).[2] While we wish to make clear that these comments do not represent the official consensus view of WTA, several of WTA's 60-plus member organisations have expressed serious reservations not only over the concepts of unilateral DSTs but also over multilateral approaches that focus on revenues first and simplicity and certainty last. For example, the Taxpayers Association of Europe asked in a June 2020 analysis:

> How should a digital tax be structured? Globally, EU-wide or national individualistically? Is a tax that is only tied to revenue even fair? How can an unequal taxation of digital and non-digital enterprises be prevented in a digital tax-system? How can it be ensured that … the principle of equivalence, the insurance principle, the principle of efficiency, the "ability-to-pay" principle, and the neutrality of taxation rulings continue to be in effect? A digital tax as it is currently conceived by the European Commission does not meet these requirements towards a modern tax system that is fair for all …[3]

If Pillars One and Two are to avoid the traps outlined above, significant revisions to the current proposals will be necessary. Striking an appropriate balance between harmonization and competition, between flexibility and certainty, and between simplicity and specificity, are all difficult tasks. Yet they are all the more vital as the world attempts to recover from the COVID-19 pandemic. Leading off discussions from the perspective of raising up to $100 billion in new revenues to fund government initiatives would be a mistake, one that would unravel much of the progress OECD has attempted to achieve in establishing more resilient principles of international taxation. It is our hope that the following recommendations, from the general to the specific, can guide future, necessary discussions on how to move forward productively.

II. Avoiding Unilateralism Is Laudable; Designing Multilateralism Requires Care (pertains to Consultation Document, Pillar One Sections I and XII, and Pillar Two Section I).

OECD has noted the damage that would result from more unilateral digital services taxes. In the absence of a consensus agreement, the likely result would be a proliferation of unilateral DSTs, generating unilateral retaliatory measures. OECD calculates that as a worst-case scenario, global GDP could decline by more than 1 percent. NTU shares this alarm.

In many cases DSTs are essentially tariffs on foreign services. OECD has noted other deficiencies, including:

- DSTs are a tax on revenues rather than profits.
- DSTs could lead to positive tax liabilities for money-losing firms.
- DSTs could result in double taxation.
- DSTs are more distortive than profit-based taxes, and they lead to higher prices, lower quantities, and less investment in the affected sectors.

Efforts to find a consensus resolution to this issue reflect U.S. objectives for digital trade that are laid out in the "Bipartisan Congressional Trade Priorities and Accountability Act of 2015." These objectives include ensuring that governments refrain from implementing trade-related measures that impede digital trade, and that measures affecting digital trade are nondiscriminatory.[4]

Nonetheless, *hasty* action should not be a substitute for *expeditious* action. Implementation of Pillar One or Pillar Two of the evolving tax framework, merely for the sake of "having a solution" that happens to raise revenues at the same time, would be ill-considered. There are many issues besides DSTs involved in these Pillars, but DST is a key component. At a minimum, the OECD should pursue a solution that includes a multilateral consensus against the imposition of discriminatory digital services taxes or other extraterritorial taxes.

While OECD has correctly assessed the dangers of unilateral action and trade wars, its policy framework, especially regarding sourcing and nexus, could make some of the same mistakes impose some of the same costs on the world economy associated with unilateral action and trade wars.

Furthermore, trade agreements are, by their nature, both cooperative and competitive. They are generally designed to facilitate commerce by removing artificial trade barriers, thereby allowing each participating nation's businesses to form cooperative arrangements with those outside national borders. Consumer welfare among all participating countries is enhanced. At the same time, the reduction in barriers allows each country's existing or potential business advantages to develop more organically. Healthy economic competition is enhanced as well.

A flawed tax agreement that creates greater barriers for some firms over others – whether by type, income levels, sales amounts, or lines of commerce – could, ironically, shift the "playing field" back toward uncooperative, uncompetitive trade policies, as nations whose industries are hardest-hit by higher taxes seek to compensate for losses in economic growth.

In this spirit, the implementation of any multilateral tax framework must be consensus-based as well, even more so than any modern trade agreement (e.g., under WTO) would be fashioned.[5] It would be an unfortunate and telling situation indeed, if a Pillar One and Two or other multinational tax agreement required only a certain majority of OECD embers or the larger body of 135 nations cooperating on this project to trigger any new rules – especially those precipitating tax increases.

NTU also believes that a precondition for ratification of any framework must abolish existing and ban future unilateral, national-level taxes aimed at the issues Pillars One and Two purport to address. We wholeheartedly agree with the U.S. Chamber of Commerce's position that the list of such "relevant, unilateral measures" must be expansive, to include not only DSTs, but also "DPTs, ORT, MAALs, equalization levies, and other similar levies."[6] Each nation should be required to certify its compliance with this directive by eliminating specifically identified levies within their control.

III. Heed the Lessons Learned – and Experience Earned – from Other Cross-Border Tax Interactions (pertains to Consultation Document, Pillar One Sections III, IV, and VII, Pillar Two Sections III and IX).

Taxes intended to import tax revenues and export tax burdens result in administrative confusion, complexity, and harm to economic growth. The experience of U.S. states is instructive for OECD's policymakers.

The U.S. Constitution contains many restrictions on state taxation of interstate commerce that were adopted following the negative experience of the Articles of Confederation period (1781-1789). In that time, U.S. states imposed trade barriers against each other, taxes on interstate commerce and out-of-state commerce, and other measures "destructive to the harmony of the States, and fatal to their commercial interests abroad."[7] Consequently, the federal government was given the power to restrict state laws that discriminate against or unduly burden interstate commerce.

To be permissible, a state tax on interstate commerce must satisfy a four-part test: the tax (1) must be applied to an activity with a substantial nexus with the taxing state; (2) must be fairly apportioned; (3) must not discriminate against interstate commerce; and (4) must be fairly related to the services provided by the state.[8] State laws that discriminate against interstate commerce are virtually *per se* invalid, while state laws that purport to regulate even-handedly can be held invalid if the burden imposed on such commerce is clearly excessive in relation to the putative local benefits.[9]

One general rule is that taxes on out-of-state activity that leave similar in-state activity untaxed are unconstitutional. States have tried essentially every variety of taxing or burdening out-of-state actors to produce a direct or indirect benefit for in-state actors, only to fall afoul of this rule.[10] A second general rule is that state taxes which tax beyond their fair share of interstate commerce are unconstitutional, with fair share measured by an "internal consistency" test that determines if tax burdens would be duplicative if every state adopted the tax in question.[11]

These restrictions on state taxation, while not perfect, have enabled the United States to "avoid the tendencies toward economic Balkanization," *Wayfair*, 138 S.Ct. at 2089, and "create an area of free trade among the several States," *Boston Stock Exch.*, 429 U.S. at 328. Additionally, Congress has enacted legislation to ban outright state taxation of certain areas most susceptible to tax exporting that are harmful to the free flow of interstate commerce. The Internet Tax Freedom

Act (ITFA), for instance, prohibits states from imposing taxes on Internet access or taxes on electronic transactions that are not also imposed on similar offline transactions. *See* P.L. 105-277, codified at 47 U.S.C. § 151 note. Under ITFA, a court analyzes whether a tax that is owed by a digital company would be different from those faced by a non-digital company engaged in similar non-digital transactions.

One major gap in the uniformity of state tax administration is state-by-state definition of nexus standards and apportionment formulas, and permitting business taxes to be imposed for reasons other than property or payroll present in the jurisdiction. A 1960s congressional commission, the Willis Commission, recommended a uniform state income tax base and an evenly weighted property-and-payroll apportionment formula, but its recommendations were not adopted. As an example of the complexity this imposes on multistate businesses, Bloomberg Tax's annual hefty volume, *Survey of State Tax Departments* (now over 500 pages), consists of state tax departments explaining what sorts of activities will result in being subject to tax within a state. States provide a variety of bewildering and mostly inconsistent rules for when activity creates a tax obligation, and experts generally concede that this variety and lack of specificity creates excessive administrative and compliance burdens and no national benefit. Generally, the costs of tax compliance are much more considerable than many think.[12]

With respect to nexus standards based on hazy economic presence standards, taxpayers are often "left to guess" as states use these areas to "secure new cross-border taxing power for themselves," with predictions of "[m]y kids and their kids and their kids all will be litigating these cases until we get something more discernible."[13]

The OECD should avoid repeating these errors. Individual governments have enormous incentive to distort nexus and sourcing standards to benefit themselves at the expense of the international economy, as the United States experienced long ago and continues to experience as states attempt (but are generally blocked from) enactment of such beggar-thy-neighbor tax and regulatory burdens. Where U.S. states have been free to pursue such enactments on interstate and international commerce without congressional or court restraints, including permitting business taxes to be imposed for reasons other than property or payroll present in the jurisdiction, the result has been a confusing and excessive administration and compliance burden.

IV. Focus on Simplification and Certainty First (pertains to Consultation Document, Pillar One Sections II, V, VII, VIII, XI, and XII and Pillar Two Sections II, V, and X).

No international tax framework can function with simplicity and certainty for long if it is designed with the overriding goal of merely raising additional revenues. Over time, the urge to "trap" various forms of income, sales, and cross-border business activity for tax purposes will invariably lead to more arcane, complex laws and rulemakings that trigger heavier compliance burdens for taxpayers and heavier administrative burdens for governments.

For more than two decades, NTU and its research arm have published an annual analysis of compliance and complexity in the U.S. tax system that examines factors such as the number of hours spent on paperwork burdens, length of tax returns, out-of-pocket costs, and other measurements. Our studies have consistently shown that all U.S. federal business income tax returns account for about twice as many paperwork burden hours as all federal individual income tax returns. When accounting for the amount of revenue raised by those returns, the ratio of "effort" per USD tax dollar generated (businesses vs. individuals) easily rises to five to one – or, depending upon how one defines "business income," much more.[14] The difference is even more pronounced when one considers that the number of individual income taxpayers far exceeds the number of business and corporate taxpayers. The resulting losses in money, time, and productivity exact immense opportunity costs, likely amounting to hundreds of billions of dollars worldwide.[15]

In NTU's opinion, a major reason why both individual and business taxpayers face these daunting compliance burdens is that tax officials sometimes design revenue collection systems for the convenience of government rather than for those who must pay government's bills. Instead of recognizing how people and businesses structure their financial lives and design tax laws around it, policymakers are tempted to create through legislation or regulation a form of economic reality that exists only "on paper," or its electronic equivalent. This, ironically, is a charge that tax officials often level at multinational companies they accuse of creating "stateless income."

OECD must resist this temptation if its leadership on behalf of cooperative solutions to major tax issues is to serve all nations and their taxpayers. In a December 8 article for *Bloomberg Daily Tax Report* Jeff VanderWolk, a Partner at Squire Patton Boggs, astutely captured at least two recent policy tendencies that could, if not moderated and channeled elsewhere, would undermine certainty in the tax system and massively boost complexity:

> The OECD, which for decades has encouraged not only its member countries but all countries worldwide to use its model tax treaty, embodying the permanent establishment concept and the arm's-length principle, carried out the Base Erosion and Profit Shifting (BEPS) project (2013-2015) to address the perceived ability of multinational businesses to engage in aggressive tax planning and thereby report a disproportionate amount of profit in tax haven jurisdictions. The BEPS project's recommendations included measures aimed at broadening the permanent establishment concept and strengthening the arm's-length pricing guidelines, particularly for transactions involving intellectual property.
>
> Since 2018 the OECD has been leading a project … that is aimed at radically changing international tax norms by abandoning both the permanent establishment requirement and the arm's-length principle, in certain circumstances.[16]

The arm's-length quandary alone raises serious questions about how some of the Blueprints' proposals would function. But Pillars One and Two, as currently drafted, elicit other questions over complexity and certainty. Resolving them will require a great deal of additional energy and commitment. A few of our recommendations follow.

A. Limit the Number of Taxpayers Subject to the New Regime

For example, several observers have called for an in-scope revenue test for Amount A of both a specified euro-level and a minimum percentage of a business's total revenue. This could at least limit the problem of "accidental taxpayers" whose particular business circumstances in a given year might cause them to face a daunting compliance task.

De minimis thresholds for a variety of provisions, including nexus, sourcing, and the GloBE tax base calculation, should also be cemented into any final rules. In our experience, such thresholds in U.S. or international law are rarely set at a sufficiently high initial level. Nor are they adequately adjusted over time to prevent what has been called "bracket creep" in income tax systems – an increasing number of taxpayers falling into more burdensome tax circumstances as initial thresholds erode in real value.[17] The rules must include a mandatory annual adjustment mechanism for all thresholds and tests based on monetary amounts. The formulas employed for the adjustment could be pegged to various composite indices of prices, incomes, or other suitable indicators, again embedded in the rules themselves.

B. Respect Progress that Has Already Been Made

Arguably the most technically challenging part of drafting the U.S. Tax Cuts and Jobs Act of 2017 surrounded its international minimum tax provisions, embodied in part by the Global Intangible Low-Tax Income (GILTI) regime. U.S. Treasury representatives have long contended[18] that unilateral actions from European Union, OECD, or other nations would be counterproductive in addressing whatever concerns foreign tax officials had expressed about U.S. multinational companies not paying their "fair share" of taxes around the world. Indeed, it could be cogently argued that GILTI, having established a new minimum corporate tax, was designed to quell other nations' fears of "stateless income" going "untaxed".

GILTI regulations, finalized only recently, provide a more than sufficient basis for qualification under Pillar Two's even more complex GloBE rules. Requiring any entity already subject under GILTI to perform a separate set of compliance exercises under GloBE would be economically inefficient for businesses and their customers, as well as fiscally unproductive for governments.

The Blueprints clearly struggled with how to integrate provisions affecting minimum tax burdens a company might have to pay in its base country (the so-called income inclusion rule) versus the difference between the effective and minimum rate in other countries where that firm has subsidiaries (the so-called under-taxed payment rule). Integrating these rules is key to avoiding situations that would amount to double taxation of the same income – a huge challenge not only for tax administrators but more so for taxpayers. NTU believes that a taxpayer complying under GILTI (assuming it is qualifying under GloBE) has already wrestled with this challenge, and arrangements where MNEs make payments to foreign subsidiaries should not be faced with the exhausting task of grappling with UTPR dictates as well. This is also the case with UTPR on ultimate parent entities, whose taxation level is properly determined by the sovereign nation in which they reside.

U.S. policymakers have had to address somewhat similar quandaries in designing GILTI rules as OECD has had for GloBE. The results have hardly been ideal for GILTI, which will likely bring years more of private letter rulings and litigation before they are regarded as a stable component of tax administration. Although GILTI was intended to apply only to multinational companies paying foreign tax of less than 13.125 percent and "eliminate the tax bias for locating high-return income in low-tax jurisdictions,"[19] unintended interactions with pre-existing tax rules led to "some companies facing relatively high foreign taxes ow[ing] GILTI."[20] New regulations to fix that gap took two years to finalize and added complexity to tax calculations. Inherent complexity has also materialized when calculating GILTI with consolidated tax groups, with net operating losses, and for state taxation (where 24 states have decoupled from GILTI, 14 states have a deduction that applies to GILTI, and 6 states have taxed 50 percent or more of GILTI).[21] U.S. companies are spending countless hours and dollars complying with this set of rules, which are nonetheless less onerous than a country-by-country or entity-by-entity approach. Such complications, along with others,[22] should serve as a cautionary tale to those who believe OECD's exercise will provide any further clarity to the international tax picture. They recommend extreme circumspection with GloBE's design and application.

C. Recognize Business Structure Realities

The Pillar One, Amount A proposal has been the subject of painstaking deliberations over how businesses participating in markets through affiliates, unaffiliated parties, or other means should be required to allocate profits and be subject to new taxes. Attempts in the blueprint to create high reallocation percentages for certain sectors of business, or profit escalators, or allocating Amount A liabilities on top of withholding taxes on intellectual property already paid to jurisdictions, do not reflect a proper understanding of how and why businesses structure their operations in certain ways. They do so because of owner and shareholder preferences, market conditions, competitors' strategies, and of economic efficiency. As noted above, the more ardor with which tax authorities attempt to build artificial tax fences around economic sectors or components of businesses within a sector, the greater the complexity in tax rules that will result. With this complexity will come a plethora of entity-level disputes over how those rules apply. If OECD is to proceed with Pillar One, Amount A, it must be made less discriminatory, less intricate, and more accountable to dispute resolution (see below).

The same is the case with Pillar One's apparent dissatisfaction with the sufficiency of audited global or segmented financial statements for certain reporting and tax calculation purposes. Instead, OECD seeks a more artificial form of segmentation in specific situations that it attempts to define in the Blueprints. The number of hours in additional paperwork this could require from multinational taxpayers could easily run into the millions annually.

Second-guessing the longstanding, global standards-based accounting methods for compiling audited financial statements does not provide the basis for trust or certainty that taxpayers will need to have from any workable international tax structure. Segmentation should flow naturally from each individual taxpayer's economic and business situation, observing all transparency laws and standards, on an elective basis.

Additionally, OECD contends that for some multinational taxpayers to avoid being caught up in Pillar One's new nexus rules (and to satisfy one part of the revenue sourcing look-through rule), they will need to reconsider some of their commercial arrangements with unrelated parties. Look-through rules can be extremely critical for businesses to avoid being overtaxed,[23] but in this instance, they serve an opposite, and undesirable, end.

D. Establish a Permanent Simplification Process

While serving on the Congressionally appointed National Commission on Restructuring the Internal Revenue Service (NCIRS), NTU and its fellow panel members recommended that the U.S. legislative branch develop a framework for considering "tax simplification legislation through a regular process that is methodical, thoughtful, and that includes time for public debate, deliberations, and input from taxpayers and the [tax agency]. … To ensure that this process includes taxpayers, Congress might consider establishing a commission of individuals that would develop recommendations that would be included in this debate."[24]

During the NCIRS's field hearings, many members of the private-sector tax community were willing to volunteer substantial time and energy to make suggestions for simplification. A simplification panel, meeting once every two or four years, would harness this volunteer activity and give a broad group of individuals much more incentive to work for the adoption of simplification rules.

OECD should establish a permanent process, perhaps overseen via a new Taxpayer Advocate Directorate (see below), to conduct this vital exercise. Although many models from around the world are available to be adapted for such a purpose, one from the U.S. standpoint is the Internal Revenue Service Advisory Council, which has served as "an organized public forum for discussion of relevant tax administration issues between Internal Revenue Service officials and representatives of the public."[25] Another would be the Taxpayer Advocacy Panel (TAP) structure. TAP is a body of citizen-volunteers first constituted in 2002 with the following function: "to identify tax issues of importance to taxpayers and to provide a taxpayer perspective to the IRS on key programs, products, and services."[26]

Tax simplification must be a systematic, ongoing effort; a staffed OECD office with this mission, complemented by private sector volunteers, would ensure this priority receives the attention it deserves.

This section of our comments prompts a basic question: can the global economy truly afford the "double hit" of significantly higher taxes and higher compliance costs, especially as it attempts to recover from the COVID-19 pandemic? The answer should be evident to all, and its attendant solutions foremost in the minds of OECD's planners.

V. Design Dispute Resolution Procedures and Taxpayer Protections with Forethought, Not as an Afterthought (pertains to Consultation Document, Pillar One Sections VII, IX, and XII, and Pillar Two Sections V and X).

There are several laudable tools within OECD's Blueprints to provide new levels of dispute resolution over certain tax matters, especially over Amount A. These include the multi-stage early certainty process for avoiding audits, backed by mandatory arbitration, and more robust information-sharing. Yet, other parts of the Blueprints, including Amount B dispute resolution mechanisms, largely remain an open question. Overall, any international tax framework risks becoming swamped in disputes without the most advanced mechanisms possible. In NTU's opinion, this area of the Blueprints must be substantially strengthened if it is to prove adequate to the task of protecting taxpayers from everyday administrative problems that will inevitably proliferate under any multinational tax agreement.

OECD's Forum on Tax Administration has admirably aggregated information from tax authorities around the world that could help answer to the purpose of providing adequate dispute resolution mechanisms, as well as safeguards for taxpayers that would enhance confidence and compliance for any international tax framework that is eventually built. These protections should not be considered as mere ornaments to such a tax structure, but rather integral to its foundation and long-term integrity. Clearly, vigorous judicial mechanisms that offer taxpayers quick access, unbiased rules of evidence, and the ability to seek injunctions, not just damages after the fact, will be vital. Here, however, we wish to offer NTU's perspective on additional U.S. and international approaches *below* the judicial level that could offer the best promise of success.

A. Create a Taxpayer Advocate Directorate

In 1988, NTU led a coalition of citizen groups that successfully pressured the U.S. government to enact a "Bill of Rights" providing certain procedural guarantees to taxpayers. Through successive legislation and administrative experience, the Office of the National Taxpayer Advocate of the Internal Revenue Service has become an institution that has dramatically improved the ability of taxpayers to obtain relief from bureaucratic maladministration of the tax system.[27] The same has occurred before and since in other nations. Regardless of the direction any future multinational tax policy may take, OECD should create a Taxpayer Advocate Directorate.

Such a Directorate would, at minimum, need the following resources to succeed:

- Leadership and employees who are statutorily independent of the Centre for Tax Policy and Administration and other executive, legislative, or judicial authorities;
- Independent legal counsel capable of filing supporting briefs or testifying on behalf of taxpayers' rights during judicial or administrative proceedings;
- Staff capable of analyzing the taxpayer rights implications of any technical proposals to implement the tax framework;
- The capacity to regularly identify, investigate, and report on the most serious problems facing taxpayers and make public recommendations for executive and legislative action;
- A permanent budget funded by any revenues generated from the framework; and
- The ability to issue the equivalent of binding "Taxpayer Assistance Orders" that would freeze any enforcement action when a taxpayer has suffered or is about to suffer significant hardship due to administration of tax laws. In practice, this power has been used sparingly by the U.S. Taxpayer Advocate, but it serves as a useful tool for prompting dispute resolution between taxpayers and tax authorities.

How could this Directorate be constituted? A governance structure, consisting of taxpayer advocates from many nations, would be a helpful starting point. One way to begin building that structure would be through the International Conference on Taxpayer Rights, initiated by then-U.S. Taxpayer Advocate Nina Olson and now administered through a nonprofit organisation.[28] This conference serves as a forum for public- and private-sector individuals and entities to converse over the latest best practices in the areas of tax administration, compliance, and taxpayer protection. Two conferences in Greece and South Africa are planned for 2021. OECD could take steps now to tap this wealth of expertise for establishing a Directorate.

To some, a Taxpayer Advocate Directorate may seem superfluous, given the resources that many large enterprises might have to defend themselves from abusive tax practices. This argument fails to recognize that the power of just one state's tax agency – let alone dozens – can well exceed any business's capacity to successfully protest an unjust act of administration. In any case, hundreds of thousands, if not millions, of SMEs would be indirectly but palpably impacted by OECD's Blueprints.

Further, some may contend that this recommendation is technically too difficult to implement, given the plethora of authorities that a Taxpayer Advocate Directorate would need to oversee, and perhaps even override. Yet, these are precisely the same objections one could raise operationally over Pillars One and Two as they are currently constituted. Any sweeping change to the conventions of international taxation requires an equally sweeping change to how leaders view – and respect – the rights of taxpayers.

B. Provide Independent, "Fast Track" Administrative Appeals

The prospect of multiple audits, enforcement actions, tax claims, and court-of-law proceedings under differing systems of administration and adjudication would be highly detrimental to any tax framework purporting to provide harmonization of laws. For large multinational companies, the daunting costs of such actions could cut into more valuable pursuits such as R&D, or even precipitate a pullback from global markets and lead to the economic stagnation that OECD seeks to avoid. For SMEs in the global supply chain, those costs would be positively untenable, leading to unjust outcomes or bankruptcies. Therefore, developing more robust administrative appeal processes now are critical.

At both the federal and state levels, the U.S. has experienced both advances and setbacks in creating tax appeal options below the judiciary. For example, the 1998 IRS Restructuring and Reform Act, which originated from a Commission's recommendations that NTU helped to shape, called for an administrative audit appeals process to allow taxpayers a fair and independent re-appraisal of tax examination results. Unfortunately, this legislative intention did not initially succeed in practice. Through legislation known as the Taxpayer First Act of 2019, the U.S. federal tax authority was ordered to create a new Independent Office of Appeals to fulfill the vision of the 1998 law.[29] Features that should be of note to OECD include:

- A "Chief of Appeals" would oversee the operation, elevating the office in the IRS hierarchy;
- Appeals were statutorily recognized as available to all taxpayers except under extremely limited circumstances;
- The Internal Revenue Service is required to furnish a taxpayer with written notice of why their appeal was denied, which a taxpayer may protest;
- Taxpayers may access nonprivileged communications in their administrative files with the tax agency prior to an appeal hearing; and
- "To the extent practicable" any tax agency lawyers advising the Appeals Department should not be the same lawyers involved in the original tax dispute.

NTU has expressed reservations that several of these provisions lack sufficient definition and weight in the law. Furthermore, these procedures are generally not available for large business taxpayers. Nonetheless, these are some useful initial guidelines for OECD. Some additional helpful parameters may be found in proposed U.S. legislation known as the Small Business Taxpayer Bill of Rights (S 2689). These include strengthening safeguards against taxpayer abuses, such as a ban on ex parte communications between case employees and appeals officers, and a prohibition on new issues being raised during a taxpayer's appeal process.[30]

However OECD designs these new processes, they must provide some level of certainty to the taxpayer that the appeals will be heard and handled expeditiously. The appeals entities should be required to reach a decision within a specified period. Failure to do so should either raise a case to the judicial level (at government's expense) or result in a default judgment in favor of the taxpayer.

U.S. states have also gradually gained some experience with administrative appeals of tax disputes, in the form of tax tribunals. More than a decade ago, the American Bar Association promulgated model legislation providing that every taxpayer who disputes a state tax assessment has a right, prior to paying the tax, to a hearing of record before an *administrative* judge who is a tax expert and is independent of the state's revenue agency. Today, such tribunals are commonplace. There are nuances in these entities worth exploring. The Model Act stipulates that the tribunal resides in the executive branch of government, and even though they do not operate as courts, tribunals are still established as separate and distinct entities from the tax agency.[31]

The Tax Executives Institute characterized its support for tax tribunals by stating, "The most important attribute of a tax tribunal is its independence. An impartial process for resolving tax disputes is a hallmark of both equitable tax administration and a competitive business environment."[32]

Here again, these recommendations are technically challenging to implement, but certainly less so than the tax policy elements in the Blueprints OECD has proffered.

C. Design Alternative Dispute Resolution Forums, Including Mandatory Ones

Although the mechanisms above would be helpful in avoiding expensive, protracted litigation in courts of law, an even more straightforward machinery can be constructed for efficiently working through technical tax matters that OECD has recognized in one way or another at several points of the Blueprints: alternative dispute resolution (ADR). Defining ADR is often the most difficult task. It may take entirely different meanings, and mechanisms, for example, to succeed for Amount A versus Amount B, and still others for additional provisions of the Blueprints. Providing these various forms of ADR in a tax framework that could encompass 135 nations is a huge undertaking. Still, other nations have fine-tuned their systems to provide useful guidance for how OECD might approach this multi-faceted problem:[33]

- Prior to a tax court case, Australian law subjects both the tax authority and the taxpayer to a mandatory requirement that they report on "genuine steps" taken to avoid litigation. As a result, ADR is more prominent in the dispute process.
- New Zealand's experience has received considerable evaluation from scholars there. In 2013 Melinda Jone at the University of Canterbury examined the country's tax dispute resolution structure, for which reforms such as mediation were being considered. In conducting both qualitative surveys and focus group interviews of practitioners, Jone and her colleague determined that "the most important aspect of the defined proposed regime is the inclusion of a mediator who is independent of both parties and moreover, that the mediator is foremost trained and qualified in mediation as opposed to being a specialist in tax law." Granted, disputes over weighty matters such as apportionment of income or sales across borders do call for more tax-law expertise in a mediator than, for example, an SME owner's dispute over single line item on her return. However, this need for balance in mediator qualifications is worth remembering.
- In 2011 Portugal initiated an ADR process for certain tax cases falling below prescribed amounts. If a given dispute meets those qualifications, revenue authorities are bound to engage in arbitration if the taxpayer requests it. An arbitration tribunal is empaneled that

normally consists of the taxpayer's nominee, the government's nominee, and a third member agreed to by these two nominees. Qualification requirements for the nominees may apply in disputes of larger amounts, and generally arbitration results cannot be subject to another level of appeal.

- In the United Kingdom, Her Majesty's Revenue and Customs has been building experience with mediation-style ADR since making the option widely available in late 2013. Initial results have shown that roughly 4 in 5 cases for mediation among businesses were resolved; more than 4.5 million taxpayers in what are called "small and medium enterprises" are eligible for this form of ADR, and most have seen resolutions to their cases within 120 days. Considering that simply obtaining a hearing through the UK's First Tier Tax Tribunal entailed an average wait of nearly four times as long, this is a vast improvement. Even when ADR fails at its immediate task of a resolving a case, it can still perform a constructive purpose by sharpening issues under contention when they are litigated.[34]

SMEs and larger enterprises have their differences in structure and operation, but the experiences listed here are but a few illustrations of why providing expedited ADR is so relevant to OECD's policymaking now.

We would be remiss in failing to mention another example: the ADR program created in the year 1996 by the U.S.-based Multistate Tax Commission (MTC, a multistate agency) and the Council on State Taxation (COST, a business NGO). This forum, according to MTC's website, has the mission of:

- Providing a voluntary, cooperative means of resolving state tax controversies involving two or more states;
- Reducing costs and risks of litigation for both the public and private sectors; and
- Providing a means of addressing the multistate character of the controversy so that the interstate issues can be resolved among the relevant parties consistently.[35]

This ADR model, which offers both mediation and arbitration, could assist with the inevitable issues that would arise in multitudes under the OECD's Blueprints (though would certainly need to be made binding and mandatory in double-taxation cases). Notably it is not housed within any tax authority's jurisdiction. In NTU's opinion, its success strongly depends upon this quality. As Roxanne Bland wrote in September 2019 for *Tax Notes State*:

> The importance of public and private sector cooperation in developing voluntary programs like ADR cannot be overstated. For a program like ADR to work, the parties, whether from the public or private sector, must have trust and confidence in the voluntary dispute resolution process.[36]

NTU would contend that such trust and confidence will be less difficult to establish if options such as ADR are fully planned and constituted *in advance* of any multinational framework's implementation. Again, a binding, mandatory dispute resolution process should be part of the advance planning for certain questions such as double taxation.

D. Create Transparency and Accountability in Guidance

OECD is on the right track in proposing guidance "safe harbors" for taxpayers who would be involved in this regime, but more can be done to provide certainty and stability.

Behind most statutory tax law, executive revenue rulings, and decisions from courts of law is a vast body of technical "guidance" that bureaucracies create that can be helpful for both governments and taxpayers. Unfortunately, tax authorities can abuse guidance, by employing it against unknowing taxpayers as if it carried the force of law. To address this growing problem in the United States, President Trump issued two Executive Orders in October of 2019 that applied to numerous federal agencies.[37] Among their provisions:

- All agency guidance documents must be catalogued and provided in a central online location for the public to examine and access. A periodic review process by agencies must occur to ensure that all guidance is updated.
- Agencies must avoid "unfair surprise" in taking administrative actions with legal consequences, effectively prohibiting the use of informal technical guidance (as opposed to laws or formal regulations) for enforcement. This is especially true for informal guidance employed to "reinterpret" past regulatory enforcement policy.
- In most cases, regulated parties must have the right to be heard regarding an agency's factual or legal determinations before an enforcement action takes place.

Under any international tax framework, OECD and its partners must consider ahead of time how a system of subregulatory guidance will be made as transparent and accountable as possible, with appropriate safeguards against this body of guidance becoming a pretense for arbitrary and capricious enforcement. The United States Office of Management and Budget, which was charged with directing agencies on implementation of the executive orders described above, could be a useful source for consultation in this regard.

To reiterate, the recommendations above would, to one degree or another, be advisable for any framework for tax cooperation that OECD and other nations might eventually agree to develop. In fact, some of them, such as an ADR process resembling what MTC and COST have created in the U.S., could even replace elements of more draconian proposals for sourcing or allocation that will ultimately be an awkward fit for the many business models that firms around the world have built.

VI. Conclusion – Major Work Ahead.

In the year 2014, OECD issued "fundamental principles of taxation" in a project entitled "Addressing the Tax Challenges of the Digital Economy." Those principles were:

- Neutrality: Taxation should seek to be neutral and equitable between forms of business activities.
- Efficiency: Compliance costs to business and administration costs for governments should be minimised as far as possible.
- Certainty and simplicity: Tax rules should be clear and simple to understand, so that taxpayers know where they stand.

- Effectiveness and fairness: Taxation should produce the right amount of tax at the right time, while avoiding both double taxation and unintentional non-taxation.
- Flexibility: Taxation systems should be flexible and dynamic enough to ensure they keep pace with technological and commercial developments.[38]

OECD has major work and modifications ahead if its latest project, Pillars One and Two, is to bear the proper resemblance to those principles. The road to a sustainable and fair international tax framework must not begin with the assumption that the paving stones are made of gold, and most everything else is irrelevant. In fact, beginning the journey out of a desire to raise revenues will virtually guarantee its failure. Constructing durable, well-engineered guardrails from kilometer one is vital. So is obtaining more information on what the final destination will look like. Of course, OECD has provided revenue and investment impact estimates[39] of its proposals as they have taken shape (at a combined annual estimate for both Pillars of $100 billion). On the other hand, serious modeling must be conducted to pinpoint the long-term damage that OECD's approach could have on various areas of the economy – whether manufacturing, global finance, retail, information technology, or any other affected industry for that matter. Analysis of this type would not be impossible, but an ongoing, robust process must begin now.

The introduction to these comments noted the necessity of balance in international tax policy, between harmonization and competition, between flexibility and certainty, and between simplicity and specificity. NTU urged the Obama and Trump Administrations to embrace this precept, and we are currently urging the incoming Biden Administration to appoint negotiators who will do the same.

We are not alone in our abiding concern. As an NTU-led coalition[40] expressed more than two years ago regarding an EU-wide digital tax scheme: "In a global economy, labor, investments, and trade can flow across boundaries to the benefit of everyone, provided governments don't attempt to overtax or overregulate them." There are no truer words today for OECD's project.

NTU is grateful to the Centre for the opportunity to present these comments, and if we can provide additional information to you, we are at your service. Thank you for your consideration.

Sincerely,

Pete Sepp, President

Notes

---

[1] National Taxpayers Union News Release, "NTU Criticizes EU Digital Tax Scheme as "Ungrounded, Complex, and Discriminatory," March 21, 2018, https://www.ntu.org/publications/detail/ntu-criticizes-eu-digital-tax-scheme-as-ungrounded-complex-and-discriminatory.

[2] For additional information on World Taxpayers Associations, see www.worldtaxpayers.org.

[3] Taxpayers Association of Europe, "Digital Change and Taxation: Demands from the Viewpoint of Taxpayers," June 2020, https://www.taxpayers-europe.org/images/pdf/TAE_Short_Statment_Digitalsteuer_EN.pdf.

[4] For additional information on the relationship of digital taxes and trade policy, see Riley, Bryan, Comments to the U.S. Trade Representative, Docket Number USTR-2020-0022, Initiation of a Section 301 Investigation of Digital Services Taxes, July 15, 2020, https://www.ntu.org/foundation/detail/comments-to-the-us-trade-representative-on-digital-services-taxes.

[5] For example, while certain multilateral agreements can enter into force with the assent of a supermajority of parties, each party is generally required to affirmatively ratify its assent to and participation in the agreement. NTU believes that at the very least, all 23 OECD members and other participating countries must ratify any multilateral tax agreement before it can take force, and all those who ratify must commit to repealing and foregoing the levy of any other types of taxes relevant to the framework. Otherwise, the purpose of a collaborative agreement is negated.

[6] U.S. Chamber of Commerce, Comments on the Public Consultation Document and on the Reports on the Pillar One and Pillar Two Blueprints, December 12, 2020, https://www.uschamber.com/comment/us-chamber-comments-the-public-consultation-document-the-reports-the-pillar-one-and-pillar.

[7] *Gibbons v. Ogden*, 22 U.S. 1, 224 (1824) (Johnson, J., concurring).

[8] *See, e.g.*, *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 279 (1977).

[9] *See, e.g.*, *South Dakota v. Wayfair*, 138 S. Ct. 2080, 2091 (U.S. Jun. 21, 2018), *citing Granholm v. Heald*, 544 U.S. 460, 476 (2005) & *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970).

[10] *See, e.g.*, *Comptroller of the Treasury of Maryland v. Wynne*, 575 U.S. ____, 135 S.Ct. 1787 (2015) (invalidating Maryland's denial of a full income tax credit for out-of-state investment, where a full credit was provided for in-state investment, using the internal consistency test); *Camps Newfound/ Owatonna, Inc. v. Town of Harrison*, 520 U.S. 564 (1997) (invalidating Maine's denial of the general charitable deduction to organizations that primarily serve non-Maine residents); *West Lynn Creamery, Inc. v. Healy*, 512 U.S. 186 (1994) (invalidating a Massachusetts general tax on dairy producers where the revenue was then distributed to domestic dairy producers); *New Energy Co. v. Limbach*, 486 U.S. 269 (1988) (invalidating an Ohio tax credit to all ethanol producers but disallowed for non-Ohio producers); *Am. Trucking Assns. v. Scheiner*, 483 U.S. 266 (1987) (invalidating a Pennsylvania scheme imposing fees on all trucks while reducing other taxes for trucks in-state only); *Bacchus Imps., Ltd. v. Dias*, 468 U.S. 263 (1984) (invalidating a Hawaii tax imposed on a category of products but exempting activity in-state); *Westinghouse Elec. Co. v. Tully*, 466 U.S. 388 (1984) (invalidating a New York scheme exempting activity in-state while simultaneously imposing a tax on identical activity out-of-state); *Boston Stock Exch. v. State Tax Comm'n*, 429 U.S. 318 (1977) (invalidating a New York tax imposed solely on activity out-of-state while leaving identical activity in-state untaxed).

[11] *See, e.g.*, *Am. Trucking Assns., Inc. v. Michigan Pub. Serv. Comm'n*, 545 U.S. 429 (2005) (upholding a fee that applied only to interstate transactions, after applying the internal consistency test); *Oklahoma Tax Comm'n v. Jefferson Lines, Inc.*, 514 U.S. 175 (1995) (applying internal consistency test to determine Commerce Clause validity); *Tyler Pipe Indus. v. Dep't of Rev. of Washington*, 483 U.S. 232 (1987) (applying the internal consistency test to determine state gross receipts taxes are imposed on wholly intrastate activity); *Container Corp. v. Franchise Tax Board*, 463 U.S. 159 (1983) (applying the internal consistency test); *Moorman Mfg. Co. v. Bair*, 437 U.S. 267, 276 (1978) (upholding Iowa's single-factor apportionment rule against a challenge based on a speculative claim of duplicative taxation); *Western Live Stock v. Bureau of Revenue*, 303 U.S. 250, 256 (1938) (holding that a state's taxation of interstate business "be fairly apportioned to the commerce carried on within the taxing state"); *Underwood Typewriter Co. v. Chamberlain*, 254 U.S. 113 (1920) (upholding a single-factor property formula because the only competitive disadvantage from it would be to local businesses). *See also Nw. Airlines v. Minnesota*, 322 U.S. 292, 306 (1944) (Jackson, J., concurring) ("The apportionment theory is a mongrel one, a cross

between desire not to interfere with state taxation and desire at the same time not utterly to crush out interstate commerce. It is a practical, but rather illogical, device to prevent duplication of tax burdens . . . .").

[12] *See, e.g.*, Brady, Demian, *Tax Complexity 2020: Compliance Burdens Ease for Second Year Since Tax Reform*, National Taxpayers Union Foundation, April 2020, https://www.ntu.org/foundation/detail/tax-complexity-2020-compliance-burdens-ease-for-second-year-since-tax-reform (estimating the cost of federal tax compliance, including opportunity costs, in 2019 to be 7.854 billion hours, worth $367 billion).

[13] Statement of Andrew Moylan, National Taxpayers Union Foundation, to the U.S. House Committee on the Judiciary, "Examining the Wayfair Decision and its Ramifications for Consumers and Small Businesses," Jul. 23, 2018, https://www.ntu.org/foundation/detail/ntuf-executive-vice-president-andrew-moylan-testimony-to-house-judiciary-committee. *See also* Bishop-Henchman, Joseph, *The History of Internet Sales Taxes from 1789 to the Present Day: South Dakota v. Wayfair*, 2018 Cato Supreme Court Review 269, 291 (2018) ("Does attending a trade show or a seminar create nexus in the state hosting it? Does having one non-sales telecommuting employee in the state create nexus? Does shipping in a returnable container versus a common carrier create nexus? Does placing an internet browser cookie on someone's computer create nexus in that someone's state? Does downloading an app in a hub airport while waiting between two interstate flights create nexus in the state of that hub airport? Once established, how long does nexus last? It is not just that we have different answers for different states, but also that many states supply vague or indeterminate non-answers to many of these questions.").

[14] Brady, Demian, *Tax Complexity 2020: Compliance Burdens Ease for Second Year Since Tax Reform*, National Taxpayers Union Foundation, April 2020, https://www.ntu.org/foundation/detail/tax-complexity-2020-compliance-burdens-ease-for-second-year-since-tax-reform. The difficulty in calculating a precise ratio of paperwork burden per USD in revenue raised is due to the reporting of certain self-employment and small business income on individual returns. Nonetheless, it is clear that the administrative burden of raising federal tax dollars from businesses is much higher than from individuals.

[15] NTU Foundation's 2020 tax complexity report noted that the total annual business income tax return compliance cost in the United States alone was $177.66 billion.

[16] VanderWolk, Jeff, "The OECD/Inclusive Framework's Digitalization Project: Politics Over Policymaking," *Bloomberg Daily Tax Report*, December 8, 2020, https://www.squirepattonboggs.com/-/media/files/insights/publications/2020/12/the-oecd-inclusive-frameworks-digitalization-project-politics-over-policymaking/the-oecd-inclusive-frameworks-digitalization-project-politics-over-policymaking.pdf.

[17] Considerable research on bracket creep has been conducted in Australia, Canada, Germany, and the United States. For just one example, see Saez, Emmanuel, "The Effect of Marginal Tax Rates on Income: A Panel Study of 'Bracket Creep'," Journal of Public Economics, May 2003, 87(5-6):1231-1258, referenced at https://www.researchgate.net/publication/4921263_The_Effect_of_Marginal_Tax_Rates_on_Income_A_Panel_Study_of_%27Bracket_Creep%27.

[18] See, for example, Bulusi, Sri, "U.S. Wants U.K., France to Pause Digital Tax Plans, Harter Says," *Bloomberg Daily Tax Report*, May 10, 2019, U.S. Wants U.K., France to Pause Digital Tax Plans, Harter Says (bloombergtax.com).

[19] Callas, George and Prater, Mark, "Is GILTI Operating as Congress Intended?," *Tax Notes Federal*, January 6, 2020, at 65.

[20] Rubin, Richard, "Trump-Era Tax Rule Benefitting Some Multinationals May Get Revised Under Biden," *Wall Street Journal* December 7, 2020, https://www.wsj.com/articles/trump-era-tax-rule-benefiting-some-multinationals-may-get-revised-under-biden-11607337001; and Rubin, Richard, "New Tax on Overseas Earnings Hits Unintended Targets," *Wall Street Journal* March 26, 2018, https://www.wsj.com/articles/new-tax-on-overseas-earnings-hits-unintended-targets-1522056600.

[21] STAR Partnership, "State Conformity to Federal Tax Reform: Global Intangible Low-Taxed Income," Jan. 1, 2020, https://www.star-partners.org/issues-overview.

[22] See, for example, Kiggins, Robert, "Foreign Income Regulations Provide Some Clarity, but Issues Remain" (subscription), *Law360,* August 26, 2020, https://www.law360.com/tax-authority/articles/1303558/foreign-income-regs-provide-some-clarity-but-issues-remain.

[23] See, for example, Sepp, Pete, Letter to the U.S. Senate Finance Committee and House Ways and Means Committee, on Extending the Section 954(c)(6) Look-Through Rule, November 5, 2020, https://www.ntu.org/publications/detail/congress-should-extend-look-through-rule-to-provide-certainty-for-businesses.

[24] See "A Vision for a New IRS: Report of the National Commission on Restructuring the Internal Revenue Service," June 25, 1997,
p. 40, http://www.house.gov/natcommirs/final.htm.
[25] See Internal Revenue Service Advisory Council Renewal Charter, October 28, 2015, https://www.irs.gov/pub/irs-utl/irsac_2015_renewal_charter.pdf. IRSAC existed prior to 1998 for 45 years as the Commissioner's Advisory Group.
[26] See Internal Revenue Service, "Taxpayer Advocacy Panel: About Us," https://www.irs.gov/advocate/taxpayer-advocacy-panel.
[27] See Internal Revenue Service, "Evolution of the National Taxpayer Advocate," https://www.irs.gov/pub/tas/evolution_of_the_office_of_the_taxpayer_advocate.pdf.
[28] For additional information, visit https://taxpayer-rights.org/international-conference/.
[29] See, for example, Committee Report to Accompany H.R. 1957, Taxpayer First Act, U.S. House of Representatives, Committee on Ways and Means, April 9, 2019, H. Rept. 116-39, https://www.congress.gov/congressional-report/116th-congress/house-report/39/1?q=%7B%22search%22%3A%5B%22taxpayer+first+act%22%5D%7D&r=1&overview=closed.
[30] For additional information, see Sepp, Pete, National Taxpayers Union Letter to the Hon. John Cornyn, United States Senate, June 20, 2018, https://www.ntu.org/publications/detail/ntu-endorses-small-business-taxpayer-bill-of-rights-legislation.
[31] See Sepp, Pete, National Taxpayers Union Testimony before the Subcommittee on Oversight, Committee on Ways and Means, September 13, 2017, https://www.ntu.org/publications/detail/irs-reform-resolving-taxpayer-disputes.
[32] Ibid.
[33] For additional information on the dispute resolution process in the United States and other nations, see Sepp, Pete, National Taxpayers Union Testimony before the Subcommittee on Oversight, Committee on Ways and Means, September 13, 2017, https://www.ntu.org/publications/detail/irs-reform-resolving-taxpayer-disputes.
[34] A useful guide in regard to the UK's recent ADR procedure is entitled "Mediation of Tax Disputes" by Carl Islam Barrister, TEP, available at http://newsite.carlislam.co.uk/wp-content/uploads/2016/02/Guide-to-the-mediation-of-tax-disputes.pdf.
[35] For additional information, visit Multistate Tax Commission - Resources (mtc.gov).
[36] Bland, Roxanne, "The Multistate Tax Commission's Alternative to Litigation," *Tax Notes State*, September 2, 2019, https://www.taxnotes.com/tax-notes-today-international/multijurisdictional-taxation/multistate-tax-commissions-alternative-litigation/2019/09/04/29wkh?highlight=Multistate%20litigation%20alternative.
[37] See Executive Orders 13891 and 13892, Issued October 15, 2019, available at https://www.federalregister.gov/documents/2019/10/15/2019-22623/promoting-the-rule-of-law-through-improved-agency-guidance-documents and https://www.federalregister.gov/documents/2019/10/15/2019-22624/promoting-the-rule-of-law-through-transparency-and-fairness-in-civil-administrative-enforcement-and.
[38] OECD, "Fundamental Principles of Taxation," Addressing the Tax Challenges of the Digital Economy, 2014, https://www.oecd-ilibrary.org/docserver/9789264218789-5-en.pdf?.
[39] See, for example, Asen, Elke, "Summary of the OECD's Impact Assessment on Pillar 1 and Pillar 2," Tax Foundation, March 17, 2020, The OECD Impact Assessment on Pillar 1 and Pillar 2 | Tax Foundation.
[40] See An Open Letter to Treasury Secretary Mnuchin on the EU Digital Tax Plan, August 14, 2018, An Open Letter to Treasury Secretary Mnuchin on the EU Digital Tax Plan - Publications - National Taxpayers Union (ntu.org).