NATIONAL TAXPAYERS UNION

August 24, 2021

The Honorable Itai Grinberg
Deputy Assistant Secretary for Multilateral Tax
Office of Tax Policy, Department of the Treasury
1500 Pennsylvania Ave. NW, Room 3120
Washington, D.C. 20220

Dear Deputy Assistant Secretary Grinberg:

On behalf of National Taxpayers Union (NTU), the nation's oldest taxpayer advocacy organization, I am writing in response to your request for input on the Inclusive Framework's (IF) tentative global tax agreement.[1] NTU has been a resource on tax policy for Capitol Hill, multiple presidential administrations, and the U.S. and global tax policy communities since its founding in 1969, and we hope our views and perspectives inform the important decisions that you, your colleagues in the Biden administration, and lawmakers in Congress must make on the Inclusive Framework's Pillars One and Two negotiations in the months ahead.

While NTU appreciates the Inclusive Framework's efforts to simplify and modernize the international tax order, we remain concerned with numerous details that purportedly have been settled (and others that have not been settled) among IF members as of the July agreement that has earned the support of at least 133 countries and jurisdictions.[2] Among our top concerns are: that the U.S. will surrender significant elements of long-established domestic policymaking prerogatives if party to this agreement, that economic competitors will win concessions during the next phase of negotiations that disadvantage U.S.-based companies, that IF members are expending effort to punish U.S. companies rather than pursuing fair and effective global tax reform, that unilateral and punitive digital services taxes (DSTs) may remain in place even with a global Pillar One agreement, and that IF members have given themselves too little time to implement the deal (inviting legislative or regulatory chaos, and significant multinational taxpayer confusion, in the process).

Building on these concerns are NTU's worries about how the IF would mesh with the Biden administration's proposals to reform U.S. taxation of U.S. companies' international profits. As you know, the administration has proposed raising the domestic corporate tax rate by 33 percent, doubling the Global Intangible Low Tax Income (GILTI) rate, repealing the qualified business asset investment (QBAI) carve-out from GILTI, repealing the

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[1] Condon, Christopher. "Treasury Official Calls for Input on Details of Global Tax Deal," *Bloomberg Government*, July 21, 2021. Retrieved from: https://www.bgov.com/core/news/#!/articles/QWLZ7QDWRGGF (Accessed August 18, 2021.)
[2] Organisation for Economic Co-operation and Development (OECD). "Addressing the tax challenges arising from the digitalisation of the economy." July 2021. Retrieved from: https://www.oecd.org/tax/beps/brochure-addressing-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-july-2021.pdf (Accessed August 18, 2021.)

Foreign Derived Intangible Income (FDII) deduction without a clear replacement, and moving from a global blended GILTI rate calculation to a country-by-country calculation.[3]

Multiple independent estimates have determined that these proposals would raise taxes on U.S. companies by hundreds of billions of dollars over a 10-year window,[4] reduce the size of the nation's economy and average hourly wages over 10 years, 20 years, and 30 years,[5] increase six-fold U.S. effective tax rates (ETRs) on foreign-source income,[6] and shift potentially tens of billions of dollars in U.S. profits overseas.[7]

If the overriding goal is to simply raise as much revenue as possible to pay for new spending priorities, then it is quite possible that NTU and the administration will not see eye to eye on the international tax matters discussed here. If the administration's goal, however, is to achieve international tax reform that increases simplicity and certainty, while retaining U.S. policymakers' ability to foster economic, job, and wage growth here at home, then we believe and hope that some of our suggestions below will serve that goal.

What follows is a brief overview of NTU's engagement on the IF so far, our broad concerns with the current Pillar One and Pillar Two agreements, our broad concerns with the administration's proposals for Pillar Two-compliant international tax reform, and NTU's suggestions for a better path forward on reaching a global consensus with IF members that nonetheless protects U.S. economic and domestic tax policy interests. Should you have questions or comments on any of our research, viewpoints, or recommendations, I am at your service.

NTU's Engagement With the IF

NTU has been engaged on international tax policy issues for decades, and that engagement has extended to the Organisation for Economic Co-operation and Development (OECD) Centre for Tax Policy and Administration as the OECD guides IF negotiations over Pillars One and Two. In December 2020, NTU President Pete Sepp filed lengthy and substantive comments to the OECD regarding its Public Consultation Document for the Report on the Pillar One Blueprint and Report on the Pillar Two Blueprints.[8]

As Sepp stated in the introduction to his comments:

> "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."[9]

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[3] Department of the Treasury. "General Explanations of the Administration's Fiscal Year 2022 Revenue Proposals." May 2021. Retrieved from: https://home.treasury.gov/system/files/131/General-Explanations-FY2022.pdf (Accessed August 18, 2021.)
[4] *Ibid*.
[5] Arnon, Alex; Dinerstein, Marcos; Huntley, Jon; and Ricco, John. "President Biden's $2.7 Trillion American Jobs Plan: Budgetary and Macroeconomic Effects." University of Pennsylvania Penn Wharton Budget Model (PWBM), April 7, 2021. Retrieved from: https://budgetmodel.wharton.upenn.edu/issues/2021/4/7/president-biden-american-jobs-plan-effects (Accessed August 18, 2021.)
[6] Arnon, Alex; He, Zheli; and Sun, Xiaoyue. "Profit Shifting and the Global Minimum Tax." PWBM, July 21, 2021. Retrieved from: https://budgetmodel.wharton.upenn.edu/issues/2021/7/21/profit-shifting-and-the-global-minimum-tax (Accessed August 18, 2021.)
[7] Kallen, Cody. "Options for Reforming the Taxation of U.S. Multinationals." Tax Foundation, August 12, 2021. Retrieved from: https://taxfoundation.org/us-multinational-tax-reform-options-gilti/ (Accessed August 18, 2021.)
[8] Sepp, Pete. "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. Retrieved from: https://www.ntu.org/publications/detail/comments-to-the-oecd-centre-for-tax-policy-and-administration (Accessed August 18, 2021.)
[9] *Ibid*.

Sepp went on to detail NTU's significant concerns over countries' imposition of unilateral DSTs, the potential distortion of nexus and sourcing standards by IF members implementing Pillar One, the co-existence of GILTI and Pillar Two, and over general ongoing tax simplification and dispute resolution efforts at the OECD.

Many of NTU's concerns outlined by Sepp in December remain today, notwithstanding some questions that have been partially or fully addressed by IF members in their July agreement. While we still await ***numerous*** details that U.S. lawmakers must know and fully understand before being asked to green-light a Pillar Two-compliant regime in 2021 (and a Pillar One-compliant regime in 2022), NTU has significant feedback for the administration on the most recent Pillars One and Two agreements, along with the administration's proposals for implementing Pillar Two in the U.S. as early as beginning of tax year 2022.

NTU's Concerns With the IF Pillar One Agreement

As you know, the July Pillar One agreement signed by 133 IF members includes the following tenets:

- A new taxing right for countries that allows a country to collect a portion of the global profits of multinational companies based on the customers or users based in such a country;
- An agreement that profits for MNCs with €20 billion ($23.4 billion) or more in annual revenues may be reallocated each year, with between 20 and 30 percent of residual profits being reallocated after exempting the first 10 percent of an MNC's profits (the €20 billion/$23.4 billion threshold falls to €10 billion/$11.7 billion after seven years);
- An agreement that the taxing right extends to any country in which an MNC "derives at least 1 million euros [$1.2 million] in revenue from that jurisdiction" (€250,000/$291,000 for countries with GDP lower than €40 billion/$46.7 billion);
- A commitment that the agreement "will provide for appropriate coordination between the application of the new international tax rules and the removal of all Digital Service Taxes"; and
- An implementation timeline of less than two years, with the multilateral instrument for profit reallocation being "opened for signature" in 2022 and profit reallocation going into effect in 2023.[10]

We are aware that the administration contemplates asking Congress to implement Pillar Two in 2021, "and that it will consider the proposal to allow other countries to tax America's large multinational companies next year" in 2022.[11] While the administration continues its technical work, we wish to express several ongoing concerns with the Pillar One negotiations and with the July agreement.

1. Global policymakers are designing Pillar One to punish specific U.S. companies: The stated goals of BEPS 2.0 include reforming the international tax system to meet the challenges of a digitalizing and globalizing economy, while ensuring complexity and administrability of the new rules are kept to a minimum. Unfortunately, global negotiators' efforts to punish specific U.S. companies suggest some IF parties have more

[10] OECD. "Statement on a Two-Pillar Solution to Address the Tax Challenges Arising From the Digitalisation of the Economy." July 1 2021. Retrieved from: https://www.oecd.org/tax/beps/statement-on-a-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-july-2021.pdf (Accessed August 18, 2021.)

[11] Rappeport, Alan. "A Treasury official says an international tax deal would help make globalization work." *The New York Times*, July 21, 2021. Retrieved from: https://www.nytimes.com/live/2021/07/21/business/economy-stock-market-news#biden-globalization (Accessed August 19, 2021.)

punitive goals in mind.[12] This has been a driving force in the debate over segmentation rules under Pillar One, as some global policymakers and activists have sought to actively carve in certain U.S. companies.[13]

This is a deeply troubling way of formulating tax policy. Global negotiators should be working towards a fair, efficient, and relatively easy-to-understand system, and attempting to carve in major, successful U.S. companies that some global finance ministers may not like runs against all these principles.

We urge the administration to work diligently against IF efforts that would punish U.S. companies. It should do so in a manner that does not favor one U.S. company over other U.S. companies, but that protects ***all*** U.S. MNCs from global efforts to reallocate profits away from their productive uses in the U.S.

2. Repeal of all DSTs seems to be a global afterthought, rather than the absolute prerequisite it should be: NTU noted in its December comments to OECD 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."[14] In other words, NTU sees the repeal of punitive, unilateral digital services taxes (DSTs) as an absolute prerequisite to Pillars One or Two agreements, not as a positive and potential side effect of global tax negotiations.

We commend Secretary Yellen and the Biden administration for making clear that continued implementation of DSTs will stand in the way of a global tax agreement.[15] Unfortunately, some of the rest of the world seems content with a full-speed ahead on DST implementation—regardless of the consequences.

The European Union (EU) has delayed imposition of its digital levy, no doubt a diplomatic victory for the administration, but the EU has not yet committed to fully scrapping its DST plans.[16] More troublingly, OECD tax chief Pascal Saint-Amans recently suggested that some version of DSTs could be compliant under a global tax agreement:

> "'Countries remain sovereign. If a country wants to introduce a value-added tax on digital services, that is tax policy,' Saint-Amans said. 'If you want to introduce an excise tax on some form of transaction, as long as you have an extremely broad coverage and low rate, I don't see any contradiction with our deal.'"[17]

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[12] Mohsin, Saleha; Horobin, William; and Edgerton, Anna. "Amazon to Be Covered by Global Tax Deal Despite Thin Margins (2)." *Bloomberg Government*, June 7, 2021. Retrieved from: https://www.bgov.com/core/news/#!/articles/QUCGZZDWRGG2 (Accessed August 19, 2021.)

[13] Jolly, Jasper. "Global G7 deal may let Amazon off hook on tax, say experts." *The Guardian*, June 6, 2021. Retrieved from: https://www.theguardian.com/technology/2021/jun/06/global-g7-deal-may-let-amazon-off-hook-on-tax-say-experts (Accessed August 20, 2021.)

[14] Sepp, Pete. "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. Retrieved from: https://www.ntu.org/publications/detail/comments-to-the-oecd-centre-for-tax-policy-and-administration (Accessed August 18, 2021.)

[15] Wilhelm, Colin. "Yellen: Digital Service Taxes Endanger Prospects for Global Deal." *Bloomberg Tax*, June 16, 2021. Retrieved from: https://news.bloombergtax.com/daily-tax-report/yellen-digital-service-taxes-endanger-prospects-for-global-deal (Accessed August 19, 2021.)

[16] Rappeport, Alan. "E.U. Delays Digital Levy as Tax Talks Proceed." *The New York Times*, July 12, 2021. Retrieved from: https://www.nytimes.com/2021/07/12/us/politics/eu-digital-tax.html (Accessed August 19, 2021.)

[17] Thompson, Matt. "Not All Digital Taxes Clash With OECD Deal, Saint-Amans Says." *Law360*, August 17, 2021. Retrieved from: https://www.law360.com/tax-authority/international/articles/1413457/not-all-digital-taxes-clash-with-oecd-deal-saint-amans-says?nl_

Now is not the time for the U.S. to be complacent or irresolute on its DST repeal conditions, and indeed a global tax deal that leaves unilateral DSTs in place would likely be worse than no deal at all. We encourage the administration to stay the course on its push for full and immediate repeal of unilateral and discriminatory DSTs. We also would encourage the administration to seek clarity on any IF enforcement mechanism for the unwinding and repeal of unilateral DSTs, a major outstanding question as of this writing.

3. The proportion of global profits proposed to be redistributed is too high: Given that the U.S. is home to nearly half of the companies that could be subject to profit reallocation under Pillar One (35 of 81),[18] it is critical that Administration officials not only hold the line against calls for a greater redistribution of profits but also fight to lower the proportion of MNC global profits being redistributed under Pillar One.

As mentioned above, Pillar One envisions redistributing between 20 and 30 percent of an MNC's global profits beyond a 10-percent return. Already, additional countries are seeking greater profit reallocation, such as Argentina and the African Tax Administration Forum (emphasis ours):

> "The 20%-over-10% proposal from the G-7 'doesn't seem appealing to low income countries' that don't have significant markets, [Argentina Director of International Tax Relations Carlos] Protto said following the G-7 announcement. The discussion about those numbers is still pending, he said.
>
> Developing countries have pushed for a greater share of profits to be subject to reallocation. The African Tax Administration Forum, which works with governments from across the continent, suggested ***reallocating a multinational company's total profits***—rather than just a portion of profits above a certain margin, as the G-7 suggested—in a proposal released May 12."[19]

Given, again, that a plurality of profit reallocation under Pillar One will come from U.S. MNCs, it is paramount that the administration's negotiators stand up for U.S. companies and workers, and stand against efforts to whisk significant profits earned by U.S. companies away to other countries.

4. The foreign in-scope revenue test may be far too low: As mentioned above, the Pillar One nexus threshold is quite low, giving a country taxing rights if an MNC has as little as $1.2 million in revenue derived from that particular country. The threshold drops to just under $300,000 for dozens of low-income countries. While this does not change the total amount of profits being reallocated under Pillar One, it does significantly increase the complexity and compliance burdens for MNCs under Pillar One, requiring them to calculate nexus and quantum for potentially many more countries than they would have to calculate under a higher threshold. The Administration should give consideration to a higher standard that reduces compliance burdens for the dozens of U.S. MNCs potentially subject to Pillar One.

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pk=6eadd2c1-36b0-4d3f-b04d-0d0664bd8c17&utm_source=newsletter&utm_medium=email&utm_campaign=tax-authority/international&read_more=1 (Accessed August 19, 2021.)

[18] Nikkei Asia. "China and US home to nearly 60% of companies likely to pay global tax." July 3, 2021. Retrieved from: https://asia.nikkei.com/Economy/China-and-US-home-to-nearly-60-of-companies-likely-to-pay-global-tax (Accessed August 19, 2021.)

[19] Gottlieb, Isabel, and Ali, Hamza. "Developing Countries Seek More Benefit From Global Tax Deal (2)." *Bloomberg Tax*, June 10, 2021. Retrieved from: https://news.bloombergtax.com/daily-tax-report/global-tax-deal-leaves-developing-countries-seeking-more-benefit (Accessed August 19, 2021.)

5. Administrability of Pillar One may be an even more significant challenge than administrability under Pillar Two: While the July agreement abandons the October Blueprint's distinctions between automated digital service (ADS) businesses and consumer-facing businesses (CFB),[20] a step in the right direction for simplicity and administrability in Pillar One, NTU has several remaining concerns about how quickly, easily, and efficiently countries can implement Pillar One.

As we wrote in our December comments:

> "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.
>
> ...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…"[21]

Given the July agreement is only five pages, and many of the finer details of a Pillar One agreement have been left to the October implementation plan deadline, NTU remains concerned about complexity in Pillar One. Our top recommendation in December was to limit the number of taxpayers subject to the new regime. While eliminating the effort to distinguish between ADS and CFB is a good start, negotiators should continue to work towards October with an eye towards simplicity.

NTU's Concerns With the IF Pillar Two Agreement

As you know, the July Pillar Two agreement signed by 133 IF members includes the following tenets:

- A 15-percent global minimum effective tax rate on corporate profits;
- A domestically-established Income Inclusion Rule (IIR) that would allow a country where a multinational company (MNC) is headquartered to levy a "top-up" tax on foreign profits earned by the MNC in countries with an ETR below the 15-percent minimum;
- A domestically-established Undertaxed Payment Rule (UTPR) that serves as a backstop to the IIR and allows a country where an MNC is headquartered to deny deductions to that MNC for payments made to low-tax jurisdictions not already subject to an IIR; and

[20] OECD. "Tax Challenges Arising from Digitalisation – Report on Pillar One Blueprint." October 2020. Retrieved from: https://www.oecd.org/tax/beps/tax-challenges-arising-from-digitalisation-report-on-pillar-one-blueprint.pdf (Accessed August 19, 2021.)

[21] Sepp, Pete. "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. Retrieved from: https://www.ntu.org/publications/detail/comments-to-the-oecd-centre-for-tax-policy-and-administration (Accessed August 18, 2021.)

- A treaty-based Subject to Tax Rule (STTR) that would, in certain circumstances, allow developing countries expanded taxing rights on certain interest and royalty payments made by MNCs to low-tax jurisdictions elsewhere in the world.[22]

The IF has an ambitious timeline of agreeing to an implementation plan later in 2021, completing implementation in all countries in 2022, and making Pillar Two effective in 2023.

NTU has at least five underlying concerns with the current Pillar Two agreement.

1. The Pillar Two agreement could undermine U.S. tax policy prerogatives: In response to concerns from Senate Finance Committee Ranking Member Mike Crapo (R-ID), Secretary Yellen wrote that she "strongly agree[d]" that any global tax agreement "must neither harm U.S. businesses and workers nor undermine the United States' tax sovereignty."[23] As of the July agreement, though, numerous questions on the details of Pillar Two remain. NTU is still concerned the finer points of a Pillar Two framework could leave U.S. policymakers with significantly less flexibility to craft a simple, fair, effective, and growth-oriented tax code in the years ahead. For example, the Treasury Department has yet to clarify (to the best of our knowledge) how federal expensing and accelerated depreciation policies will factor into the calculation of U.S. MNCs' ETRs.

Although the OECD Report on the Pillar Two Blueprint from October 2020 contemplates this matter,[24] the Blueprint left open the question of how the IF will address expensing and accelerated depreciation. Further, the July agreement is silent on the matter, and to the best of our knowledge the administration has not commented on the impact of expensing or accelerated depreciation policies on the calculation of ETR. Might the U.S. lack the ability to extend various expensing policies in the years ahead, such as Secs. 168(k) and 174, or to expand expensing to commercial structures, if such changes would bring certain U.S.-based companies, sectors, or industries below a 15-percent ETR? Is the Administration advocating for the use of tax depreciation rules at the IF so that neither existing expensing policies in the U.S. nor future U.S. policy changes are undermined by the Pillar Two agreement?[25]

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[22] OECD. "Statement on a Two-Pillar Solution to Address the Tax Challenges Arising From the Digitalisation of the Economy." July 1 2021. Retrieved from: https://www.oecd.org/tax/beps/statement-on-a-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-july-2021.pdf (Accessed August 18, 2021.)

[23] Yellen, Janet L. Letter to The Honorable Mike Crapo. Department of the Treasury, June 4, 2021. Retrieved from: https://mnetax.com/wp-content/uploads/2021/06/Yellen_letter_to_Crapo_on_OECD_tax_negotiations920-1.pdf (Accessed August 18, 2021.)

[24] See Paragraphs 220-225. OECD. "Tax Challenges Arising from Digitalisation - Report on the Pillar Two Blueprint." October 2020. Retrieved from: https://www.oecd.org/tax/beps/tax-challenges-arising-from-digitalisation-report-on-pillar-two-blueprint.pdf (Accessed August 18, 2021.)

[25] Note Paragraph 224 from the Pillar Two Blueprint: "...using the tax depreciation rules would eliminate a significant temporary difference and reduce both the frequency and amount of IIR tax paid due solely to temporary differences. Overall, this modification to the financial accounts to determine the GloBE tax base may be less burdensome from a compliance and administration perspective than a proliferation of IIR tax credits." OECD. "Tax Challenges Arising from Digitalisation - Report on the Pillar Two Blueprint." October 2020. Retrieved from: https://www.oecd.org/tax/beps/tax-challenges-arising-from-digitalisation-report-on-pillar-two-blueprint.pdf (Accessed August 18, 2021.)

This is but one example of outstanding questions that impact U.S. tax sovereignty. Others include the agreement to a 15-percent ETR minimum—lower than the current statutory U.S. corporate rate but higher than the current GILTI rate—and the possibility of a higher minimum in the future (more on that below), the co-existence of GILTI with Pillar Two's IIR framework (more on that below), the co-existence of the Base Erosion and Anti-Abuse Tax (BEAT) and the administration's proposed Stopping Harmful Inversions and Ending Low-tax Developments (SHIELD) framework with Pillar Two's UTPR framework, the agreement on a substance-based carve-out, potential IIR and UTPR exclusions, implementation requirements, and the rules concerning dispute resolution. In short, the five-page July agreement leaves many questions unanswered, and the Administration should develop expeditious answers to lawmakers and taxpayers if it is to attempt to implement Pillar Two before the end of this calendar year.

2. The U.S. has not won presumption that GILTI is IIR-compliant: As noted in the IF statement on the July agreement:

> "...consideration will be given to the conditions under which the US GILTI regime will co-exist with the GloBE rules, to ensure a level playing field."[26]

In other words, it is far from certain that the GILTI regime enacted under the Tax Cuts and Jobs Act (TCJA) and painstakingly implemented through Treasury Department guidance in subsequent years[27] will be deemed fully compliant with Pillar Two's IIR framework. The central hang-up appears to be over GILTI's global blending of income and foreign tax credits (FTCs), whereas the Pillar Two agreement conceptualizes country-by-country income and FTC calculations. It also remains to be seen if GILTI's substance-based carve-out for qualified business asset investment (QBAI) will fit within Pillar Two's carve-out framework as well.

NTU President Pete Sepp summarized the GILTI/IIR quandary well in his December 2020 OECD comments:

> 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.[28]

It is deeply troubling, therefore, to see that the July agreement—which the U.S. is party to—contemplates that GILTI will ***not*** co-exist with Pillar Two's IIR framework, requiring further changes to GILTI from Congress and the administration. After years of onerous toil over regulations and guidance, the Biden administration should be loath to go down this rabbit-hole again—and the U.S. multinational business community will likely dread the prospect as well.

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[26] OECD. "Statement on a Two-Pillar Solution to Address the Tax Challenges Arising From the Digitalisation of the Economy." July 1 2021. Retrieved from: https://www.oecd.org/tax/beps/statement-on-a-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-july-2021.pdf (Accessed August 18, 2021.)

[27] For more, see: Kaeding, Nicole. "Maintaining GILTI's High-Tax Exemption." National Taxpayers Union, February 27, 2020. Retrieved from: https://www.ntu.org/foundation/detail/maintaining-giltis-high-tax-exemption (Accessed August 18, 2021.)

[28] Sepp, Pete. "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. Retrieved from: https://www.ntu.org/publications/detail/comments-to-the-oecd-centre-for-tax-policy-and-administration (Accessed August 18, 2021.)

3. Economic competitors could win exclusions and concessions that disadvantage U.S. MNCs: Despite the intense media coverage of the July agreement, the administration knows better than most that significant agreement and implementation hurdles remain for Pillar Two at the IF. In fact, reporting indicates that although "there were no China-specific carveouts or exceptions" in the July deal,[29] America's chief economic competitor may aggressively "seek exemptions" in the months ahead.[30] As *Bloomberg* reported in June:

> "Beijing now represents the toughest hurdle in talks over the minimum tax, according to one person familiar with the discussions. It's seeking a 'carve out' or exclusion for domestic profit, which the person said would undermine the effective tax rate of 15%. The agreement could ultimately provide a limited carve-out to satisfy China but not to the extent it would undermine the minimum tax rate, the person said."[31]

Concerningly, the head of OECD's Centre for Tax Policy and Administration has suggested that China could win some of the exceptions or carve-outs that it seeks.[32] To the extent that China-specific, Pillar Two carve-outs aid China's tax incentives for their "Made in China 2025" plan,[33] such carve-outs have not only major economic implications for the U.S. and its companies but for U.S. national security as well. U.S. negotiators must guard against exceptions to Pillar Two rules that unfairly reward our economic competitors, especially those whom many consider to be rivals on the global security stage as well.

4. The 15-percent minimum is too high, and could go higher in the future: NTU firmly believes that a 15-percent minimum corporate ETR is too high, especially given the current statutory U.S. corporate tax rate is 21 percent and given ongoing questions about the impact policies like expensing, credits, and loss carryforwards will have on MNCs' temporary fluctuations in ETR. The 15-percent minimum has already caused concerns from economic competitors like China (see above, on exclusions and concessions) and from U.S. allies like Ireland that currently have a statutory rate lower than 15 percent.[34]

An entirely different and all the more concerning problem is the efforts by some countries, including the U.S., to achieve a higher minimum rate than 15 percent. Reporting indicates the Biden administration and France were "pushing to go above 15 percent," even after the announcement of the July agreement.[35] Argentina's finance minister says a 15-percent rate "falls very short," and is pushing for a 21-percent minimum rate.[36]

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[29] Thomas, Leigh. "130 countries back global minimum corporate tax of 15%." *Reuters*, July 1, 2021. Retrieved from: https://www.reuters.com/business/countries-backs-global-minimum-corporate-tax-least-15-2021-07-01/ (Accessed August 18, 2021.)

[30] *Bloomberg News*. "China's Likely Bid for Tax Exemption Poses Risk to Global Accord." June 9, 2021. Retrieved from: https://www.bloomberg.com/news/articles/2021-06-09/china-seen-posing-global-tax-accord-hurdle-with-exemption-demand (Accessed August 18, 2021.)

[31] *Ibid*.

[32] *Ibid*.

[33] Sutter, Karen M. "'Made in China 2025' Industrial Policies: Issues for Congress." August 11, 2020. Retrieved from: https://crsreports.congress.gov/product/pdf/IF/IF10964 (Accessed August 18, 2021.)

[34] Alderman, Liz; Tankersley, Jim; and Nelson, Eshe. "U.S. Proposal for 15% Global Minimum Tax Wins Support From 130 Countries." *The New York Times*, July 1, 2021. Retrieved from: https://www.nytimes.com/2021/07/01/business/global-minimum-tax.html (Accessed August 19, 2021.)

[35] Rappeport, Alan. "Global Tax Overhaul Gains Steam as G20 Backs New Levies." *The New York Times*, July 10, 2021. Retrieved from: https://www.nytimes.com/2021/07/10/us/politics/global-tax-overhaul-g20.html (Accessed August 19, 2021.)

[36] Peccarelli, Brian. "With Developing Nations Balking At A Global Minimum Tax, Corporate Tax Pros Brace For Uncertainty." *Forbes*, July 29, 2021. Retrieved from: https://www.forbes.com/sites/brianpeccarelli/2021/07/29/with-developing-nations-balking-at-a-global-minimum-tax-corporate-tax-pros-brace-for-uncertainty/?sh=45dcf1db4cb3 (Accessed August 19, 2021.)

For some finance ministers and progressive advocates, it appears that the 15-percent minimum is considered the *start* of negotiations rather than the absolute highest minimum rate that could achieve consensus at the IF. While there is no doubt that a higher global corporate minimum rate would create political space for the Biden administration to raise the statutory domestic corporate rate from 21 percent to 28 percent, administration officials should heed the warnings of NTU,[37] the U.S. business community,[38] and even Congressional allies like Sen. Joe Manchin (D-WV)[39] that a 28-percent corporate rate would do damage to U.S. businesses and workers. The U.S. Chamber of Commerce has pointed out that 1.4 million small businesses employing 13 million Americans would be directly hit by this 33-percent rate hike,[40] while NTU has estimated that a 28-percent rate could raise taxes on households making under $100,000 per year by $100 billion over the next decade.[41]

Even if the administration heeds these warnings and stops advocating for a corporate rate hike, a 15-percent minimum (paired with the current U.S. statutory 21-percent corporate rate) may significantly reduce U.S. policymakers' ability to incentivize job, wage, and economic growth here at home, as noted above. And, in any case, the Pillar Two proposal as it already stands "would triple the effective U.S. tax rate on foreign income" according to the University of Pennsylvania Penn Wharton Budget Model (PWBM), raising taxes on U.S. multinational companies that may be passed on in part to U.S. workers.[42]

5. The IF implementation timetable is much too short: As mentioned above, the IF has settled on an extremely ambitious implementation timetable for Pillar Two. The goals, according to the July agreement,[43] are to agree on an implementation plan by October 2021, have 130-plus countries pass the Pillar Two plan into law in 2022, and make Pillar Two effective in all 130-plus countries by the start of 2023.

U.S. challenges with GILTI specifically, and international tax reform under the TCJA generally, should serve as a warning against the IF moving too fast. Under the prior administration, the Treasury Department only released final GILTI regulations in July 2020, more than 2.5 years following the passage of TCJA in December 2017.[44]

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[37] Lautz, Andrew. "Biden's Corporate Tax Increase Could Be a $100 Billion Tax Hike on Taxpayers Making Less Than $100K." National Taxpayers Union, August 12, 2021. Retrieved from: https://www.ntu.org/publications/detail/bidens-corporate-tax-increase-could-be-a-100-billion-tax-hike-on-taxpayers-making-less-than-100k (Accessed August 19, 2021.)
[38] Dubay, Curtis. "Small Business Would Be Hit Hard by Corporate Tax Increase." U.S. Chamber of Commerce, April 30, 2021. Retrieved from: https://www.uschamber.com/series/above-the-fold/small-business-would-be-hit-hard-corporate-tax-increase (Accessed August 19, 2021.)
[39] Stein, Jeff, and Romm, Tony. "Citing his 'leverage,' Manchin says White House tax plan must change." *The Washington Post*, April 5, 2021. Retrieved from: https://www.washingtonpost.com/us-policy/2021/04/05/joe-manchin-white-house-tax/ (Accessed August 19, 2021.)
[40] Dubay, Curtis. "Small Business Would Be Hit Hard by Corporate Tax Increase." U.S. Chamber of Commerce, April 30, 2021. Retrieved from: https://www.uschamber.com/series/above-the-fold/small-business-would-be-hit-hard-corporate-tax-increase (Accessed August 19, 2021.)
[41] Lautz, Andrew. "Biden's Corporate Tax Increase Could Be a $100 Billion Tax Hike on Taxpayers Making Less Than $100K." National Taxpayers Union, August 12, 2021. Retrieved from: https://www.ntu.org/publications/detail/bidens-corporate-tax-increase-could-be-a-100-billion-tax-hike-on-taxpayers-making-less-than-100k (Accessed August 19, 2021.)
[42] Arnon, Alex; He, Zheli; and Sun, Xiaoyue. "Profit Shifting and the Global Minimum Tax." PWBM, July 21, 2021. Retrieved from: https://budgetmodel.wharton.upenn.edu/issues/2021/7/21/profit-shifting-and-the-global-minimum-tax (Accessed August 18, 2021.)
[43] OECD. "Statement on a Two-Pillar Solution to Address the Tax Challenges Arising From the Digitalisation of the Economy." July 1 2021. Retrieved from: https://www.oecd.org/tax/beps/statement-on-a-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-july-2021.pdf (Accessed August 18, 2021.)
[44] IRS. "Treasury, IRS issue final and proposed regulations on income subject to a high rate of foreign tax." July 20, 2020. Retrieved from: https://www.irs.gov/newsroom/treasury-irs-issue-final-and-proposed-regulations-on-income-subject-to-a-high-rate-of-foreign-tax (Accessed August 19, 2021.)

And, as NTU's Pete Sepp has noted, GILTI rules "will likely bring years more of private letter rulings and litigation before they are regarded as a stable component of tax administration."[45]

Repeat this process 130-plus times, and give the countries that are party to the global agreement only 14 months, rather than 30, to implement Pillar Two, and policymakers can get a broad sense that the IF's current proposed timetable is impractical. Rushed work will likely lead to additional and unnecessary global tax complexity, additional country-to-country and MNC-to-country disputes, and mass confusion in the global business and tax communities—all contrary to stated IF goals for the Base Erosion and Profit Shifting (BEPS) 2.0 project.[46]

At a minimum, the U.S. should consider advocating for an extended implementation timeline, perhaps one that gives 130-plus countries two or three years to implement Pillar Two through legislation and regulation rather than 14 months. Alternatively, the U.S. could advocate for delaying the effective date by a year or two so that the business community and tax administrators could sort out any questions, concerns, and disagreements over Pillar Two implementation before (rather than after) an effective date.

NTU's Concerns With the Biden Administration's Pillar Two-Compliant Proposals

Above and beyond NTU's concerns with the existing Pillar Two agreement, we are significantly troubled by some of the administration's Pillar Two-compliant proposals, which the administration and Congress may try to pass into law as soon as this fall.

As you well know, the administration's proposals include:

- A 28-percent statutory domestic corporate tax rate, 33 percent higher than the current 21-percent rate;
- A 21-percent GILTI rate on profits earned by U.S. MNCs abroad, double the current 10.5-percent rate;
- Assessing GILTI on U.S. MNCs on a country-by-country basis, rather than allowing MNCs to blend their foreign income (and foreign tax credits) on a global basis;
- The repeal of GILTI's 10-percent QBAI carve-out, which would, in effect, subject a significantly higher proportion of U.S. MNCs' profits earned abroad to GILTI taxation;
- The repeal of the Foreign Derived Intangible Income deduction, which reduces the tax rate U.S. companies pay on income derived from U.S. exports; and
- Replacing the Base Erosion and Anti-Abuse Tax with a Stopping Harmful Inversions and Ending Low-Tax Developments regime that would deny certain tax deductions for payments MNCs make to related and unrelated parties in low-tax jurisdictions.[47]

The administration's Green Book estimates claim that these proposals, combined, will increase revenues at least $1.9 trillion over the next decade.[48] Tax Foundation, for its part, found that the combination of proposals

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[45] Sepp, Pete. "Shaky 'Pillar 2' Tax Scheme from Overseas Could Crush Economic Recovery." National Taxpayers Union, September 28, 2020. Retrieved from: https://www.ntu.org/publications/detail/shaky-pillar-2-tax-scheme-from-overseas-could-crush-economic-recovery (Accessed August 19, 2021.)

[46] OECD. "What is BEPS?" 2021. Retrieved from: https://www.oecd.org/tax/beps/about/ (Accessed August 19, 2021.)

[47] Department of the Treasury. "General Explanations of the Administration's Fiscal Year 2022 Revenue Proposals." May 2021. Retrieved from: https://home.treasury.gov/system/files/131/General-Explanations-FY2022.pdf (Accessed August 18, 2021.)

[48] *Ibid*. Though repealing FDII increases revenues $123.9 billion over 10 years, the Administration proposes spending an equal amount on "additional support" for unspecified research and experimentation measures. This makes the FDII proposal revenue-neutral.

above—***not*** including replacing BEAT with SHIELD—would increase federal corporate income tax (CIT) liabilities by nearly $1.4 trillion over the next decade. They estimated the following effects:

- A 28-percent corporate rate increases federal CIT liabilities by $752.9 billion;
- A 21-percent GILTI rate increases federal CIT liabilities by $192.2 billion;
- Assessing GILTI on country-by-country basis increases federal CIT liabilities by $102.3 billion;
- Repealing QBAI increases federal CIT liabilities by $146.4 billion;
- Repealing FDII increases federal CIT liabilities by $88.8 billion; and
- Denying MNCs deductions related to foreign income increases federal CIT liabilities by $90 billion.[49]

Needless to say, NTU is concerned about proposals to raise taxes on U.S. companies by hundreds of billions of dollars, in part because the incidence of such tax hikes may fall in part on U.S. workers and on U.S. middle-class and lower-income households.[50] Our additional concerns with the administration's proposals are as follows.

1. Proposed higher domestic corporate and GILTI rates will disadvantage U.S. companies and workers relative to foreign competitors: NTU has warned for months that a 28-percent corporate rate and a 21-percent GILTI rate, paired with a 15-percent minimum, will disadvantage U.S. companies and workers relative to foreign competitors. Tax Foundation analysis confirms that the rise in the domestic corporate rate and the repeal of FDII would more than outweigh increased U.S. tax revenue from raising the GILTI rate, increasing profit shifting from the U.S. ***on net***:

> "[T]he full Biden administration proposal would raise the average tax rate on CFC activity by 4.9 percentage points, but a 28 percent corporate tax rate and repeal of the FDII deduction raise the average tax rate on U.S. activity by more than 7 percentage points. On net, this would increase profit shifting out of the U.S."[51]

Tax Foundation further finds that net profit shifting out of the U.S. could number in the tens of billions of dollars over the next decade:

> "Comparing our main results with the static scenario, profit shifting reduces the domestic tax liabilities of U.S. multinationals under the Biden plan by $79 billion over a decade under the Biden administration proposal, and the U.S. loses $36 billion under the partial version of it. Using the greater tax haven responsiveness from Dowd, Landefeld, and Moore, the full Biden administration proposal loses $237 billion to profit shifting."[52]

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[49] Locher, Thomas. "Four Revenue Scores on Options to Change U.S. International Tax Rules." Tax Foundation, August 17, 2021. Retrieved from: https://taxfoundation.org/us-international-tax-reform/ (Accessed August 19, 2021.)
[50] Lautz, Andrew. "Biden's Corporate Tax Increase Could Be a $100 Billion Tax Hike on Taxpayers Making Less Than $100K." National Taxpayers Union, August 12, 2021. Retrieved from: https://www.ntu.org/publications/detail/bidens-corporate-tax-increase-could-be-a-100-billion-tax-hike-on-taxpayers-making-less-than-100k (Accessed August 19, 2021.)
[51] Kallen, Cody. "Options for Reforming the Taxation of U.S. Multinationals." Tax Foundation, August 12, 2021. Retrieved from: https://taxfoundation.org/us-multinational-tax-reform-options-gilti/ (Accessed August 19, 2021.)
[52] *Ibid.*

PWBM similarly estimates (emphasis ours) that "[u]nder both current law ***and the Biden administration's proposal*** … it is profitable for U.S. firms to locate intangible investments in a foreign jurisdiction with a zero-tax rate, while the OECD proposal would make the U.S. the better location."[53]

These analyses would suggest that the Biden administration's proposals would have the opposite effect of TCJA's international tax reform provisions, which PWBM estimates returned $140 billion in profit to U.S. shores over a three-year period from 2018 through 2020.[54] Net profit-shifting out of the U.S. ultimately reduces the U.S. tax base, but more importantly it represents foregone opportunities to increase jobs and wages here at home.

Even if the administration rejects the above profit-shifting projections, the corporate tax rate and GILTI rate increases are troubling as standalone measures, given the deleterious impact such tax hikes would have on U.S. economic and wage growth and the potential incidence of rate increases on U.S. workers and middle- and lower-income households (both cited above).

2. Eliminating QBAI is particularly unwise given Pillar Two's agreed-upon substance-based carve-out: The administration proposes eliminating GILTI's substance-based carve-out, equal to 10 percent of "the average of the aggregate of the [controlled foreign corporation]'s adjusted bases in specified tangible property that is both used in its trade or business" and is deductible,[55] even as Pillar Two envisions a five-percent substance-based carve-out equal to "the carrying value of tangible assets and payroll" (7.5 percent in the first five years).[56] It is particularly unwise for the administration to propose eliminating QBAI while remaining silent on adopting Pillar Two's substance-based carve-out.

As noted above, Tax Foundation estimates the QBAI repeal alone will raise taxes $146.4 billion over a decade.[57] Repealing QBAI also cuts against the original legislative purpose for GILTI, which was to ensure that MNCs' supernormal returns on highly mobile, intangible assets are not escaping U.S. taxation when such intangible assets are properly attributed to U.S. economic activity. This is the purpose of Pillar Two negotiations as well.[58] A U.S. international tax regime without a substance-based carve-out will put the U.S. at a significant disadvantage relative to economic competitors that incorporate the Pillar Two substance-based carve-out into their tax codes.

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[53] Arnon, Alex; He, Zheli; and Sun, Xiaoyue. "Profit Shifting and the Global Minimum Tax." PWBM, July 21, 2021. Retrieved from: https://budgetmodel.wharton.upenn.edu/issues/2021/7/21/profit-shifting-and-the-global-minimum-tax (Accessed August 18, 2021.)
[54] *Ibid*.
[55] Joint Committee on Taxation. "U.S. International Tax Policy: Overview And Analysis." April 19, 2021. Retrieved from: https://www.jct.gov/publications/2021/jcx-16r-21/ (Accessed August 19, 2021.)
[56] OECD. "Statement on a Two-Pillar Solution to Address the Tax Challenges Arising From the Digitalisation of the Economy." July 1 2021. Retrieved from: https://www.oecd.org/tax/beps/statement-on-a-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-july-2021.pdf (Accessed August 18, 2021.)
[57] Locher, Thomas. "Four Revenue Scores on Options to Change U.S. International Tax Rules." Tax Foundation, August 17, 2021. Retrieved from: https://taxfoundation.org/us-international-tax-reform/ (Accessed August 19, 2021.)
[58] See Paragraph 332: "The use of payroll and tangible assets as indicators of substantive activities is justified because these factors are generally expected to be less mobile and less likely to lead to tax induced distortions. Conceptually, excluding a fixed return from substantive activities focuses GloBE on 'excess income', such as intangible-related income, which is most susceptible to BEPS risks." OECD. "Tax Challenges Arising from Digitalisation - Report on the Pillar Two Blueprint." October 2020. Retrieved from: https://www.oecd.org/tax/beps/tax-challenges-arising-from-digitalisation-report-on-pillar-two-blueprint.pdf (Accessed August 18, 2021.)

Further, Tax Foundation estimates that switching the U.S. from QBAI to the OECD substance-based carve-out, when combined with a number of other modest proposals to conform the U.S. international tax regime to the Pillar Two agreement, would effectively be revenue-neutral, raising federal corporate income tax liabilities by just $2.7 billion over a decade.[59]

In short, eliminating QBAI without a carve-out replacement makes little policy sense. If the Administration is simply seeking to capture more revenue for its spending plans, it should reverse course and instead either maintain QBAI (if Pillar Two-compliant) or adjust QBAI to conform with Pillar Two.

3. Moving to country-by-country GILTI calculations will increase complexity and compliance costs: Though the Pillar Two agreement includes country-by-country IIR calculations, we believe that neither global negotiators nor the Biden administration have given sufficient thought to the increased complexity, compliance, and tax burdens that country-by-country GILTI and foreign tax credit (FTC) calculations will impose on U.S. MNCs, costs that will be diverted away from more productive investments in workers and economic growth.

Even the IF has contemplated the complexity and compliance burdens of country-by-country reporting, given all four of the Pillar Two Blueprint's proposed "Simplification options" pertain to this very topic..[60]

NTU discussed these challenges in our December comments to the OECD as well, with Sepp noting:

> "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). 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."[61]

PWBM also models the country-by-country calculation as a key factor in the tripling of the U.S. tax rate on foreign profits under Pillar Two (and the six-fold increase in the U.S. tax rate on foreign profits under the administration proposal),[62] and Tax Foundation estimates that country-by-country reporting will raise U.S. corporate tax liabilities by $102.3 billion over a decade.[63]

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[59] This revenue effect is combined with proposals for a 15-percent GILTI rate in the U.S, rather than 21 percent, country-by-country GILTI calculations, the removal of GILTI's foreign tax credit (FTC) haircut, and the allowance of GILTI FTC carryforwards. See: Locher, Thomas. "Four Revenue Scores on Options to Change U.S. International Tax Rules." Tax Foundation, August 17, 2021. Retrieved from: https://taxfoundation.org/us-international-tax-reform/ (Accessed August 19, 2021.)

[60] See Chapter 5, "Simplification options." The four simplification options are 1) a country-by-country reporting safe harbor for countries with ETRs above a certain threshold, 2) a rule allowing companies to exclude countries with a percentage of profits below 2.5 percent of the MNC group's total profit, 3) allowing a country's ETR to cover several years, rather than being calculated every single year, and 4) tax administrative guidance that could presume certain countries will always have an ETR above the minimum. OECD. "Tax Challenges Arising from Digitalisation - Report on the Pillar Two Blueprint." October 2020. Retrieved from: https://www.oecd.org/tax/beps/tax-challenges-arising-from-digitalisation-report-on-pillar-two-blueprint.pdf (Accessed August 18, 2021.)

[61] Sepp, Pete. "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. Retrieved from: https://www.ntu.org/publications/detail/comments-to-the-oecd-centre-for-tax-policy-and-administration (Accessed August 18, 2021.)

[62] Arnon, Alex; He, Zheli; and Sun, Xiaoyue. "Profit Shifting and the Global Minimum Tax." PWBM, July 21, 2021. Retrieved from: https://budgetmodel.wharton.upenn.edu/issues/2021/7/21/profit-shifting-and-the-global-minimum-tax (Accessed August 18, 2021.)

[63] Locher, Thomas. "Four Revenue Scores on Options to Change U.S. International Tax Rules." Tax Foundation, August 17, 2021. Retrieved from: https://taxfoundation.org/us-international-tax-reform/ (Accessed August 19, 2021.)

All of the above leads us to urge U.S. negotiators to insist upon global blending of foreign tax liabilities and FTCs under Pillar Two, or at the very least to fight for robust safe harbors and de minimis profit exemptions as envisioned by the October 2020 Pillar Two blueprint. Doing so will avoid a compliance and complexity disaster for MNCs, and ultimately keep down tax hikes that harm U.S. workers.

4. The administration has been silent on a replacement for FDII, on the FTC haircut, and on GILTI/FTC carryforwards: While the administration proposed replacing FDII with "revenue that can be deployed to incentivize R&D in the United States directly and more effectively," the administration has yet, to the best of our knowledge, to specify the design and target beneficiaries of such initiatives.[64] This currently serves as a gigantic, potentially $124 billion hole in the administration's international tax reform plan, and the lack of specifics leave NTU deeply concerned—even as the administration informs the OECD that FDII is "in the process of being eliminated."[65]

As two tax law experts recently put it:

> "...a number of US MNEs repatriated IP back to the United States in reliance on the benefits of the FDII incentive.
>
> Upon repeal of FDII, these MNEs could face a significant effective tax rate increase (which may be disproportionately higher than that faced by other MNEs adversely affected by potential regular corporate and GILTI rate increases) unless they restructure again, likely at a significant tax cost."[66]

The administration needs to provide U.S. lawmakers and taxpayers with details on their proposals for a FDII 'replacement,' well before Congress holds a vote on the administration's Pillar Two-compliant proposals.

The administration has also not offered, to the best of our knowledge, thoughts on two critical components of GILTI that may or may not be altered by the Pillar Two agreement and/or the administration's proposed international tax reform. They are 1) the foreign tax credit (FTC) haircut that limits the amount of FTCs a U.S. MNC can apply to offset their GILTI liability (and raises U.S. ETRs on foreign profits in the process) and 2) foreign income and/or FTC carryforwards, permitted under the July Pillar Two agreement but not permitted by GILTI (and not yet addressed by the administration). The FTC haircut effectively raises the statutory GILTI rate to a maximum rate of 13.125 percent in many cases,[67] while a Biden administration doubling of GILTI that ***retains*** the FTC haircut would raise the maximum GILTI rate to 26.25 percent, nearly equal to the administration's proposed domestic corporate tax rate of 28 percent.

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[64] Department of the Treasury. "General Explanations of the Administration's Fiscal Year 2022 Revenue Proposals." May 2021. Retrieved from: https://home.treasury.gov/system/files/131/General-Explanations-FY2022.pdf (Accessed August 18, 2021.)

[65] OECD. "Progress towards a fairer global tax system continues as additional countries bring their preferential tax regimes in line with international standards." August 5, 2021. Retrieved from: https://www.oecd.org/tax/beps/progress-towards-a-fairer-global-tax-system-continues-as-additional-countries-bring-their-preferential-tax-regimes-in-line-with-international-standards.htm (Accessed August 19, 2021.)

[66] Osborn, Jason M., and Lebovitz, Michael. "United States: Whither FDII — OECD Discusses FDII In Harmful Tax Practices Update." Mondaq, August 12, 2021. Retrieved from: https://www.mondaq.com/unitedstates/tax-authorities/1101282/whither-fdii-oecd-discusses-fdii-in-harmful-tax-practices-update (Accessed August 19, 2021.)

[67] Lautz, Andrew. "Senate Finance Should Mind U.S. Competitiveness When Reforming the International Tax System." National Taxpayers Union, April 16, 2021. Retrieved from: https://www.ntu.org/publications/detail/senate-finance-should-mind-us-competitiveness-when-reforming-the-international-tax-system (Accessed August 19, 2021.)

As for carryforwards, Tax Foundation succinctly explains why not allowing carryforwards was a flaw in GILTI's design:

> "...firms have been allowed to carry foreign taxes in excess of the limitation forward, and to carry losses forward. A firm's income or loss and its foreign taxes can fluctuate from year to year due to temporary timing effects, and allowing carryforwards recognizes this and mitigates timing impacts on firms' U.S. taxes. GILTI does not allow carryforwards of CFC losses or of unused foreign taxes (in excess of the limit). A firm with a foreign tax rate that fluctuates between 10 and 20 percent will owe taxes on GILTI in low-tax years but be unable to use all its foreign taxes for the FTC in high-tax years."[68]

It would similarly be a flaw for the administration to not allow for carryforwards under the new foreign regime. In the Pillar Two-compliant alternative scenario envisioned by Tax Foundation, completely removing GILTI's FTC haircut and allowing for GILTI carryforwards would reduce revenues by a combined $90 billion, a revenue loss that is dwarfed by the revenue gains of a 15-percent GILTI rate ($98.8 billion).[69]

5. The administration has a lower threshold for applying SHIELD than the threshold proposed for UPTRs under Pillar Two: An additional concern is that the administration proposes a far lower threshold for applying SHIELD, which the it intends to be a Pillar Two-compliant undertaxed payments rule (UTPR), than the threshold envisioned by the IF in the July agreement. The IF threshold is €750 million[70]—$877 million as of this writing—while the Biden administration proposes applying SHIELD to "financial reporting groups with greater than $500 million in global annual revenues."[71] In other words, the bar is 43 percent lower in the U.S. than it may be in other Pillar Two-compliant countries, subjecting many more MNCs to SHIELD requirements and limitations in the U.S. than such MNCs will face under other UTPRs. It is unclear from the Green Book what the administration's policy rationale is for this significant difference. If the only rationale is to raise more revenue for spending priorities, the administration should rethink its proposal and instead consider conforming to the Pillar Two standard.

<u>A Better Path Forward for Global Tax Negotiations</u>

Clearly, NTU has no shortage of critiques on the existing Pillars One and Two agreement, and we have a number of respectful differences with the administration's proposals for Pillar Two compliance. That said, we wish here to reiterate some of our recommendations to administration policymakers, lawmakers, and global negotiators in the IF as they move from the July agreement to an October final implementation plan for Pillars One and Two. We summarize some of our recommendations in brief, given they were covered in earlier stages of this letter.

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[68] Kallen, Cody. "Options for Reforming the Taxation of U.S. Multinationals." Tax Foundation, August 2021. Retrieved from: https://files.taxfoundation.org/20210811105252/TaxFoundation_FF7761.pdf (Accessed August 19, 2021.)

[69] Locher, Thomas. "Four Revenue Scores on Options to Change U.S. International Tax Rules." Tax Foundation, August 17, 2021. Retrieved from: https://taxfoundation.org/us-international-tax-reform/ (Accessed August 19, 2021.)

[70] OECD. "Statement on a Two-Pillar Solution to Address the Tax Challenges Arising From the Digitalisation of the Economy." July 1 2021. Retrieved from: https://www.oecd.org/tax/beps/statement-on-a-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-july-2021.pdf (Accessed August 18, 2021.)

[71] Department of the Treasury. "General Explanations of the Administration's Fiscal Year 2022 Revenue Proposals." May 2021. Retrieved from: https://home.treasury.gov/system/files/131/General-Explanations-FY2022.pdf (Accessed August 18, 2021.)

1. Maintain a 21-percent domestic corporate tax rate: Tax Foundation estimates that raising the domestic corporate tax rate from 21 percent to 28 percent would reduce the size of the nation's economy by 0.7 percent, reduce wages by 0.6 percent, and lead to the loss of 138,000 full-time equivalent (FTE) jobs.[72] PWBM estimates that the total effect of the American Jobs Plan, which includes the 28-percent corporate tax rate, would reduce GDP 0.9 percent and reduce average hourly wages 0.7 percent by 2031, while increasing government debt 1.7 percent, ***even after*** accounting for the new spending in the proposal.[73] And NTU has calculated that a 28-percent corporate rate could represent a $100 billion tax hike on households making less than six figures over the next decade, based on JCT analysis.[74] Simply put, we strongly urge the administration to support maintaining the 21-percent statutory corporate tax rate.

2. Ensure the GILTI rate is no higher than what is needed to comply with Pillar Two: The administration's proposal for a 21-percent GILTI rate is 40 percent higher than what it would need to be under the July Pillar Two agreement. A 15-percent GILTI rate would be IIR-compliant, and, according to Tax Foundation, would only raise taxes by $98.8 billion (compared to the administration's 21-percent rate, which would raise $192.2 billion).[75]

3. Maintain a substance-based carve-out that is as generous as Pillar Two allows: As noted above, we are deeply concerned about the administration's proposal to repeal QBAI without any clear replacement. The administration should commit to a substance-based carve-out under GILTI that is at least as generous as the Pillar Two agreement allows.

4. Keep FDII, or clarify a replacement for FDII so that U.S. exporters have confidence they will not be disadvantaged under the IF: Repealing FDII without a clear replacement that makes U.S. exporters whole could do significant damage to U.S. companies that have managed to successfully sell their goods and services abroad. The administration should expeditiously clarify its intended FDII replacement, or otherwise plan to keep FDII in place.

5. Fight attempts by U.S. economic competitors to win company-, industry-, or sector-specific exceptions in Pillar Two: As U.S. economic competitors seek to win exceptions and additional carve-outs to the Pillar Two framework, the U.S. should stand firm against efforts to include special favors for other countries. The entire basis for a multilateral agreement is to level and simplify the tax administration playing field for countries and U.S. MNCs to the maximum extent possible. Exceptions, in particular for U.S. economic competitors, could have economic and security implications for the U.S., its companies, and its workers.

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[72] Tax Foundation. "Options for Reforming America's Tax Code 2.0." April 19, 2021. Retrieved from: https://taxfoundation.org/tax-reform-options/?option=36 (Accessed August 19, 2021.)

[73] Arnon, Alex; Dinerstein, Marcos; Huntley, Jon; and Ricco, John. "President Biden's $2.7 Trillion American Jobs Plan: Budgetary and Macroeconomic Effects." University of Pennsylvania Penn Wharton Budget Model (PWBM), April 7, 2021. Retrieved from: https://budgetmodel.wharton.upenn.edu/issues/2021/4/7/president-biden-american-jobs-plan-effects (Accessed August 18, 2021.)

[74] Lautz, Andrew. "Biden's Corporate Tax Increase Could Be a $100 Billion Tax Hike on Taxpayers Making Less Than $100K." National Taxpayers Union, August 12, 2021. Retrieved from: https://www.ntu.org/publications/detail/bidens-corporate-tax-increase-could-be-a-100-billion-tax-hike-on-taxpayers-making-less-than-100k (Accessed August 19, 2021.)

[75] Locher, Thomas. "Four Revenue Scores on Options to Change U.S. International Tax Rules." Tax Foundation, August 17, 2021. Retrieved from: https://taxfoundation.org/us-international-tax-reform/ (Accessed August 19, 2021.)

6. Lower the threshold of residual profits redistributed by Pillar One so that it is not a mere revenue grab-bag for the rest of the world: In NTU's December 2020 comments to the OECD, we expressed our concern with "multilateral approaches that focus on revenues first and simplicity and certainty last."[76] Unfortunately, the profit redistribution proposals under Pillar One appear to focus on revenues first (i.e., a headline-inducing €100 billion per year redistribution estimate) and on simplicity and certainty last. Lowering the Amount A profit redistribution formula—currently 20 to 30 percent of global profits above a 10-percent return—would tilt the framework back in favor of simplicity and certainty.

7. Allow for a longer implementation horizon for both Pillars One and Two: As noted at numerous points above, we are deeply concerned that the IF has not given countries nearly enough time to pass Pillars One and Two into law, issue regulations and guidance to implement the law, and bring Pillars One and Two into effect for tax year 2023. Hasty work will lead to additional complexity, new disputes, and massive global confusion. We recommend the administration push for a longer implementation timeline, adding at least one or two years.

8. Continue to heed NTU's recommendations from its December 2020 comments to OECD: Given the outstanding questions raised by the five-page July 2021 Pillars One and Two agreement, many questions from the Pillars One and Two blueprints of October 2020 remain unresolved (or, at least, publicly unanswered). Until such a time, many of NTU's recommendations from our December 2020 comments to OECD carry ongoing relevance to Administration officials, lawmakers, and global negotiators.[77] This is especially the case with designing appropriate processes and mechanisms for dispute resolution, promulgation and transparency of guidance, and ongoing review of the system as it evolves in order to seize opportunities for administrability improvements. Such design efforts must take place now, not as an afterthought. As our December comments noted,[78] there are ample institutions here and abroad to facilitate administrability of any multilateral tax framework contemplating major changes in how nations' tax policies toward MNCs will interact.

Despite the aggressive timeline proposed by the IF, we believe there is still time for administration negotiators to salvage some of the most troubling aspects of the Pillars One and Two agreement. Should the administration fall short of securing significant changes to the July agreement, we still believe the administration can reverse course on some of its most harmful proposals for lawmakers' consideration under Pillar Two. We look forward to continuing our work with you, your colleagues, and Members of Congress on these proposals and more.

I deeply appreciate your time and consideration of NTU's views and recommendations. Again, should you have any questions, I am at your service.

Sincerely,

Andrew Lautz
Director of Federal Policy

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[76] Sepp, Pete. "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. Retrieved from: https://www.ntu.org/publications/detail/comments-to-the-oecd-centre-for-tax-policy-and-administration (Accessed August 18, 2021.)
[77] *Ibid*.
[78] *Ibid*.

CC: The Honorable Janet Yellen, Secretary of the Treasury
The Honorable Wally Adeyemo, Deputy Secretary of the Treasury
The Honorable Ron Wyden, Chairman, Senate Committee on Finance
The Honorable Mike Crapo, Ranking Member, Senate Committee on Finance
The Honorable Richard Neal, Chairman, House Committee on Ways and Means
The Honorable Kevin Brady, Ranking Member, House Committee on Ways and Means
Members of the Senate Committee on Finance
Members of the House Committee on Ways and Means