Response to the Hamilton Project Report "Six Economic Facts on International Corporate Taxation"[1]

1. **Claim: U.S. multinationals paid an effective worldwide cash tax rate of 8.8% in 2018.**

❖ ***Response: The data used in this analysis double count worldwide income, resulting in a gross understatement of the effective tax rate of U.S. multinational companies, and predate the impact of the Global Intangible Low-Taxed Income (GILTI) and other anti-base erosion measures.***

- The data source cited is a Joint Committee on Taxation (JCT) analysis of U.S. multinational companies' (MNCs) country-by-country reports for 2018 (IRS Form 8975) that are filed by companies with over $850 million of revenues. The calculation shown is only for subsidiaries and jurisdictions with positive profits before income taxes.

- JCT observes that "There are several important ambiguities to note when interpreting this data."[2] Most importantly **there is significant double counting of income in these data**, which artificially reduces the effective tax rates. Double counting arises for two reasons. First, many companies reported inter-company dividends as income. Berkeley professor Gabriel Zucman and co-authors estimate that **72% of income was double counted in 2018** due to inter-company dividends.[3] Second, related party revenues are reported on an aggregate rather than a consolidated basis, "So, related party revenues will have some double counting in jurisdictions."[4]

- The Hamilton Report does not use the most recent available data. GILTI was not effective for many companies in 2018 because their foreign subsidiaries had taxable years that differ from the companies' fiscal year and were not included in taxable income until 2019. The IRS has now published 2019 country-by-country report data, which show U.S. MNCs' worldwide cash tax rate for all filing companies (with and without losses) was **15.9%** in 2019. The worldwide cash tax rate for subsidiaries and jurisdictions with positive profits was **12.6%**, 43% higher than the 2018 figure, and these effective tax rates also are understated due to **double counting of an estimated 47% of income in 2019** due to inter-company dividends.[5]

- In addition to understating the worldwide effective tax rate, the double counting in the data used by JCT can also understate the domestic tax rate of U.S. MNCs in the Form 8975 data. Where foreign subsidiary dividends are double counted as U.S. income, the U.S. effective tax rate is reduced by the foreign tax credit – but this is simply because the earnings were previously taxed by another country.

- Country-by-country reports are not yet available for 2020 or 2021. However, based on the tax provision from financial statements of S&P 500 companies (a subset of all filers of the country-by-country data), the median worldwide effective tax rate of S&P 500 companies was **18.5%** and **19.3%** in 2020 and 2021, respectively.

- The long-term effects of the 2015 Base Erosion and Profit Shifting (BEPS) Agreement and the 2017 TCJA on profit shifting would not be expected to be fully reflected in 2018 data. Thus, we would expect U.S. MNC effective tax rates to increase after 2018 – as the available data indicate – when countries adopt BEPS measures and companies respond to BEPS actions and TCJA.

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[1] Wendy Edelberg, Chye-Ching Huang, and Rose Jenkins, "Six Economic Facts on International Corporate Taxation," Hamilton Project, June 13, 2022.
[2] Joint Committee on Taxation, "U.S. International Tax Policy: Overview and Analysis," JCX-16R-21, April 19, 2021, p. 62.
[3] Javier Garcia-Bernardo, Petr Janský, Gabriel Zucman, "Did the Tax Cuts and Jobs Act reduce profit shifting by U.S. multinational companies?" NBER Working Paper 30086, May 2022, p. 25.
[4] JCT, op cit. p. 57.
[5] Garcia-Bernardo et al., op. cit., p. 25.

2. **Claim: U.S. multinationals still shift profits into lower-tax countries.**

- ***Response: The measure of profit in low-taxed countries is based on an analysis by Professor Kim Clausing that misinterprets Bureau of Economic Analysis (BEA) data. As explained by accounting professors Jennifer Blouin and Leslie Robinson, "the Clausing papers consistently use BEA income measures that are unsuitable for studying profit shifting."***[6]

  - The BEA data used in Clausing's analysis attribute all of the income earned by lower-tier foreign subsidiaries to the country of the top-tier foreign subsidiary. It is quite common for a U.S. MNC to own its foreign subsidiaries through a top-level holding company incorporated in a low-tax country.

    - For example, a German affiliate may be owned by a Irish holding company of a U.S. MNC. The income of the Irish holding company reported in the BEA data (used in the Clausing study) includes the earnings of the German affiliate, which are taxed in Germany. The use of these BEA data without adjustment incorrectly makes it appear as if the income that was actually earned in Germany (and typically subject to a relatively high tax rate) was instead earned in Ireland.

  - When the BEA data are adjusted to correctly assign income to the foreign subsidiary that earned it, Profs. Blouin and Robinson determined that **Clausing's measure of income shifting was overstated 10-fold**.

  - Blouin and Robinson report that **Clausing "acknowledges that our critique of her earlier work is warranted but, yet, she continues to incorrectly rely upon a BEA income measure that misattributes the location of MNEs' foreign affiliates earnings**."[7]

3. **Claim: U.S. multinationals can use the variation in tax rates across countries to lower their tax liability because GILTI is not calculated on a per-country basis.**

- ***Response: Estimates of income shifting across countries are vastly overestimated by the referenced studies. However, to the extent that companies engage in income shifting, it is not evident that there would be less income shifting under a per-country GILTI design relative to the current law global average GILTI design. Further, unlike their foreign competitors, U.S. companies are the only companies in the world that have been subject to a foreign minimum tax since 2017.***

  - A foreign minimum tax calculated on a per-country basis does not necessarily result in less income shifting than a foreign minimum tax based on the global average foreign tax rate (like GILTI).

    - Under the current law GILTI rules, a U.S. company has no incentive to shift income from a high-tax to a low-tax country once the company's average foreign tax rate is equal to the GILTI tax rate.[8] At this point, the company would achieve no tax savings by shifting additional income out of a high-tax country.

    - By contrast, under a per-country GILTI design (favored by the Hamilton Project Report), a U.S. company would have an incentive to shift all income from a high-tax country to a low-tax country because it would continue to achieve tax savings on every dollar of income shifted.

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[6] Jennifer Blouin and Leslie Robinson, "Double counting accounting: How much profit of multinational enterprises is really in tax havens?" September 2020, p. 5.

[7] Ibid., p. 5.

[8] For a discussion of these incentives, see Chris W. Sanchirico, "Should a global minimum tax be country-by-country?" *Tax Notes Federal*, April 25, 2022, pp. 549-558.

    - Further, as noted by Prof. Sanchirico, widespread adoption of per-country foreign minimum taxes would create a greater incentive for high-tax countries to reduce their corporate tax rates to the minimum tax rate to discourage companies from shifting income abroad.[9]

- As recognized by Treasury Secretary Yellen, **because the United States is the only country in the world that imposes any minimum tax on the foreign earnings of its multinational corporations,** U.S. companies would be less tax disadvantaged if other countries adopted foreign minimum taxes of their own that applied to their companies.[10] This is true whether they take the form of a per-country or a global average foreign minimum tax. **However, proposals to further increase the burden of the U.S. foreign minimum tax (GILTI) before other countries impose foreign minimum taxes on their own MNCs would further tilt the tax playing field against U.S. companies**.

4. Claim: Competition between countries has created a race to the bottom in corporate taxes.

❖ ***Response: While statutory tax rates have declined over time, corporate tax revenue as a share of GDP in the OECD is unchanged since 2000. For the OECD, corporate tax revenue as a share of GDP was 3.1% in 2000 and 3.1% in 2018.***[11]

- With lower statutory corporate tax rates and a broader base, corporate taxes raise the same revenue but with less harmful effects on the economy. The OECD has found that the corporate income tax is the form of tax most harmful for economic growth because it discourages job creation and productivity enhancing investments that boost wages.[12]

- In 2022, the U.S. statutory corporate tax rate, including state income taxes, is 25.8%, 2.7 percentage points above the 23.1% average corporate tax rate for all other OECD countries.[13]

5. Claim: Corporate tax revenues in the United States are at very low levels, internationally and historically.

❖ ***Response: Corporate income tax revenues collected by the federal government reached a record $372 billion in fiscal year 2021. As a share of GDP, federal corporate tax revenues were 1.7%, the highest since 2015 and slightly higher than the average for the decade between 1980 and 1989.***[14] ***Through May 2022, corporate income taxes are up by 17% over the same period last year.***[15]

- **The high level of corporate taxes as a share of GDP is even more striking given that, over time, a large percentage of business activity has shifted to firms that are taxed directly under the individual income tax rather than subject to corporate income taxes**. These forms of business, referred to as pass-through businesses because the income passes through directly to its owners, include S Corporations, partnerships, and sole proprietorships.

    - In 1980, pass-through businesses accounted for just 22% of all business income, while corporations subject to the corporate income tax accounted for the remaining 78% of business income. By 2016, pass-through businesses accounted for the majority of all business income –

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[9] Ibid., p. 555.
[10] Secretary Yellen observed this during the hearing on the Administration's FY2023 Budget before the Senate Finance Committee on June 7, 2022.
[11] OECD, Corporate Tax Revenues, accessed June 2022.
[12] OECD, Tax Policy Reform and Economic Growth, 2010.
[13] OECD, OECD Tax Database, accessed June 2022.
[14] CBO, Historical Budget Data, May 2022.
[15] U.S. Treasury, Monthly Treasury Statement for Fiscal Year 2022 through May 31, 2022, June 10, 2022.

62% – while corporations subject to the corporate income tax accounted for just 38% of business income.[16]

- The Hamilton Project Report relies on BEA data on corporate profits, which includes S Corporation profits even though S corporations are not subject to corporate tax. In 1980, S Corporation profits represented just 1.1% of total corporate income. By 2016, S Corporation profits represented 43% of corporate income. As a result, corporate taxes as a share of the profits of corporations actually subject to corporate tax is greatly understated in the more recent BEA data.[17]

- **CBO estimates that individual income tax receipts, which now include an increasing amount of income from pass-through businesses, will reach a record high as a percentage of GDP in fiscal year 2022, and tax revenue from all sources will be the highest as a share of GDP since 2000**.

- **Further tax increases on businesses, especially while many economists are warning of an increased risk of recession, would be detrimental to economic growth and jobs for American workers**.

6. **Claim: A failure for the United States to engage in the coordinated multilateral tax reform creates risks.**

❖ ***Response: The United States is the only country that has enacted a foreign minimum tax; thus, one might properly state that the United States is far ahead of other OECD and Inclusive Framework countries in advancing the stated goal of worldwide adoption of foreign minimum taxes.***

- Just as there may be benefits to coordinated action, **there are disadvantages if the United States proceeds unilaterally to increase the GILTI tax burden on U.S. companies before other countries have enacted foreign minimum taxes of their own**.

  - U.S. companies are at a competitive disadvantage in global markets if they are taxed at a higher rate than foreign-headquartered companies.

  - This competitive disadvantage translates into a loss in the global market share of U.S. companies and results in fewer jobs for American workers.

  - Among the companies that would most benefit from a higher GILTI tax burden on U.S. companies are Chinese companies, which represent the largest number of Fortune Global 500 companies of any country in the world.

- **The United States should wait until other countries, including all other G7 countries and China and India, have enacted and implemented foreign minimum taxes of their own in order to avoid an adverse impact on U.S. companies and American workers.**

[16] IRS Statistics of Income, Integrated Business Data, 1980-2015 (with updates to 2016 based on other IRS data).
[17] Ibid.