Member Companies
3M
Abbott Laboratories
ADP
Alcoa Corporation
American Express Company
Bank of America Corp.
Boston Scientific Corp.
Carrier Global Corp.
Caterpillar Inc.
Cisco Systems, Inc.
The Coca-Cola Company
Corteva Inc.
Danaher Corporation
Dell Technologies, Inc.
The Dow Chemical Company
DuPont
Eli Lilly and Company
Emerson Electric Co.
Exxon Mobil Corporation
General Electric Company
General Mills Inc.
Google, Inc.
The Home Depot Inc.
Honeywell International Inc.
IBM Corporation
Johnson & Johnson
Johnson Controls, Inc.
JPMorgan Chase & Co.
Kellogg Company
Kimberly-Clark Corp.
MasterCard Inc.
McCormick & Company, Inc.
Morgan Stanley
Oracle Corporation
Otis Worldwide Corp.
PepsiCo, Inc.
Procter & Gamble Co.
Prudential Financial Inc.
Raytheon Technologies Corp.
S&P Global Inc.
State Street Corporation
Texas Instruments, Inc.
United Parcel Service, Inc.
Verizon Communications Inc.
Walmart Inc.
The Walt Disney Company
Zoetis Inc.

July 19, 2023

The Honorable Janet L. Yellen
Secretary of the Treasury
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Re: Corporate and International Tax Proposals in FY 2024 Budget

Dear Secretary Yellen:

We are writing to express concerns regarding the corporate and international tax changes proposed in the Administration Fiscal Year 2024 Budget.[1] The Administration has endorsed the Organization for Economic Cooperation and Development ("OECD") international agreement to implement a global minimum tax ("Pillar Two") on the grounds it "puts the United States and other countries on a more level playing field."[2]
ACT has long supported a level international tax playing field. However, the Administration's proposed changes to the taxation of global intangible low-taxed income ("GILTI") do not come close to this goal. Instead, they represent a significant departure from international tax norms and would result in a system that is much harsher than the OECD global minimum tax to which the Treasury agreed without seeking consent from Congress. The inevitable result of these changes would be less domestic investment and innovation, fewer jobs, and lower wages for U.S. workers.

The negative consequences of these proposed international tax changes are made worse when considered in conjunction with the Administration's other tax proposals.[3] In total, Treasury Department economists estimate that the Administration's proposals would increase taxes on U.S. companies by more than $2.8 trillion through fiscal year 2033, or about 55 percent.[4] And, as is widely recognized, "corporate taxes are the most harmful type of tax for economic growth."[5] Such a significant increase in taxes on U.S. companies would result in a substantial reduction in U.S. jobs and investment.[6]

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[1] The Alliance for Competitive Taxation ("ACT") is a coalition of leading American companies across a broad array of industries whose principal mission is securing an internationally competitive tax system. ACT believes a corporate tax system that is harmonized with the tax systems of our major trading partners will promote greater U.S. investment, increased employment, and higher wages
[2] https://home.treasury.gov/system/files/131/General-Explanations-FY2024.pdf, p. 26.
[3] https://home.treasury.gov/system/files/131/General-Explanations-FY2024.pdf
[4] Analytical Perspectives, Budget of the United States Government, Fiscal Year 2024, https://whitehouse.gov/omb/analytical-perspectives/, Table 17-3, p. 192. The $2.8 trillion increase does not include the $242 billion Treasury economists project will be raised by the proposed increase in the tax rate of the stock repurchase excise tax.
[5] OECD, *Tax Policy Reform and Economic Growth*, OECD Publishing, OECD Tax Policy Studies No. 20, 2020, p. 3.
[6] See, for example, Alexander Ljungqvist and Michael Smolyansky, "To Cut or Not to Cut? On the Impact of Corporate Taxes on Employment and Income," Finance and Economics Discussion Series 2016-006, Board of Governors of the Federal Reserve System, 2016; Karel Mertens and Morten O. Ravn. "The Dynamic Effects of Personal and Corporate Income Tax Changes in the United States," *American Economic Review*, vol. 103, no. 4, June 2013, pp. 1212–47; and Christina D. Romer and David H. Romer, "The Macroeconomic Effects of Tax Changes: Estimates Based on a New Measure of Fiscal Shocks," *American Economic Review*, vol. 100, June 2010, pp. 763-801.

www.ActOnTaxReform.com

The Administration has expressed its intent not to increase taxes on taxpayers with less than $400,000 of annual income, stating: "Under the President's plan, there are no tax increases at all for anyone making less than $400,000 per year."[7] However, according to Treasury's own estimates, the legislative proposals in the Administration's budget would saddle these taxpayers with more than $1 trillion in additional tax liability from fiscal year 2023 through fiscal year 2033.[8]

Below, we provide more detailed comments on specific corporate and international tax proposals. No inference is intended about our view of the Administration's proposals for which we have not provided detailed comments in this letter.

ACT believes a competitive U.S. corporate tax system will promote greater U.S. investment, increased employment, and higher wages. We would be pleased to meet with you or your staff to discuss these important issues in greater detail.

Sincerely,

Alliance for Competitive Taxation

cc: Rep. Jason Smith, Chairman of the House Committee on Ways and Means
Sen. Ron Wyden, Chairman of the Senate Committee on Finance
Rep. Richard Neal, Ranking Member of the House Committee on Ways and Means
Sen. Mike Crapo, Ranking Member of the Senate Committee on Finance

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[7] https://www.whitehouse.gov/briefing-room/statements-releases/2023/03/27/fact-sheet-extreme-maga-congressional-republicans-propose-handouts-to-rich-and-tax-hikes-for-working-families/

[8] According to the Treasury's Office of Tax Analysis, 35.9 percent of the corporate income tax is borne by families making less than $293,985 (https://home.treasury.gov/system/files/131/Distribution-of-Tax-Burden-Current-Law-2023.xlsx). These families are estimated to bear 35.9 percent of the $2.8 trillion in corporate income tax increases, or $1.0 trillion. The total burden for families making less than $400,000 includes an additional amount of the corporate income tax increase borne by families making between $293,985 and $400,000 and the portion of the $242 billion in stock repurchase excise tax increase borne by families making less than $400,000 through their direct and indirect stock holdings.

ACT Comments on Administration's FY 2024 Corporate Revenue Proposals

The Administration proposes substantial increases in corporate taxes as part of its fiscal year 2024 revenue proposals. In total, Treasury Department economists estimate that the Administration's proposals will increase corporate income taxes by more than $2.8 trillion from fiscal year 2023 through fiscal year 2033, or about 55 percent.[1] The Congressional Budget Office ("CBO") estimates corporate profits of approximately $31.6 trillion over that same period, which implies an increase in average corporate income tax rates of approximately 8.9 percentage points.[2] This increase would result in less domestic investment, fewer jobs, and lower wages. [3]

1. Revise the global intangible low-taxed income ("GILTI") tax regime

The Administration's proposal would make significant changes to the GILTI tax regime. First, the GILTI tax rate would increase to 21 percent as a result of the proposals to increase the corporate income tax rate to 28 percent and to reduce the section 250 deduction to 25 percent. Second, the proposal would calculate the GILTI foreign tax credit limitation separately for each foreign jurisdiction rather than on an overall basis. Third, the proposal would repeal the base adjustment for a 10-percent return on qualified business asset investment ("QBAI"). Fourth, the proposal would repeal the high-tax exemption and the reference to that provision in the GILTI regime. Only partially offsetting these adverse changes, the proposal would allow (1) a credit for 95 percent rather than 80 percent of foreign taxes, (2) excess foreign tax credits to be carried forward for 10 years within a jurisdiction, and (3) net operating losses to carry forward within a jurisdiction.

The Administration's proposed changes to the GILTI regime, rather than putting the United States on a level playing field with other countries, would result in a system that is much harsher than the OECD global minimum tax ("Pillar Two") to which the Treasury agreed without Congressional consent. See Box 1, below. The Administration's proposal would impose a higher tax rate on a broader tax base than Pillar Two and would fail to provide full relief from double taxation of foreign earnings. The resulting unlevel playing field would harm American workers and their U.S. employers to the benefit of foreign workers and their foreign employers. Economic research finds an increase in corporate tax rates on foreign income reduces both foreign and domestic investment, employment, and research and development spending.[4]

Moreover, the country-by-country determination of the foreign tax credit limitation perversely creates a greater incentive to shift income subject to Pillar Two from higher-tax foreign jurisdictions (i.e., those with a foreign effective tax rate above the global minimum rate) to lower-tax foreign jurisdictions than does a minimum tax determined on a blended basis, as under the present-law GILTI regime. Even

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[1] Analytical Perspectives, Budget of the United States Government, Fiscal Year 2024, https://whitehouse.gov/omb/analytical-perspectives/, Table 17-3, p. 192. The $2.8 trillion increase does not include the $242 billion Treasury economists project will be raised by the proposed increase in the tax rate of the stock repurchase excise tax.

[2] https://www.cbo.gov/system/files/2023-02/51138-2023-02-Revenue.xlsx

[3] Recent studies estimate that for every percentage point increase in corporate average tax rates employment would decline, ranging from: (a) 0.3 to 0.5 percent (Alexander Ljungqvist and Michael Smolyansky, "To Cut or Not to Cut? On the Impact of Corporate Taxes on Employment and Income," Finance and Economics Discussion Series 2016-006, Board of Governors of the Federal Reserve System, 2016); (b) 1.2 to 1.44 percent (Juan Carlos Suárez Serrato, "Unintended Consequences of Eliminating Tax Havens," National Bureau of Economic Research Working Paper 24850, December 2019); and (c) 2.2 percent (Katarzyna Bilicka, Yaxuan Qi, and Jing Xing, "Real Responses to Anti-Tax Avoidance: Evidence from the UK Worldwide Debt Cap," *Journal of Public Economics*, vol. 214, October 2022, pp. 1-18). In 2021, C corporations employed more than 56 million workers. U.S. Census Bureau, County Business Patterns by Legal Form of Organization, 2021, Table CB2100CBP.

[4] Ruud de Mooij and Sjef Ederveen, "Corporate Tax Elasticities: A Reader's Guide to Empirical Findings," *Oxford Review of Economic Policy*, February 2008 and Mihir Desai, C. Fritz Foley, and James R. Hines, Jr., "Domestic Effects of the Foreign Activities of U.S. Multinationals," *American Economic Journal: Economic Policy*, February 2009.

assuming other countries enact Pillar Two minimum taxes, the country-by-country proposal would give U.S. companies an incentive to move income subject to Pillar Two out of any jurisdiction with an effective tax rate above 21 percent to jurisdictions with tax rates below 21 percent. Under a blended system, any incentive to shift investment stops when the average foreign effective tax rate hits the GILTI tax rate.[5]

Box 1.–How the Proposed GILTI Regime Compares to Pillar Two

- **Higher rate.** The Administration's proposal would impose incremental tax on U.S. companies up to a foreign tax rate of 22.1 percent[6] compared to 15 percent under Pillar Two.[7] The foreign earnings of U.S. companies would face a higher minimum tax rate than the foreign earnings of foreign-parented companies.[8]
- **Broader base.** Pillar Two allows a substance-based income exclusion equal to 10 percent of payroll (phasing down to 5 percent in 2033) and 8 percent of tangible assets (phasing down to 5 percent starting in 2033), while the Administration's proposal would provide no substance-based income exclusion whatsoever.
- **Double taxation by design.** Pillar Two effectively allows a 100-percent foreign tax credit against the global minimum tax, while the Administration's proposal allows only a 95-percent foreign tax credit.
- **Timing differences.** Pillar Two in many common scenarios provides more generous relief for timing differences through the use of deferred taxes than the Administration's proposal providing for a 10-year foreign tax credit carryforward.
- **Expense allocation.** Pillar Two has no allocation for domestic research and development, stewardship, or interest expense. The Administration's proposal both retains expense allocation for FTC purposes and doubles down on this uniquely uncompetitive feature by introducing a new restriction with respect to expenses associated with controlled foreign corporation ("CFC") stock.[9]

2. Raise the corporate income tax rate to 28 percent

The Administration proposes increasing the corporate income tax rate from 21 percent to 28 percent. If enacted, the U.S. statutory corporate income tax rate, including state taxes, would be the second highest among the 38 OECD member countries, at 32.3 percent, compared to an OECD average rate of 23.5 percent.[10] Only Colombia, at 35 percent, would have a higher corporate rate.

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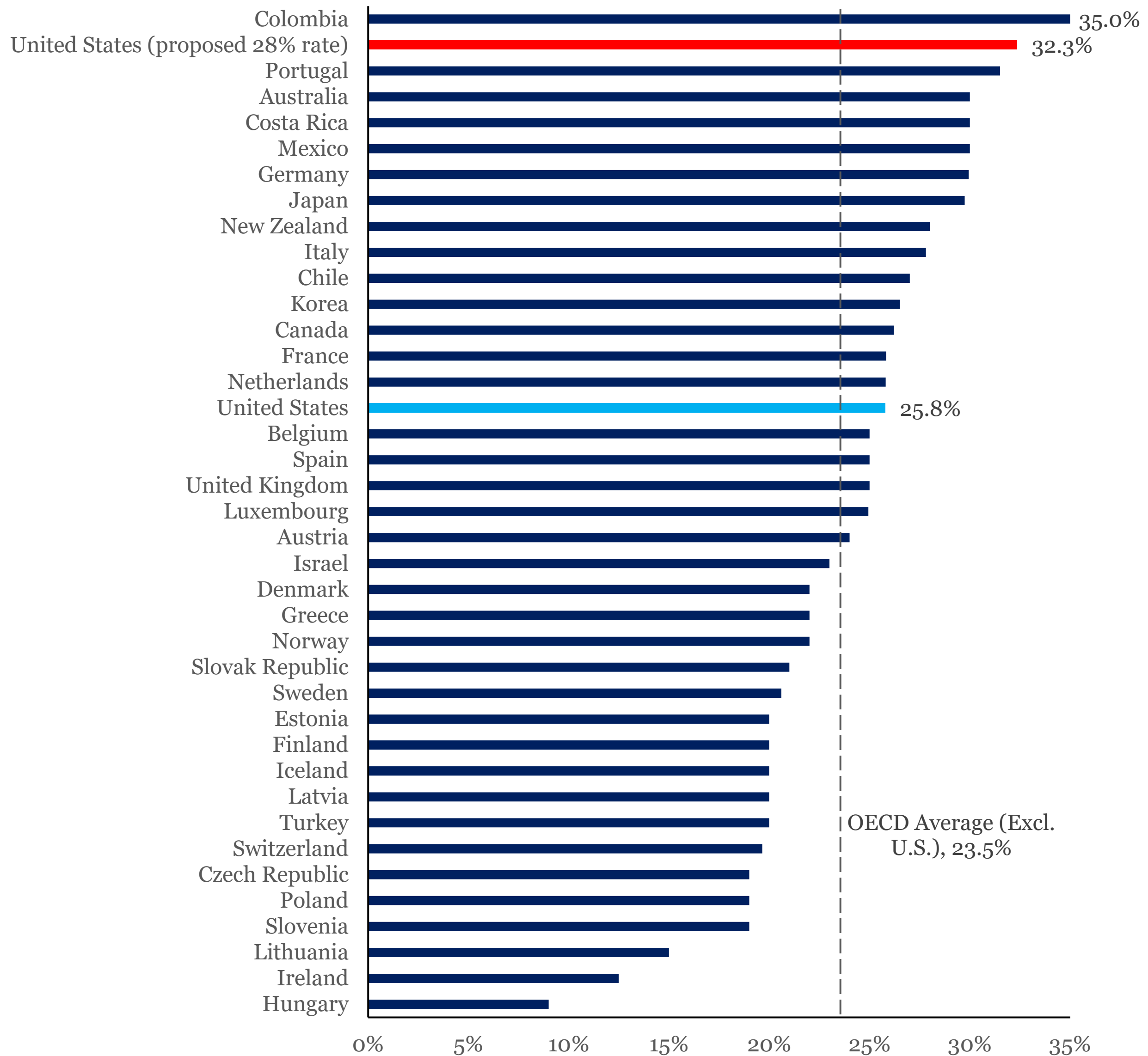
[5] As a result, a country with a tax rate above the global minimum tax rate faces a stronger incentive to lower its tax rate under a jurisdiction-by-jurisdiction regime than it faces under a global averaging regime. Chris William Sanchirico, "Should a Global Minimum Tax Be Country-by-Country?" *Tax Notes Federal*, April 25, 2022; and Chris William Sanchirico, "A Game Theoretic Analysis of Global Minimum Tax Design: Country-by-country vs. Global Averaging," University of Pennsylvania, Institute for Law and Economics Research Paper No. 22-19, March 25, 2022.
[6] The proposal would raise the tax rate on GILTI from 10.5 percent to 21 percent. After credit for 95 percent of foreign tax under the Administration proposal, companies paying foreign tax at a rate of at least 22.1 percent would have no incremental tax liability (21 percent = 95 percent of 22.1 percent).
[7] Contrary to the Secretary's assertion, in many cases the rate differential would be worse under the Administration's proposal than under present law, even if other countries implement global minimum taxes. Under present law, assuming a 10 percent foreign effective tax rate, U.S. companies face a 2.5 percent rate disadvantage (12.5 percent rate for the U.S. company (10.5 percent plus (1-0.8) x 10 percent) and a 10 percent rate for the foreign company), or 25 percent of the tax paid by the foreign company (2.5 percent/10 percent foreign effective tax rate with no minimum tax). Under the proposal, U.S. companies would face a 6.75 percent rate disadvantage (21.75 percent rate for the U.S. company (21 percent plus (1-.95) x 15 percent) and a 15 percent rate for the foreign company), or 45 percent of the tax paid by the foreign company (6.75 percent/15 percent foreign effective tax rate under Pillar Two).
[8] Foreign companies with U.S. operations are subject to corporate alternative minimum tax at 15 percent and, under the Administration's proposal, would be subject to domestic minimum top-up tax at 15 percent and the undertaxed profits rule at 15 percent.
[9] The Administration not only would allocate certain expenses to income in the GILTI basket (reducing the foreign tax credit limit) but also would deny a deduction for expenses related to a portion of this income.
[10] This rate represents the simple average central and subnational government corporate tax rates among the 37 non-U.S. OECD countries. It reflects enacted changes in corporate income tax rates for 2023 in Austria (from 25 percent to 24 percent), Turkey (from 23 percent to 20 percent), and the United Kingdom (from 19 percent to 25 percent).



Source: OECD.

A higher corporate income tax rate would increase the after-tax cost of capital and discourage investment in the United States by U.S. and foreign companies. Less capital per worker means lower productivity and lower wages. Less investment in the United States could also decrease the security of U.S. supply chains, contrary to Administration policy.[11]

[11] See for example, https://www.whitehouse.gov/briefing-room/presidential-actions/2021/02/24/executive-order-on-americas-supply-chains/ and https://www.whitehouse.gov/briefing-room/statements-releases/2022/08/09/fact-sheet-chips-and-science-act-will-lower-costs-create-jobs-strengthen-supply-chains-and-counter-china/.

Treasury Department economists agree with those at the CBO and the Joint Committee on Taxation ("JCT") that workers bear a significant portion of the corporate income tax.[12]

Treasury Department economists estimate that the proposal to increase the corporate income tax rate would raise $1.4 trillion in revenue over the fiscal year 2023-2033 period, about half of the overall proposed increase in corporate income taxes. More than $500 billion of the tax increase would be borne by families making less than $300,000 per year.[13] Treasury's analysis shows that families in the bottom 40 percent of the income distribution (those making less than $54,000) face a greater burden on average from corporate income taxes than from individual income taxes.

3. Repeal the deduction for foreign-derived intangible income ("FDII")

The Administration's proposal would repeal the deduction for FDII.

Approximately half of OECD countries (including France, Italy, Spain, and the United Kingdom), China, and numerous other countries have preferential tax rates for intellectual property ("IP") income ranging from the single digits to as high as 15 percent. The U.S. tax rate on IP income under the Administration's proposals would be 32.4 percent, higher than in 36 of the other 37 OECD countries, and much higher than would be enjoyed in the many countries with IP regimes. This would place U.S. companies at a disadvantage relative to their foreign competitors and put the United States even farther out of step with international tax norms.

As a result of the deduction for FDII, many companies repatriated significant amounts of IP from abroad. Nine U.S. technology companies alone reported an additional $60 billion of profits in the United States in 2020 following repatriation of IP after the enactment of the FDII provisions.[14]

Under the Pillar Two Administrative Guidance, adoption of qualified domestic minimum top-up taxes ("QDMTTs") abroad will reduce the ability of the United States to tax foreign income under the GILTI regime because QDMTTs come before the GILTI regime. Consequently, a regime like FDII becomes even more important to protect the U.S. fisc because it incentivizes companies to own IP in the United States, preserving U.S. primary taxing jurisdiction. The deduction for FDII is thus a U.S. tax base protection measure as it reduces the incentive to hold IP offshore for the sale of goods and services to foreign customers.

Moreover, the FDII deduction incentivizes companies to keep investment and high-value jobs (e.g., engineering and other research and development jobs, strategic marketing, and leadership positions) in the United States to manage their global supply chains, logistics, marketing, strategy, and other activities.[15]

[12] Treasury allocates 18 percent of the corporate income tax burden to workers. See, Julie-Anne Cronin, Emily Y. Lin, Laura Power, and Michael Cooper, "Distributing the Corporate Income Tax: Revised U.S. Treasury Methodology," Office of Tax Analysis Technical Paper 5, May 2012. The CBO and JCT allocate 25 percent to workers. See Congressional Budget Office, *The Distribution of Household Income, 2019*, November 2022 and Joint Committee on Taxation, *Modeling the Distribution of Taxes on Business Income* (JCX-14-13), October 16, 2013.

[13] According to the Treasury's Office of Tax Analysis, 35.9 percent of the corporate income tax is borne by families making less than $293,985. The corporate rate increase to 28 percent is projected to raise $1.4 trillion through 2033, 35.9 percent of which is $508 billion. https://home.treasury.gov/system/files/131/Distribution-of-Tax-Burden-Current-Law-2023.xlsx

[14] Martin Sullivan, "Big Tech Is Moving Profit to the United States," *Tax Notes Federal*, August 23, 2021.

[15] Repatriating IP makes it possible to perform more IP development, enhancement, maintenance, protection, and exploitation ("DEMPE") functions in the United States. The OECD transfer pricing guidelines take DEMPE functions into account in allocating taxing rights for IP income.

4. Adopt domestic minimum top-up tax ("DMTT") as part of the undertaxed profits rule ("UTPR")

The Administration proposal would repeal the base erosion anti-abuse tax ("BEAT") and replace it with a UTPR. The UTPR would disallow U.S. tax deductions in an amount determined by reference to the low-taxed income of foreign entities and foreign branches that are members of the same financial reporting group. Deductions of the domestic members of the group would be disallowed to the extent necessary to collect the hypothetical amount of top-up tax required for the financial group to pay an effective tax rate of at least 15 percent in each foreign jurisdiction in which the group has profits. The proposal also includes a DMTT that would apply when another jurisdiction adopts a UTPR.

As part of Pillar Two, the Administration agreed to allow foreign countries to tax the domestic income of U.S. companies through an unprecedented and unprincipled UTPR.[16] Now, to stop application of that tax, the Administration insists on still higher domestic taxes on U.S. companies in the form of a DMTT. The DMTT would have the same disincentive effects on U.S. investment as would a foreign country's UTPR applied to the U.S. income of U.S. employers. As a result, the DMTT would undermine targeted tax incentives Congress has enacted to advance important economic, environmental, and social goals. The DMTT would also hamstring the ability to use tax policy in the future to strengthen the economy and create jobs, counteract a recession, accelerate recovery from a natural disaster or pandemic, and encourage domestic production of critical supplies for national security reasons.

The Administration expresses a desire to "ensure U.S. taxpayers would continue to benefit from U.S. tax credits and other tax incentives to promote U.S. jobs and investment" without specifying a mechanism for protecting these incentives from the UTPR. We agree with this objective. While recent OECD Administrative Guidance provides some relief for transferable credits and provides a delay in the application of the UTPR, we urge Treasury to renegotiate Pillar Two to protect other U.S. tax incentives (such as the credit for research and experimentation expenditures) and to ensure equal treatment with similar incentives (i.e., refundable tax credits) offered by other members of the Inclusive Framework and, failing that, to modify U.S. tax incentives so that they are qualified refundable tax credits.[17]

5. Other international tax changes

Deduction for dividends received from non-controlled foreign corporations

The Administration's proposal would limit the section 245A dividend received deduction ("DRD") to dividends received from a CFC or a qualified foreign corporation, including a corporation incorporated in a territorial possession of the United States or a corporation eligible for benefits of a comprehensive income tax treaty.

Denying the deduction for dividends received from non-CFCs would depart from international tax norms. Most OECD countries provide a participation exemption to shareholders owning as little as 10 percent of a foreign corporation.[18] If U.S. companies with greater than 10 percent, but less than 50 percent, ownership of foreign companies are not eligible for the section 245A DRD, they will be at a disadvantage in expanding into foreign markets (for example through minority-owned joint ventures) relative to foreign-headquartered corporations whose foreign earnings are not subject to tax in their home countries. Research shows that expanding foreign operations creates economies of scale that support additional investment in plant and equipment and research and development in the United States, resulting in more

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[16] See, Angelo Nikolakakis and Jinyan Li, "UTPR – No Taxation without Value Creation!" *Tax Notes International*, April 3, 2023 and Michael Lebovitz, et al., "If Pillar 1 Needs an MLI, Why Doesn't Pillar Two?" *Tax Notes International*, August 29, 2022.

[17] Modifying existing tax credits to make them refundable would give rise to significant additional revenue loss. Peter Merrill, et al., "Where Credit Is Due: Treatment of Tax Credits under Pillar Two," *Tax Notes International*, March 20, 2023.

[18] Japan is an exception, requiring a 25 percent ownership share.

jobs and higher wages for American workers.[19] For every 10-percent increase in foreign employment by a U.S. company, on average, U.S. employment increases by 6.5 percent. Given that U.S. multinational companies employ twice as many workers in the United States as they do abroad, this implies that an increase of 100 workers abroad is associated with an increase of 132 workers in the United States. Limiting the ability of U.S. companies to expand into foreign markets to sell more U.S. goods and services hurts U.S. workers.

Deductions attributable to income exempt from U.S. tax and taxed at preferential rates

The Administration's proposal would expand the application of section 265 to disallow deductions allocable to foreign gross income that is exempt from tax or taxed at a preferential rate through a deduction under section 245A or 250.

The proposal would treat U.S. companies far worse than their foreign competitors. No other country has expense allocation rules like the United States, and the proposal would uniquely disadvantage U.S. employers by moving us further from international tax norms. This proposal would increase the cost of financing new investments in the United States and result in less domestic investment, making the tax playing field for U.S. companies more uneven. The section 265 proposal would be on top of existing limitations on the deductibility of interest under section 163(j) that by themselves are more stringent than international tax norms (by applying the limitation based on earnings before interest and taxes rather than earnings before interest, taxes, depreciation, and amortization). Indeed, by applying to repatriated dividends of CFCs, the proposal would create an incentive to leave earnings abroad, reestablishing a lockout effect that was lifted in 2017.[20] Lockout of foreign earnings creates an incentive to make investments abroad that provide a lower pretax rate of return than could be earned on new investments in the United States.[21]

In addition, the proposal would perversely make U.S. companies and their foreign subsidiaries more profitable if they were owned by a foreign company that was not subject to restrictions on deductions associated with the foreign earnings. As a result, the proposal would create an incentive for foreign companies to acquire U.S. companies and their foreign subsidiaries.

Broaden the definition of an inversion transaction

The Administration proposal would broaden the definition of an inversion transaction by lowering the threshold of continuing former shareholder ownership from 80 percent to 50 percent. The proposal would also expand the scope of transactions subject to adverse tax consequences to include, among others, the combination of a larger U.S. group with a smaller entity or group that, after the transaction, is managed and controlled in the United States and does not have substantial business activities in the relevant foreign country, even if the shareholders of the U.S. entity do not retain control of the resulting multinational group.

Regulatory and legislative changes implemented over the last decade represent bipartisan efforts to combat inversions, and they have been remarkably effective. In fact, there have been no inversion transactions in more than 5 years. Proposing stricter inversion rules is a tacit acknowledgment that the

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[19] Mihir Desai, C. Fritz Foley, and James R. Hines, Jr., "Domestic Effects of the Foreign Activities of U.S. Multinationals," *American Economic Journal: Economic Policy*, February 2009.

[20] Elimination of such a lockout effect is a bipartisan objective of international tax reform. According to Senator Chuck Schumer (D-NY) and Senator Rob Portman (R-OH), ending the lockout effect was a "crucial rationale for enacting reforms to the international tax system utilized by the United States." Senate Finance Committee, *International Tax Reform Working Group: Final Report*, July 7, 2015, p. 72.

[21] Laura D'Andrea Tyson, et al, "Implications of a Switch to a Territorial Tax System in the United States: A Critical Comparison to the Current System," Berkeley Research Group Working Paper, November 2013. Michelle Hanlon, Rebecca Lester, and Rodrigo Verdi, "The Effect of Repatriation Tax Costs on U.S. Multinational Investment," *Journal of Financial Economics*, vol. 116, no. 1, April 2015, pp. 179-196.

Budget proposals are collectively so disadvantageous to U.S. companies that they would increase the incentive for foreign companies to acquire U.S. companies for the purpose of relocating their headquarters to a more favorable tax jurisdiction. The same incentives would reduce start-ups and new investments in the United States.

Anti-inversion provisions cannot overcome the competitive disadvantage placed on the foreign operations of U.S. companies. For example, proposals that create an incentive for foreign takeovers of U.S. companies also create an incentive for U.S. companies to sell their foreign operations to foreign-headquartered companies in whose hands those operations would produce higher after-tax returns and greater cash flow. New foreign operations would also produce higher returns if owned by foreign companies.

6. Increase the excise tax rate on the repurchase of corporate stock

The Administration proposes increasing the tax rate on corporate stock repurchases from 1 percent to 4 percent. A majority of U.S. households owns stock directly or through mutual funds and retirement accounts and would be harmed by this proposal. In 2019, 52.6 percent of families owned stock directly or indirectly according to the Federal Reserve Board, including a majority of middle-income families making between $47,900 and $75,300.[22] According to a more recent survey conducted by Gallup in 2023, 61 percent of households owned stock directly or indirectly, including 63 percent of those with annual household income between $40,000 and $100,000 and 29 percent of those earning less than $40,000.[23] Approximately, 94 percent of 401(k) participants had at least some investment in equities in 2020.[24]

In addition to its broad reach, the excise tax is also economically self-defeating as it encourages companies to retain cash and make lower-return investments rather than distributing funds to shareholders who can reinvest those funds in higher-return, higher-growth opportunities. The net effect of the increased excise tax would be to reduce economic growth and employment in the United States.

Discouraging the return of capital to shareholders lacks an economic justification. The proceeds of stock repurchases to shareholders are not flushed from the economy; instead they are either reinvested in other productive investments or spent on goods and services that support the domestic economy. Research shows that companies that pay out earnings via stock repurchases rather than dividends spend more on research and development and are less likely to reduce research spending when cash flow declines.[25] In fact, companies have increased their capital investment at the same time that they have increased stock buybacks showing buybacks do not displace capital investment.[26]

[22] https://www.federalreserve.gov/publications/files/scf20.pdf and https://www.federalreserve.gov/econres/scf/dataviz/scf/table/index.html#series:Stock_Holdings;demographic:all;population:all;units:have

[23] https://news.gallup.com/poll/266807/percentage-americans-owns-stock.aspx

[24] https://www.ebri.org/content/ebri-ici-study-shows-401(k)-participants-asset-allocations-favor-investment-in-equities and https://www.ebri.org/content/401(k)-plan-asset-allocation-account-balances-and-loan-activity-in-2020

[25] Sharier Azim Khan, "Does Payout Choice Affect R&D Spending?" April 12, 2023, available at SSRN: https://ssrn.com/abstract=4417459.

[26] Jesse M. Fried and Charles C.Y. Wang, "Are Buybacks Really Shortchanging Investment?" Harvard Business Review, March-April 2018, https://hbr.org/2018/03/are-buybacks-really-shortchanging-investment. Jesse M. Fried and Charles C.Y. Wang, "The Virtues of Stock Buybacks," Wall Street Journal, August 9, 2022.