Remarks by Assistant Secretary for Tax Policy Lily Batchelder at the New York State Bar Association's Annual Meeting

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As prepared for delivery

Thank you, Gordon, for the kind introduction, and for inviting me to speak today. It is a true honor.

The Tax Section is such an incredible resource for tax law and policy. I remember when I worked on the Hill, always looking forward to your briefings on such a huge array of legislative ideas, which we never would have had the bandwidth or expertise to come up with ourselves.

And in my new role, I'm already seeing how invaluable your work is on regulatory issues.

In just the past two weeks, we received letters from you on 4 issues—ranging from disaster loss elections to worthless stock deductions to the device prohibition in the spin-off rules.

I can't pretend to follow the details of every issue you raise, but one of the wonderful things about my new job is being part of such an extraordinary team. And I want you to know that the experts at OTP on each issue that write about take your comments very seriously.

One of the things I appreciate so much about the Tax Section is how hard you work to improve our tax laws and regulations through thoughtful, creative, and unbiased analysis.

I remember learning more about your process from Debbie Paul a few years back, and was really interested in and heartened to hear about your conflicts of interest policies. As you all know, it is rare in these jobs to get advice from outside experts who deeply understand all the technical details and market dynamics of an issue, but do not have a client interest. People who are just calling balls and strikes as they see them.

This—along with the fact that the tax brain trust in this room is truly unmatched—makes your advice invaluable. So thank you for all that you do.

Today, I want to outline some of the work we have been doing over the past year at Treasury and the Office of Tax Policy, and also give a preview of what is to come.

One of the biggest accomplishments of the entire Treasury Department and Administration to date, has been the global agreement to stabilize the international tax landscape so that it benefits both hardworking Americans and US businesses.

In a remarkable testimony to multilateralism, 137 out of 141 jurisdictions in the OECD Inclusive Framework have agreed to a global minimum tax, and to partially reallocating taxing rights from countries where companies are headquartered to those where they sell goods and services. This includes all G20 and EU countries and includes representing nearly 95% of the world's GDP.

Let me start with the global minimum tax.

I don't have to tell this crowd that, currently, the United States, is the only country with a minimum tax on foreign earnings. The global minimum tax rate is 0%.

To be sure, some countries have anti-abuse regimes that limit profit shifting at the margins. But these regimes are porous and poorly coordinated.

The agreement sets a floor so that multinational corporations, whether headquartered in the United States or abroad, will pay taxes on their foreign earnings of at least 15%.

And in a novel step for international tax law, the agreement includes strong enforcement provisions that will ensure countries honor their commitments, while heavily incentivizing non-signatory countries to join the common framework.

Let me first step back and explain the problem at which the global minimum tax is aimed.

Fundamentally, we at Treasury see the agreement as essential to saving the corporate income tax, which in turn is fundamentally about making sure the income tax taxes capital and not just labor.

Although Treasury and the Administration are pursuing other reforms to the taxation capital, the corporate tax is a key component in this effort, because it is such a straightforward way to do so compared to individual level reforms.

The problem is that nations have engaged in tax competition, which has driven down corporate tax rates, and diminished their important role in making sure that owners of capital bear their fair share of the tax burden.

Because of this race to the bottom, corporate tax rates have declined from an OECD average of over 40% forty years ago, to just 23% today.

This race to the bottom means that not only are corporate tax rates driven down, but so are government resources, which could be used to build infrastructure, educate and train our citizens, incentivize R&D, and combat climate change. These kinds of government investments are critical to ensuring long-term, sustainable growth, as well as U.S. competitiveness.

But to make matters worse, to the extent that this shortfall in revenues is picked up by others, it is picked up by workers and small businesses.

We need to reverse this trend, both because it is fair, but also because it will help ensure that our political systems are stable and functioning.

At its core, tax competition as a classic collective action problem. Rational actors may choose not cooperate even if it is in their best interests to do so.

But it is in the interests of all countries to not undercut one another’s tax rates so that we all have the resources we need to make investments that expand opportunities.

This is *why* a multilateral solution is necessary. By agreeing to enact a minimum tax on foreign earnings, 137 jurisdictions have decided to put a floor on tax competition once and for all.

This agreement will provide real and tangible benefits to working and middle class people in the United States and around the world, because it will allow us to invest in essential public goods, respond to crises like COVID, improve technologies and infrastructure, and ensure owners of capital fairly share the burden of financing government.

But I want to emphasize that this agreement is not a zero-sum. Workers will benefit significantly, but it will bring important benefits to US corporations as well.

Our corporations will no longer be based in the only country on earth that requires them to pay a minimum tax on their foreign earnings. This level playing field will enhance their competitiveness relative to foreign corporations—along with all of the other extraordinary benefits that US residence offers.

This level playing field has been the single most frequent international tax policy request from the US multinational community. And, it will prevent the offshoring of American jobs and help stop corporate inversions.

For all these reasons, over the long term, the global minimum tax will benefit the US fisc. Not only will it ensure our corporate revenue stream is sustainable, but it will also enhance economic growth through a more competitive and less distortive international tax system.

Finally, I want to emphasize that strengthening our *current* minimum tax system to align with the global deal will help combat profit shifting, which inefficiently inhibits domestic productivity.

Our current GILTI rules are poorly designed to combat this effect. Because they apply globally—meaning that companies can blend income from high tax countries with income from low tax countries—they effectively mean that the US is often the last place where a US multinational would want to earn income.

Our Build Back Better proposals strengthen and reform GILTI so that it aligns with the global deal, and applies on a per country basis. This would dramatically reduce profit shifting incentives.

So far, I have focused on Pillar Two of the global deal.

But I want to shift to Pillar One—which partially reallocates taxing rights—and has similar benefits for US business by stabilizing a system that has frankly been upended.

Over the last fifteen years, the current system for allocating taxing rights has lost the support of foreign sovereigns. It ignores the realities of doing business in a modern world, and instead demands physical presence for taxing rights to be triggered.

The resulting phenomenon of stateless income, a term coined by the late and wonderful Ed Kleinbard, led to longstanding complaints by countries that are market economies rather than headquarters jurisdictions, and which were long aggrieved by the current allocation of taxing rights.

These complaints were joined by complaints from developed economies, primarily from Europe, that historically supported the existing system, but were frustrated by the ability of so-called digital giants to escape taxation in their jurisdictions.

In response to these calls for change, the prior Administration acknowledged that there was a problem with the international taxing rights allocation system writ large. But they strongly emphasized that it was not limited to digital services.

At the same time, political pressures abroad created a chaotic array of digital services taxes and other unilateral measures that discriminate against US businesses, threaten them with multiple layers of taxation, and escalate tax-related trade tensions that could harm economic growth. Moreover, as more sectors digitize and nations get more creative, these measures threaten not just the digital sector.

When we inherited the negotiations, they were on life support. The former Administration had proposed a safe harbor approach to Pillar 1, which would have made it voluntary. This was understandably a nonstarter to the rest of the world. When Secretary Yellen dropped the safe harbor demand last February, the negotiations were kickstarted.

But the scope of Pillar 1 was still in dispute. The original proposal—to ringfence the digital tech companies—was popular abroad. But it was conceptually indefensible, discriminatory against US business, and not future proofed because the global economy will continue to digitize.

Meanwhile, the compromise proposal to include consumer-facing businesses introduced definitional problems that, because of their qualitative nature, had the potential to discriminate against US businesses as well.

In March, we proposed a comprehensive solution to the scope question, which applies Pillar 1 to the largest and most profitable companies in any sector. This unlocked the negotiations and offered a way to restabilize the system in a manner that would be sustainable and non-discriminatory.

Pillar One as it now stands will put an end to unilateral, discriminatory measures. And it will replaces them with stable rules that are fit for the 21st century. Importantly, the new rules will also protect US interests. As one of the largest market economies in the world, we stand to benefit from Pillar One's reallocation of taxing rights to market jurisdictions.

Our companies will also benefit from the increased tax certainty this will create. This will in turn help them plan for the future and invest their capital based on economic and not tax considerations. No longer will unilateral tax measures that fall through the cracks of the international tax system burden our companies with multiple layers of tax, and our governments with trade tensions.

And no matter which side of the aisle you are on, I think we can all agree that these are important benefits to both the private and public sectors.

Shifting gears a bit from the corporate side of tax to the individual side, I also want to take time today to discuss important progress the IRS has made in ensuring that eligible individuals and families receive all the tax benefits to which they are entitled.

These efforts started with the stimulus payments or EIPs, which provided Americans relief from the pandemic so they could pay bills, put food on their tables, and otherwise meet the needs of their families.

Most of the stimulus payments were provided automatically using tax return information from prior years. But many eligible taxpayers didn't have a filing obligation in recent years. To reach them, the IRS and Treasury engaged in a novel set of outreach efforts, partnering with other federal agencies and community organizations.

Since 2020, Treasury and the IRS have made more than 163 million EIP payments, totaling $390 billion, to 85% of American households. Of these, more than 26 million payments went to taxpayers without recent tax returns. This is really a testament to these new outreach efforts.

Although these efforts were unprecedented, the Administration is committed to ensuring *all* families receive the tax benefits they are entitled to. So to this end, Treasury's Office of Tax Policy, with support from the IRS Research, Applied Analytics, and Statistics Division (RAAS), is examining whether and how eligible adults and families received an EIP. They are also estimating how a letter campaign impacted take-up.

This work is important because it will help us learn how to do even better next time. We hope it will give us a better understanding of the barriers to uptake among some of our most vulnerable communities.

But it is also important because it will represent the first time the Office of Tax Policy will examine the racial equity impacts of a tax program.

Once this work is completed, we plan to publish statistics on the demographic characteristics of EIP recipients, including estimates of race and ethnicity. This will of course be done following strict protocols that prevent disclosure of taxpayer information.

This work follows from President Biden's Day One executive order, which directed agencies to examine whether and how their policies and programs perpetuate barriers to equal opportunity, and having data is essential to performing this task.

Another exciting aspect of this work is that it is part of an effort by OTP to develop a reliable methodology for imputing demographic data, including race and ethnicity, on to tax data. An imputation model is necessary because the IRS does not collect this information and cannot acquire it from other agencies.

Once validated, this work could be used in other similar contexts, for example to examine the equity impacts of delivery of the monthly Child Tax Credit by income, race, and other demographic characteristics.

As I'm sure you know, between July and December of last year, the IRS delivered almost $93 billion of advance monthly CTC payments to families of about 61 million children. In addition, the full refundability of the CTC under the American Rescue Plan meant that families of more than 26 million lower-income kids became eligible for the full CTC for the first time.

This work will extend over several years as data becomes available. But eventually, we hope the imputation model will enable outside researchers and other government and researchers to analyze the demographic and equity effects of a variety of tax policies.

Looking ahead to this year's filing season, I have to start by acknowledging that it will be a challenging one, as you are all well aware.

But it is important for us to recognize that these challenges stem from two things:

First, systematically underfunding the IRS for more than a decade.

And second, a global pandemic that forced the IRS to adjust staff levels and operations, at the same time that it was providing critical support to families, for example through three rounds of economic impact payments reaching over 85% of households.

The IRS, like all of us, has been hugely impacted by COVID-19.

For months in 2020, the IRS closed down processing centers entirely, and since mail is opened manually, this meant no paper returns were processed or correspondence answered for months. The filing season deadline was delayed twice, which meant that the customer service agents who process many amended returns and all taxpayer correspondence had to spend more time on the phones dealing with filing season questions and less time working through the backlog. In addition, about 20 percent of the customer services workforce has been on leave over the past two years, largely due to COVID.

On top of these direct COVID impacts, the IRS took on new and far greater responsibilities as a result it COVID relief legislation. It delivered necessary lifelines individuals and businesses, whether through programs like the stimulus payments or the employee retention tax credit.

The result of this and underfunding is an IRS that doesn't have the capacity to serve taxpayers the way that they deserve.

Normally, entering a filing season, the IRS has well under 1 million unaddressed pieces of inventory. This year, the number is far higher.

Phone calls to the IRS more than quadrupled last year relative to the historic norm. In the first half of the last year, the IRS received 200 million calls. Because it had fewer than 15,000

customer service reps, that translated to one person per 13,000 calls.

Amidst the serious challenges, the IRS and Treasury Department and are doing all we can to ensure that taxpayers can to make the tax filing process less painful.

For example, yesterday, we relaunched ChildTaxCredit.gov, which will now include several features that help simplify tax filing, including directing taxpayers to the best free filing options, and helping them determine their eligibility for remaining credits.

The IRS is also increasing the availability of customer callback technology, which will be available for up to 70% of the types of calls that the IRS receives. And it is providing more automated phone assistance.

But it is important to remember that the IRS's challenges date back much further than the pandemic. Chronic underfunding has decimated the agency, making its tasks herculean in normal times. And we are not in normal times.

Over the past decade, the IRS budget has cut by nearly 20% in real terms. As a result, is workforce is the same size as it was in 1970, even though the US population has grown by 60% since then, and the economy is far more complex.

And the agency's technology is also archaic, with some processing technology dating back to the 1960s. So much work that could be efficiently automated—like processing paper returns—is still being done manually: Agents transcribe information from these forms by hand. This is because the IRS has no resources to invest in a much-needed overhaul of its technological ecosystem.

Since day one in office, the Biden Administration made overhauling the IRS a priority by making efforts to request additional funding at every turn.

The Build Back Better proposals include a much-needed mandatory funding stream of $80 billion over the course of the next decade, which would allow the IRS to enter the 21st century with a more robust workforce and modern technology, finally allowing it to adequately serve the American public.

It would also have the stable funding that it needs to invest in the capacity to meaningfully attack the tax gap, by pursuing high-end evaders who accrue income in increasingly opaque ways.

Because the lost revenue from noncompliance is so substantial—the IRS fails to collect more than $700 billion annually—this investment in the IRS would pay for itself several times over.

Conservatively, Treasury estimates it would net $400 billion in revenue over the next decade to support critical investments in workers, children, and the climate.

This brings me to the opportunities ahead.

We all know that the Administration's Build Back Better package has faced many twists and turns on its road to enactment, despite extraordinary strong public support for the provisions it includes.

Having worked in Congress, I can say this is true of every major (and minor) piece of legislation.

At last Wednesday's press conference, the President signaled the Administration's optimism about a path forward for the plan.

We are confident that many of our top priorities will ultimately be enacted, including the additional IRS funding and strengthening of our minimum tax on foreign earnings.

These initiatives would be worthwhile even if they raised no revenue.

Enhanced and stable funding for IRS will allow the IRS to enforce our tax laws more fairly and efficiently. It will allow the IRS to provide taxpayers with the services they deserve, and ensure that fewer vulnerable families leave benefits they are eligible for on the table.

And our international tax proposals will level the playing field for US companies and combat profit shifting.

But the revenue dollars they bring in will *also* transform lives, by supporting broadly shared economic growth, funding initiatives to combat climate change, and enabling investments in our children and our communities.

And so on that hopeful note, I'll end my remarks but am happy to answer questions.