Remarks by Assistant Secretary for Tax Policy Lily Batchelder on Global Corporate Tax at the Hutchins Center at Brookings Institute and the Urban-Brookings Tax Policy Center

April 15, 2022

As prepared for delivery

Thank you, David, for the kind introduction, and for inviting me to speak today.

Brookings and the Tax Policy Center are such incredible resources for the tax policy community. I have admired both institutions ever since I started out in tax many years ago, so it is a real honor to be here today.

I also want to thank you for the opportunity to explain why we at Treasury, and indeed the entire Administration, have been so committed to this project and what lies ahead.

The global tax agreement is one of the biggest accomplishments of this Administration to date. It would stabilize the international tax landscape and make it fairer to the benefit of US workers and businesses. In a remarkable testimony to multilateralism, 137 jurisdictions have joined this agreement, a result that would not have been possible without the strong leadership of the US. These agreeing jurisdictions include all G20 and EU countries, representing nearly 95% of the world's GDP. Of course, more work needs to be done to implement the global deal. But before I get to that, I want to first highlight why the deal has the been such a top priority of the Administration.

Let me start with the global minimum tax, called Pillar Two.

Currently, the United States is the only country with a formal 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 many of these regimes are leaky 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 earnings in each jurisdiction in which they operate at a rate of at least 15%. That means that all 137 countries that are part of the agreement have agreed to impose this country-by-country minimum tax on the foreign earnings of all multinationals that are resident in their jurisdiction.

But that is not all. In a new step for international tax law, the agreement includes a strong enforcement mechanism, which ensures that countries honor this commitment, while heavily incentivizing non-signatory countries to join the common framework. Specifically, these enforcement rules allow agreeing countries to impose top-up taxes on companies operating in their jurisdiction if the corporate group's effective tax rate falls below the 15% minimum in any jurisdiction. And that is true even if the corporate group is not headquartered in that country. So, essentially, if a country does not enact the country-by-country minimum tax on its resident multinationals, other countries will apply the minimum tax to those multinationals via their subsidiaries and soak up all the revenue that that the non-implementing country could have collected.

These enforcement rules make the regime robust by creating strong incentives for adoption. No longer will it pay off to route earnings through daisy chains of subsidiaries in search of the lowest tax rates. Instead, most jurisdictions will have a minimum tax. And those countries that do not will be heavily incentivized to adopt one because of the regime's enforcement rule, which would tax their multinationals' low-taxed profits anyways.

Turning to the rationale, the fundamental reason why we see this global agreement as so critical is because it is essential to saving the corporate income tax. Over the past 40 years, nations have engaged in tax competition, generating a race to the bottom in corporate tax rates. The OECD average corporate tax rate has declined from 40% forty years ago, to just 23% today. The global agreement would end this race to the bottom by largely eliminating the benefits from engaging in it.

And what's more, saving the corporate income tax is, in turn, key to making sure we can tax capital income. If we can't, we would have to solely rely on taxes on workers and labor income. At home, we've seen labor bear an increasing share of the tax burden in recent decades. We need to reverse this trend. That is why the President has focused so heavily on taxing wealth like work. To be sure, there are many ways to accomplish this goal, and Treasury and the Administration are pursuing multiple reforms to the taxation of capital. But shoring up the corporate income tax is a key component in this effort. It is a straightforward way to rebalance the tax system to more effectively tax capital, and it is one of the most progressive components of the federal tax system.

A further benefit of the agreement is that it will enable our government and others to raise more revenue and reduce taxes on workers and small businesses. The race to the bottom in corporate tax rates has reduced government resources, which could be used to build infrastructure, educate our citizens, support R&D, and combat climate change. And, unless we stop it, this general shortfall in corporate tax revenues will ultimately have to be picked up by someone, most likely workers and small businesses.

That is why this deal is part of what it means to have a foreign policy for the middle class; it ensures that capital and corporations pay their fair share.

This deal also illustrates the benefits of reviving international economic multilateralism. Putting a floor on tax competition by large multinationals once and for all will help ensure we all have the resources we need to make investments that expand opportunities. It will enhance economic growth through a less distortive international tax system. And it is the sort of thing we can only do together and not alone, which is why a multilateral solution is so essential.

I do, though, want to emphasize that this agreement is not a zero-sum game. Workers will benefit significantly because it will ensure that the owners of capital fairly share the burden of financing government investments. But it will also bring important benefits to US businesses. Small businesses will benefit because they will no longer face a competitive disadvantage relative to large multinationals that can shift profits on paper to low-tax jurisdictions, while they pay the full US rates. And our largest corporations will benefit too. They will no longer be based in the only country that formally requires them to pay a minimum tax on their foreign earnings. That level playing field has been the single most frequent international tax policy request that the US multinational community has made. The deal will enhance their competitiveness relative to foreign corporations—along with all of the other extraordinary benefits that US residence offers. And, it will help stop the offshoring of jobs and corporate inversions.

Before I move on to Pillar One, I want to spend a moment on our domestic legislative agenda as it relates to Pillar Two. And in particular, I want to underscore the benefits of strengthening our current minimum tax system, called GILTI, even apart from the global deal.

Our current GILTI rules are poorly designed to combat profit shifting. They apply globally, not on a country-by-country basis—meaning companies can blend income from high tax countries with income from low tax countries. What this effectively means is that the US is often the last place where a US multinational would want to earn income, because it is the only place where income does not offset high-taxed or low-tax GILTI income earned elsewhere, and because they get a 50% rate cut on it.

The House-passed international tax reforms last year would strengthen and reform GILTI and BEAT, including by applying GILTI on a per country basis. They would align our law with the global deal, and fulfill our commitments under it. But just as importantly, they would dramatically reduce profit shifting incentives, for both US multinationals, and foreign multinationals operating in the US. These profit shifting incentives inefficiently inhibit domestic productivity. The BEAT reforms would also serve as a major incentive for countries to adopt minimum taxes on the foreign earnings of their multinationals. Meanwhile, the revenue raised could be used to finance the transformative investments that I discussed earlier.

You may have noticed that in this year's Greenbook, we proposed a slightly different approach to addressing base erosion and enforcing the global minimum tax, called a UTPR. Treasury and the Administration fully support the BEAT reforms in the House-passed bill, and the UTPR is really an alternative model for accomplishing the same objectives. Both the Greenbook UTPR proposal and House-based BEAT reforms would create powerful incentives for other countries to join and comply with the new global regime, and both further the goals of the global agreement.

Shifting to Pillar One, it also has substantial benefits for US business, including the largest ones, because it would stabilize a system that has frankly been upended. Over the last 15 years, the current system for allocating taxing rights has lost the support of foreign sovereigns. In particular, it ignores the realities of doing business in a modern world, by demanding physical presence for taxing rights to be triggered. This outdated paradigm initially led to longstanding complaints by countries that are primarily market economies rather than headquarters jurisdictions. More recently, these objections were joined by complaints from high-income economies, especially in Europe, that were frustrated by the ability of so-called digital giants to escape taxes in their jurisdictions.

At the same time, political pressures abroad began creating a chaotic array of digital services taxes and other unilateral measures. These taxes often discriminated against US businesses. They threatened multiple layers of taxation, and escalated tax-related trade tensions. To make matters more complicated, these measures threatened to expand beyond the digital sector, as more sectors digitize and nations get more creative.

In response to this increasingly untenable situation, the prior Administration acknowledged there was a problem with the current system for allocating international taxing rights. They strongly, and correctly, emphasized that it was not limited to digital services. But they proposed a safe harbor approach to Pillar 1, which would have essentially made it voluntary. This was understandably a nonstarter for the rest of the world. So, when Secretary Yellen dropped the safe harbor demand last February, the negotiations restarted in earnest.

There have of course been many challenging issues along the way. The original proposal—to limit any reallocation of taxing rights to the digital tech companies—was popular abroad. But it was conceptually indefensible, discriminated against US business, and was not future proofed because the global economy is going to continue to digitize. Other proposals, for example to also include consumer-facing businesses, instead introduced definitional problems that potentially discriminated against US businesses as well.

Ultimately, we reached a compromise—again supported by 137 countries—that applies Pillar 1 reallocation to the largest and most profitable companies in almost all sectors. Pillar One as it now stands would restabilize the system in a way that is sustainable and would put an end to unilateral, discriminatory measures.

Importantly, it also protects US interests. As one of the largest market economies in the world, we would benefit from Pillar One's partial reallocation of taxing rights to such jurisdictions. Our companies would also benefit from the increased tax certainty it will create. No longer will they face unilateral tax measures that threaten them with multiple layers of taxation. No longer will they face the threat of escalating tariff retaliations and trade wars that are bad for US business. Instead, they will be able to plan for the future and invest their capital based on economic and not tax considerations.

Finally, I want to turn to what is next. I'd be ignoring the elephant in the room if I didn't acknowledge that there are still important steps left for the global deal to become a reality. Nations need to implement these rules. Europe is moving strongly towards implementation of Pillar 2. Although they did not gain consensus on a draft directive this month, the French Presidency is committed to doing so in the coming weeks. Poland remains the only outlier here. We are disappointed that they did not join the otherwise unified EU on this important measure that will, when implemented around the world, raise crucial new revenue for 137 participating countries. But we remain optimistic that in the coming weeks Poland will no longer block unanimity in the EU.

The path forward in the US has had many twists and turns, but we are also confident we will meet our commitment to reform GILTI and BEAT, which remains a top priority of the Administration. There is broad support across the Democratic caucus for these international tax proposals. And we are optimistic that we will meet our commitment to enact Pillar Two in 2022.

Much has been made in recent weeks of the possibility that the agreement would curtail certain domestic tax incentives through UTPRs. Under the Pillar Two Model Rules and Commentary, tax incentives do generally reduce a taxpayer's tax expense and thus their effective tax rate. That general rule was necessary, given the goal of Pillar Two to level the playing field for American businesses, and end the race to the bottom for corporate effective tax rates. If the deal disregarded all tax incentives, it would render the minimum tax meaningless because any rate cut can be framed as a tax incentive.

But it is worth emphasizing that the number of U.S. taxpayers even potentially affected by UTPRs is incredibly small. The global agreement provides that a UTPR may only apply to the largest and most profitable multinational companies, and only if they are paying less than a 15% effective tax rate in each jurisdiction in which they operate. Only 0.02% of U.S. corporations are above these thresholds as a percentage of US corporate returns. That is 2 in 10,000. And the share of all US businesses affected is much smaller. So this is emphatically not something that small or even reasonably large corporations will be affected by.

Moreover, the effect of UTPRs on tax credits depends on several factors, including who controls the projects that give rise to the credits, and whether the credits are refundable. Some of the credits being raised as concerns almost certainly fall outside of the scope of UTPRs.

And for those credits that do not, we are committed to working with Congress to explore other ways to protect US tax incentives that promote US jobs and investment.

After GILTI and BEAT reform, the US will need to turn to the multilateral instrument for Pillar One, important pieces of which are currently being negotiated and submitted for public consultation as they become ready.

Although the business community is understandably reserving judgement until the details of Pillar One become clear, we are confident that once the deal is brought to the implementation stage, the benefits to the US fisc and to US businesses will be readily apparent.

Pillar One would restabilize the allocation of taxing rights in the international tax system in a way that would be sustainable and would put an end to the chaotic array of unilateral, discriminatory measures that were proliferating and can result in multiple layers of taxation.

These measures currently only threaten certain sectors of the economy, but they are poised to apply more broadly, potentially escalating tariff retaliations and trade wars.

Certainty is invaluable to investors and business leaders, and Pillar One will deliver on that.

To conclude, this is a generational achievement, that would benefit not only working and middle-class Americans but also citizens around the world. Workers will find themselves in a position where they are no longer bearing a disproportionate share of the tax burden. Individuals and families will benefit from the revenues this deal raises to pay for important social goods, like childcare, health care, climate protection, and education.

The race to the bottom that has bedeviled the tax system for decades will be replaced with a different kind of race: Who has the most productive workers? The strongest infrastructure? The most creative R&D?

That is what I'd call a race to the top. And one that benefits citizens around the world rather than depriving them of resources and investments.

And with that, I'm happy to discuss with you further, David.