

THE BROOKINGS INSTITUTION

WEBINAR

TACKLING INTERNATIONAL TAX

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PROCEEDINGS

MR. GEITHNER: Good afternoon. I'm Tim Geithner and on behalf of my colleagues at the Hamilton Project, I'm pleased to welcome you to this webcast on international corporate tax reform. We released today with the Tax Law Center of NYU a short document which lays out the essential aspects of the international and U.S. tax systems that never reformed.

I want to start by recognizing Wendy Edelberg, the Hamilton Project's Executive Director, Etsy Griffith, our Managing Director and Lauren Bauer our Associate Director. They did their typically excellent job pulling this program today.

We have some outstanding presenters discuss this today by a panel lead by Jason Furman. And we're going to begin or I think we're going to beginning with a conversation with Brian Deese led by Wendy. Brian who is going to join us soon is President Biden's Director of National Economic Council. In that capacity, he has one of the three most important economic policy job in the United States. Surely, the broadest of them and in some ways the hardest of them

He brings to that role a long record of experience in the White House and the Executive branch. A first-class mind, a sterling reputation for integrity and judgment and a patient, calm tenacity in the important effort, the

noble effort of trying to bend policy towards competence and more just outcomes.

So, Brian, I want to thank you for joining us and I want to turn over the program to Wendy now.

MS. EDELBERG: Thank you, Tim. And yes, we are indeed delighted to be joined by Brian Deese. I think we have him. And he and I will be having a conversation about international tax reform that's being organized by the OECD. It's titled the Inclusive Framework on Base Erosion and Profit Shifting.

We're going to talk about how that fits into the administration's priorities and criticisms and challenges for implementation of those policies. So, Brian, great to see you. Let's start – oh, I'm not sure we can hear you.

MR. DEESE: Can you hear me?

MS. EDELBERG: Okay. Yep, I can. So let's start with some basic questions. So as Tim mentioned, we put out this facts document that I encourage everyone to take a look at. Highlighting the critical problems as we see them on how big U.S. taxes international corporations.

So what are the problems as you see them? And what do you think are the most important aspects of reform that are currently being considered? And how does that reform solve those problems?

MR. DEESE: Great. Well, let me start, Wendy, by thanking

you and Tim and Jason and the whole team for the opportunity and for the ongoing role, essential role, that the Hamilton Project plays in really bringing to the floor important policy debates and ideas and intuitions. And we – I know we on the President's economic team and many others across the country and the world rely on your sound judgment and counsel so thank you for that.

So, yeah, look I mean to start, I think that the basic problem is relatively straightforward which is that we have an international tax system that is best characterized as a race to the bottom. And that this has happened over years and in fact decades. But if we look over 40 years, we've just seen the erosion in corporate tax rates across the OECD. And also, we've seen the erosion in trust in our institutions, in being able to actually enforce viable tax regimes on capital income.

And so, when this president came into office and was trying to identify economic priorities particularly international economic priorities, he really keyed in on trying to solve this problem for a couple of reasons. One, was how important it was to be able to generate sufficient revenue through capital taxation to fund investments while also keeping tax burdens for working people and labor in the United States at reasonable levels.

And I think the paper that you all have put out underscores and shows that, you know, we have in the United States basically failed that test.

And we have historically low corporate revenue as a shared GDP. And this connect between corporate revenue and corporate profits in our economy. And the tax law that was put in place in 2017 kind of made that worse. So that's piece one.

Piece two is how do we actually create more competition around economic dynamism or around competing on ideas and innovation as opposed to tax competition? And, you know, this is where the race to the bottom is not only about hallowing out the tax base, but it's actually very distortive of economic activities. And the United States economy probably loses out the most when it's a competition about tax regimes because our economy has unique strengths in terms of dynamism, IP role of law, innovation, our workforce and when it's all about tax competition that puts us on our weakest foot.

And then, I guess thing that I would say in terms of our goals and objectives was demonstrating that we can actually work multilaterally to solve this problem and tax capital effectively in a way that that's fair and in a way that's stable is we believe important from a broader sense of trying to demonstrate that multilateral institutions can actually solve important economic problems. And that this core problem, this problem of the basic erosion of our international tax system makes partnership on everything from trade to energy to international development harder.

And so, if we can fix it and we can move from a system that sort of feels like it's built on a house of sand to something that is more durable and encouraging of the kind of economic behavior we have, we can build trust in our own workers and in our communities here in the United States and across the world that working multilaterally to solve these types of economic problems is actually in their interest as well.

So, you know, that's sort of the broadly speaking. The goals that motivated us to try to come to and prioritize getting to an agreement internationally.

MS. EDELBERG: So which aspects of the inclusion framework would you highlight as being most important to solving these problems?

MR. DEESE: Yeah. So as, you know, and I think many of yours probably know, the framework has a couple of pillars. I think most central to that to solving, to achieving those goals is pillar two.

And pillar two is, you know, can be thought of as ending that core reach to the bottom by establishing for the first time a global minimum tax regime. And it stems from this view that if we are going to solve those problems, we have to do it multilaterally.

But also, if we're going to solve these problems, we need to have a viable structure in place that incentivizes countries to participate. And so, the combination of having a global minimum tax but then also a viable

enforcement mechanism for those who don't participate really should turn that dynamic on its head and create real incentives, tangible financial incentives for countries and companies to get behind this agreement.

Which is not to take away from pillar one and not to take away from the accomplishments there in terms of digital services but at its core, I think that that – it is pillar two and the shifting of paradigms, the culminant of tax regime that really is going to get us to that place.

MS. EDELBERG: So 141 countries and jurisdictions have been engaged in the OECD negotiations around these two pillars. And we'll get into our details as we go along as to what these pillars are, but just let's just take for now that these are basically two very ambitious ways of recreating, reforming the international tax system.

So nearly all 141 of those have signed onto the agreement. But of course, that's just the beginning. How do those changes go about being implemented because truthfully if success depends on optimal policy changes by 141 different governments, the path to success seems rocky?

MR. DEESE: Very reasonable caution, but here's what I would say. The first point is the most notable thing about this challenge in front of us is how much progress we've actually made notwithstanding the path ahead.

I think that if you had asked most observers and most who had

been in this space 18 months ago whether over the course of 18 months you could actually get through to not only conceptualizing but agreeing in principle, agreeing in framework. Getting the entire OECD to agree and be well into the implementation phase. Whether that was reasonable to expect over an 18-month period, that would be at least on the outer edge of people's realistic expectations and we are there.

I think that that's due, you know, in no small part to the United States, this President and in particular Secretary Yellen's leadership in prioritizing this on the international stage. But it's also due to the fact that there is real durable international enthusiasm and cooperation around implementation.

So the question then is how do we build on that and go from here? We are now in the – well, into the implementation phase, which means that countries that have signed onto this agreement now have to take action to reform or codify their own domestic laws to adhere to the basic framework.

The United States has been working very closely with our partners and allies particularly the European Union and other major countries, major players in this space like the U.K. and Canada and Japan. And we are hopeful that the EU in its process will advance and agree on a directive for the European Union shortly.

And then countries including the United States then need to enact laws consistent with this approach. But understanding the point that you made about the complexity and the nuance of individual country's circumstances, the basic agreement contemplates why we should have confidence that that's the case.

Because there is a huge – there's a really significant carrot to all countries to participate because actually getting in and being part of the global minimum tax regime means your companies can benefit from the stability that the agreement provides. And that your country can benefit by gaining the revenue that the system generates. And if you don't participate then it gives other countries the ability to make sure that you can't gain the system and you can't be given an unfair incentive.

So certainly, getting 141 countries or more to collaborate on anything is complicated. And we have work to do ahead of us, but I think that that foundation, a partnership and those inbuilt incentives give us a lot of confidence as to why we can keep making progress at the clip we've been making.

MS. EDELBERG: So I have a couple of questions in follow up. So first, as core these tax reforms are meant to raise additional tax revenue from international corporations.

So in that regard it makes sense that corporations might

oppose the reforms, but you were talking about benefits to corporations. So how do you – I mean what are the pros and cons that you see from the vantage point of U.S. corporations?

MR. DEESE: Well, look I would say this. From the perspective of the U.S. economy and U.S. competitiveness. I see multiple reasons why we should really be for this. And I think that attaches to the way that companies should think about this as well. Particularly, companies that are thinking about operating for the long term.

First of all, the United States is functionally the only country in the world right now that has a global minimum tax. And what this would do is actually reduce the differential between the U.S. global minimum tax and the rest of the world which means that countries can more effectively compete in jurisdictions without the concern that their foreign counterparts are actually going to be able to game the system based on taxes.

Secondly, for the broadly speaking for U.S. companies and U.S. companies, the majority of which operate domestically. The majority of which aren't large U.S. multinationals. This agreement is a slam dunk win because it will make our economy more competitive and it will generate sufficient revenue to invest in things like R&D and things like infrastructure that benefit companies because of creating a better business environment in the United States.

I mean even for those large multinational corporations, the benefit of having a stable international tax regime where they don't have worry about their foreign counterparts undercutting them based on tax-based competition across time, I think will very much benefit them as well.

I mean this is, of course, the case that in a regime where some individual firms will pay more taxes. Some of them may prefer to not pay outside taxes. But if your focus is on what's going to create a better competitive environment to operate over the medium term, I think that for companies large and small, domestic and international there's a lot to recommend in this approach.

MS. EDELBERG: Yeah. So let's talk about the economic effects. I mean what if of the economy, it's hard to have enable. I mean even the tax after 2017 for all of its very significant changes and reductions and statutory rates was estimated at least by my rights to have very small effects on the economy over the longer term.

How do you see the reforms that are on the table now effecting actual economic activities? So putting aside where profits are located. So where in income is reported so that it's taxed and how it's taxed. How will these reforms actually change where firms want to locate their real activity? You know, whether it's where they want to employ people? Where they want to put, you know, their physical assets? How will it affect those incentives?

MR. DEESE: Well, I think the most significant thing that it will do is it will reduce the incentive for companies to make those decisions based on tax arbitrage opportunities. And it will increase the incentive to make those decisions based on economic opportunities.

And in that competition, the United States is going to win. The United States is uniquely well positioned because of the strengths as I mentioned earlier in our economy. So in that sense by shifting those incentives, we're going to create more opportunities for our economy.

But I also think that there is also a benefit from stability and a benefit from resources. Stability with respect to having a stable global international tax regime on which people can rely, on which people can operate and that is based on those incentives. Again, I think has a larger and longer term benefit than is often captured in static models.

It will also help – and this I am confident of in our international economic diplomacy and engagement. Will help us build more capacity to partner in other areas as well like international trade. And it will also create a situation where we have a more stable and durable revenue base in the United States which has broader economic benefits as well.

MS. EDELBERG: So one question we have from an audience member watching is – and I share in having this question. Should we worry that by joining this agreement, we are somehow losing our autonomy to

create our own tax policy?

And there's like, you know, just a general worry that, you know, why should we let international organizations dictate our policy? But then I think that there's a more substantive worry which is does this make our tax policy possibly less nimble in the future as the economy changes over time? And does Congress lose some its abilities to, you know, nimbly change tax policy in the face of changing economic positions?

MR. DEESE: Yeah. I think it's a fair concern or a fair question. And I would answer it this way, which is we operate in a global economic. And our economy and our businesses operate in an existing global world.

And so, it's not as if our – we can be immune to how our own policies are affected by the way that other countries run and operate their tax regimes. The only way to completely avoid that impact would be to erect walls or protections, barriers that would not serve anybody's interest well.

And the reality right now is so we already operate in a system where whatever tax regime we adopt then has implications to how other countries operate. And we are now operating in a system that is the worst of all worlds because the – whatever impact we're trying to accomplish from our policies, tax policies or corporate tax policies is undermined and significantly by an international system where companies can gain advantage by basically arbitraging our tax system globally.

And this is something that can only be solved effectively through cooperation. But cooperation doesn't mean seeding autonomy. It doesn't mean seeding our own sovereign ability to set tax laws. We still have all of our capacity within our tax laws to incentivize particular economic activity that we find to be sensible or that can pass Congress. We retain all of those abilities.

And, in fact, what we gain in this context is a commitment. As I mentioned before, we already have a global minimum regime. It's just not a regime that actually works to achieve those goals. But what we gain is the commitment of other countries to actually step in and take away some of those negative incentives.

So, you know, I think that at the end of the day the right international regime involves cooperation. And that requires us to be willing to commit ourselves to certain principles and goals, but we can do that while also maintaining, you know, the autonomy to provide the incentives that we want in the places that we want where we see fit.

MS. EDELBERG: So last question before I turn things over to Jason Furman and his distinguished panel. Let's take this as a given that this train is leaving the station internationally.

What are the risks as you see them from us not engaging from the U.S. stepping back from this initiative?

MR. DEESE: So we've talked a lot about the opportunities. And so, I won't underscore them. I think they are significant. And I am confident that we can and that we will as a country step up to the commitments that we've made because of those opportunities and because it makes economic sense.

And we have also demonstrated that there is broad support for doing so in Congress, broadly across Democrats and some Republicans too. I think we passed a bill in the House that would be consistent with the international tax framework. And it is an issue that we are working actively on in the Senate as well.

But to the question that you're raising, we face a significant opportunity cost if we don't act and we don't act in a timely way because the world is moving forward on this issue. And I think that that's what the OECD agreement has underscored is that not just in the United States but across the developed world and broadly speaking the global economy. There is a real appetite to end this practice and to reduce these incentives for inefficient tax-based sort of race to the bottom behavior and dynamic.

And so, as the world moves forward the risk is that we get left behind. And that we end up operating in a system where other countries are able to coordinate and harmonize and harvest the economic benefits associated with this regime, and we are ending up on our backfoot. And

there's no reason why that we need to be there. We've already been leading in this effort. We've got our momentum and as I said, I'm confident that we could do that.

But that's the stakes here is our opportunity to harvest those benefits for our economy and for our working families or to see those to other countries.

MS. EDELBERG: But just very quickly. I mean if this really – if 140 or 141 as the, you know, countries and jurisdictions cooperate on this and the one that is left out is the U.S. Is it fair to say that multinational U.S. corporations are still going to end up paying more tax? They are just not going to be paying it to the U.S. government?

MR. DEESE: Well, that's where we're headed. I mean where we're headed is a situation where other countries – as I was saying, other countries harvest the benefit of this agreement. The benefit of terms of economic cooperation. They benefit in terms of revenue as well, right?

And so, that's part of the design of this is to set this up where every country has an incentive to harvest those benefits. I think from our perspective, the economic benefits here are really paramount. And they are larger for the United States in part because of the way that we have set this up.

But the revenue benefits are real as well and it would be

unfortunate to find ourselves in that situation. But as I said, I don't anticipate that we will and I think that the economic logic behind it ultimately will prevail.

MS. EDELBERG: Well excellent. Thank you so much, Brian Deese, the Director of the National Economic Council at the White House. And thank you very much for joining us. I'm now going to turn things over to Jason Furman and our distinguished panel.

MR. FURMAN: Great. Well, that was a terrific discussion so thank you to Brian and to Wendy.

If I could get three friends together in a bar to have a conversation about international corporate tax, it would be Kim Clausing, Chye-Ching Huang and Rohit Kumar. I'll tell you a tiny bit more about each one of them when I bring them into the conversation.

I wanted to start with Kim Clausing as the Eric Zolt Chair of Tax Law and Policy at UCLA, School of Law. She herself though is a thinker of a lawyer. She is trained as an economist. I think you are, right? Trained as an economist. And up until two weeks ago was Deputy Assistant Secretary for Tax Analysis at the Treasury. She's written two Hamilton papers on international tax reform. One in 2007, one in 2020. And the 2021 one really in some ways sets the groundwork and makes the argument for what the administration subsequently pursued.

So, Kim, I would like to start with you. I would like to just step

back and give like a very brief description of, you know, what exactly was agreed to? And what it means? And what the administration is proposing? And then just your interpretation.

MS. CLAUSING: Thanks, Jason. And thanks to the Hamilton Project for holding this event. It's been very interesting to hear all the thoughts.

So let's start with the agreement and then I'll fold it into the administration's perspective. As Brian noted, pillar two is really at the heart of the matter. Pillar two is an agreement by more than 135 countries that have signed on representing more than 95 percent of the world economy that multinational companies headquartered in those jurisdictions will pay at least 15 percent tax rate on their income.

So you might ask, well, why do countries, the governments and their citizens find this attractive? And there are several reasons. First, and probably most obviously this raises revenue, but it also raises revenue in a way that's fair and efficient. Right now, in many countries, the relative weight of the tax burden has been shifted from capital and business towards labor and consumption.

And this would rebalance the tax burden towards taxing multinationals and help governments fund urgent priorities. This is also an efficient tax based. The majority of the corporate tax falls on above normal

returns to capital and those are efficient to tax.

This also helps create a tax system that's capable of taxing capital at all. As one example in the United States more than 70 percent of U.S. equity income is held in nontaxable accounts or by entities that are not taxable by the U.S. government like nonprofits or foreigners.

So this corporate tax is one of the only ways to reach this income. So there are a lot of reasons why countries want to tax multinational companies. But countries have had difficulty doing this because the companies themselves have argued that having such taxes in place puts them in a competitive disadvantage relative to other countries that are offering lower tax rates or special tax regimes.

So a long comes the international tax deal and countries can coordinate and agree that they will establish some minimum level of tax and that takes away this argument that you can't tax corporate income because of these competitiveness concerns.

So not only have all large economies agreed to adopt this pillar two minimum tax, but there's an enforcement provision that Brian talked about earlier that kicks in if countries don't follow through on their promises. And this is called the Under Tax Profits Rule or the UTPR for short.

And this lets other countries tax multinational profits even in the event that their home countries aren't taxing them. So all together this

agreement provides a floor on tax competition pressures because you agree to tax your companies at least 15 percent but if other countries don't follow through on their commitments, you also have the ability to top up their tax rates to 15 percent as well.

There's also a pillar one. Pillar one involves a reallocation of taxing rights towards market jurisdictions. And it's an important way to stabilize the international tax system in a way that avoids unilateral measures. Right now, countries that have a lot of consumers of multinational products but not the ability to tax them sometimes feels sort of left out.

And so, they resort to unilateral measures and this can generate trade conflicts and a lot of ad hoc disputes. So for the largest companies in the world this agreement would reallocate the taxing rights and some fraction of the excess profits would then be taxable in the market jurisdiction.

For the United States, the consequences of this part of the agreement are not particularly large in terms of revenue on the redistribution of taxing rights won't have a very large effect on the government. But what's more important is preventing a lot of disputes about who has the right to tax what income.

Pillar one allows a cooperative solution where we all agree on how those rules should work for the largest most profitable companies rather

than resorting to this ad hoc unilateral measures and the resulting escalation in trade disputes which can certainly create a more uncertain business environment.

The administration's international tax proposals and those adopted by the House in November remain under consideration now. And these are fully consistent with the vision laid out in the international agreement. Under the legislation, we'd adopt a country-by-country minimum tax that's fully consistent with the pillar two agreement. Country by country is an important feature because without it there's a strong incentive for countries to lower their tax rate all the way to zero. And both the JCT and the Office of Tax Analysis have shown that such reforms can erase hundreds of billions of dollars for the U.S. government at a time when we really need the money for both deficit reduction and for a long list of fiscal priorities.

MR. FURMAN: Great. Thank you so much, Kim. The United States has had two really important economic policy imports from the country of New Zealand.

One is the two percent inflation target. The second is Chye-Ching Huang who has been a massive force in tax policy since she left being an academic and practitioner in tax in New Zealand and came to the United States. She's at the Center on Budget for a long time and now is the Executive Director of the Tax Law Center at NYU. And, Chye-Ching, I would

love to hear your perspective on these reforms.

MS. HUANG: Excellent. Well, thanks for having me, Jason. I've been sort of somewhat distracted by trying to come up with a punchline to three of Jason Furman's tax friends walking into a bar. I believe you will ponder that while I sort of focus on something a little more basic which is I really think that any discussion of this topic needs to start with a really very simple fact. Which is that at the moment, U.S. multinationals pay about 8.8 percent of their profits on tax.

That's their cash tax rate as a share of their worldwide book income in 2018. It's a very simple fact. It's not novel but it's not broadly well understood. And I think it really needs to ground any policy discussion in this areas because of the policy discussion, we spend a lot of time focusing on current and proposed statute rates. Whether it's the 15 percent global minimum tax or 21 percent that others have proposed. Or even 25 percent or 28 percent, so on and so forth.

But U.S. multinationals actually pay well below those current and proposed statutory rates. And I think really the question that should motivate a lot of the policy discussion that we're having is whether the cost of the current provisions of the law that allow multinationals to achieve that 8.8 percent effective tax rate worldwide is worth it to the U.S. as a whole?

Is it worth it in terms of the incentives that it creates to locate

profits or investment offshore? Is it worth the cost of the revenue that could have stayed deliverable to other basements with broad economic benefits? And is it worth it in terms of the disadvantage that accrues to small, new and domestic businesses that don't use their tax departments or maybe don't have tax departments that they can use to create a profit center from shifting profits to tax havens?

So it's that sort of really basic fact and opportunity cost that I think is an important place to start here. And I'm sure we'll sort of – we'll hopefully, Jason, you can avoid us going into a sort of data fruit flight, but there's lots of fun things to talk about in terms of how we precisely visualize. I think the rights and quantify those opportunity costs. But I think to me that's the frame that we should be thinking about this from.

MR. FURMAN: Great. Terrific. So our third speaker, Rohit Kumar, I first met in 2009 when he was Deputy Director for the Majority Leader McConnell. I think I was late for the very first meeting we had. And the next several years between Obama and the Congressional Republicans got off on the wrong foot as a result.

He forgave me, though. We had a great negotiation in 2010 and has always been someone who combines just enormous, enormous levels of insight in tax with real political savvy. Now, he is the Principle and Co-Leader of the Washington Tax Services for PwC.

I would just like sort of broadly speaking for you to give us your perspective and let us know whether you're giving us your policy perspective? Your political read? Speaking on behalf of the business community or what have you?

MR. KUMAR: Yeah. So thank you and thank you for inviting me. This definitely feels like I was – I watched a lot of Sesame Street as a child so this feels a little bit like one of these is not like the other game. And you can probably guess who is the not like the other in this exercise.

MR. FURMAN: Kim, who is not a lawyer.

MR. KUMAR: Right, yeah. You've won. So, you know, perhaps not surprisingly given my background and practice, I don't entirely share the views expressed here before.

You know, I think it's important – but it's important to have a fact-based conversation, right? If nothing else, if we can disagree about the solutions, but we ought to be able to agree on the facts. So let's just look at like the 2018 statistic that the effective rate for multinational is 8.8 percent.

So of two things jump out at me. One is Gabriel Zucman, not an economist that I quote regularly. You know, noted that that estimate substantially includes a lot of double counted income. Yes, he calculated it at 72 percent of the income was double counted because of intracompany dividends so it inflates income, it doesn't inflate the tax. And you end up with

this artificially low rate. And then if you disagree, you know, you're in a fight with Gabriel Zucman about his calculations.

We have 2019 data, right? And the 2019 data shows that the cash tax rate was actually 15.9 percent, which is, you know, some 80 percent higher than a 2018 rate. Now, that's not hugely surprising because the 2017 law was enacted at the end of 2017 so you wouldn't expect much effect in 2018. 2019 will be the first year and it would be just the beginning of when you would start to see some of the effects of the 2017 law.

And I actually feel like in a lot of ways the conversation we're having, and even in some of the analysis that has been presented today, is – and this is always true of government, is fighting the last war. Like this is very much a pre-2017 conversation when things that companies could do, U.S. companies anyway could do, foreign companies can still do it. It's just no longer available because we do have – and Brian pointed this out.

We do have the only minimum tax on the active foreign earnings of our headquartered multinationals. And the one thing I do agree, and I always like to find some area of agreement. The one thing I do agree is if the rest of the world were to actually adopt something like a pillar two style regime and the U.S. were then to follow and do it at the same time – or if not follow do it at the same time that would actually be helpful, right?

The risk though, and I think this is what gives Congress – and

now I'm wearing a political hat – what gives Congress some pauses, Congress is being asked to adopt these changes now like within the next, you know, several months. Where they proposed 1/1/23 effective date at a time when it doesn't look like anybody else is racing to the start line or even the finish line of this exercise.

You know, what countries agree to at the OECD was not actually a commitment to do it. If you actually read the OECD – and we're seeing this play out in the EU now. What it says is it is volunteer. And if you are going to do this then this is like the model goal. Like this is the gold standard of what a minimum tax regime should look like. But you're not actually obligated to do it.

Now, the EU is trying to pass a directive that requires unanimity in the EU, which would then in theory require EU member states over a period of time to adopt these changes into their national law. And now that it is becoming a little bit more mandatory than what was agreed to at the OECD, the rubber is hitting the road and the EU is now – they are O for 3 in getting the unanimity required.

They're going to take another run at this, I think on Friday. The last meeting of the Finance Ministers under the French Presidency of the EU. At the moment, it doesn't look like unanimity is likely to be obtained. Poland has been objecting. The Polish Finance Minister was in the press last week

saying our objections remain.

And so, you know, the challenge here, I think is how do you do this in a way that actually doesn't disadvantage U.S. headquartered multinationals? And disadvantage both as to substance and the substance of the House passed bill is more onerous than what the model rules that were proposed and as to timing. And the timing of the House passed Build Back Better legislation at least as it relates to this issue.

Clearly more onerous because there's no one in the world that's going to adopt this for a 1/1/23 effective date.

MR. FURMAN: So I don't want to have a long discussion about debate about the numbers. If there's a very brief response, Chye-Ching, you're one of the coauthors, I should have said at the excellent all facts document which I highly recommend which is on the Hamilton Project website.

If you want to quickly respond on that? But then I want to draw out this question of what if the U.S. acts and others don't and vice versa?

MS. HUANG: Yeah, this panel might be a quick bite for some excellent analyses of these issues by joint committee on taxation. Patrick Gleason, Kim Clausing and the Commercial Research Service.

These data issues are pretty well known. I'm pretty familiar with anyone that has looked at the data. I think where his points covered a

few different things. The treatment of losses potentially. The impact of reappropriation taxes and also, I think the treatment of stateless income.

If you look at footnote six in our paper, you can see some analyses that actually go into these and are pretty detail. And you find that basically the overall story, which is benefit to rights, and below statutory rights is a very wide spread apart tax rights available to multinationals and a profit share thing is substantial. It stays pretty constant no matter which variation of those different approaches that you can try, but also, Kim, if you wanted to jump in because you write some of those very pieces, feel free to do so.

But again, I think the bullet story is the same. No matter which of those styles you tweak.

MR. FURMAN: And, Kim, only briefly if you felt the need to jump in just because we have –

MS. CLAUSING: I'm fine with moving on.

MR. FURMAN: Rohit, do you need to say anything or should we –

MR. KUMAR: No. Look, I mean it's not hugely rising. I mean no company pays headline rates. Everyone pays below statutory rates because there are incentives in every regime in the world. But so that's not hugely surprising. I mean it would be shocking if you were paying the

headline rate at some level.

And stateless income while possibly true for a foreign headquartered multinational is just no longer available for a U.S. headquartered multinational. Not since the guilty changes. Not since the 2017 law was passed. So this is where I feel like some of this conversation is rooted in what happened – what was potentially available in 3/2017, but frankly post the original BEOPS, Base Erosion of Profit Shifting exercise at the OECD in post-2017, you know, the U.S. tax law changed for U.S. headquartered multinationals anyway. Speaking only for them.

Stateless income is not available. I don't know that it's widely available for any multinational anymore, but it is certainly not true for – it's not available for U.S. multinationals.

MR. FURMAN: So I wanted to go to the more important – well, everything is important of course. I think the important challenge you raised is the possibility that the United States could pass this and other countries not.

So I wanted to get from either Kim or Chye-Ching or possibly both. Well, why don't we start with you, Kim. What would the consequence to us be if others didn't pass it? And what type of incentives does our going ahead in doing it unilaterally create for other countries?

MS. CLAUSING: Yeah, so there's a strong incentive for other

countries to adopt. And if we adopt, I think it will be an even stronger incentive for them to adopt.

Effectively because of the enforcement provisions envisioned in these agreements. If nonadopting countries are really at a disadvantage because other countries will tax their multinational companies' profits.

And even if we look at sort of the House past legislation, it envisioned a stronger base which is not exactly the same thing as the UTPR acronym that I referred to earlier, but does serve a similar purpose of really incentivizing foreign multinational companies to also adopt this international tax agreement because if they don't then they will much more likely to be subject to the BEPS because they will have low effective tax rates than, you know, elsewhere. And if they try to strip income out of the United States, they'll be hit by the BEPS.

So, you know, I think the risks here are relatively minimal and there are plenty of things that the United States government can do to make them even smaller. And one thing to remember is that Congress retains autonomy, right? So if we are the first to implement this, which unlikely because I think other countries are ready to move as swiftly as we are. But even if we are the first to implement this.

And let's say nobody else does it, right? Then there's two options. We can either toughen our enforcement measures which we're fully

capable of doing or we can, you know, reevaluate later. But it's important to keep in mind that there's multiple definitions of competitiveness here.

So even if our companies are paying a little bit more tax than some of the companies abroad, we also have to worry about the competitiveness of the U.S. location as a place for doing things. And U.S. international and tax reform will greatly enhance that by making it less advantageous to shift profits offshore and less advantageous to shift jobs and investment offshore. Because right now, you've got a 50 percent discount for foreign income relative to domestic income and U.S. international tax reform would narrow that differential substantially.

MR. FURMAN: Come in, Rohit.

MR. KUMAR: I was going to say one important thing to point out, though. This under taxed profit rules, this so-called unfortunate mechanism is not something that is in the House passed bill. This, of course, is a product of a release of the model rules that came after the House bill was passed.

So while there might be hypothetically a world where we could do this with a UTPR only if the U.S. were to do it. We still wouldn't be at a competitive disadvantage. That's not the role we're discussing. That's a theoretical one. That's not the role that's presented to Congress at the moment.

And even the UTPR proposal in the President's most recent budget is not – has a lot of holes that still need to be filled in as to how that would exactly work. So that proposal is not quite yet ready for prime time.

But I would say this, Kim. I think it would be a reasonable approach. Not one that Congress is currently thinking about but one that could perhaps I suppose. Can say, look, the U.S. will make these per country guilty changes.

But we will trigger that change based on adoption by pick a cohort of relevant countries, EU perhaps to start. You know, you can debate whether China and India are relevant to this, but at a minimum like the G7 EU countries.

If that were the proposal on the table, I think politically that would be a much easier thing for Congress to digest because you would protect against this risk that, you know, while hypothetically Congress retains autonomy, it does. But in the practical world legislating on tax as we have seen over the last year and a half can be quite challenging even when you have total control of the House, Senate and White House.

And so, it is I think for most elected officials, it is sort of cold comfort to say, well, but you can always change this later if it doesn't work out for U.S. multinationals or for the U.S. economy or U.S. workers.

I think it would be a far easier sell if the administration were to

say, hey, how about we make these changes contingent upon action by, you know, relevant headquarter's jurisdictions so that we are ensured that if we are going to jump into this, we're going to jump together and the U.S. isn't going to, you know, be an outlier both in substance and timing.

MR. FURMAN: Right. So I think there's two issues there. One is, you know, on the merits would the United States pass this unilaterally even if no other country would? I think some people – I think, Kim, your original proposal for the Hamilton Project was the U.S. unilaterally doing something like this regardless of whether other countries did.

So sort of on the merits does it pass a bar or not by itself? On the trigger, there's a second question that, Chye-Ching, maybe now that we're sitting around in the bar, maybe you know the answer to. Can you do – actually, Rohit, you might even be the best expert on this. Can you do a trigger like that under reconciliation even if you wanted to?

MR. KUMAR: I'm happy to take a crack at it as the guy with probably the most Senate experience on the panel. If any, right, the most of both.

So there a pure trigger that is conditioned upon changing foreign law. You could do if you get 60 votes just for that narrow provision because that change in and of itself, the official estimator from Capitol Hill will say, if change in the U.S. law is contingent upon other country changing

law, we can't assume another country will change law. And therefore, we can't assume U.S. law changes. And therefore, no revenue. And if no revenue then in theory a 60 vote point of order would lie – I actually don't know.

You might get Republicans to say, look, if we're going to do this together that's one thing. It's doing it independently first that is problematic. You could solve for that, however, by saying, well, look. Irrespective of action by other country, the U.S. law will kick in – you'd have to put it maybe at the end of the budget window so maybe 2031, right? Which is the end of this budget window that we're considering this bill under.

Regardless of anybody else, nine years from now this law change is going to happen. And you could even build in a, look, if the relevant headquarter's jurisdictions. You could debate who that is. If they, do it before 2031, the U.S. could automatically accelerate its effective date to guarantee other countries – look, if you stick the landing in '24 or '25 or '26 or any point before 2031, we will join you because the Secretary can certify that you've done it and accelerate the effective date.

So there is a way to make this work inside reconciliation either with 60 votes. You can do anything with 60 votes in the Senate. But even if you couldn't get 60 votes or you were skeptical about getting 60 votes, you could delay the effective date, the backstop effective date to a point where it

still scored for reconciliation purposes but also maximally protected the U.S. from putting itself in a dramatically uncompetitive posture relative to every other country in the world.

MR. FURMAN: So, Chye-Ching, I wanted to just bring in what some of the other objections one adheres to whether you think they're legitimate? Whether you think – and if they are whether there are ways to address them? What is the business tax credits that this would prevent – that the United States operates things like rental – buildings with low-income housing and energy programs through the tax code and this agreement would interfere with that? Do you think that's correct? Do you think something needs to be done? Will be done, et cetera?

MS. HUANG: Yeah. This is a really interesting one. I find it pretty impressive the amount of attention that those communities manage to drive towards the (inaudible) and create the feeling that this is something that both anticipated and critical when it's really might not be neither of those things.

So to sort of step back a few steps to folks that might not have been following it as closely as Jason and the rest of us. The issue here to the extent there is one stems from the fact that multinationals think that they will continue to be able to achieve such low effective tax rates that they will face a top up tax to take them to some (inaudible) from other multinationals.

Now, of course, that's somewhat contingent with some of Rohit's questioning of the extent to which multinationals might actually be paying more than that headline rate. But let's say there are a lot of multinationals facing that top up tax. Now, that has the impact potentially of reducing the modular incentive for some of these domestic tax credits that you were mentioning, Jason.

But we could of course also be sort of focusing on the extent to which this problem also stems from the fact that companies have been very effective at resisting the repeal of other tax benefits such as FDII. Such as the actual rates that were sitting under the House deal, the President's proposal and other proposals.

So, you know, one could sort of address this problem to the extent that you think there is one by raising an effective marginal tax rates and the (inaudible) of these credits – so that those credits have more marginal benefit.

I kept saying that this is potentially an issue because, of course, as a question that's very much still alive in the implementation discussion. And again, I think there are many of these sorts of issues that is just a feature of remaking an international tax framework that's been in place since before, you know, microwaves were invented or anything else that has happened in the past 100 years.

Let alone talking about sort of the general services and other intellectual property that sort of is really making the current framework and the purpose. There's a lot of things that need to be shifted and these are the sorts of problems that the international community will keep talking through.

And at the moment, one of the questions is whether the protections, the so-called refundable business tax credits are broad enough to encompass some of these ones with particularly domestic salient. And that maybe something that they agree on. Maybe it's something that's not agreed on. But you know, there are dozens of these sorts of issues.

MR. FURMAN: Great. I wanted to go back to Kim just to sort of elevate on some of the economics of what we were talking before.

You know, in taxes most taxes are distorting. Most taxes have some tradeoff or bad side effect. And so, to some degree you're picking – you know, it's about picking your poison and minimizing those distortions as well as achieving other goals.

You addressed some of this at our opening, but wanted to sort of to use that frame. How much of this tax is an affirmative good in its own right versus it's a lesser, you know, it's sort of a less distortionary way to raise money? How would you sort of consider the weights of those two? And then how would you insofar as there is any distortion? And Rohit has brought up a number. How would you compare them to what other taxes

would do?

MS. CLAUSING: Yes. It always important to remember that you do need some taxes to pay for civilized society. You know, and that will require taxing something, right? And those taxes fund all sorts of things that make businesses more successful and that make citizens more happy. You know, everything from infrastructure and education, defending democracy, you know, you name it.

So if we take, you know, that as given. And then we look at the major sources of revenue in the United States. An awful lot of our tax is raised on labor income, right? And so, whenever you take a worker's wages, right, you're discouraging them from work because you're increasing the gap between what they're employer has to pay to hire them and what they actually take home in that wages.

So it's not like our alternative is to have no taxes. Our alternative is to put even more taxes on workers. And if you turn to the corporate tax, there is disagreements, you know, about exactly who bears what burden of it. But everybody really literally every economist agrees that it falls more heavily on capital and excess profits than it does than do these other taxes, which are the alternatives, right?

So, you know, we can look at differences of opinion about exactly like what shares is worn by what? But, you know, it certainly less

burden is put on labor by corporate taxes than by labor taxes.

You know, a large share of the corporate tax base what I quoted earlier was some work that was done by Treasury Economists looking at sort of the difference between what the tax base would be if it were a pure tax on rents versus what it is now. And they find that over two thirds of the tax base is really on rents or above normal return to capital. And if you look at taxing those that's pretty efficient because the same decisions that maximize before tax profits will maximize after tax profits. And so, it's actually a pretty low distortion way to raise revenue.

There are unfortunately a number of features where our tax code – and you've written yourself on some of these – that make it a little more complicated than that because some types of investment is actually tax subsidized if it's debt financed and subjecting to expensing. And some types of investment are taxed more heavily. And so, there are ways that we could reduce that distortion by changing the treatment of that inequity of finance.

But another important distortion is the treatment of different, you know, corporate tax bases in different parts of the world. And right now, we have a huge tax incentive for having income earned offshore because you get this 50 percent discount as opposed to having it in the United States. So that itself is a distortion too. And a distortion that discourages U.S. investment and U.S. job creation.

So moving towards these international tax reforms, it's a pretty efficient way to raise money just to increase the corporate tax, but you're also lowering the distortion that is moving too much income to low tax jurisdictions relative to at home. And you're also bringing the rest of the world along so that you don't have to worry as much about the headquarters competitiveness issue.

So I think it really is actually the perfect time to raise more money in this particular fashion because of this international movement. And I would point out that the foreign countries themselves often think the United States is the hardest place for good reason to get this done, right? It's a lot easier in parliamentary systems and in many other countries abroad to fulfill their commitment under the agreement than it will be to get this across the finish line in the United States.

So I think that's part of the reason that we're so eager to see something happen in the U.S. Congress soon.

MR. FURMAN: And that's a great segue to what I was dying to hear from Rohit, which is the – if this pass this year. I think it will be fair to say it passes with 50 Democratic votes in the Senate reconciliation or Republican help.

If it doesn't pass this year, it seems very likely that it will need Republican votes in one of the two chambers to pass in the future. Can you

see any scenario any way in which this could happen on a bipartisan basis with a Republican House or a Senate in the future? And how would that compare to say what the House passed? What would the scenario be? What's the hope that this could happen in the future?

MR. KUMAR: Yeah. So I can see I think maybe one scenario. I could see lots of scenarios where nothing happens, but I can see one scenario where something happens.

And that scenario is so no change in U.S. law this year. And at some point, despite that – and, you know, these are not independent variables so let's treat them as independent variables for the moment. Despite that the rest of the world proceeds the pace, right? And we wake up at some point in 2023 or early 2024 or let's say 2023 to give them time.

It looks like the rest of the world is proceeding at pace. And that in the next year or two, everyone is going to have pillar two style per country minimum tax regimes with this enforcement mechanism, these under tax profits rules and probably qualify domestic minimum on top of taxes just to round out the trifecta of acronyms.

And that U.S. headquarter multinationals at that point the question they would be facing is I'm going to pay a fixed amount of tax. The only question is how much am I paying to a foreign government? And how much am I paying to the U.S. government. And if the U.S. made some

changes than more of that would be paid to the U.S. and less would be paid to the foreign sovereign. And as an American company I have some patriotic instinct to pay more here than I do over there.

And so, at that point you might find consensus on a true, truly conforming. Not what's in the House passed bill, but a truly conforming, you know, pillar two style, income inclusion regime, minimum tax regime that really looks like what the rest of the world has done. And we now know what it looks like because they've done. In an effort to get ahead of the sanctions that would follow on U.S. headquartered companies if they were living in a noncompliant regime.

That would be something that would take 60 votes in the Senate. If you're going to get bipartisanship, you're getting it in both chambers not just in one. Substantively, it would look quite different because what's in the House passed bill is more onerous than what the model rules require. The timing could be more closely aligned because we would know the effective dates for what other jurisdictions have done.

But of course, the risk is if other jurisdictions don't do this relatively soon or if they do it but with substantially delayed effective dates on their own, 2025, 2026, things like that I think this we've all seen. Congress likes a deadline.

And if Congress doesn't have a deadline in the next two years,

Congress is not likely to just decide one day to be especially responsible and get out ahead of something that's, you know, doesn't have an action forcing event associated with it for another two years.

I mean at that point maybe you're looking at the end of 2025 when all the individual and past iterations from the 2017 Act expire. The entire, you know, substantially all the individual code expires and that might be an opportunity to kind of revisit. Now, of course, we have no idea who is going to be in charge by then, but, you know, that's a built-in opportunity for Congress to revisit all major taxing decisions because we've got a big fiscal cliff, a second fiscal cliff awaiting us at the end of 2025.

MR. FURMAN: Great.

MS. HUANG: I just want say one something. One thing that I do sort of – I tried to take companies seriously when I hear them say that they like Wall Street stability.

I think this sort of root (inaudible) of triggers and potentially waiting and often a lot is the least faulty stability than simply implementing something like the House BBB proposal. I know we've still got a lot of triggers left from the 2017 tax law that are sort of bearing down on us anyway. But I think sort of avoiding creating that is has sort of --

MR. KUMAR: You're right. Companies do want stability but if there's certainty being offered as certain debt than I think they'll take the

instability. And they view the U.S. being a substantial outlier with respect to the –

MS. HUANG: So I have kind of trouble sort of squaring the idea that they're already paying 15 percent or more on average according to you. And the idea that requiring them to pay 15 percent for certain debts –

MR. KUMAR: Well, but the 15 percent is if you're talking about for the UTPR purposes that's using OECD accounting and this is way in the weeds for most viewers. But that's using OECD accounting principles where deferred tax assets are valued at 15 not at 23 or 24, whatever their real effective rate is.

So if you were using identical systems then there might be an inconsistency. But because you have inconsistent accounting principles that are being applied across regimes, it naturally yields to inconsistent results.

MS. HUANG: Yeah. And you could choose as for certainty that they would face the U.S. guilty and the pillar regime as an opposed to sort of a network of UTPS that may or may not have inconsistent accounting on that front as they go forward.

The other thing I just want to say to the sort of like global politics. I mean just because I have a foreign accent doesn't mean I have any expertise in this space, but I have noticed that the U.S. tax policies does have global gravity. When I think the fact that we're even looking at a

minimum tax regime which just a few years ago was really kind of snuffed at by the international tax community is one example of that.

So I mean I think that there is some benefit of going first in order to actually shake other countries to –

MR. KUMAR: But we already did go first. In 2017, we adopted a minimum tax on active foreigners of U.S. multinationals. And we sit here five years later and no one has followed us yet. I mean they would be all welcomed to adopt a global minimum tax regime as a show of good faith towards greater global conformity but nobody has done that.

So on the one hand, you can say there's some gravity to U.S. policy. On the other hand, there's at least no evidence that we're pulling anyone into our orbit yet.

MR. FURMAN: So we're about at the end of the panel so our time is about to end. I think, Rohit and Chye-Ching, I'm going to determine that to have been your summing up even though you didn't realize you were doing that.

Kim, you are going to get the last word before I close it out.

MS. CLAUSING: Okay. Well, thanks, Jason, and thanks everybody. I think this agreement and U.S. legislation that can go with it is both in the national interest, but I also think it's really in the interest of the business community for a number of reasons.

It creates a more stable tax regime as Chye-Ching noted out. It creates a more competitive regime because other countries will follow. And 137 of them have stated their intention to do so. It provides a more stable revenue base in a time that we need a lot of public goods and services. And I do think returning to a theme that Brian mentioned at the beginning.

I do think this is a really important model for international economic cooperation. And not to be too weighty, but we're at a moment in time where Russia has invaded Ukraine. Where climate change is an existential threat. Where international cooperation is more important than ever before to address both of those issues.

I think the negotiation of this international agreement was a really meaningful step forward in the U.S. leading and bringing countries together to solve what's truly a public collective action problem. And I think it can be a model for how to address other international collective action problems.

It sets a clear goal. It agrees on a minimum standard and it has an enforcement mechanism that really encourages other countries to adopt. And so, I think this is the perfect time for the U.S. to do international tax reform and I'm hopeful that we will do it and it will be a model for other types of big problems that we're all facing in the future.

MR. FURMAN: Great. So unfortunately, we're going to have

to bring this discussion to a close. I think you've got a sense of the richness both of the really complicated policy issues that we've had some back and forth on.

But also, just the complicated chicken and egg problem of does the United States go first? Does it wait for the rest of the world? How do those two interact? I don't want to overstate the agreement here, but I did think there was a very important one. Which is that the first best is that the entire world does something.

And in that case, the United States does something. It may not be exactly what was in the House passed bill, but it's something that builds on what was passed in 2017. And, you know, in some sense everything else is, you know, some form of less than perfect. And that's often I find where the policy debates are the biggest when you're dealing with shades of less perfect.

And, you know, it's going to be a complicated issue to thread this year, but a really important one. And if it doesn't pass this year, we'll probably have Rohit and Kim back again next year to continue the conversation. But I can say speaking for myself, I'm hoping that is a retrospective conversation on what passed and how it changed the world, but we'll see. So thank you so much.

MS. CLAUSING: Thank you, Jason.

MR. KUMAR: Thank you.

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