



## AMERICANS PUSHED INTO BIDEN'S GLOBALIST TAX TRAP

During his tenure, President Biden has advanced tax reforms that undermine American interests, reduce our economic competitiveness, and add unnecessary complexity to an already burdensome tax code.

One of the most egregious moves has been to collude in the formulation of a draft international tax treaty agreement under the direction of the Organisation for Economic Co-operation and Development (OECD). The OECD “two-pillar tax solution” would impose a global minimum corporate tax rate. Absent Senate approval, the draft treaty cannot take effect and is directly non-binding to the U.S. Nevertheless, the U.S. still stands to lose as foreign governments that individually adopt policies implement the OECD international taxing rules and extract U.S. tax revenue.

Congress must pass reforms that boost our nation’s economic competitiveness and pre-empt any surrender of U.S. sovereignty over national taxing rights to the OECD or other foreign entities.

### BACKGROUND

- **The long-run decay of the OECD**

- The OECD has deviated into a supra-governmental organization that is focused on pushing government-centric policies across the world, instead of adhering to its core, original mission to contribute to sound economic growth and trade expansion among market-oriented countries.<sup>1,2</sup>
  - The OECD was formed after World War II, initially to facilitate the administration of post-war reconstruction funding to European nations, and later, under a new convention charter in 1961 with U.S. membership, to promote policies that would expand trade and access to capital markets among the market-oriented member countries.<sup>3,4,5</sup>
  - As governments began implementing income taxes in the first half of the 20<sup>th</sup> century,<sup>6</sup> the OECD started providing “technical expertise” in the resolution of issues stemming from differences in tax systems across the world, especially in areas where there was the potential for double-taxation on income and profits earned by multinational companies.<sup>7</sup>
  - Despite any original aspirations, over the past half century, the OECD has morphed through long-run mission creep into a globalist advocacy organization that has increasingly focused on pushing policies that disfavor private-sector competition, free enterprise, and serve to insulate governments as high-cost monopolies.<sup>8,9</sup> As scholars have stressed, “today’s OECD has largely devolved into a tax-payer funded advocacy group for higher taxes, more intrusive government, burdensome regulation, and climate activism.”<sup>10</sup>
- The costs of U.S. membership to the OECD exceed any benefits (e.g., access to high-quality international data), especially when taxpayer donations are going to fund the OECD efforts intended to take control of our national sovereign tax law-making powers.<sup>11</sup>

- American taxpayers directly funded about 20 percent of the OECD budget in 2023, which totaled €338 million (or \$366 million), making it the largest funder followed by Japan (9 percent), Germany (7.5 percent), United Kingdom (5.4 percent), and France (5.1 percent).<sup>12</sup>
- Yet the opportunity costs of membership continue to mount, and the OECD's latest gambit to cartelize international taxing authority on multinational corporations under a draft two-pillar tax agreement would put the U.S. under an intrusive collection of global tax rules designed to reassign profits and take rights away from the current taxing jurisdiction.<sup>13</sup>

- **The remaking of the OECD into a global IRS**

- In 2013, the OECD spearheaded an “Inclusive Framework on Base Erosion and Profit Shifting” project that has been approved by 140 countries—including the U.S.—into a draft “two-pillar” tax treaty agreement.<sup>14</sup>
  - *Pillar One* outlines rules that would reassign taxing rights on upwards of \$100 billion annually in profits for the largest multinational companies to “jurisdictions different from where the profits are currently being taxed.” The rules under the draft treaty would supercede the “digitalization services taxes” enacted in recent years by countries with the intent to tax companies that sell to end-users but lack a physical presence in the country. Under Pillar One, companies with global revenues exceeding €20 billion (about \$22 billion at current exchange rates) would face a 25 percent tax on “excess profitability” in the taxing jurisdiction based on where their customers are located (e.g., Google users in France), where “excess profitability” is defined as profits above 10 percent.<sup>15</sup>
  - *Pillar Two* sets a global minimum effective tax rate of 15 percent on foreign subsidiaries of multinational companies through a mechanism of rules that would determine cross-country payments of “top-up” taxes to meet the minimum rate. This global minimum rate would apply to foreign subsidiaries of multinational companies with annual revenues roughly €750 million (at current exchange rates, approximately \$812 million).
- The OECD lacks U.S. Senate consideration that is necessary for formal treaty ratification.
  - Notwithstanding the political bidding of the Biden administration, the Senate has not given the required “advice and consent” to cede taxing rights to the OECD. The Constitution requires two-thirds of Senators present and constituting a quorum to agree to a resolution of advice and consent before a President can formally enter a treaty.<sup>16</sup>
- The “two-pillar solution” would neutralize international tax competition, undercut global economic growth, and enrich international tax accountants and countries beholden to bloated governments.<sup>17</sup>
  - First, the data over the past several decades do not support the premise that tax competition and lower rates have led to corporate tax base erosion, which is a stated goal of the OECD and the Biden administration.<sup>18,19</sup> In fact, the average corporate tax rate worldwide has decreased nearly in half—falling from 39 percent in the 1980 to 22 percent in the 2022—while corporate tax revenue increased from 2.2 percent of Gross Domestic Product (GDP) to 3.5 percent of GDP between 1981 and 2021.<sup>20,21</sup>
  - Second, the economics literature is clear that increasing U.S. corporate taxes results in slower economic growth when there are reduced financial incentives for higher capital and business investment that hampers productivity.<sup>22</sup> Even the OECD has acknowledged in the past that corporate taxes are the most economically distortive and harmful for long-run growth.<sup>23</sup>
  - Further, the OECD “two-pillar solution” would be a boondoggle for international tax accountants and a globalist, supra-government power grab over taxing rights of nations. The proposal uses typical glossy language to describe what would amount to the consolidation of global taxing authority resembling a global Internal Revenue Service.<sup>24</sup>

<b>The OECD Pillar Two Tax Rules</b> <i>Under the OECD taxing rules, companies, economically identical for illustrative purposes, operating with foreign subsidiaries in separate international jurisdictions ("High-Tax" and "Lower-Tax") could face different amounts of "top up" taxes to meet a global minimum effective tax rate of 15 percent.</i>		
	<b>Company A with Foreign Subsidiary in High-Tax Country</b>	<b>Company B with Foreign Subsidiary in Lower-Tax Country</b>
Direct Taxes Paid	\$35	\$35
Direct Subsidy	\$15	None
Non-refundable Tax Credit	None	\$15
Covered Income	\$215	\$200
Effective Tax Rate	16.3%	10.0%
<b>"Top Up" Taxation to meet Globalist Minimum Corporate Tax Rate</b>	<b>No</b>	<b>Yes</b>

Figure 1<sup>25</sup>

- **Biden's political bidding with the OECD misrepresents American interests**

- Biden has offered his support of the OECD draft treaty and, in his words, "put an end to the race to the bottom on corporate taxation".<sup>26</sup>
  - Yet the administration has negotiated with the OECD at the expense of our nation, resulting in a two-pillar global taxing proposal that will inject greater complexity for U.S. multinational companies as they resolve foreign countries "first right to tax U.S. firms' low-tax foreign income" and subjugate U.S. tax policies that lower businesses effective tax rates.<sup>27</sup>
  - The administration has argued for raising taxes and ignored the gains made with reforms enacted under the Tax Cuts and Jobs Act of 2017 (TCJA)<sup>28</sup> that brought down average corporate tax rates, made it easier for companies to repatriate foreign earnings, and enacted rules to discourage profit shifting to low tax jurisdictions outside of the U.S.<sup>29</sup>
  - In 2022, the Inflation Reduction Act became law and created a "corporate alternative minimum tax"<sup>30</sup> that does not meet the OECD two-pillar rules as it is applied to all foreign-source income, not applied on a country-specific basis.<sup>31</sup>
- The U.S. would lose tax revenue, whether adopting reforms consistent with the the OECD global minimum tax system or not.<sup>32</sup>
  - The Joint Committee on Taxation estimates that the U.S. could lose at least \$57 billion in federal tax revenue over 10 years by adopting the OECD proposal.<sup>33</sup> Modeling by the independent Tax Foundation shows that adoption of the two-pillar tax rules could amount to "a large tax increase by foreign governments on U.S. shareholders" with up to \$69 billion in "lost personal income taxes."<sup>34</sup>
  - The loss of tax revenue could occur for numerous reasons. For instance, multinational companies already have an incentive to repatriate foreign profits through reforms enacted in the 2017 TCJA (an estimated \$140 billion in the three years after). Also, *Pillar One rules* are designed to shift profits from the "home" country to the taxing jurisdiction where sales occur, in addition to the low-tax jurisdictions increasing tax rates in response to the *Pillar Two* global minimum tax.<sup>35</sup>

- Numerous expert tax analysts have warned that the rules under the two-pillars would neutralize tax competition over rates. They have generally argued that this global taxing framework would “redistribute taxing rights from productive economies to consumer economies,” and favor countries that use “direct cash or cash-equivalent subsidies to private businesses” instead of the “U.S.-style non-refundable tax credits” as incentives to offset taxes (see Figure 1).<sup>36,37,38</sup>
- Americans already lose several billions of hours in productivity due overall tax compliance, which would only worsen for U.S. companies under the OECD two-pillar proposal.
  - According to the Tax Foundation, Americans spend at least 6.5 billion hours each year to maintain compliance with the tax code. This corresponds to the loss of an estimated \$313 billion annual loss in productivity, about 1.4 percent of Gross Domestic Product.<sup>39</sup>
  - The Tax Foundation has highlighted that the two-pillar tax adjustments could increase the effective average tax rate about 0.7 percent, which would only layer on top of an already complex and burdensome level of tax compliance.<sup>40</sup>

## POLICY SOLUTIONS

- The best way to deal with the OECD’s effort to cartelize global taxing authority would be for Congress to pass reforms that beat it at its own game, which should be to formally withdraw U.S. membership and stop sending hard-earned American taxpayer dollars to fund the organization’s globalist tax agenda.<sup>41</sup> The U.S. should enact tax reforms that solidify the U.S. as the most attractive (“safe haven”) economy for productive capital and business investment by further lowering the U.S. corporate tax rate to a *maximum* 15 percent rate, allow for a full territoriality, and put an end to bloated deficit-spending policies.<sup>42</sup>
  - While miniscule in comparison to the overall U.S. budget, it makes no sense for American taxpayers to fund an organization that actively promotes policies that constrict foreign investment and strip our nation’s ability to use sovereign taxing power as a way compete for foreign investment and boost economic growth. The OECD’s two-pillar proposal to cartelize global taxing authority and neutralize international tax competition should be the last straw for further support from the U.S. Congress should pass reforms that terminate the U.S. financial backing of the OECD, such as the reforms included in H.R. 4665, the Department of State, Foreign Operations, and Related Programs Appropriations Act.<sup>43,44</sup>
  - Congress should also pass pro-growth reforms that restores federal fiscal sanity through spending reductions and de-regulation, such as those reforms in H.R. 2811, the Limit, Save, Grow Act of 2023.<sup>45,46</sup>
- Short of the ideal reform path, it is important that Congress pass reforms that defend against Biden’s collusion with the OECD and prevent the loss of tax revenue to foreign governments that begin to impose higher tax rates on U.S. multinational companies.
  - Congress should pass reforms, such as those in H.R. 3665, the Defending American Jobs and Investment Act<sup>47,48</sup> that prevent against intrusions over U.S. taxing authority by foreign taxing jurisdictions that implement the OECD two-pillar tax rules.

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<sup>1</sup> Adam N. Michel. From Global Growth to Redistribution: The OECD’s Agenda to Tax American Success. Cato Institute. July 19, 2023. <https://www.cato.org/testimony/global-growth-redistribution-oecd-agenda-tax-american-success>

<sup>2</sup> Convention on the OECD. <https://www.oecd.org/about/oecd-convention.htm>

<sup>3</sup> *Id.*

<sup>4</sup> James M. Roberts, David R. Burton, Nicolas D. Loris, and Adam N. Michel, Ph.D. Organization for Economic Co-operation and Development (OECD): What America Should Do. The Heritage Foundation. March 16, 2021. <https://www.heritage.org/sites/default/files/2021-03/BG3593.pdf>

- <sup>5</sup> Lotta Moberg and Andrew P. Morriss. Cartelizing Taxes: Understanding the OECD's Campaign Against 'Harmful Tax Competition'. 2011. [https://scholarship.law.ua.edu/cgi/viewcontent.cgi?article=1271&context=fac\\_working\\_papers](https://scholarship.law.ua.edu/cgi/viewcontent.cgi?article=1271&context=fac_working_papers)
- <sup>6</sup> *Id.*
- <sup>7</sup> <https://www.heritage.org/sites/default/files/2021-03/BG3593.pdf>
- <sup>8</sup> *Id.*
- <sup>9</sup> <https://www.cato.org/testimony/global-growth-redistribution-oecd-agenda-tax-american-success>
- <sup>10</sup> *Id.*
- <sup>11</sup> <https://www.heritage.org/taxes/commentary/defund-the-self-appointed-global-tax-authorities-the-oecd>
- <sup>12</sup> OECD Member Countries' Budget Contributions. <https://www.oecd.org/about/budget/member-countries-budget-contributions.htm>
- <sup>13</sup> <https://www.heritage.org/taxes/commentary/defund-the-self-appointed-global-tax-authorities-the-oecd>
- <sup>14</sup> Preston Brashers. The OECD Crusade to Raise Taxes. The Heritage Foundation. February 4, 2022. <https://www.heritage.org/taxes/commentary/the-oecd-crusade-raise-taxes>
- <sup>15</sup> <https://taxfoundation.org/taxedu/educational-resources/case-studies-oecd-global-tax-deal/>
- <sup>16</sup> Daniel Bunn. Five Takeaways from the New Pillar One Documents. Tax Foundation October 18, 2023. <https://taxfoundation.org/blog/pillar-one-us-treasury-consultation/>
- <sup>17</sup> Chris Edwards. Global Tax Competition. Cato Institute. 2022. <https://www.cato.org/cato-handbook-policymakers/cato-handbook-policymakers-9th-edition-2022/global-tax-competition>
- <sup>18</sup> The OECD claims that "[base erosion and profit shifting] practices cost countries 100-240 billion USD in lost revenue annually, which is the equivalent to 4-10% of the global corporate income tax revenue." <https://www.oecd.org/tax/beps/>
- <sup>19</sup> <https://home.treasury.gov/news/press-releases/jy0101>
- <sup>20</sup> These figures account for OECD countries. Corporate tax revenue as a share of all revenue has increased from 8.6 percent to 9.4 percent, and the average statutory corporate income tax rate has decreased from 48 percent to 24 percent. Adam N. Michel. Bold International Tax Reforms to Counteract the OECD Global Tax. Cato Institute. February 13, 2024. <https://www.cato.org/policy-analysis/bold-international-tax-reforms-counteract-oecd-global-tax>
- <sup>21</sup> <https://www.cato.org/cato-handbook-policymakers/cato-handbook-policymakers-9th-edition-2022/global-tax-competition>
- <sup>22</sup> Parker Sheppard, Ph.D. The Long-Run Economic Effects of Raising the Corporate Tax Rate to 28 Percent. The Heritage Foundation. August 15, 2021. <https://www.heritage.org/taxes/report/the-long-run-economic-effects-raising-the-corporate-tax-rate-28-percent>
- <sup>23</sup> Alex Durante and William McBride. Reminder that Corporate Taxes Are the Most Economically Damaging Way to Raise Revenue. Tax Foundation. August 4, 2022. <https://taxfoundation.org/blog/inflation-reduction-act-corporate-taxes/>
- <sup>24</sup> Preston Brashers. Defund the Self-Appointed Global Tax Authorities at the OECD. The Heritage Foundation. December 4, 2023. <https://www.heritage.org/taxes/commentary/defund-the-self-appointed-global-tax-authorities-the-oecd>
- <sup>25</sup> While this example is instructive for illustrating one way in which U.S. companies stand to lose under this type of international taxing scheme, the increased cost burdens of sorting through the compliance complexity is enormous. In any event, this illustrative example assumes different dollar amounts but is analogous to the one used by scholar Adam N. Michel of the Cato Institute in his written testimony for a hearing at the House Committee on Ways and Means. <https://www.cato.org/testimony/global-growth-redistribution-oecd-agenda-tax-american-success>
- <sup>26</sup> <https://www.whitehouse.gov/briefing-room/statements-releases/2021/07/01/statement-by-president-joe-biden-on-todays-agreement-of-130-countries-to-support-a-global-minimum-tax-for-the-worlds-largest-corporations/>
- <sup>27</sup> <https://www.cato.org/testimony/global-growth-redistribution-oecd-agenda-tax-american-success>
- <sup>28</sup> Public Law No. 115-97. <https://www.congress.gov/115/plaws/publ97/PLAW-115publ97.pdf>
- <sup>29</sup> Garrett Watson. A Lower Corporate Rate Is an Opportunity Worth Taking as Part of Broader Tax Reform. Tax Foundation. October 18, 2023. <https://taxfoundation.org/blog/trump-corporate-tax-cut/>
- <sup>30</sup> Public Law No. 117-169. <https://www.congress.gov/bill/117th-congress/house-bill/5376/text>
- <sup>31</sup> <https://www.cato.org/testimony/global-growth-redistribution-oecd-agenda-tax-american-success>
- <sup>32</sup> *Id.*
- <sup>33</sup> Possible Effects of Adopting the OECD's Pillar Two, Both Worldwide and in the United States. Report Prepared by the Staff of the Joint Committee on Taxation. June 2023. [https://www.finance.senate.gov/imo/media/doc/118-0228b\\_june\\_2023.pdf](https://www.finance.senate.gov/imo/media/doc/118-0228b_june_2023.pdf)
- <sup>34</sup> <https://taxfoundation.org/research/all/federal/global-minimum-tax-us-tax-base/>
- <sup>35</sup> <https://www.cato.org/cato-handbook-policymakers/cato-handbook-policymakers-9th-edition-2022/global-tax-competition>
- <sup>36</sup> <https://www.cato.org/testimony/global-growth-redistribution-oecd-agenda-tax-american-success>
- <sup>37</sup> <https://www.cato.org/cato-handbook-policymakers/cato-handbook-policymakers-9th-edition-2022/global-tax-competition>
- <sup>38</sup> Alan Cole and Cody Kallen. Risks to the U.S. Tax Base from Pillar Two. Tax Foundation. August 30, 2023. <https://taxfoundation.org/research/all/federal/global-minimum-tax-us-tax-base/>
- <sup>39</sup> Scott Hodge. The Tax Compliance Costs of IRS Regulations. Tax Foundation. August 23, 2022. <https://taxfoundation.org/blog/tax-compliance-costs-irs-regulations/#:~:text=The%20burden%20costs%20to%20individual,is%20more%20than%20%2460%20billion.>
- <sup>40</sup> OECD Pillar 2 (Global Minimum Tax). Tax Foundation. <https://taxfoundation.org/taxedu/glossary/oecd-pillar-2-global-minimum-tax/>
- <sup>41</sup> <https://www.cato.org/testimony/global-growth-redistribution-oecd-agenda-tax-american-success>
- <sup>42</sup> <https://www.cato.org/policy-analysis/bold-international-tax-reforms-counteract-oecd-global-tax>
- <sup>43</sup> H.R. 4665 – The Department of State, Foreign Operations, and Related Programs Appropriations Act. 118<sup>th</sup> Congress – House of Representatives. <https://www.congress.gov/bill/118th-congress/house-bill/4665/text>
- <sup>44</sup> Preston Brashers. Defund the Self-Appointed Global Tax Authorities at the OECD. The Heritage Foundation. December 4, 2023. <https://www.heritage.org/taxes/commentary/defund-the-self-appointed-global-tax-authorities-the-oecd>
- <sup>45</sup> H.R. 2811 – Limit, Save, Grow Act of 2023. 118<sup>th</sup> Congress – House of Representatives. <https://www.congress.gov/bill/118th-congress/house-bill/2811>
- <sup>46</sup> <https://www.cato.org/testimony/global-growth-redistribution-oecd-agenda-tax-american-success>

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<sup>47</sup> H.R. 3665 – Defending American Jobs and Investment Act. 118<sup>th</sup> Congress – House of Representatives.

<sup>48</sup> <https://www.heritage.org/taxes/commentary/defund-the-self-appointed-global-tax-authorities-the-oecd>