



# Options for International Tax Policy After the TCJA

By Kimberly Clausing | January 30, 2020

The 2017 tax law, known as the Tax Cuts and Jobs Act (TCJA), enacted large corporate tax rate cuts, reducing U.S. corporate tax revenues to about 1 percent of gross domestic product (GDP). Because peer nations typically raise about 3 percent of GDP from their corporate tax, and U.S. corporate profits have been at historically high levels, one might question whether the TCJA's cuts to the U.S. corporate tax rate were too large.<sup>1</sup>

While increasing the statutory corporate tax rate would generate substantial corporate tax revenues, reforms to the United States' international corporate tax regime could also raise revenue, while simultaneously reducing profit shifting and offshoring incentives.<sup>2</sup> This issue brief discusses several proposals for international corporate tax reform, providing a range of estimates for the amount of revenue that reforms would bring the United States.

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## Background on the U.S. corporate tax

Prior to the passage of TCJA, the U.S. corporate tax rate was 35 percent, and U.S. multinational companies (MNCs) were taxed on their worldwide income at the same rate, with two major caveats. First, corporations were allowed foreign tax credits for taxes paid abroad in order to avoid double-taxation on foreign income. Second, tax was not due on foreign profits until repatriation. In the early years of this system, U.S. companies had sufficient foreign tax credits to offset the amount of U.S. tax due on foreign income, allowing them to repatriate without owing much U.S. tax on this income. But as time passed, and foreign countries lowered their tax rates below the U.S. rate, fewer companies had sufficient foreign tax credits to avoid tax at home. So, they left income offshore, where it could grow tax-free. To finance investments at home, or for other uses, companies were free to borrow. This effectively gave them tax-free access to their earnings offshore, since interest costs were deductible at home, but profits offshore earned taxable interest. Companies therefore postponed repatriation in the hope of a tax holiday, such as that enacted as part of the American Jobs Creation Act of 2004, or a lighter tax upon transition to a territorial system, which exempts foreign income, as occurred with the TCJA.

There was widespread taxpayer dissatisfaction with the prior system, in part due to the inconvenience of the tax upon repatriation. Activist shareholders and companies organized substantial lobbying with the goal of making the U.S. international tax system more “competitive.” They often pointed to the high U.S. statutory rate relative to peer nations, as well as America’s purportedly “worldwide” system, as reasons to align the U.S. system with those of its peers, despite the fact that the U.S. government raised little revenue from taxing foreign income.<sup>3</sup> These comparisons neglected the fact that, prior to the TCJA, the U.S. government raised about 50 percent less, as a share of GDP, from its corporate tax than did peer nations, despite having high—and rising—corporate profits, in part due to the aggressive profit shifting of U.S. MNCs.<sup>4</sup>

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## International tax provisions in the TCJA

Enter the TCJA, which combined a massive corporate tax rate cut—from 35 percent to 21 percent—with a purportedly “territorial” system of taxation that exempted foreign income from taxation.<sup>5</sup> Because of the TCJA, corporate tax revenues have declined sharply, further increasing the discrepancy between U.S. corporate tax revenues and those of peer nations.

Compared with the prior system, the new territorial system actually collects more tax on the foreign income of the most tax-aggressive MNCs, since it taxes some foreign income as it is earned rather than when it is repatriated. In particular, there is a global minimum tax, known as the global intangible low-taxed income (GILTI) tax, that applies when the global foreign tax burden for the multinational group is sufficiently low; the minimum tax applies at an effective rate of between 10.5 percent and 13.125 percent. But the first 10 percent return on physical assets located in foreign countries is exempt from the minimum tax, providing an incentive to offshore physical assets in order to reduce the bite of the minimum tax. In addition, because the GILTI tax is based on companies’ global tax burdens, it has the perverse feature of encouraging all foreign income relative to U.S. income. Haven income—income reported in jurisdictions where corporations pay little or no tax—is of course taxed at a lower rate than U.S. income, but even income in higher-tax countries comes with tax benefits. For example, German income generates foreign tax credits that reduce the tax burden associated with the minimum tax on haven income, whereas U.S. income has no such beneficial consequence.<sup>6</sup>

In addition, the TCJA includes a tax preference, known as the foreign-derived intangible income (FDII) deduction, for U.S. export income above a certain return on assets. This provision also acts as an offshoring incentive, since—all else being equal—reducing assets in the United States increases the benefit of this export subsidy. Most experts conclude that this provision is likely to be ineffective in altering companies’ intellectual property location decisions, as tax treatment abroad is

generally more favorable. Also, the provision may not be consistent with the United States' World Trade Organization (WTO) obligations and will likely be challenged by trading partners.<sup>7</sup>

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## Options for international tax reform moving forward

First, it would make sense to repeal the FDII. This costly export tax preference is unlikely to be effective, may be incompatible with WTO rules, and is perhaps even more costly than the congressional Joint Committee on Taxation (JCT) originally estimated.<sup>8</sup> Using JCT estimates, repeal would generate increased U.S. tax revenue of between \$127 billion if one assumes a 21 percent corporate tax rate and \$212 billion if one assumes a 35 percent corporate tax rate.<sup>9</sup>

Second, the global minimum tax could be replaced with either a higher global minimum tax at the regular domestic U.S. rate or a per-country minimum tax at a rate lower than the domestic rate. Either option would dramatically lower profit shifting incentives relative to current law. In addition, the present exemption from tax for the first 10 percent return on assets could be eliminated, in order to remove offshoring incentives under current law.

If foreign income is taxed at a lower tax rate than domestic income, the lower rate for foreign income would make it useful to have a per-country minimum tax, rather than a global minimum tax. This would ensure that haven income was discouraged for all companies, since income from high-tax countries would otherwise offset minimum tax due.

If the foreign rate is harmonized with the U.S. rate, a global minimum tax may work better, since all foreign income would be taxed at the U.S. rate, and there would be no incentive for haven income. High-tax foreign income would still reduce the tax burden on haven income, but since all foreign income would be taxed at the same rate as the U.S. rate, there would no longer be any general tax preference for foreign income relative to U.S. income.

### Advantages of a lower per-country minimum tax

Consider the possibility of returning the U.S. corporate tax rate to 35 percent—its level prior to the TCJA—as proposed by several U.S. policymakers. In this circumstance, a lower per-country minimum tax is less burdensome on foreign income than a 35 percent rate, somewhat addressing company competitiveness concerns. For example, a 21 percent minimum is closer to current corporate tax rates abroad; the corporate tax rate for Organization for Economic Cooperation and Development (OECD) countries averaged 22 percent in 2019.<sup>10</sup>

In general, U.S. companies will argue that it is difficult to compete with foreign companies that are under tax regimes that do not require minimum taxes in non-U.S. markets. For example, since U.S. companies face higher tax burdens operating in Ireland than many foreign companies do, they would be at a competitive disadvantage when serving the Irish market, when serving third markets from Ireland, when competing for foreign acquisitions, or when running a global business that is dependent on affiliated companies in global supply chains.

Companies have made overstated claims about competitiveness both before and after the TCJA. Under these regimes, there has been no evidence of serious competitiveness problems for the U.S. corporate community. After-tax profits were high in both historic and comparative terms; U.S. companies had a steady and disproportionate presence on global lists of the world's top companies by any measure—whether sales, profits, market capitalization, or count; and U.S. corporate tax revenues as a share of GDP were far lower than those of typical trading partners.<sup>11</sup> Furthermore, the most mobile U.S. companies earned reputations as world-class tax avoiders, such that companies in other countries felt disadvantaged.<sup>12</sup>

However, a regime with a 21 percent minimum tax due currently, with no opportunity to defer that tax, is far more burdensome on global operations than either pre- or post-TCJA law. Thus, company complaints may have some merits in this context. A lower rate on foreign income, such as a 21 percent or 28 percent rate in the presence of a 35 percent domestic tax, is a way of recognizing these potential competitiveness worries. While a lower foreign rate is a compromise relative to the full domestic rate, it will still undoubtedly meet substantial business resistance when viewed in comparison with current law.

An additional argument for a lower per-country minimum tax, rather than matching a higher domestic rate, is that it may prove easier to encourage other countries to adopt a minimum tax at that rate. Tax competition pressures would be lessened as more countries adopted a minimum tax regime, making economic activity and tax revenue less sensitive to tax rate differences across countries. Many prominent U.S. trading partners have shown interest in a minimum tax regime, and the OECD has proposed a minimum tax as part of its proposals on digital taxation.<sup>13</sup>

#### [Advantages of a harmonized global minimum tax](#)

If the foreign rate were the same as the U.S. domestic rate, there would no longer be any concern that U.S. tax policy prefers foreign income over domestic income. All income, regardless of source, would be taxed at the same rate, immediately. In contrast, any tax regime with a foreign rate lower than the U.S. rate would clearly prefer foreign income, tilting the playing field toward foreign operations.

Also, if foreign income were taxed at the U.S. rate, there would be less need for per-country implementation of the tax, which would lighten administrative and compliance burdens. Companies have complained that a per-country minimum tax would present administrative difficulties. Although these complaints are both overstated and convenient, a global tax is easier to administer. At any given tax rate, companies prefer global minimum taxes, since they lighten the burden of minimum taxes when tax rates differ across countries.

However, if the domestic rate were returned to its pre-TCJA level, there would be substantial concerns about the competitiveness of U.S. MNCs if foreign income were taxed at the same rate. As one example, if a U.S. MNC were taxed at 35 percent on its worldwide income as it was earned, but a foreign MNC were taxed under a territorial system that exempted foreign income, the U.S. company would be at a disadvantage if both were bidding on a foreign acquisition target. One possible solution is to combine these corporate policies with more robust capital taxation at the individual level, implementing a lower corporate rate—perhaps 28 percent—for both foreign and domestic income.

There are currently many proposals for strengthening capital taxation at the individual level. These range from relatively incremental changes—such as ending step-up in basis at death; strengthening estate taxation; raising rates on dividends and capital gains; ending the pass-through business deduction; and limiting contributions to tax free retirement and college savings accounts—to relatively systemic, broad proposals, such as adopting a wealth tax or mark-to-market taxation for capital income.<sup>14</sup>

The incremental proposals are much easier to adopt in the short run, although more systemic changes are certainly worthy of medium-run consideration once implementation and legal issues have been resolved. Regardless, it is important to remember that about 70 percent of U.S. equity income goes untaxed at the individual level, so the corporate tax remains an indispensable tool for taxing capital income.<sup>15</sup>

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## Anti-inversion rules and regimes

While there are tax provisions such as the base erosion and anti-abuse tax (BEAT) that attempt to discourage profit shifting by foreign-based MNCs, all of the above proposals risk discouraging U.S. residence for tax purposes, since U.S. residence is what triggers the taxation of foreign income. Thus, there is concern regarding corporate inversions—transactions that companies use to change their country of residence for tax purposes.

Preventing U.S. companies from reincorporating abroad is relatively simple if there is political will to enact strong anti-inversion measures. Already, bills proposed in Congress aim to do just that. One option is to adopt a strong management and control test, and there are other rules that could combat corporate inversions.<sup>16</sup>

There would still be concerns that foreign companies would face a tax advantage, but those could be combated through a stronger BEAT or other measures to reduce tax avoidance by foreign-based companies. Economists Emmanuel Saez and Gabriel Zucman suggest applying sales-based formulary apportionment to the global tax deficit of foreign companies in countries without minimum taxes; the tax deficit is the difference between the tax companies would have paid with a 25 percent minimum tax and their actual tax payments.<sup>17</sup> This proposal would entail many complexities, but such a tax would raise additional revenue.<sup>18</sup>

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## Estimated revenue gains from international tax reform

According to JCT revenue estimates, each percentage point increase in the U.S. corporate tax rate raises about \$100 billion of revenue over 10 years. In addition, both the repeal of the FDII and the replacement of the GILTI tax with a more robust per-country minimum tax would raise substantial revenue. (see Table 1)

The estimates presented in Table 1 are built on several assumptions, detailed in the table's notes; these assumptions are both cautious and in line with current literature in this area. The table's first column shows estimates from the U.S. Bureau of Economic Analysis data series on direct investment income; the second and third columns report series from the new IRS country-by-country dataset. The second column shows the full country-by-country dataset, and the third column shows a second set of estimates that averages estimates from the full dataset with those from a dataset that is confined to the companies that report positive profits.<sup>19</sup> Multiple datasets are used to provide a range of possible estimates that are all based on high-quality data sources. The strengths and weaknesses of these data are discussed in the paper referenced in the first note of the table.

Table 1 does not include estimates for global minimum taxes. At any particular tax rate, global minimum tax revenues would be lower than per-country minimum tax revenues due to the possibility of cross-crediting. In addition, the further the minimum tax rate was from the U.S. rate, the more a global minimum tax would result in reduced revenue relative to its per-country counterpart.<sup>20</sup> When foreign income is encouraged relative to U.S. income, there is a greater incentive to combine higher- and lower-taxed income streams from foreign countries, rather than earn income in the United States. Thus, unless the U.S. and the foreign rates are similar, an adoption of the per-country minimum tax will better stem profit shifting and protect the U.S. corporate tax base.

TABLE 1

## Revenue estimates from international tax reform proposals

Estimated revenue gain, in millions of U.S. dollars

	Bureau of Economic Analysis direct investment income sample	IRS Country by Country data: Full sample	Country by Country data: Average of full sample and positive-profit sample
<b>21 percent per-country minimum tax</b>			
2017 estimate	30,400	40,500	52,600
2021–2030 estimate	427,000	569,000	738,000
<b>28 percent per-country minimum tax</b>			
2017 estimate	49,100	63,800	81,700
2021–2030 estimate	690,000	895,000	1,147,000
<b>35 percent per-country minimum tax</b>			
2017 estimate	71,400	89,200	113,400
2021–2030 estimate	1,002,000	1,252,000	1,592,000
<b>Repeal of GILTI (subtract from all)</b>			
2021–2030 estimate		-137,000	
<b>Repeal of FDII (add to all)</b>			
		127,000 to 212,000	
(Depends on U.S. statutory domestic rate. Estimates are for the 2021–2030 period and show 21 percent to 35 percent rates.)			

Notes: For all countries with effective tax rates less than the threshold, the tax rate difference is calculated and applied to the country-by-country (tax form 9775) measure of income in 2017 (columns 2 and 3) or the BEA data on direct investment income in 2017 (column 1). These data series are described in far more detail in Appendix A of Kimberly A. Clausing, "Profit Shifting Before and After the Tax Cuts and Jobs Act," Social Science Research Network, January 20, 2020, available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3274827](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3274827).

In this analysis, the U.S. government is assumed to recoup only two-thirds of the revenue from the method described above, due to reduced foreign-to-foreign shifting. For U.S. multinational companies, two-thirds is a bit less than the ratio of U.S. economic activity—an average of assets, sales, and employment—to all global activity. (In 2017, this ratio was 68.8 percent, according to the IRS data.)

There is some ambiguity regarding the "stateless" income in the country-by-country data series above. The author has completely omitted stateless income from the analysis.

With the minimum tax in place, the GILTI revenues will disappear. That amounts to a 10-year loss of \$137 billion, using Joint Committee on Taxation (JCT) estimates for the 2021–2027 period and adding three years at the average of the 2026 and 2027 numbers. Joint Committee on Taxation, "Estimated Budget Effects of the Conference Agreement for H.R. 1, the 'Tax Cuts and Jobs Act,' Fiscal Years 2018 - 2027," December 18, 2017, available at <https://www.jct.gov/publications.html?func=startdown&id=5053>.

If the FDII is repealed, that adds revenue. That amounts to a 10-year gain of \$127 billion, using the above JCT estimates for the 2021–2027 period and adding three more years at the average of 2026 and 2027 numbers. In addition, multiply by the ratio  $x/21$ , where  $x$  is the assumed new corporate tax rate. In the above table, the author has included possible domestic rates from 21 percent to 35 percent.

To scale from 2017 to a 2021–2030 estimate, the author has inflated 2017 to 2021 assuming four years of 4 percent nominal growth in foreign profits. The author multiplied the 2021 number by 12 for the 10-year estimate—which also amounts to a 4 percent nominal growth rate in foreign profits.

The author has ignored impacts on revenue from the BEAT revenues in this table. The per-country minimum taxes would reduce any BEAT revenue that comes from U.S.-headquartered companies. However, BEAT revenues may prove quite disappointing regardless, according to Thomas Horst, "Preliminary Effects of the Likely Actual Revenue Effects of the TCJA's Provisions," Tax Notes International, September 16, 2019, pp. 1153–1158.

Sources: Author's calculations using data from the Bureau of Economic Analysis (column 1) and the IRS Country by Country income series (columns 2 and 3). U.S. Bureau of Economic Analysis, "U.S. Direct Investment Abroad: Balance of Payments and Direct Investment Position Data," available at <https://www.bea.gov/international/di/usdbal> (last accessed January 2020); IRS, "SOI Tax Stats - Country by Country Report," available at <https://www.irs.gov/statistics/soi-tax-stats-country-by-country-report> (last accessed January 2020).

Notably, the OECD recently proposed an unspecified global minimum tax as part of its work on the digital economy,<sup>21</sup> and there may be momentum for the adoption of minimum taxes elsewhere. The adoption of minimum taxes by foreign governments will generate revenue in the United States for the same reason that a U.S. minimum tax generates foreign revenues: Minimum taxes reduce the incentive to shift income from all nonhavens toward havens. Thus, it is also important for the U.S. government to productively engage in international efforts toward cooperation on this issue. Governments have much to gain from taming tax competition. And, because tax competition is far more of a problem for capital taxation than for labor taxation, stemming tax competition meets important progressivity goals. Despite the fact that capital income is far more concentrated than labor income, in recent decades, tax burdens on capital income have declined relative to those on labor income.<sup>22</sup>

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## Conclusion

Prior to the Tax Cuts and Jobs Act, the U.S. government collected less corporate tax revenue than its peer countries, despite the fact that U.S. corporate profits were at historically high levels. The profit shifting of MNCs was responsible for large revenue losses, and companies reported \$2.8 trillion of accumulated earnings in just nine tax havens in 2017, on the eve of the passage of the TCJA.<sup>23</sup> The TCJA responded with large corporate tax cuts, and the international provisions of the legislation had conflicting and ambiguous effects on profit shifting. The reforms to U.S. international tax rules detailed above would simultaneously raise corporate revenues, reduce profit shifting, and end the incentives to offshore economic activity that are embedded in current law.

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## Endnotes

- 1 Federal Reserve data on corporate profits indicate that after-tax profits since 2009 were between 9 percent and 11 percent of GDP, high in historical terms relative to prior decades. In contrast, federal corporate tax revenue was about 1 percent of GDP in 2018. The average OECD country collected 3 percent of GDP in corporate tax revenue in 2018. See Organization for Economic Cooperation and Development, "Tax on corporate profits," available at <https://data.oecd.org/tax/tax-on-corporate-profits.htm#indicator-chart> (last accessed January 2020); Federal Reserve Bank of St. Louis, "Corporate Profits After Tax (without IVA and CCAdj)/Gross Domestic Product," available at <https://fred.stlouisfed.org/graph/?g=pJLZ> (last accessed January 2020).
- 2 For a larger discussion of the important role of the corporate tax in a healthy tax system, see Kimberly A. Clausing, "Strengthening the indispensable U.S. corporate tax" (Washington: Washington Center for Equitable Growth, 2016), available at <https://equitablegrowth.org/research-paper/strengthening-the-indispensable-u-s-corporate-tax/>. For more on the flaws of the TCJA, see Kimberly A. Clausing, "Fixing Five Flaws of the Tax Cuts and Jobs Act" (Portland, OR: Reed College Department of Economics, 2019), available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3397387](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3397387).
- 3 Business Roundtable, "Tax Reform: Advancing America in the Global Economy" (Washington: 2015), available at <https://s3.amazonaws.com/brt.org/archive/BRT%20Tax%20Reform%202015%20Sept24%20%281%29.pdf>.
- 4 Organization for Economic Cooperation and Development, "Tax on corporate profits"; Federal Reserve Bank of St. Louis, "Corporate Profits After Tax (without IVA and CCAdj)/Gross Domestic Product." For evidence of the scale of profit shifting, see Kimberly A. Clausing, "Profit Shifting Before and After the Tax Cuts and Jobs Act" (Portland, OR: Reed College Department of Economics, 2020), available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3274827](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3274827).
- 5 For a complete discussion of the international provisions within TCJA as well as their likely effects on profit shifting, see Clausing, "Profit Shifting Before and After the Tax Cuts and Jobs Act."
- 6 Although foreign tax credits are only 80 percent creditable, foreign income is more desirable than U.S. income as long as the foreign rate is less than 52.5 percent—if the company has haven income and is subject to the GILTI. If they have excess tax credits already, there is no preference for foreign high tax income, though there remains a strong preference for haven income, since GILTI will not be applicable due to excess tax credits.
- 7 The TCJA also includes other base protection measures, including the base-erosion and anti-abuse tax, which is a minimum tax that is triggered if there are excessive deductible payments to related parties. Unlike the GILTI, the BEAT also intends to combat the profit shifting of foreign MNCs.
- 8 Opinions differ regarding the WTO issue, but similar export preferences in the tax code (extraterritorial income and domestic international sales corporations) were previously ruled incompatible with WTO obligations. Regarding the FDII's possibly larger-than-expected revenue cost, see Thomas Horst, "Preliminary Effects of the Likely Actual Revenue Effects of the TCJA's Provisions," *Tax Notes International* (2019): 1153–1158, available at <https://www.taxnotes.com/tax-notes-international/tax-cuts-and-jobs-act/preliminary-estimates-likely-actual-revenue-effects-tcja-provisions/2019/09/16/29w41>. Regarding the FDII's probable ineffectiveness, see Chris Sanchirico, "The New US Tax Preference for 'Foreign-Derived Intangible Income,'" *Tax Law Review* 71 (4) (2019): 625–664, available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3171091](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3171091).
- 9 This includes the JCT estimates of the cost of the provision for 2021 to 2027 and adds three years of the average cost over 2026 to 2027 to make the 10-year cost. Joint Committee on Taxation, "Estimated Budget Effects of the Conference Agreement for H.R. 1, the 'Tax Cuts and Jobs Act'" (Washington: U.S. Congress, 2017), available at <https://www.jct.gov/publications.html?func=startdown&id=5053>.
- 10 This is the rate for the central government. Including subnational rates, the average is 24 percent in 2019. See Organization for Economic Cooperation and Development, "Tax on corporate profits."
- 11 For evidence on these matters, see Chapter 7 of Kimberly A. Clausing, *Open: The Progressive Case for Free Trade, Immigration, and Global Capital* (Cambridge, MA: Harvard University Press, 2019). This issue is also discussed within Clausing, "Fixing the Five Flaws of the Tax Cuts and Jobs Act."
- 12 Jonathan Chew, "7 Corporate Giants Accused of Evading Billions in Taxes," *Fortune*, March 11, 2016, available at <https://fortune.com/2016/03/11/apple-google-taxes-eu/>.
- 13 For more on the OECD proposal, see Organization for Economic Cooperation and Development, "Global Anti-Base Erosion Proposal ('GloBE') - Pillar Two: Tax Challenges Arising from the Digitalisation of the Economy" (Paris: 2019), available at <https://www.oecd.org/tax/beps/public-consultation-document-global-anti-base-erosion-proposal-pillar-two.pdf.pdf>.
- 14 For a discussion of major progressive tax options, see Lily L. Batchelder and David Kamin, "Taxing the Rich: Issues and Options" (New York: New York University School of Law, 2019), available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3452274](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3452274).
- 15 Leonard E. Burman, Kimberly A. Clausing, and Lydia Austin, "Is U.S. Corporate Income Double-Taxed?," *National Tax Journal* 70 (3) (2017): 675–706, available at [https://www.taxpolicycenter.org/sites/default/files/publication/144606/2001514-is-u.s.-corporate-income-double-taxed\\_0.pdf](https://www.taxpolicycenter.org/sites/default/files/publication/144606/2001514-is-u.s.-corporate-income-double-taxed_0.pdf).
- 16 A U.S. resident company could be defined to include both U.S.-incorporated firms and foreign firms with their mind and management in the United States. Foreign firms that have some managerial presence in the United States and that use the U.S. dollar as their functional currency would face a rebuttable presumption that they are U.S. firms. See Edward D. Kleinbard, "The Right Tax at the Right Time," *Florida Tax Review* 21 (2017): 208–388, available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2878949](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2878949); Edward D. Kleinbard, "Competitiveness' Has Nothing to Do With It," *Tax Notes* 144 (2014), available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2476453](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2476453).
- 17 Emmanuel Saez and Gabriel Zucman, *The Triumph of Injustice: How the Rich Dodge Taxes and How to Make Them Pay* (New York: W. W. Norton and Co., 2019).
- 18 As part of its Pillar 2 work on digital taxation, the OECD has recommended developing rules such that all international businesses are subject to minimum rates of tax. While the details of these proposals are still being developed, they envision rules that would enable countries to tax income when it was insufficiently taxed abroad.
- 19 Positive-profit companies are more likely to pay tax in any given year, and the effective tax rates used in the positive-profit sample are more likely to reflect the tax treatment of companies paying taxes. In contrast, the full sample will also include companies making losses, biasing upward effective tax rates and thus biasing downward estimates of revenue from the minimum tax. If some companies consistently earn profits and others consistently earn losses, the positive-profit sample would provide a more accurate revenue estimate. However, if all companies spend some years earning losses and other years earning profits, the full sample may be a better reflection of the overall profitability of companies over time. Since there are good arguments in favor of each series, the average of the two might be a sensible benchmark.

- 20 The current U.S. global minimum tax is estimated to raise less than 40 percent of what a per-country version would raise, according to analysis in Clausing, "Profit Shifting Before and After the Tax Cuts and Jobs Act."
- 21 Organization for Economic Cooperation and Development, "Global Anti-Base Erosion Proposal ('GloBE') - Pillar Two."
- 22 In addition to the corporate and pass-through tax cuts under the TCJA, there were several large tax cuts to dividends, capital gains, and estate taxes since the mid-1990s, whereas changes in labor income tax rates have been far more modest.
- 23 Clausing, "Profit Shifting Before and After the Tax Cuts and Jobs Act"; IRS, "SOI Tax Stats – Country by Country Report," available at <https://www.irs.gov/statistics/soi-tax-stats-country-by-country-report> (last accessed January 2020). The havens are Bermuda, the Cayman Islands, Ireland, Jersey, Luxembourg, the Netherlands, Puerto Rico, Singapore, and Switzerland.