Member Companies

3M
Abbott Laboratories
ADP
American Express Company
Bank of America Corp.
The Boeing Company
Boston Scientific Corp.
Carrier Global Corp.
Caterpillar Inc.
Chevron Corporation
Cisco Systems, Inc.
The Coca-Cola Company
Corteva Inc.
Danaher Corporation
Dell Technologies, Inc.
The Dow Chemical Company
DuPont
Eli Lilly and Company
Emerson Electric Co.
Exxon Mobil Corporation
GE Aerospace
GE Vernova Inc.
General Mills Inc.
Google, Inc.
The Home Depot Inc.
Honeywell International Inc.
IBM Corporation
Johnson & Johnson
Johnson Controls, Inc.
JPMorgan Chase & Co.
Kenvue Inc.
Kimberly-Clark
MasterCard Inc.
McCormick & Company, Inc.
Morgan Stanley
Oracle Corporation
Otis Worldwide Corp.
PepsiCo, Inc.
Procter & Gamble Co.
Prudential Financial Inc.
RTX Corporation
S&P Global Inc.
State Street Corporation
Texas Instruments, Inc.
United Parcel Service, Inc.
Verizon Communications Inc.
Walmart Inc.
The Walt Disney Company

March 18, 2025

The Honorable Scott Bessent
Secretary
United States Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Re: Executive Order with respect to The Organization for Economic Cooperation and Development (OECD) Global Tax Deal

Dear Mr. Secretary:

The Alliance for Competitive Taxation ("ACT") is a coalition of leading American companies from a wide range of industries that supports a globally competitive corporate tax system.

ACT members wish to express their support for President Trump's leadership in issuing the Executive Order referenced above and expressly rejecting extraterritorial or discriminatory taxes being imposed by foreign countries on income that should be properly taxed by the United States. Our purpose in writing is to convey our concerns with respect to the OECD's "Pillar Two" project, specifically the "undertaxed profits rule" ("UTPR").[1] As described more fully below, and as repeatedly highlighted by Members of Congress (most recently in a February 3, 2025 letter to President Trump from 18 Members of the House Committee on Ways and Means), Pillar Two as currently constituted undermines the sovereignty of the United States, violates obligations under our bilateral tax treaties and siphons tax revenue from the United States to foreign governments.[2] For these reasons, we believe the United States must be firm in insisting that the UTPR be eliminated from the Pillar Two framework and from the domestic laws of any countries that have adopted it.

[1] ACT members also have other important concerns with Pillar Two, but, for the reasons discussed herein, we believe that the UTPR is the most egregious feature of the Pillar Two framework.
[2] These and similar concerns have been repeatedly raised by members of Congress for several years, including in a February 16, 2022, letter to Secretary Yellen from ranking member Crapo and 13 other members of the Senate Finance Committee and a December 14, 2022, letter to Secretary Yellen from ranking member Risch of the Senate Foreign Relations Committee, ranking member Crapo of the Senate Finance Committee, ranking member Brady of the House Ways and Means Committee, and 29 other members of Congress representing these committees.

We recognize that President Trump's Executive Order, as well as legislation recently re-introduced in Congress,[3] contemplates the possibility that the United States will respond through our income tax system to protect our national interests. Like all businesses that operate in multiple countries around the world, we firmly believe in the long-term reduction of tax barriers to cross-border trade and investment, which will enhance jobs and economic growth in the United States. However, we also believe that it is vital for other countries not to doubt the resolve of the United States in putting a stop to extraterritorial or discriminatory taxation and restoring our sovereign right, acting through our elected representatives, to enact tax policies that serve the interests of the United States.

As you know, the OECD's two pillar project arose following the enactment by Congress and President Trump of the Tax Cuts and Jobs Act ("TCJA"). The TCJA transformed the U.S. tax system by, among other changes, lowering the corporate tax rate and by adopting the Global Intangible Low Taxed Income ("GILTI") regime, the world's first broad-based minimum tax applicable to the foreign subsidiaries of globally engaged companies.[4] After the adoption of GILTI by the United States, however, Pillar Two morphed into a framework to divert tax revenue that would otherwise have been collected by the United States under GILTI to foreign countries. The Joint Committee on Taxation has estimated that the adoption of Pillar Two by the rest of the world would result in lost tax revenue to the United States of $122 billion from 2023-2033.[5]

The most significant of the changes to Pillar Two was the adoption of the UTPR, an unprecedented provision granting foreign countries the right to tax income that has no connection whatsoever to their countries, including in many circumstances income that was already subject to tax by the United States.[6]

In contravention of over one hundred years of established international tax norms and the obligations of countries under long-standing and carefully negotiated bilateral tax treaties, the UTPR would subject a company, including a U.S. company, to additional tax in any country in which the ownership group has an affiliate merely as a result of the company earning "low-taxed" income due to incentives provided through the tax system. Under this framework, for example, U.S. companies could be subject to additional tax in foreign countries as a result of performing research in the United States (and thereby qualifying for the U.S. research credit) or as a result of engaging in other activities in the United States that qualify for congressionally enacted incentives, including making investments in plants and equipment or other tangible property in the United States (and thereby benefitting from accelerated depreciation[7]).

Perhaps even more importantly, the UTPR would undermine the effectiveness of tax policies adopted by current and future Congresses and Presidents to stimulate investment and job creation in the United States or to mitigate the economic harm from a future pandemic or economic recession. In short, the UTPR

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[3] Defending American Jobs and Investment Act, H.R. 591, 119th Cong. (2025).
[4] GILTI was estimated to raise $112.4 billion in tax revenue from 2018-2027.
[5] Joint Committee on Taxation, *Possible Effects of Adopting the OECD's Pillar Two, Both Worldwide and in the United States*, June 2023, https://www.jct.gov/publications/2023/oecd-pillar-two-report-june-2023/ . This revenue estimate was based on several assumptions, including that the United States does not fully conform U.S. law to the OECD framework.
[6] In addition, despite prior public statements by senior OECD officials, the OECD also backtracked on its commitment to treat GILTI as a "qualified" Pillar Two minimum tax, thereby uniquely exposing U.S. companies to double taxation on their foreign earnings (under both the U.S. GILTI rules and the Pillar Two rules, including the UTPR).
[7] Although accelerated depreciation cannot by itself result in an incremental tax liability under Pillar Two, under the unique and harsh framework devised by the OECD, the combination of accelerated depreciation and other incentives such as the R&D tax credit can (and frequently will) increase a company's exposure to Pillar Two tax. Thus, for example, a company making significant capital investments in the United States to increase its research capabilities will face increased exposure to the UTPR from the combination of the research credit and the accelerated depreciation available from its capital investments.

represents an unprecedented extraterritorial violation of the sovereign right of countries, including the United States,[8] to determine their own tax policies.

In addition, as President Trump's Executive Order suggests, the UTPR represents a violation of U.S. income tax treaties,[9] treaties which have been painstakingly negotiated by your Department over many decades to lower tax barriers in a fair and reciprocal manner and encourage cross-border trade and investment. As many commentators have noted,[10] our tax treaties generally obligate the United States and each of our treaty partners to limit the tax imposed by each country to income that has a sufficient economic nexus or connection to that country.[11] To use a specific example, under the income tax treaty between France and the United States, France is only permitted to impose tax on the business profits of a U.S. corporation if the U.S. corporation has a taxable presence (a permanent establishment) in France and then only to the extent of the profits that are attributable to its operations in France.

A separate set of provisions of our tax treaties[12] provides that, in attributing income among related entities, the amount of income that can be attributed to an entity in one treaty country (and thereby taxed in that country) must be consistent with the amount of income that would arise if the related entities were unrelated and transacting at "arm's length," and that the treaty partners are to consult to ensure that income is properly attributed to each treaty partner to achieve this result. In addition, our treaties include non-discrimination requirements that provide, among other protections, that a treaty partner cannot impose an increased tax burden on a company incorporated in its country because that company is owned or controlled by an entity incorporated in the other country.[13]

The UTPR cannot be reconciled with these treaty obligations. Specifically, the UTPR provides that a country (e.g., France) can tax income that is earned by a company doing business in another country (e.g., the United States) despite the fact that the entity earning the income has no taxable presence in or nexus to the country imposing the UTPR. Similarly, the UTPR effectively attributes income of an entity in one country to an affiliated entity in another country, with no regard to the amount of income that would be attributable to each of these entities under an arm's length standard. The UTPR also results in discriminatory taxation being imposed on a company solely because the company is owned or controlled by a company in another country if that company (or any of its affiliates) earns "low taxed" income.

We note that the OECD and some commentators have attempted to argue that the UTPR can be imposed without running afoul of treaty obligations. Although we will not attempt to address such arguments comprehensively in this letter, they rely on flawed interpretations of the relevant treaty provisions that, in

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[8] Article 1, Section 8, Clause 1 of the United States Constitution provides that Congress has the right to "lay and collect taxes" – the very first enumerated power granted to the Congress. The UTPR transfers this critical sovereign right to other countries based on a framework that has never been adopted into law in the United States. President Trump's Executive Order emphasizes this point, instructing you and the Permanent Representative of the United States to the OECD to notify the OECD that "any commitments made by the prior administration on behalf of the United States with respect to the Global Tax Deal have no force or effect within the United States absent an act by the Congress adopting the relevant provisions of the Global Tax Deal."

[9] Specifically, the Executive Order provides, "The Secretary of the Treasury in consultation with the United States Trade Representative shall investigate whether any foreign countries *are not in compliance with any tax treaty with the United States* or have any tax rules in place, or are likely to put tax rules in place, that are extraterritorial or disproportionately affect American companies, and develop and present to the President, through the Assistant to the President for Economic Policy, a list of options for protective measures or other actions that the United States should adopt or take in response to such non-compliance or tax rules." (emphasis supplied).

[10] *See, e.g.,* David G. Noren, *Coordination of Undertaxed Payment Rules With Bilateral Income Tax Treaties*, 51 Tax Mgmt. Int'l J. No. 9 (Sept. 2, 2022); Jefferson VanderWolk, *The UTPR is Inconsistent with the Nexus Requirement of Tax Treaties*, Kluwer International Tax Blog (Oct. 26, 2022).

[11] U.S. Model Income Tax Convention, art. 5 (Permanent Establishment), 2016, available at U.S. Department of Treasury; *Id.* at art. 7 (Business Profits).

[12] *Id.* at art. 9 (Associated Enterprises); *Id.* at art. 25 (Mutual Agreement Procedure).

[13] *Id.* at art. 24.5 (Non-Discrimination).

some cases, could be considered frivolous. The OECD has asserted, for example, that the UTPR is consistent with treaty obligations because most treaties provide that the obligations of a treaty do not prevent a country from imposing tax on its own residents as though the treaty were not in effect.[14] Such an argument elevates artifice over reality. The UTPR, by design, imposes tax on income earned by a company doing business in another country – income that is explicitly beyond the permitted reach of that country under its treaty obligations -- by co-opting a related domestic entity to be a collection agent for the extraterritorial tax.

As the Supreme Court has repeatedly recognized, treaties are to be interpreted consistent with the intent of the parties to the treaty, recognizing the broader "object and purpose" of those treaty obligations.[15] As commentators have observed,[16] it is difficult to believe that the parties to a bilateral tax treaty would agree that one party could avoid the jurisdictional limits on its taxation rights under the treaty by simply imposing an extraterritorial tax and seeking collection from a company that is within its taxing jurisdiction.[17]

The unfortunate reality is that the OECD's Pillar Two project has veered off course. We believe it is time for the United States to restore well-understood and widely agreed international tax norms[18] and to reassert its long-standing leadership with respect to international taxation by making it clear that the United States will not sacrifice its sovereignty or the rights under our carefully negotiated bilateral tax treaties to a misguided effort to establish global tax uniformity. We believe every country, including the United States, should retain the sovereign right to determine the tax policies that, in its judgment, will provide the greatest benefit to its citizens and its national welfare.

We also are concerned that even if Pillar Two is modified to prevent foreign countries from applying the UTPR to impose extraterritorial taxes on the domestic and foreign income of U.S. companies, those modifications may prove not to be durable and only provide temporary relief from extraterritorial taxes being imposed by foreign countries on income that should be properly taxed by the United States. That is because the multilateral tax framework that supports Pillar Two would create a new international tax architecture that would provide a ready means for future governments in the United States and abroad to change the rules governing extraterritorial taxation.[19] Accordingly, we believe the United States must be

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[14] This is often referred to as the treaty "savings clause". The savings clause does not apply to non-discrimination claims.

[15] *See, e.g., Abbott v. Abbott,* 560 U.S. 1, 20 (2010); *Sanchez-Llamas v. Oregon,* 548 U.S. 331, 347 (2006); *Société Nationale Industrielle Aérospatiale v. U.S., Dist. Ct. for S. Dist. Of Iowa*, 482 U.S. 522, 530 (1987)*; E. Airlines, Inc. v. Floyd, 499 U.S. 530, 552 (1991). See also Vienna Convention on the Law of Treaties* (1969), art. 31(1) ("A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in light of its object and purpose.").

[16] *See, e.g.,* Jefferson Vanderwolk, note 5.

[17] For the avoidance of doubt, we note that a prior iteration of the UTPR proposed by the OECD, referred to as the undertaxed ***payments*** rule, suffered from all of the same defects described in this letter. The prior undertaxed payments rule provided for a different mechanism for allocating among countries the "right" to impose extraterritorial tax on "low-taxed" income. However, because this prior version also asserted extraterritorial taxation rights over income that had no connection to the jurisdiction imposing the tax, it raised precisely the same concerns with respect to violations of sovereignty and breach of tax treaty obligations.

[18] Although not the focus of this letter, we note that the incompatibility of the UTPR with international tax norms has already led to a legal challenge outside the United States. Specifically, in July 2024 the American Free Enterprise Chamber of Commerce filed a legal challenge in Belgium, seeking to annul Belgium's enactment of the UTPR on the grounds that it violates the Belgian Constitution, the European Convention on Human Rights, and the EU Charter of Fundamental Rights.

[19] Since the release of the "final" Pillar Two rules in December 2022, the OECD has issued multiple tranches of administrative guidance that effectively rewrite portions of the rules (including changes that have been detrimental to the interests of the United States). While the OECD has adopted temporary "safe harbors" that suspend harmful portions of the rules for a period of time, relying on safe harbors or other similar temporary measures will fail to deliver the certainty that the UTPR has been eliminated from the Pillar Two framework and will leave the United States vulnerable to future attempts to reinstitute extraterritorial taxation on U.S. companies.

firm in insisting that the UTPR (and any similar forms of extraterritorial taxation) be permanently removed as a policy mechanism by the OECD and participating countries.

We look forward to working with you, your staff, President Trump, and the Congress to ensure this message is clearly delivered to the OECD and to our trading partners and that countries that have adopted UTPRs take appropriate steps to eliminate them without delay.

Yours sincerely,

Alliance for Competitive Taxation

cc: The Honorable Jason Smith
The Honorable Richard Neal
The Honorable Mike Crapo
The Honorable Ron Wyden