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U.S. Proposal for Minimum Tax Rate

By: Henry Tan



One of the White House's most ambitious foreign policy projects is establishing a global, minimum corporate tax rate.^[1] The proposal aims to lessen the ability of global corporations to “shop around” and prevent the “race to the bottom.”^[2] The fledgling minimum tax proposal touches on various issues: the interests of smaller nations vis a vis their larger peers, American technology giants, and the Biden Administration's plans to raise domestic tax rates to fund the administration's ambitious economic and social policy bills.

The proposal has two distinct parts: “the minimum tax” and “changing where large companies pay taxes.”^[3] The minimum tax is achieved by two primary rules. First, the income inclusion rule decides whether a parent company's revenues should include its holdings' revenue and sets the effective tax rate at 15 percent, or “otherwise additional taxes,” would be owed in the company's home country.^[4] This disincentives companies from moving their headquarters to a lower tax rate nation. The second rule is the “under taxed payments rule,” which is used to disincentivize companies from making payments to their parent-organizations, which are often located in low tax jurisdictions.^[5] These rules disincentivize companies from changing their tax-paying jurisdictions and would bolster overall tax revenue. However, it also pits the interests of traditionally low tax jurisdictions, often smaller nations, against high tax jurisdictions, typically represented by significantly larger nations. 130 countries, including every major economy, expressed support for the minimum tax proposal and agreed in theory to a minimum rate of at least 15 percent.^[6] However, nine countries have withheld their support but remain in negotiations with the others nations.^[7] Among them are traditional tax heavens as well as EU member states, notably Hungary and Ireland, who rely on a tax rate below 15 percent to attract foreign investment.^[8] On the other hand, larger nations with high tax rates, such as France and the U.S. view a 15 percent floor as insufficient and have been pushing for an increase to 21 percent.^[9]

The tax proposal is also part of a larger negotiation between the United States and the international community on how to tax large U.S. corporations such as Facebook and Alphabet. In recent years, some countries have levied taxes on digital services to specifically

target companies like Facebook, but subsequently suspended them once the negotiations began.^[10] American technology corporations seem to view the tax proposal as an acceptable tradeoff for the repeal of the digital services taxes, in part because the global tax plan would be easier to navigate than a disparate digital tax policy developed by individual countries.^[11] However, this view is not uniform in the industry. For example, NetChoice, an industry association that includes Facebook, believes that the agreement would not satisfy European nations who would continue to raise taxes and antitrust actions against the industry.^[12]

Establishing a global minimum tax would ease the path for the Biden Administration to raise domestic corporate taxes. The administration had initially sought to establish a domestic rate of 28 percent on corporations, up from the current 21 percent.^[13] The Trump Administration and Congress had lowered the rate to 21 percent from 35 percent in 2017.^[14] The higher the minimum global rate, the easier it would be for President Biden to raise America's domestic corporate tax. It would ease the fears among Congress that American companies would seek foreign tax heavens. Treasury Secretary Yellen has argued that even a 15 percent global floor would be sufficient in dissuading domestic companies from going abroad.^[15] While a higher floor would make the Biden Administration's push for a domestic increase simpler, it would also make it harder for the 130 nations who have agreed to the plan to implement in their legislatures.

While the proposal was met with initial fanfare in the summer, reports about its progress have slowed down since September as the minutiae of negotiations grow. It also becomes more pressing: the self-imposed October deadline for the proposal is fast approaching.^[16] With the consent of both the House and Senate required for both raising the domestic tax rates, the collapse of the talks would also impede the Biden Administration's ability to fund its ambitious economic stimulus and social policy plans.

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[1] Alan Rappoport, *U.S. Backs 15% Global Minimum Tax to Curb Profit Shifting Overseas*, N.Y. Times (May 20, 2021), <https://www.nytimes.com/2021/05/20/business/economy/global-minimum-tax-corporations.html>.

[2] Liz Alderman, Jim Tankersley & Eshe Nelson, *US Proposal for 15% Global Minimum Tax Wins Support from 130 Countries*, N.Y. Times (July 1, 2021), <https://www.nytimes.com/2021/07/01/business/global-minimum-tax.html>.

[3] Daniel Bunn, *What's in the New Global Tax Agreement?*, Tax Found. (Oct. 8, 2021), <https://taxfoundation.org/global-tax-agreement/>.

[4] *Id.*

[5] *Id.*

[6] Alan Rappoport, *House Bill Raises Chance for Global Pact to Curb Corporate Tax Havens*, N.Y. Times (Sep. 14 2021), <https://www.nytimes.com/2021/09/14/us/house-bill-global-tax.html>.

[7] Bunn, *supra* note 3.

[8] Alderman, Tankersley & Nelson, *supra* note 2.

[9] Rappoport, *supra* note 1.

[10] Diane Bartz, *Big Tech Supports Global Tax, but Wants Digital Services Levies Axed*, Reuters (June 8, 2021), <https://www.reuters.com/world/middle-east/big-tech-supports-global-tax-wants-digital-services-levies-axed-2021-06-07/>.

[11] *Id.*

[12] *Id.*

[13] Rappoport, *supra* note 6.

[14] Johnathan Weisman, *In Social Policy Bill, Businesses See a Lot to Like. The Oppose it*, N.Y. Times (Sept. 12, 2021), <https://www.nytimes.com/2021/09/12/us/politics/businesses-social-policy.html>.

[15] Rappoport, *supra* note 1.

[16] Weisman, *supra* note 14.