TAXING MULTINATIONALS

Hic Sunt Dracones (Turbulent Times Ahead)!

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Taxing Multinationals: Turbulent times lie ahead!

There are huge changes happening in the international tax architecture that governs how the profits of multinational enterprises (MNEs) are taxed.

For 60 years, the OECD set the bilateral tax rules by which governments tax MNEs. Today's digital MNEs, however, have global "scale without mass" and highly mobile (hard-to-tax) profits.

Two big proposals are on the table.

- The OECD wants to tax and use a formula to apportion the profits of the world's 100 largest MNEs, together with a assessing a 15% minimum tax on almost all MNEs.
- Developing countries view the OECD proposals with suspicion and have countered with a "more inclusive and effective" proposal for a new UN Framework Convention on International Tax Cooperation (FCITC).

While these policy debates are happening at the global level, their effects will be felt everywhere including here in terms of trade, investment and employment in Texas and the United States.

TAXING MULTINATIONALS

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1. International Tax Cooperation: What and Why?

2. Old Guard: OECD Base Erosion and Profit Shifting Projects

3. New Guard: The United Nations Framework Convention

4. From Global to Texas

What Is International Tax Cooperation?

Governments agree on a common set of

- Principles
- Prescriptive and proscriptive norms (standards of behavior)
- Rules, and
- Dispute mechanisms

which will govern cross-border taxation of firms, individuals and activities.

Benefits and costs of international tax cooperation:

- Benefits: fosters cross-border flows, encourages economic growth, raises tax revenues
- Costs: loss of national sovereignty, permits free riders and cheating

Why Should Governments Engage in International Tax Cooperation?

- Taxing the profits of multinational enterprises (MNEs) is a key revenue source for most governments, both taxing profits earned by MNEs in their country of Residence and their profits earned abroad (Foreign Source Income (FSI).

- What happens when governments each country sets its own rates and bases?

- We get international tax competition → "beauty contests" to attract inward foreign direct investment (FDI).
    - Benefits: national tax sovereignty
    - Costs: Fosters tax arbitrage and tax games, race to the bottom and beggar-thy-neighbor policies (DUP (Directly Unproductive Profit-seeking) activities). Leads to less productive FDI, lower tax revenues and less economic growth.

Basic International Tax Principles and Norms

- Defines country of residence (where the firm's owners reside) and country of source (where the firm's profits are earned).
- Defines nexus (right to tax) based on concept of "permanent establishment" and "effectively connected income".
- Defines which country has the primary right to tax (first crack) which types of income
  - Source country: Corporate income tax CIT) on profits earned in the country and withholding taxes on after-CIT profits sent offshore
  - Residence country: CIT on dividends, royalties, MGMT and service fees, etc.
- Gives residence country the right to tax on either a territorial or worldwide basis:
  - Territorial: only taxed the profits its MNEs earned at home ("water's edge")
  - Worldwide: taxed all profits earned by its MNEs wherever earned on either accrual (as earned annually) or deferral (not taxed until repatriated) basis. Also, if worldwide, a foreign tax credit ("FTC") must be provided, up to the home CIT rate, for income taxes levied by the source country (e.g., source CIT + with taxes).
- Arm's length principle ensures that cross-border transactions and activities within the MNE are priced based on what independent enterprises would have done under the same facts and circumstances, so MNE profits accurately reflect income and discourage illegal tax avoidance.

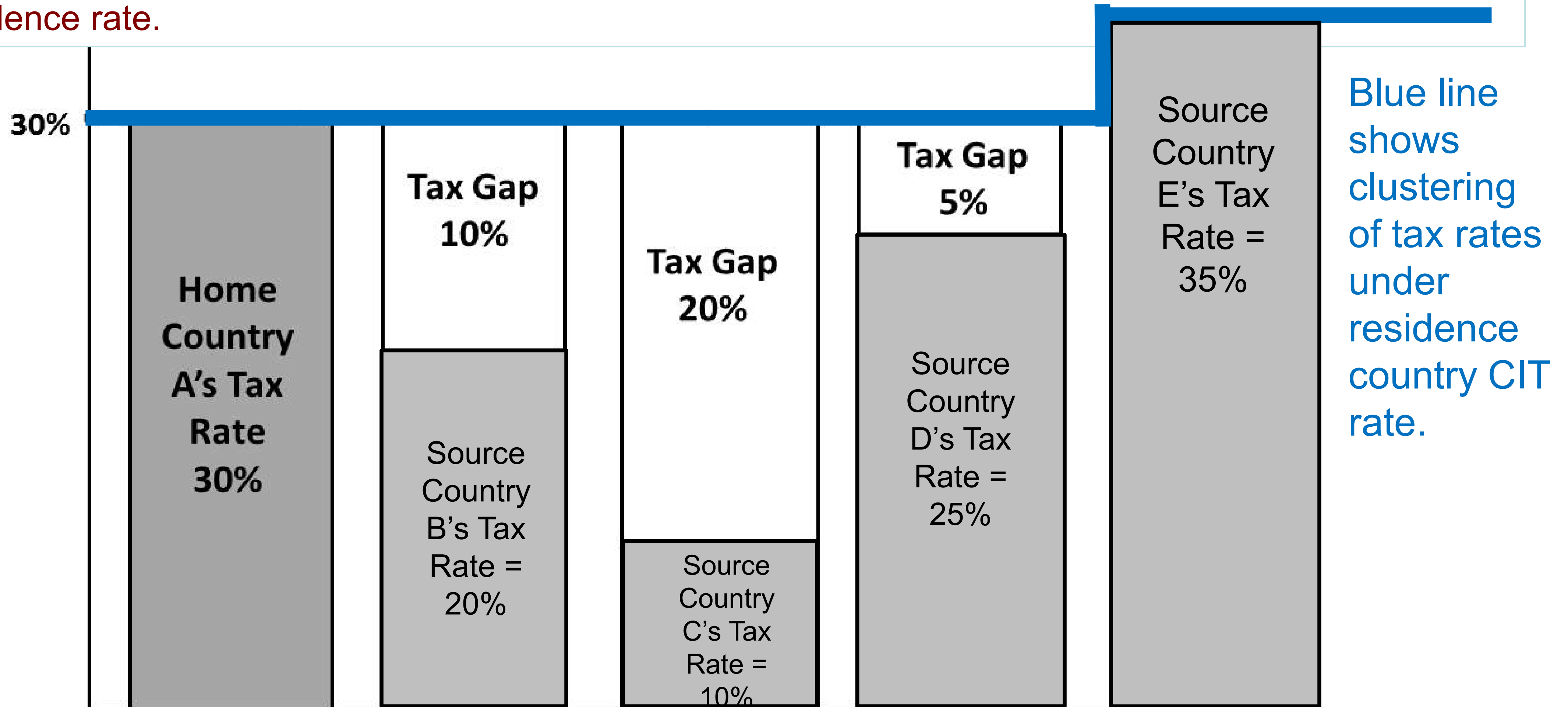
1930s- 1980s: Core International Tax Practices

- Most residence countries (including the USA) taxed on a worldwide basis.
- Permanent establishments defined as “brick and mortar” investments; otherwise, MNE profits could not be taxed by source country.
- Taxation of foreign source income (FSI) depended on whether the income was:
    - Active business income (“ABI”): taxes deferred until FSI was repatriated.
    - Passive income: taxed on an accrual basis using “Controlled Foreign Corporation (“CFC” rules). In USA: “SubPart F rules”.
- Result: Source countries - where most of their inward foreign direct investment (FDI) was from one residence country (e.g., most FDI in Canada is from the USA) -- set their CIT rates close to the CIT rate in the residence country to get the foreign tax credits. Thus, most CIT rates in OECD countries clustered under the US CIT rate. Worldwide taxation therefore had an “umbrella effect”.
- Example: 1987: US drops CIT. Most countries follow.

Worldwide Taxation

Residence (Home) Country Taxes FSI as Earned with Foreign Tax Credit

Residence country offers de facto "umbrella" by providing FTC up to Residence rate. MNE global tax = $t^{Res} + (t^{Source} - FTC) \approx t^{RES}$ → First Crack Principle: Optimum policy for source country is to cluster at or just under Residence rate.



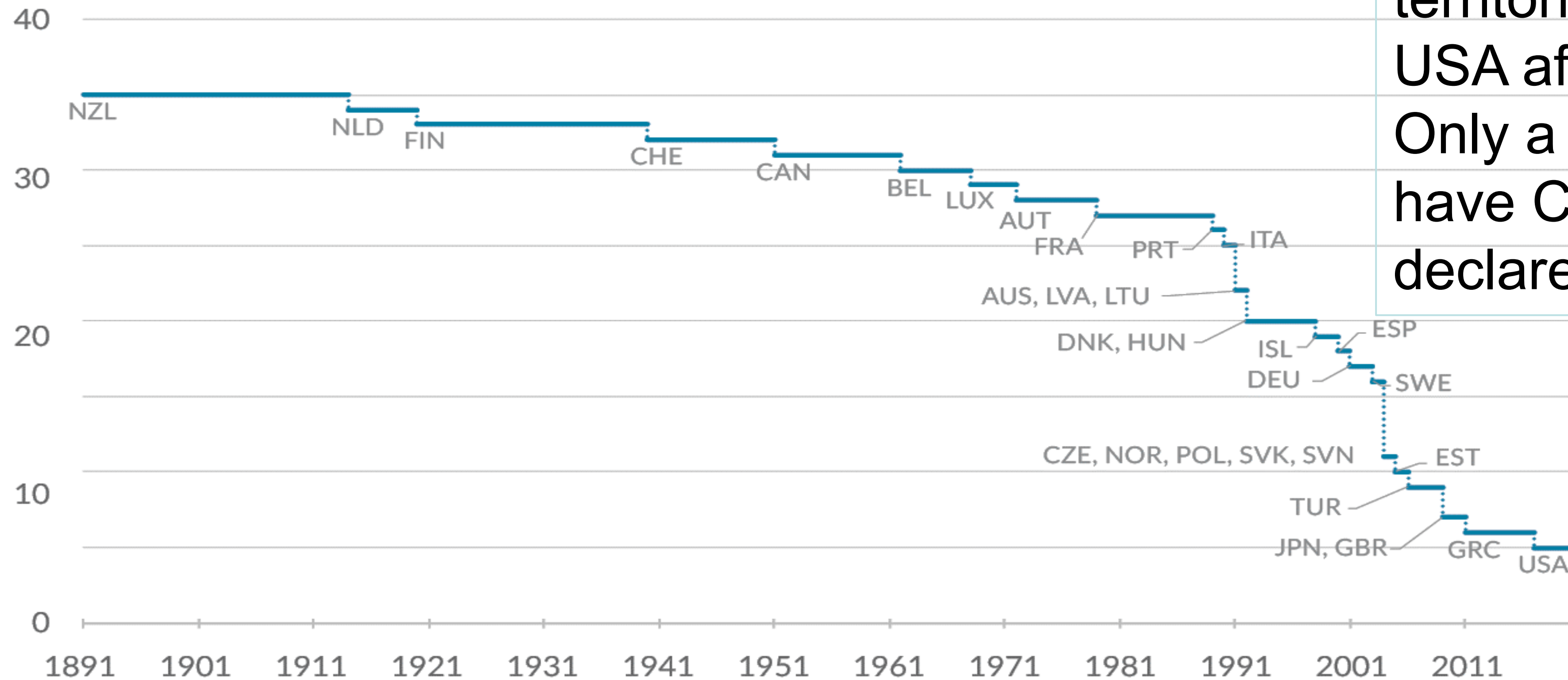
1990s-2010s: Core International Tax Practices

- Base Erosion and Profit Shifting (BEPS) activities by MNEs skyrocket
- Encouraged by:
    - Rapid growth in tax havens and offshore centers (hubs)
    - EU residence countries shift from worldwide to territorial taxation of MNE profits
    - Tax planning industry exploits cross-border tax arbitrage opportunities
        - Differences in CIT rates, bases and preferences across countries.
        - Loopholes (two-headed Irish, Dutch sandwich, US check-the-box rules)
        - Transfer pricing rules (e.g., cost sharing; location of functions, assets, risks)
- Greater mobility of MNE profits:
        - Migration of intellectual property (IP) to IP hubs and marketing hubs
        - Rise of the Digital Economy and the Digital Giants
        - Global Financial Crisis 2007-2009

→ Greater spread in CIT rates across countries and huge growth in global profit shifting by MNEs.

The Shift from Worldwide to Territorial Taxation Among OECD Countries

Number of OECD countries with worldwide system, 1891-2020



Note: New Zealand and Finland effectively repealed (in 1988 and 1990, respectively) and
systems. The year when the territorial system first went into effect is shown.

Source: Narine Nersesyan, "The Current International Tax Architecture: A Primer," in Corp
and How It Could Be Designed (Washington, D.C.: International Monetary Fund, 2021).

TAX FOUNDATION

Almost all Residence countries now tax on a territorial basis (including USA after TCJA 2017). Only a few countries have CFC rules on profits declared in tax havens.

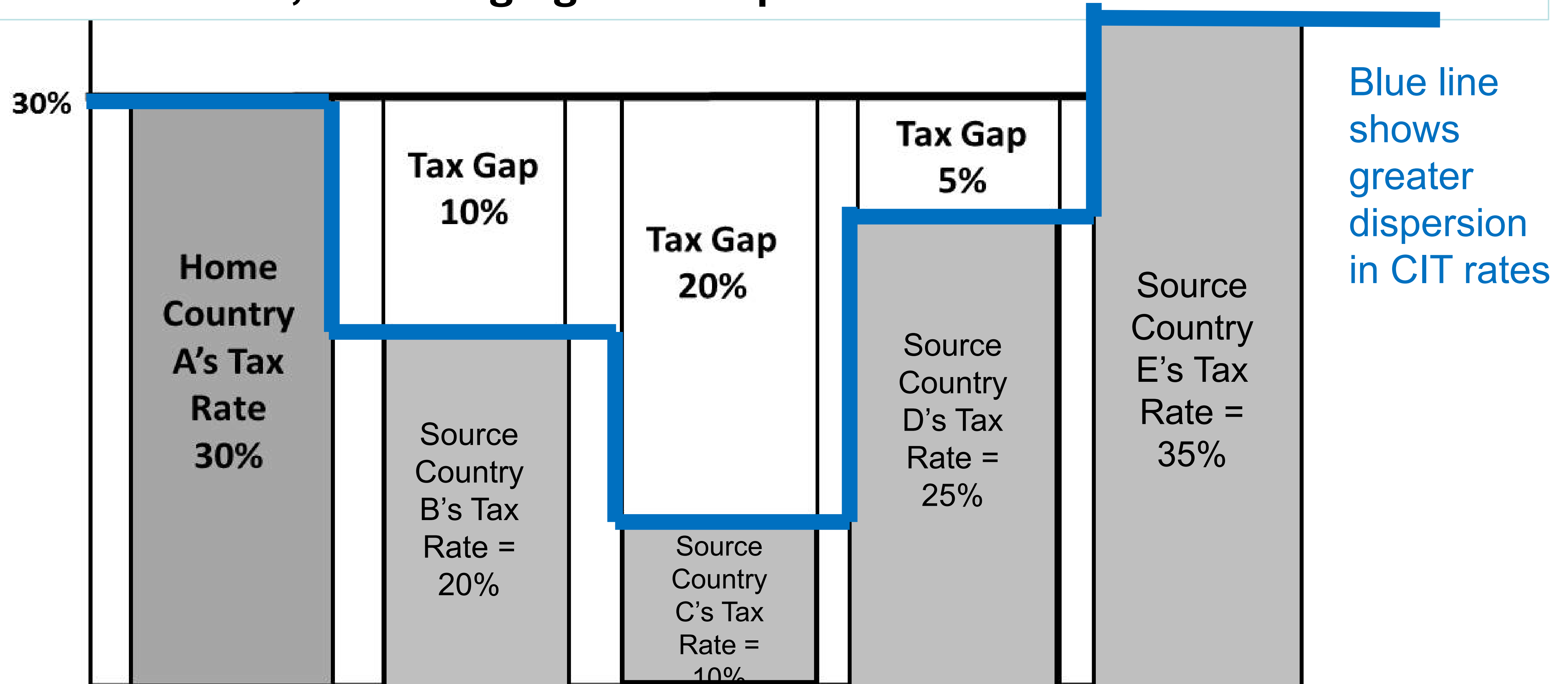
Readings

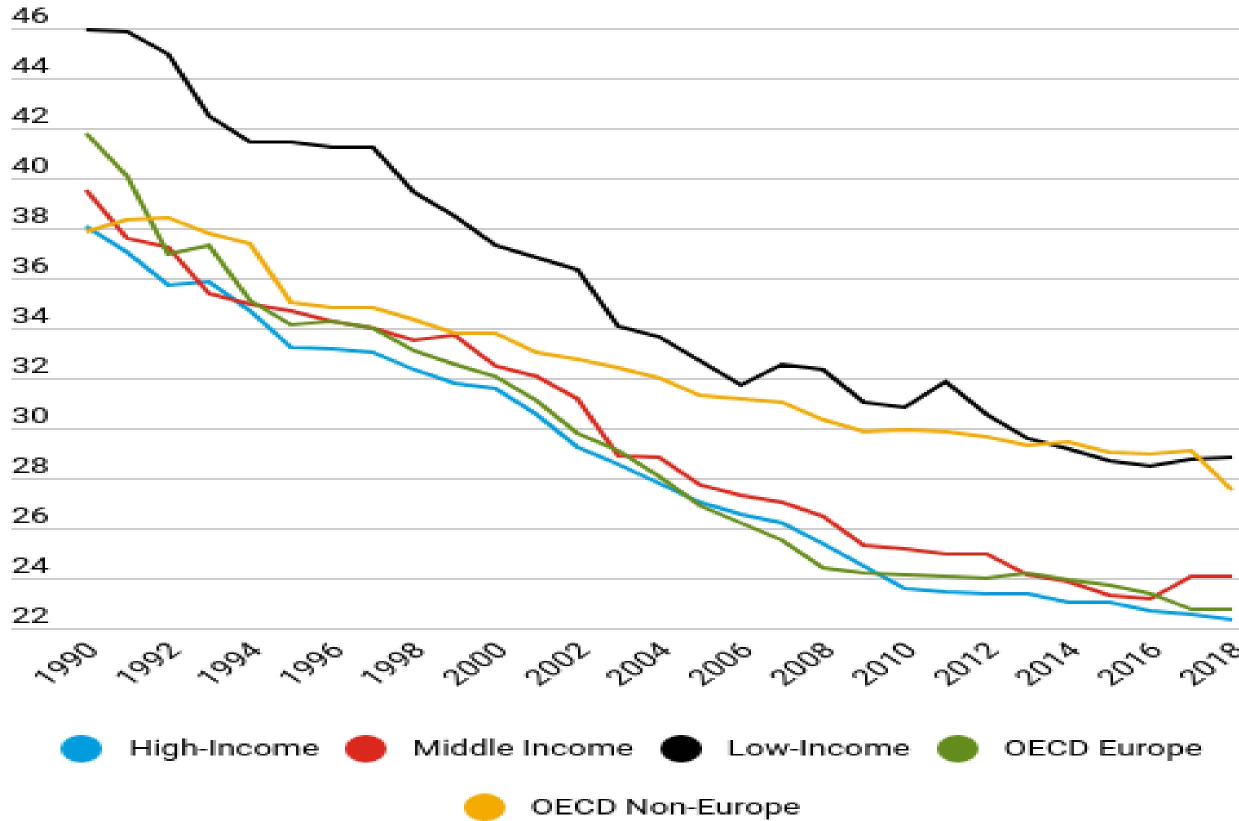
https://www.elibrary.imf.org/display/book/9781513511771/ch003.xml
https://www.imf.org/external/pubs/ft/wp/2013/wp13205.pdf
https://taxfoundation.org/territoriality-tax-systems-europe-2021/
https://taxfoundation.org/global-perspective-territorial-taxation/
https://taxfoundation.org/territorial-tax-system-oecd-review/

Territorial Taxation

Residence Country Exempts FSI so Effective Rate Is Source Country Rate

Without "umbrella" differences in source country tax rates affect location and amount of inward FDI, encouraging tax competition and race to bottom.



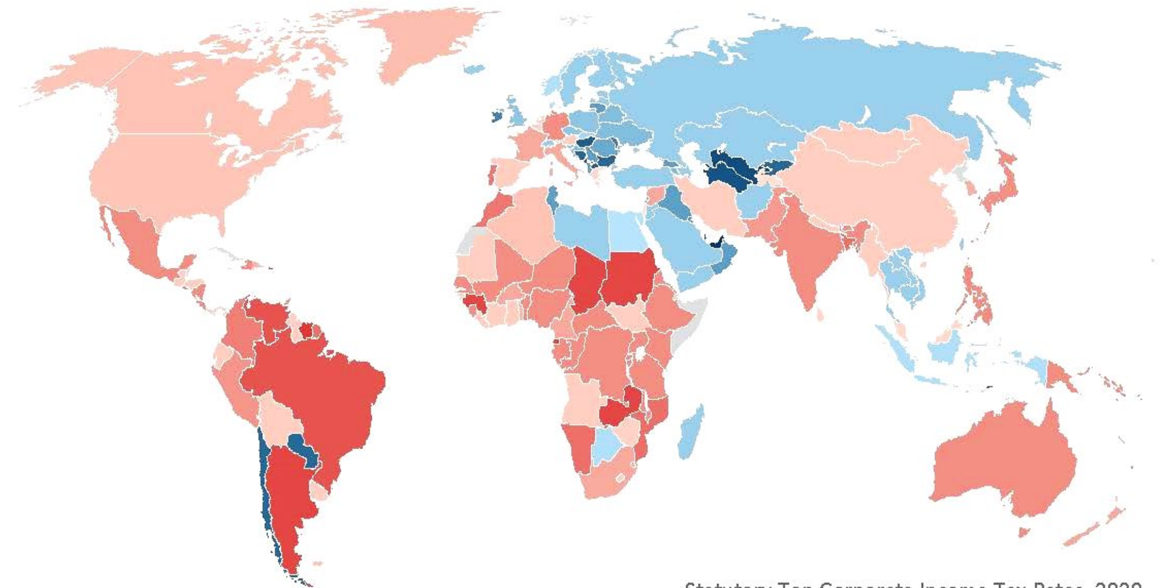


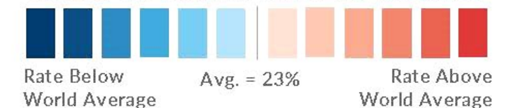
IMF analysis shows, for example, that non-OECD countries lose about $200 billion in revenue per year, or about 1.3 percent of GDP, due to companies shifting profits to low-tax locations.

https://www.imf.org/en/Blogs/Articles/2019/07/15/corporate-tax-rates-how-low-can-you-go

https://www.imf.org/en/Publications/Policy-Papers/Issues/2019/03/08/Corporate-Taxation-in-the-Global-Economy-46650

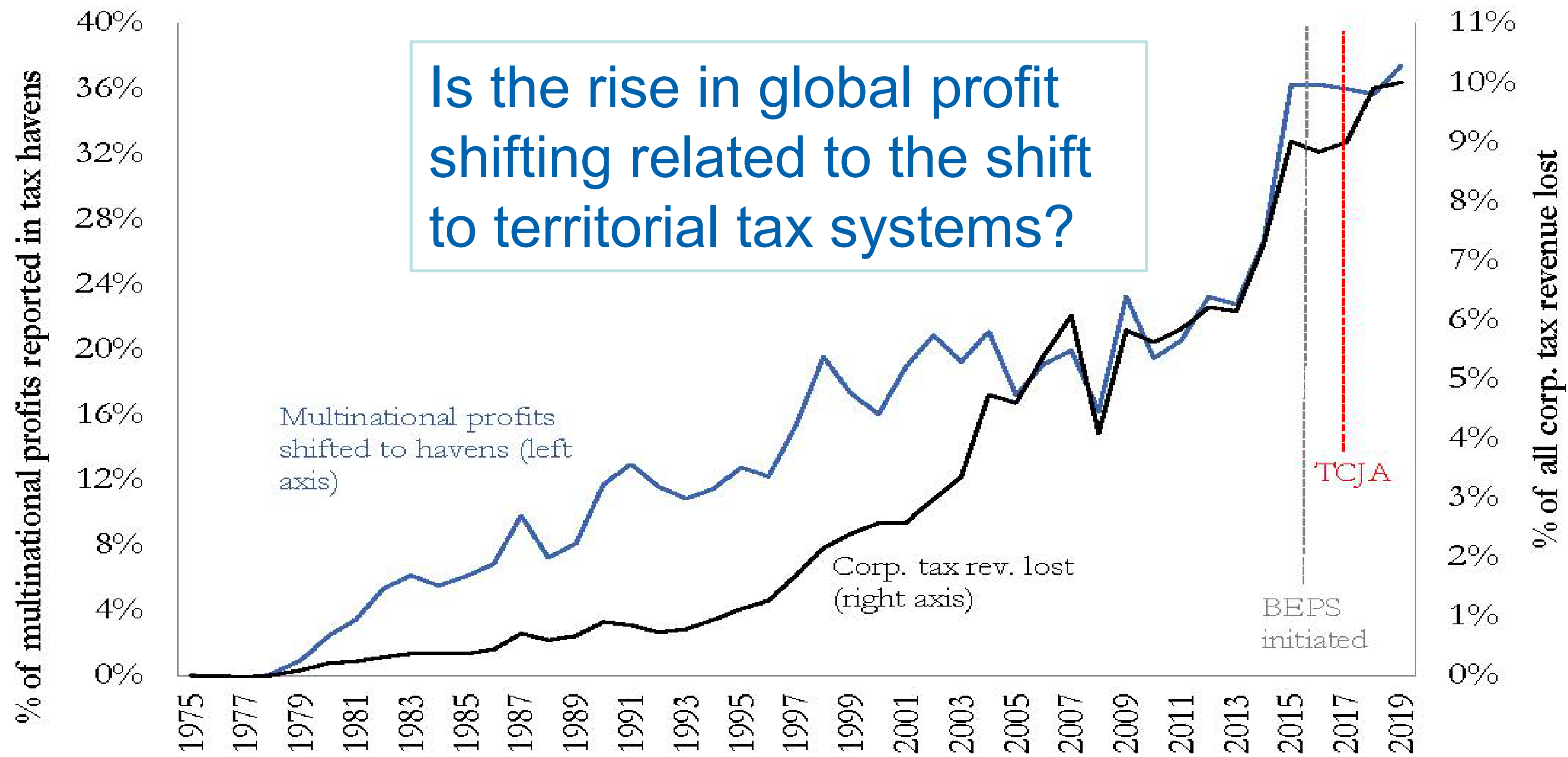
Statutory Corporate Income Tax Rates Across Countries and Time



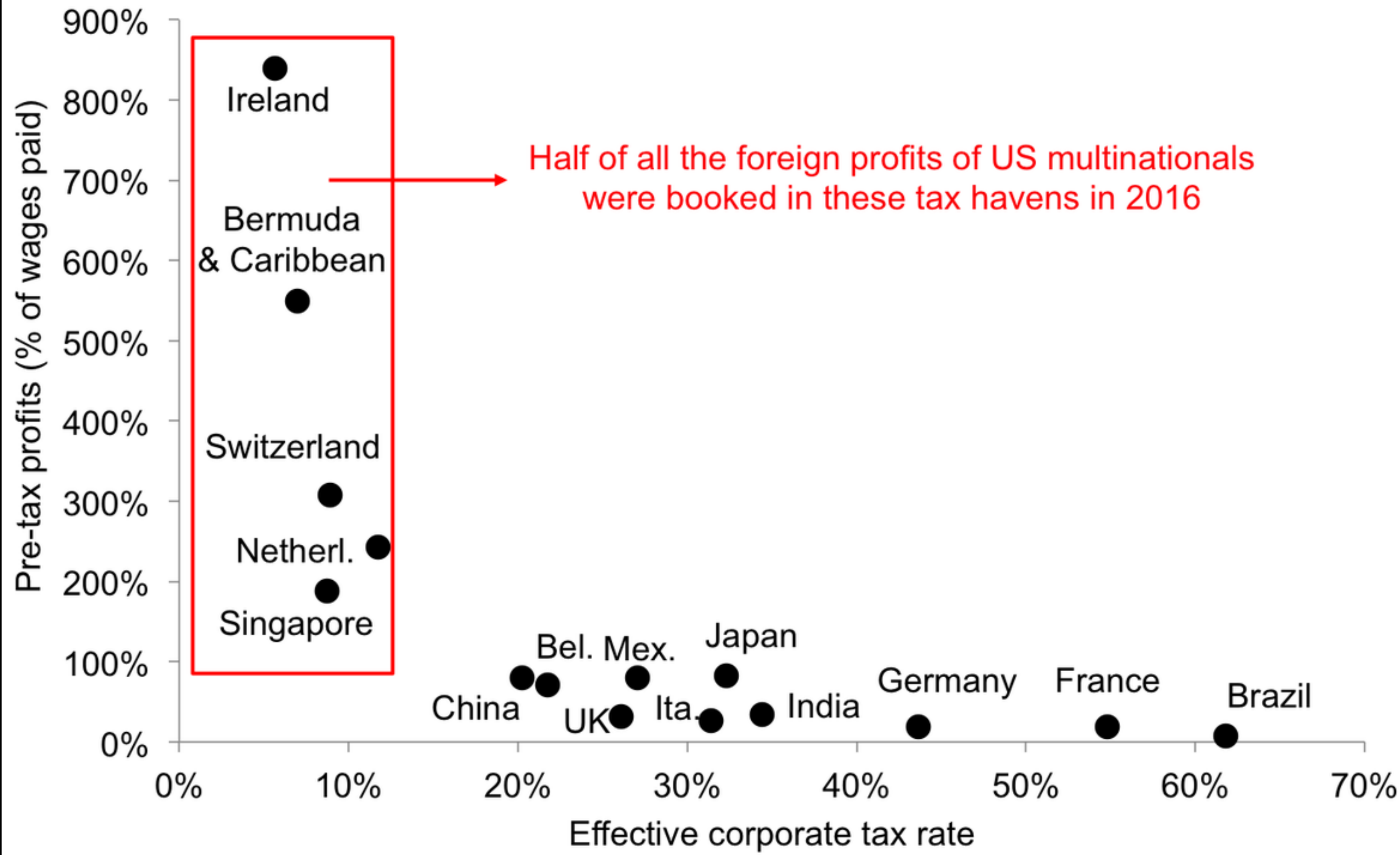


https://taxfoundation.org/corporate-tax-rates-by-country-2021/

MNEs Have Shifted Their Profits to Tax Havens, 1975-2019



Source: L.S. Wier and G. Zucman. "Global Profit Shifting, 1975-2019", NBER Working Paper 30673, Nov 2022, p.12.



US MNEs also book their profits in tax havens and low tax jurisdictions.

By Britishfinance - Own work, CC BY-SA 4.0, https://commons.wikimedia.org/w/index.php?curid=72650579

The most important tax havens of the world

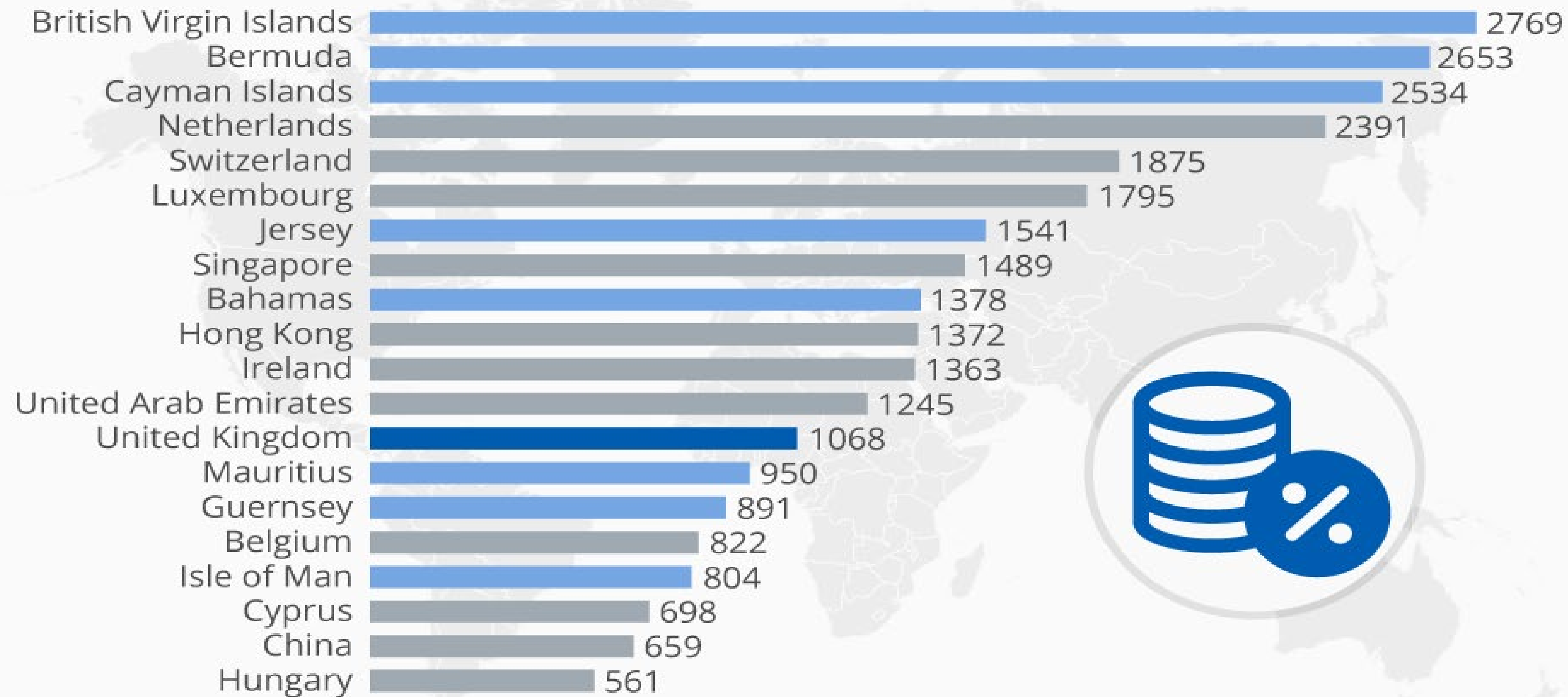
$616 billion is declared in other tax jurisdictions, of which 92% goes to just 11 tax havens

	Shifted profits received ($ / billion)	% of local profits	Effective tax rate
Ireland	106	61%	4%
Caribbean	97	95%	2%
Singapore	70	58%	8%
Switzerland	58	61%	21%
Netherlands	57	29%	10%
Luxembourg	47	52%	3%
Puerto Rico	42	79%	3%
Hong Kong	39	41%	18%
Bermuda	24	96%	0%
Belgium	13	16%	19%
Malta	12	86%	5%

Source: Consultancy.org analysis, The Missing Profits of Nations

Low Effective Corporate Tax Rates Arise from either Tax Preferences and/or Low Statutory Rates

https://www.consultancy.eu/news/1641/europe-home-to-6-of-the-globes-top-10-tax-havens-ireland-tops-list



https://www.statista.com/chart/18221/uk-dominates-most-damaging-tax-havens/

The Backlash by NGOs after the 2008-2009 Financial Crisis: A public uproar over “tax dodging” Multinationals

STARBUCKS	Google	amazon.com
Domicile: UK	Domicile: Ireland	Domicile: Luxembourg
UK turnover: £398m	UK turnover: £2.6bn	UK turnover: £3.3bn
UK corporation tax paid: None	UK corporation tax paid: £6million	UK corporation tax paid: None
Year: 2011	Year: 2011	Year: 2010

Google does do evil by avoiding taxes in Britain, say MPs

Mail report, May 17

The New York Times

April 28, 2012

How Apple Sidesteps Billions in Taxes

By CHARLES DUHIGG and DAVID KOCIENIEWSKI

International Tax Cooperation: Historical Overview

- **1920s-1950s**
  - 1923: "Four Wise Men" Report set up guiding principles for international tax
  - 1928: First model tax conventions, focusing on bilateral tax treaties
  - Rise of US and European multinationals (MNEs) and foreign direct investment (FDI)
- **1960s-1990s**
  - 1963: OECD formed 1961. Publishes first OECD Model Tax Convention. Goal: Foster international tax cooperation through network of bilateral tax treaties (BTTs) designed to avoid double taxation of MNE profits and foster FDI.
  - 1964: Group of 77 set up at UNCTAD to push for economic development.
  - 1980: First UN Tax Committee 1968. First UN Model Tax Convention 1980. Focused on developing countries. Stronger emphasis on source-based rights.
  - 1980s and 1990s
    - Rise of tax havens and offshore hub structures
    - Growth in Tax Planning, Base Erosion and Profit Shifting by MNEs
- **1990s-present**
  - **OECD attempts to fight Base Erosion and Profit Shifting (BEPS) by MNEs**
  - **UN attempts to fight BEPS Activities, especially illegal financial flows**

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OECD Attempts to Deter BEPS Activities by MNEs, 1990s-Present

- OECD's first attempt to fight harmful tax competition. 1998-2002. Focused on tax havens and harmful preferential tax regimes. Result: "naming and shaming" havens.

- OECD's first Base Erosion and Profit Shifting (BEPS 1) Project, 2012-2015
  - 15 Action Items
  - Country by Country Reporting – greater transparency
  - Multilateral Instrument

- OECD's second Base Erosion and Profit Shifting (BEPS 2) Project, 2019-present
  - Action Item 1: Addressing the Tax Challenges of the Digital Economy
  - OECD and the Inclusive Framework (IF)
  - OECD Proposals: Pillar 1 and Pillar 2
    - Pillar One – Amount A and Amount B
    - Pillar Two – GLOBE and the Subject to Tax Rule (STTR)

OECD Policy Response #1: “Name and Shame” Tax Havens

- The OECD’s policy attack on abusive tax havens ‘named and shamed’ several tax haven countries in 1998-2000.

- Many OECD countries that encouraged tax haven status of, for example, former colonies were not on the list:

  - Ireland, Hong Kong, Luxembourg, Switzerland, Netherlands, United Kingdom
  - Bermuda, Cayman Islands, Singapore, Malta, Mauritius, Puerto Rico

- Tax havens were asked to sign statements saying they would not engage in tax abusive behaviors.

OECD BEPS 1: Addressing Tax Loopholes with Action Items (2015)

1. Addressing tax challenges of digital economy
2. Neutralizing effects of hybrid mismatch arrangements
3. Strengthening rules on controlled foreign corporations
4. Limiting base erosion via interest deductions & other financial payments
5. More effectively countering harmful tax practices
6. Preventing tax treaty abuse
7. Preventing artificial avoidance of permanent establishment status
8. Transfer Pricing: Making transfer pricing outcomes reflect value creation – intangibles
9. Transfer Pricing: Making transfer pricing outcomes reflect value creation – risks & capital
10. Transfer Pricing: Making transfer pricing outcomes reflect value creation – high-risk transactions
11. Establishing methods to collect & analyze BEPS data
12. Requiring taxpayers to disclose aggressive planning arrangements
13. Re-examining transfer pricing documentation (country-by-country reporting (CBCR))
14. Making dispute resolution mechanisms more effective
15. Developing a multilateral tax instrument (MLI) where states could sign onto action items.

OECD BEPS 2: Taxing the Digital Economy (2020-present)

- **Two Pillars – each with two policy proposals**

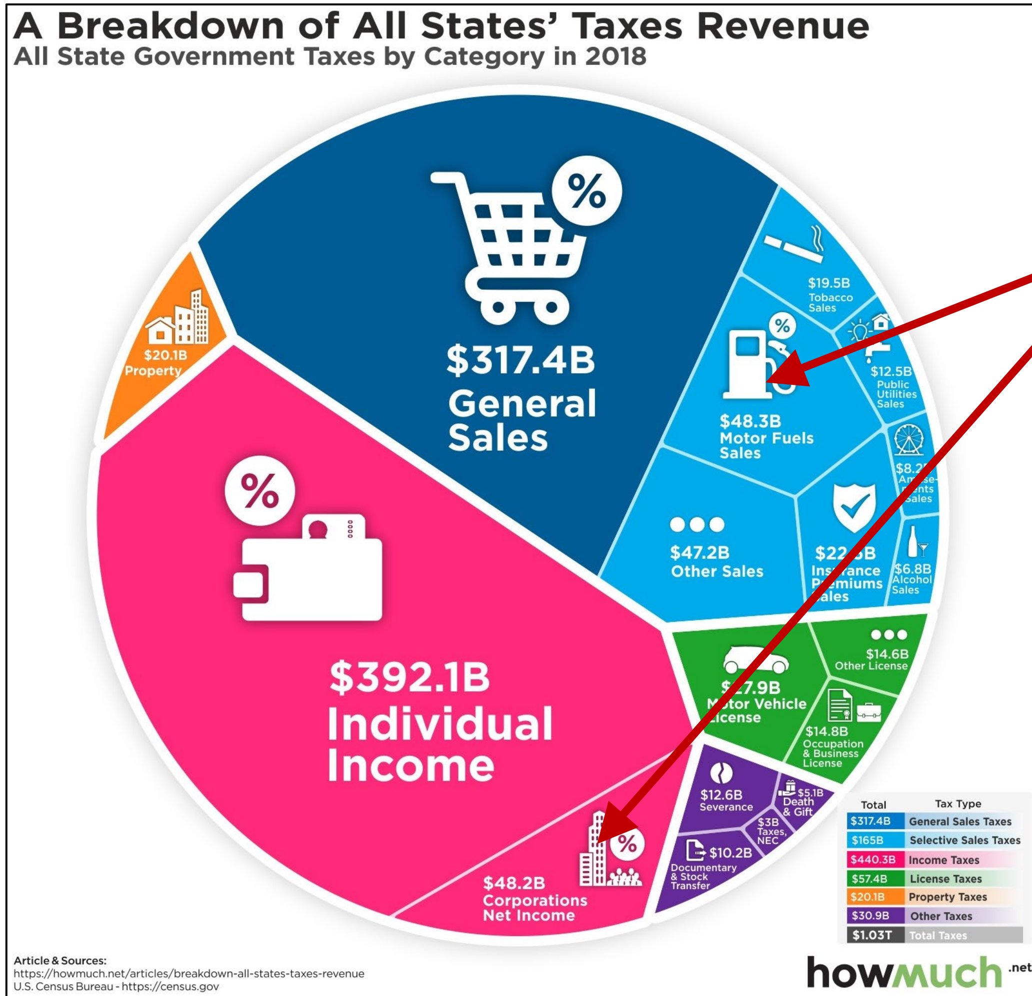
- **Pillar One (2020 to present)**

  - **Amount A:** Purpose: Deter spread of digital sales/service taxes (DSTs). Allocates a share of global profits of approximately 100 largest MNEs from source and residence countries to market countries using global formulary apportionment as the allocation key (GFA). In return, all countries are to remove their DSTs. Draft Multilateral Convention to Implement Amount A of Pillar One circulated October 2023. US Treasury asked for comments. Convention expected to open for ratification in 2025. Highly controversial because not congruent with existing international tax principles and rules. Convention cannot take effect without USA signing on.

  - **Amount B:** Designed to reduce tax disputes over the taxable profits declared in market jurisidictions by marketing and distribution entities. Establishes minimum returns for baseline distribution activities for different industries in different market jurisdictions based on comparable baseline rates in regional markets. Method to be added to the OECD Transfer Pricing Guidelines as an optional method.

Amount A: A“Leap of Faith” that Will Lead to Regrettable Substitution

Hic Sunt Dracones!



- Governments and MNEs have little experience with global formulary apportionment (GFA) at international or domestic levels (exceptions: US and Canada sub-federal corporate income tax; BEFIT being discussed at EU).
- Even in USA, state corporate income taxes raise little money: $48B (4.7% of revenues) in 2018; the same as motor fuel taxes.
- Adopting GFA does not prevent “tax games”. US states and firms have “gamed” the system by changing the weights, altering tax bases, etc. This would be much easier at international level.

My Conclusion: Amount A would generate “regrettable substitution”. Policymakers should follow “precautionary principle”: assume “unsafe until proven otherwise!” Avoids “whack-a-mole” policies needed to deal with unintended bad consequences. Key US public policy think tanks agree with my assessment of Amount A.

American Petroleum Institute Comments to the US Treasury On the OECD's Proposed Multilateral Convention on Amount A (Dec 2023)

1. Amount A rules involve r**adical departures from well-established tax rules such as single-entity taxation, arm's length pricing, and the permanent establishment standard.**
2. The **formula for computing Amount A allocations is not supported by empirical evidence or a cogent economic analysis.** Rather, the formula was the result of a political negotiation.
3. Uses **formulary apportionment, in direct conflict with the longstanding, unanimous position of OECD countries against the use of formulary apportionment** for international income taxes.
4. Adopting complex new tax rules in the Pillar One MLC would **create more uncertainty** for both taxpayers and tax administrations. This is especially true where the **new rules are not grounded in agreed policy principles or supported by a clear rationale.**
5. The provisions for dispute prevention and dispute resolution in the MLC are **novel and complex** and we cannot be confident that the provisions would be effective in practice.
6. Implementing the convention, including its provisions for dispute prevention and resolution, would more likely result in **greater uncertainty, more tax disputes and cases of double taxation.**
7. The revenue sourcing rules in MLC impose an **unrealistic compliance burden on taxpayers**, especially those engaged in B2B sales.

https://home.treasury.gov/public-input-on-draft-oecdg20-inclusive-framework-pillar-one-multilateral-convention-text

BR

Business Roundtable Comments to the US Treasury On the OECD's Proposed Multilateral Convention on Amount A (Dec 2023)

- **One of the most complicated pieces of tax legislation that we have ever seen proposed.**
- A **significant departure from the longstanding principles** of the arm's length standard.
- Many aspects lack clarity on the policy or economic "anchor" that would allow for predictable or intuitive outcomes.
- The MLC includes complex definitions that, in some instances, do not provide full clarity on the calculation mechanics and make the overall policy goals difficult to follow.
- The various cliff effects throughout the Amount A calculation would create significant volatility in financial reporting outcomes, making them **difficult to accurately predict.**
- Amount A **complicates assessment of tax implications for business decisions and is not likely to enhance certainty or stability in the international tax system, or to solve for the tax challenges from digitalization of the economy.**
- As drafted, the convention **falls short of achieving the goals of stability and certainty**.
- Sourcing based on the GDP allocation key by US MNEs could result in **significant revenue that is economically attributable to US activities being considered to arise in jurisdictions that have little or nothing to do with US businesses.**

https://home.treasury.gov/public-input-on-draft-oecdg20-inclusive-framework-pillar-one-multilateral-convention-text

Tax Foundation Comments to the US Treasury On the OECD's Proposed Multilateral Convention on Amount A (Dec 2023)

- The allocation of tax base to market jurisdictions is **overly complex.**
- The policy outcome is **untethered to economic circumstances** faced by businesses.
- Amount A eliminates double taxation through **formulas that make very little economic sense,** in exchange for **near term political convenience** for the United States.
- Amount A does not have comprehensive scoping, which leads to **awkward approximations** like allocation keys. Allocation keys are necessary but are not based on a true economic relationship between the taxpayer and the jurisdiction where tax may be owed.
- Amount A is **even less transparent (and more complex) than multi-factor formulary apportionment used by U.S. states to allocate state-level corporate income taxes.**
- Amount A is a **complex policy that is not ready for adoption.**

https://home.treasury.gov/public-input-on-draft-oecdg20-inclusive-framework-pillar-one-multilateral-convention-text

OECD BEPS 2: Taxing the Digital Economy (2020-present)

- Pillar Two (2020-present)

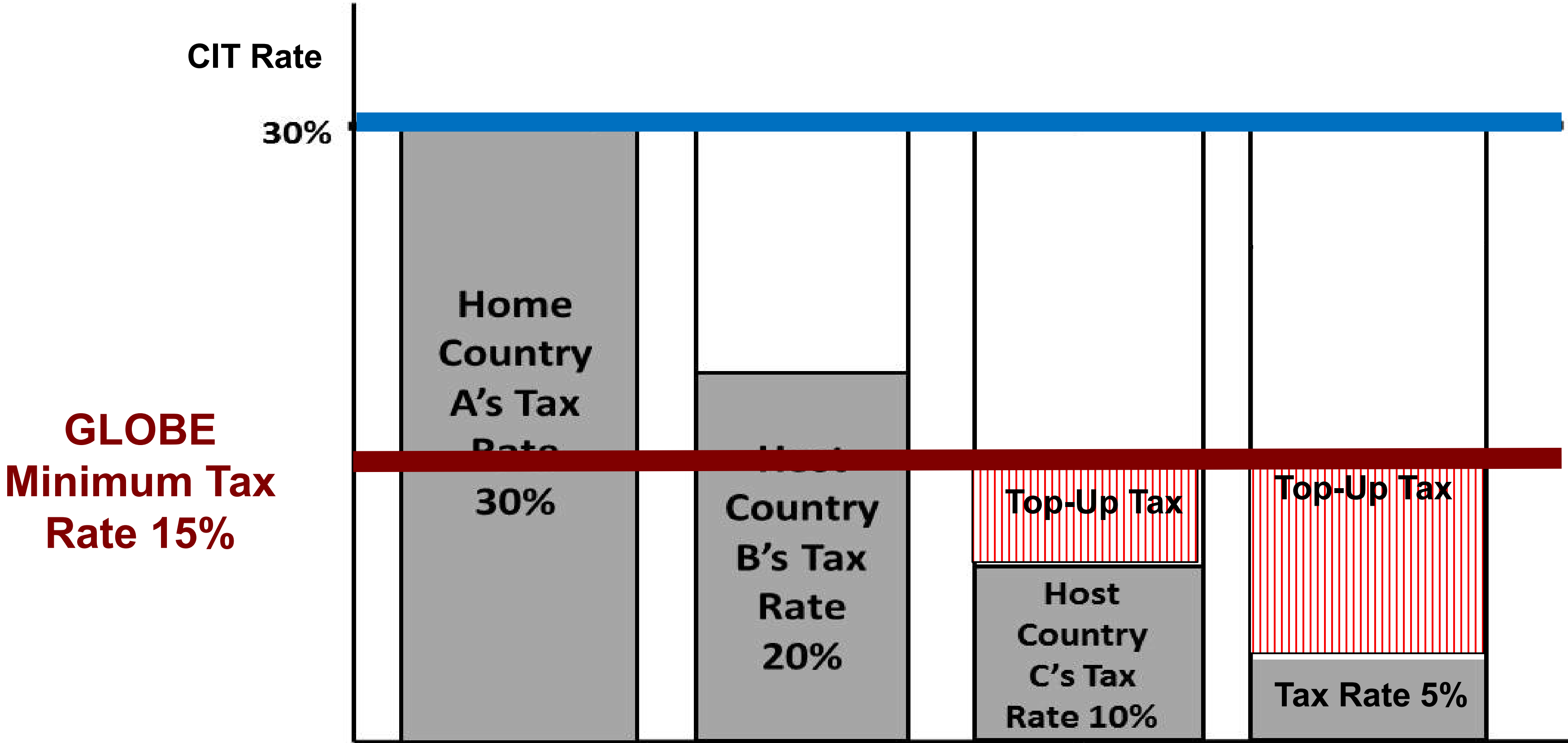
- Purpose: ensure large MNEs pay a minimum level of tax regardless of where the parent firm or its affiliates are located. In effect, would set a floor ("minimum umbrella) for taxes on MNE profits, both domestic and FSI.

  - GLOBE: sets a minimum tax of 15% on pre-tax profits earned by the MNE in any jurisdiction. Tax can be claimed by the home country (Income Inclusion Rule), the host country (Domestic Top-up Tax), or even by a combination of host countries (Undertaxed Profits Rule). Countries are implementing GLOBE now. See BDO tracker. PwC tracker. How GILTI (TCJA 2017) fits with GLOBE is not clear and USA has not adopted any of the GLOBE provisions.

  - Subject to Tax Rule (STTR): Treaty-based rule that permits the Source country to impose a withholding tax at 9% on certain related party payments (interest, royalties, etc) that are subject to low tax rates in the Residence jurisdiction and no GLOBE tax has been levied. Favors Source countries but not clear whether the STTR withholding tax will be creditable by the Residence country. To be implemented bilaterally through tax treaties.

GLOBE: Hic Sunt Dracones?

Under GLOBE, MNEs that pay less than a 15% effective CIT rate on MNE pre-tax accounting profits (both active and passive income) must pay a top-up tax on an accrual basis to: (i) Residence, (ii) Source or (iii) Other Source countries (using formulary apportionment). Local fiscal preferences reduce the effective rate and make GLOBE more likely. GLOBE could create a "mini-umbrella" for CIT rates in Source countries but could also be a nightmare to implement.



MY ASSESSMENT OF BEPS 1 AND BEPS 2

- BEPS 1
- Multilateral Instrument is slowly being implemented.
- Needs a renewed commitment to eliminating tax loopholes that foster base erosion and profit shifting.

- BEPS 2
  - **Hic sunt dracones!** Pillar One Amount A.
  - Possibility (but dracones in the details): Pillar Two GLOBE.
  - Most likely to succeed: Pillar One Amount B
  - Depends on if and how adopted: Pillar Two Subject to Tax Rule (STTR).

→ UN Framework Convention on International Tax Cooperation could help.

The Problem: Taxing MNEs in the Digital Economy

- We MUST figure out how to fairly and effectively tax MNEs in the digital economy.
  - Amount A does not solve the problem; rather it creates new problems.
  - The other pillars do not deal with the digital economy. Nor did BEPS 1.

- DSTs are not going away:
  - Too easy revenue source. Even US states have DSTs.
  - 1990s "infant industry argument" for not taxing digital is obsolete: infants are giants.
  - Tax fairness can justify DSTs: currently discriminating across products, sectors and methods of delivery.

- We can avoid a DST trade war – using multilateral institutions (e.g. WTO).
  - GATT (moratorium on electronic transmissions)
  - GATS (for digital services)
  - WIPO (for digital assets)
  - BITs and new G15 Investment facilitation agreement (for digital investments)

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United Nations Attempts to Deter BEPS Activities

- 2015: Addis Ababa Action Agenda – focus on illicit financial flows (IFFs)
- Nov 2022: African Group tables UN Resolution 77/244 (approved). Asks US Secretary General to propose steps to "strengthen the inclusiveness and effectiveness of international tax cooperation".
- July 2023: UN Secretary General tables report. Concludes OECD/IF BEPS 2 process not sufficiently inclusive and effective. Argues for UN approach with three options.
- Nov 2023: UN Resolution 78/230 approved (111 yes, 46 no, 10 abstain), which recommended:
    - Selects middle option (framework convention + protocols)
    - Sets up Ad Hoc Committee (AHC) to draft Terms of Reference (ToR)) by August 2024 and submit to UN General Assembly in October 2024. AHC should also consider early protocols.
- Jan 2024: Ad Hoc Committee starts work and in June 2024 releases first "Zero Draft" ToR for comments.
- August 2024: Report A/79/333. ToR approved (113 yes, 8 no, 42 abs). UN WebTV.
- Oct 15-18, 2024: 29th Session of the UN Tax Committee

What Is a Framework Convention (FC)?

- A form of international law making (international governance structure) set up by a group of countries to encourage international cooperation or coordination in an issue area that affects them.
- A legally binding multilateral agreement.
- Under the FC are more specific commitments and institutional arrangements formalized in "protocols". The FC provides an "umbrella" or "framework" for protocols.
- Protocols are open only to countries that sign the FC; countries may choose whether or not choose to join individual protocols.
- Core components of a FC are:
    - Objectives and guiding principles
    - Basic obligations of the parties
    - Institutional arrangements, mechanisms and law-making processes to guide the creation, implementation and enforcement of the protocols.
- Countries are bound by the FC's guiding principles when interpreting and implementing the rights and obligations of the protocols (i.e. FC is both umbrella and constraint).
- Example: UN FC on Climate Change (1994). Now ratified by 198 countries (including USA). Includes Kyoto Protocol (2005-2020) and Paris Agreement (2016). USA signed but did not ratify the Kyoto Protocol. USA signed, withdrew and rejoined the Paris Agreement.

Terms of Reference for the Proposed UN Framework Convention on International Tax Cooperation (FCITC), August 2024

- Three objectives of the FCITC
  - Establish fully inclusive and effective international tax cooperation in terms of substance and process;
  - Establish a system of governance for international tax cooperation capable of responding to existing and future tax and tax-related challenges on an ongoing basis;
  - Establish an inclusive, fair, transparent, efficient, equitable, and effective international tax system for sustainable development,
    - with a view to enhancing the legitimacy, certainty, resilience, and fairness of international tax rules,
    - while addressing challenges to strengthening domestic resource mobilization.

Terms of Reference for the Proposed UN Framework Convention on International Tax Cooperation (FCITC), August 2024

- **Five priority areas for early protocols**
  1. taxation of income derived from cross-border services
  2. taxation of the digitalized and globalized economy;
  3. tax-related illicit financial flows;
  4. prevention and resolution of tax disputes;
  5. taxation of high-worth individuals.

#1 will be the first protocol; the second will be drawn from the other four priority areas.

Benefits of a UN-Led Process for International Tax Cooperation

- Greater inclusivity and representation (esp by developing countries)
- Decision-making: slower, majority vote, 1 country 1 vote.
- Scope and focus: more emphasis on developing country needs
- Transparency: open to observers, livestreamed over TV
- Legitimacy and norm-setting: all countries participating
- Could address problems with OECD-led BEPS processes
- Linking tax cooperation to broader goals like SDGs, human rights.
- Flexibility and gradual approach via framework + protocols
- Potential for progressive alliances across countries
- Framework Convention would be legally binding
- Capacity building and technical assistance
- Attention to national sovereignty concerns: two-track mechanisms.

Challenges the UN Faces in Developing a FCITC

- Opposition from OECD Countries (“no” votes on Res 78/230 were Australia, Canada, Israel, Japan, New Zealand, South Korea, USA. Mexico and most EU countries abstained.)
- Disagreements over scope and focus – concerns over duplication of OCED/IF efforts
- Risk of fragmentation: risk of parallel frameworks
- Allocation of resources that could be better spent elsewhere.
- Complexity and inefficiency: more layers of government
- Expertise concerns: OECD much more expertise than UN
- Balancing interests of developing and developed countries: getting consensus will be difficult and will need OECD members, esp USA.

My Assessment of the UN Process

- UN Framework Convention on International Tax Cooperation:
  - Once-in-a-lifetime opportunity to create a more equitable and effective form of international tax cooperation at the UN level
  - May be critically important for developing countries
  - May also offer a way forward from the OECD BEPS projects – preserve the best and drop the excessively complex and arbitrary components.
  - Will need cooperation of OECD member countries – especially USA - to succeed.

- The FCITC and protocols need to keep - but update -- the underlying principles of international tax cooperation: residence/source, nexus, first crack for source countries, and the arm's length principle.

- Re Digital: Protocols could be used to define, separate and develop international tax rules for digital sales, services, assets and investments, keeping the traditional separation of:
  - Taxes on destination vs origin – indirect taxes – VAT, GST, tariffs, non-tariff barriers
  - Taxes on residence vs source – direct taxes – CIT, withholding taxes

TAXING MULTINATIONALS

Hic Sunt Dracones (Turbulent Times Ahead)!

1. International Tax Cooperation: What and Why?

2. Old Guard: OECD Base Erosion and Profit Shifting Projects

3. New Guard: The United Nations Framework Convention

4. **From Global to Texas**

From Global to Texas: Hic Sunt Dracones?

- **Uncertainty of upcoming US election**
- **Expiring 2017 Tax Cuts and Jobs Act**
- **Possible increase in US tariffs**
- **Border immigration**
- **US participation (or not) in international tax cooperation at OECD and UN**
- **USMCA up for renewal (or renegotiation)**
- **Other possible dracones?**

- **Impacts on Texas: Trade, foreign direct investment, employment, the Texas digital economy**

- ***I welcome your questions, comments and feedback!***

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WRAP-UP AND THANK-YOU

Please share your comments and questions with me at leden@tamu.edu

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