



U.S. DEPARTMENT OF THE TREASURY
**THE MADE IN AMERICA
TAX PLAN**

APRIL 2021

Executive Summary and Introduction

Last week, President Biden proposed the American Jobs Plan, a comprehensive proposal aimed at increasing investment in infrastructure, the production of clean energy, the care economy, and other priorities. Combined, this plan would direct approximately 1 percent of GDP towards these aims, concentrated over eight years.

This report describes President Biden's Made in America tax plan, the goal of which is to make American companies and workers more competitive by eliminating incentives to offshore investment, substantially reducing profit shifting, countering tax competition on corporate rates, and providing tax preferences for clean energy production. Importantly, this tax plan would generate new funding to pay for a sustained increase in investments in infrastructure, research, and support for manufacturing, fully paying for the investments in the American Jobs Plan over a 15-year period and continuing to generate revenue on a permanent basis.

To start, the plan reorients corporate tax revenue toward historical and international norms. Of late, the effective tax rate on U.S. profits of U.S. multinationals—the share of profits that they actually pay in federal income taxes—was just 7.8 percent.¹ And although U.S. companies are the most profitable in the world, the United States collects less in corporate tax revenues as a share of GDP than almost any advanced economy in the Organization for Economic Co-operation and Development (OECD).

At the same time, the U.S. corporate income tax system incentivizes shifting of profits and investment abroad—and allows other countries to undercut corporate tax rates here. For instance, a U.S. corporation making a physical investment abroad pays no U.S. tax on the first 10 percent return on foreign investment. And, both U.S. and foreign corporations still have substantial incentives to report profits in low tax countries and strip profits out of the United States; the latest data suggest that such profit shifting remains at record levels.

Lastly, the current system maintains a series of incentives that distort economic outcomes. Our tax system contains tax preferences for fossil fuel producers and lacks sufficient incentives for climate-change mitigation. In contrast, the Made in America tax plan contains tax provisions that incentivize clean energy. It also introduces new market-based incentives for corporate research and development expenditures, complementing the spending proposals advanced in the American Jobs Plan.

The President's Made in America tax plan is guided by the following principles:

1. **Collecting sufficient revenue to fund critical investments.** A primary objective of the Made in America tax plan is to promote competitiveness by funding critical new investments. Corporate tax revenues have fallen dramatically from 2 percent of GDP in the years before the Tax Cuts and Jobs Act (TCJA) to 1 percent in the years since the enactment of TCJA.
2. **Building a fairer tax system that rewards labor.** In recent decades, the share of national income derived from labor has declined relative to that derived from capital. The plan would counter the incentives in our tax code that contribute to that trend.
3. **Reducing profit shifting and eliminating incentives to offshore investment.** The enactment of a country-by-country minimum tax aims to substantially curtail profit shifting by U.S. multinational corporations. By tackling the profit shifting of foreign multinational companies out of the U.S. tax base, the plan works to level the playing field between multinational

¹ See Joint Committee on Taxation. 2021. "U.S. International Tax Policy: Overview and Analysis." JCX-16-21, March.

companies headquartered in the United States and foreign countries. The President's plan would also eliminate the tax laws embedded in the 2017 TCJA that incentivize the offshoring of assets.

4. **Ending the race to the bottom around the world.** Countries too often compete for multinationals' business by reducing corporate tax rates which makes it difficult for the United States and other countries to meet revenue needs. The President's plan provides a strong incentive for nations to join a global agreement that implements minimum tax rules worldwide through the denial of U.S. deductions on related party payments to foreign corporations residing in a regime that has not implemented a strong minimum tax. This aspect of the plan is designed to help level the playing field between foreign and U.S. companies.
5. **Requiring all corporations to pay their fair share.** To ensure that large, profitable companies pay a baseline amount of taxes, the President's plan would impose a minimum tax on firms with large discrepancies between income reported to shareholders and that reported to the IRS. It would also provide the IRS with resources to pursue large corporations who do not meet their tax obligations, reversing a trend toward fewer corporate audits.
6. **Building a resilient economy to compete.** To complement initiatives in the American Jobs Plan that would change the path of energy production in the United States and provide resources for a new research and development agenda, the tax plan would end long-entrenched subsidies to fossil fuels, promote nascent green technologies through targeted tax incentives, encourage the adoption of electric vehicles, and support further deployment of alternative energy sources such as solar and wind power.

The Made In America Tax Plan

The current corporate income tax regime contains incentives for corporations to shift their production and profits overseas. Declining corporate tax revenues hinder the ability of the United States to fund investments in infrastructure, research, technology, and green energy. The Made in America tax plan would fundamentally reorient corporate taxation to reverse this legacy.

The Made in America tax plan implements a series of corporate tax reforms to address profit shifting and offshoring incentives and to level the playing field between domestic and foreign corporations. These include:

1. Raising the corporate income tax rate to 28 percent;
2. Strengthening the global minimum tax for U.S. multinational corporations;
3. Reducing incentives for foreign jurisdictions to maintain ultra-low corporate tax rates by encouraging global adoption of robust minimum taxes;
4. Enacting a 15 percent minimum tax on book income of large companies that report high profits, but have little taxable income;
5. Replacing flawed incentives that reward excess profits from intangible assets with more generous incentives for new research and development;
6. Replacing fossil fuel subsidies with incentives for clean energy production; and
7. Ramping up enforcement to address corporate tax avoidance.

These are the major elements of the Made in America tax plan, but the proposal contains several additional tax incentives that would directly benefit U.S. corporations, passthrough entities, and small businesses. These include, for example, a marked increase in the resources available through the Low-Income Housing Tax Credit and other housing incentives. This report, however, is focused on the elements of the package directly related to corporate tax reform and reforming energy incentives.

Addressing Flaws In The Current System

The Made in America tax plan advances a series of reforms aimed at addressing the major flaws in the corporate tax code, including both shortcomings introduced through the TCJA and longstanding inefficiencies that have persisted for decades. The President's plan would make the tax code more efficient, reverse biases against labor, raise sufficient revenue to pay for critical initiatives, eliminate incentives for profit shifting and offshoring, and introduce new preferences for the production of clean energy. Combined, these reforms will have substantial benefits for the American economy.

Toward a More Efficient Tax System

The reforms in the Made in America tax plan are aimed at improving economic efficiency. Much of the efficiency argument for low corporate statutory rates is based on the premise that corporate investment incentives are driven by the corporate tax rate. Supporters of this line of thinking contend that higher corporate tax rates decrease investment incentives, and lower corporate tax rates improve them.

Evidence following the 2017 corporate rate cut from 35 percent to 21 percent, however, did not show an increase in investment or economic growth from trend levels, with one analysis concluding that “there is no evidence that the 2017 tax law has made a substantial contribution to investment or longer-term economic growth.”² In fact, a report from the International Monetary Fund (IMF) found that less than one-fifth of the increase in corporate cash balances, which were enhanced by the corporate tax cut, was used for capital and research and development (R&D) spending. Instead, the increased corporate cash balances were directed toward financing buybacks and dividend payouts for shareholders.³

It is unsurprising that corporate tax cuts would not spur a surge in investment since much of the corporate tax falls on “excess profits,” not normal returns. Taxing these excess profits can generate revenue without undue distortion, according to research. Moreover, a rising share of the corporate tax base, over three-quarters by 2013, consists of excess returns. That fraction is likely even higher now, due to the rising market power of large companies, as well as special provisions that exempt most normal returns from taxation.⁴

Although the 2017 corporate tax rate cut purported to increase the competitiveness of U.S. companies, the law's generous treatment of corporate profits was paired with incentives for shifting profits and activities offshore. Instead of a focus on encouraging investments in the United States, for example, the 2017 TCJA created new offshoring incentives through two provisions, the global

2 See detailed evidence within: Furman, Jason. 2020. Prepared Testimony for the Hearing “The Disappearing ‘Corporate Income Tax.’” Committee on Ways and Means, 11 February; Gravelle, Jane and Donald Marples. 2019. “The Economic Effects of the 2017 Tax Revision: Preliminary Observations.” Congressional Research Service, 22 May; Clausing, Kimberly. 2020. “Fixing the Five Flaws of the Tax Cuts and Jobs Act.” *Columbia Journal of Tax Law* 11(2): 31–75.

3 See Kopp, Emanuel, Daniel Leigh, Suzanna Mursula, and Suchanan Tambunlertchai. 2019. “US Investment since the Tax Cuts and Jobs Act of 2017.” *International Monetary Fund*, 31 May (<https://www.imf.org/~media/Files/Publications/WP/2019/WPIEA2019120.ashx>). This is consistent with work by Hanlon, Hoopes, and Slemrod (2019) that finds that only around 20 percent of S&P 500 companies in 2018 mentioned planned increases in investment that were linked to the 2017 tax reform (see <https://www.journals.uchicago.edu/doi/abs/10.1086/703226>).

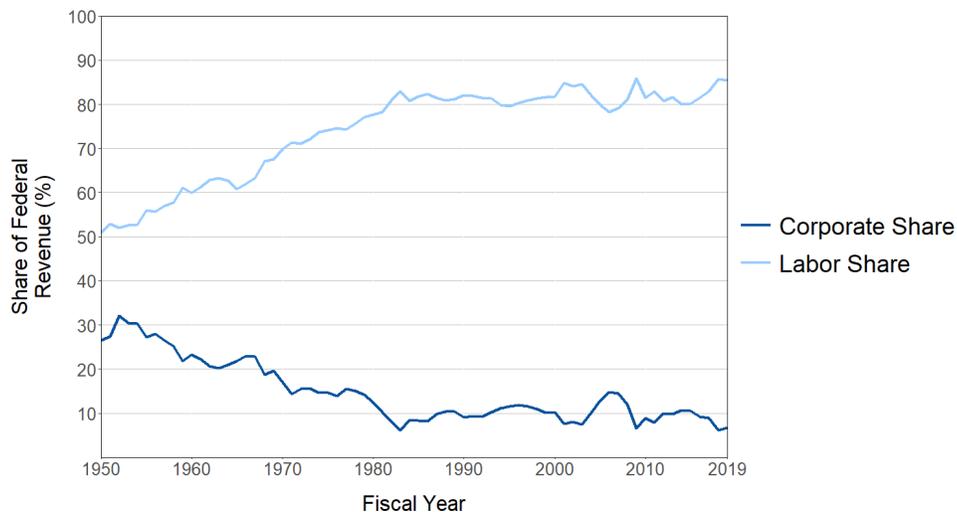
4 See Power, Laura and Austin Frerick. 2016. “Have Excess Returns to Corporations Been Increasing Over Time?” *National Tax Journal* 69(4): 831–46. Since this paper, tax law has exempted much of the normal return to capital for equity-financed investment, so the corporate tax should fall even less on labor than it did in years past. (The mechanism by which corporate taxes burden labor requires a reduction in investment.) Of note, many debt-financed investments are currently subsidized through the tax code. Also, the role of market power in the U.S. economy has continued to increase, making more and more of the corporate tax base excess profits rather than the normal return to capital. See Phillipon, Thomas. 2019. *The Great Reversal: How America Gave up on Free Markets*. Cambridge: Harvard University Press.

intangible low-tax income (GILTI) provision and the foreign-derived intangible income (FDII) deduction.⁵ In addition, since foreign shareholders own a significant share of U.S. equities, much of the benefits of the corporate tax cut accrued to foreign, rather than U.S., investors.⁶ Combined, the current tax code provides insufficient incentives for companies to maintain operations in the United States, while rewarding those that shift profits to low-tax jurisdictions.

Toward a Fairer Tax System

The labor share of national income has been declining for years, representing a worrying trend for workers and a contribution to rising income inequality.⁷ This shift has many causes, but it is exacerbated by a worldwide trend of governments shifting relative tax burdens away from corporations and capital and onto workers by reducing tax rates on capital gains, dividends, and corporate income while increasing tax burdens on sales and wages. In the case of the United States, the share of federal revenue raised by the corporate tax has fallen steadily and is now under 10 percent, while the share of revenue raised by taxing labor has been growing for decades and now exceeds 80 percent.

Figure 1: Labor and Corporate Share of Federal Tax Revenue (1950-2019)



Note: Labor is defined as individual income receipts and social insurance and retirement receipts.

Data: Office of Management and Budget, Historical Tables

- 5 GILTI exempts the first 10 percent return on foreign assets; all else equal, FDII deductions are less generous as domestic assets increase. Early literature has shown that companies have responded to these perverse incentives. For example, Beyer et al. (see https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3818149) find that for U.S. multinational corporations, higher levels of pre-TCJA foreign cash are associated with increased post-TCJA foreign property, plant, and equipment investments. They do not find a similar increase in domestic property, plant, and equipment. Atwood et al. (see https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3600978) find the GILTI provisions introduced new incentives for U.S. multinational corporations to invest in foreign target firms with lower returns on tangible property so that they might shield income generated in havens from U.S. tax liability under the GILTI minimum tax.
- 6 See Rosenthal, Steven and Theo Burke. 2020. "Who's Left to Tax? US Taxation of Corporations and Their Shareholders." (<https://www.law.nyu.edu/sites/default/files/Who%E2%80%99s%20Left%20to%20Tax%3F%20US%20Taxation%20of%20Corporations%20and%20Their%20Shareholders-%20Rosenthal%20and%20Burke.pdf>). Also see Congressional Budget Office. Letter to the Honorable Chris Van Hollen. 18 April 2018.
- 7 See ILO and OECD. 2015. "The Labour Share in G20 Economies." Report. International Labour Organization and Organisation for Economic Co-operation and Development; Jacobson, Margaret M. and Filippo Occhino. 2012. "Labor's Declining Share of Income and Rising Inequality." Federal Reserve Bank of Cleveland Working Paper 2012-13; Karabarbounis, Loukas and Brent Neiman. 2013. "The Global Decline of the Labor Share." Quarterly Journal of Economics 129(1): 61-103; Karabarbounis, Loukas and Brent Neiman. 2014. "Capital Depreciation and Labor Shares Around the World: Measurement and Implications." National Bureau of Economic Research Working Paper 20606; Elsby, Michael W. L., Bart Hobijn, and Ayşegül Şahin. 2014. "The Decline of the U.S. Labor Share." Brookings Papers on Economic Activity 2013(2): 1-63.

This trend has implications not only for the division between labor and capital income, but also for aggregate income inequality. Since capital income is disproportionately concentrated among wealthier taxpayers, tax preferences for capital relative to labor imply benefits for upper-income taxpayers relative to those with lower levels of income. The concentration in capital income is stark: in 2019, the top 5 percent of the income distribution earned just 26 percent of labor income, but 71 percent of capital income.⁸

Since corporate tax burdens, in the short-term, are largely borne by shareholders, near-term changes in corporate tax revenue are borne in equal proportions to foreign and domestic share ownership. In the wake of the TCJA, one key critique of the law was that since foreign shareholders own over one-third of U.S. equities, a large share of the tax cut was a windfall gain for overseas shareholders. In fact, one analysis observed that the TCJA conferred over three times the tax benefits to foreign taxpayers as it did to middle-income families.⁹

Another aspect of fairness simply concerns the “effective” tax rate paid by corporations, or the tax bill as a share of profits after all exclusions and deductions have been claimed. One feature of the U.S. tax code is the substantial discrepancy between the headline rate and the effective tax rate; this discrepancy can often obscure discussions of international competitiveness. In fact, U.S. multinational corporations’ effective tax rate—the share of profits that they actually pay in federal income taxes—is just 8 percent, the result of a combination of profit shifting and tax preferences that allow large companies to shrink their tax burdens.¹⁰

Toward a Tax System that Raises Needed Revenue

As a result of the tax cuts of prior years, the United States now raises only about 16 percent of GDP in federal tax revenue, a decline of about four percentage points in the last two decades.

The corporate tax has historically raised around 2 percent of GDP in revenue. This share depends on a host of factors, including the state of the business cycle and the division of profits between the corporate and non-corporate sectors. Still, corporate tax revenues remained roughly constant over the past four decades. After the corporate tax cuts under the TCJA, the share of corporate taxes collected as a share of GDP fell from 2 percent to 1 percent.

Table 1: Corporate Tax Revenues Relative to GDP, United States and OECD Average

Before and After Tax Cuts and Jobs Act of 2017 (TCJA)

	United States	OECD Average ¹¹
Post-TCJA: 2018-2019	1.0	3.1
5 Years pre-TCJA: 2013-2017	2.0	2.9
Years Prior: 2000-2012	2.0	3.0

Source: OECD Revenue Statistics

8 Data are available on the Treasury OTA website (see <https://home.treasury.gov/system/files/131/Distribution-of-Income-by-Source-2019.pdf>).

9 See Rosenthal, Steven. 2017. “Slashing Corporate Taxes: Foreign Investors are Surprise Winners.” Tax Notes Federal, 23 October.

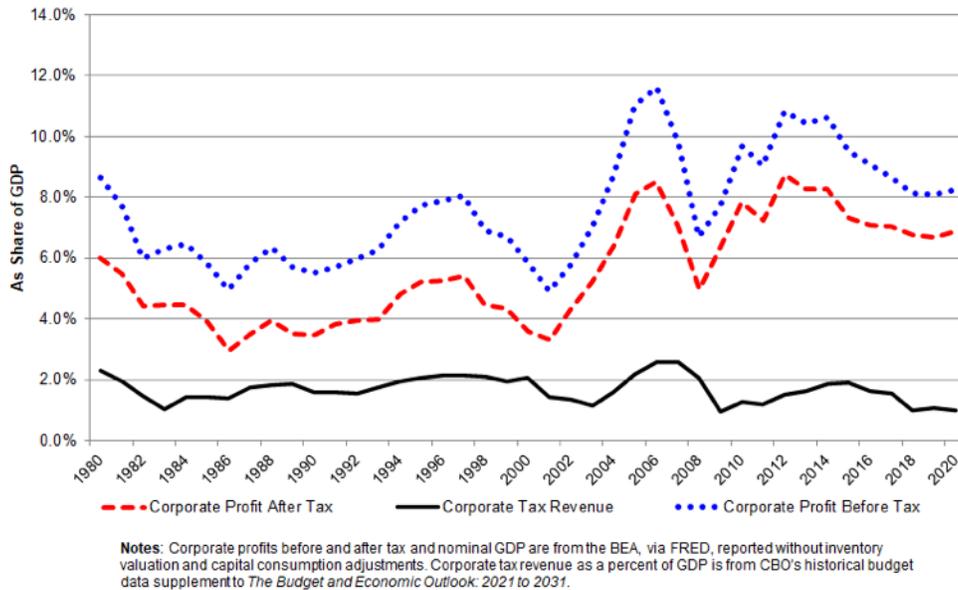
10 See Joint Committee on Taxation. 2021. “U.S. International Tax Policy: Overview and Analysis.” JCX-16-21, 19 March.

11 The average for G7 countries is very similar.

This contrasts with rising U.S. corporate profits, which are at historic and comparative highs. In recent years, corporate profits (after-tax) as a share of GDP averaged 9.7 percent (2005-2019), whereas in the period 1980-2000, corporate profits averaged only 5.4 percent of GDP.¹² The U.S. corporate sector is the most successful in the world: it hosts 37 percent of the Forbes 2000 companies by profit while the United States accounts for 24 percent of world GDP.

In part, the divergence between U.S. corporate profits and U.S. corporate taxes arises from the incentives created by the tax code for successful multinationals to shift profits overseas to avoid U.S. tax burdens.

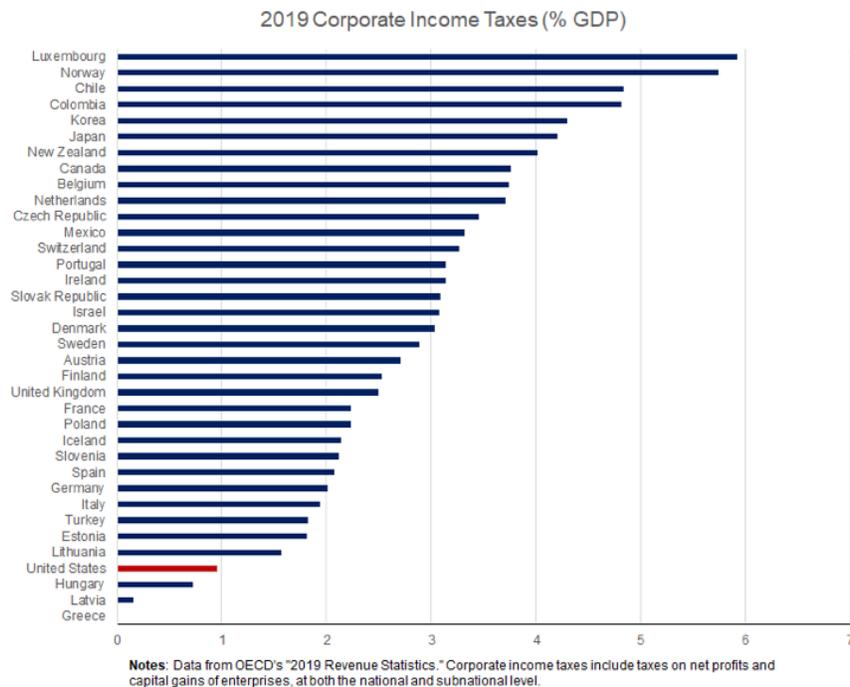
Figure 2: Corporate Profits and Taxes as a Share of GDP



Overhauling corporate and international taxation can raise substantial revenue. For the past two decades, the typical OECD country has raised about 3 percent of GDP from corporate taxation. (See Table 1 and Figure 3.) And while the United States has historically raised comparatively less revenue through the corporate tax relative to our trading partners, the wedge was greatly exacerbated by the 2017 tax law. Indeed, closing even half the gap between the U.S. corporate tax burden and the median OECD burden is approximately sufficient to pay for the proposed initiatives in the American Jobs Plan.

¹² Data are from the Federal Reserve Economics Statistics database.

Figure 3: 2019 Corporate Tax Collection in OECD Countries as a Share of GDP



Toward an End to Profit Shifting and Offshoring

The right approach for corporate taxation requires balancing dual priorities: maintaining U.S. competitiveness while protecting the corporate tax base. As noted above, corporate tax collections in the United States, however, are at historic lows and well below what other countries collect. Simultaneously, the United States has an “America last” approach to corporate taxation, incentivizing shifting profits to high-tax and low-tax jurisdictions alike. By blending income streams from high and low tax countries and taking advantage of the current exclusion in the U.S. minimum tax, U.S. multinational companies can be taxed at a 50 percent discount or more relative to their domestic peers.

Until 2017, foreign profits were taxed at the domestic tax rate upon repatriation to the domestic parent firm. This created big incentives for large companies to keep profits offshore in order to avoid U.S. tax. For the last few years, U.S. firms have been subject to a minimum tax on their global intangible low-taxed income. This tax exempts the first 10 percent of returns on foreign tangible assets, and GILTI is taxed at approximately half of the corporate tax rate (10.5 percent).¹³

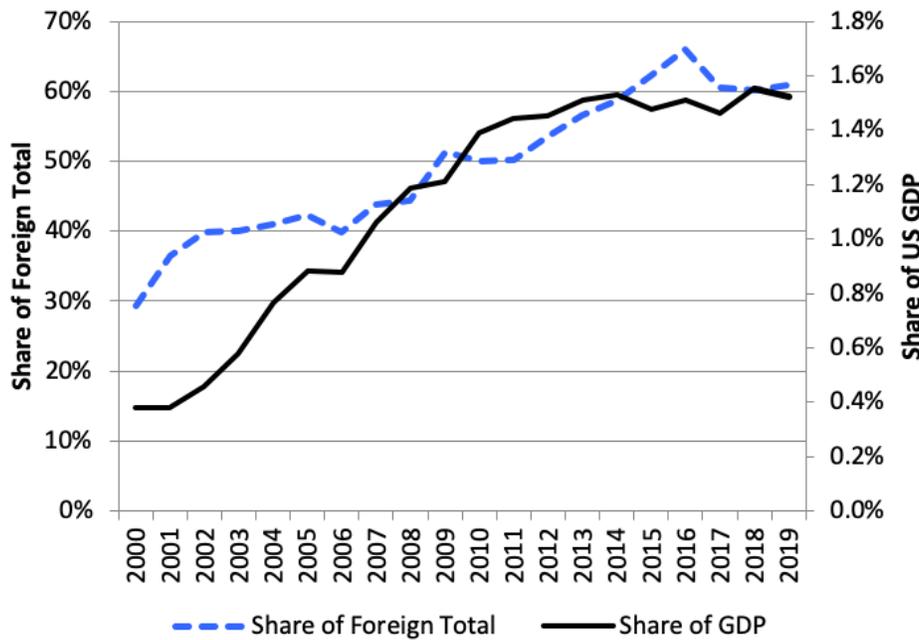
Beyond its low statutory rate and exemptions, the current GILTI regime maintains profit shifting incentives. GILTI tax liabilities are calculated on a global basis, which leads multinationals to prefer to earn income outside the United States; this preference extends to both higher-tax jurisdictions as well as lower-tax ones. Since taxes paid in high-tax jurisdictions can generate tax credits that allow for untaxed profit shifting into tax havens, companies can blend the two streams of income and achieve a tax burden that is only about half that of domestic companies.¹⁴

¹³ The tax rate can be as high as 13.125 percent depending on the location of companies' foreign operations.

¹⁴ Kamin, David, David Gamage, Ari Glogower, Rebecca Kysar, Darien Shanske, Reuven Avi-Yonah, Lily Batchelder, J. Clifton Fleming, Daniel Hemel, Mitchell Kane, David Miller, Daniel Shaviro, and Manoj Viswanathan. 2019. “The Games They Will Play: Tax Games, Roadblocks and Glitches Under the 2017 Tax Overhaul.” 103 Minn. L. Rev. 1439.

As a result, of the top 10 locations for U.S. multinational profit in 2018, seven were tax havens.¹⁵ More U.S. profits are housed in tiny tax havens than in the major economies of China, India, Japan, France, Canada, and Germany combined. Bermuda, a country of merely 64,000 people, shows 10 percent of all reported U.S. multinational foreign profit, an amount of reported profit that is many multiples of Bermuda's GDP.¹⁶ Despite attempts to rein in profit shifting, tax havens are as available today as they were prior to the 2017 tax reform. For U.S. multinational companies, the share of total foreign income in seven prominent havens is nearly identical in the two years after TCJA (2018 and 2019) as it was in the five years prior to the law, at 61 percent of after-tax income, or 1.5 percent of GDP.

Figure 4: Share of U.S. Multinational Corporation Income in Seven Big Havens, 2000-2019



Note: Data are foreign investment earnings from the U.S. Bureau of Economic Analysis (<https://www.bea.gov/international/di1usdbal>). The seven low-tax jurisdictions that are particularly important in these data are: Bermuda, the Caymans, Ireland, Luxembourg, the Netherlands, Singapore, and Switzerland. The haven share is mechanically higher than it would be in some data sources since the data are reported on an after-tax basis.

Toward a Cleaner Energy Sector

Tax preferences for oil, gas, and coal producers today decrease their tax liabilities relative to other firms. Not only does this lead to lower overall tax receipts, but these provisions of the tax code shift our energy production away from cleaner alternatives, undermining long-term energy independence and the fight against climate change. Subsidized fossil fuels have also negatively impacted air and water quality in U.S. communities—especially in communities of color. Fossil fuel companies additionally benefit from substantial implicit subsidies, since they sell products that create externalities but they do not have to pay for the damages caused by these externalities. Recent research shows how the benefits of these implicit subsidies are concentrated within a handful of large firms.¹⁷

15 In addition, two other countries in the top 10 have effective tax rates within one percentage point of the 10.5 percent GILTI threshold. Of the top ten countries, only Canada has a rate above 11.4 percent. See Table 6 of Joint Committee on Taxation. 2021. “U.S. International Tax Policy: Overview and Analysis.” JCX-16-21, 19 March.

16 See Table 6 of Joint Committee on Taxation. 2021. “U.S. International Tax Policy: Overview and Analysis.” JCX-16-21, 19 March.

17 See Kotchen, Matthew. 2021. “The Producer Benefits of Implicit Fossil Fuel Subsidies in the United States.” Proceedings of the National Academy of Sciences 118(14).

At the same time, incentives for clean energy production and investments are insufficient to match the massive scope of our environmental and climate problems. For example, the production tax credit for renewable electricity producers lapsed and was retroactively extended five times between 1999 and 2015, leading to significant policy uncertainty for renewable producers. The Biden-Harris Administration’s climate-related commitments would remove the subsidies for fossil fuel producers and substantially expand tax incentives for clean energy.

A Tax Code To Bolster American Competitiveness

In recent years, our international partners have overhauled their corporate tax codes and broadened their tax bases, raising revenues (relative to the size of their economies) well above those we collect. Efforts to rein in profit shifting in the United States, however, have made corporate taxation worse. The U.S. raises less corporate tax revenue (as a share of GDP) than at any time since at least World War II, and incentives for shifting profits and offshoring jobs outside of the United States remain. The 2017 tax law largely retained profit shifting incentives and increased those for offshoring.

The failure of our corporate tax regime to meet the challenges of the modern era has had real consequences. Current tax laws levy higher tax rates on labor income while entrenching preferences for capital income which disproportionately accrues to higher income taxpayers. The President’s Plan would undo the ability of taxpayers to shield capital and corporate profits from tax liability. This would curtail profit shifting, bolster U.S. tax competitiveness, and raise much-needed tax revenue.

Raising the Corporate Income Tax Rate to 28 percent

The Made in America tax plan will increase the corporate tax rate from 21 percent to 28 percent. This increase maintains a tax rate on corporate profits which is approximately 7 percentage points below the rate that was in place from the late 1980s until 2017, and it is paired with attendant reforms designed to promote competitiveness and reward productive investments.

As noted above, the United States raises less corporate tax revenue (as a share of GDP) than almost all of the advanced economies in the OECD.¹⁸ Raising the corporate income tax rate would modestly increase corporate revenues relative to GDP, still leaving them below those of our trading partners.

In addition to raising revenue to fund urgent fiscal priorities, raising the corporate income tax rate would also help attenuate inequality. The corporate income tax is one of the most progressive taxes in our tax system. Also, the corporate tax is an essential lever for taxing capital in general, serving as a critical backstop to ensure that capital is taxed at least once; in the absence of the corporate tax, a substantial share of capital income would escape taxation altogether.¹⁹

The Made in America tax plan recognizes that corporate investment depends on far more than the headline tax rate. Investment also depends on the factors that truly shape business climate, including the health and education of our workforce, the strength of our institutions, and smooth and stable relations with other countries. The President’s plan to make public investments in infrastructure, technology, research, and the green industries of the future would help lay a strong foundation for longstanding economic prosperity. It would also promote job creation in the United States, ensuring that American workers benefit from a robust domestic economy.

18 See OECD data at <https://data.oecd.org/tax/tax-on-corporate-profits.htm#indicator-chart>.

19 See Burman, Leonard E., Kimberly A. Clausing, and Lydia Austin. 2017. “Is U.S. Corporate Income Double-Taxed?” *National Tax Journal* 70(3): 675–706.

Ending Offshoring and Profit Shifting Incentives: Strengthening the Global Minimum Tax for U.S. Multinational Corporations

One of the most important objectives of the Made in America tax plan is to reduce incentives for the offshoring of American jobs while also limiting the ability of corporations to take advantage of corporate tax loopholes to shift their profits to low-tax jurisdictions.

The plan takes aim at offshoring through a series of reforms that reverse tax-based incentives for moving production overseas. Perhaps the most consequential of these are fundamental changes to the GILTI regime introduced by the TCJA. The Made in America tax plan would eliminate the incentive to offshore tangible assets by ending the tax exemption for the first 10 percent return on foreign assets. It would also calculate the GILTI minimum tax on a per-country basis, ending the ability of multinationals to shield income in tax havens from U.S. taxes with taxes paid to higher tax countries.²⁰ The plan would also increase the GILTI minimum tax to 21 percent (up to three-quarters of the proposed new 28 percent corporate tax rate, as opposed to the current one-half ratio). In addition to these reforms to GILTI, the plan would disallow deductions for the offshoring of production and put in place strong guardrails against corporate inversions. Overall, the stronger minimum tax regime would substantially reduce the current tax law's preferences for foreign relative to domestic profits, creating a more level playing field between domestic and foreign activity.

The President's plan would dramatically reduce the significant tax preferences for foreign investment relative to domestic investment that are embedded in both the current GILTI and FDII regimes, including a near-elimination of profit shifting.²¹ Past scholarship suggests that profit shifting costs the United States \$100 billion annually (estimated in 2017, prior to the TCJA), or \$60 billion at current rates, two-thirds of which is from the profit shifting of U.S. multinational companies.²² Transitioning to a per-country GILTI minimum tax is estimated by scorekeepers at both the Treasury Department and the Joint Committee on Taxation to raise more than \$500 billion in revenue over a decade—beyond the current estimated corporate tax revenues generated from the poorly designed GILTI regime.

In parallel to these efforts to eliminate profit shifting by U.S. multinational companies, proposals to repeal and replace the Base Erosion and Anti-Abuse Tax (BEAT) would counter the profit shifting of foreign-headquartered multinational companies. All told, these proposals would bring well over \$2 trillion in profits over the next decade back into the U.S. corporate tax base.

Ending the Race to the Bottom Around the World

A race to the bottom among countries has driven down corporate tax rates substantially over the last two decades. The average statutory corporate rate among OECD countries was 32.2 percent in 2000; by 2020 this had fallen to 23.3 percent.²³ Widening the time horizon shows that the fall has been even more precipitous; in 1980, OECD statutory corporate rates were rarely less than 45 percent.

These declines are the result of a collective action problem. When countries compete against each other to attract multinationals' profits and activities by lowering their corporate rates, the result is a race to the bottom that makes it difficult for the United States—

20 The literature has shown that companies have responded to these incentives. For example, Beyer et al. (see https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3818149) find that for U.S. multinational corporations, higher levels of pre-TCJA foreign cash are associated with increased post-TCJA foreign property, plant, and equipment investments. They do not find a similar increase in domestic property, plant, and equipment. Atwood et al. (see https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3600978) find the GILTI provisions introduced new incentives for U.S. multinational corporations to invest in foreign target firms with lower returns on tangible property so that they might shield income generated in havens from U.S. tax liability under the GILTI minimum tax.

21 GILTI exempts the first 10 percent return on foreign assets; all else equal, FDII deductions are less generous as domestic assets increase.

22 See Clausing, Kimberly. 2020. "Profit Shifting Before and After the Tax Cuts and Jobs Act." *National Tax Journal*.73(4): 1233-1266.

23 OECD Tax Database (2020).

and other countries—to raise enough revenue to support necessary investments, and allows countries to try to gain a competitive edge by undercutting each other’s tax systems.

Ending this race to the bottom and ensuring that income earned by any multinational corporation, whether based in the United States or elsewhere, is possible through coordinated efforts among countries and carefully designed incentives to encourage such coordination. Under the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting, the United States and the international community are pursuing a comprehensive agreement on corporate minimum taxation, providing for minimum tax rules worldwide. Under the agreement, home countries of multinational corporations would apply a minimum tax when offshore affiliates are taxed below an agreed upon minimum tax rate.

Although countries have strong incentives to work together to counter tax competition, they will not stop the race to the bottom unless enough large economies adopt a minimum tax on foreign earnings. The Made in America tax plan’s proposed replacement of the ineffective BEAT would be transformative in that regard by incentivizing other large economies to join the United States in taking the first step to adopt strong minimum taxes on corporations and leveling the playing field between the taxation of domestic and foreign corporations.

The BEAT has been largely ineffective at curtailing profit shifting by multinational corporations, and BEAT revenues have been below forecasts.²⁴ The BEAT does not apply to payments for cost of goods sold (except for some inverted companies), and is not triggered unless certain related party payments exceed 3 percent (2 percent for financial groups) of the overall deductions taken by a multinational corporation.²⁵ Beyond these flaws, the BEAT unfairly penalized some U.S. based companies benefitting from clean energy tax credits.

In contrast, the President’s plan would repeal and replace the BEAT to more effectively target profit shifting to low-taxed jurisdictions by multinational corporations while simultaneously providing a strong incentive to bring nations to the bargaining table and end the race to the bottom. Notably, other countries working in the OECD/G20 project favor a rule where the United States would turn off the BEAT regime when entities are resident in countries that have adopted the globally agreed upon minimum tax. If adopted, the President’s proposal would do just that.

To replace the BEAT, the plan proposes the SHIELD (Stopping Harmful Inversions and Ending Low-tax Developments), which denies multinational corporations U.S. tax deductions by reference to payments made to related parties that are subject to a low effective rate of tax. The low effective rate of tax would be defined by reference to the rate agreed upon in the multilateral agreement. However, if the SHIELD is in effect before such an agreement has been reached, the default rate trigger would be the tax rate on the GILTI income, as modified by the President’s plan.

This President’s SHIELD proposal recognizes that foreign corporations strip profits into tax havens and provides strong penalties for doing so. As a backstop to this new anti-base erosion regime, the President’s plan also strengthens the anti-inversion provisions to prevent U.S. corporations from inverting. The proposal would strengthen the anti-inversion rules by generally treating a foreign acquiring corporation as a U.S. company based on a reduced 50 percent continuing ownership threshold or if a foreign acquiring corporation is managed and controlled in the United States.

24 The IRS Statistics of Income reports direct BEAT revenues of \$1.8 billion in 2018, and Treasury expects revenues of \$7 billion for the two years of 2019 and 2020. JCT had forecast more than twice that revenue as the law was being enacted.

25 See 26 U.S.C. § 59A; see also Congressional Research Service. 2020. “Issues in International Corporate Taxation: The 2017 Revision (P.L. 115-97).” Congressional Research Service, 23 April.

Estimates by the Treasury Department and the Joint Committee on Taxation confirm that international tax reforms along the lines of the President's proposals can essentially end profit shifting and raise an amount of revenue that is nearly identical to the estimates of revenue lost due to prior profit shifting incentives: approximately \$700 billion (over 10 years) that would be paid by both U.S. and foreign multinational corporations.

Building Multilateral Cooperation in International Tax: Repealing Export Preferences

The 2017 TCJA lowered the tax rate for a portion of a U.S. corporations' export income categorized as FDII to 13.125 percent, rather than the regular 21 percent, in order to encourage corporations to export more goods and services and to keep intellectual property within the United States.

There are two large problems with the FDII regime. First, FDII is not an effective way to encourage research and development (R&D) in the United States. It does not incentivize new domestic investment in R&D; it merely provides large tax breaks to companies with excess profits—who are already reaping the rewards of prior innovation.

Second, FDII creates incentives to locate economic activity abroad. Because the FDII benefit is only received above a ten percent return on a domestic corporation's tangible assets, firms can lower the hurdle necessary to obtain preferential FDII treatment by reducing tangible investments in the United States. Coupled with the current GILTI regime, this creates an incentive for companies to offshore plant and equipment, since moving tangible assets offshore both increases the tax-free return under GILTI and increases the tax deduction under FDII.

The President's plan repeals FDII. Repealing FDII would also raise significant revenue that would be deployed to incentivize R&D in the United States directly and effectively. Stronger tax-based incentives for research have been shown to increase firms' activity in this area.²⁶ By effectively incentivizing R&D, this plan would strongly support innovation, especially when combined with the American Jobs Plan's \$180 billion direct investment in R&D.

Ensuring Every Large Corporation Makes a Contribution: A Minimum Book Tax

In a typical year, around 200 companies report net income of \$2 billion or more. Of these, a significant share pay zero or negative federal income taxes, despite reporting hundreds of billions of dollars in profits to shareholders in the aggregate. This is because significant gaps in current tax law, as well as the presence of offshoring incentives, provide large and profitable corporations with many ways to decrease profits exposed to tax liability—in many cases, to zero.

In contrast, workers pay taxes on their full salaries, which are automatically withheld by their employer and paid to the IRS. Corporations have at their disposal two kinds of reporting rules (book and tax reporting) that provide for a variety of allowances that shield them from meaningful tax bills. Corporations are simultaneously able to signal large profits to shareholders and reward executives with these returns, while claiming to the IRS that income is at such a low level that they should be freed from any federal tax obligation.

The President's minimum book tax proposal would work to eliminate this disparity. Large corporations that report sky-high profits to shareholders would be required to pay at least a minimum amount of tax on such out-sized returns. Under this proposal, there would be a minimum tax of 15 percent on book income, the profit such firms generally report to the investors. Firms would make an additional payment to the IRS for the excess of up to 15 percent on their book income over their regular tax liability. For example, a

²⁶ See, e.g., Rao, Nirupama. 2016. "Do Tax Credits Stimulate R&D Spending? The Effect of the R&D Tax Credit in Its First Decade." *Journal of Public Economics* 140(C): 1–12.

firm with zero federal income tax liability computed based on its taxable income would still face a minimum tax of 15 percent on book income. Firms would be given credit for taxes paid above the minimum book tax threshold in prior years, for general business tax credits (including R&D, clean energy and housing tax credits), and for foreign tax credits.

In recent years, about 45 corporations would have paid a minimum book tax liability under the President's proposal.²⁷ This minimum book tax is a targeted approach to ensure that the most aggressive tax avoiders are forced to bear meaningful tax liabilities. The average company facing this tax would see an increased minimum tax liability of about \$300 million each year.

A minimum book tax would also provide a backstop against a new international tax regime. Under the regime, highly profitable multinational corporations would no longer be able to report significant profits to shareholders while avoiding federal income taxation entirely.

Replacing Subsidies for Fossil Fuels with Incentives for Clean Energy Production

Climate change is already impacting homes, businesses, communities, and farms. If left unchecked, the damage from both extreme heat and extreme cold, devastating storms and wildfires, droughts, and other disruptions are predicted to grow.

Today the tax code contributes to climate change by providing significant tax preferences and subsidies for the oil and gas industry. The President's tax plan would remove subsidies for fossil fuel companies, while providing incentives to reposition the United States as a global leader in clean energy and to ensure that our infrastructure is resilient to storms, floods, fires, and rising sea levels. Targeted investments in a clean and resilient energy future would also boost jobs for American workers and address environmental injustices.

Estimates from the Treasury Department's Office of Tax Analysis suggest that eliminating the subsidies for fossil fuel companies would increase government tax receipts by over \$35 billion in the coming decade. The main impact would be on oil and gas company profits. Research suggests little impact on gasoline or energy prices for U.S. consumers and little impact on our energy security.²⁸

The Made in America tax plan would advance clean electricity production by providing a ten-year extension of the production tax credit and investment tax credit for clean energy generation and storage, and making those credits direct pay. Together with non-tax initiatives, like the Energy Efficiency and Clean Electricity Standard, the plan sets the country on a path to 100 percent carbon pollution free electricity by 2035. In addition to addressing climate change, analysis by an independent think tank suggests that plans like the President's would also lead to a dramatic reduction in local air pollution, reducing premature deaths from breathing polluted air by at least two-thirds.²⁹ Low-income and minority households are more likely to live in communities with poor air quality, so these benefits would help address equity concerns as well.

The President's plan would also create a new tax incentive for long-distance transmission lines to ensure that clean energy can be carried to cities, homes, and businesses. The plan further expands the tax incentives available for electricity storage projects. These incentives would help ensure that the electricity supply is reliable as well as less harmful to the climate.

27 Of the 180 firms above the \$2 billion threshold, 45 paid so little in federal income tax, that once accounting for general business and foreign tax credits, they would be liable for the minimum book tax.

28 See Metcalf, Gilbert. 2018. "The Impact of Removing Tax Preferences for US Oil and Natural Gas Production: Measuring Tax Subsidies by an Equivalent Price Impact Approach." *Journal of the Association of Environmental and Resource Economists* 5(1): 1–37.

29 See Picciano, Paul, Kevin Rennert, and Daniel Shawhan. 2020. "Two Key Design Parameters in Clean Electricity Standards." *Resources for the Future Issue Brief* 20-02.

Recognizing the importance of supporting nascent technologies to help fight climate change, the President's plan calls for tax incentives for state-of-the-art carbon capture and sequestration projects. The President's plan also includes specific supports for clean energy manufacturing, including an extension of the 48C tax credit program. Finally, the President's plan includes a blender's tax credit for sustainable aviation fuel, enabling the decarbonization of a key portion of the U.S. transportation sector. Innovation in these areas could have large spillover benefits to our industrial sector as well as to global efforts to address climate change. Taken together, the President's tax incentives would help precipitate a shift toward cleaner energy and create high-paying jobs in green industries.

For consumers, the President proposes incentives to encourage people to switch to electric vehicles and efficient electric appliances. New incentives, combined with other government investments in the infrastructure for electric vehicles, can help overcome consumers reluctance to start using new technologies and make these technologies available to the consumers that need them most.

While these investments will help stem future damage from climate change, past greenhouse gas emissions have created a more volatile climate. To protect homes and businesses from the impacts of climate change, the President has proposed tax incentives for investments to increase the resilience of households and small businesses to droughts, wildfires, and floods.

Additionally, the President's plan would penalize polluters through tax disincentives, restoring a tax on polluters to pay for EPA clean-up costs associated with Superfund sites. Superfund taxes would help address harm caused by fossil fuel production and the production of toxic products while also addressing inequities associated with the fact that Superfund sites disproportionately impact communities of color—and so resources dedicated for Superfund improvement would benefit this group.

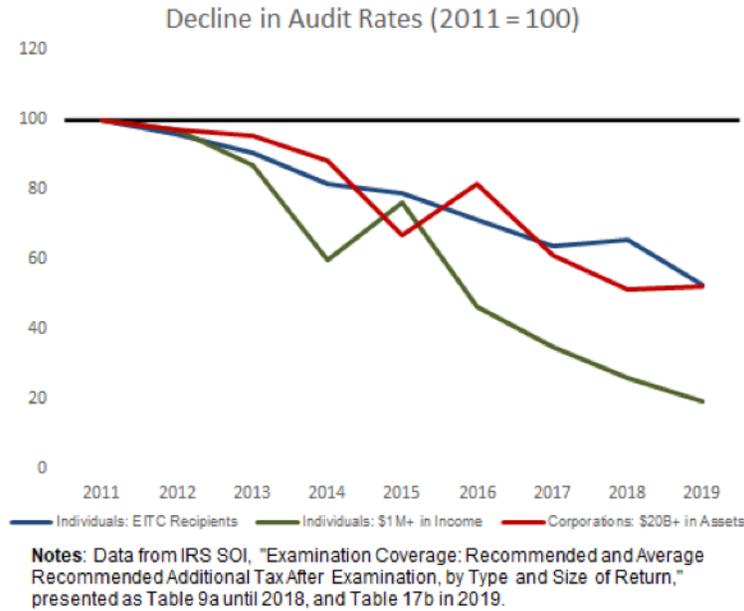
Address Corporate Avoidance and Evasion: Improving Tax Enforcement

Workers' wages are reported to the IRS, and taxes are withheld by their employer. By contrast, large corporations have significant opportunities to lower their tax liabilities, including by transferring profits offshore to avoid taxation. Opportunities are rampant for such tax avoidance, and even for tax evasion. The IRS today faces the difficult task of having to sift through thousands of pages of complicated corporate tax returns to unearth tax abuse and evasion.

This task has been made harder by the fact that the IRS's enforcement budget has fallen by 25 percent over the course of the last decade. This makes it difficult to hold accountable well-resourced taxpayers such as corporations.

Plagued by resource constraints, the IRS today prioritizes enforcement of less-complex cases, foregoing complex investigations of large corporations—and the wealthy individuals who own them. The share of large corporations that face IRS audit scrutiny has been cut in half over the last decade, falling to less than 50 percent of the 2011 level. In fact, audit rates have fallen as dramatically in the last decade for corporations with more than \$20 billion in assets as for the lowest-income individuals on the Earned Income Tax Credit (and dropped even more for wealthy individuals, who own stakes in large corporations). The result is direct revenue losses to the federal government from audits that the IRS cannot afford to conduct as well as indirect losses as corporations and the wealthy realize there is much to gain—and little to lose—from underpayment.

Figure 5: Decline in Audit Rates Over the Last Decade



The IRS today does not have the resources it needs to pursue large corporations as the IRS lacks the ability to sustain multi-year litigation involving complex tax matters against corporations.

The Made in America tax plan would address corporate tax avoidance and evasion in two distinct ways. First, it would foreclose many of the opportunities the current tax regime affords large corporations to lower tax bills by tackling, for example, profit shifting incentives. Second, the President's plan would also invest in the IRS to ensure that large corporations that cross the line would be held accountable, providing an under-resourced IRS the support it needs to overhaul tax administration. By ramping up the IRS's enforcement budget, a well-resourced team of revenue agents can be hired and trained to identify when corporations—and the wealthy individuals who own them—underpay. This proposal is part of a broader overhaul of tax administration that would give the IRS the resources it needs to collect the taxes that are owed by wealthy individuals and large corporations.

Conclusion

The right approach to corporate taxation requires maintaining U.S. competitiveness while protecting the corporate tax base. Today, we fail on both counts. The current corporate tax code contains incentives for firms to transfer profits abroad rather than investing at home. The result is that the largest, most profitable U.S. companies face lower tax rates than ordinary Americans. Additionally, the United States and its international partners are unable to collect significant tax revenue from corporations because of tax competition.

The 2017 tax law reduced U.S. corporate tax rates, resulting in a significant decrease in corporate tax collection. There is little evidence of an increase in economic growth or corporate investment resulting from these dramatic reductions in corporate tax rates. The 2017 tax law also created incentives for multinational corporations to shift profits to both high-tax and low-tax jurisdictions, placing those corporations that primarily produce and sell domestically at a disadvantage.

The Made in America tax plan would reverse these trends. It would create novel instruments that reject the long-held notion that tax competition and profit shifting are inevitable features of a globalized economy because of the mobility of capital. The plan would eliminate biases in current tax law that favor offshoring economic activity and would largely put an end to corporate profit shifting with a country-by-country minimum tax. The plan would also lead the world toward the creation of a modernized, stable, and coordinated international tax regime that is premised on multilateral cooperation, thereby addressing collective action problems among nations.

The President's corporate tax agenda is aimed at encouraging investment and American job creation, while also investing in priorities that are intended to benefit American families, such as infrastructure and climate resiliency. It will, in summary, create a corporate tax regime that is fit for purpose: an engine for economic growth, international cooperation, and a more equitable society.

