

RESOLUTION OF INQUIRY DIRECTING THE SECRETARY OF THE TREASURY TO PROVIDE CERTAIN DOCUMENTS IN THE SECRETARY'S POSSESSION TO THE HOUSE OF REPRESENTATIVES RELATING TO THE IMPACT OF THE OECD PILLAR ONE AGREEMENT ON THE UNITED STATES TREASURY

SEPTEMBER 28, 2022.—Referred to the House Calendar and ordered to be printed

Mr. NEAL, from the Committee on Ways and Means, submitted the following

ADVERSE REPORT

together with

DISSENTING VIEWS

[To accompany H. Res. 1269]

The Committee on Ways and Means, to whom was referred the resolution (H. Res. 1269) of inquiry directing the Secretary of the Treasury to provide certain documents in the Secretary's possession to the House of Representatives relating to the impact of the OECD Pillar One agreement on the United States Treasury, having considered the same, reports unfavorably thereon without amendment and recommends that the resolution not be agreed to.

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I. SUMMARY AND BACKGROUND

A. PURPOSE AND SUMMARY

H. Res. 1269 requests that the Department of the Treasury provide the House of Representatives information that refers or relates to (1) United States Pillar One tax revenue modeling data and reports estimating the impact of the OECD Pillar One agreement on reallocating taxing rights from the United States to foreign jurisdictions, or (2) the economic effects of the OECD Pillar One agreement on the U.S. Treasury.

B. BACKGROUND AND NEED FOR LEGISLATION

On July 26, 2022, H. Res. 1269 was introduced by Representative Kevin Hern. H. Res. 1269 is a resolution of inquiry, which is a means infrequently used by the House of Representatives to obtain certain factual information from the Executive Branch. Under clause 7 of rule XIII, a resolution of inquiry is subject to a motion to discharge from committee if the resolution is not reported by the committee to which it was referred within 14 legislative days of its introduction. Accordingly, the Committee on Ways and Means scheduled a markup of H. Res. 1269 within the 14-day period.

In October 2021, the member countries of the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS) issued a statement describing a two-pillar international tax reform. This statement was agreed to by every major global economy, including the United States.

Pillar One of the two pillar international tax reform consists of Amount A and Amount B. Amount A would provide for the resourcing of revenue from large, highly profitable large multinational enterprises to the end market jurisdiction where goods or services are used or consumed. Amount B would provide a simplified approach to applying the arm's length principle to in-country baseline marketing and distribution activities. Pillar One implementation would include a binding agreement among the participating states to eliminate unilateral measures that discriminate against U.S. companies.

In July 2022, the OECD Secretariat published a progress report on Pillar One. The public consultation document included several policy options and questions in respect to Amount A of Pillar One and invited the public to comment on the questions raised in the progress report. In September 2022, the OECD hosted a public consultation meeting focused on these questions.

The Committee reported the resolution adversely because, among other flaws, no agreement has been reached among the members of the Inclusive Framework concerning key elements of either Amount A or Amount B of Pillar One. Key parameters of the Pillar One agreement have yet to be reached, and as such any estimate

of the revenue impact would be premature. The resolution also refers only to the revenues allocated from the United States to foreign jurisdictions but does not take into account revenue allocated either from foreign jurisdictions to the United States or among non-U.S. jurisdictions. In addition, it does not take into account the economic benefits of greater tax certainty or the benefits from ending tax measures that discriminate against U.S. companies. For these reasons, the Committee reported the resolution adversely.

C. LEGISLATIVE HISTORY

Background

H. Res. 1269 was introduced on July 26, 2022, by Rep. Kevin Hern and was referred to the Committee on Ways and Means.

Committee hearings

The Committee on Ways and Means held no hearings on H. Res. 1269.

Committee action

The Committee on Ways and Means marked up H. Res. 1269 on September 20, 2022, and ordered the resolution adversely reported (with a quorum being present) by a roll call vote.

II. EXPLANATION OF THE BILL

H. Res. 1269 directs the Secretary of the Treasury to provide to the Committee within 14 days copies of all documents in its possession that refer to the economic impact of the adoption of Pillar One agreement to reallocate certain tax rights under Pillar One of the OECD Global Agreement, including documents that relate to data or reports on modeling the reallocation of tax rights as well as any documents that refer to the economic effect on the United States Treasury.

III. VOTES OF THE COMMITTEE

Pursuant to clause 3(b) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the vote of the Committee on Ways and Means in its consideration of H. Res. 1269 on September 20, 2022.

The resolution, H. Res. 1269, “Of inquiry directing the Secretary of the Treasury to provide certain documents in the Secretary’s possession to the House of Representatives relating to the impact of the OECD Pillar One agreement on the United States Treasury,” was ordered adversely reported to the House of Representatives by a recorded vote (with a quorum being present) of 24 yeas to 16 nays.

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Doggett	X	.....	.....	Mr. Brady .....	.....	X	.....
Mr. Thompson	X	.....	.....	Mr. Buchanan .....	.....	X	.....
Mr. Larson	X	.....	.....	Mr. Smith (NE) .....	.....	X	.....
Mr. Blumenauer	X	.....	.....	Mr. Kelly .....	.....	X	.....
Mr. Kind	X	.....	.....	Mr. Smith (MO) .....	.....	X	.....
Mr. Pascrell	X	.....	.....	Mr. Rice .....	.....	X	.....
Mr. Davis	X	.....	.....	Mr. Schweikert .....	.....	X	.....
Ms. Sánchez	X	.....	.....	Mr. LaHood .....	.....	X	.....

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Higgins	X	.....	.....	Dr. Wenstrup .....	.....	X	.....
Ms. Sewell .....	.....	.....	.....	Mr. Arrington .....	.....	X	.....
Ms. DelBene	X	.....	.....	Dr. Ferguson .....	.....	.....	.....
Ms. Chu	X	.....	.....	Mr. Estes .....	.....	X	.....
Ms. Moore	X	.....	.....	Mr. Smucker .....	.....	X	.....
Mr. Kildee	X	.....	.....	Mr. Hern .....	.....	X	.....
Mr. Boyle	X	.....	.....	Mrs. Miller .....	.....	X	.....
Mr. Beyer	X	.....	.....	Dr. Murphy .....	.....	X	.....
Mr. Evans	X	.....	.....	Mr. Kustoff .....	.....	X	.....
Mr. Schneider	X	.....	.....	.....	.....	.....	.....
Mr. Suozzi	X	.....	.....	.....	.....	.....	.....
Mr. Panetta	X	.....	.....	.....	.....	.....	.....
Mrs. Murphy	X	.....	.....	.....	.....	.....	.....
Mr. Gomez	X	.....	.....	.....	.....	.....	.....
Mr. Horsford	X	.....	.....	.....	.....	.....	.....
Ms. Plaskett	X	.....	.....	.....	.....	.....	.....
Chairman Neal	X	.....	.....	.....	.....	.....	.....
Totals	24	.....	.....	Totals .....	.....	16	.....

IV. BUDGET EFFECTS OF THE BILL

A. COMMITTEE ESTIMATE OF BUDGETARY EFFECTS

In compliance with clause 3(d) of rule XIII of the Rules of the House of Representatives, the Committee advises that the Congressional Budget Office did not provide a cost estimate of the resolution.

B. STATEMENT REGARDING NEW BUDGET AUTHORITY AND TAX EXPENDITURES BUDGET AUTHORITY

Pursuant to clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee states that the resolution involves no new or increased budget authority. The Committee further states that the resolution involves no new tax expenditure.

C. COST ESTIMATE PREPARED BY THE CONGRESSIONAL BUDGET OFFICE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee advises that the Congressional Budget Office did not provide a cost estimate of the resolution.

V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee made findings and recommendations that are reflected in this report.

B. STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee advises that the resolution does not authorize funding, so no statement of general performance goals and objectives is required.

C. INFORMATION RELATING TO UNFUNDED MANDATES

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104–4).

The Committee has determined that the resolution does not contain Federal mandates on the private sector. The Committee has determined that the resolution does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

D. ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by the resolution.

E. APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the resolution does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(2) of the Congressional Accountability Act.

F. CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the resolution, and states that the provisions of the resolution do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

G. HEARINGS

In relation to compliance with clause 3(c)(6) of rule XIII of the Rules of the House of Representatives, the Committee states that no hearings were held on this resolution.

H. APPLICABILITY OF HOUSE RULE XXI, CLAUSE 5(b)

Clause 5(b) of rule XXI of the Rules of the House of Representatives provides, in part, that “It shall not be in order to consider a resolution, joint resolution, amendment, or conference report carrying a retroactive Federal income tax rate increase.” The Committee, after careful review, states that the resolution does not involve any retroactive Federal income tax rate increase within the meaning of the rule.

I. TAX COMPLEXITY ANALYSIS

Section 4022(b) of Pub. L. No. 105–266, the Internal Revenue Service Restructuring and Reform Act of 1998 (the “RRA”), requires the staff of the Joint Committee on Taxation (in consultation with the Internal Revenue Service and the Treasury Department) to provide a tax complexity analysis. The complexity analysis is required for all legislation reported by the Senate Committee on Finance, the House Committee on Ways and Means, or any committee of conference if the legislation includes a provision that directly or indirectly amends the Internal Revenue Code of 1986 and has widespread applicability to individuals or small businesses.

Pursuant to clause 3(h)(1) of rule XIII of the Rules of the House of Representatives, the staff of the Joint Committee on Taxation has determined that a complexity analysis is not required under section 4022(b) of the RRA because the resolution contains no provision that amends the Internal Revenue Code of 1986 and has “widespread applicability” to individuals or small businesses within the meaning of the rule.

J. DUPLICATION OF FEDERAL PROGRAMS

In compliance with clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that no provision of the resolution establishes or reauthorizes: (1) a program of the Federal Government known to be duplicative of another Federal program; (2) a program included in any report to Congress pursuant to section 21 of Pub. L. No. 111–139; or (3) a program related to a program identified in the most recent Catalog of Federal Domestic Assistance, published pursuant to section 6104 of title 31, United States Code.

VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

Pursuant to clause 3(e)(1)(B) of rule XIII of the Rules of the House of Representatives, the Committee advises that H. Res. 1269 does not make any changes to existing law.

VII. DISSENTING VIEWS

Committee Republicans strongly oppose the Committee's action of unfavorably reporting H. Res. 1269, Resolution of inquiry directing the Secretary of the Treasury to provide certain documents in the Secretary's possession to the House of Representatives relating to the impact of the OECD Pillar One agreement on the United States Treasury.

Congressional oversight is one of the most important responsibilities of the U.S. Congress, and Resolutions of Inquiry (ROIs) are one of the methods used by the U.S. House of Representatives to obtain information from the executive branch. ROIs simply demand that the administration turn over basic information to Congress. This information is critical because it allows the Congress to ensure the executive branch's compliance with congressional intent; evaluate program performance; prevent the executive branch's encroachment on the legislative branch's powers; assess an agency's ability to manage and carry out program objectives; and acquire information from the executive branch that can inform policymaking.

Moreover, Congressional Republicans have repeatedly sought information from the Administration about the expected and actual impact of these policies. Transparency is essential because it promotes accountability and provides information for the Congress and Americans about what the federal government is doing. Despite the Biden Administration stating that President Biden would "bring transparency and truth back to the government to share the truth, even when it's hard to hear," the Administration has ignored the need for congressional oversight and completely failed on its promise. The American people deserve to know how their government works and we will hold the Biden Administration accountable for its disastrous policies.

This ROI seeks information about how much U.S. corporate taxing rights will be sent overseas by the Biden Administration in ongoing international tax negotiations. On April 8, 2021, without consulting Republicans in Congress, the Biden Administration proposed an agenda to the steering group of the Inclusive Framework at the Organisation for Economic Cooperation and Development (OECD) that included a new proposal for the scope of Pillar One to target about 100 of the largest and most profitable companies. It was concluded that the scope of the agreement should apply to companies with more than 20 billion Euro in global revenue and more than a 10 percent profitability threshold. These proposals were included in internal OECD Secretariat Documents for the Task Force on the Digital Economy as early as April 27, 2021, and the official OECD inclusive framework statement on July 1, 2021.

Committee Republicans first requested information on this issue from the U.S. Department of Treasury on April 28, 2021. Despite repeated requests for this information from Congressional Repub-

licans to various officials at the U.S. Department of Treasury between April 2021 to August 2022 via questions from Committee staff in briefings and emails, questions from Members of Congress at hearings, questions for the record, and letters, the Administration has not provided Congress with the requested information.

The Majority claimed that the Treasury Department has made progress on the Pillar One agreement that would eliminate discriminatory digital service taxes targeting U.S. companies. While this is the goal that both parties in Congress tasked the Treasury Department with achieving at the OECD, all publicly available information suggests the Department has failed in their attempt. Academic studies suggest that the Biden Administration's Pillar One agreement will serve to perpetuate the discrimination against U.S. companies. Studies suggest that around 64 percent of reallocated income is from U.S. headquartered multinationals, while U.S. Gross Domestic Product (GDP) only represents about 24 percent of Global GDP.¹ This misrepresentation by the Treasury Department is precisely why it is important for the Congress to have access to the data and estimations that the Treasury Department is using to evaluate the outcome of their negotiations. We need to understand if the Treasury Department is finding a favorable solution for U.S. industry, or if they are reaching a conclusion that the Congress cannot accept.

The Majority went on to cite, that with so many fluid elements the estimations would be based on premature assumptions about the details of the agreement, as a reason the Treasury Department need not share its analysis with the Congress. We find this argument without merit and an inexcusable resignation of our Constitutionally assigned authority. As the committee responsible for tax legislation in the chamber that must originate legislation for raising revenue we should have the necessary information to understand what is being considered. The Congress cannot properly signal our support or dissatisfaction with an agreement without an understanding of the underlying assumptions or statistical analysis. Without understanding where the Treasury Department is in the process, we cannot direct the Department to change course if appropriate. It is the Congress that has the power to lay and collect taxes, and while the Administration may have a diplomatic role in facilitating cross-border tax cooperation, the Administration should not deny the Congress essential information to evaluate proposals of significant resignations of taxing rights to other countries.

Finally, the Majority argued that this resolution does nothing to help American families put food on the table, pay their bills, or take care of their families. In fact, this resolution goes to those very concerns. If the Administration is proposing to cede taxing rights to other countries, the result is a narrower tax base here in the U.S. As a result, it will fall to American families to shoulder more of the effects of the U.S. tax burden to raise the same amount of revenue to fund the essential services of our government. Families are already suffering under President Biden's punishing economic policies. We fear a continuation of misguided policies will

¹ Michael Devereux and Martin Simmler, *Who Will Pay Amount A?*, 5 ECONPOL POLICY BRIEF (2021).

make things worse for American families whose paychecks can no longer cover their needs.

As the branch of government responsible for prescribing tax policy, it is essential that Congress receive revenue and company inclusion estimates. To be able to evaluate the proposal Congress needs to know what companies will be affected, what jurisdictions will be losing tax rights, and what jurisdiction will be gaining taxing rights under the current proposals. More broadly, Congress should understand where U.S. companies may be sending profit taxing rights and how it could factor into larger geopolitical considerations. It is wholly impossible for Congress to do its job with regards to Pillar One without an understanding of the proposed shifts in inflows and outflows. If the Administration continues to deprive Congress of this essential information, the ultimate harm will fall on U.S. negotiators losing credibility abroad. It is disappointing that Committee Democrats have blocked the request for this information.

KEVIN BRADY,
Ranking Member.
KEVIN HERN.

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