MICHIGAN LAW
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Walter Spilsbury, Chair
Commision on Worldwide Combined
Reporting for Unitary Business Under the
Business Profit Tax RSA 77-A:23-b

Dear Chair Spilsbury,

I have been asked to respond to some questions raised regarding proposed legislation to have New Hampshire adopt worldwide combined reporting (WWCR) for multinational enterprises (MNCs) operating in it. My answers are below.

- What, if any, are the additional reporting burdens on MNCs, especially foreign owned MNCs, with the adoption of WWCR?

None. MNCs already must calculate global income for financial reporting purposes. They also must calculate country by country (CBC) people assets sales and taxes for purposes of CBC reporting under BEPS. And the larger ones have to apply the three-factor formula under pillar 1 of BEPS 2.0 when implemented, which it will be by many countries even if it cannot be done multilaterally. They also must calculate country by country effective tax rates for pillar 2 purposes and that calculation includes state tax burdens.

- What is the likelihood that global losses could reduce rather than increase revenue to states adopting WWCR?

Most large MNCs are very profitable. If they were not, they would not fight against WWCR. And if they have losses offshore these should be allowed to offset onshore income because that is the correct income tax base and not doing so is a basic flaw in the current system both at the federal and at the state level.

- Have the 2017 Tax Cut and Jobs Act and GILTI resolved the issue of profit shifting by MNCs?

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Definitely not, as Kim Clausing's research shows.[1][2] Nor is that surprising given that the first 10% return on tangibles is exempt, that the GILTI rate is half the domestic rate, and that cross crediting is allowed. The situation would have improved if BBB had been enacted, but it failed and will not be revived any time soon.

- Is NH's tax scheme which taxes 100% of foreign dividends repatriated to the US and 50% of GILTI a better deal than adopting WWCR and ending the "water's edge" provisions?

No. Taxing foreign dividends only works when dividends are paid, and they frequently are not. Repatriations after TCJA were far lower than the income accumulated earlier even though they were completely exempt. GILTI inclusions are problematic as well because the deemed dividend system they rely on is very complex, as is the reduced foreign tax credit mechanism. WWCR is much simpler to administer, especially since then New Hampshire does not have to rely on the inadequate transfer pricing enforcement by the IRS.

- Is there evidence behind the idea that NH shouldn't end "water's edge" and adopt WWCR because it would be an outlier among the states, might be seen as hostile to business, particularly foreign business, and could be subject to retaliation ?

None. No foreign MNE cares significantly about US state taxation at quite low rates. And other states are likely to adopt WWCR now that the feds have effectively adopted WWCR in the corporate AMT. The MNEs are far more worried about pillar two (the global minimum corporate tax). In fact, any tax imposed by NH on large MNEs (revenues above 750 billion Euros) will be credited against their 15% pillar two liability on global income. From that perspective, not adopting WWCR is for any state ceding taxing jurisdiction to the EU had other countries that are implementing the global minimum tax.

Sincerely,

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[1] See Clausing, Kimberly A., Profit Shifting Before and After the Tax Cuts and Jobs Act (June 3, 2020). 73(4) National Tax Journal 1233-1266 (2020), UCLA School of Law, Law-Econ Research Paper No. 20-10, Available at SSRN: https://ssrn.com/abstract=3274827 or http://dx.doi.org/10.2139/ssrn.3274827

[2] See Garcia-Bernardo, Javier and Jansky, Petr and Zucman, Gabriel, Did the Tax Cuts and Jobs Act Reduce Profit Shifting by Us Multinational Companies?. Available at SSRN: https://ssrn.com/abstract=4554525 or http://dx.doi.org/10.2139/ssrn.4554525