Maryland Should Mandate Worldwide Combined Reporting, as Proposed by SB859, The Fair Share for Maryland Act of 2025

Michael Mazerov

michael.mazerov@gmail.com

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Part One:
The Affirmative Case for Worldwide Combined Reporting

What is Worldwide Combined Reporting?

- Combined reporting is a method of determining the share of a multistate or multinational corporation's profit that can be assigned for taxation to each of the states in which it is doing business when the company is structured as a parent corporation with one or more subsidiary corporations. The profit of the parent and its "unitary" subsidiaries is added together (combined) and then each state taxes a share of the combined profit based on a formula.

- WWCR is an extension of "water's edge combined reporting" (WECR), a policy currently in place in 28 states and DC. (Gov. Moore has proposed that Maryland adopt WECR.) Under WECR, only the profits of a U.S. parent and its U.S. subsidiaries are combined. Under WWCR the profits of foreign parents and "unitary" foreign subsidiaries are combined as well.

- In the early 1980s, 12 states mandated WWCR. They withdrew to WECR under pressure from the Reagan Administration and the threat of a congressional ban on WWCR.

The case for adoption of WWCR in a nutshell

- There is overwhelming evidence from numerous government agencies and academic researchers that abusive international profit shifting by multinational corporations (MNCs) is massive problem that the anti-abuse provisions of the 2017 Trump tax bill (TCJA) barely dented. It is costing states billions of dollars of corporate income tax receipts to which they are entitled and that they need to fund critical services. WWCR is the most legally viable tool available to states to address the problem effectively and comprehensively.

- Mitigating abusive international profit shifting to the greatest extent possible is needed to ensure that MNCs do not have unfair advantages in competing with other MNCs not engaged in profit shifting and with purely domestic businesses (many of them small) that can't engage in the practice because they don't have foreign subsidiaries.

Overwhelming evidence that abusive international profit shifting is pervasive (1)

(For sources, see: Michael Mazerov, "States Can Fight Corporate Tax Avoidance by Requiring Worldwide Combined Reporting," Center on Budget and Policy Priorities, June 27, 2024, https://www.cbpp.org/sites/default/files/6-27-24sfp.pdf . Reprinted in *Tax Notes State*, July 22, 2024.)

- In 2017, international profit shifting just by U.S.-parent MNCs cost the federal government $60 billion to $94 billion in corporate income tax revenue, according to 2020 study by economist and former U.S. Treasury official Kimberly Clausing. "[A]s of the end of 2019, there is no evidence of a reduction in profit shifting" attributable to provisions of TCJA.

- 2023 study by Gabriel Zucman (the other leading academic economic expert) estimated that $369 billion of U.S. MNC profit was shifted to 13 tax havens in 2022

Overwhelming evidence that abusive international profit shifting is pervasive (2)

- US Treasury Dept. (2021): “More U.S. profits are housed in tiny tax havens than in the major economies of China, India, Japan, France, Canada, and Germany <u>combined</u>. . . . 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. . .”

- Congressional Research Service (2022): The profit reported by U.S.-parent MNCs as earned in Barbados, Bermuda, the Cayman Islands, Jersey, and Mauritius in 2018 was many times larger than the entire economic output of those countries – a mathematical and economic impossibility.

Overwhelming evidence that abusive international profit shifting is pervasive (3)

- 76 of the Fortune 100 report in their SEC 10-Ks at least one subsidiary in one or more of 9 major foreign tax havens. Walmart has subsidiaries in both the Cayman Islands and Singapore, despite not having stores in either location. Exxon has 6 in Netherlands and 2 in Singapore. CVS has 5 in Bermuda, 2 in Ireland, 1 in Luxembourg, and 1 in Singapore. Johnson & Johnson has 93 tax haven subsidiaries, including 24 in Ireland, 23 in Switzerland, and 19 in Netherlands. HP has subsidiaries in all nine major foreign tax havens, including 26 in Netherlands. Blackstone has 326 subsidiaries in the Cayman Islands and 67 in Luxembourg. Amazon's 10-K claims it has no foreign subsidiaries, yet its European HQ is in Luxembourg.

Overwhelming evidence that abusive international profit shifting is pervasive (4)

- A series of forensic accounting studies performed since 2020 by transfer pricing economist Stephen L. Curtis and colleagues concluded that just six U.S. MNCs — Apple, Cisco, eBay, Facebook, Google, and Microsoft — may have underpaid their U.S. corporate income taxes by $277 billion (not including penalties/interest) over varying periods from 2009 through 2022 due to their failure to comply with – and the IRS's failure to enforce – IRS regulations regarding cost-sharing arrangements. "If only six taxpayers could represent a half-trillion dollars in collectible funds, it should not be a stretch to believe that total noncompliance could account for as much as $1 trillion or more."
- After a decade of legal wrangling, in October 2023 the IRS assessed Microsoft $28.9 billion in additional federal corporate income taxes (plus penalties and interest) for the 2004-2013 period in a challenge to its cost sharing arrangement with a Puerto Rico subsidiary.

Overwhelming evidence that abusive international profit shifting is pervasive (5)

- Economist Brad Setser to Senate Finance Committee (2023): major U.S.-listed pharmaceutical companies reported earning over $90 billion in foreign profits in 2022 but only around $10 billion in U.S. profits. "Such a pattern is all the more striking because the United States is well known to have the highest pharmaceutical prices in the world . . . The cost of pharmaceutical production does not vary significantly from jurisdiction to jurisdiction, so the profit margin on high priced U.S. sales would normally be expected to be much higher than the margin on foreign sales. It consequently is particularly noticeable that the bulk of the American pharmaceutical industry appears to barely make any money on their U.S. operations, while reporting large profits in countries that more intensively regulate pharmaceutical pricing."

How much revenue might states collectively and Maryland gain by requiring WWCR?

- Extremely challenging to estimate, as indicated by broad range of estimates of federal revenue losses from profit shifting among academic experts, CBO, etc.

- A February 2025 study by the Institute on Taxation and Economic Policy (of which I am a co-author) estimated that CIT-levying states in the aggregate could gain as much as $18.7 billion in annual revenue from universal adoption of WWCR. Maryland's gain would be as much as $717 million. Actual revenue would depend on the extent to which states in the aggregate and Maryland itself have an "overhang" of accrued tax credits and operating losses from prior years that can be carried forward and used to offset current-year profits. No publicly available data exist with which to estimates such offsets, although the Comptroller may be in possession of it. Eventually, however such credits and NOLs will be used up, because more taxable profit will be reported due to WWCR.

The fiscal note does <u>not</u> represent the estimated revenue gain from mandatory WWCR! (1)

- The fiscal note for the combined reporting provision of SB859 – $215 million in FY 2030 – does <u>not</u> represent an estimated gain from the actual language in the bill.

- The fiscal note states: “Estimated revenue effects relating to the bill’s adoption of . . . combined reporting . . . are based on a previous study conducted by the Comptroller’s Office based on data collected from taxpayers in tax years 2006 through 2010, adjusted for subsequent changes in the economy and corporate income tax revenues. The study’s examination of the potential impacts of combined reporting contemplated a water’s edge election . . . .” <u>SB859 provides for mandatory WWCR, not elective</u>.

The fiscal note does <u>not</u> represent the estimated revenue gain from mandatory WWCR! (2)

- Elective WWCR would inherently raise less revenue than mandatory WWCR, because the majority of corporations that pay more under mandatory WWCR would calculate their taxes under water's edge combined filing (if the General Assembly were to approve the Governor's proposal). And if corporations could elect between the current separate filing system or WWCR, the state would actually lose revenue.

- Further evidence that the fiscal note on the WWCR provision of SB849 should be recognized as meaningless is that the fiscal note on the Governor's proposal to move to mandatory water's edge combined reporting estimates a FY30 gain of $221 million – which would imply that moving from water's edge to WWCR would lose revenue – an impossibility given the enormous scale of international profit-shifting documented above.

Maryland and all CIT states should mandate WWCR to help level the playing field (1)

- Not all MNCs have an internal culture that creates pressure for aggressive international tax avoidance, and some lack unique and valuable intangible assets that facilitate it

- Domestic-only corporations – many of them small businesses – don't have the wherewithal to establish foreign tax haven subsidiaries to which they can shift profits.

- But both compete with MNCs that are engaged in aggressive international tax avoidance. (Your local coffee shop doesn't have a Cayman Islands subsidiary, but Starbucks does.)

- The international profit shifters may be able to attract capital at a lower cost because of their lower effective tax rates and/or be able to use their lower taxes and pricing power to undercut the prices of their U.S.-only competitors.

Maryland and all CIT states should mandate WWCR to help level the playing field (2)

- Empirical support: "[T]he empirical analysis also shows that industries with a strong presence of tax-planning multinationals tend to be more concentrated than other industries, but less so when strong rules against tax planning are in place. Overall, the results support the hypothesis that large multinationals use their tax savings to crowd out other firms and ultimately obtain higher mark-ups."

  Sorbe and Johansson, "International Tax Planning, Competition, and Market Structure," OECD Working Paper, 2017

Maryland and all CIT states should mandate WWCR to help level the playing field (3)

- “A fair and efficient corporate tax system would not favor the biggest and most profitable corporations over smaller domestic competitors. It would also not advantage and reward the most aggressive tax avoiders over those focused on creating economic value. Yet that is the system Minnesota currently has, and so we are pleased to see Minnesota moving towards a reform that would address the unfairness and inefficiency of its current corporate tax system . . . . Worldwide Combined Reporting” (law prof’s letter 5/23)

- The ability to lower their U.S. taxes by shifting income offshore “gives US multinational companies a large tax advantage relative to domestic companies, [which] are (on average) far smaller. . . . Reforming international tax rules to ensure that large, dominant multinational companies pay adequate tax on their foreign income is . . . essential for creating a level competitive playing field.” (Clausing)

WWCR is the most comprehensive, effective, legally viable state policy for mitigating international profit shifting (1)

- Constitutionality of WWCR has been upheld twice by U.S. Supreme Court as applied to both U.S. parent (*Container*) and foreign parent (*Barclays*) MNCs.

- The only viable legal basis for challenging the application of WWCR is challenging the inclusion of specific affiliates in the unitary group. Contrary to widespread corporate representative assertions, such disputes appear to be exceedingly rare – there is virtually no reported litigation in recent years. States can and should address concerns about unity disputes by allowing (long term and global – i.e., no year-to-year cherry-picking) affiliate group elections based on 50%+ ownership alone (i.e., no requirement for establishment of "unity").

WWCR is the most comprehensive, effective, legally viable state policy for mitigating international profit shifting (2)

- The Council on State Taxation (COST) and other corporate representatives constantly rattle their sabers about constitutional and other challenges to other anti-profit-shifting policies like GILTI, addback statutes, inclusion of tax haven subsidiaries in water's edge groups, etc. (E.g., Frieden and Nicely, "Minnesota's New Approach to Taxing Foreign Income Is Unfair and Unwise," August 2023; re: MN GILTI conformity)

- COST and corporate representatives are also constantly lobbying against the adoption of these alternatives and for their repeal where they exist. (E.g. successful repeal of tax haven blacklists in MT and OR and GILTI conformity and addback provision in NJ)

- Why should states adopt half-measures to address international profit shifting when COST and other corporate representatives will litigate and lobby against them just as systematically and aggressively as they oppose WWCR?

Part Two:

Responses to Council on State Taxation's Arguments Against Adoption of Mandatory Worldwide Combined Reporting

Claim: WWCR proponents are seeking to reestablish a “discredited” policy when there was a “water’s-edge compromise” in 1984. (1)

- The WWCR states agreed to withdraw to water’s edge combined reporting during the 1984 Reagan WWCR Working Group because they had a gun to their head in the form of credible threats from the administration of federal preemption legislation – not because they agreed WWCR was a “discredited” policy. “Discredited”? -- SCOTUS upheld it twice!

- During the Working Group’s deliberations, it was widely conceded that even if states withdrew from WWCR to water’s edge combined reporting, they were justified in including foreign tax haven subsidiaries in their water’s edge groups. In his final report, Treasury Secretary Regan noted that all five of the alternative water’s edge policy “bundles” put forth as potential solutions to the WWCR controversy proposed to include in a water’s edge group “certain tax haven corporations presumed to be part of the unitary business.” COST conveniently omits this fact from its history of the Working Group.

Claim: WWCR proponents are seeking to reestablish a "discredited" policy when there was a "water's-edge compromise" in 1984. (2)

- To this day, COST has a formal policy position opposing state mandating of even water's edge combined reporting and actively lobbies and testifies against its adoption wherever it is proposed – notwithstanding that almost 2/3 of states levying CITs mandate it.

- Notwithstanding the acknowledgment in the Working Group that states were justified in including tax haven subsidiaries in otherwise water's edge combined groups, COST has a formal policy position against this and has actively lobbied for repeal in states that do so and against additional states adopting the practice.

- In short, COST criticizes WWCR proponents for somehow reneging on an alleged "water's edge compromise" that COST <u>itself</u> has <u>never</u> accepted. In any case, international profit-shifting is a far more serious problem today than in 1984; WWCR mandate is justified.

Claim: WWCR is an "outdated" policy.

- No, what is "outdated" is an international income assignment system premised on establishing intra-corporate-group transfer prices based on an "arm's-length standard."

- Such a system might have made sense when it was adopted in the 1930s, when multi-entity MNCs were much less prevalent, international trade was a smaller share of GDP, and most trade was in relatively routine products and commodities.

- Such a system is no longer administrable or capable of preventing massive profit shifting in a world where a huge share of cross-border trade occurs within multi-entity groups and many corporations' profits are based on highly valuable, unique intangibles and services.

- Key evidence that arm's length standard is obsolete is the need for Pillar 2 of the OECD agreement, GILTI, Inflation Reduction Act's Corporate Alternative Minimum Tax (CAMT)

Claim: Corporations opposed WWCR in the early 1980s because of its unreasonable compliance burdens.

- COST: “[S]tate imposition of mandatory WWCR ultimately led to numerous court challenges arising out of the complexity of the compliance burdens, the mismatch of foreign and domestic tax rules and accounting standards, and the foreign policy implications of subjecting international groups to subnational (state) taxation.”

- Those were the <u>arguments</u> used in *Container* and *Barclays*.

- The cases <u>arose</u> out of MNCs’ desire to not be subject to a taxing method that substantially shut down their international tax avoidance strategies.

- Additionally, foreign-parent MNCs viewed the arm’s-length system as the international standard and resented having to comply with a different subnational system in the U.S.

Claim: Combined reporting would inherently increase the volatility of corporate tax revenue and might well lose revenue (1).

- These claims arise from the fact that in 2 of 5 years (2006-10) during which hypothetical ("pro-forma) tax returns calculated using combined reporting were required along with the regular return, the calculations showed small revenue losses relative to what was reported under the current separate filing method. But:

- Even though that period encompassed the deepest recession since the Great Depression, the Comptroller's analysis of these returns found that for the five years taken together the "Finnigan" method of water's edge combined reporting (Governor Moore's proposal) would have resulted in an additional $299 million of corporate tax revenue had it been in effect. That amount is 7.6 percent of actual corporate tax receipts in those 5 years.

Claim: Combined reporting would inherently increase the volatility of corporate tax revenue and might well lose revenue (2).

- These reductions were of the same order of magnitude as normal year-to-year fluctuations in corporate tax receipts. For example, corporate tax receipts fell 2.4 percent between tax year 2005 and 2006 and 9.0 percent between tax year 2009 and 2010. No one could reasonably argue that fluctuations of such magnitude would justify repealing the corporate income tax, so it is disingenuous of combined reporting proponents to argue that fluctuations of similar magnitude attributable to combined reporting justify forgoing this valuable reform – all the more so when one notes that it would have boosted corporate tax receipts by fully 27 percent in (non-recession) tax year 2006 and 20 percent in tax year 2007.

Claim: Combined reporting would inherently increase the volatility of corporate tax revenue and might well lose revenue (3).

- Many revenue sources, such as capital gains realized by high-income people, are also quite volatile and frequently drop significantly during recessions. Again, no one suggests that the appropriate response to this volatility is to forgo the revenue and sacrifice the improvement in tax fairness that including the revenue source in the tax system creates.

- The appropriate solution is for any potential increase in volatility is for the state to have an adequate rainy-day fund with which to weather recessions and to build into state budgets only the average annual yield of the revenue source rather than the amount it generates in peak years

Claim: Combined reporting would inherently increase the volatility of corporate tax revenue and might well lose revenue (4).

- No fiscal note on a Maryland water's edge combined reporting bill has ever concluded that mandating it would lose revenue.

- It is not credible to claim that worldwide combined reporting would lose revenue given the vast amount of abusive international profit shifting occurring, and studies that have examined the potential revenue gains from mandating WWCR at the federal level have predicted significant revenue gains.

- Since national economies frequently have business cycles that are not in synch with those of other countries, portfolio theory suggests that WWCR would be more likely to reduce the volatility of corporate tax collections than increase it – particularly for U.S. companies that have sales in numerous other countries like movie producers and drug companies.

Claim: WWCR is not needed, because OECD Pillar 2 agreement will substantially solve the international profit shifting problem

- On his very first day in office, President Trump withdrew the United States from the international agreement developed by the OECD for a minimum corporate tax – the so-called "Pillar 2" provision. He threatened retaliatory action against any country that enforces the provision of the agreement that is intended to pressure countries to participate in the agreement – the "undertaxed profits" provision.

- The agreement is effectively dead for the foreseeable future, yet in its testimony in opposition to the Fair Share Act COST continues to cite it as a reason why WWCR is unnecessary.

Claim: WWCR is not needed, because the IRS audits and litigation under Section 482 of the Code are adequate to prevent profit shifting (1)

- All the studies and data cited above demonstrate that there is a massive profit shifting problem notwithstanding IRS enforcement efforts.

- “Between 1979 and 1994, the IRS consistently lost every major transfer pricing case it litigated, including those against U.S. Steel Corp., Bausch & Lomb Inc., HCA Healthcare, Eli Lilly and Co., G.D. Searle LLC, Ciba-Geigy AG, Sundstrand Corp., and Merck & Co. Inc. After the new transfer pricing regulations were issued in 1994, there was a hiatus in transfer pricing litigation. When cases resumed, the IRS continued losing, including against DHL Corp. (1998), UPS (1999), Compaq (1999), Xilinx Inc. (2005), Veritas Software Corp. (2009), Medtronic Inc. (2016), and Amazon.com Inc. (2017).” Reuven S. Avi-Yonah and Gianluca Mazzoni, “Coca-Cola: A Decisive IRS Transfer Pricing Victory, at Last,” Tax Notes Federal, December 14, 2020. (Note: Coca-Cola decision now on appeal.)

Claim: WWCR is not needed, because the IRS audits and litigation under Section 482 of the Code are adequate to prevent profit shifting (2)

- IRS acknowledges it has been incapable of effectively addressing profit shifting with available resources:

  - "The IRS is increasing compliance efforts on the U.S. subsidiaries of foreign companies that distribute goods in the U.S. and do not pay their fair share of tax on the profit they earn on their U.S. activity. These foreign companies report losses or exceedingly low margins year after year through the improper use of transfer pricing. . ." (10/23)

  - [O]ur discussions with [E]xamination identified concerns with their ability to accomplish their mission with limited resources. Specifically, these teams cited the need for specialists, such as economists, to help them develop and pursue the complex issues and transactions associated with examining large multinational corporations.

Claim: WWCR is not needed, because the IRS audits and litigation under Section 482 of the Code are adequate to prevent profit shifting (3)

- IRS acknowledges it has been incapable of effectively addressing profit-shifting with available resources. For example:
  - [T]he LB&I [Large Business and International"] Division noted that they have a staffing deficit in their transfer pricing practice area. As of July 2023, the LB&I division reported a staffing deficit of 190 employees, which is a reason why it cannot conduct more examinations of transfer pricing on large multinational corporation tax returns."
  - LB&I Division management expressed concerns with their hiring efforts. They noted that pay disparity between the public and private sector for persons with the technical skills and competencies that are needed to address large corporate tax compliance is a major contributor to their inability to recruit and retain a highly skilled workforce."

Claim: WWCR is not needed, because the IRS audits and litigation under Section 482 of the Code are adequate to prevent profit shifting (4)

- "Due to constrained resources, large corporate enforcement activities have decreased in recent years, with the audit rate falling from 10.5% in 2011 to 1.7% in 2019."

- "Between 2010-2021, funding appropriated to the IRS declined by 22% in real terms. Even though filings increased by more than 8% between 2011-2019, the IRS workforce is now the same size as it was in the 1970s – with fewer audits than at any time since WWII."

- It is no disparagement of the highly dedicated staff of the IRS to observe that they are massively outgunned in their efforts to enforce the broken, unenforceable, arm's length transfer pricing system vis-à-vis sophisticated MNCs.

Claim: WWCR is not needed, because Maryland has substantially solved the profit-shifting problem with its "addback" rule (1)

- This is an utterly false claim, and COST and other WWCR opponents know it is. There are many tax-avoidance strategies that exploit the absence of combined reporting that addback rules inherently can't address (leaving aside loopholes in the addback laws).

- "Addback" rules disallow deductions for royalties, interest, licensing fees, etc. paid to other members of a corporate group in another state that may not be subject to corporate income tax in Maryland. Intragroup payment for the use of such intangibles use to be a primary profit shifting mechanism (e.g., Toys R Us's royalty for use of Geoffrey Giraffe)

- They are called "addbacks" because the disallowance is achieved by adding back the deductions to federal taxable income that is the starting point for the calculation of Maryland taxable income after they have been deducted in calculating the former.

Claim: WWCR is not needed, because Maryland has substantially solved the profit-shifting problem with its "addback" rule (2)

- Tax-avoidance technique #1: run-of-the-mill "transfer pricing."

- Maryland fabric manufacturer sells it to clothing manufacturer in Virginia. Maryland's corporate tax rate is 8.25%; Virginia's is 6.0%. Manufacturer wants as much profit as possible to show up in Virginia. It sets up a distribution subsidiary in Virginia and sells the fabric to it at an artificially low price, depressing profits reported to Maryland. The distribution subsidiary resells the fabric at the market price to the clothing manufacturers, so more of the total profit shows up on tax return of the distribution subsidiary.

- Addback rule doesn't apply, because the intra-company sales involve tangible goods, not royalties or interest. Under combined reporting, profit of MD and VA corporations would be combined, and MD would tax a share of it, nullifying tax savings from profit shifting.

Claim: WWCR is not needed, because Maryland has substantially solved the profit-shifting problem with its "addback" rule (3)

- Tax-avoidance technique #2: "entity isolation"

- MD hospital purchases MRI machine from out-of-state or foreign manufacturer. Manufacturer is careful to avoid being subject to MD's corporate income tax by limiting its MD activities to those that are protected by federal PL86-272 (domestic manufacturer) or "permanent establishment" standards under U.S. tax treaties (foreign manufacturer). But manufacturer must engage in post-sale activities in MD (supervising installation and calibration of MRI machine, training employees in its use, etc.) Those activities would establish nexus for manufacturer, so it forms a separate subsidiary to employee the personnel who conduct them, which charges the hospital for the services. MD can tax the limited profits of the latter, but the bulk of the profits are earned by the manufacturing arm, which is beyond MD's tax reach. Addback doesn't apply; no intra-groups sales.

Claim: WWCR is not needed, because Maryland has substantially solved the profit-shifting problem with its “addback” rule (4)

- Tax-avoidance technique #3: “asset isolation”

- MD bank issues a loan to a MD corporation. All the expenses involved in approving the loan are deductible in calculating the bank’s profits. After the loan is issued, its ownership is transferred to a DE intangible holding company (IHC) in exchange for an equal value of stock in the latter. Going forward, all the interest on the loan is reporting as income in DE, which doesn’t tax it.

Claim: Complying with mandatory WWCR would be unreasonably complex, burdensome, costly, uncertain, litigious, etc. (1)

- Obviously, MNCs are enormously complex enterprises engaged in enormously complex production processes spanning numerous national borders and employing diverse and complex business models. No method of measuring and allocating their profits across international boundaries can ever be simple.

- But complying with Section 482 is complicated, burdensome, costly, subjective, uncertain, litigious, etc. Complying with GILTI is as well. Complying with the Inflation Reduction Act's new Corporate Alternative Minimum Tax (CAMT) will be. Filing a 6-page IRS Form 5471 for every single CFC is undoubtedly complicated, burdensome, and costly.

- Fairly assessing the complexity, subjectivity, burden, etc. of complying with WWCR is a matter of a) "compared to what?" and b) what is the <u>marginal</u> burden of WWCR?

Claim: Complying with mandatory WWCR would be unreasonably complex, burdensome, costly, uncertain, litigious, etc. (2)

- COST and other WWCR opponents can describe in detail the complexities of complying with WWCR because their baseline for such a comparison is a status quo in which there is virtually no independent policy or action by states to protect their corporate income tax bases from abusive international profit shifting.

- They are quite happy with that status quo because it provides MNCs with billions of dollars of state tax savings on top of tens of billions of federal tax savings.

- But that status quo should be unacceptable to states, the public, and competitors not engaged in abusive profit shifting.

Claim: Complying with mandatory WWCR would be unreasonably complex, burdensome, costly, uncertain, litigious, etc. (3)

- It is entirely understandable that COST and other WWCR opponents don't relish the idea of having to comply with WWCR mandates on top of Section 482, GILTI, CAMT, and IRS international information-reporting requirements

- They are free at any time to make constructive recommendations regarding how states might mitigate WWCR compliance burdens by piggybacking on GILTI and CAMT information reporting

- One of the chief objections to the compliance burden and subjectivity entailed in WWCR can be addressed by long-term, global, affiliate group elections based on 50%+ common ownership alone, rather than the need to determine the scope of the "unitary business." I would support an amendment to the Fair Share Act to implement such a policy.

Claim: Complying with mandatory WWCR would be unreasonably complex, burdensome, costly, uncertain, litigious, etc. (4)

- COST: WWCR "was to be undertaken in the face of differing domestic and foreign accounting principles, exchange rate fluctuations, inflationary differences, differing levels of profitability, and numerous other domestic/foreign distinctions that can only be resolved through "best guess" scenarios. Unfortunately, the arbitrary nature of these calculations undermines the requisite certainty and predictability of effective tax statutes, and of the ensuing audits of companies under those statutes."

- U.S. based corporations already must deal with differing accounting principles, exchange rate changes, subsidiaries organized as passthrough entities, etc. in creating worldwide financial statements for SEC purposes and calculating GILTI and CAMT. Claims that determination of US source income under the arms length standard is more predictable/certain and less arbitrary than the result under WWCR aren't credible.

Claim: Complying with mandatory WWCR would be unreasonably complex, burdensome, costly, uncertain, litigious, etc. (5)

- Whatever the compliance burdens of filing on a WWCR basis may be, hundreds of MNCs are willing to incur those burdens to be able to pay less tax in the 10 states that allow a WWCR election

- # of companies making WWCR election 2021 (data gathered from state DoRs)
  - DC – 228
  - MA – 94
  - NJ – 119
  - UT – 500-525
  - MT – 1191 (this is the number known to have foreign subsidiaries)

Claim: Complying with mandatory WWCR would be unreasonably complex, burdensome, costly, uncertain, litigious, etc. (6)

- Much of the complexity in complying with WWCR is of MNCs' own making. They create very complex, multi-tiered ownership structures incorporating circular partnerships, LLCs, etc., in no small part to make their tax planning opaque to IRS and state auditors.

- Thus, corporations seeking to avoid WWCR by citing compliance burdens are like the proverbial murderer of his parents who asks the judge to impose a light sentence because he's an orphan.

Claim: Administering/enforcing mandatory WWCR would be unreasonably complicated and burdensome for the Comptroller

- A dozen states mandated WWCR in the early 1980s and believed enough in its benefits relative to its administrative burdens that they agreed to withdraw from it only in the face of threats of federal preemption.

- 10 states currently provide for elective WWCR filing and presumably have significant experience in auditing WWCR returns

- Moving to WWCR would undoubtedly impose significant challenges for the Comptroller's office. It should be given additional resources to hire additional auditors and obtain training for them, to hire people with federal international tax expertise, to hire attorneys to write regulations and other written guidance, to make necessary changes in IT systems, etc. Some of the revenue gained from WWCR should be used to pay for these.

Claim: Administering/enforcing mandatory WWCR would be unreasonably complicated and burdensome for the Comptroller (2)

- Challenges for the Comptroller's office could be mitigated by:
  - Allowing for affiliate group elections in lieu of "unitary business" determinations
  - Providing delayed effective dates for WWCR implementation; SB859 has a tax year 2029 effective date, which is more than adequate
  - Limiting the application of WWCR to companies subject to the federal Corporate Alternative Minimum Tax, with mandatory water's edge combined reporting coupled with permanent GILTI conformity for smaller MNCs