White House proposal re-energizes global talks on corporate tax reallocation

Longstanding multilateral talks being held by the Organisation for Economic Cooperation and Development (OECD) and G20 nations that are aimed at reallocating corporate taxes among countries may have been given a new lease on life this week, with the Biden administration reportedly delivering a fresh negotiating position that would shrink the number of companies impacted but apply the new rules regardless of business sector.

Rethinking Pillar 1

To date, the so-called Pillar 1 negotiations on taxation of the digital economy have focused on reallocating income earned only by consumer-facing businesses and automated digital services, with a goal of taxing multinationals based on where their customers are, regardless of a company's physical nexus. In a proposal obtained by various media outlets on April 8, however, the US pitches a new design that would use quantitative criteria to include no more than 100 of the largest and most profitable multinational groups, "regardless of industry classification or business model."

The US document argues that this simplification would reallocate the same level of profits but with far less complexity and administrative burden than the blueprint the OECD released in October 2020 – and, notably, in a way that is not discriminatory towards US-based companies. (For prior coverage of last October's blueprint, see *Tax News & Views*, Vol. 21, No. 46, Oct. 16, 2020.) The US document also notes that the earlier proposal relied on qualitative determinations about companies' activities that would likely lead to disputes, and it criticized the lack of "clearly defined policy objectives and principles" to distinguish automated digital services and consumer-facing businesses from the rest of the economy.
URL: https://newsletters.usdbriefs.com/2020/Tax/TNV/201016_2.html

This new proposal may capture more companies headquartered outside of the US, and there are still many details to be discussed before a consensus agreement may be reached, but the initial reactions from some key players were positive. The *Financial Times* reported that the finance ministers from France, Germany, the Netherlands, and the United Kingdom all welcomed the Biden administration's move as a decisive step forward.

For many around the negotiating table, the goal of Pillar 1 is to collect taxes from high-tech giants – largely US-headquartered – that are able to profit from sales to customers in jurisdictions where the company may not have a physical presence. To address this concern and ease political pressure from their constituents while these global negotiations occur, a number of countries, especially in Europe, have imposed digital services taxes (DSTs). US lawmakers on both sides of the aisle have been staunchly opposed to these DSTs, and the US Trade Representative (USTR) has found them to be discriminatory and therefore grounds for imposition of retaliatory tariffs. The latest US proposal appears to maintain this stance against DSTs, stating that "stabilizing the [multilateral international tax] architecture requires, among other steps, addressing the proliferation of unilateral measures."

Pascal Saint-Amans, head of tax administration at the OECD, welcomed the US communication, telling the *Financial Times*, "[t]his reboots the negotiations and is very positive. It is a serious proposal with a chance to succeed in both the [international negotiations] and US Congress."

However, any agreement is still a long way from reaching Congress. A treaty or other multilateral instrument would require a Senate vote, and any legislative changes necessary to comply with a global agreement would have to begin in the House.

A boost for Pillar 2?

Word of the new US proposal for Pillar 1 comes on the heels of the Biden administration's explicit support in its Made in America Tax Plan (the financing component of the president's $2 trillion infrastructure package) for a global minimum tax, which is Pillar 2 of the OECD project. Treasury Secretary Janet Yellen said in a speech delivered on April 5 that the US believes a global minimum tax will help "stop the race to the bottom" among nations as Democrats look to increase the US corporate rate. (For an overview of the Made in America Tax Plan, see *Tax News & Views*, Vol. 22, No. 16, Apr. 2, 2021. Also see separate coverage in this issue for details of a Treasury Department report that elaborates on some key elements of the plan.)
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/210402_1.html

"Together we can use a global minimum tax to make sure the global economy thrives based on a more level playing field in the taxation of multinational corporations, and spurs innovation, growth, and prosperity," Yellen said in a speech to the Chicago Council on Global Affairs.

Some countries engaged in the OECD talks will not sign off on a Pillar 2 agreement without also dealing with Pillar 1 – and vice versa – so this week's proposal likely also will give Pillar 2 a second wind.

Ways and Means Republicans weigh in

In the wake of the US's new proposal, House Republican taxwriters on April 8 sent a letter to Secretary Yellen asking for a briefing on the administration's goals; emphasizing the need for "a strong position in favor of the US tax base, workforce, and business community"; and reiterating support for USTR's findings against various DSTs.
URL: https://gop-waysandmeans.house.gov/wp-content/uploads/2021/04/Letter-to-Sec.-Yellen-OECD-4.pdf

The letter also criticized the administration's approach to a minimum tax.

"The US global intangible low-taxed income (GILTI) minimum tax must…be treated as an acceptable minimum tax under the OECD framework," wrote 17 of the 18 GOP members of the House Ways and Means Committee, led by Rep. Kevin Brady of Texas. "We are also very concerned that your negotiating position will permit other countries to enact minimum taxes at rates lower than today's GILTI effective rate, while the Biden administration seeks to double the GILTI rate paid by US- headquartered companies. That result would place American workers and companies at a severe competitive disadvantage versus their foreign peers."

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