Crapo lays out concerns over OECD/G-20 global tax talks

The Senate's top Republican taxwriter this week sent Treasury Secretary Janet Yellen a lengthy missive on the ongoing international tax negotiations involving nearly 140 countries and led through the Organization for Economic Cooperation and Development (OECD) and G-20 member nations, in which he reiterated what he called "the bipartisan objectives and priorities that served as the foundation" for the US's entry into the talks and asked for more details on new proposals the US recently presented to its negotiating partners.

With stakeholders in the talks ambitiously targeting mid-summer for political agreement on a new international framework, members of Congress – as well as US multinational corporations – are eager to understand the current state of play.

In his May 24 letter to Yellen, Sen. Mike Crapo, R-Idaho, the ranking member of the Senate Finance Committee, wrote that "US engagement should be based on achieving results that (1) do not harm US businesses and the workers they employ, (2) do not undermine the United States' tax sovereignty and recognize Congress' constitutional role in setting domestic tax policy, and (3) ultimately protect the US fisc."
URL: https://www.finance.senate.gov/imo/media/doc/crapo_letter_on_oecd_negotations.pdf

Multilateral negotiations through the OECD and G-20 have been in progress for several years now, with the goal of revising international tax rules to reallocate taxing rights among jurisdictions in a way that recognizes the digitalization of the global economy (known as Pillar 1 of the talks) and establishing a global minimum tax (Pillar 2). With Pillar 1 focused on ensuring that companies pay what many countries describe as "their fair share of taxes" in jurisdictions where they earn profits without necessarily having a physical presence, the US has been a leading voice within the group known as the Inclusive Framework (IF) and has worked to prevent US technology companies from being singled out.

Overview of Treasury's proposal

Under the Biden administration, the US recently reinvigorated the negotiations – which had been essentially put on hold by the Trump administration during the global pandemic – by providing a new proposal in April that would significantly change the focus of Pillar 1.

Under the previous OECD blueprints, including one released last October, the new rules being contemplated would have applied to consumer-facing businesses and automated digital services with global revenue above a certain threshold. (For prior coverage, see *Tax News & Views*, Vol. 21, No. 46, Oct. 16, 2020.) The new US proposal – which has not officially been released by Treasury but has been widely circulated – would simplify the plan to include only the world's 100 largest and most profitable multinationals, regardless of sector or country of domicile. (For prior coverage, see *Tax News & Views*, Vol. 22, No. 19, Apr. 9, 2021.) This is generally understood to target companies with over 20 billion euros of global revenue that achieve certain profitability thresholds.
URL: https://newsletters.usdbriefs.com/2020/Tax/TNV/201016_2.html
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/210409_3.html

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In addition, the US called for a “standstill and rollback” approach to the many unilateral digital services taxes (DSTs) that have cropped up in the past several years and endorsed the development of a global minimum tax through Pillar 2 – simultaneously indicating that rate should align with President Biden’s domestic policy goal of a higher 21 percent tax on global intangible low-taxed income (GILTI) as proposed in late March in his American Jobs Plan. More recently, however, Treasury said May 20 that it would accept a global minimum tax of at least 15 percent – with the caveat that “discussions should continue to be ambitious and push that rate higher.” (For prior coverage, see *Tax News & Views*, Vol. 22, No. 26, May 21, 2021.)
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/210521_2.html

Pillar 1 concerns

In its proposal, Treasury emphasized that “the United States cannot accept any result that is discriminatory towards US firms.” However, in his letter to Yellen, Crapo expressed concern that under the US’s new Pillar 1 proposal “a disproportionate amount of the reallocated profits of in-scope companies may be those of market-leading US companies – namely, American technology, pharmaceutical, and consumer products companies that are ‘intangibles-driven.’” He cautioned that that any agreement must be based “on sound international tax principles, and not arbitrary thresholds rooted in politics or popular opinion of the day.”

“Treasury must clearly articulate to Congress the underlying tax policy of its proposed approach and demonstrate why the new strategy justifies ceding US taxing rights over profitable US companies to foreign jurisdictions,” Crapo wrote.

He went on to say that Treasury needs to provide Congress with a detailed analysis of how many US companies would be affected by the proposal, which companies likely would be treated as “in scope,” the magnitude of profits that would be reallocated, and the effect on US tax revenues.

Further highlighting the risk to US technology giants, regardless of their profit margins, French Finance Minister Bruno Le Maire said during a virtual press conference May 26 that one “condition [for France] is to have all big digital companies, being included in the scope” of Pillar 1.

“When I say all important digital companies, it means all important digital companies,” Le Maire said.

Under both the Trump and Biden administrations, US negotiators have insisted that DSTs and similar unilateral measures must be repealed as part of an agreement. Crapo reiterated the importance of this condition, noting that EU says it intends to move forward with a bloc-wide DST this year regardless of the OECD talks and that EU Tax Commissioner Paolo Gentiloni says it will be designed in a way to work within Pillar 1. (In response to these statements, Pascal Saint-Amans, the director of the OECD’s Center for Tax Policy and Administration, said at a conference April 30 that “if [the EU DST] were to qualify as a DST or be considered as discriminatory by the US, it would be dead upon arrival.”)

Crapo asserted in his letter to Yellen that “[t]hese EU statements are directly counter to the OECD’s key objective of the current negotiations” and that “[i]t would be unacceptable for the United States to endorse

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any agreement that would allow DSTs or similar unilateral measures to continue to be imposed on US companies."

Pillar 2 concerns

Similarly, Crapo said the US must not accept an agreement that provides an exception from Pillar 2 for any country and noted that the OECD's Saint-Amans recently indicated China might be considered for such a carve-out.

Crapo's concern stems from a comment by Saint-Amans in response to a question at the April 30 conference about objections from China that a global minimum tax agreement could hurt its efforts to boost manufacturing and R&D through tax incentives. Saint-Amans replied that "there may be ways through some form of carve-out on Pillar 2, to address the Chinese concerns." He also mentioned carve-outs that could exempt France's patent box. However, Saint-Amans told Law360 in an email May 25 that his comments had been "clearly misunderstood" and that no country would get a specific carve-out.

"The current conversation explored different carve-out options which could have different impacts," he said.

More details needed

Crapo's letter laid out a number of questions for Yellen for which he requested a response by June 4. These include requests for specific data, such as which companies would be in scope for Pillar 1 under certain revenue and profit margin assumptions, and broader questions about the benefits to the US under Pillar 1 and "the sound tax principles underlying Treasury's proposed Pillar 1 approach."

In a question unlikely to receive a favorable response, he also asked if the administration would "commit not to take the…step of making GILTI far more stringent before other countries even take their first step of enacting a global minimum tax." (Crapo and other Republicans similarly raised this issue at a May 25 hearing with Lily Batchelder, the nominee to be Treasury's assistant secretary for tax policy. See separate coverage in this issue for details.)

Status of negotiations

The G-7's finance ministers will meet virtually May 28 and in person the week of May 31, and a number have expressed optimism that a political agreement within this group – and then within the G-20 and the broader Inclusive Framework – is within reach.

"We are in the final phase of getting an agreement," German Finance Minister Olaf Scholz said May 26 in a virtual press conference with France's Le Maire. "It's not done yet but looks like we will be there very soon."

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