Finance Committee Republicans raise concerns over global tax pact

Senate Finance Committee Republicans this week reiterated to the Treasury Department a number of prior concerns—and raised several new ones—about the commitments the Biden administration made on behalf of the US in last year's international tax agreement led by the OECD and G-20. In a letter to Treasury Secretary Janet Yellen sent February 16, Finance Committee ranking member Mike Crapo of Idaho and his GOP colleagues on the panel argued that there have been "a number of alarming developments" in the past two months that lead them to fear the global deal will erode both US competitiveness and tax revenue.
URL: https://www.finance.senate.gov/imo/media/doc/finance_republicans_oecd_follow-up.pdf

The agreement, which nearly 140 countries signed in October, seeks to reallocate some of the taxing rights of countries (Pillar 1) and to ensure that multinational corporations are paying a minimum level of tax globally (Pillar 2). (For prior coverage, see *Tax News & Views*, Vol. 22, No. 47, Oct. 15, 2021. An alert that summarizes the agreement is available from Deloitte Tax LLP.)
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/211015_2.html
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/211015_2_suppA.pdf

This week's letter, which follows an earlier one that Finance Committee Republicans sent Yellen last December 22, focuses on Pillar 2 and raises concerns related to the Model Rules released by the OECD at the end of December and what GOP taxwriters view as more preferential treatment that other countries have negotiated for their current tax regimes.
URL: https://www.finance.senate.gov/imo/media/doc/republican_letter_to_treasury_oecd.pdf

"Without evidence to the contrary, we are increasingly concerned that Treasury has negotiated a deal that will harm US businesses and jobs," the senators wrote.

The OECD agreement calls for multinationals around the world to pay a minimum tax of 15 percent on all of their earnings. The current US regime imposes tax on global intangible low-taxed income (GILTI) at a rate of 12.5 percent, but congressional Democrats are seeking to raise it to 15 percent as part of their proposed Build Back Better Act. (That legislation cleared the House last November but is currently stalled in the Senate.) According to the Model Rules, if a company is deemed to have paid less than 15 percent on its domestic earnings, another jurisdiction may have the right to impose a "top-up tax," as well as disallow tax incentives from which the company legally benefited.

"Ultimately, under the Treasury-negotiated agreement, foreign countries could effectively capture the benefit of congressionally-provided tax credits and deductions targeted at domestic innovation, investment, and job creation," the GOP letter stated.

Republicans pointed to the UK as an example of other countries that have successfully negotiated preferential treatment for their own domestic tax laws and companies. According to the UK's draft Pillar 2 consultation document, its research and development (R&D) credit would not be eliminated or reduced when a UK company's tax payment is considered.

“In stark contrast,” the GOP taxwriters wrote, “the US R&D credit would not receive the same preferential treatment, nor would the low-income housing tax credit, new markets tax credit, or foreign-derived intangible income. Congress specifically enacted these provisions to encourage US jobs and investment. Yet, this administration appears intent on thwarting Congress’s constitutional taxwriting authority, including its authority to provide effective incentives that both parties agree are meaningful and necessary to promote US investment and innovation.”

Republicans have for months criticized the Democratic proposal to raise the rate on GILTI to 15 percent before other countries have implemented their own minimum tax regimes, and they raised that point once again in this week’s letter.

“. . . [W]e believe the focus on Congress to make the US global minimum tax harsher when it in a number of ways already exceeds the standards of the Pillar 2 minimum tax is misplaced,” they wrote. “The United States has had a global minimum tax for four years. Rather than mounting a pressure campaign against Congress, the focus should be on whether other countries enact a global minimum tax in the first place.”

The Finance Committee Republicans also reiterated their concerns that US participation in the global tax agreement “would surrender a share of the US tax base to foreign countries,” despite forecasts by Treasury officials that the global minimum tax will benefit the US fisc over the long term. The senators contend that Treasury “has declined to provide any data or analysis of the effect of the OECD agreement on US revenue . . . so that independent estimates and analysis can be developed and provided to members of Congress on a bipartisan basis.”

Seeking answers to what they said are “repeated” and “unanswered” questions about the potential implementation and impact of the OECD agreement, the Republican senators criticized both Treasury and the Democratic majority in Congress for failure to hold public consultations or hearings on the global deal, and they advocated for the relevant Treasury officials to appear before the Finance Committee.

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