Republican tax leaders raise additional concerns over global tax agreement

Congressional Republican criticism of the Biden administration's approach to an overhaul of global tax rules continued this week as GOP members of the Senate Finance Committee added to their recent exchange of letters with Treasury officials to decry the administration's "insufficient level of engagement and consultation" with Congress in negotiating in last year's international tax agreement led by the OECD and G-20; meanwhile, the top GOP taxwriters in both chambers pointed to recent news out of the EU as a reason to step back from implementing the pact.

Insufficient engagement

After receiving two lengthy replies from the Treasury Department in March to letters sent last December and in February addressing concerns with both pillars of the global agreement, Senate Finance Committee Republicans on March 31 sent another missive to Treasury Secretary Janet Yellen, saying that the level of engagement they perceive from her department "does not convey that Treasury views our input as necessary or critical." (For details on the two previous letters and Treasury's responses, see *Tax News & Views*, Vol. 23, No. 13, Apr. 1, 2022.)
URL: https://www.finance.senate.gov/imo/media/doc/finance_republicans_yellen_follow-up_3_31.pdf
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/TNV/220401_3.html

Responding to the Treasury's claims that it had consulted with Congress in the course of its negotiations on the global tax agreement, Finance Committee Republicans commented in their March 31 letter that "briefings provided by Treasury to certain [c]ongressional staff . . . merely informed certain staff of negotiations after they had occurred, and in most cases, after developments were publicly announced and the corresponding documents were publicly released." According to the GOP taxwriters, "[a]fter-the-fact briefings with committee and leadership staff do not constitute meaningful consultation."

The Republicans went on to note multiple elements of the agreement the administration signed on to last October that are "in direct opposition" to the stated views of the GOP. Among the specific issues cited are the agreement's more favorable treatment of refundable tax credits over nonrefundable credits, which are more prevalent in the US; its failure to include a provision deeming current US law to be compliant under the Pillar 2 global minimum tax; and the administration's proposal to eliminate the US's foreign-derived intangible income (FDII) provision. (The letter noted that FDII is supported by a number of Democrats, as well as Republicans.)

The GOP letter also criticized the request by Assistant Secretary for Legislative Affairs Jonathan C. Davidson for input on the marketing and distribution safe harbor in Pillar 1 (reallocation of global taxing rights) in his March 1 letter to the senators.

"[T]he Assistant Secretary does not provide any data on the 'tradeoffs,' specific options on the table, or any meaningful information to allow us to provide constructive feedback," the senators said in their latest letter. "Such actions do not reflect a Treasury Department that believes Congress should play a meaningful role in these negotiations, or that its views should be taken into account."

The senators emphasized that they believe the administration should revisit certain aspects of the global deal. Although more than 140 countries signed on to the agreement last October, the taxwriters said they believe "there is still time to change course" because "the clearly unrealistic [implementation] timeline is already slipping."

"As we have stated many times, implementation of this agreement would require [c]ongressional action, including Senate approval of a multilateral tax treaty," they wrote, urging Treasury to conduct in-person briefings and hearings.

Speedbump in Europe

The timeline for implementing the global agreement was pushed even further into the spotlight this week as the EU's finance ministers failed on April 5 to reach the necessary unanimity on the Pillar 2 minimum tax proposals in a draft directive put forth by the European Commission at the end of December, and modified in March by France (in its capacity as the current head of the Council of the EU) to have a delayed effective date. Under the proposed delay, one of the three principal rules of Pillar 2, the income inclusion rule (IIR), would go into effect in 2024, and another, the undertaxed payment rule (UTPR), in 2025. Each of these is a year later than originally anticipated.

It is not yet clear whether the France will try again for unanimity before it hands off leadership of the Council of the EU to the Czech Republic on June 30. Many in the international tax world believe that if the EU fails to get an agreement on Pillar 2 by the end of 2022, it will signal trouble for Pillar 2 around the world.

The EU's failure so far could be problematic for the Biden administration as it seeks to have the US conform to Pillar 2 this year by raising the rate on the current minimum tax—imposed on global intangible low-taxed income (GILTI)—to 15 percent and applying GILTI on a country-by-country basis. Republicans—and some Democrats—have raised concerns about having the US implement Pillar 2 before other countries do so, arguing that this will put US companies at a competitive disadvantage.

The administration's challenge was highlighted by an April 5 statement from the senior Republicans on the Senate Finance Committee and the House Ways and Means Committee—Sen. Mike Crapo of Idaho and Rep. Kevin Brady of Texas, respectively—who said that said the holdup in the EU is a reason for the US to put on the brakes.
URL: https://www.finance.senate.gov/ranking-members-news/crapo-brady-warn-against-partisan-pitfall-laden-path-forward-on-global-minimum-tax

"EU finance ministers have again failed to agree on the global minimum tax, further evidence that the Biden [a]dministration was premature in taking a victory lap on the OECD [a]greement," Crapo and Brady said. "If the EU is already hitting roadblocks, no one should expect countries like China to implement this deal anytime soon. The Biden [a]dministration has neglected to consult with Congress in this process, and the result is a bad deal for American businesses and workers. The [a]dministration should abandon its failed go-it-alone approach and work with Congress to negotiate a deal that protects US economic strength."

— Storme Sixeas
Tax Policy Group
Deloitte Tax LLP