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Hungary faces international backlash after pulling support for global minimum tax pact

After scuttling the EU's most recent attempt to implement a global minimum tax developed through the OECD, Hungary is facing threatened backlash from the US and from its European neighbors. But key Republicans in Congress have praised the country's holdout against the OECD agreement and have blasted the Biden administration for what they characterized as a "transparent attempt to bully Hungary into hasty action."

In the wake of Hungary's unexpected veto on June 17 of the EU vote on a draft directive to implement a 15 percent minimum tax on companies with global revenue greater than 750 million euros—Pillar 2 of the global tax agreement reached by 140 nations last October—the US Treasury Department announced its intention to terminate the tax treaty with Hungary that has been in place for decades. A Treasury spokesperson said the US has grown increasingly unhappy with the treaty as Hungary's 9 percent corporate tax rate makes the agreement's benefits lopsided. Hungary's stance on the OECD agreement, which is a priority for the Biden administration, proved to be the last straw. (For prior coverage, see *Tax News & Views*, Vol. 23, No. 21, June 17, 2022.)
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/TNV/220617_2.html

"Hungary made the US government's longstanding concerns with the 1979 tax treaty worse by blocking the EU directive to implement a global minimum tax," a Treasury spokesperson told *Tax Notes* July 8. "If Hungary implemented a global minimum tax, this treaty would be less one-sided; refusing to do so could exacerbate Hungary's status as a treaty-shopping jurisdiction, further disadvantaging the United States."

GOP cheers on Hungary

Key congressional Republicans, however, criticized the announcement about the tax treaty, accusing the administration of trying to bully Hungary and "interfere in an internal European Union policy-making process."

"The move stands in stark contrast to the Biden administration's rhetoric about improving multilateral tax cooperation," said top Senate Finance Committee Republican Mike Crapo and top Senate Foreign Affairs Committee Republican Jim Risch, both of Idaho, and top House Ways and Means Committee Republican Kevin Brady of Texas in a statement July 11. "We are very concerned that Treasury's go-it-alone approach to the global tax negotiations will lead to more uncertainty, more disputes among countries, and fewer jobs and opportunities for Americans."
URL: https://www.finance.senate.gov/ranking-members-news/crapo-brady-risch-on-treasurys-desperate-attempt-to-force-global-tax-agreement

Following Hungary's veto, the country's Minister of Foreign Affairs and Trade, Péter Szijjártó, said in a radio interview, "US Republicans and the Hungarian government agree that the smaller the tax on labor, the bigger the opportunities for economic growth."

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The criticism of Treasury's move followed a letter two senior GOP House taxwriters sent to Hungary's US ambassador thanking the nation for its "wisdom" in opposing the EU directive.

"We have similar concerns that the OECD's current Pillar 2 rules lack important details and would likely harm our own global competitiveness," Reps. Adrian Smith, R-Neb., and Mike Kelly, R-Pa., wrote to Ambassador Szabolcs Takács on June 20, adding, "We question the prudence of the entire world moving forward toward a system that forces countries to relinquish their sovereign taxing authority while simultaneously creating new international tax disputes between countries."
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/TNV/220715_2_suppA.pdf

The pair also emphasized that under the US political system, Congress is a necessary partner for implementing certain aspects of the agreement that the Biden administration signed onto, asserting that the administration "has not consulted directly with Congress or demonstrated the ability to assemble a majority to enact the tax law changes necessitated by these agreements."

Since last October when the agreement was inked through the OECD and G-20, Republican taxwriters have decried what they say is a lack of consultation with Congress by the administration and a lack of revenue analysis for the impact on the US fisc of Pillar 1, which would reallocate global taxing rights. (For prior coverage, see *Tax News & Views*, Vol. 23, No. 13, Apr. 1, 2022, and *Tax News & Views*, Vol. 23, No. 14, Apr. 8, 2022.)
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/TNV/220401_3.html
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/TNV/220408_2.html

Democrats have been hoping to use a budget reconciliation vehicle that will not require any GOP votes to pass some legislative changes needed for US implementation of Pillar 2, including an increase in the tax rate on global intangible low-taxed income (GILTI) to 15 percent and a calculation of GILTI on a country-by-country basis rather than on a global basis. These provisions were included in the Build Back Better Act the House passed last November but have been stuck in the Senate, where the support of all 50 Democrats is necessary to advance the measure under fast-track budget reconciliation protections. (See separate coverage in this issue for an update on the status of Build Back Better negotiations in the Senate. A detailed discussion of the tax provisions in the House-approved Build Back Better Act is available from Deloitte Tax LLP.)
URL: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-provisions-in-the-build-back-better-act.pdf

EU-0, Vetoes-2

The EU has encountered multiple roadblocks in its effort to implement the global minimum tax, which requires unanimity by the 27 member states of the union. Initially, Poland vetoed the directive at a May 24 meeting, insisting that the implementation of Pillars 1 and 2 have a binding link. When Poland relented and voted in favor at the June 17 meeting, Hungary reversed its stance and blocked passage. Many speculated that Hungary might be using its vote as leverage to unlock coronavirus recovery funds the EU is withholding, but hope for an about-face similar to Poland's were short-lived as Hungary's parliament on June 21 overwhelmingly adopted a resolution rejecting the EU directive.

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Since then, pressure has been growing in the European Parliament to find a workaround and move the draft directive without Hungary's support. A resolution adopted July 6 calls for the European Commission to find alternative ways to adopt the directive and to look at gradually introducing majority voting on tax matters, rather than allowing a single member state to dictate outcomes. In the shorter term, however, French Finance Minister Bruno Le Maire told reporters July 1 that discussions are under way "on alternative solutions which would allow member states which wish to do so to put the minimum tax mechanism in place without Hungary."

One such option that some—including France and Germany—have proposed is the use of what is known as an "enhanced cooperation mechanism," which allows at least nine EU member states to move forward as a last recourse if no agreement can be found at the EU level. However, an EU official told *Tax Notes* that this would not be a quick fix, either, and advised that if urgency is required "it's better to work on plan A and engage with Hungary."

Detractors of the agreement in the US have pointed to the EU's difficulty in moving Pillar 2 implementation as a reason for the US to delay its own process, arguing that being a first mover on the new rules will put the US and its companies at a disadvantage. Critics in the EU have similarly pointed to the US's own struggles to pass necessary legislation for Pillar 2 as a reason to delay, creating a circular challenge.

How about Pillar 1?

Turning to the more complicated Pillar 1 of the global agreement, which will entail far more rules and multilateral cooperation, the OECD on July 11 released a *Progress Report on Amount A of Pillar One* and is accepting comments on the consultation paper until August 19.
URL: https://www.oecd.org/tax/beps/progress-report-on-amount-a-of-pillar-one-july-2022.pdf

Conceding to what had been widely viewed as an unrealistically ambitious 2023 implementation timeline for the reallocation of global taxing rights, the drafters revised the schedule for Amount A and propose to stabilize the rules this October, complete work related to the needed multilateral convention (MLC) and its explanatory in time for a signing ceremony in the first half of 2023, and enable the MLC to enter into force in 2024 "once a critical mass of jurisdictions . . . have ratified it."

The OECD said it will release the rules on the administration of the new taxing rights, including the tax certainty-related provisions, before members of the Inclusive Framework—the countries participating in the global tax project—meet in October. The OECD also stated that the work on Amount B of Pillar 1, a marketing and distribution safe harbor, will be completed by the end of this year.

— Storme Sixeas
Tax Policy Group
Deloitte Tax LLP

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