EU agrees to implement 'Pillar Two' global minimum tax

The European Union on December 15 secured a long-sought unanimous agreement to implement the global minimum tax component—known as Pillar Two—of a 2021 OECD agreement through an EU directive. Pillar Two is designed to ensure a 15 percent global minimum level of taxation for multinational enterprise groups with annual revenues greater than 750 million euros. The directive requires EU member states to transpose the directive into domestic law before the end of 2023, with the result that the Income Inclusion Rule of Pillar Two will take effect in 2024, and the Undertaxed Profits Rule (UTPR) will become effective in 2025.

European Commissioner for Economy Paolo Gentiloni touted the agreement on a global corporate minimum tax as "a win for fairness, a win for diplomacy, and a win for multilateralism."

Congressional Republicans skeptical

In the US, however, congressional Republicans this week renewed their criticism of the Biden administration's role in negotiating the tax and what the GOP sees as the Treasury Department's encouragement of other countries to tax US-based multinationals "in a manner inconsistent with our bilateral treaties."

The EU's inability to achieve consensus before now was a key argument for keeping legislative changes to the US's own tax on global intangible low-taxed income (GILTI) that would have moved GILTI towards Pillar Two conformity out of the Inflation Reduction Act (P.L. 117-169), which was signed into law this past August. Sen. Joe Manchin, D-W.Va., and others argued that increasing the GILTI rate and applying it on a country-by-country basis rather than a blended one—steps the administration has contended are necessary to bring the US into compliance—would put US multinationals at a competitive disadvantage when it wasn't yet clear that other countries were going to move in the same direction.

(The United Kingdom last month said it would start collecting a 15 percent minimum tax in 2024.)

House Ways and Means Committee Chairman Richard Neal, D-Mass. welcomed the prospect of action in the European Union and said he hoped it would increase the pressure on Congress to act.

"I'm hopeful that good sense will prevail here," Neal said December 13, noting that the US will need to find a way to comply with the global agreement to avoid a repeat of the unilateral digital services taxes and retaliatory actions that led to the OECD project.

Another factor many Democrats hope will force Congress's hand is the so-called top-up tax in the Pillar Two framework that would allow other countries to apply an Undertaxed Profits Rule to multinational companies if the companies' effective rates are less than 15 percent in their home countries. The thinking is that US lawmakers will want to see that any additional taxes imposed on US multinationals are paid to the US Treasury rather than to a foreign country, and that this will lead to US conformity.

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But congressional Republicans made clear in a letter to Treasury Secretary Janet Yellen this week that such pressure is unlikely to sway the GOP, as they renewed their criticism of the administration's role in the OECD negotiations.
URL: https://gop-waysandmeans.house.gov/wp-content/uploads/2022/12/sfc-sfrc-wm-r_letter_to_secretary_yellen-1.pdf

"While some may believe that implementation by foreign countries of the model rules, including the UTPR, will lead the United States to follow suit, Congress's hand will not be forced," wrote Senate Finance Committee ranking member Mike Crapo, R-Idaho; Senate Foreign Affairs Committee ranking member James Risch, R-Idaho; House Ways and Means ranking member Kevin Brady, R-Texas; and the Republican members of the Finance and Ways and Means committees. "Nor will Congress sit idly by as US companies and profits are taxed in a manner inconsistent with US law and our bilateral tax treaties. This should have been clear to both the administration and its international negotiating partners before, but it should be even more apparent now with the incoming divided government in the United States."

The letter goes on to add that "[w]hile the administration may have agreed to allow foreign countries to tax US companies in a manner inconsistent with our tax treaties, Congress has not. The administration must recognize the limitations of what it can and cannot unilaterally agree to in international tax negotiations. Congress also expects the administration to defend current US tax law as passed by Congress, not the law the administration wants it to be."

An aide to Ways and Means Committee Republican Jason Smith of Missouri, who is one of three House GOP taxwriters vying to chair Ways and Means when Republicans take the House majority in 2023, told *Politico* this week that Smith believes the full implementation of the minimum tax only serves to benefit countries such as China. The staffer added that Smith plans to investigate what he sees as unconstitutional negotiations of international tax agreements by the Biden administration if he becomes chair.

OECD seeks comments on 'Pillar One Amount B' consultation document

In other developments, the OECD on December 8 released a public consultation document related to the main design elements of Amount B under Pillar One of the proposed global tax pact. Public comments on the consultation document will be accepted through January 25, 2023.

Pillar One of the OECD global agreement would expand a country's authority to tax profits from companies that make sales into their country but don't have a physical presence there. Amount B, one of the components of the Pillar One tax, provides for a simplified and streamlined approach to the application of the arm's length principle to in-country baseline marketing and distribution activities. It would apply to all multinational businesses that undertake "routine" distribution activities.

According to the OECD, the December 8 release is a relatively "early stage" document and several options included in the draft are open for further debate, so the Amount B proposal could change in important respects before it is finalized. The OECD is targeting mid-2023 to release the final Amount B deliverable and 2024 for application and implementation of Amount B.

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The OECD released a progress report on the other component of the Pillar One tax—Amount A—in July. (For prior coverage, see *Tax News & Views*, Vol. 23, No. 23, July 15, 2022.)
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/TNV/220715_2.html

Find out more: An International Tax Alert discussing key provisions of the new public consultation document is available from Deloitte Tax LLP.
URL: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/dttl-tax-alert-us-14-december-2022.pdf

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