

## Finance Committee Republicans press IRS chief counsel nominee on Pillar Two, Inflation Reduction Act guidance

Marjorie Rollinson, President Biden's pick to serve as the next chief counsel for the Internal Revenue Service, fielded questions from Senate Finance Committee members—particularly on the Republican side of the aisle—on the OECD's Pillar Two initiative, guidance related to tax provisions in the Inflation Reduction Act of 2022 (P.L. 117-169), the agency's audit priorities, and a range of other topics during a September 28 hearing to consider her nomination.

The chief counsel is one of only two posts at the IRS that require Senate confirmation—the other is the commissioner—and plays a key role in developing guidance and regulations on new tax legislation. The position has been vacant since President Biden took office in January of 2021. William Paul, the current principal deputy chief counsel, has been serving as acting chief counsel in the interim.

Rollinson, who is currently retired, spent much of the past 36 years at a Big Four professional services firm, most recently as deputy director of its national tax department. However, she also served in the IRS chief counsel's office from 2013 to 2019, finishing her time there as associate chief counsel, international.

### Pillar Two

Finance Committee member Todd Young, R-Ind., echoing the concerns that many Republicans in both chambers of Congress have voiced in recent months, contended that Pillar Two of the OECD-led global tax pact, which calls for jurisdictions to impose a minimum tax of 15 percent on certain large multinational corporations and includes several backstop rules to ensure these entities pay at least that level of tax on all their income worldwide, "uniquely disadvantages US businesses." He pressed Rollinson for her view on how the minimum tax would affect operations of US companies.

Rollinson replied that the chief counsel's office plays a very limited role in negotiating Pillar Two. (The Treasury Department leads that effort.) As to the specific impact of the minimum tax on large US multinationals, Rollinson said, without elaboration, that she "can understand why Pillar Two evolved."

**UTPR:** Turning to more specific aspects of Pillar Two, Young asked about the undertaxed profits rule (UTPR), a final backstop to the minimum tax that some jurisdictions participating in the OECD's multilateral tax agreement intend to adopt. He contended that the UTPR would be particularly detrimental to US multinationals because it essentially would "allow foreign countries to tax US businesses on their US activities."

Rollinson commented that she "needed to get much more information about" the UTPR, since it was not under discussion during her previous stint in the chief counsel's office and is not an issue she has followed closely since leaving the government.

Young, for his part, replied that he would "find it challenging to support [Rollinson's] nomination" if she disagreed with the premise that the UTPR would pose undue burdens on US enterprises.

**Treatment of nonrefundable tax credits:** Young also brought up the less favorable treatment under Pillar Two for nonrefundable tax credits—such as the US’s credit for research and development expenses—compared to refundable credits. (Nonrefundable credits are more common in the US, while refundable credits are more common in jurisdictions outside the US, and the disparate treatment of the two types of credits under the Pillar Two rules continues to be a sore point for Republican and Democratic taxwriters alike.)

When Young asked specifically if the current Pillar Two Model Rules act as a disincentive for companies looking to invest in research and development activities in the US, Rollinson replied that she would “need to know a lot more about those rules before [answering] that.”

Rollinson’s response prompted Young to assert that Pillar Two “will be a disincentive to US companies investing in R&D in the US at a time that China is offering very generous incentives for research and development to companies that relocate there.”

### **Inflation Reduction Act guidance**

Finance Committee ranking member Mike Crapo, R-Idaho, expressed concern that the Treasury Department and the IRS have taken positions in recent guidance implementing provisions in last year’s Inflation Reduction Act that are not supported by the plain language of the statute.

Crapo stated that in the case of the Inflation Reduction Act’s electric vehicle tax credit “the IRS and Treasury proposed rules that had no statutory basis and simply ignored the statutory deadline for issuing guidance—which had the effect of temporarily preventing new requirements from taking effect and allowing scores of credits to be claimed inappropriately.” He also noted that “[t]here are other recent instances where the IRS and Treasury have ignored unambiguously stated effective dates and delayed certain provisions from taking effect.”

Crapo asked Rollinson how she as chief counsel would address a situation in which the language of a statute is clear but the White House seeks a different outcome “based on claims of administrative complexity or political expediency.”

Rollinson replied that tax law frequently is unclear; however, “to the extent the law is clear,” Treasury and the IRS “need to stay within the parameters of the law.” The role of the chief counsel, she said, is to “advocate for what we think the law says” and to make sure that published guidance is administrable.

**OIRA review of tax regulations:** Addressing guidance issues at a more general level, Finance Committee Republican James Lankford, R-Okla., asked Rollinson if she believes that the Office of Information and Regulatory Affairs (OIRA) which is part of the White House Office of Management and Budget (OMB) should play a role in overseeing the tax regulatory process. (Treasury and the OMB announced in June that the budget agency will no longer be involved in reviewing tax regulations issued by the IRS, rescinding an agreement put in place during the Trump administration in 2018 that required tax regulations to be reviewed by OIRA in

addition to the Treasury Department. For prior coverage, see *Tax News & Views*, Vol. 24, No. 24, June 16, 2023.)

[URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2023/TNV/230616\\_3.html](https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2023/TNV/230616_3.html)

Rollinson replied that a key role of the chief counsel's office is to ensure that guidance issued by the IRS is determined to be valid and that she would "do everything [she] can to ensure" that result.

### **New enforcement funding and IRS's audit focus**

Sen. Marsha Blackburn, R-Tenn., raised questions about the 10-year mandatory funding allocated to the IRS under the Inflation Reduction Act to beef up its enforcement efforts as well as modernize its information technology and improve its customer service. (As enacted, the Inflation Reduction Act provided the agency with \$80 billion in new funding, although roughly \$20 billion of that amount will be rescinded as part of a "handshake" deal between President Biden and Speaker Kevin McCarthy, R-Calif., when they negotiated the Fiscal Responsibility Act, the debt limit deal that was signed into law this past June.)

Blackburn noted that the IRS has stated that its expanded audit program for high-income taxpayers will focus on individuals with income of \$400,000 or more and that Commissioner Daniel Werfel has told the Finance Committee that the \$400,000 threshold would be determined based on "total positive income." (For prior coverage, see *Tax News & Views*, Vol. 24, No. 14, Apr. 21, 2023.)

[URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2023/TNV/230421\\_2.html](https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2023/TNV/230421_2.html)

Blackburn contended, though, that the term "total positive income" is vague and could be interpreted to mean *gross* income—a standard that potentially would sweep middle-class owners of small businesses into the audit net—and she asked Rollinson for clarity on how the chief counsel's office would interpret the agency's audit threshold.

Rollinson responded that she intended to work with IRS leadership to understand the parameters for its expanded audit program, noting that it is "important that the IRS is transparent about the standard so that everyone understands what is meant."

Sen. Steve Daines, R-Mont., expressed concern that the IRS's recently announced plans to use its new funds to ramp up audits of passthrough entities could ensnare "Main Street businesses." (The IRS noted in its announcement that it is also focusing its audit efforts on high-income individuals, large corporations, and tax promoters in addition to partnerships.)

[URL: https://www.irs.gov/newsroom/irs-announces-sweeping-effort-to-restore-fairness-to-tax-system-with-inflation-reduction-act-funding-new-compliance-efforts](https://www.irs.gov/newsroom/irs-announces-sweeping-effort-to-restore-fairness-to-tax-system-with-inflation-reduction-act-funding-new-compliance-efforts)

Finance Committee Chairman Ron Wyden, D-Ore., told Daines that the IRS is using the Inflation Reduction Act funds to pursue "millionaires and billionaires" who are refusing to file income tax returns. Wyden also cited a letter he sent to Commissioner Werfel on September 28 in which he states that "[n]ew data provided to the Finance Committee by the IRS has identified staggering levels of noncompliance and criminality by high-income non-filers."

**URL:**  
[https://www.finance.senate.gov/imo/media/doc/wyden\\_letter\\_to\\_irs\\_on\\_high\\_income\\_nonfilers\\_final\\_092823.pdf](https://www.finance.senate.gov/imo/media/doc/wyden_letter_to_irs_on_high_income_nonfilers_final_092823.pdf)

## **Implications of a government shutdown**

Chairman Wyden asked Rollinson about what a shutdown of the federal government would mean for taxpayers, noting that her confirmation hearing was being held as Congress was struggling to either approve legislation that would fund federal departments and agencies for fiscal year 2024, which begins October 1, or agree on a short-term funding patch that would keep the government running while lawmakers pursue a more durable appropriations package. (See separate coverage in this issue for details on the status of those negotiations.)

Rollinson replied that she began and ended her prior career at the IRS in the midst of a government shutdown and explained that, from the chief counsel's perspective, a lapse in funding for the coming fiscal year will require the agency to make difficult decisions "about what work we can get done while the government is shut down." Those decisions, she said, "will have an impact on ongoing litigation . . . and guidance to the field."

## **Next steps**

The Finance Committee has not yet scheduled a vote on whether to advance Rollinson's nomination. Assuming she receives a favorable report from the panel, her nomination would then be sent to the full Senate for a confirmation vote.

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