NATIONAL TAXPAYERS UNION

Summary of NTU's Letter to the Treasury Department on Pillars One and Two

Key Takeaways

- NTU wrote to Deputy Assistant Secretary for Multilateral Tax Itai Grinberg, responding to his July request for input on implementation of the recent OECD Inclusive Framework (IF) agreement on international tax policy changes (Pillars One and Two)
- Our letter summarizes NTU's previous engagement with the IF, our concerns with the tenets of the July Pillars One and Two agreements, and our recommendations for Biden administration action, supported by existing data and estimates from OECD, Treasury, the Penn-Wharton Budget Model, Tax Foundation, and more
- Policy recommendations to administration officials include ensuring the new U.S. GILTI rate is no higher than the Pillar Two global minimum, maintaining a generous substance-based carve-out in GILTI, keeping FDII or immediately clarifying a replacement, lowering the threshold for residual profit redistribution under Pillar One, and allowing for a longer implementation horizon for both pillars

NTU's Concerns With Pillar One

1. Global policymakers are designing Pillar One to punish specific U.S. companies (i.e., carve-ins); a backwards way of formulating fair and efficient tax policy;
2. Repeal of all DSTs seems to be a global afterthought, rather than the absolute prerequisite it should be (see the EU's ongoing digital levy pursuits, and recent comments from OECD's Saint-Amans);
3. The proportion of global profits proposed to be redistributed is too high (uniquely affects U.S. MNCs, according to Nikkei analysis; amount of profits reallocated may yet go higher);
4. Revenue threshold ~$300,000 for taxing rights may increase complexity and compliance burdens; and
5. Administrability remains a concern absent further details from the July agreement.

NTU's Concerns With Pillar Two

1. The Pillar Two agreement could undermine U.S. tax policy prerogatives, such as expensing/accelerated depreciation;
2. U.S. has not yet won presumption that GILTI is IIR-compliant (i.e., country-by-country reporting remains a sticking point);
3. Economic competitors may yet win exclusions and concessions in Pillar Two that disadvantage U.S. MNCs (see efforts from China);
4. The 15-percent minimum is too high given the existing U.S. tax environment, and may go higher (see U.S. and France push to raise minimum rate); and
5. The IF implementation timetable is much too short -- 14 months to effective date (when some TCJA international tax regulations took 2.5 years and counting).

NTU's Concerns With Biden Administration Proposals

1. Proposed higher domestic corporate and GILTI rates will disadvantage U.S. companies and workers relative to foreign competitors (and could actually ***increase*** profit shifting, according to Tax Foundation);
2. Eliminating QBAI is particularly unwise given Pillar Two's agreed-upon substance-based carve-out (imagine a global regime in which European MNCs benefit from a five-percent payroll and tangible assets carve-out from an IIR, whereas the U.S. GILTI rate has no carve-out for U.S. MNCs);
3. Moving to country-by-country GILTI calculations will increase complexity and compliance costs (not to mention challenges with U.S. state GILTI taxes);
4. The administration has been silent on a replacement for FDII, on the FTC haircut, and on GILTI/FTC carryforwards (could have significant impacts on effective tax rates paid by U.S. MNCs, and yet as of this writing the administration has been publicly silent); and
5. The administration has a lower threshold for applying SHIELD than the threshold proposed for UPTRs under Pillar Two (another potential competitive disadvantage when comparing SHIELD to potential UPTRs with economic competitors).

NTU Recommendations for Administration/Legislative Action

1. Maintain a 21-percent corporate tax rate (NTU estimates a 28-percent corporate rate could raise taxes on taxpayers making less than $100,000 by $100 billion over the next decade);
2. Ensure the GILTI rate is no higher than what is needed to comply with Pillar Two (i.e., 15 percent, not 21 percent to 26.25 percent);
3. Maintain a substance-based carve-out that is as generous as Pillar Two allows (i.e., five percent of payroll and tangible assets);
4. Keep FDII, or clarify a replacement for FDII so that U.S. exporters have confidence they will not be disadvantaged under the IF;
5. Fight attempts by U.S. economic competitors to win company-, industry-, or sector-specific exceptions in Pillar Two (especially from competitors who are also adversaries on a national security basis);
6. Lower the threshold of residual profits redistributed by Pillar One so that it is not a mere revenue grab-bag for the rest of the world (focus on simplicity and certainty first, and revenue last);
7. Allow for a longer implementation horizon for both Pillars One and Two (NTU believes at least an additional one or two years is necessary); and
8. Continue to heed NTU's recommendations from its December 2020 comments to OECD (on dispute resolution, promulgation of and transparency for OECD guidance, and ongoing review of the new international tax system with input from government and non-government stakeholders).

Additional NTU Resources

- Full Letter to Treasury (August 2021)
- Comments to the OECD Centre for Tax Policy and Administration (December 2020)
- Initial Reactions to the 130-Country, 15% Corporate Minimum Tax Agreement (July 2021)
- Issue Brief: Shaky "Pillar 2" Tax Scheme from Overseas Could Crush Economic Recovery (September 2020)