EUROPEAN UNION

Five EU Member States Pursuing Delayed Pillar 2 Implementation

by Sarah Paez

Five EU member states have told the European Commission that they plan to avail of the possibility to delay implementation of the pillar 2 directive, a top EU tax official said.

Estonia, Latvia, Lithuania, Malta, and Slovakia have requested delayed implementation for pillar 2 global minimum tax rules, and the commission does not expect that number to increase before the end of the year, said Benjamin Angel, director of direct taxation at the commission's Directorate General for Taxation and Customs Union. The EU pillar 2 directive provides this option for member states with fewer than 12 ultimate parent entities of in-scope multinational enterprise groups.

Angel, who was speaking at an October 25 panel at the annual Congress of the International Fiscal Association in Cancun, Mexico, said that so far, 17 member states have announced the drafting of legislation transposing the directive. He added that the commission had hoped the number of member states with pillar 2 draft legislation would be higher by this point in the year.

EU member states must transpose the pillar 2 directive (Council Directive (EU) 2022/2523) by December 31 to ensure the rules start taking effect January 1, 2024. Hungary became the latest member state to publish pillar 2 draft legislation on October 17.

EU member states are among the nearly 140 jurisdictions in the 143-member OECD/G-20 inclusive framework on base erosion and profit shifting that reached broad political agreement in 2021 on a plan to overhaul the global corporate tax system in response to the increasing digitalization of the economy.

Pillar 2 of the plan calls for the global anti-base-erosion (GLOBE) rules, which establish a top-up taxation framework targeting MNEs with annual group revenue of €750 million. The GLOBE rules would ensure that those MNEs pay an effective tax rate of 15 percent in the jurisdictions in which they have constituent entities. Countries are also free to adopt domestic minimum top-up taxes that qualify as being in line with the GLOBE rules.

So far, Angel said, the commission has not identified any contradictions between the OECD administrative guidance on pillar 2 issued this year and the EU directive, which was adopted by the EU council in December 2022.

"The [EU pillar 2] directive is not something that can be easily changed," Angel said. "Let's be honest, the last year has been quite a roller coaster, so I think the political appetite to reopen [the directive] will be close to zero. In that sense, it is important that member states and the commission, when participating [in] the OECD work, keep always relying on the directive [and] make sure that the development of the administrative guidance remains at all times compatible with what is foreseen in the directive."

Remaining BEFIT Concerns for Pillar 2

Some panelists questioned how the commission's Business in Europe: Framework for Income Taxation (BEFIT) proposal might interact with the pillar 2 directive, possibly creating loopholes.

BEFIT would create a centralized framework that calculates a single combined tax base and then allocates the aggregated tax base to multinational and domestic groups in scope of the pillar 2 rules, while allowing smaller groups to voluntarily apply BEFIT rules if it suits them.

Georg Kofler, professor of international tax law at Vienna University of Economics, said that there are ongoing discussions in the business community, including over whether a loss in one EU country and profit in another would trigger minimum taxation under the pillar 2 directive. Eric Kemmeren, a professor at Tilburg University, asked Angel if a company that wanted to get rid of its pillar 2 obligations could simply enter into BEFIT, the rules of which are mandatory for companies in scope of pillar 2 and voluntary for those outside the scope.

Angel said that the BEFIT proposal implies that "the company, for the sake of calculating pillar 2, should be handled at Union level, not at national level, because of the cross-border compensation of losses."

If a company applies the calculation of pillar 2 at the national level, it could possibly end up with a top-up tax because of the cross-border compensation of losses, Angel said. "In essence, BEFIT is pushing the corporate income tax for countries in scope — sorry for saying a rude word — to the federal level, and as such, it should be mirrored in the calculation to be done under pillar 2," he added. ■

Firms Will Struggle With Pillar 2 and BEFIT, Business Rep Says

by Stephanie Soong

Global minimum tax rules and a common EU corporate tax system will likely overload companies' capacity for compliance because the interplay between the regimes could be overly complex, a business representative warned.

There are some things to like about the European Commission's "Business in Europe: Framework for Income Taxation" (BEFIT) proposal, like the removal of withholding taxes and cross-border loss compensation, Georg Geberth, vice chair of the BusinessEurope tax policy working group, said October 25. He spoke during a tax symposium in Brussels organized by the European Parliament and the European Commission.

However, the BEFIT initiative, on top of pillar 2 rules, would lead to a lot of complexity, according to Geberth. The proposal would require in-scope multinational enterprises to calculate their tax bases with fewer adjustments compared with the pillar 2 global minimum tax rules, "but there are different adjustments," Geberth said. "So why not take the pillar two adjustments because we have to do them anyhow?"

Geberth also noted that EU member states would also be able to make tax base adjustments. "So if you take this in total . . . I think it would overstretch our capabilities, which are already extremely stretched by pillar 2," he said.

There's still time for businesses to discuss the BEFIT proposal with the commission because it would take effect in 2028 if adopted, Geberth said. "But we have a lot of complexities, which also come from the interplay between pillar 2 and BEFIT, which may result in double taxation," he said. "This is difficult to assess as long as pillar 2 has not been implemented."

As a result, businesses have to wait until pillar 2 has been adopted before assessing the true impact of the BEFIT proposal, he added. EU member states must transpose the pillar 2 directive (Council Directive (EU) 2022/2523) by December 31 to ensure the rules start taking effect January 1, 2024.

The BEFIT proposal, which the commission published September 12, aims to cut compliance