

## Top House Republicans back Belgian legal challenge to Pillar Two

House Republicans this week offered up a reminder of their longstanding opposition to the global minimum tax agreement struck through the OECD by more than 140 countries—including the US—by backing a legal challenge to the agreement in Belgian court and reiterating their willingness to unleash retaliatory measures against foreign jurisdictions that use the deal to “target Americans.”

The international agreement known as Pillar Two seeks to ensure large multinational corporations pay a minimum tax of 15 percent in every country in which they operate, and it allows countries to levy top-up taxes if a company isn’t taxed at that level in its home country or in the parent jurisdiction—an aspect of the regime known as the undertaxed profits rule (UTPR). Congressional Republicans, who argue that the Biden administration overstepped its authority in negotiating and signing on to the deal, have especially opposed the UTPR, under which foreign jurisdictions can seek to collect top-up taxes from US-headquartered multinationals beginning in 2026.

Taking aim at a directive for all EU member states to implement Pillar Two, the American Free Enterprise Chamber of Commerce this summer filed a legal challenge to the UTPR law in Belgium; and in a September 17 letter, the GOP’s 25 Ways and Means Committee members and top four Republican House leaders echoed their support for the challenge, saying the UTPR “would surrender US tax sovereignty, allowing unelected foreign bureaucrats to dictate tax policy, and help foreign governments arbitrarily extract hundreds of billions of dollars from the US economy.”

**URL:** <https://waysandmeans.house.gov/wp-content/uploads/2024/09/US-House-Letter-to-OECD.pdf>

The letter, sent to OECD Secretary-General Mathias Corman, went on to argue that China—which, like the US, has not adopted Pillar Two—will exploit the deal’s “loophole for direct government subsidies,” making the UTPR ineffective against Chinese companies. At the same time, the Republicans say the UTPR will allow other countries to “claw back important US tax incentives,” such as the research and development tax credit, and “attack the operations of American companies in third-party jurisdictions.” Under the agreement, nonrefundable tax credits such as those more typically used in the US are treated as reducing a corporation’s tax payment, but refundable credits, which are more common in other countries (for example, the UK’s R&D tax credit) are not, so US companies are at greater risk of falling below the 15 percent threshold. This has been a bipartisan point of contention in Congress, with Democrats also continuing to urge the administration to reach a renegotiated solution on the treatment of tax credits.

This week’s letter is far from the first time GOP legislators have threatened to take retaliatory “countermeasures” against jurisdictions that seek to wield the UTPR against US-based companies. In 2023, Ways and Means Committee Chairman Jason Smith, R-Mo., introduced the Defending American Jobs and Investment Act (H.R. 3665), under which the tax rate on US income of wealthy investors and corporations in countries identified as having “extraterritorial taxes or discriminatory taxes” such as UTPRs would increase by 5 percentage points each year for four years, to a maximum of 20 percentage points above the base. (For prior coverage, see *Tax News & Views*, Vol. 24, No. 19, May 26, 2023.) And taxwriter Ron Estes, R-Kan., has introduced the Unfair Tax Prevention Act (H.R. 4695) to tighten the US base erosion and anti-avoidance tax

(BEAT) rules for companies based in jurisdictions that impose a UTPR or similar tax on US multinationals. (For prior coverage, see *Tax News & Views*, Vol. 25, No. 27, July 21, 2023.)

URL: <https://www.congress.gov/118/bills/hr3665/BILLS-118hr3665ih.pdf>

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Neither bill has been taken up in the taxwriting committee this Congress, but Smith has pointed to them as “a clear warning to any nation tempted to exploit the success of our workers and businesses for its own gain,” and they are viewed as markers of the type of action Republicans might take if they hold on to their majority in the House and recapture the Senate and the White House in this November’s elections.

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