

Industry Group Voices Support For Side-by-Side Pillar 2 Plan

by Alexander Rifaat

The National Association of Manufacturers threw its weight behind Treasury efforts to finalize a deal that would allow U.S.-parented companies to be exempt from some pillar 2 provisions.

In an October 28 letter addressed to Treasury Secretary Scott Bessent, Charles Crain of NAM said the organization “strongly supported” the adoption of a plan that would see the OECD-brokered global tax reform initiative and the U.S. tax system sit “side-by-side,” with U.S.-parented entities being exempt from pillar 2 global anti-base-erosion rules, but still subject to qualified domestic minimum top-up taxes.

“Manufacturers strongly support the Administration’s efforts to implement this deal, which will help ensure fair treatment on the global taxation of U.S. companies without the need for retaliatory tax measures that would have negatively impacted foreign investment into the United States,” Crain wrote.

The OECD inclusive framework on base erosion and profit shifting, signed in 2021 by 136 countries, aimed to combat tax avoidance and create a level playing field by adopting, among other things, a 15 percent global minimum tax on corporations with annual revenues in excess of €750 million, also known as pillar 2.

While the United States under the leadership of former President Biden and Treasury Secretary Janet Yellen played a key role in crafting the OECD global tax deal and pushed for its implementation, President Trump and Republicans in Congress have criticized the framework as violating territorial sovereignty and harmful to American businesses.

After Republican threats to introduce a new code section that would allow the United States to retaliate against countries with “discriminatory taxes,” the United States and its G7 counterparts agreed to arrange the side-by-side system in June, although it is yet to be finalized. ■

Government Shutdown Puts ERC Appeals on Hold

by Katie Lobosco

The government shutdown is exacerbating problems some taxpayers were already experiencing when trying to claim the employee retention credit made available to qualifying businesses during the COVID-19 pandemic.

Thousands of claims have yet to be processed, and taxpayers that have appealed an ERC disallowance faced slow response times from the IRS even before the federal government shut down October 1, limiting the agency’s operations.

Now, any planned appeals conferences that coincided with the shutdown will have to be rescheduled. Plus, the staff at the Taxpayer Advocate Service — which usually helps practitioners with administrative problems — aren’t working during the shutdown.

“It makes a problem that was already happening that much more challenging,” said Rebecca Sheppard of Frost Law, who works with several clients seeking to claim the ERC.

Roughly half of IRS employees aren’t working because of the lapse in government funding. The government shutdown has lasted over four weeks with no end in sight.

Two-Year Deadline

Practitioners have told *Tax Notes* that they saw a surge in ERC claim audits earlier this year.

Appeals hearings were just starting to get scheduled for the protests Sheppard said she filed for her clients fighting those rejections — and now they’ll have to be rescheduled. The delay could put people at risk of missing the two-year statutory deadline to file suit for refund in federal court.

Even before the shutdown, “not a ton” of appeals conferences were happening, Sheppard said.

Trump administration efforts to reduce IRS staff earlier in the year led to a 28 percent decrease in the number of people working in the Independent Office of Appeals as of June, according to the national taxpayer advocate.

The Appeals Office, which is meant to resolve tax disputes without lengthy litigation, handles a

variety of matters, including those collection appeals.

Existing Backlog

The ERC program was available to qualifying businesses that continued to pay their employees during the COVID-19 pandemic. But after receiving an influx of potentially fraudulent claims, the IRS paused processing between September 2023 and August 2024, and a backlog ensued.

TAS said more than 597,000 claims were unprocessed as of April, the latest data available. The longer it takes to process some of those claims, the more interest the government will owe taxpayers due a refund.

The number of businesses waiting for an ERC claim to be processed is likely even greater because professional employer organizations file one claim on behalf of many small and medium-size businesses, said Pat Cleary of Vensure Employer Solutions.

The government shutdown is likely prolonging their wait, but another month or so isn't too significant for employers that filed a claim back during the pandemic. Deadlines to file ERC claims were scheduled for April 15, 2024, for 2020 claims and April 15, 2025, for 2021 claims.

"We've already been waiting for five years — and counting," Cleary said. ■

IRS CEO Role Incites Worry About Constitutionality, Agency Risk

by Trevor Sikes and Benjamin Valdez

The appointment of an IRS CEO is in contravention to the Constitution and poses a significant risk to the stability and reputation of the agency, observers say.

"The Constitution assumes that it will be followed," but in the case of Social Security Administration Commissioner Frank Bisignano being named IRS CEO, "it's pretty clear that it hasn't been followed," David A. Super of Georgetown Law told *Tax Notes*.

Treasury announced October 6 that Bisignano will oversee day-to-day operations at the IRS, under Treasury Secretary Scott Bessent, while continuing to lead the SSA. Bessent has been serving his own dual role after becoming acting IRS commissioner following the sudden ouster of President Trump's choice to lead the agency, former Rep. Billy Long.

Under the Constitution, appointments must be made with the advice and consent of the Senate unless they're inferior officers, noted Super, who questioned whether Bisignano's new position falls under that categorization.

"Is this an inferior official? I don't think it is if they're a CEO," Super said, adding that Treasury's statements suggest that Bisignano is "going to be issuing orders, he's going to be the top decision-maker — that's not an inferior officer."

Super pushed back against the notion that Bisignano doesn't need to be nominated because he is working under Bessent, pointing out that there are many Treasury officials reporting to other Senate-confirmed officials who still require the same confirmation.

Super also said that Bisignano's role as IRS CEO could be in jeopardy through multiple avenues.

The Senate could make a resolution to disapprove and delegitimize Bisignano's role as IRS CEO — firing him from the job — or they could include a provision in an appropriations bill that says "\$0 shall be provided for any CEO of the IRS who is not the commissioner," Super said.

A scary possibility is that "someone could sue and say that because [Bisignano] was not constitutionally appointed that any decisions he