Govt may defer Pillar 2 tax rules as it sees no net gain

Revenue benefit pegged at just ₹200 crore per year, no match for loss of sovereign rights

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THE GOVERNMENT MAY bide its time on the implementation of the multilateral Pillar 2 tax regime, even though it would eventually include an enabling provision in the Income Tax Act for this, as part of the proposed redrafting of the six-decades-old legislation.

The cautious approach is warranted in view of an analysis that revealed revenue gain from the adoption of the minimum 15% corporate tax regime for large multinational enterprises would be minimal, according to an official source. At the same time, the regime, anchored by the OECD, involves compromising sovereign taxation powers, the source pointed out.

To implement the Pillar 2 regime, the necessary rules are required to be notified, and this could be deferred.

"An internal analysis shows the government stands to gain merely ₹100-200 crore of additional revenue after adopting Pillar 2, and that too under specific circumstances," an official said. "The gains are not much, and surrendering the (sovereign) right to make laws for such a small amount is a big price to pay," the person added.

However, since India, along with about 140 other countries, has signed OECD's relevant multilateral convention, the government may have to eventually implement the rules that aim to stymie profit shifting by multinational corporations (MNCs) to low-tax jurisdictions to minimise their tax outgo. *FE* had reported earlier that India may end its ambivalence on the minimum 15% corporate tax rule for MNCs and include an enabling provision in the Income Tax Act in the coming months. The I-T Act, 1961, is currently under a comprehensive review, which is likely to be completed by January.

The Pillar 2-GloBE Rules — which provides for a global minimum tax for multinational enterprises (MNEs) — aim to deter profit shifting by ensuring that these firms maintain a minimum Effective Tax Rate (ETR) of 15% across all jurisdictions in which they operate. MNEs are defined as those entities with a global turnover exceeding 750 million euros.

So far, 30 of the 140 countries that signed the relevant multilateral convention have embraced Pillar 2. The US is yet to implement the regime, but some European Union countries are already on board.

To be sure, the effective corporate tax rate in India is 25.17%, and this rate will remain unchanged even after the adoption of Pillar 2. The new regime will only allow the government to collect additional tax revenue, in the form of "top-up tax", from companies who are artificially reporting profits in low-tax jurisdictions.

Consider for instance, an MNE headquartered in India pays corporate tax at a rate of 9% in the UAE through its subsidiary. The remaining 6%, it will have to pay as top-up tax, if both the UAE and India adopt the Pillar 2 regime. However, official sources say the design of Pillar 2 makes the possibility of revenue gains limited because of one specific provision — the Qualified Domestic Minimum Top-up Tax (QDMTT), which curbs the country's ability to benefit from its regime's adoption.

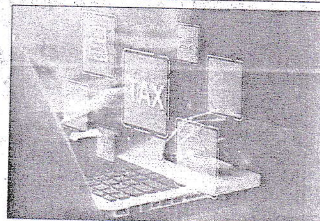
In the example cited above (of India and the UAE), the top-up tax may either be paid to India or to the UAE, depending on whether the low-tax jurisdiction (in this case UAE) has introduced QDMTT or not. In case, QDMTT is not invoked, India will have the right to collect the extra 6%. But in reality, that may not be the case, say officials.

Tax experts, nevertheless, say the aim of Pillar 2 adoption is to prevent tax abuse by MNEs, rather than collect additional revenue and align India's corporate taxation laws with that of international tax measures.

"Implementation of Pillar 2 tax policy principles will be quite complementary to domestic tax policy, far from being a threat to sovereign right to legislate taxes. This is because Pillar 2 outcomes are required to be legislated through domestic law procedures and ratification methodologies," said Sumit Singhania, partner, Deloitte India. Yeeshu Sehgal, head of tax markets, AKM Global, says Pillar 2 aims to establish a global minimum tax rate, which prevents a "race to the bottom" where countries compete by offering ever-lower tax rates. "It ensures that multinational enterprises pay a fair share of taxes, regardless of where they operate. This creates a more equitable system for businesses of all sizes," he added.

GLOBAL TAX CODE

- The Organisation for Economic Co-operation and Development (OECD) has categorised its tax plans for large multinational companies in two pillars
- **Pillar One** is focused on changing where companies pay taxes and **Pillar Two** establishes a global minimum tax



- It proposes **15%** global minimum tax
- The US is among 30-odd countries to implement Pillar 2 so far
- Pillar 2 tax regime aims to deter profit shifting by MNCs to low-tax jurisdictions
- It will apply to large multinational businesses with revenues of at least 750 million euro per year