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Legislative update: Senate Finance releases revised text of "Build Back Better Act"

Overview

U.S. Senate Finance Committee Chairman Ron Wyden (D-OR) on December 11, 2021, released updated legislative text related to the "Build Back Better Act."

Read the text of the bill [PDF 1.7 MB] (1,180 pages) released by the Finance Committee (the tax-related items begin on page 275).

The "Build Back Better Act" is currently under consideration in the Senate, having been previously approved by the House on November 19, 2021. Read a KPMG report [PDF 2.4 MB] (210 pages) that provides analysis and observations about the tax proposals in the House-approved "Build Back Better Act"

The revised language introduced yesterday by Senate Finance reflects modifications to the House bill. According to Chairman Wyden, the Senate Finance Committee's modification "includes both technical and policy changes, as well as modifications to comply with Senate budget rules."

Yesterday's draft legislation is likely to change as it moves through the Senate process, including possibly being modified by a manager's amendment and/or amendments during consideration on the Senate floor.

The Joint Committee on Taxation (JCT) has not released a revenue table with respect to the updated text.

Tax rates

As with the version of the bill passed by the House, the legislation proposed by the Senate Finance Committee would not increase the corporate income tax rate (21%), individual ordinary income rate (top rate of 37%), or the capital gains rate (20%).

Corporate minimum tax

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The Senate Finance draft retains the proposed new financial statement-based corporate minimum tax but would make certain changes. In particular, the legislation would add a new adjustment to financial statement Income for income, costs, and expenses relating to defined benefit pensions. This adjustment would allow for book numbers to be backed out of the calculation, and amounts taken into account for tax purposes to be used instead.

International provisions

The Senate Finance draft would make important changes to the international title of the bill. First, the legislation would modify the interest limitation of section 163(n) to add an election to allow taxpayers to use adjusted basis instead of EBITDA to determine the share of the group net interest expense.

To offset the cost of the taxpayer-favorable changes to section 163(n), the legislation would modify the anti-inversion rules of section 7874. Specifically, the legislation would lower the stock ownership threshold for having a surrogate foreign corporation from 60% to 50%. In addition, the legislation would change the stock ownership test for treating an acquiring foreign corporation as a domestic corporation from 80% to 65%. Further, the threshold for testing whether there is a "substantially all" acquisition under the inversion rules would be expanded by looking at acquisitions of all of a domestic corporation's or domestic partnership's properties or by looking just at properties constituting a trade or business. Finally, acquisitions of substantially all of a foreign partnership's properties that are effectively connected with a United States trade or business would be potentially subject to the inversion rules.

Other areas

The draft legislation includes other modifications to the House bill in several areas, including changes to the energy provisions, changes to the low-income housing tax credit, and a deletion of the House-approved nicotine tax.

What's next?

This legislation is likely to change as it moves through procedural steps in the Senate.

A manager's amendment could make changes to the bill as could the so-called "vote-a-rama" process in the Senate when any Senator can offer unlimited amendments related to issues in the bill.

The Senate has other pending business, including finalizing the National Defense Authorization Act (NDAA), that may or may not delay immediate action on the "Build Back Better Act." With the scheduled holiday recess approaching, the Senate must act expeditiously if the bill is to be enacted in 2021.

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