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TaxNewsFlash

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Legislative update: Senate passes reconciliation bill with tax provisions

The U.S. Senate this afternoon, August 7, 2022, passed budget reconciliation legislation (H.R. 5376) that includes significant tax law changes.

All 50 Senate Democrats voted for the legislation, while all 50 Senate Republicans voted against it. Vice President Harris cast the tie-breaking vote in favor of the legislation.

Overview

The Senate bill is significantly smaller in size—and includes far fewer revenue-raising provisions—than the reconciliation bill the House passed in November 2021 under the "Build Back Better" moniker (the "House BBBA"). Read **KPMG's report (November 2021)** [PDF 2.4 MB] on the House BBBA.

Significant tax revenue raisers in the Senate bill include the following:

- An alternative minimum tax (AMT) on certain large corporations (applies to tax years beginning after December 31, 2022)
- A tax on stock buybacks (applies to repurchases of stock after December 31, 2022)
- Reinstatement of Superfund taxes on crude oil and petroleum products (effective January 1, 2023)
- A two-year extension of the section 461(l) loss limitation rules for noncorporate taxpayers (extends the current law limitation to tax years beginning before January 1, 2029)

The bill passed by the Senate today also reflects changes to draft legislative text that was previously released on July 27, 2022, by Majority Leader Chuck Schumer (D-NY) and Senator Joe Manchin (D-WV) (the "July 27 Draft Text"). Changes to tax provisions include:

- The deletion of a provision regarding the treatment of partnership interests held in connection with the performance of services (i.e., "carried interest")
- The addition of the tax on stock buybacks
- Significant narrowing of the scope of the proposed corporate AMT (both through updated text and through a floor amendment)
- Addition of the two-year extension of the section 461(l) loss limitation as a revenue raiser

The Senate bill continues to include a substantial package of energy and climate related provisions; tax provisions relating to health care; and provisions for an approximately $79.6 billion increase in the funding of the IRS over a 10-year period. The Congressional Budget Office (CBO) has indicated in a footnote to its official cost estimate of the bill that the increase in IRS funding for tax enforcement activities would result in increased revenues of approximately $203.7 billion over the 10-year period even though that revenue is not included in its official estimate. [Listen to a June 24, 2022 **KPMG Podcast: Spend money to make money: IRS funding proposals**.]

Although the Joint Committee on Taxation (JCT) released a revenue table with respect to the July 27 Draft Text, the JCT has not yet released its estimates of the bill that passed the Senate today. Thus, official information with respect to the revenue "scores" of provisions that were modified or added during Senate floor consideration is not yet available.

KPMG observation

Notably, the Senate bill does not include the substantial number of international tax changes that the House BBBA had proposed. The House bill would have modified "global intangible low-taxed income" (GILTI), the base erosion and anti-abuse tax (BEAT), interest limitations, and a number of other international provisions in significant ways. Many of those changes would have aligned the U.S. tax system more closely with those proposed in the ongoing BEPS 2.0 project of the Organisation of Economic Cooperation and Development (OECD). By excluding those changes, it is not clear where the Senate bill leaves the U.S. system relative to the changes being contemplated outside the United States (in particular with regard to Pillar Two).

Also, unlike the House BBBA, the Senate bill does not include changes to the limitation on the "state and local tax" (SALT) deduction, and it also does not address the treatment of research and experimentation (R&E) expenditures under section 174.

Background on the budget reconciliation process

The Senate currently is split equally (50-50) between Republicans and Democrats (counting as Democrats two Independents who caucus with Democrats—Senators Bernie Sanders (VT) and Angus King (ME)). As vice president of the United States, Kamala Harris is president of the Senate and may vote in the Senate in the case of a tie. Thus, the Democrats control the Senate and its legislative agenda. Senate cloture rules, however, generally require 60 votes to end debate before Senators can proceed to vote on legislation. Thus, absent 60 votes, one or more Senators can delay, and effectively stop, movement on legislation through "filibustering."

Importantly, however, special "budget reconciliation" procedures allow some types of legislation—including certain tax legislation—to move through the Senate by only a majority vote, without being subject to a filibuster. Reconciliation procedures are set forth in the Congressional Budget Act of 1974 (as amended) and include complex and intricate rules that can affect the design and substance of legislation. For more information on the budget reconciliation process, read **KPMG's February 2021 report** [PDF 2.7 MB] on the Biden Administration and the 117th Congress.

In August 2021, the House and Senate put reconciliation into play by agreeing to a joint budget resolution that set forth revenue and spending goals for the federal budget for the year that began October 1, 2021, and that will end September 30, 2022. Read ***TaxNewsFlash*** for prior coverage. At that time, congressional Democrats were seeking to use the budget reconciliation to advance legislation under President Biden's "Build Back Better" initiative. The budget resolution allowed for up to $3.5 trillion in new spending and, in effect, instructed the House and Senate tax-writing committees to offset the cost of spending they approved within their jurisdictions, including the tax incentive and benefit provisions, and to raise an additional $1 billion—a small amount given the scale of the overall package.

Soon after adoption of the budget resolution, the House Ways and Means Committee began marking up its recommendations for provisions to be included in House reconciliation legislation. On September 15, 2021, the Ways and Means Committee concluded its mark-ups of items within its jurisdiction. Among other things, it approved a substantial tax title with more than a trillion dollars in tax cuts and spending and more than two trillion dollars in gross tax increases. Read a KPMG report on the Ways and Means revenue recommendations: ***TaxNewsFlash***. The House Budget Committee then packaged these recommendations together with recommendations from other House committees for a possible House bill with an estimated cost of approximately $4.5 trillion.

Before voting on a House bill, however, with the approval of the Biden Administration, House Democrats cut the size of the bill substantially and made significant changes to the tax proposals that Ways and Means had previously recommended. These changes included deleting some significant revenue raisers (such as proposed individual and corporate rate increases); adding other revenue raisers (such as a tax on stock buybacks and a new corporate minimum tax); and including a provision relating to the limitation on the SALT deduction provided by the 2017 tax law (Tax Cuts and Jobs Act (TCJA)). The House approved the modified bill (the "House BBBA") on November 19, 2021, by a vote of 220 to 213, with all House Republicans opposing the bill. Read a **KPMG report** [PDF 2.4 MB] on the tax provisions in the House bill.

In December 2021, Senate Finance Committee Chair Ron Wyden (D-OR) released draft updated legislative text related to the Build Back Better Act (the "SFC BBBA Draft"). This draft included modifications to some of the tax proposals in the House BBBA, including changes to the new corporate AMT proposed in the House BBBA as well as changes to some energy provisions. Read ***TaxNewsFlash***. The SFC BBBA Draft was not acted on by either the Senate Finance Committee or the full Senate. Instead, shortly after its release, it became apparent that there was not yet political consensus among all 50 Democratic Senators on the substance of a possible reconciliation bill.

Months later, on July 27, 2022, Senate Majority Leader Schumer and Senator Manchin announced that they had reached an agreement on tax, climate change, energy, and health care provisions to be included in the "Inflation Reduction Act of 2022." Read ***TaxNewsFlash*** for text of the July 27 draft. The Senate began to consider a modified version of this bill under the rules of budget reconciliation on Saturday, August 6, 2022. Amendments relating to tax provisions were also adopted during floor consideration. As a result, as indicated earlier in this report, there are some significant differences between the final Senate bill and the July 27 Draft Text.

What's next?

House leadership has indicated that the House will return to vote on the Senate bill this coming Friday, August 12, 2022. Read the **Floor Schedule Update** issued by House Majority Leader Steny Hoyer on August 5, 2022.

If the House were to approve the Senate-passed bill with no modifications, the legislation then would be sent to President Biden for his expected signature. In the seemingly unlikely event, the House were to approve a bill that was modified in any way from the bill passed by the Senate, then any differences would need to be resolved, and both the House and Senate would need to pass identical versions of the legislation before it could be transmitted to the President.

Documents

- **Text of the Senate bill** [PDF 1 MB] (755 pages) as released on August 6, 2022, prior to amendments offered on Senate floor.
- **Text of amendment** [PDF 183 KB] offered on Senate floor and adopted by a vote of 51-50 [modifies amendment listed below to change its revenue offset].
- **Text of amendment** [PDF 81 KB] offered on Senate floor and adopted by a vote of 57-43 [modifies bill's AMT provisions].

Upcoming special report

KPMG will provide an analysis and observations regarding the Senate bill in a future report.

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