



# GMS Flash Alert



2021-273 | November 5, 2021

## United States - House Democrats Release Modified Build Back Better Act

On November 4, 2021, the Rules Committee of the U.S. House of Representatives voted to approve H.R. 5376, “Build Back Better Act” (“the Act”), the \$1.75 trillion budget reconciliation measure containing proposals for corporate and individual tax reforms.<sup>1</sup> The House floor consideration of the Act is scheduled to begin today. KPMG will be releasing a detailed analysis of these proposals in the coming days.

### WHY THIS MATTERS

After over a month of negotiations between the White House and Congressional Democrats over the Biden Administration’s Build Back Better Act proposal, the House appears set to vote on the Act. If passed by the House and Senate, and signed into law by the president, the Act would make significant modifications to U.S. tax law that will affect cross-border employees and global mobility programs.

### Background

The House has taken up the work on the Biden Administration’s “Build Back Better” framework, President’s Biden’s “human infrastructure” proposal that would make investments in child care and pre-school, home care, housing, clean energy and climate investments, among other policy priorities.<sup>2</sup>

In September, the House Committee on Ways and Means successfully reported the tax title of the Build Back Better Act out of committee (“the September proposal”).<sup>3</sup> As reported in [GMS Flash Alert 2021-241](#), the September proposal would have increased the top marginal individual income tax rate, increased the top capital gains rate, imposed a new 3-percent surcharge, modified the foreign tax credit limitation, and created a new monthly refundable child tax credit, among other corporate and individual tax reforms.

© 2021 KPMG LLP, a Delaware limited liability partnership and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved. Printed in the U.S.A. NDPPS 530159

On October 28, the House Rules Committee released a modified version of the Build Back Better Act, which dropped many provisions from the September proposal and made significant changes to the bill.<sup>4</sup>

The Act released today is similar in many respects to the version released on October 28, but includes significant additions and modifications.

## Individual Income Tax Proposals Included in the Act

The Act includes the following proposals that may impact individual taxpayers, including cross-border employees or international assignees, and global mobility programs:

- Increase and extend the temporary limitation on the deduction for state and local taxes from \$10,000 to \$80,000 (\$40,000 if a married individual filing a separate return) for tax years 2021 through 2030, and set the limitation at \$10,000 (\$5,000 if a married individual filing a separate return) for tax year 2031.
- Impose a tax equal to 5 percent of a taxpayer's modified adjusted gross income (MAGI) in excess of \$10 million and an additional tax of 3 percent of a taxpayer's MAGI in excess of \$25 million.
- Modify the Child Tax Credit, including:
  - extend and modify the Child Tax Credit and advance payment for 2022; and
  - make the Child Tax Credit fully refundable after 2022.
- Modify the Foreign Tax Credit (FTC), including:
  - require the FTC limitation be determined on a country-by-country basis; and
  - disallow excess FTCs to be carried back one year.
- Modify the application of the Net Investment Income Tax to trade or business income of certain high-income individuals.
- Limit excess business losses of noncorporate taxpayers.

The Act proposes a number of modifications relating to retirement plans and individual retirement accounts (IRAs), including:

- Impose a contribution limit for individual retirement plans of high-income taxpayers with large account balances;
- Increase the minimum required distributions for high-income taxpayers with large retirement account balances;
- Modify the tax treatment of rollovers to Roth IRAs and accounts;
- Modify the statute of limitations with respect to IRA noncompliance;
- Treat IRA owners as disqualified persons for purposes of prohibited transactions rules.

The Act also includes a number of green energy, energy efficiency, and alternative vehicle incentives for individuals.

## Provisions in the September Proposal Dropped from the Act

Notably, the Act released today by the Rules Committee does not contain a number of individual income tax-related items that were included in the September proposal, including:

- Individual ordinary income rate increases;
- Individual capital gains and qualified dividends income rate increases;
- Limit on deduction of qualified business income of certain high-income individuals; and
- Termination of the temporary increase in the unified credit for estate tax purposes.

---

### KPMG NOTE

KPMG LLP (U.S.) is actively monitoring the progress of these proposals through the legislative process and will endeavor to advise of any significant developments.

---

### FOOTNOTES:

- 1 The Rules Committee Print of the Act is available [here](#). An approved amendment to the manager's amendment is available [here](#). A section-by-section summary of the Rules Committee Print of the Act is available [here](#).
- 2 See The White House, "[President Biden Announces the Build Back Better Framework](#)," (October 28, 2021).
- 3 For a complete analysis of the September proposal, see "[Build Back Better Act](#)" tax proposals, as approved by Ways and Means: [KPMG summary and analysis](#)," a publication of KPMG LLP (U.S.).
- 4 See *TaxNewsFlash*, "[Legislative update: House Rules Committee releases updated version of the "Build Back Better Act" \(initial impressions\)](#)," (October 29, 2021) for an overview of the changes between the September proposal and the House Rules Committee's October 28 proposal. *TaxNewsFlash* is a publication of KPMG LLP (U.S.).

\* \* \* \*

**The above information is not intended to be "written advice concerning one or more Federal tax matters" subject to the requirements of section 10.37(a)(2) of Treasury Department Circular 230 as the content of this document is issued for general informational purposes only.**

**The information contained in this newsletter was submitted by the KPMG International member firm in United States.**

[www.kpmg.com](http://www.kpmg.com)

[kpmg.com/socialmedia](http://kpmg.com/socialmedia)



© 2021 KPMG LLP, a Delaware limited liability partnership and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved. Printed in the U.S.A. NDPPS 530159

The KPMG name and logo are registered trademarks or trademarks of KPMG International. The KPMG name and logo are trademarks used under license by the independent member firms of the KPMG global organization.

KPMG LLP is the U.S. firm of the KPMG global organization of independent professional services firms providing Audit, Tax and Advisory services. The KPMG global organization operates in 147 countries and territories and has more than 219,000 people working in member firms around the world.

Each KPMG firm is a legally distinct and separate entity and describes itself as such. KPMG International Limited is a private English company limited by guarantee. KPMG International Limited and its related entities do not provide services to clients.

Flash Alert is a GMS publication of KPMG LLP's Washington National Tax practice. To view this publication or recent prior issues online, please click here. To learn more about our GMS practice, please visit us on the Internet: click here or go to <http://www.kpmg.com>.