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Corporate Tax Hikes for Biden's Infrastructure Plan

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On March 31, 2021, President Joe Biden unveiled a $2 trillion infrastructure and economic recovery plan (**American Jobs Plan**) to strengthen the post-pandemic economy. The American Jobs Plan focuses on increasing federal spending to fix highways, electric grids, broadband, schools and childcare facilities, manufacturing, and R&D investments, among other areas. As an offset for the American Jobs Plan, the White House also introduced the "Made in America Tax Plan" (**Tax Plan**), which aims to increase the corporate tax rate to 28% and proposes other significant international tax changes. The Tax Plan expects to raise over $2 trillion over the next 15 years and reduce the deficit permanently.

Specific Provisions of the Tax Plan

Tax Rates on Domestic and Offshore Profits

The Tax Plan would increase the corporate tax rate from 21% to 28% and include other measures to end the preferential tax rates for offshore profits. Thus, the Tax Plan would increase the tax rate for certain active income of controlled foreign corporations (**CFCs**) known as global intangible low-taxed income (**GILTI**) to 21%. Currently, GILTI is effectively taxed at 10.5% due to the 50% deduction under Section 250 of the Internal Revenue Code (**Code**). GILTI would also be calculated on a per-country basis to maximize the U.S. corporate tax with respect to income in tax-haven jurisdictions. Further, the Tax Plan would eliminate the exemption of up to 10% return on depreciable tangible investments made offshore from the GILTI calculation (also known as the qualified business asset investment, or the QBAI).

In addition, certain intangible income (including income from sales and services) from serving foreign markets currently is eligible for a deduction (also known as the foreign-derived intangible income (FDII) deduction) that can reduce the corporate tax rate to 13.125% on such items of income. The Tax Plan would repeal the FDII deduction and use the revenue raised from the repeal to expand R&D incentives intended to be more effective than the FDII deduction.

Minimum Tax

The Tax Plan would introduce a 15% minimum tax on certain large corporations' book income (i.e., income used to report profits to investors). It is not clear which corporations would be subject to the minimum tax regime.

Anti-Profit Stripping

The Tax Plan would also include a measure to deny deductions for payments to corporations established in countries that do not have a robust minimum tax regime. It also views an anti-profit stripping rule (without specifying the rule) introduced by the Tax-Cuts and Jobs Act, 2017 (**TCJA**) as ineffective. Therefore, it would replace that rule with a global agreement on a strong minimum tax through multilateral negotiations. Although it is not entirely clear, the Tax Plan could potentially replace the base-erosion and anti-abuse tax (**BEAT**), which generally targets large corporations with gross receipts over $500 million.

Under the Tax Plan, corporations would also no longer be permitted to write off expenses related to offshoring jobs. On the contrary, the Tax Plan would provide a tax credit for onshoring jobs.

Anti-Inversion

The Tax Plan would introduce stringent anti-inversion measures. It could introduce a rule that may treat foreign corporations as U.S. corporations if their place of management and operations is in the United States.

Increased Taxes for the Fossil Fuel Industry

Currently, the fossil fuel industry enjoys certain subsidies and special tax credits. The Tax Plan would eliminate such special preferences and reinstate Superfund Trust Fund taxes for site cleanups.

Funding IRS Enforcement

The Tax Plan would provide the IRS with additional funding in order to increase tax enforcement.

Other Observations

On March 11, 2021, two tax reform Bills (*the Stop Tax Haven Abuse Act* and *the No Tax Breaks for Outsourcing Act)* were introduced in both the House and the Senate targeting international transactions, with some significant international tax changes. The announcement of the Tax Plan seems to reflect the proposed changes in the tax reform bills. However, with a slim majority of Democrats in the House and the Senate, some modifications to the current plan are expected. Treasury Secretary Janet Yellen has also mentioned that the Treasury Department is expected to issue a “Green Book” sometime in the Spring, to provide technical explanations of the Biden administration’s revenue proposals. The Senate Finance Committee also held a hearing on the international tax changes on March 25, and Chairman Ron Wyden (D-OR) is expected to release an international tax framework for the proposed international tax changes.

In addition to the above sweeping proposed changes to corporations, the White House also issued a statement that it would introduce tax changes in the coming weeks that would affect high-income individuals.

Taxpayers should consult with their tax advisors on how the Tax Plan may impact their existing organizational structures and domestic and global businesses. Any prospective structuring and restructuring should consider the effect of the tax proposals by the Biden administration, if enacted in their current form.

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