



# Post-election tax planning for Technology, Media, and Telecommunications

Post Election Debrief

December 14, 2020

**Donielle Borgo**  
Partner

**Kristin Kranich**  
Partner

**AJ Schiavone**  
Partner



# Disclaimer

---

The information provided herein is educational in nature and is based on authorities that are subject to change. You should contact your tax adviser regarding application of the information provided to your specific facts and circumstances.

# Your presenter

---



**Donielle  
Borgo**  
PARTNER, CROWE LLP



**Kristin  
Kranich**  
PARTNER, CROWE LLP



**AJ  
Schiavone**  
PARTNER, CROWE LLP

# Agenda

- Welcome
- Post Election Outlook
- Corporate Tax
- Potential impacts for global businesses
- R&D Credits Considerations
- Transaction Landscape
- Closing Summary

# Post Election Outlook

# Post Election Outlook

---



**Democrat**  
**Joe Biden**

---

Establish a Made in America tax credit for revitalizing existing closed or closing facilities, retooling any facility to advance manufacturing competitiveness and employment, bringing production jobs back to the U.S., expanding job-creating efforts, or expanding manufacturing payroll. Expand the new markets tax credit and make it permanent.

Establish the manufacturing communities tax credit, and fund the credit for five years to reduce the tax liability of businesses that experience workforce layoffs or a major government institution closure.

Expand the work opportunity tax credit to include military spouses.

Expand the low-income housing tax credit.

Establish a workplace childcare facility tax credit of up to 50% of an employer's first \$1 million in costs for qualified on-site childcare.

---

Raise the corporate tax rate from 21% to 28%.

Require C corporations with over \$100 million in book income to pay the greater of normal corporate tax liability or 15% of book income.

Enact a 10% offshoring surtax (on top of the current 28% rate) on U.S. company profits from overseas production for sale in the U.S. and for call centers and services serving the United States.

Double the global intangible low-taxed income rate to 21%, and close certain loopholes.

Implement anti-inversion regulations and penalties.

Deny deductions for moving production and jobs overseas.

Impose sanctions on countries that "facilitate illegal corporate tax avoidance and engage in harmful tax competition."

---

Eliminate all deductions for expenses to advertise prescription drugs.

Increase the depreciable life of rental real estate.

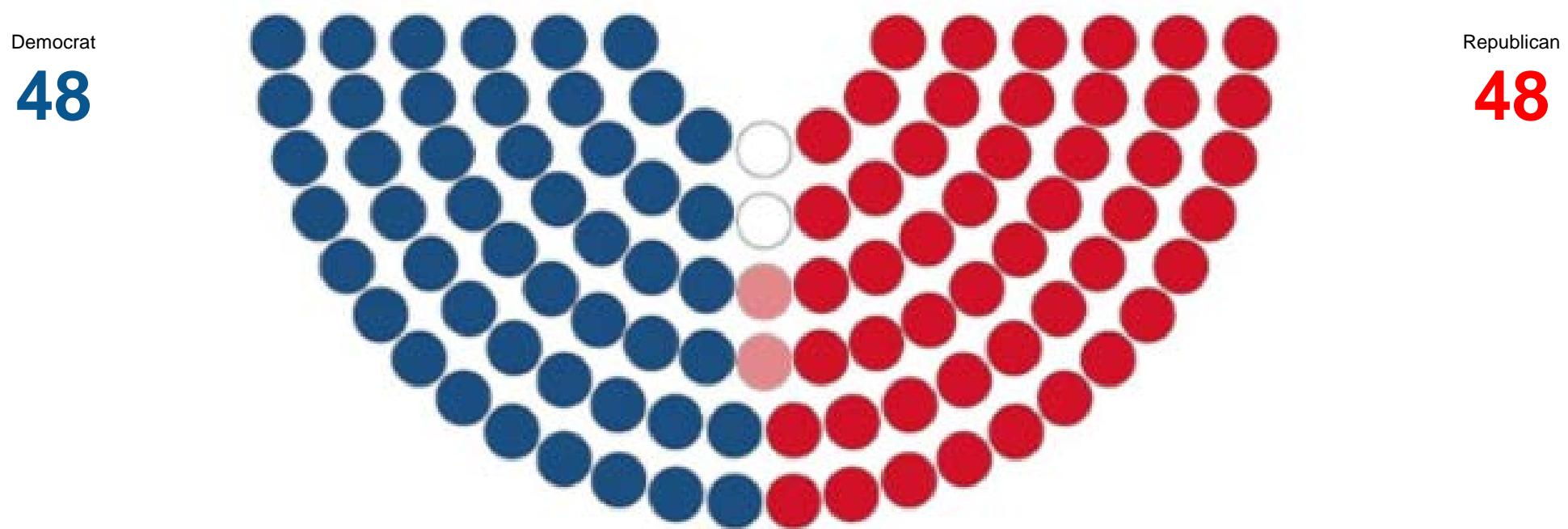
Eliminate the deferral of capital gains from like-kind exchanges for real estate.

Establish incentives for opportunity zone funds to partner with nonprofit or community-oriented organizations, and jointly produce a community benefit plan for each investment. Require reporting, public disclosure of community impact, and Treasury oversight.

# Post Election Outlook

---

## Senate Balance of Power



# Corporate Tax

# Corporate Tax

---



“The 2020 election season has been just as surprising as the year itself, but individuals and companies should be proactively thinking about how changes in tax policy may impact their bottom line. We expect a new administration will focus on providing additional pandemic relief and stimulus, however, changes in tax policy could be on the horizon. Even if major tax legislation is unlikely, the executive branch has regulatory tools at its disposal to impact tax policies.”

Gary Fox  
Managing Partner of Tax Services  
Crowe LLP

# Potential Impact for Global Businesses

# International Tax Considerations

---

Some of the key proposals affecting international businesses are focused on penalizing offshore earnings while promoting onshoring functions and jobs. A summary of these proposals is as follows:

- Increasing the U.S. corporate income tax rate from 21% to 28%.
- Establishment of an Offshoring Tax Penalty (10% surtax):
  - 30.8% tax will be assessed on profits of any production by a United States company overseas that is sold back into the U.S.
  - Offshoring Surtax will also apply to call centers or services by American companies located overseas but serving the U.S.

# International Tax Considerations (continued)

---

Creation of new “Made in America” Tax Credit.

- 10% advanceable tax credit for companies making investments that will create jobs for American workers such as:
  - Revitalizing existing closed or closing facilities,
  - Retooling any facility to advance manufacturing competitiveness and employment,
  - Reshoring job-creating production,
  - Expanding or broadening U.S. facilities,
  - Expanding manufacturing payroll.

# International Tax Considerations (continued)

---

- Implementation of strong anti-inversion regulations and penalties.
- Denial of all deductions and expensing write-offs for moving jobs or production overseas where jobs could plausibly be offered to American workers.
- Closing Offshoring Loopholes:
  - Increase the effective tax rate on GILTI from 10.5% to 21%.
  - Assess GILTI on a country-by-country basis.
  - Eliminate QBAI from the GILTI computation.

# Expected Negative Implications of the Tax Plan

---

- The GILTI high-tax exclusion and Subpart F high tax exception would be limited due to the increase in the U.S. corporate rate to 28%.
- Post TCJA, the threshold to qualify for the high tax exclusion was 18.9%. Under Biden's proposed policy changes, this would increase the rate to 25.2%.
- Approximately 41 countries have corporate income tax rates between 18.9% and 25.2%.
- The country by country GILTI computation could leave taxpayers with significantly higher U.S. residual tax on GILTI.

# Treasury Regulation Repeal

---

## Repeal of Treasury Regulations versus Statutory Change

- The Georgia run-off election will help clarify President-Elect Biden's ability to make significant changes to the U.S.-International tax regime via statutory updates. If the Republicans win at least 1 seat, it will be much more difficult for the Biden Administration to push through any substantial tax reform without support from a number of Republicans. If the Democrats don't win both seats, the likely regulatory changes can be repealing or altering Treasury Regulations.
- If the Republicans win either of the seats in the Georgia Senate runoff, the likelihood of major policy changes decrease. This does not impact the ability to push through regulatory changes, including repealing some of the recent TCJA regulations such as:
  - GILTI High-Tax Exclusion Regulations
  - Foreign Tax Credit Regulations
  - BEAT Regulations
  - Downward Attribution Regulations
  - Reintroduction of Section 385
- Additional possibilities of a temporary regulatory freeze which could suspend regulatory projects that have already begun.

# Potential Executive Actions of the New Administration

---

- Potential updates to the Base Erosion and Anti-Abuse Tax (“BEAT”) regime such as widening the applicability beyond large taxpayers.
  - Possibility of adjusting the applicable BEAT taxpayer thresholds below \$500M gross receipts.
- Lack of clarity regarding whether the beneficial look-through rules for controlled foreign corporations (“CFCs”) will be extended.
  - Could increase organizations Subpart F income drastically.
- Potential modifications to the Foreign Derived Intangible Income (“FDII”) provisions.
  - Remove the QBAI detriment from FDII regime.

# Key International Takeaways

---

- The overall theme of the president elect's proposed tax policy is increasing the tax on corporations and wealthy individuals.
- If companies are analyzing locations for moving business, it is important to analyze the impact of the potential surtax, "Made in America" incentives, tariff landscape, and the potential elimination of QBAI for GILTI.
- If taxpayers are currently relying on high tax exceptions to avoid taxation on foreign profits, it would be prudent to model out the potential impacts to the increased U.S. corporate tax rate.
- If taxpayers are relying on net tested losses from high tax jurisdictions to offset net tested income in higher taxed jurisdictions, there may be significant U.S. residual tax upon transition to a country by country GILTI regime.

# R&D Credits

# New IRS ASC 730 Directive

---

## Overview

- LB&I Directive issued September 10, 2020
- Administrative solution for identifying QREs
- Leverages ASC 730 R&D expenses
- Disclosed in audited financial
- Effective tax years ending after July 31, 2020
- Supersedes 2017 LB&I Directive
- Original Directive framework remains in tact

## Changes

- Clarifies it is not a safe harbor
- New exam audit and elevated review process
- IRS discretion for determining taxpayer eligibility
- Removal of non ASC 730 expenses
  - Software (ASC 350 – Internal Use)
  - Excludable activities (ASC 730-10-55-2)
- Additional documentation requirements

# Siemer Milling Co. v. Commissioner

---

- Tax court held taxpayer failed to prove that its activities failed to meet the 4-part test
- Cited Union Carbide Corp. & Subs v. Commissioner 2009-50
- Burden of proof case
- Be wary of including minimalistic descriptions of research activities

# Exam Environment

---

- LB&I Directive on the Centralized Risking of Research Issues under IRC §§ 41 & 174
- Requires Research Risk Review Team Risk Analysis
  - engineers, revenue agents and other specialists
- Applies to:
  - Industry Cases
  - Large Corporate Compliance
  - All claims and amended returns

# Section 174 & Software Development Expenses

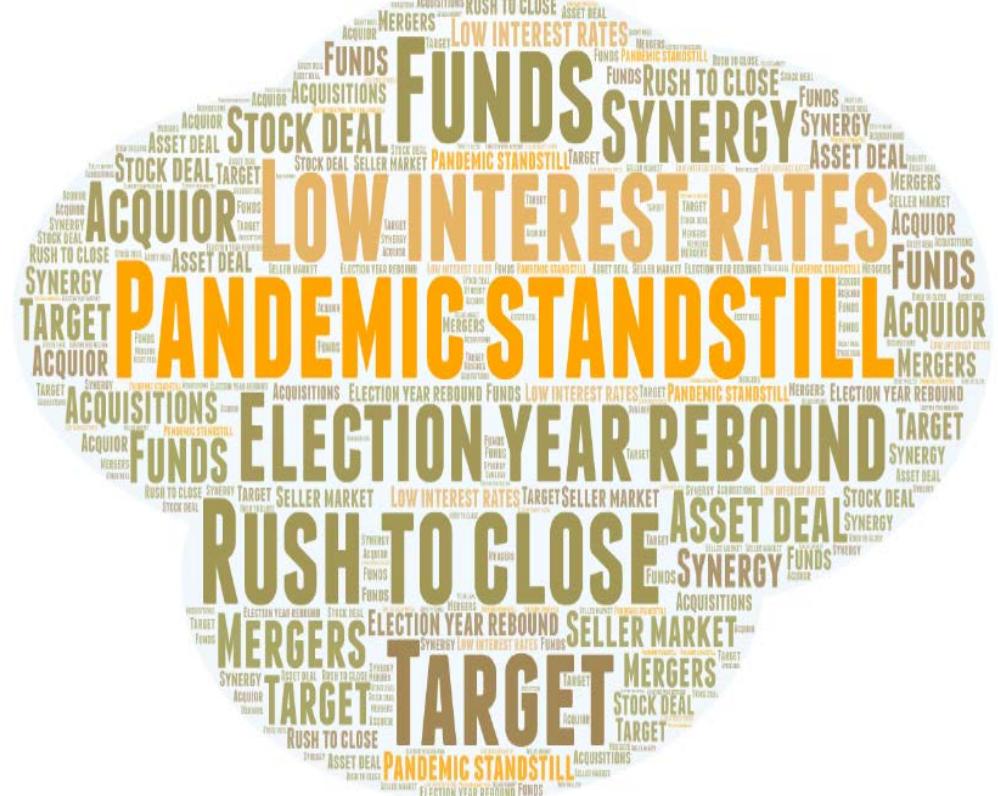
- Current Tax Law - 174 Costs
  - Expense as incurred
  - Election to capitalize and amortize over 60 months
  - Section 174 - Automatic Accounting Method Change (Cutoff Basis)
  - Rev. Rul. 58-74
- Current Tax Law - Software Development Costs
  - Software – Rev. Proc. 2000-50
  - Expense as incurred
  - Election to capitalize and amortize over 60 months
  - Capitalize and depreciate over 36 months (Software Development Only)
  - Software – Automatic Accounting Method Change (481(a) adjustment)
- **Tax Law Change – Tax years beginning after December 31, 2021**
  - **R&D conducted in the U.S. – capitalize and amortize over 5 years**
  - **R&D conducted outside the U.S. – capitalize and amortize over 15 years**
- Considerations
  - Accounting systems for R&D costs
  - Section 174 Costs are more broadly defined than Section 41 QREs
  - Impacts foreign tax credit calculation
  - 174 costs are exempt from UNICAP



This Photo by Unknown Author is licensed under CC BY-NC

# Transaction Landscape

# 2020 Review



# Transaction Tax Considerations



## Pre-Acquisition Tax Due Diligence and Planning

- Identify and document significant tax exposures and risks
- Asset versus stock modeling
- Attribute limitations under IRC 382 and 383, built in gain/loss planning
- Tax planning for compensation packages and stock-based awards

## Day One Tax Planning

- Purchase Accounting, including opening balance sheet
- Transaction cost recovery analysis
- Research Credits – federal and state
- Sales & Use tax – nexus, compliance and opportunities
- Unclaimed property compliance

## Tax Compliance and Provision

- Initial short period and recurring income tax filings
- Tax elections and reporting: federal, state and international
- Cash tax planning for estimates, extensions and filings
- Foreign statutory filings and coordination with U.S information reporting

## Exit Strategy and Wrap-up

- Identify and document significant tax exposures and risks
- Earnout contingencies and related tax implications
- Compensation and change of control considerations
- Final short period compliance
- Carryback claims and refund opportunities

# Closing Summary



# Any questions?



# Thank you

---

**Donielle Borgo**  
TMT Tax Lead Partner  
+1 415 536 7009  
[donielle.borgo@crowe.com](mailto:donielle.borgo@crowe.com)

**Kristin Kranich**  
West Region Lead Global Tax  
Services Partner  
+1 415 590 3878  
[kristin.kranich@crowe.com](mailto:kristin.kranich@crowe.com)

**A.J. Schiavone**  
National Tax Office Partner  
+1 614 280 5276  
[AJ.Schiavone@crowe.com](mailto:AJ.Schiavone@crowe.com)



[crowe.com/keepscore](http://crowe.com/keepscore)

The information in this document is not – and is not intended to be – audit, tax, accounting, advisory, risk, performance, consulting, business, financial, investment, legal, or other professional advice. Some firm services may not be available to attest clients. The information is general in nature, based on existing authorities, and is subject to change. The information is not a substitute for professional advice or services, and you should consult a qualified professional adviser before taking any action based on the information. Crowe is not responsible for any loss incurred by any person who relies on the information discussed in this document. Visit [www.crowe.com/disclosure](http://www.crowe.com/disclosure) for more information about Crowe LLP, its subsidiaries, and Crowe Global. © 2020 Crowe LLP.