



The changing tax legislative landscape:
Considerations for businesses, investors,
and the real estate industry

2021 tax policy: Federal tax legislative update

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Agenda

1

Describe the broad potential effects of recent tax legislative developments on you and your organization.

2

Identify trends in federal tax.

3

Recognize opportunities to reduce taxes and mitigate tax risk in the current tax legislative environment.



Presenters



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POLLING QUESTION

The Build Back Better Act...

A

Will be bad for my business.

B

Isn't as bad for my business as it could have been.

C

Won't have much impact on my business.

D

The full impact can't be determined until there is final legislation.

Legislative Overview

Legislative Overview

Bipartisan Infrastructure, Investment, and Jobs Act

- Signed into law Nov. 15, 2021
- Highlights:
 - Employee retention credit terminates September 30, 2021
 - Notice 2021-65 issued Dec. 6, 2021
 - Digital assets subject to broker reporting and reporting by recipients of \$10,000 in cash effective for reports required to be filed after December 31, 2022

Build Back Better Act (BBB)

- Passed House Nov. 19, 2021
- Currently under consideration in the Senate

Continuing resolution until Feb. 18, 2022

Build Back Better Act: Current State of Play

Business and Individual Tax



Business Tax

- 15% Corporate Minimum Tax for corporations with profits over \$1 billion
- New interest deduction limitations for international financial reporting groups
- Deferral of losses in controlled group liquidations
- Delay in mandatory capitalization and amortization of R&E expenses
- 1% tax on corporate stock buybacks for publicly traded corporations
- Limitations on Section 1202 benefits

Individual Tax

- Increase SALT Cap from \$10,000 to \$80,000 through 2031. Would be effective in 2021.
- Surtax for high-income individuals beginning in 2022:
 - 5% on modified AGI in excess of \$10 million, \$5 million married filing separate and \$200,000 for estates or trusts
 - PLUS**
 - 3% on modified AGI in excess of \$25 million, \$12.5 million married filing separate and \$500,000 for estates or trusts
- Expansion of 3.8% tax on net investment income
- Makes \$500,000 cap on trade or business deductions permanent. Disallows carryforwards for estates and trusts for tax years beginning in 2021.

International Tax



International Tax

GILTI – ETR increased to 15% from 10.5%, and break-even foreign ETR increased to 15.8% from 13.125% along with the substantial elimination of aggregation.

- §250 deduction decreased to 28.5% from 50%
- Exempt deemed tangible return reduced from 10% to 5% of QBAI
- Calculated on a tested unit and country-by-country basis
- Tested losses carry forward

International Tax

FTC – Mixed bag

- GILTI Impact generally favorable to taxpayers
 - GILTI FTC haircut drops to 5% from 20%
 - GILTI FTCs carry forward for 5 years
 - Only §250 deduction and taxes are allocated to GILTI – no other expense allocation
- Other FTC impacts generally unfavorable to taxpayers
 - Country-by-country/taxable unit §904 limitation
 - Carryback eliminated
 - Foreign branch basket eliminated

International Tax

FDII – ETR increased to 15.8% from 13.125%

- §250 deduction decreased to 24.8% from 37.5%
- Deemed tangible income return still 10% of QBAI (unlike GILTI)
- Limitation based on taxable income eliminated (also applies to GILTI)



International Tax

BEAT – mixed bag that generally breaks in favor of taxpayers

- Rate increases: 12.5% in 2023; 15% in 2024; 18% in 2025 (12.5% scheduled after 2025)
- Certain payments included in COGS and inventory are tainted payments
- 3% base erosion threshold for application of BEAT eliminated in 2025 **BUT**
- Payments subject to US tax (referencing old §163(j) rules) or foreign tax >15% are excluded
- Added parity to treatment of credits for BEAT and regular tax purposes



International Tax

- Eliminates special rule allowing CFCs to adopt 1-month deferral Y/E (11/30/2022)
- Reinstates §958(b)(4) precluding downward attribution from a foreign party in the determination of a US shareholder and CFC
- Generally effective for years beginning after 12/31/2022, but BEAT applicable for years beginning after 12/31/2021

Partnership Tax



Partnership Tax

- Carried Interest
- Abandonment or worthlessness of partnership interest would be a capital loss.
- Business interest expense would be applied at partner level beginning after Dec. 31, 2022.

Chairman Wyden Proposals

Dodging a bullet

- Mandatory basis adjustments
- Mandatory use of remedial method under IRC Section 704(c)
- Mandatory revaluations under 704(b)
- Elimination of substantial economic effect test for partnership allocations
- Changing liability allocation methodology
- Taxing publicly traded partnerships as corporations



Thank you

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