U.S. International Tax Law: Legislative Developments

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Interesting times in the international tax policy world. A number of different proposals for substantial changes to the U.S. international tax system, which was enacted as part of the Tax Cuts and Jobs Act of 2017.

The Biden Administration's Green Book

Generally, each year, to accompany the Administration's Budget, Treasury releases the "General Explanations of the Administration's Revenue Proposals," which provides an explanation of the Administration's revenue proposals for that fiscal year. This document is referred to as the "Green Book." The Treasury, during the Trump Administration, never released a Green Book so the last Green Book was issued in early (February) 2016. On May 28, 2021, Treasury released a Green Book for fiscal year 2022. The 114-page document is generally divided into business tax proposals and individual tax proposals, which is consistent with the two plans that President Biden released: the American Jobs Plan and the American Families Plan.

The centerpiece of the business tax proposals is an increase in the corporate tax rate from 21 percent to 28 percent. The rate increase is estimated to raise $857 billion over ten years, and the Treasury has noted that it "is an administratively simple way to raise revenue in order to pay for the Administration's infrastructure proposals and other long-run drivers of spending growth." In January 2021, the Tax Policy Center noted that the United States had the 11th highest corporate tax rate among the 36 OECD countries surveyed. An increase in the rate to 28 percent would place the United States at the top of the 36 OECD counties, with a combined federal and state corporate income tax rate approaching 33 percent.

The Biden Administration has proposed substantial changes to the U.S. international tax system, which was, for the most part, enacted in December 2017 as part of the Tax Cuts and Jobs Act (TCJA). The Global Intangible Low-Taxed Income (GILTI) effective tax rate, which is currently at 10.5 percent/13.125 percent (foreign effective break-even rate), would be increased to 21 percent/26.35 percent by decreasing the GILTI deduction from 50 percent to 25 percent. GILTI would be applied on a country-by-country basis with disallowance of expenses attributable to the GILTI deduction. The exclusion from U.S. tax of a ten percent return on depreciable tangible property (qualified business asset investment or QBAI) would be repealed. The 37.5 percent deduction for Foreign-Derived Intangible Income (FDII) would be repealed and replaced by research and development tax incentives. In essence, the U.S. international tax system would be a *de facto* worldwide no deferral system.

The Base Erosion and Anti-abuse Tax (BEAT), enacted as part of TCJA, would be replaced by Stopping Harmful Inversions and Ending Low-tax Developments (SHIELD). Generally, under SHIELD, a deduction (whether to a related or unrelated party) would be disallowed to a domestic corporation by reference to gross payments that are made to "low-taxed members" of a financial reporting group. A "low-taxed member" is a financial reporting group member whose income is subject to an effective tax rate that is below a designated minimum tax rate. The Biden Administration also proposed restricting deductions of excessive interest expense of members of a financial reporting group for disproportionate borrowing in the United States. This proposal is similar to one made during the Obama Administration.

Also, on the business side, the Biden Administration has proposed a 15 percent minimum tax on worldwide book income. This proposal was made during the campaign and

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