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US Tax Legislative and OECD Pillar 2 Update

March 22, 2022

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Speakers

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Agenda

Washington Update

OECD BEPS 2.0 Pillar 2

Q&A

Build Back Better:

(A look back at 2021)

Build Back Better Act: Spending and Revenue Summar

Program	Cost
Family Benefits	-$585B
Climate & Infrastructure*	-$570B
Individual Tax Credits/Cuts	-$215B
Health Care	-$330B
Housing and other	-$335B
SALT tax relief	-$275B
Immigration	-$110B
TOTAL SPEND	**-$2.43T**

*Climate includes
Clean energy/electricity tax credits -$190B
Clean fuel and vehicle credits -$ 60B
Other climate tax credits -$ 75B

Tax and Other Increase	Revenue
Book corp. minimum tax	$320B
Increase tax on foreign earnings, other international	$280B
1% stock buyback tax	$125B
Other corporate taxes	$105B
Expand 3.8% investment tax	$250B
Surtax on high earners	$230B
Limit non-corp business losses	$160B
Superfund taxes (oil/methane)	$20B
Nicotine taxes	$10B
New SALT cap	$290B
Mega IRAs, other retirement	$10B
Health Care	$325B
TOTAL RAISED	**$2.27T**

Total	**-$2.43T**
	$2.27T
	-$160B

The challenges of BBBA

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Manchin's View

- Overall cost of the bill ($1.5-$1.8T?)
- Inflationary effect of unfunded spending
- Budgetary "gimmicks" of one-year extensions vs. ten year proposals

Example:

Current child tax credit extended 1 year:	*$ 185B*
Current child tax credit extended 10 years:	*$1,597B*

(JCT and CBO estimates)

The challenges of BBBA

The Sinema Doctrine

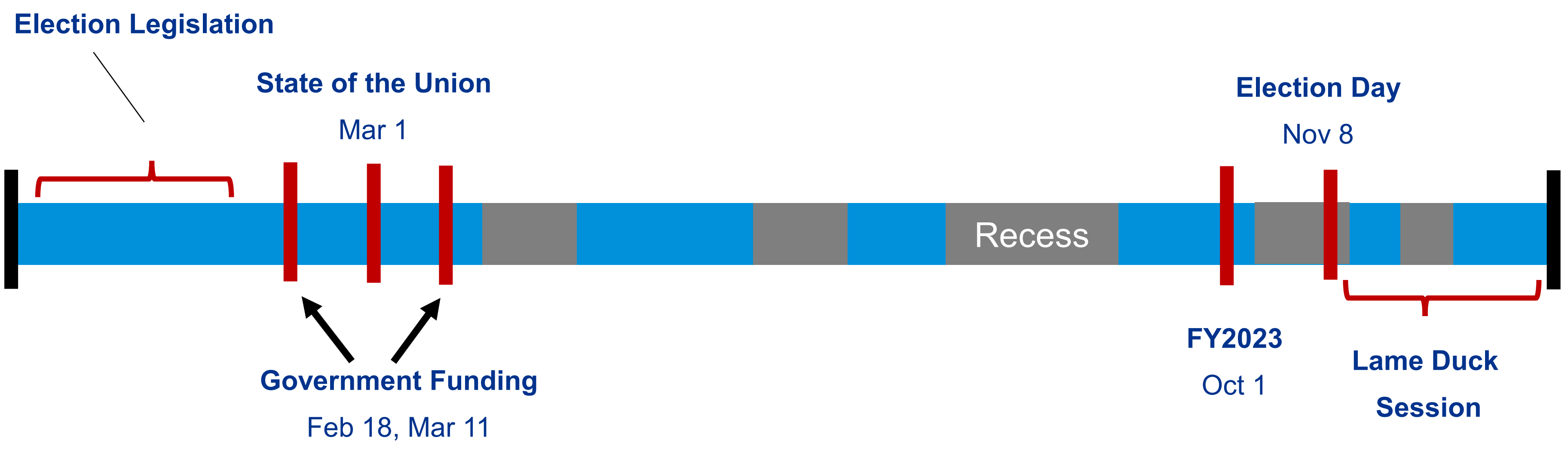
- Goal should be to raise taxes without raising rates
- Impose taxes on those not currently paying their fair share
- Result

NO	YES
Corporate Rate Increase	GILTI Rate Increase
Individual Rate Increase	Surtax on High Earners
Capital Gains Rate Increase	NII Expansion

Build Back Better

(The road ahead)

Build Back Better Act: 2022 Timeline



Other work to be scheduled includes:

- Supreme Court nominee
- Debt Limit
- Russia/Ukraine response legislation
- China competition bill
- ~~Build Back Better~~ Build a Better America
- Extenders

Build Back Better Act: Breaking Up Is Hard to Do

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Accounting for select business proposals (in billions)

Select business tax proposals	Biden	Ways & Means	House Revised**
Increase corporate rate	(28%) 857.8	(26.5%) 540.1	(21%) 0
Minimum tax on global book income tyba2022	148.3	0	318.9
Increase GILTI rate plus CxC^ tyba2022	(21%) 533.5	(16.5%) 185.2	(15%) 180.9
Modify FDII	123.9	*	*
BEAT repeal + SHIELD replacement	390.1	24.8	67.1
Further limit interest deductions [163(n)]	18.6	34.8	27.9
Fossil Fuel proposals	121.3	0*	0*
Reinstate Super Fund	24.8	38.4	24.8
Research and Development (174)	0	(4.0)	(4.0)
Foreign Tax Credits	0	23.5	18.7
Stock buyback excise tax tyba 2021	0	0	124.2

*Included in GILTI score

^Groups items I.1.C1, C2, C6, C7 from JCT tables

Total $758.5

Source: Administration's FY2022 Green Book estimates, Joint Committee of Taxation Revenue Tables

Accounting for select individual proposals (in billions)

Select Individual tax proposals	Biden	Ways & Means	House Revised*
Increase ordinary income rate to 39.6%	131.9	170.5	0
Increase capital gains/div rate to	(39.6%^) 322.5	(25%) 123.4	0
“Rationalize” NII and SECA 3.8% tax	236.5	252.2	252.2
Carried interest as ordinary	1.5	14	0
Like-kind exchange repeal	19.6	0	0
Individual surtax on high-earners 5% 10M, 8% 25M	0	127.3	227.7
Limit losses [461(l)]	42.9	166.8	160.3
Modify SALT deduction $80,000	0	0	2.0
Bank reporting	462.6	0	0
Miscellaneous tax administration	9.9	13.9	1.4

Total $643.6

Source: Administration's FY2022 Green Book estimates, Joint Committee of Taxation Revenue Tables

^Biden proposal includes cap gains realization at death

Build Back Better Act:Many Open Questions

- Will the Senate agree to a bill at all?
- If so, how much spending can they agree to?
- If the bill shrinks by $500B - $1T, what spending will be removed?
- If the bill shrinks by $500B - $1T, what tax increases will be removed?
- Can a scaled back bill still pass the House?
- Will inflation sink the bill?
- At what point in 2022 might it become impossible?
- How will Congress deal with effective dates?

OECD Pillar Two

What is the policy objective and how is it achieved?

Policy objective: Pillar 2 addresses "remaining BEPS challenges" and is designed to ensure that large internationally operating businesses pay a minimum level of tax regardless of where they are headquartered or the jurisdictions they operate in.

Income Inclusion Rule (IIR)

IIR is the primary rule

The operation of the IIR is, in some respects, based on traditional CFC rules (although the IIR is much broader) and triggers additional tax at the level of the Parent where the income of a constituent entity (aggregated at the jurisdictional level) is taxed at below the agreed minimum tax rate of 15%

Undertaxed payments rule (UTPR) and subject to tax rule (STTR)

UTPR is a secondary rule and only applies where Group income is not already subject to an IIR. It operates by denying deductions (or an "equivalent adjustment")

STTR "complements" the other rules. It denies treaty benefits for certain intra-group payments made to jurisdictions where those payments are subject to low rates of "nominal" taxation

Qualified Domestic Top Up Tax

Jurisdictions may choose to implement a Qualified Domestic Top Up Tax which operates to increase domestic tax liability with respect to a top up tax liability that would otherwise be collected by other Jurisdiction's IIR or UTPR.

When is Pillar 2 expected to be implemented?

- IIR & UTPR Commentary Released (March 2022)

- Public consultation on admin aspects of IIR & UTPR (Comments due April 11)
- STTR Model Rule and Commentary (April)

- IIR and STTR come into effect (UTPR delayed until 2024)

2021 | **2022** | **2023**

- OECD Model Rules released (December 2021)
- EU Directive released (December 2021)

Implementation:

- EU Directive (4 holdouts), latest version includes 1 year delay
- Proposed Globe rules being included around the world (Hong Kong, Ireland, Singapore, Switzerland, UAE, UK, others)
- Inaction on GILTI is unlikely to deter implementation

How does the Pillar 2 calculation

1. Determine GloBE income on a jurisdictional basis

2. Determine Covered Taxes on a jurisdictional basis

3. Calculate jurisdictional ETR = Covered Taxes / GloBE income

4. Calculate Top-up Tax % = Minimum ETR – Jurisdictional ETR

5. Determine Excess Profit = GloBE Income – Substance Carve Out

6. Calculate jurisdictional Top-up Tax = Top-up Tax % * Excess Profit

7. Jurisdictional Top-up Tax of a CE is then absorbed by a qualified domestic top up tax, charged to a parent entity (IIR) or apportioned to a subsidiary entity (UTPR)

As shown, the centerpiece of Pillar 2 (IIR and UTPR) is computing "GloBE Income," "Covered Taxes," and ETR on a jurisdictional basis

Impact on US-based Multinationals

Assuming GILTI is treated as a qualified IIR	Assuming GILTI is **NOT** treated as a qualified IIR
UTPR applies to US low-tax profit	Everything in the first column, and
IIR applies below a US parent in certain split ownership structures	IRR applies below a US parent at intermediate parent(s)
Qualified Domestic Minimum Top Up Taxes	UTPR potentially applies at subsidiary jurisdictions
Administration	
Subject to Tax Rule?	

Resources

Selected resources:

- KPMG Report on House Build Back Better Act
- KPMG Report on Ways and Means Tax Bill
- KPMG Report on the Green Book
- *Catching Up on Capitol Hill* podcast series
- Legislative Updates Homepage
- KPMG Report on Pillar Two Model Rules

Thank you for joining us

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