The Made in America Tax Plan Webcast Series


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Agenda

• How did we get here?

• What’s in play?
  o Overview - anticipated legislation
  o Focus on expected federal tax provisions
  o Dynamics of the various federal tax provisions

• What’s ahead?
  o Who are the critical players?
  o Timing considerations
  o Future events

• Q&A
Learning Objectives

• Explore background to the Made in America Tax Plan, focusing on key federal tax provisions.

• Review President Biden’s tax policy objectives regarding specific targets of legislative reform.

• Analyze American corporate tax rules to incentivize job creation and investment within the United States.
How did we get here?

• **Infrastructure legislation has been considered for years**
  o Clearly demonstrated need for, and interest in, infrastructure projects.
  o Infrastructure enjoys broad bipartisan support across the country and provides funding “carrots” for both parties.
  o Trump promoted infrastructure investment (e.g., 2019 $287 billion highway bill that failed to advance out of committee).

• **Campaign highlights**
  o Throughout the campaign, Biden addressed the importance of focusing on improving the landscape for American businesses and openness to changing the tax laws to support the US.
  o Made in America tax credit, September 9, 2020 advanced by Biden.
How did we get here?

• **The American Rescue Plan**
  - $1.9T COVID-19 relief bill (included $268B for Transportation, Infrastructure, Fin Services and other Education & Labor), January 20, 2021

• **Initial Executive Order**
  - “Buy American” Executive Order, January 25, 2021

• **The American Jobs Plan/Made in America Tax Plan**
  - WH Fact Sheet, March 31, 2021
  - U.S. Department of the Treasury Report, April 7, 2021

• **Potential third package** – American Families’ Plan, which focuses on education, childcare, and social reforms.
What’s in play, from a legislative perspective?

- **Defining the package** - infrastructure (broadly defined) projects and separate pay-for

- **Dynamics of the bill(s)** – Application of revised ‘21 reconciliation or ‘22 reconciliation.

- **Understanding both approaches** – timing/composition/Senate/House procedure.

- **Tax Proposals**: Treasury Made In America Tax Plan; SFC Overhauling International Taxation; Treasury Green Book?

- **How will Tax provisions be chosen and enacted?**
  - Bipartisan package – size/scope
  - Via Reconciliation
What’s at play, from a Federal Tax Perspective?
Revenue Raisers v. Federal Tax Enhancements

- Increase statutory corporate rate from 21%
- Increases to IRS budget to support enhanced corporate enforcement
- Create a new corporate minimum tax of up to 15% of global book income on corporations reporting net income of $2 billion or more
- Tax credit to support on shoring jobs – possible changes to domestic R&D incentives
- Bonus Depreciation changes
- Repeal of the $10,000 cap on SALT deductions
Increase Statutory Corporate Rate

• Increase corporate rate to 28%? 25%?
• Rationale: To help fund critical investments in infrastructure, clean energy, R&D, and more to maintain U.S. competitiveness and grow the economy.
• Emergence of political obstacles - moderates
• Treasury Report notes:
  o Although the corporate tax rate was reduced in the TCJA to make the US more competitive with other countries, Treasury notes that as a share of GDP, US raises less corporate tax revenue than almost all advanced economies in the OECD.
  o Raising the rate would “modestly” increase corporate revenues relative to GDP, still leaving them below trading partners, i.e., would not be disadvantageous to the US economy.
Increased IRS Enforcement Budget

- **Aimed at corporate enforcement but will also encompass individuals (high net worth, promoters).**
  - Biden’s fiscal 2022 budget calls for 10.4% funding increase
  - Increase of $417 million to improve compliance and collection

- **IRS Commissioner Rettig recently testified before SFC that the tax gap could exceed $1 trillion.**
  - Tax gap is considered the difference between taxes owed and paid each year.
  - Increased gap attributed in part to loss of 17,000 IRS enforcement employees in the last decade.

- **Treasury Report notes:**
  - Corporate tax avoidance is far more sophisticated and complex than individual tax avoidance.
  - Over the last decade, the IRS’s enforcement budget has fallen by 25%.
  - Rates of large corporations facing IRS audit scrutiny have plummeted in the last 10 years.
Minimum Corporate Tax on Book Income

- **Enact a 15% minimum tax on book income:** Income corporations report on their profits to investors.

- **Rationale:** To ensure that large, profitable corporations cannot exploit loopholes in the tax code to avoid paying U.S. corporate taxes.

- **Treasury Report notes:**
  - Typically, around 200 companies report net income over $2 billion but pay zero or negative federal income taxes.
  - Goal: To minimize the disparity between taxes corporations don’t pay and tax rates paid by workers.
  - Details:
    - Qualifying corporations (about 45 corporations in recent years) would make an additional payment to the IRS for the excess of up to 15% on their book income over their regular tax liability.
    - Credits would be provided for taxes paid above minimum book tax threshold in prior years, for general business tax credits (e.g., R&D, clean energy, housing), and for foreign tax credits.
Tax Credit to Support Job On shoring/Changes to R&D

- As part of the America Jobs Plan, the Biden Administration seeks to invest more than $52 billion in domestic manufacturers, focusing on clean energy and rural manufacturing.
  - Plans include extending certain tax credit programs, including the Section 48C credit for the auto industry.
- As part of the Made in America Tax Plan, the Biden Administration proposes a tax credit to support on shoring jobs.
- Recent Senate Finance Committee hearing focusing on the need for R&D extension rather than allowing amortization of R&D costs to proceed.
Bonus Depreciation Considerations

• There is a 20-year history of providing bonus depreciation sweeteners when enhanced capital investment by US corporations is sought.

• Bonus depreciation is set to be phased out and recent legislation seeks to make bonus depreciation permanent.

• Focus on depreciation may also result in increased scrutiny of Section 163(j):
  o Section 163 (j) is set to change in that adjusted taxable income threshold measurement for the deduction is determined without regard to any deduction allowable for depreciation, amortization, or depletion in taxable years beginning before January 1, 2022.
  o Will the adjustment be modified so that these items don’t reduce adjusted taxable income ceiling?
Repeal of the SALT Cap

- TCJA was paid for, in large part, by a limiting SALT deductions to $10,000.
- IRS data shows that of the 40 Congressional districts with the largest SALT deductions, 39 districts are represented by Democrats.
- Many feel that the provision should be repealed, however, there are significant costs to a repeal.
- JCT estimates cost of repealing the SALT cap through 2025 would be $600,000,000.
Specific Dynamics of the Federal Tax Provisions

• **How do these provisions interact?**
  o What’s in and what’s out – how is the sausage made.

• **All or nothing? Biggest bargaining chips?**
  o How quickly can various provisions be changed/picked up off of the cutting room floor?

• **Competing demands?**
  o Dynamics within Democratic Caucus: Moderates V. Progressives.
  o Administration’s role in bridging the divide.
Who are the critical players?

- **Senate V. House** - which chamber originates/drafts primary pieces of bill and what’s the catalyst?

- **Legislating with razor thin majorities on both sides of the Capitol will make consensus challenging.**

- **Significant coalitions in the Senate:**
  - Moderate Democrats, Manchin and Sinema
  - Moderate Republicans, e.g., Romney, Tester, Kelly, Collins, Murkowski

- **Significant coalitions in the House:**
  - SALT coalition
  - Bipartisan Problem Solver’s Caucus
  - Blue Dog Coalition/New Democrat Coalition/Progressive Caucus
What’s ahead?

• **Timing considerations**
  o Must-pass bills – government funding, debt ceiling, unplanned legislation throughout the rest of the year.

• **Interplay between American Jobs Plan and Made in America Tax Plan?**
  o Size and scope will determine how the two are wed.

• **Interplay with potential third infrastructure bill focused on individual reforms**
  o Timing/Political obstacles

• **Significance of 2022 Elections**
  o Senate/House outlook