Tax Reform Part Deux: Multinational Boogaloo
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Robb Chase
Partner, Eversheds Sutherland

Taylor Kiessig
Partner, Eversheds Sutherland

Mary Monahan
Partner, Eversheds Sutherland
Learning Objectives

• Understand the background of The Made in America Tax Plan and analyze current expectations of upcoming legislation.

• Review the potential and significant changes to the GILTI rules that were enacted as part of the TCJA, as well as to FDII.

• Analyze proposals of the Biden Administration which include reform of tax rules relevant to multinational corporations within the United States.
Agenda

- Setting the Stage
  - Congress and the Administration
  - If Nothing Happens: Sunsets and Extenders
  - The OECD and the Inclusive Framework

- Getting Down to Brass Tacks: International Reform Proposals
  - GILTI
  - BEAT
  - FDII

- Legislative Proposals
Setting the Stage
The 117th U.S. Congress

House

218 SEATS NEEDED FOR CONTROL

222

213

DEM

GOP

Senate

TIE-BREAKER VP-ELECT HARRIS

50

DEM (2 IND caucusing with Dems)

50

GOP

Source: NBC News
The 117th U.S. Congress

How a Bill Becomes a Law

House
Majority vote

Senate
60 votes required to avoid filibuster

Filibuster
Overcome by:
• Eliminating filibuster
• Passing legislation in budget reconciliation – Majority vote

Budget Reconciliation
Limited to fiscal matters
Byrd Rule – no extraneous matters
No budget adopted for current fiscal year, so possibility of two budget reconciliation bills advancing
The Biden Administration

The American Jobs Plan

- Everything is infrastructure – Highways, airports, Amtrak, drinking water, electric grid, broadband, etc.
The Biden Administration

Renewed International Engagement

- “It is important to work with other countries to end the pressures of tax competition and corporate tax base erosion.” – Janet Yellen
If Nothing Happens: Sunsets and Extenders

While the corporate rate cut was permanent, the individual rate cuts are not and expire in 2026. But wait, there’s more:

**Section 199A** Qualified business income deduction
- Makes effective rate for qualifying income comparable to corporate income subject to two levels of tax. **Expires in 2026.**

**Section 174** Research and experimental expenditures
- Such expenditures, which are currently deductible, will be subject to capitalization and being amortized over 5-years beginning in 2022.

**Section 163(j)** Business interest expense limitation
- Generally, 30% of adjusted taxable income, which until 2022 includes an add back of depreciation and amortization.
If Nothing Happens: Sunsets and Extenders

**Section 168(k)**
Current expensing for qualified property
- Phased out by 2027.

**Section 59A**
Base erosion and anti-abuse tax (BEAT)
- Modified taxable income subject to 10% tax.
- Rate of tax increases to 12.5% in 2026.

**Section 250**
FDII and GILTI Deductions
- 50% deduction for Section 951A global intangible low-taxed income (GILTI). Reduced to 37.5% in 2026.
- 37.5% deduction for foreign derived intangible income (FDII). Reduced to 21.875% in 2026.
The OECD and the Inclusive Framework

OECD Pillar One: Profit Allocation and Nexus Rules

• Objectives:
   Reform the allocation of profit of multinational enterprises
   Remote nexus rules to facilitate taxation
   Revise transfer pricing rules

• Profit allocation mechanism:
   Amount A – Establish taxing rights for market jurisdictions
    ➢ Scope – (a) Large multinational entities with significant revenues (EUR 750M+)
      and (b) “Automated Digital Services” & “Consumer-Facing Businesses”
    ➢ Formulaic Approach – (1) Calculate excess profit; (2) Identify market jurisdictions;
      (3) Allocate excess profits based on revenue

   Amount B – Simplify transfer pricing in market jurisdictions by creating fixed returns
    ➢ Scope – Baseline marketing and distribution activities
    ➢ Open Items – (a) Finalize list of in-scope activities; (b) accounting for geographic
      region, activities; (c) rule vs. rebuttable presumption

• New U.S. “simplifying” proposals – Apply to 100 largest companies
OECD Pillar Two: Global Minimum Taxation

- **Objective:**
  - Establish taxing rights for market jurisdictions

- **Scope:**
  - Large multinational entities with significant revenues (EUR 750M+);
  - Jurisdiction-by-jurisdiction allocations; and
  - Use of consolidated financials (CbC reporting)

- **Open Questions:**
  - Agreeing on minimum rate – 21% versus 12.5%
  - Implementation
Getting Down to Brass Tacks
# The Biden Administration International Tax Agenda

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<tr>
<th>Build Back Better Plan</th>
<th>Infrastructure funded through corporate tax increases</th>
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<td>Increase in corporate tax rate to 28%</td>
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<td>Reform “ineffective” international provisions from TCJA: GILTI, FDII and BEAT</td>
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<td><strong>GILTI</strong></td>
<td>Eliminate QBAI threshold (currently 10% return on qualified asset basis is excluded from GILTI)</td>
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<td>Increase effective tax rate (after section 250 deduction) from current 10.5% to 21%</td>
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<td>Require calculation of GILTI on a country-by-country basis—no blending of tax rates</td>
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<td>Similar proposals have been made by Democrats in Congress</td>
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<td>FDII</td>
<td>Repeal the FDII rules (section 250 deduction for “foreign derived intangible income” that was enacted as part of TCJA)</td>
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<td>Replace with “research and development incentives” to encourage companies to invest onshore</td>
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<td>Senate Finance Democrats would repair FDII to provide benefits for “innovation” income</td>
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<td>To date, proposals for replacement or repair of FDII are short on specifics</td>
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The Biden Administration International Tax Agenda

**BEAT**

Replace the BEAT with SHIELD (Stopping Harmful Inversions and Ending Low-tax Developments)

Deny deductions by reference to payments made to related parties subject to a low effective tax rate

Rates are tied to GILTI minimum tax rate

Senate Finance Democrats would repair BEAT, increasing the rate for certain payments and restoring full value of domestic credits
Legislative Proposals
Proposed Legislation

S. 714: No Tax Breaks for Outsourcing Act

☐ Eliminate FDII and GILTI deductions

☐ Apply GILTI on country-by-country basis

☐ Repeal subpart F high tax exclusions for FBCI

☐ Eliminate carryback of excess FTCs and apply FTC on CbC basis

☐ Further restrict interest deductions for highly leveraged businesses

☐ Expand inversion rules

☐ Treat corporations as U.S. corporations if managed and controlled in US
S. 725: Stop Tax Haven Abuse Act

- Eliminate CTB that make foreign corporations disregarded
- Eliminate section 954(c)(6) look through
- Require public disclosure of CbC information for public companies
- Require interest on deferred section 965 installment payments
- Broaden BEAT coverage, eliminating 3% threshold and lowering gross receipts to $100 million
- Transfers of intangibles to partnerships with foreign partners are taxable
- Expand FATCA and anti-money laundering rules