Wyden unveils international tax 'framework'

Senate Finance Committee Chairman Ron Wyden, D-Ore., along with Senate Democratic taxwriters Sherrod Brown of Ohio and Mark Warner of Virginia unveiled a "framework" for international tax reform on April 5 that is sure to play a role in the debate going forward as congressional Democrats attempt to move legislation implementing President Biden's recently announced American Jobs Plan.
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/210405_1_suppA.pdf

Familiar themes on GILTI, FDII, and BEAT

At a high level, many elements of the trio's framework are familiar, reflecting what appears to be a growing Democratic consensus around perceived flaws in the international tax system put in place by 2017's Tax Cuts and Jobs Act (TCJA, P.L. 115-97). Many of the proposals were discussed by Democratic members and witnesses at a recent Finance Committee hearing focused on international tax policy, while others were laid out just last week by President Biden as revenue raisers to help finance his $2 trillion infrastructure initiative. (For prior coverage of the Finance Committee hearing, see *Tax News & Views*, Vol. 22, No, 14, Mar. 26, 2021; for prior coverage of the American Jobs Plan, see *Tax News & Views*, Vol. 22, No. 16, Apr. 2, 2021).
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/210326_1.html
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/210402_1.html

GILTI: The framework discusses revamping the TCJA's global intangible low-taxed income (GILTI) regime by:

- Increasing the effective tax rate on GILTI. The framework defers a decision on exactly what that rate should be, stating that "[i]t is an open question whether the tax rate on GILTI should equal the US corporate rate – effectuating a fully 'worldwide' international tax system – or still remain at a lower proportion of the US rate – *e.g.*, 75 percent, as proposed by President Biden." (The president's American Jobs Plan proposes to increase GILTI rate to 21 percent and the corporate income tax rate to 28 percent. Wyden's 2011 tax reform plan, which he released with Republican Sen. Dan Coats of Indiana, called for a worldwide system with foreign earnings taxed at 100 percent of the US corporate tax rate.)
- Requiring GILTI to be calculated on a country-by-country basis, which generally would prevent taxpayers from offsetting GILTI amounts between high-tax and low-tax jurisdictions. The framework mentions two options to achieve that goal – either by expanding the existing system of foreign tax credit "baskets" to have separate GILTI "country baskets" or by dividing global income into low-tax and high-tax categories and applying GILTI only to income from low-tax jurisdictions.
- Changing the formula for calculating GILTI to eliminate the exclusion for a 10 percent return on foreign tangible investment (so-called "qualified business asset investment," or "QBAI").

Additionally, the framework contends that the interaction of the current GILTI system with the foreign tax credit rules can discourage US research and development and argues that such expenses should be treated as entirely domestic, a change that would "eliminat[e] foreign tax credit penalties under GILTI."

FDII: The framework suggests repealing the QBAI aspect of the TCJA's foreign-derived intangible income (FDII) regime, which it says "penalizes companies that grow their footprint in the US." Further, it proposes to replace the "deemed intangible income" concept within FDII with a metric referred to as "deemed innovation income" or “DII” that would be designed to encourage spending on US-based research and development and worker training.

Lastly, it notes that any reformed system that retains modified GILTI and FDII regimes should ensure that the two systems have equal tax rates, in contrast to the current system which includes a 10.5 percent rate on GILTI and 13.125 percent rate on FDII.

BEAT: The framework discusses reforming the TCJA’s base erosion and anti-abuse tax (BEAT) by adding a second rate bracket – that is, in addition to the current 10 percent rate – which it argues would focus the BEAT on firms that “are doing the most to erode the US tax base.” Thus, “regular taxable income would still be subject to a 10 percent rate, while base erosion payments would be subject to a higher rate.” In addition, the framework suggests changes should be made to ensure that domestic tax credits are “fully restored.”

Finally, according to the framework, concerns over the interaction of the BEAT regime and foreign tax credits “could be addressed based on the availability of additional revenue from the BEAT system” (for example, from the proposed second bracket).

More to come

We will provide additional details on Sen. Wyden’s international tax framework – and recap initial reactions among other Democrats and Republicans in the House and Senate – in our upcoming week-in-review edition of *Tax News and Views*.

— Alex Brosseau
Tax Policy Group
Deloitte Tax LLP