Treasury report drills down further on White House tax priorities

A Treasury Department report released on April 7 provides some additional detail around changes – especially within the international tax space – that the White House would like to see made to the tax code as part of the Made in America Tax Plan, the financing component of the $2 trillion infrastructure package recently unveiled by President Biden.

Corporate tax rate

At a high level, the tax policy proposals detailed in the report closely adhere to those included in a White House fact sheet that was released in advance of a March 31 speech delivered by President Biden in which he rolled out his infrastructure package and proposed revenue offsets. (For prior coverage of the plan's initial rollout, see *Tax News & Views*, Vol. 22, No. 16, Apr. 2, 2021.)
URL: https://home.treasury.gov/system/files/136/MadeInAmericaTaxPlan_Report.pdf
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/210402_1.html

That includes the president's proposed increase in the top corporate rate from 21 percent to 28 percent, which the report argues is necessary to help fund investments that will ultimately stand to benefit the business sector.

"The Made in America Tax Plan recognizes that corporate investment depends on far more than the headline tax rate," the report states. "…The president's plan to make public investments in infrastructure, technology, research, and the green industries of the future would help lay a strong foundation for longstanding economic prosperity."

Higher threshold for minimum tax on book income

During the 2020 presidential campaign, then-candidate Biden had called for a 15 percent minimum tax on corporations that report "book income" greater than $100 million but owe no federal income tax.

In a notable change to that campaign proposal, a footnote in this week's Treasury report appears to limit application of the minimum tax proposal to corporations with net "book income" of at least $2 billion.

The report also makes clear that the proposal would take into account prior-year taxes paid in excess of the minimum tax, and that certain current-law tax credits would be allowable under the system.

"Firms would be given credit for taxes paid above the minimum book tax threshold in prior years, for general business tax credits (including R&D, clean energy, and housing tax credits), and for foreign tax credits," the report says.

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Some new international tax details

The Treasury report provides additional background on President Biden's proposals to modify or eliminate current-law tax provisions that the administration argues provide incentives for companies to locate investment in foreign jurisdictions and move US-based jobs and production activities offshore.

BEAT: In perhaps the most notable development in the international tax arena, the report digs a bit deeper into the administration's proposal to repeal and replace the base erosion and anti-abuse tax (BEAT) that was enacted by the 2017 Tax Cuts and Jobs Act (TCJA, P.L. 115-97) – which Treasury argues has been "ineffective" at preventing profit shifting and unfairly penalizes US-based taxpayers that benefit from certain tax credits. (The earlier White House fact sheet alluded to repealing the BEAT but offered no details about a replacement regime.)

The Treasury report specifically calls for replacing the BEAT regime with a new structure known as "SHIELD" (short for Stopping Harmful Inversions and Ending Low-Tax Developments) that would deny US deductions on related-party payments if they are subject to a low effective rate of tax in the destination jurisdiction.

The report states that what constitutes a "low effective rate of tax" could be determined as part of the current negotiations being undertaken by the Organisation for Economic Cooperation and Development's (OECD) so-called "Inclusive Framework" on Base Erosion and Profit Shifting. Absent such an agreement, the rate would be equal to the president's proposed rate on global intangible low-taxed income (GILTI), which is discussed in more detail below. (See separate coverage in this issue for news on OECD talks regarding corporate tax reallocation and a global minimum tax.)

More broadly, Treasury argues that US adoption of the proposed SHIELD regime would incentivize other countries to adopt their own minimum tax regimes – thus reducing the likelihood that their resident companies would be subject to US tax under SHIELD.

"The Made in America Tax Plan's proposed replacement of the ineffective BEAT would…incentiviz[e] other large economies to join the United States in taking the first step to adopt strong minimum taxes on corporations and leveling the playing field between the taxation of domestic and foreign corporations," the report says.

In fact, according to the report, the SHIELD would "turn off" for entities resident in countries that have adopted a "globally agreed upon" minimum tax regime.

GILTI: With respect to the GILTI rules enacted by the TCJA, the report largely adheres to President Biden's prior proposals to:

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- Increase the effective tax rate on GILTI to 21 percent (from the current rate of 10.5 percent);
- Require GILTI to be calculated on a country-by-country basis; and
- Change 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").

The report states that based on estimates by both the Treasury Department and the Joint Committee on Taxation, the proposed GILTI changes would raise more than $500 billion over the next 10 years.

FDII, US research incentives: The White House fact sheet made a general call for the full repeal of the deduction for foreign-derived intangible income (FDII) enacted as part of the TCJA and redirecting the revenue "to expand more effective R&D investment incentives."

The Treasury report reiterates those policies, arguing that the FDII regime's QBAI concept – as within GILTI – creates an incentive to move tangible investment out of the US.

"Because the FDII benefit is only received above a 10 percent return on a domestic corporation's tangible assets, firms can lower the hurdle necessary to obtain preferential FDII treatment by reducing tangible investments in the United States," the report argues.

The report also notes that "stronger tax-based incentives" could be achievable with the revenue raised by repealing the FDII deduction – a possible nod in favor of bolstering the R&D tax credit.

Offshoring and 'inversions': The Treasury report provides additional detail on steps the Biden administration would take to prevent US companies from becoming foreign-domiciled – policies it argues would serve as a "backstop to [the proposed] anti-base erosion regime."

In particular, the report calls for tightening current law anti-inversion rules by reducing to 50 percent (from 80 percent) the so-called "continuity of interest" threshold and by providing that "inverted" firms that continue to be managed and controlled from within the US would be treated as US-domiciled rather than foreign-domiciled.

The report also reiterates support for "disallow[ing] deductions for the offshoring of production" – though it does not include a related campaign proposal that called for a 10 percent net profits tax (in addition to the increased corporate rate) on income derived from the production of goods or delivery of services abroad for sale or use in the US.

Wyden has his own ideas: The new details on the Biden administration's international tax proposals come just days after Senate Finance Committee Chairman Ron Wyden, D-Ore., along with Senate Democratic taxwriters Sherrod Brown of Ohio and Mark Warner of Virginia, released their own proposed international tax reform "framework."

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Although the trio's framework and Biden's plans are broadly similar, there are some key differences especially with respect to their respective treatment of the BEAT and FDII regimes. (For details on the Wyden "framework," see *Tax News & Views*, Vol. 22, No. 17, Apr. 5, 2021.)
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/210405_1.html

Fossil fuel and renewable energy tax incentives

The Treasury report reiterates a campaign proposal to repeal tax incentives the president claims unfairly benefit the fossil fuel industry – changes that the administration believes could raise more than $35 billion over the next decade.

The report provides additional detail, however, with respect to some of its favored renewable energy tax policies – including a proposed "10-year extension of the production tax credit and investment tax credit for clean energy generation and storage, and making those credits direct pay."

The report also calls for extending the credits under 48C (advanced energy manufacturing) and 45Q (carbon capture and sequestration), providing new tax incentives for sustainable aviation fuel and to encourage the building of long-distance transmission lines, and reinstating Superfund taxes.

On the individual side, the report reiterates the administration's support for incentives encouraging the purchase of electric vehicles and energy-efficient electric appliances.

Increased IRS enforcement resources

Without mentioning specific dollar figures, the Treasury report reiterates the White House's support for increasing the Internal Revenue Service's enforcement budget, noting the proposal would be "part of a broader overhaul of tax administration that would give the IRS the resources it needs to collect the taxes that are owed by wealthy individuals and large corporations." (The administration proposed a 10.4 percent budget bump for the IRS – including additional funds for enforcement – in the "skinny" budget request it sent to Congress on April 9. See separate coverage in this issue for details.)

Next steps

Although the Treasury report fills in some blanks in the Biden administration's tax policy platform, it stops short of providing specific details on how these tax proposals would operate or when they would take effect. We could learn more in the coming weeks when the president releases his budget blueprint for fiscal year 2022, which is expected to be accompanied by a Treasury "Green Book" that typically contains more detailed descriptions of an administration's revenue proposals.

Later this month, the president is also expected to unveil a separate tax-and-spending package – which he has dubbed the "American Families Plan" – that will include policies designed to address "human infrastructure"

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issues such as access to affordable health care, education, and child care, along with proposed revenue raisers focusing on upper-income taxpayers to pay for the additional spending.

It remains unclear exactly how congressional Democrats will handle the Biden administration's proposals. (See related coverage in this issue for a discussion of some of the political and procedural factors Democrats are weighing in making those determinations).

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