

## Wyden unveils draft bill fleshing out details of 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 draft legislation for international tax reform on August 25 that provides additional detail on proposed changes within the high-level “framework” the trio previously released in April.

**URL:**  
<https://www.finance.senate.gov/imo/media/doc/WBW%20Framework%20discussion%20draft%20leg%20text%20FINAL%208.24.21.pdf>

The senators hope to include the proposals as revenue offsets for some of President Biden’s social spending priorities in an expansive budget reconciliation measure that congressional Democrats are aiming to move this fall. (See separate coverage in this issue for additional discussion of the reconciliation package.)

### More detail on proposed GILTI, FDII, and BEAT changes

In releasing the draft bill – which was accompanied by a section-by section summary – Chairman Wyden criticized the international tax system put in place by the 2017 Tax Cuts and Jobs Act (TCJA, P.L. 115-97).

**URL:** <https://www.finance.senate.gov/imo/media/doc/section%20by%20section%20-%20WBW%20Framework%20discussion%20draft%208.20.21%20FINAL.pdf>

“The Republican tax law was a massive giveaway to mega-corporations, and corporate tax revenue is down nearly 40 percent since before 2017,” Wyden said in an August 25 news release. “...To right the ship, we’re ending incentives to ship jobs overseas and closing loopholes that allow companies to stash their profits in tax havens. Instead, we’re going to reward companies that invest in the United States.”

Despite those criticisms, however, the draft bill – like the framework before – still proposes to work within the confines of the current international tax system by addressing perceived flaws rather than repealing and replacing elements of it on a wholesale basis. (For prior coverage of the Wyden-Brown-Warner international tax reform 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](https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/210405_1.html)

**GILTI:** Consistent with the earlier framework, the draft bill suggests three main changes to the TCJA’s global intangible low-taxed income (GILTI) regime. These proposed changes would:

- Increase the effective tax rate on GILTI (though the draft bill continues to defer a decision on exactly what that rate should be);
- Modify 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”); and
- Require 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 draft bill suggests effectuating this change by dividing global income into high-tax (that is, income subject to an effective

rate greater than the GILTI rate, which would be treated under the Treasury Department's existing high-tax exclusion regulations) and low-tax groups, with only the latter being subject to residual GILTI tax.

The bill also includes changes intended to address certain interactions between the GILTI regime and subpart F income, including the foreign tax credit rules, and calls for extending the high-tax exclusion rule to foreign branches.

It is worth bearing in mind that congressional Democrats are not necessarily united when it comes to proposed changes to the GILTI regime. For example, in a recent letter to Ways and Means Committee Chairman Richard Neal, D-Mass., a group of 11 moderate House Democrats (including several taxwriters) pointed to progress by the OECD and G20 nations in moving toward an agreement on a global minimum corporate tax and cautioned that "proposals to dramatically increase the tax on...GILTI in forthcoming legislation would risk needlessly hampering US economic competitiveness abroad." (For prior coverage, see *Tax News & Views*, Vol. 22, No. 38, Aug. 13, 2021.)

[URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/210813\\_1.html](https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/210813_1.html)

**FDII:** Similar to the framework, the draft bill suggests repealing the QBAI aspect of the TCJA's foreign-derived intangible income (FDII) regime, replacing 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, and equalizing the as-yet-undetermined FDII and GILTI rates.

**BEAT:** The draft legislation continues to support 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 – applicable to "base erosion income." Also consistent with the earlier framework, the bill suggests changes that would ensure that the value of certain domestic tax credits under tax code section 38 – for example, the research credit – are fully restored.

The section-by-section summary also notes that "[t]he drafters are considering the best way to incorporate into the BEAT the purposes and policies of the Stop Harmful Inversions and Ending Low-Tax Developments (SHIELD) proposal put forth by the Biden administration."

In that vein, it is important to note that the Biden administration has suggested different approaches to international tax policy, particularly with respect to the FDII and BEAT regimes which the White House has argued should be repealed entirely. In the case of the BEAT, the White House has suggested the alternative SHIELD regime that would deny US deductions on related-party payments if they are subject to a low effective rate of tax (an as-yet-undetermined threshold) in the destination jurisdiction. (For details on international and other proposed tax law changes that President Biden included in his proposed FY 2022 budget, see *Tax News & Views*, Vol. 22, No. 28, May 29, 2021.)

[URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/210529\\_1.html](https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/210529_1.html)

**Other changes:** The draft legislation also provides for taxpayer-friendly changes to the foreign tax credit rules in regard to research and experimentation expenses for “stewardship,” which would be allocated 100 percent to US-source income.

## A menu of revenue-raising proposals

The international discussion draft is one of a series of revenue-raising proposals Wyden has released in recent months that he hopes to include in the tax title of an eventual budget reconciliation bill. Those earlier proposals include:

- The Ending Carried Interests Loophole Act, which generally would require fund managers to recognize income from carried interests as deemed compensation that would be taxed at ordinary income rates. (For prior coverage, see *Tax News & Views*, Vol. 22, No. 36, Aug. 6, 2021.)  
**URL:**  
<https://www.finance.senate.gov/imo/media/doc/Ending%20the%20Carried%20Interest%20Loophole%20Act%20117th%20-%20Legislative%20Text.pdf>  
**URL:** [https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/210806\\_1.html](https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/210806_1.html)
- The Modernization of Derivatives Tax Act, which would, among other things, require annual mark-to-market treatment of derivatives and ordinary tax treatment of the resulting gains and losses and apply a single tax regime to all derivative contracts (see *Tax News & Views*, Vol. 22, No. 36, Aug. 6, 2021).  
**URL:** <https://www.finance.senate.gov/imo/media/doc/Modernization%20of%20Derivatives%20Tax%20Act1.pdf>  
**URL:** [https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/210806\\_1.html](https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/210806_1.html)
- The Clean Energy for America Act, which would consolidate roughly 40 current-law energy-related provisions into just a handful of “technology-neutral” incentives. (The Finance Committee approved a modified version of this bill along party lines on May 26. See *Tax News & Views*, Vol. 22, No. 27, May 28, 2021.)  
**URL:** <https://www.congress.gov/117/bills/s2118/BILLS-117s2118pcs.pdf>  
**URL:** [https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/210528\\_2.html](https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/210528_2.html)
- The Small Business Tax Fairness Act, which would, among other things, further limit the 20 percent deduction under section 199A (see *Tax News & Views*, Vol. 22, No. 34, July 23, 2021).  
**URL:**  
<https://www.finance.senate.gov/imo/media/doc/7.19.21%20Small%20Business%20Tax%20Fairness%20Act.pdf>  
**URL:** [https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/210723\\_1.html](https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/210723_1.html)

## Hoping to act quickly...but path ahead may be bumpy

When they released their international discussion draft, Wyden, Brown, and Warner noted they are requesting comments (to be sent to [InternationalTax@finance.senate.gov](mailto:InternationalTax@finance.senate.gov)) by September 3, 2021 – a short window, to be sure, but one that factors in the speed with which Democrats hope to act on their legislative ambitions this fall.

Also to that end, under the fiscal year 2022 budget resolution adopted by congressional Democrats this week (see related coverage in this issue), committees charged with producing policy under that blueprint’s budget

reconciliation instructions are asked to report their respective pieces of legislation by September 15, 2021 – a nonbinding deadline but, again, one that demonstrates a desire among Democratic leaders to act swiftly.

It remains to be seen whether Democrats will be able to move reconciliation legislation so quickly, however, particularly given internal divisions among factions of the Democratic party over the size and scope of a budget reconciliation package as well as several competing “must-pass” legislative priorities that will crowd the calendar – such as funding the federal government for fiscal year 2022 and a looming deadline to increase or further suspend the federal debt limit – when lawmakers return from their summer recess next month. (See separate coverage in this issue for additional discussion of September’s legislative agenda.)

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