



Comparison of Recent Tax Proposals

September 1, 2021

Comparison of Recent Tax Proposals – International Tax Implications

	Current Law (TCJA)	FY22 President Biden “Green Book”	Wyden/Brown/Warner Overhauling International Taxation (Draft bill 8-25)	OECD Pillar 2 Blueprint
U.S. Corporate Tax Rate	21%	28%, for fiscal year end taxpayers the tax rate is prorated	N/A	N/A
“GILTI Tax Rate”	10.5%	Increase rate to 21% using a 25% section 250 deduction	250 deduction rate is still TBD	Being negotiated
GILTI Calculation	Aggregate across all countries	Per-country GILTI inclusion	<ul style="list-style-type: none"> Mandatory high-tax exclusion (HTE) determined based on ETR of all tested units within the same country that are part of a foreign expanded group (i.e., not limited to CFC) One GILTI inclusion for all low-taxed tested income Effective for tax years of foreign corporations that begin after the date of enactment. 	Country-by-country ETR test based on book income
GILTI FTCs (960)	20%	<ul style="list-style-type: none"> No elimination of 960(d) haircut (up to 26.5% ETR before considering expenses) Taxes paid outside the controlled US group may be allowed as FTC (to align with Pillar 2) No FTC carryforward 	<ul style="list-style-type: none"> FTC haircut between 0-20% Taxes paid by foreign parent of US group may be allowed as FTC under regs (to align with Pillar 2) No FTC carryforward 	N/A
GILTI QBAI	Exempts 10% return on tangible asset basis	Eliminated	Eliminated	Excludes from min tax calculation a fixed return for substantive activities with a payroll and a fixed asset component

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Loss Sharing	<ul style="list-style-type: none"> Losses shared on aggregate basis No loss carryforward Losses are considered low-tax under final GILTI HTE Regs and high-tax under Prop. HTE Regs 	<ul style="list-style-type: none"> No loss sharing across countries No loss carryforward 	<ul style="list-style-type: none"> Losses of a tested unit can only be shared within the same country If aggregate tested unit for a country has a tested loss, its income is considered high-tax tested income If aggregated tested unit for a country has a tested loss, its taxes are neither creditable nor deductible Taxes at a tested loss tested unit may still be creditable, provided the tested loss offsets tested income of tested units within the same country, and the country’s aggregate tested unit has positive tested income that is not excluded by HTE. No requirement to have positive tested income at the CFC under section 960(d) to claim FTCs 	<ul style="list-style-type: none"> Losses can be shared on a country-by-country basis Indefinite carryforward Excess taxes in a jurisdiction create a credit to the extent of prior min-tax liability, which can offset liability in <u>any</u> jurisdiction. Other excess taxes may carryforward as a tax expense
High-Tax Exclusion	Elective HTE for GILTI (final) and elective unified HTE for GILTI and subpart F (proposed)	Repeal HTE for subpart F and GILTI	Use of final GILTI HTE regulations as a framework for mandatory HTE	N/A
FTC haircut on PTEP	Only FTC haircut on taxes imposed on 965 PTEP	N/A	Apply FTC haircut between 0-20% on taxes imposed on distributions of GILTI and subpart F PTEP	N/A

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Subpart F	<ul style="list-style-type: none"> Taxed at US corporate tax rate No FTC haircut 	N/A	<ul style="list-style-type: none"> Mandatory HTE by country at US corporate tax rate Separate ETR test for general and passive subpart F income Losses of a tested unit can only be shared within the same country If aggregate tested unit for a country has a subpart F loss, its income is considered high-tax tested income FTC haircut between 0-20% 	N/A
Foreign branch income	Single FTC limitation for aggregated foreign branch income	Per-country foreign branch FTC imitation	<ul style="list-style-type: none"> Mandatory HTE by country at US corporate tax rate As distinct from other HTEs, losses incurred by a branch <u>are</u> permitted to offset other low-taxed foreign branch income in other countries If aggregated foreign branch for a country is high-taxed, or has a loss, its taxes are neither creditable nor deductible FTC haircut between 0-20% Amends definition of foreign branch to more closely align with tested unit definition in GILTI HTE 	N/A
Expense Allocation	§861 regulations	<ul style="list-style-type: none"> Eliminate 904(b)(4) 265(a) disallowance of expenses allocable to exempt income (e.g., 250 deduction and 245A) 	<ul style="list-style-type: none"> R&D and stewardship expenses incurred in the U.S. are directly allocated to U.S. source income for FTC purposes Does not include 265(a) disallowance for interest expense 	N/A

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BEAT	<ul style="list-style-type: none"> Corporate min tax on large taxpayers with sufficient “base erosion percentage” (at least 2 or 3%, depending on industry) Applies “BEAT rate” to “modified taxable income” (MTI) Currently, BEAT rate is 10 or 11% (depending on industry) BEAT = excess of <ul style="list-style-type: none"> BEAT rate × MTI, over regular tax liability reduced by all credits other than certain of the components of the section 38 credit 	<ul style="list-style-type: none"> Repeal and replace BEAT with SHIELD, which denies 100% of the deductions with respect to payments to related parties in low tax countries (by reference to agreed min tax rate at OECD, or, if such agreement is not in place new GILTI rate), effective for tax years beginning on or after 1/1/2023 Payments to non-low taxed countries may be disallowed in part based on the aggregate ratio of the financial reporting group’s low-taxed profits to its total profits, based on consolidated financial statements. Reductions to gross income for COGS for sales to related parties in low-tax countries (or to non low-tax members of a financial reporting group if ETR is less than designated min rate) also effectively eliminated by reducing other allowable deductions, including those to unrelated parties 	<ul style="list-style-type: none"> Retains BEAT Provides full value for all general business credits (none for FTCs) Applies 2 BEAT rates to MTI: a new higher rate (yet to be determined) would apply to the excess of MTI over taxable income, and the current rate would apply to the remainder of MTI Drafters considering how to incorporate policy of SHIELD into the BEAT 	Undertaxed Payments Rule (UTPR) applies to deny deductions based on payments to entities whose low-taxed income is not subject to Income Inclusion Rule (IIR)

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FDII	37.5% deduction (13.125–21% effective tax rate)	<ul style="list-style-type: none"> • Repeal FDII deduction • Replace with [R&D incentives] 	<ul style="list-style-type: none"> • Eliminate QBAI offset to qualifying income • Applies the same section 250 deduction rate (to be determined) to both net CFC tested income, and the foreign-derived ratio of deemed innovation income (“foreign-derived <u>innovation</u> income”) • <u>Deemed innovation income</u> is the lesser of (A) DEI and (B) the sum of [X]% qualified R&E and [X]% qualified training expenditures for activities conducted in the US • Determination of DEI and FDDEI remains relevant for foreign-derived ratio • If R&E expenditures must be amortized for section 174 purposes, does not affect the amount taken into account for deemed innovation income purposes • Effective date to be determined 	N/A

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Comparison	Present Law	Wyden/Brown/Warner Overhauling International Taxation (Draft Bill 8-25)
FDDEI	100	100
DEI	400	400
Foreign Derived Ratio	25% ^a	25% ^a
DEI	400	
DTIR (10% of QBAI)	50	
Deemed Intangible Income	350 ^b	
R&E and Training Expenses		300
Qualifying R&E and Training %		80%*
Deemed Innovation Income		240 ^b
FDII (a*b)	88	60
FDII Deduction	33	23

* For illustrative purposes only- the % has not been determined.

Observations:

- Taxpayers will have a larger/smaller FDII deduction based on the materiality of their R&E in relation to their DEI less 10% of QBAI
- All of the complexity in the present law calculation remains, with the exception of computing QBAI
- Taxpayers who couldn't clear the QBAI hurdle under current law may now have a FDII benefit for the first time (the TI limitation still applies)

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Financial Reporting Group Interest Expense Limitation	163(j) limitation of the U.S. Group	<ul style="list-style-type: none"> • Appears to add an additional limitation for the deduction for interest expense based on a member’s proportionate share of the group’s EBITDA reflected on the group’s financial statements. • Appears to allow the US member to take into account EBITDA of CFCs to support US interest deductions. • Applies the lesser of existing 163j limitation and financial reporting group interest expense limitation • Disallowed interest deductions are carried forward indefinitely • Financial services entities exempt 	N/A	N/A

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Reduced deductions for Offshoring Jobs	N/A	Disallow deductions for expenses paid or incurred in connection with offshoring a US trade or business	N/A	N/A
Incentives for onshoring Jobs	N/A	New general business credit equal to 10% of the eligible expenses paid or incurred in connection with onshoring a US trade or business	N/A	N/A
Book Income Minimum Tax	N/A	<ul style="list-style-type: none"> Min tax of 15% on worldwide pre-tax book income (reduced by book NOLs) for companies with greater than \$2B worldwide book income Equals the excess of book tentative minimum tax over the regular tax liability. The book tentative minimum tax is reduced by general business credits and FTCs. Book tax credit (if regular tax liability exceeds 15% book tax liability) allowed as a carryforward 	N/A	N/A, but note that ETR is determined based on “covered taxes” imposed on book income (with some adjustments). Covered taxes include local income taxes, WHT, CFC tax, and taxes on dividend income

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Corporate Inversions	<p><u>Ownership Continuity:</u></p> <ul style="list-style-type: none"> Different tax consequences dependent upon continuity (50-69%, 60-79%, and 80-100%) <p><u>Management and Control:</u></p> <ul style="list-style-type: none"> N/A 	<p><u>Ownership Continuity:</u></p> <ul style="list-style-type: none"> Amend 7874 to treat as a U.S. company a foreign acquirer if shareholder of 50% (from current 60%/80%). <p><u>Management and Control:</u></p> <ul style="list-style-type: none"> Amend 7874 to treat as a U.S. company a foreign acquirer if: (i) immediately prior to acquisition FMV of US > FMV of Foreign Acquiring; (ii) primary management and control in the US; and (iii) EAG does not conduct substantial business activities in the country of foreign acquiring corporation <p>Expand Scope of Acquisition to include substantially all the assets of a trade or business of domestic corp or foreign partnerships and address distributions of stock.</p> <p>Effective for transactions completed after date of enactment</p>	To be considered in future legislation	N/A
Entity Classification Elections	Check-the-box rules permitted for non per se entities under section 7701	Source and character of any gain recognized in a disposition of a specified hybrid entity and to a change in entity classification is treated as a sale or exchange of stock (without regard to section 1248), effective for transactions occurring after the date of enactment	N/A	N/A
Fossil Fuels	Foreign oil and gas income taxed at 10.5%	Repeal of GILTI exemption for FOGEI	N/A	N/A

Unless otherwise stated, the effective date for each of these provisions is for tax-years beginning on or after 1/1/2022.



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