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Tax News & Views
Capitol Hill briefing.
July 22, 2022

Senate Democrats to pursue narrower 'Build Back Better' bill without significant tax title

Following the recent news that Sen. Joe Manchin, D-W.Va., would not support efforts by Senate Democrats to advance a "Build Back Better" package addressing climate change, health care, deficit reduction, and taxes using fast-track budget reconciliation before the August recess, party leaders this week appeared poised to advance a much narrower reconciliation bill with no clean energy tax provisions or significant tax increases.

While some Democrats still hold out hope that they can pass another bill including energy tax provisions and revenue raisers before November's election, most signs point to their ambitious Build Back Better plans being dashed—along with the administration's hopes for timely US implementation of changes to the treatment of global intangible low-taxed income to comply with Pillar 2 of the multilateral tax agreement signed last year.

After a lengthy period of negotiations on a potential bill that would include robust clean energy tax provisions, Medicare prescription drug pricing reforms, and substantial tax increases on corporations and wealthy individuals—items that Manchin had identified earlier this year as priorities in a reconciliation agreement—the West Virginia Democrat told Majority Leader Charles Schumer, D-N.Y., and other party leaders on July 14 that at the present time he could support only a far more limited bill focused on health care.

Manchin has consistently raised concerns about rising inflation, and after the latest consumer price index report showed that prices were 9.1 percent higher in June as compared to the same month last year, he indicated that he was going to be "very, very cautious" about any action that could be further inflationary. The result of that caution was to nix any significant corporate or high-wealth tax hikes for now and agree only to a product that includes certain Medicare prescription drug pricing reforms—including an excise tax on pharmaceuticals manufacturers that do not participate in mandatory price-setting negotiations with the government—and a two-year extension of certain enhanced Affordable Care Act premium assistance credits that are scheduled to expire at the end of this year. (For prior coverage, see *Tax News & Views*, Vol. 23, No. 23, July 15, 2022.)
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/TNV/220715_1.html

Go small or go home

As a budget reconciliation measure, Build Back Better legislation can clear the Senate with a simple majority rather than the three-fifths supermajority—typically 60 votes—often required to avoid procedural hurdles in that chamber. But in the evenly divided Senate (with Vice President Kamala Harris as a tie-breaker), and with no support expected from any Republicans, Democrats need to keep all 50 of their members united to retain a working majority.

Given the choice between advancing a much smaller package now or waiting until Congress reconvenes in September in hopes that inflation will fall and Manchin will consider a broader package, Democratic leaders—at the urging of President Biden—have indicated they will move quickly to wrap up the health-focused passage in the next two weeks.

Some of Manchin's Senate colleagues have publicly aired their anger with him for prolonging a process they thought would be wrapped up in 2021, only to leave them without any of the clean energy tax provisions and revenue raisers they targeted.

"[I]t's not fair to string people along for a year and not come to a conclusion," Sen. Martin Heinrich, D-N.M., told reporters July 19 outside the hearing room of the Energy Committee Manchin chairs. "That's just not an appropriate way to negotiate."

Sen. Bernie Sanders, D-Vt., the Budget Committee chair who helped craft the original reconciliation outline, described his own feeling about the drawn-out negotiations with Manchin to reporters July 19: "My ending point was six months ago."

A September surprise unlikely

Manchin insisted during a July 15 radio interview in West Virginia he still wants to address climate change through energy legislation and to ensure large corporations and wealthy individuals are paying their "fair share" in taxes, but that he will not support tax increases without being certain they won't harm the US economy. He also suggested that he would be open to revisiting the reconciliation package in September if the July inflation report (which will be released August 10) and the Federal Reserve's next move on monetary policy (expected at its July 25-26 meeting) suggest that economic conditions are improving.

President Biden, however, in a July 15 statement issued in response Manchin's decision to withhold support for a broader package in the near term, noted his disappointment that the Senate is unable to take action on climate change and clean energy and urged Democrats to take the deal on offer and "give Medicare the power to negotiate lower drug prices and to prevent an increase in health insurance premiums for millions of families with coverage under the Affordable Care Act" before the August recess.
URL: https://www.whitehouse.gov/briefing-room/statements-releases/2022/07/15/statement-by-president-joe-biden-5/

There seems to be general acceptance now among the caucus that this is the course they will take over the next two weeks. But some in the party are still holding on to the slim hope that they will find a way to address pass clean energy tax provisions after Labor Day.

"We'd be crazy not to keep working on it. . . . As long as Joe Manchin is at the table, I'm at the table," said Sen. John Hickenlooper, D-Colo., referring to Manchin's statement that he might consider revisiting additional legislative provisions if he thinks the economic outlook warrants.

The only way Democrats would be able to pass a bill including the climate provisions they envision would be through party-line reconciliation legislation as a climate change package would have no GOP support; however, the legislative calendar suggests that such an approach would face long odds.

The fiscal year 2022 budget resolution that includes the currently available reconciliation instructions expires at the end of September, so as a practical matter, waiting until Congress returns after Labor Day would give

Democrats little time to use that authority to advance significant party-line legislation in the fall work period. The only other option available to Democrats would be to quickly pass a fiscal year 2023 budget resolution that includes a new set of reconciliation instructions, but that process would be extremely challenging and time-consuming as lawmakers look ahead to the fall election season, making the chances of success highly unlikely.

What's next for the global tax agreement?

Key among the tax provisions that will be left aside if the Senate passes the health-only reconciliation bill are changes necessary for US law to come closer to a 15 percent global minimum tax, Pillar 2 of an agreement the US joined 140 other countries in signing last October. The Build Back Better legislation that was passed by the House last November and the potential agreement that until recently was under negotiation in the Senate included an increase in the tax rate on global intangible low-taxed income (GILTI) to 15 percent and a shift to calculating GILTI on a country-by-country basis.

In his July 15 radio interview, however, Manchin specifically cited the GILTI changes as among the provisions he opposes right now because other countries have not yet adopted the global minimum tax and he doesn't want to put American companies at a competitive disadvantage.

"Can't do that, so we took that off the table," said Manchin, referring to what he told Senate Majority Leader Schumer in their recent conversation that led to the breakdown in negotiations.

Treasury Secretary Janet Yellen tried to continue projecting optimism this week. As she left a meeting in Bali of the G-20's finance ministers, she told reporters July 16 that there is still strong support among the group for the global deal.

"I think there's huge political momentum to move forward, and other countries are moving forward," Yellen said. "Whether we go first or second or later, the incentive exists for the United States to join this agreement, and we will push forward with every opportunity we have."

Yellen acknowledged in a July 19 radio interview that it could take "years" for the US to implement the deal but insisted it is too important to abandon. She also said she believes implementation of Pillar 2 by other nations will have the effect of putting pressure on the US to follow suit.

"They will levy this tax on American companies doing business in their jurisdictions, and America will just lose out on tax revenues that we could use to invest in the strength of our economy, in the middle class," Yellen told National Public Radio. "So there will be incentives over time to adopt this in the United States."

The EU has faced its own political obstacles in implementing Pillar 2, but Yellen also said she expects that the trading bloc will be able "in the not-very-distant future" to circumvent Hungary's recent veto of a directive to implement the 15 percent minimum tax across the 27 EU countries. That action by Hungary prompted the US Treasury Department to announce its intention to terminate the tax treaty with Hungary that has been in place for decades. (For prior coverage, see *Tax News & Views*, Vol. 23, No. 23, July 15, 2022.)

URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/TNV/220715_2.html

Several senior Republicans on the House Ways and Means Committee who oppose the global tax pact met with Hungarian Foreign Minister Peter Szijjarto and Ambassador Szabolcs Takacs in Washington on July 21 to reiterate their support for Hungary's position.

In a statement released after the meeting, Ways and Means ranking member Kevin Brady of Texas, along with taxwriters Adrian Smith of Nebraska (the top Republican on the Trade Subcommittee) and Mike Kelly of Pennsylvania (the top Republican on the Select Revenue Measures Subcommittee), said that they "share concerns over the global minimum tax harming our countries' job creation and economic growth, as well as the Biden administration's unilateral termination of the longstanding US-Hungary tax treaty."
URL: https://gop-waysandmeans.house.gov/ways-means-gop-meets-with-hungarian-delegation-biden-global-tax-deal-harms-our-countries-job-creation-and-economic-growth/

"The United States will not surrender economically to foreign countries by increasing our global minimum tax based on an agreement that is not complete, nor enforceable, nor in our interest. Congress will not ratify an agreement that cedes its constitutional taxwriting authority or fails to protect key US tax incentives," the statement said.

— Storme Sixeas
Tax Policy Group
Deloitte Tax LLP