CURRENT STATE-OF-PLAY:
TAX PROPOSALS

May 25, 2021

OVERVIEW

Since the March 11 enactment of the American Rescue Plan (ARP) - which extended and expanded numerous tax credits - Congressional Democrats and the Biden Administration have proposed sweeping changes to the tax code as a method to pay for Democratic policy priorities. Many of these proposals are long-held objectives and/or part of then-candidate Joe Biden's campaign platform; nevertheless, with narrow majorities in both chambers and the budget reconciliation process providing a vehicle, we can expect a determined effort to enact changes to corporate and individual taxes.

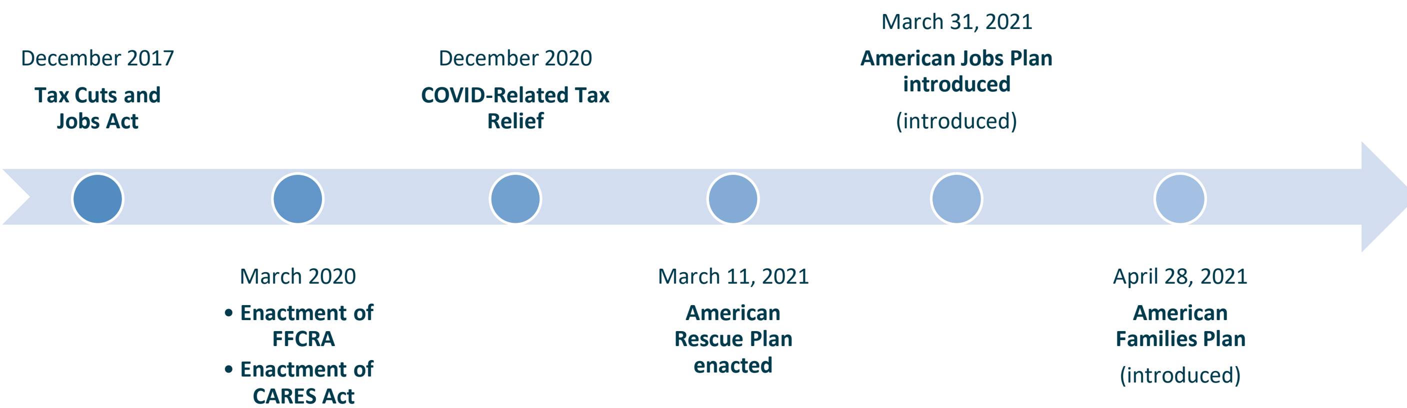
The ARP was part of the Biden Administration's response to the pandemic and a two-part infrastructure policy – the American Jobs Plan and the American Families Plan – has now been proposed to bolster the economic recovery. On March 31, President Biden announced the American Jobs Plan (AJP), which includes more than $2 trillion in infrastructure spending. Concurrently, the Treasury Department released a paper entitled the Made in America Tax Plan, which includes not only changes to domestic corporate tax policy, but also international tax policy to pay for much of the AJP. Subsequent to the release of those two plans, the White House released the American Families Plan (AFP) on April 28, which provides an additional $2 trillion of investments in human capital. To pay for the AFP, the Administration proposed changes to individual tax rates and various capital gains policies.

Congressional Democrats also are proposing changes to the tax code, many of which dovetail with the Administration's proposals. Senate Finance Chairman Ron Wyden (D-OR) and Senators Mark Warner (D-VA) and Sherrod Brown (D-OH) offered a proposal to overhaul international taxation. Wyden also is examining changes to the treatment of clean energy tax policy with his Clean Energy for America Act.

In the House, Ways and Means Committee Chairman Richard Neal (D-MA) has expressed some hesitancy about the Administration's proposals, and he has outlined many of his priority areas via the Building an Economy for American Families plan, which would expand several tax credits for working families. Chairman Neal is now envisioning completing a markup before the July 4 recess, a change from the timetable set by Speaker Pelosi a few months ago when she indicated the full House would vote on an infrastructure and tax bill by July 4. The new deadline for House consideration appears to be sometime before the August recess. Additionally, from a substance perspective, Chairman Neal still would like to proceed with one comprehensive markup which would include the GREEN Act as well as the infrastructure revenue measures. Importantly, the Chairman has been reminding Democratic Members the goal of this exercise is finding revenue raisers to pay for the AJP and that this is not a tax reform exercise. That condition may prove to be a complicating factor for dealing with certain issues of priority to Democratic Members, specifically SALT.

Congressional Republicans generally oppose any changes to the 2017 Tax Cuts and Jobs Plan. Instead, they have proposed transportation user fees and repurposing monies appropriated for the pandemic response as potential methods to pay for infrastructure spending.

Below, we have outlined the key provisions in each proposal.



POLICY PLANS & PROPOSALS

American Jobs Plan / Made in America Tax Plan

Coinciding with the announcement of the American Jobs Plan, President Biden released the Made in America Tax Plan. The domestic portion of the plan focuses on corporate tax policy and energy tax policy. The plan would:

- Raise the corporate tax rate from 21 percent to 28 percent;
- Establish a minimum tax of 15 percent on book income for some corporations;
- Bolster tax enforcement; and
- Address methods used to reduce corporate tax liability.

More details on the Administration's proposals are expected later this week with the release of the President's Budget and accompanying Green Book. Additionally, we will distribute a separate memo detailing clean energy tax proposals following the Senate Finance Committee's markup later this week.

American Families Plan

This proposal would expand upon the ARP, including:

- Extending the Child Tax Credit (CTC) increases and making the CTC fully refundable;
- Making the Child and Dependent Care Tax Credit (CDCTC) expansion permanent; and
- Making the Earned Income Tax Credit (EITC) expansion permanent for childless workers.

The plan also calls on Congress to pass legislation to grant the IRS authority to oversee and regulate paid tax preparers.

To pay for the policies in the AFP, the Administration seeks changes to the tax code affecting upper individual brackets and the treatment of capital gains, including:

- Increasing the income tax rate for the top 1 percent of earners to 39.6 percent;
- Ending capital income tax breaks for households with more than $1 million of income;
- Ending the stepped-up basis for capital gains in excess of $1 million for individuals and $2.5 million for couples when combined with real estate exemptions;

- Ending carried interest;
- Ending the deferral of taxation on real estate exchanges for gains greater than $500,000 and permanently extending the limitation on excess business losses; and
- Ensuring the 3.8 percent Medicare tax on high-income earnings is applied consistently.

Ways & Means Chairman Neal's Building an Economy for American Families
While most of the discussion around tax proposals has focused on the AJP, many of the AFP provisions are similar to legislation offered by Chairman Neal, which would:

- Create refundable payroll tax credits for certain wages paid to child-care workers;
- Make the ARP expansion and changes to the CDCTC permanent;
- Make the ARP increase in the exclusion for employer-provided dependent care assistance permanent;
- Make the ARP changes to the CTC permanent and extend the fully refundable CTC to U.S. territories; and
- Make the ARP changes to and expansion of the childless EITC permanent.

The Administration says these proposals would result in corporations and high-income individuals "paying their fair share" in taxes. Democrats supporting these policies make the case they are politically popular, served as the basis for President Biden's campaign last fall and will result in economic benefits for all Americans. Reaction in Congress, however, has been mixed. Moderate Democrats in both chambers, most notably Senator Joe Manchin (D-WV), have suggested the proposed corporate 28 percent rate is too high. Manchin said in April he would support a 25 percent rate and suggested some of his colleagues in the Senate had a similar view.

In the House, Chairman Neal has stated his committee "would accept some" of the President's proposal but did not reference the Administration's proposed rate increase in a May 19 committee hearing on infrastructure, leading to further speculation he may not support such an increase.

Additionally, following a meeting with President Biden, both Senate Republican Leader Mitch McConnell (R-KY) and House Republican Leader Kevin McCarthy (R-CA) said all Republicans would oppose any changes to TCJA.

International Tax Proposals
Specifically, the Made in America Tax Plan would:

- Make several changes to global intangible low-tax income (GILTI), including the elimination of the tax exemption on the first 10 percent return on foreign assets;
- Calculate GILTI on a per-country basis;
- Raise the GILTI minimum tax rate to 21 percent;
- Eliminate the system for foreign-derived intangible income (FDII); and
- Replace the Base Erosion and Anti-Abuse Tax (BEAT) with a new system, the Stopping Harmful Inversions and Ending Low-tax Developments (SHIELD).

Under the SHIELD proposal, multinational corporations would not be able to utilize U.S. tax deductions for payments made to related parties with a low effective tax rate. The SHIELD plan is intended to bolster anti-inversion policies by treating the foreign acquiring company as a U.S. company if either the acquiring company owns 50 percent (lowered from the current 80 percent) or the foreign company is managed and controlled in the U.S. As with the domestic tax policy proposals, we anticipate additional details when the Administration releases the Green Book. Additionally, the Administration continues to lead the discussion over a global minimum tax at the OECD, and it is possible the timing of an agreement may align with consideration of tax legislation in Congress.

In April, Senate Finance Committee Chairman Wyden along with Senators Brown and Warner released an international tax framework titled "Overhauling International Taxation." The framework aligns closely with the President's proposal, focusing on changes to GILTI, FDII, and the BEAT as additional sources of revenue to pay for infrastructure proposals. The framework does contain some notable differences, though, including:

- Options to increase the GILTI rate without a specific target number;
- Options on calculating GILTI on a per-country basis;
- Added incentives to onshore research and management positions;
- Revisions and reforms to FDII, rather than outright elimination; and
- Modifications to the BEAT, including a higher rate on base erosion payments.

Wyden has announced the Senate Finance Committee will be considering infrastructure and tax proposals over the summer.

Lastly, though not specifically included in many of the plans released to date, there are a number of tax policies being discussed as potential pay-for's for various spending priorities, including:

- Establishment of a Financial Transaction Tax
- Modification of the Qualified Business Income deduction
- Modifications to Mark-to-Market Taxation
- Implementation of a Deemed Realization System for Bequests
- Implementation of a Vehicle Miles Traveled Tax
- Expansion of Tolling
- Excise Taxes on Freight Transport

SUMMARIES OF RECENT TAX AND INFRASTRUCTURE HEARINGS

3.16 SFC Domestic Manufacturing Tax hearing
3.25 SFC International Tax hearing
4.27 SFC Tax System hearing
4.27 SFC Tax Code/Climate Change hearing
5.11 SFC Tax Gap hearing
5.12 W+M Tax Code Reform hearing
5.18 SFC Infrastructure Finance hearing
5.19 W+M Tax Code/Infrastructure hearing