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Tax Trends

Tax Provisions of Budget Reconciliation Legislation Coming Together

By Mark A. Luscombe

The Administration has made its tax proposals in the Green Book. Congress has approved a budget resolution for \$3.50 trillion. Now Democrats in Congress are in the process of fleshing out the details of what might go into that budget reconciliation legislation, which has been given a working title of the Build Back Better Act. The current fiscal year ends on September 30, 2021, and Speaker Pelosi has already delayed a promised a vote on bipartisan infrastructure legislation by September 27, 2021, putting pressure on getting the budget reconciliation legislation enacted by the end of September. Most commentators have predicted that final agreement will likely take longer, if agreement can be reached at all. To hold all of the Democratic Senators together, it is likely that the \$3.50 trillion total will have to be somewhat reduced. Congress is accustomed to doing temporary resolutions to extend government funding until the budget legislation can be finalized. Initial proposals from the Ways and Means Committee have already backed off somewhat from some of President Biden's original proposals. The Ways and Means proposals still have to be finalized, still have to pass the House, and still have to make it through the Senate. There is very little room to maneuver in either the House or Senate and still preserve the Democratic votes needed for passage. Still, Democrats are likely to come up with the necessary compromises to get something enacted rather than come away completely empty-handed.

Individual Tax Rates

Ways and Means is proposing to return the top individual tax rate to 39.6 percent, as was in place in 2017, from the current top rate of 37 percent, and in line with Biden's proposals. That rate would be expanded to begin at incomes of \$400,000 for single filers, \$450,000 for joint filers. Also proposed is a three-percent surcharge on incomes over \$5 million, which was not part of Biden's proposals.

Capital Gain Rates

Ways and Means is also proposing to raise the top rate on long-term capital gains and qualified dividends to 25 percent from 20 percent. The increased rate would apply to single taxpayers with incomes over \$400,000, \$450,000 for joint filers.

Biden had proposed that high-income taxpayers would pay capital gain taxes at the individual tax rate. It had been rumored that a capital gain rate change might be effective retroactively back to April 2021, but the Ways and Means proposal would make it effective as of September 13, 2021.

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Tax Credits

The tax credits from the American Rescue Plan Act would be extended or made permanent, as proposed by President Biden. The 2021 Child Tax Credit would be extended through 2022, with some portions extended through 2025, and the American Rescue Plan changes to the Child and Dependent Care Credit, the Earned Income Tax Credit, and the Premium Tax Credit would be made permanent.

Corporate Tax Rate

Ways and Means is proposing a top corporate tax rate of 26.5 percent, splitting the difference between Biden's proposed 28 percent and a top rate of 25 percent sought by some Senate Democrats. The current top corporate rate is 21 percent and had been 35 percent before the Tax Cuts and Jobs Act of 2017. The top rate would apply to incomes in excess of \$5 million. For incomes over \$10 million, there would be a 3 percent tax up to a maximum of \$287,000, phasing out the benefit of a new 18 percent rate for taxable income up to \$400,000. There would also be new limits on the business interest deduction for specified domestic corporations part of a multinational group.

Passthrough Businesses

Passthrough business owners would see new limits on the Qualified Business Income Deduction enacted as

part of the Tax Cuts and Jobs Act, and passthrough businesses would potentially become subject to the current 3.8-percent net investment income tax on their active business income. The prohibition on excess business losses would be made permanent.

Estate Tax

Ways and Means proposes to reverse the doubling of the estate and gift tax exemption amount enacted in the Tax Cuts and Jobs Act but does not adopt the Biden proposal to impose an income tax on assets at death. An exception is provided for farmers. The proposal also includes some changes related to grantor trusts.

International Taxation

International tax changes are being proposed on several fronts: the Ways and Means Build Back Better bill, the Administration's Green Book, and Senate Finance proposals. Treasury Secretary Yellen has also been negotiating international tax changes with the OECD. Changes have been proposed to most of the international tax provisions enacted with the Tax Cuts and Jobs Act, including FDII, GILTI, and BEAT, as well as Foreign Tax Credit changes.

Retirement Accounts

The Ways and Means proposal would place limits on retirement accounts exceeding \$10 million, with restrictions on further contributions and higher required minimum distributions. There would be new restrictions on Roth IRA rollovers and conversions. There is also a separate set of retirement account changes in a bill with the label SECURE 2.0. This bill has bipartisan support, so it is not clear if it would be incorporated into the Democratic budget reconciliation effort or try to be enacted as a stand-alone bill.

Qualified Conservation Easements

To help address an abuse that the IRS has been successfully pursuing in court, Ways and Means is proposing a dollar limit on the permitted deductions associated with conservation easements. This is another provision that would be given retroactive application.

Energy

While the proposals include a number of new tax breaks for clean energy and expansion of current tax breaks, the

Ways and Means proposal does not eliminate all tax breaks for fossil fuels as Biden had proposed.

New Tax Breaks

The Ways and Means proposal also includes a few tax breaks completely new to the Internal Revenue Code, including a payroll tax credit for local newspapers employing journalists and a deduction for union dues up to \$250.

IRS Funding

The proposal includes an increase in IRS funding that did not make it into the infrastructure bill and that is scored as a source of revenue due to projected increased IRS enforcement activity.

SALT Deduction Limit

As of this writing, a modification or elimination of the state and local tax deduction limit has not been proposed by Ways and Means; however, a proposal is still expected.

Summary

By the time this column is read, it is possible that agreement will have been reached and the final provisions of the budget reconciliation bill will be clear. It is also possible that negotiations are still continuing and uncertainty remains as to what will finally be included or even if agreement can be reached at all.



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