The Made in America Tax Plan: The Biden Administration Outlines its Tax Reform Proposals

Tax Talks Blog on **April 5, 2021**

On March 31, 2021, the White House released a factsheet describing the "American Jobs Plan", a $2.3 trillion proposal for infrastructure spending that also contains certain significant tax credits, and the "Made in America Tax Plan", a tax proposal that would generate revenue to pay for the American Jobs Plan spending. The White House estimates that the Made in America Tax Plan will raise $2 trillion in tax revenue over the next 15 years.

The Made in America Tax Plan contains a number of proposals that apply principally to multinational corporate taxpayers, many of which are similar to those proposed by President Biden during his presidential campaign. The proposals include a significant increase to the U.S. federal corporate income tax rate (but still well below the pre-2017 rate), a "minimum" tax on the book income of large corporations, and significant changes to some of the international tax rules that were enacted as part of the Tax Cuts and Jobs Act in 2017.

The factsheet is not proposed legislation, and each element of the Made in America Tax Plan must be introduced and passed by Congress before it can become law. It is very possible that some or all of the proposals in the Made in America Tax Plan will be substantially modified before being enacted into law. Additionally, Senate Finance Chair Ron Wyden (D-Ore.) and Senators Sherrod Brown (D-Ohio) and Mark Warner (D-Va.) introduced a separate international tax proposal on April 5, 2021. The Senators' plan is somewhat different than the Made in America Tax Plan.

The remainder of this post contains a short summary of the proposals under the Made in America Tax Plan and the tax credits in the American Jobs Plan:

Increase in corporate income tax rate

Under the Made in America Tax Plan, the U.S. federal corporate income tax rate would be increased from 21% to 28%. The Tax Foundation has estimated that, taking into account state and local taxes, the aggregate U.S. corporate tax rate would be 32.34%, which would be the highest in the OECD. (The Tax Foundation estimates that the United States is currently the 12th highest in the OECD, with a combined U.S federal, state and local rate of 25.76%.)[1]

Revised GILTI regime

The "global intangible low taxed income" ("GILTI") regime was enacted as part of the Tax Cuts and Jobs Act. Very generally, GILTI imposes a 10.5% minimum tax on 10-percent U.S. corporate shareholders of "controlled foreign corporations," based upon the controlled foreign corporation's "active" income in excess of a threshold equal to 10% multiplied by the foreign corporation's tax basis in certain depreciable tangible property. [2] (This basis is referred to as "qualified business asset investment", or "QBAI".) GILTI is not determined on a country-by-country basis, and, therefore, under current law a U.S. multinational corporation may be able to avoid the GILTI tax with respect to its subsidiaries operating in low tax-rate countries by "blending" the low rate with income from subsidiaries operating in high tax-rate countries.

The Made in America Tax Plan would make three changes to the GILTI regime.

- The effective tax rate on GILTI for corporate taxpayers would increase from 10.5% to 21%, which represents an increase in the effective tax rate on GILTI to 75% of the corporate tax rate (21%/28%, assuming the U.S. federal corporate tax rate is raised to 28%) from 50% of the corporate tax rate under current law (10.5%/21%).
- GILTI would be required to be determined on a country-by-country basis. Accordingly, income earned in low tax-rate countries would become subject to GILTI, whereas under current law, it might be blended with higher-taxed income and either reduce or eliminate GILTI entirely.
- The exclusion equal to 10% of QBAI would be removed.

Together, these proposals would change the GILTI regime in a manner that would generally tax foreign source income of U.S. multinational corporations at a significantly higher rate and make offshore investments by U.S. multinationals much less attractive than under current law.

Repeal of FDII regime; expansion of R&D investment incentives

The “foreign derived intangible income” (“FDII”) regime under current law is intended to provide a counterbalance to the GILTI regime by encouraging U.S. multinational groups to keep intellectual property in the United States by providing a lower 13.5% effective tax rate for certain foreign sales and the provision of certain services to unrelated foreign parties in excess of 10% multiplied by the taxpayer’s QBAI.[3]

The Made in America Tax Plan would repeal the FDII regime in its entirety. The factsheet states, without detail, that the revenue from the repeal of the FDII regime will be used to expand more effective research and development (“R&D”) investment incentives.

Multi-lateral global minimum tax agreement and replacement of BEAT

The factsheet indicates that the Biden Administration will seek a global agreement on a strong minimum tax through multilateral negotiations and will repeal and replace the “base erosion and anti-abuse tax” (“BEAT”) with a regime that denies deductions to U.S. multinationals that make payments to countries in jurisdictions that have not adopted the minimum tax. (The BEAT is a 10% minimum tax that applies to very large multinational corporations and limits deductions on certain transactions with related foreign persons.)[4]

Strengthening “anti-inversion” rules; imposing U.S. tax on foreign corporations with U.S. management and operations

The factsheet indicates that President Biden will seek to prevent U.S. corporations from merging with foreign corporations and reducing their U.S. federal income tax while retaining management and operations in the United States. It is unclear whether tax would be imposed on the merger, or whether such a resulting foreign corporation would be treated as a U.S. corporation. It is also unclear what effect this proposal might have on foreign corporations that previously inverted.

Elimination of deductions for expenses relating to “offshoring jobs” and new tax credits for “onshoring jobs”

The Made in America Tax Plan would eliminate deductions for expenses arising from offshoring jobs (i.e., moving a factory from the United States to a foreign jurisdictions) and provide tax credits for onshoring jobs. There is no detail on these proposals.

Minimum corporate tax on “book income”

The Made in America Tax Plan would impose a 15% minimum tax on “large, profitable corporations” based on “book income”, which appears to refer to GAAP income. This proposal is in line with President Biden’s presidential proposal of a minimum tax of 15% on book income for corporations with book income exceeding $100M. The proposal does not indicate how the minimum tax would be computed for companies that use IFRS or other non-GAAP methods of accounting.

Fossil fuels and environmental cleanup

The Made in America Tax Plan proposes to eliminate all subsidies, loopholes, and special foreign tax credits available to the fossil fuel industry. The factsheet also indicates that the Plan would restore payments from polluters into the Superfund Trust Fund to cover costs of environmental cleanups.

Strengthening enforcement against corporations

The Made in America Tax Plan also proposes strengthening enforcement against corporations by increasing funding and resources to the IRS, with a stated goal of raising audit rates.

Tax credits in the American Jobs Plan

Aside from the proposed tax law changes in the Made in American Tax Plan, the American Jobs Plan also proposes a series of tax credits. These tax credits include:

- Point of sale rebates and tax incentives to buy American-made electric vehicles;
- A business tax credit for low- and middle-income families and small businesses to invest in disaster resilience;
- A targeted investment tax credit for construction of high-voltage capacity power lines;
- An investment tax credit and production tax credit for clean energy generation and clean energy storage;
- Reform and expansion of the section 45Q tax credit, which provides a tax credit on a per-ton basis for CO_2 that is sequestered by new equipment placed into service. The American Jobs Plan proposed to make the credit direct pay and easier to use for certain industrial applications, air recapture, and retrofits of existing power plants;

- Targeted tax credits to expand affordable housing rental opportunities in underserved communities;
- The Neighborhood Homes Investment Act tax credit (which is proposed to be $20 billion over five years) to build or rehabilitate 500,000 homes;
- Expanding the home and commercial efficiency tax credits under the Weatherization Assistance Program;
- A tax credit (50% of the first $1 million in construction costs per facility) to encourage the building of child care facilities at places of work; and
- An expansion of the section 48C tax credit program, which aims to build a robust U.S. manufacturing capacity to supply clean energy projects with American-made parts and equipment.

[1] See Biden Infrastructure Plan: American Jobs Plan | Tax Foundation.

[2] Under section 250, the 10.5% rate is provided through a 50% deduction, which is generally not available for non-corporate taxpayers unless an election under section 962 is made. All section references are to the Internal Revenue Code.

[3] The lower effective rate is achieved through a deduction. *See* section 250.

[4] Section 59A. Corporations subject to the BEAT are generally those with annual gross receipts exceeding $500M whose base erosion percentage is 3 percent or higher. A base erosion percentage generally is the base erosion tax benefits divided by the corporation's total deductions.

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