Build Back Better Act - Tax Law Changes –

What will the final version of this constantly evolving stimulus bill look like?

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President Biden and the US Congress have had a very busy October, producing a recently drafted 1,684 page document related to spending and revenue collection proposals. In our last SKP information blast, we updated you as to the newly minted Bipartisan Infrastructure Bill. There were many concerning adjustments to the tax code, mostly involving additional tax for our clients. The latest version of Biden's infrastructure spending proposals, called the "Build Back Better Act" (a name that seems more like a tongue twister), surprises us with many of the expected tax increases completely stripped out of the playbook.

Here is what we have found to be the key provisions that affect many of our clients:

INDIVIDUALS:

Surcharges for High Income Earners – Married individuals who report modified adjusted gross income over $10 million, $5 million for married separate filers and $200,000 for estates and trusts - will pay 5% more tax on income above that threshold. Add on an additional 3% tax for those in excess of $15 million, $12.5 married filing separate, and $500,000 for estates and trusts. These increases would start in 2022. Writers note – watch out for the estate and trust component – for those who have trusts that contain provisions for it to pay tax, this can be a very damaging proposal for a structure you probably set up to plan for your estate to be tax efficient.

Net investment income (NII) tax – for those who took advantage of the active participation rules and avoided this tax on pass through income from partnerships and s corporations, the new proposal would remove the active exemption for those with income over $500,000 ($400,000 for heads of households and single filers, $250,000 for married separate filers). This means an additional tax of 3.8% for those who fit into this description starting 2022. Writers note – this component of the proposal can affect a large percentage of our clients that are business owners and take advantage of the current NII tax structure for active participants of a business.

Small business stock exemptions – An exemption from capital gains, small business stock benefits of what currently can be a zero tax on certain stock sales will be stripped away for those earning more than $400,000.

BUSINESSES:

Corporate minimum tax – for very large corporations with GAAP based income in excess of $1 billion, or $100 million for certain foreign parented corporations, an alternative tax computation that would ensure these entities pay at least a 15% federal tax. Writers note – seems like the government is gunning for big corporations and public companies to foot this bill.

Stock repurchases – a one percent excise tax on stock repurchases or redemptions for domestic corporations.

Business interest expense limitations – net interest expense deducted by certain domestic corporations (usually part of a multinational group) and have average interest expense of $12 million will be limited from deducting that interest by 110 percent of the group's net interest expense, starting in 2022.

GILTI – modification of the Global Intangible Low Taxed Income in the income of a shareholder of a controlled foreign corporation on a country-by-country basis starting after 2021.

BEAT tax modifications – Taxpayers with gross receipts in excess of $500 million would be subject to the Base Erosion and Anti-Abuse tax, certain exceptions to this computation still apply.

WHAT HAS BEEN REMOVED FROM THE ORIGINAL BILL?

Gone are the increases to individual ordinary rates of tax from 37% to 39.6%, however they will still be getting the collection of tax dollars from those over $10 million in income and those who qualify under the changes described above to the net investment tax for those earning over $400,000 in adjusted gross income.

Missing from this draft are the increased capital gain tax increases we discussed starting September that challenged the current 20% long term capital gain rates.

Nowhere can we find any change to estate tax concepts that we have grown to love – including the step up in basis, reduction in lifetime gifts, and allowable gift discounting. Estate and trust attorneys have been extremely busy these last few months planning for a change in this direction. While we are happy to see this removed, we wouldn't be surprised if something eventually comes down the road.

Still missing is the insertion of a state and local tax (SALT) tax deduction beyond the $10,000 limit, which seems to constantly come up in congress from representatives in high tax states like New York and California.

Absent too are the proposals to raise corporate taxes to a rate higher than 21%.

While no one knows what will pass through both house and senate to become law, we must stay vigilant in our watch to keep you informed and make educated decisions affecting your businesses and financial well-being. We will continue to keep you updated as things progress. Keep in mind also that we are in tax planning season – so please reach out to us with any questions you may have and alert your SKP representative as to current developments affecting your business and personal tax positions.