THE BIDEN TAX PLAN: AN INTERNATIONAL PERSPECTIVE

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The Biden Tax Plan

- On March 31, 2021, the White House released an outline of its proposed infrastructure bill, which includes the Made in America Tax Plan.
- The plan involves a major revamping of the corporate and international tax provisions in the 2017 Tax Cuts and Jobs Act.
- The plan is supposed to be enacted by the end of this year through the budget reconciliation process.

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- The plan includes:
- Raising the corporate tax rate from 21 to 28 percent;
- eliminating the participation exemption for a 10 percent return on qualified business asset investment;
- reforming the global intangible low-taxed income regime by raising the rate to 21 percent and applying it per country;
- strengthening the anti-inversion rules;

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- replacing the base erosion and anti-abuse tax with a stronger but conditional denial of deductions for payments to related foreign parties;
- repealing the foreign-derived intangible income regime and replacing it with increased research and development subsidies for domestic activities.

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- The plan is a long-overdue recognition that U.S.-based multinationals have not been paying their fair share of taxes, given their levels of profitability, most of which are economic rents not subject to competition because of their monopolistic or oligopolistic positions in their respective markets.
- Also, the BEAT replacement will be a major incentive for other countries to enact similar legislation under the auspices of pillar 2 of the OECD’s base erosion and profit shifting initiative due to be completed by October.

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- The chances of enactment depend on the ability of Democrats in Congress to unite around it, given that no Republicans will vote in favor.
- The plan is likely to be modified (legislation is supposed to be produced by Sep. 15). For example, the corporate rate is unlikely to rise above 25% per Sen. Manchin (D-WV).
- Nevertheless, the Democrats are committed to pass legislation to fund the $3.5 trillion administration proposals.

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- If anything like the Biden plan is enacted, this will have an impact on BEPS 2.0.
- Raising the GILTI rate to 21% and eliminating QBAI and the participation exemption puts pressure on the IIR.
- The SHIELD proposal puts pressure on the UTPR.
- Eliminating FDII reduces US-EU tension re WTO rules.

The Biden Tax Plan

- The Biden plan is a major step forward in reforming U.S. corporate and international rules to prevent U.S. multinationals from having a competitive advantage over domestic U.S. corporations, as well as a long-overdue stride toward making them pay a fair share of taxes.
- The plan is a major enhancement of the safety net, and it shows how globalization can be compatible with democracy as long as tax competition is limited, which is also the goal of BEPS.

	Current Law	Biden Budget	OECD	Ways & Means	Wyden
Minimum rate	10.5%	21%	at least 15%	About 16.5%	Unclear from public documents, but likely 18-19%
Exemption for activities in foreign jurisdiction	10% return on physical assets only (known as QBAI)	0% return on physical assets only (no QBAI exemption)	7.5%, (with reduction to 5% after 5 yrs) of physical assets and payroll	5% return on QBAI; 10% in U.S. territories	0% return on physical assets only (no QBAI exemption)
Treatment of foreign taxes	80% of foreign tax credits can be claimed, no carryforward	80% of foreign tax credits can be claimed, no carryforward	100% of taxes paid can be claimed and carried forward	95% of taxes paid can be claimed and carried forward	[80%-100%] of foreign tax credits can be claimed, no carryforward
Treatment of losses	Losses cannot be carried forward	Losses cannot be carried forward	Losses can be carried forward	Losses can be carried forward	Unclear, considering limited averaging for losses
Country-by-Country?	No	Yes	Yes - U.S. law must be changed for U.S. to be compliant system	Yes	High tax exclusion, less generous in some cases than CbC