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TaxNewsFlash

Canada

New U.S. Tax Changes Headed for Senate Consideration

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Canadian companies that do business in the United States and U.S. individuals living in Canada should be aware of new U.S. tax changes that may be on the way. The U.S. House of Representatives has approved new tax legislation that proposes to introduce a new 15% corporate alternative minimum tax for certain large corporations, limit business interest deductions, and change the effective tax rates for global intangible low-taxed income (GILTI), foreign derived intangible income (FDII) and the base erosion anti-abuse tax (BEAT), among other changes. These amendments are proposed in the United States' "Build Back Better Act" legislative effort.

Now that the bill has been approved by the House, it moves to the U.S. Senate where further changes are expected. In the United States legislature, passing new tax rules can take considerably longer than in Canada. Before these rules are enacted, identical versions of U.S. tax legislation must be passed by both the House and the Senate, before it is presented to the President for signing. Thus, where the Senate amends the bill, it would then return to the House for passage. Given the Democrat's narrow control of both houses of the U.S. Congress, this bill faces additional legislative challenges before enactment.

Background
The United States released legislative text to enact new changes to the U.S. tax rules in September 2021. For details, see *TaxNewsFlash-Canada* 2021-45, "U.S. Updates Personal & Corporate Tax Change Plans".

The tax proposals contained in the "Build Back Better" legislation have been significantly modified from what was originally included in the September legislative text and no longer include, for example, measures to increase the corporate income tax rate, the top individual rate and the top capital gains rate. For further details, see the following recent alerts from KPMG's U.S. member firm: House passes "Build Back Better Act" with tax measures - KPMG United States and "Build Back Better Act" tax proposals in House bill: KPMG analysis and observations.

Possible corporate tax changes — Highlights

The bill, as currently drafted, outlines potential upcoming corporate tax measures, including changes to:

- Limit the interest deduction of domestic corporations that are part of an international financial reporting group
- Significantly modify the base erosion anti-abuse tax (BEAT) determination and gradually increase the BEAT rate (to 12.5% for 2023, 15% for 2024, and 18% for 2025 and thereafter)
- Modify the effective tax rate for foreign-derived intangible income (FDII) to 15.8%
- Introduce or expand tax incentives for clean energy, housing and infrastructure.

The bill also now includes new tax proposals to:

- Introduce a 15% minimum tax on adjusted financial statement income of corporations with three-year average income in excess of $1 billion
- Introduce a 1% excise tax on the value of stock repurchased by publicly traded U.S. corporations.

Note that the effective date for implementation of the international proposals are delayed, in the hope that they will coincide with the implementation of proposed changes under the OECD's BEPS 2.0 plan.

Possible personal tax changes — Highlights

The bill, as currently drafted, outlines potential upcoming personal tax measures, including changes to:

- Modify the application of the net investment income tax (NIIT) to trade or business income of certain high-income individuals
- Limit excess business losses of non-corporate taxpayers
- Amend certain personal tax credits including the Child Tax Credit

- Impose limitations on high-income taxpayers with large retirement account balances and increase the minimum required distributions.

The bill also now includes new tax proposals to:

- Introduce surcharges on high-income individuals, estates and trusts (5% of modified adjusted gross income in excess of $10 million and an additional tax of 3% in excess of $25 million)

- Increase the individual deduction for state and local taxes to $80,000 (from $10,000) for 2021 to 2030.

Possible international tax changes — Highlights

The bill, as currently drafted, outlines potential upcoming international tax measures, including changes to:

- Amend the foreign tax credit regime to determine foreign tax credit limitations on a country-by-country basis and to increase the deemed paid credit for taxes attributable to global intangible low-taxed income (GILTI) to 95% (from 80%)

- Reinstate rules to prevent downward attribution of stock ownership from a foreign person to a U.S. person for purposes of determining whether a U.S. person is a U.S. shareholder or whether a foreign corporation is a controlled foreign corporation (CFC), subject to certain exceptions

- Modify the effective tax rate for GILTI to 15%.

We can help

Your KPMG adviser can help you assess the effect of any forthcoming U.S. tax changes on your business and personal tax situations. For more details, contact your KPMG adviser.