

## TAX TAKE: Top 10 Questions (and Then Some) Regarding the Reconciliation Package: Part Two

Tax Alert

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Last week, we presented the first half of our " [Top 10 Questions](#)" regarding the pending reconciliation package. Here is the highly anticipated second half of the list.

**What will the effective date be of any tax increases that are enacted?** Consideration and enactment of the reconciliation bill in the late fall (at the earliest) suggests a general effective date for taxable years beginning after December 31, 2021. Will the Administration's proposed retroactive effective date of the increase in the capital gains rate stick? Will Congress consider other retroactive effective dates if it finds itself short on revenue to finance the package? Would Congress actually consider a prospective effective date if there is a dramatic health care and economic impact of the COVID-19 delta variant?

**What about the pending changes to the *Tax Cuts and Jobs Act of 2017 (TCJA)* provisions regarding the deductibility of research and development expenses and the interest expense deduction limitation?** Most believe it is unlikely that Democrats would move TCJA-related provisions, despite their popularity and bipartisan support, as part of the reconciliation package. But if individual tax relief, such as an expansion of the state and local tax (SALT) deduction cap, is included in the reconciliation package, wouldn't these TCJA-related changes also be considered for inclusion? If not, any year-end bipartisan tax bill (discussed below) would presumably be an ideal legislative vehicle for these changes.

**What about proposed international changes?** This is perhaps the area with the most interest and the most uncertainty, given the potential scope and application of the international proposals contained in the Greenbook and the [international framework](#) proposed by Senate Finance Committee Chairman Ron Wyden (D-OR). Assuming the harsher modifications to global intangible low-taxed income (GILTI) are enacted as proposed, will other, harsher aspects of the GILTI regime be modified as well? Prospects for removing the 20 percent haircut to the GILTI foreign tax credit? Any chance to implement GILTI foreign tax credit carryforwards? And what about the Stopping Harmful Inversions and Ending Low-Tax Developments (SHIELD) provision? Will Congress go as far as requested in the Pillar Two framework, and make the base erosion and anti-abuse tax (BEAT) a true "secondary" rule, in that it will not apply if the recipient of the offending payment is subject to an income inclusion rule?

**What is the timing of enactment of the reconciliation package?** There are some natural dates that could be paired with the enactment of the reconciliation package, such as the expiration of government funding on September 30, 2021 or the need to [increase the federal debt limit](#) sometime in the fall. And perhaps the ultimate deadline in the view of many policymakers is the end of the calendar year, as it is likely that Democrats will be reluctant to enact any tax increases on a partisan basis in the mid-term election year. In addition, the ongoing OECD negotiations on Pillars One and Two may impact the timing. In this regard, will Congress try to enact legislative changes to (1) conform GILTI to more closely resemble the income inclusion rule and (2) either modify BEAT or repeal it altogether in favor of the SHIELD for a rule that more closely resembles the undertaxed payments rule before or coincident to the highly anticipated statement from the OECD in October?

**What about a year-end bipartisan tax bill?** Conventional wisdom is that after enactment of the reconciliation bill, Congress would turn to bipartisan consideration of a traditional year-end tax package, focused on items such as extenders, retirement legislation and technical corrections. Will the post-reconciliation legislative and political environment be conducive to consideration of such a package? Will any delay in the enactment of the reconciliation package "run out the clock" on consideration on such a package? Will it be required to be financed and, if so, how?

Given the extremely compressed timeline on which the Democrats hope to move the reconciliation bill, we anticipate a lot of action once both chambers return in September. In the meantime, tax-writing committee staffs are anticipated to be busy during the

Congressional recess evaluating proposals and scoping out the potential contents of the bill - this will not be the typical sleepy month of August in Washington for all involved. No news doesn't mean no action, so it's important to remain engaged. **#TaxTake**

## Upcoming Speaking Engagements and Events

On September 23, Loren and fellow Member [Kevin Kenworthy](#) will provide a Litigation Update at [API's 86th Annual Federal Tax Forum](#).

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