

## TAX TAKE: All is Quiet On New Year's Day: 2022 Tax Policy Outlook

Tax Alert

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Happy New Year! As the Senate returns today (to be followed by the House next week), Congress faces a full tax policy agenda. Here is our 2022 Tax Policy Outlook highlighting items that are most likely to be addressed at some point this year.

**Build Back Better Act (BBBA):** The Administration and Congressional leadership will continue to engage in discussions with Senator Joe Manchin (D-WV) in hopes of securing an agreement on the BBBA. The [House-passed bill](#), as subsequently proposed to be modified by the [Senate Committee on Finance](#), is certain to undergo significant changes. A reduced need for revenue resulting from a contraction in the scope of spending measures could result in the elimination, scaling back, or deferral of some of the most significant tax increases in the House-passed bill. Conversely, a longer-term extension of the child tax credit as well as any amount of SALT deduction cap relief will drive up the tax revenue needed to fund the bill.

**Expired/Expiring TCJA Provisions:** The *Tax Cuts and Jobs Act of 2017* (TCJA) contains a number of provisions that expire or are subject to change over time. Important changes to two of these provisions – amortization of research and development (R&D) expenses over five or 15 years and the shift from using EBITDA to EBIT in the adjusted taxable income calculation for purposes of determining the available amount of deductible interest expense under section 163(j) – went into effect as of January 1. In addition, the 100 percent bonus depreciation allowance enacted by the TCJA will begin to phase down next year. Hopefully, Congress will include the R&D expensing provision included in the House-passed bill, but the other time-sensitive provisions will most likely need to be addressed in another legislative vehicle, such as an extenders bill or perhaps a post-election lame duck bill at the end of the year.

**Tax Extenders:** The [traditional tax extenders package](#), composed largely of energy-related credits, expired at the end of 2021. There is hope that the first quarter of this year will yield bipartisan negotiations to address the extenders package, presumably on a retroactive basis. The prospects for such negotiations, however, are uncertain – particularly in light of the precarious status of the BBBA and the increasingly political climate leading into the 2022 mid-term elections. It is important to note that even if the 2021 tax extenders package is addressed, Congress will face the expiration of a new extenders package at the end of 2022. Hopefully, that package could be addressed in a post-election lame duck bill to avoid the need for retroactive legislation once again.

**Retirement Legislation:** There is both long-standing and current bipartisan interest in retirement legislation, as evidenced by the bipartisan bills put forth by [Senators Ben Cardin \(D-MD\) and Rob Portman \(R-OH\)](#) and [Representatives Richard Neal \(D-MA\) and Kevin Brady \(R-TX\)](#). While it may be challenging for Congress to address retirement legislation on a stand-alone basis, such legislation would be an ideal candidate to be included in another available legislative vehicle. In this regard, there may be an increased emphasis in addressing retirement legislation before Senator Portman's [impending retirement](#).

**Technical Corrections:** Although Congress has addressed a handful of technical corrections on an ad hoc basis, including the long-awaited qualified improvement property technical correction in the *Coronavirus Aid, Relief, and Economic Security Act* (CARES Act), it has been a long time since a comprehensive technical corrections package has been enacted. As a result, there is a backlog of long-awaited technical corrections ([many related to the TCJA](#)) that hopefully can be addressed if a bipartisan legislative vehicle emerges.

**COVID-Related Stimulus Legislation:** Depending on the impact of the latest COVID-19 surge from the omicron variant, Congress may need to consider another stimulus package to address the continuing economic impact of the pandemic. Congress may revisit [expired CARES Act provisions](#), such as the employee retention tax credit, or may look at new measures to help

struggling businesses.

Given the mid-term elections, Congress has a limited window to address this lengthy to-do list. The end of the first quarter (if not earlier) is the unofficial deadline to address BBBA and other matters before the mid-term election season kicks in and passage of significant legislation is no longer politically viable. Anything not addressed in the first quarter will likely need to wait for a potential year-end lame duck bill, although the existence and breadth of such a bill is always uncertain. #TaxTake

## Upcoming Speaking Engagements and Events

On January 7, Loren will moderate the panel " [Diversity in the Tax Bar](#) ," a discussion addressing policy opportunities for diverse tax lawyers, presented by the Law Firm Antiracism Alliance, the American Bar Association Section on Taxation, the American College of Tax Counsel, and the American Tax Policy Institute.

## In the News

In [comments](#) to *The Hill*, Jorge said a more focused bill could help Democrats counter Republican attacks that portray the BBBA as a grab bag of spending. "**I think it definitely helps [Democrats] from a messaging perspective** ," he said.

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