

TAX TAKE: Take Me Home - A Lame Duck Package Aimed to Cross the Year-End Finish Line

Tax Alert

05.31.2022

Last week's [Tax Take](#) focused on the potential for a post-election lame duck tax package. This week, we turn to the potential components of a bill, with an emphasis on those "must pass" provisions that could be the real driver to get a package across the finish line before year-end.

R&D Amortization Fix. Pursuant to the Tax Cuts and Jobs Act (TCJA), as of January 1, 2022, research and development (R&D) expenses must be capitalized and amortized over five years (15 years for foreign R&D expenses). The [House-passed Build Back Better Act](#) (BBBA) included a four-year delay of the mandatory capitalization and amortization. In addition, there are [House](#) and [Senate](#) bills with strong bipartisan support to allow permanent immediate expensing of R&D. If the issue is not addressed in a revived BBBA or the pending [China competition bill](#), look for the R&D amortization fix to be a major component of any lame duck package.

Saving the DA. Another by-product of the TCJA is that as of the beginning of this year, the calculation of the section 163(j) interest expense deduction limitation is based on EBIT rather than EBITDA. There are bills in both the [House](#) and [Senate](#) to "save the DA" and make the use of EBITDA permanent. Given that the shift to EBIT is already in effect, Congress may consider this a time sensitive provision that should be included in a lame duck package.

Pending Phase-Out of Bonus Depreciation. Also pursuant to the TCJA, the phase-out of 100 percent bonus depreciation is scheduled to begin in 2023 – an 80 percent deduction is allowed for property placed in service in 2023, gradually declining an additional 20 percent in each of the following three years before sunsetting for tax years beginning in 2027. As with the R&D amortization fix, legislation to make the 100 percent bonus depreciation permanent has been proposed in the both the [House](#) and [Senate](#). Congress may look for an opportunity to address the pending phase-out in advance as part of a lame duck package, particularly given the popularity of bonus depreciation.

Retirement Legislation. On March 29, 2022, the House passed a large retirement savings package – H.R. 2954, the [Securing A Strong Retirement Act of 2022](#) – by an overwhelming bipartisan vote of 414 to 5. The Senate Committee on Finance is working towards a markup of its own retirement package in June, with the bipartisan legislation introduced by Senators Ben Cardin (D-MD) and Rob Portman (R-OH) – S.1770, the [Retirement Security and Savings Act of 2021](#) – as the starting point. Passage of a bill by the Senate Committee on Finance, particularly with a strong bipartisan vote, will position retirement legislation for consideration as part of any lame duck package, particularly given Senator Portman's retirement at the end of the year.

Tax Extenders. Congress let a package of temporary tax relief provisions (known as extenders) expire at the end of 2021, with [another package of extenders](#) scheduled to expire at the end of this year. Extenders have traditionally been a significant component of lame duck packages, and the need to address two years' worth of expired (or soon to be expired) provisions make tax extenders a natural candidate for a year-end package.

Build Back Better Tax Relief Provisions. Although the tax provisions of BBBA are primarily tax increases, the package does contain significant tax relief provisions. In addition to the R&D amortization fix previously discussed, BBBA also [includes](#) relief from the state and local tax deduction limitation, infrastructure incentives, and green energy incentives. If BBBA does not move forward, proponents of these tax relief provisions will certainly be looking to the lame duck package as a potential legislative vehicle.

Russia Tax Sanctions Legislation. Senate Committee on Finance Chairman Ron Wyden (D-OR) and Senator Portman recently

introduced legislation – S. 4218, the [Support Ukraine Through Our Tax Code Act](#) – to disallow foreign tax credits and other tax benefits for companies operating in Russia. Such legislation is likely to generate significant bipartisan support, positioning it for consideration at year-end, if not sooner.

Technical Corrections. Although there have been many tax bills enacted in the last number of years, Congress has not enacted a comprehensive technical corrections package in some time. In addition to [numerous technical corrections](#) that have been identified with respect to the TCJA, it is anticipated that technical corrections will be needed with respect to the COVID-related tax bills given the accelerated timeframe in which this legislation was considered and enacted. Technical corrections, however, have taken on a partisan political dynamic in recent years that make inclusion of a technical corrections package in a lame duck period challenging.

Individual Tax Relief. The Administration may be reluctant to include business tax relief provisions without also including individual tax relief provisions, such as the BBBA-proposed extensions and modifications to the child tax credit and the earned income tax credit.

Revenue Raisers. One significant question hanging over any potential lame duck tax package is whether the cost would need to be offset with revenue raisers. It is anticipated that Republicans will object to the inclusion of revenue raisers, particularly to fund items such as tax extenders. This could become a significant issue if Democrats, perhaps concerned with the exclusion of individual tax relief as discussed above, insist that business tax relief provisions be paid for.

#TaxTake

Upcoming Speaking Engagements and Events

On June 1, Loren will co-chair "Domestic Recent Tax Developments and Changes in the Tax Environment," a panel discussion at the [IFA USA-Italy Joint Meeting](#).

Loren will speak on the "International Tax Update" panel at the [2022 Texas Federal Tax Institute Annual Conference](#) in San Antonio on June 8.

On June 14, Loren will speak at the [TPMinds International 2022 Summit](#) in London on a panel titled "Latest U.S. Tax Developments."

Loren will speak on the "Transfer Pricing Debate" panel at the [2022 NABE Transfer Pricing Symposium](#) on July 19.

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