House Ways and Means Committee Releases a Revamped Tax Proposal

November 2, 2021

On October 28, 2021, the House Ways and Means Committee released a revamped draft tax proposal ("Revised Tax Proposal"), which now includes new levies affecting large corporations and millionaires. The original draft legislation was released on September 13, 2021, and provided for a series of tax increases and tax cuts that, if passed, would dramatically impact the corporate and individual tax planning landscapes.

Here are the material tax changes from the September 13 bill *that have been dropped*:

- The increase in the flat C corporate tax rate from 21% to 25% (under the original proposal, the flat 21% corporate tax rate would have been replaced with a new graduated structure, effective for tax years beginning after December 31, 2021).
- The increase in the capital gains rate from a maximum of 21% to a maximum of 25% (plus a 3% surtax for trusts and estates with income over $100,000, and individuals, whether single or married, with modified adjusted gross income ("AGI") in excess of $5 million, or $2.5 million if married filing separately). This change was set to become effective as of September 13.

The changes that remain or that were added as part of the Revised Tax Proposal are described below.

15% Corporate Minimum "Book" Tax

The Revised Tax Proposal provides for a 15% "minimum tax" on the financial statement profits of all U.S. corporations earning more than $1 billion a year in profits. The minimum tax would be assessed on "book" income reported to shareholders, rather than on profits reported to the IRS.

Global Minimum Corporate Tax

The Revised Tax Proposal calls for a 15% country-by-country global minimum tax. The new rules would also impose penalties on foreign corporations in countries that don't impose the minimum tax rate.

Expansion of 3.8% Investment Tax

Currently a 3.8% tax is imposed on the "net investment income" of single or head-of-household taxpayers with modified AGI in excess of $200,000 ($250,000 for married taxpayers who file jointly). Net investment income does not include income derived in the ordinary course of a trade or business or income attributable to the disposition of property earned outside of a passive activity. The Revised Tax Proposal would expand the surtax to cover net investment income derived in the ordinary course of a trade or business for single or head-of-household filers with a modified AGI over $400,000 ($500,000 for married joint filers). The tax would also apply to owners of businesses formed as “pass-through” entities.

Tax on Corporate Stock Buybacks

The Revised Tax Proposal includes a 1% surcharge on stock buybacks to encourage companies to invest in their operations rather than re-purchase shares. The intent of the provision is for these “stock buybacks” to be taxed the same way as corporate dividends.

Surtax on Millionaires

The Revised Tax Proposal includes a version of a prior proposed plan which adds a new 5% surcharge on modified AGIs from $10 million to $25 million ($5 million to $12.5 million for married taxpayers filing a separate return), and an additional 3% on incomes above $25 million, on top of the top tax rate, which is currently 37%. About 0.02% of Americans would be affected. Modified AGI would mean regular AGI reduced by any deduction allowed for investment interest.

Limitation on Business Losses

Under current law, business owners cannot deduct losses exceeding $250,000 ($500,000 for joint filers) on Schedule C (however, any excess losses can be treated as a net operating loss in later tax years). This business loss limitation rule is currently set to expire in 2027. The Revised Tax Proposal would make the limitation permanent starting in 2022. As a result, any excess loss would be treated as a net operating loss in a later tax year. This provision would limit excess business losses for partnerships, limited liability companies and other pass-through entities.

Increased IRS Enforcement

The Revised Tax Proposal includes a provision for additional IRS funding to hire more revenue agents, modernize technology and update customer service to increase tax compliance. Expanded audit capabilities would be targeted to those making more than $400,000 a year.

Conclusion

The Revised Proposal includes a variety of tax changes that are likely to affect both individual and entity-level tax planning. The legislation is not yet final however, and additional changes could be made. Cullen and Dykman LLP is committed to assisting the firm’s clients with their individual and business tax planning strategies. Please contact one of the members of our Tax team for further detail.

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Practices

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