FACTCOALITION
Financial Accountability & Corporate Transparency

FACT Sheet

November 2021

A Summary of

Build Back Better International Tax Reform

The Financial Accountability and Corporate Transparency (FACT) Coalition urges Congress to advance needed international tax reforms as part of the 2021 budget reconciliation process by passing the Build Back Better Act (H.R. 5376). The international tax reforms included in the Act would decrease tax haven abuse and the offshoring of jobs, while raising revenue for the rest of the plan and furthering the recent OECD minimum global tax agreement adopted by the President and other G-20 leaders.

The following table outlines the various characteristics of key U.S. international tax regimes and shows how the Build Back Better Act would modify them, including: the Global Intangible Low-Taxed Income (GILTI) tax, the Base-Erosion and Anti-Abuse Tax (BEAT), and the Foreign-Derived Intangible Income (FDII) deduction.

This chart also provides a comparison of the Build Back Better Act to earlier proposals from President Biden and the House Ways & Means Committee, along with notes demonstrating where changes must be advanced to further the recent, historic OECD agreement to create a global minimum corporate tax.

As the below chart demonstrates, many Build Back Better changes are taxpayer favorable compared to current law, contrary to conflicting narratives. In some instances, Congress might consider strengthening current proposals consistent with President Biden's earlier Green Book to create a fairer tax system in which U.S. multinationals bear the appropriate burden of investments that will undoubtedly benefit them. For example, the U.S. can afford to go beyond OECD minimums to raise additional revenue without fear for competitiveness, such as by raising the GILTI rate.

Nonetheless, key structural components of the Build Back Better Act do decrease the incentive for profit-shifting and offshoring by U.S. and foreign multinationals compared to current law. By advancing the Build Back Better Act now, Congress can remove these improper incentives, and, in doing, increase the competitiveness of America's working families and domestic businesses.

Connections to the OECD agreement are noted in blue. Taxpayer favorable provisions are noted in red.

Where is the Build Back Better Act?**

GILTI Provisions

	Current Law	President Biden Proposal	W+M Draft Sept. 2021	Build Back Better (Nov. Draft H.R. 5376)	Notes
Domestic Rate	21%	28%	26.50%	21%	Taxpayer favorable
Section 250 Deduction for Offshoring under GILTI	50% (decreases to 37.5% after 2025)	25%	37.50%	28.5% beginning in 2023 (delay not required under OECD)	Creating a structural preference for offshore profits (other than for demonstrable double-tax relief via foreign tax credits) encourages offshoring and profit-shifting. A smaller GILTI deduction is preferable and can raise material additional revenue.
GILTI rate	10.50%	21.00%	16.56%	15.02%	15% minimum rate required for OECD compliance; yet, the GILTI rate can and should be higher to limit differences between international and domestic rates.
Differential between rate on domestic and foreign profits	10.50%	7%	9.94%	5.99% beginning in 2023	Calculated on an absolute basis
GILTI exemption for "routine profits" ("Qualified Business Asset Investments" or "QBAI")	"Routine profits" are exempted and deemed to be equal to 10% of foreign tangible assets	No exemption for routine profits	QBAI equal to 5%	QBAI equal to 5%	QBAI exemption creates perverse incentive to offshore asset investment and **is not necessary under OECD agreement**
GILTI Application	Aggregate (or blending) of GILTI attributes, including for QBAI, foreign tax credits, and GILTI calculation) encourages additional offshoring to higher-tax jurisdictions and profit-shifting to tax havens	Country-by-Country application	Country-by-Country application	Country-by-Country application beginning in 2023	Required for OECD compliance, ***but delay is not required and should be reconsidered*** .
GILTI foreign tax credit "haircut"	80% of foreign taxes paid are credited against GILTI tax	80% of foreign taxes paid are credited against GILTI tax	95% of foreign taxes are credited against GILTI tax	95% of foreign taxes are credited against GILTI tax	Taxpayer favorable compared to current law.
Loss/credit carryforward in GILTI	Not allowed	Not allowed	Allowed	Allowed	Taxpayer favorable compared to current law.
Expense Allocation	Expenses should be allocated neutrally between foreign and domestic income	Deduction and Credits related to tax-exempt or preferred income (including GILTI) denied.	For foreign tax credit purposes, only directly allocable expenses will limit FTCs	For foreign tax credit purposes, only directly allocable expenses will limit FTCs	Taxpayer favorable compared to current law.
Oil & gas industry	Oil and gas industries are exempted from GILTI	Removes inappropriate foreign oil and gas exemption	Removes inappropriate foreign oil and gas exemption	Removes inappropriate foreign oil and gas exemption	Required for OECD compliance.
Timing	GILTI deduction decreased after 2025	Immediate changes	Immediate changes	Delayed implementation to 2023.	Taxpayer favorable delay not required under OECD agreement.

FDII Provisions

	Current Law	President Biden Proposal	W+M Draft Sept. 2021	Build Back Better (Nov. Draft H.R. 5376)	Notes
Section 250 Deduction for "export" income	37.50%	Eliminate FDII	21.88%	24.80%	FDII remains a problematic incentive that has been identified as an improper "export subsidy" for trade purposes.
FDII Incentive to offshore (i.e. deemed tangible income return decreasing FDII)	10%	0%	10%	10%	This is an inappropriate incentive to offshore tangible assets within an inappropriate subsidy for export income. The overall effect is nuanced if FDII is maintained.
FDII Rate	13.13%	28%	20.70%	15.80%	Taxpayer favorable compared to current law after 2025

BEAT Provisions

	Current Law	President Biden Proposal	W+M Draft Sept. 2021	Build Back Better (Nov. Draft H.R. 5376)	Notes
BEAT Rate	• 10% until 2026 • 12.5% after	Replace with more comprehensive SHIELD (contemplating OECD rate or 21%)	• 10% until 2024 • 12.5% in 2024 and 2025 •15% after	• 10% until 2023 • 12.5% in 2023 • 15% in 2024 • 18% after	***Current BEAT provides weak incentives to deter base-erosion to small pool of***
Cost of Goods Sold and Certain Other Inventory Costs	No additional Excluded from BEAT	Included	Included	Included	Addresses large (and growing) category of base-eroding payments previously excluded from BEAT
BEAT Pool	Average annual revenue above $500mm for last 3 years	$500 mm annual revenue (financial reporting)	Average annual revenue above $500mm for last 3 years	Average annual revenue above $500mm for last 3 years	
BEAT Threshold Exemption	Only corporations that make more than 3% of their total deductible payments to foreign affiliates are subject to the BEAT	NA	Exemption applies only through 2023	Exemption applies only through 2023	OECD Compliant
"Double" Tax	Ignored	Would respect OECD compliant payments	Does not apply to payments taxed at BEAT rate	Does not apply to payments taxed at lesser of BEAT rate or 15%	OECD Compliant and Taxpayer favorable
Indirect Application	Does not contemplate base erosion that extends beyond initial deduction.	Contemplates "indirect" base erosion, potentially denying deductions/payments if any group member has ETR below OECD rate	Creates call for regulations to address payments or deductions that indirectly result in lower-tax payments	Creates more specific call for regulations to address payments or deductions that indirectly fund payments to second (or down-stream) foreign persons taxed less than 15%	Addresses ability to profit-shift through complicated corporate structures (and addresses current strategic tax-planning realities).

Additional Provisions

	Current Law	President Biden Proposal	W+M Draft Sept. 2021	Build Back Better (Nov. Draft H.R. 5376)	Notes
Corporate Minimum Tax	None	15% minimum worldwide tax on "book" income (less General Business Credits, i.e., R&D, and FTCs) for TP's with more than $2 BN in annual revenue	None	15% minimum tax on "book" income effectively connected to U.S. T/B (ECI) or via CFCs (less General Business Credits, i.e., R&D, and FTCs) for TP's with more than $1 BN in worldwide annual revenue (and at least $100 M in U.S. ECI). FTCs not directly incurred subject to annual cap of 15%, with carryforward.	If the corporate minimum tax applies, other international provisions do not, making this a worldwide backstop. JCT estimations indicate that the overlap between this tax and GILTI/BEAT/FDII revisions may be "modest," though worth understanding.
U.S. Interest Deduction Limitation based on Worldwide EBITDA	No formulaic limitation to prevent U.S. base erosion.	Strict interest deduction limitations based on comparative U.S. share of EBITDA to worldwide EBITDA or the inability to substantiate U.S. interest deductions	Limits U.S. interest deductions based on comparative U.S. earnings (or, EBITDA) to international EBITDA.	Substantively similar to Sept. draft (w/ a few technical differences).	This provision has a few key utilities, including to fill a gap for foreign-parented MNEs that are not be subject to the BEAT but that engage in base-eroding practices.

**The above summary does omit some very technical aspects of the current Build Back Better Act, including certain taxpayer favorable changes to Subpart F and relating to current and proposed expense allocation rules; however, the FACT Coalition can be available to discuss these issues in greater detail. *This table also omits discussion of additional Internal Revenue Service funding currently contemplated as part of the Build Back Better Act, which should be considered an essential component of ensuring that implemented tax laws are enforced as intended in light of years of failing to invest in (and actively defunding) the IRS.* In fact, permanent increased funding of the IRS should be separately prioritized, given the potential long-term time horizon of realizing very high returns from such an investment.

For additional reading on the need for international tax reform to improve competitiveness for America's working families, level the playing field for domestic businesses, and deter profit-shifting see:

- Analyzing needed U.S. international tax reform within the context of the OECD global minimum corporate tax agreement: https://thefactcoalition.org/trillions-at-stake-behind-the-numbers-at-play-in-u-s-international-corporate-tax-reform/
- Analyzing how U.S. international tax reform will improve U.S. competitiveness: https://thefactcoalition.org/international-tax-policy-and-us-competitiveness/

- Analyzing the urgent need for international tax reform: https://thefactcoalition.org/fact-sheet-the-urgent-case-for-u-s-international-tax-reform/

For more comprehensive FACT analysis on earlier international tax reform proposals see:

- FACT comments on proposed international tax framework from Senate Finance Chair Wyden and Senators Warner and Brown: https://thefactcoalition.org/fact-weighs-in-on-senates-provisional-international-tax-plan-ahead-of-budget-reconciliation/
- FACT response to Sept. Ways & Means international tax proposed reforms: https://thefactcoalition.org/congress-must-strengthen-proposed-international-tax-measures-in-line-with-bidens-tax-plans/
- Comparing earlier proposed international tax reforms: https://thefactcoalition.org/fact-sheet-overview-of-us-international-corporate-tax-law/

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