The Bankler Report

November 20, 2021

INTRODUCTION

The US House of Representatives has passed the Build Back Better Bill. This bill now goes to the US Senate, where it will likely be changed. Below is a quick summary of the major provisions of the bill:

A. Individual Taxes:

1. **1 year extension of expanded child tax credit with permanent extension of refundability** –The changes to the child tax credit by the American Rescue Plan for 2021 would be extended through 2022. In addition, it would extend the refundability of this credit beyond 2022. Taxpayers whose adjusted gross income exceeds $150,000 for joint filers, $112,500 heads of households or $75,000 for other taxpayers, would not be eligible for advanced payments.

2. **New 3% tax surcharge –** This would apply to taxpayers with modified Adjusted Gross Income (AGI) in excess of $10 million (joint filers), $5 million (married filing separately), or $200,000 (for an estate or trust), plus 3% of the amount of the taxpayer's AGI that exceeds $25 million ($12.5 million for married filing separately, $500,000 for an estate or trust).

3. **Expansion of Net Investment Income (NII) tax** – This tax, which imposes an additional tax of 3.8% on income from passive businesses, will now be imposed on active businesses as well. It will be imposed on taxpayers with more than $500,000 taxable income (joint filers), $400,000 (single filers), or $250,000 (married filing separately).

4. **Excess business losses –** These apply to non-corporate taxpayers and were due to expire but would now be made permanent.

5. **Small Business Stock and high-income taxpayers** – The Bill would disallow the 75% and 100% exclusion of gain from the sale of stock if the taxpayer's AGI is over $400,000 or if the taxpayer is a trust or estate.

6. **SALT deduction cap** – The Bill would increase the deduction for state and local taxes from $10,000 to $80,000 ($40,000 for married filing separately, trusts and estate) and would extend the deduction thru 2031.

7. **WASH-Sale rules** – The Bill would add commodities, foreign currencies, and cryptoassets to the wash sale rules (losses on the sale of an asset are disallowed if a similar asset is purchased within 30 days of sale).

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B. Retirement Accounts:

1. **No contributions allowed for large accounts –** If an IRA or Roth IRA has an account balance that exceeds $10 million at the end of the prior year, no contributions are allowed if the taxpayer has taxable income in excess of $450,000 (married filing joint), $400,000 (single filers) or $425,000 (heads of households).

2. **New required minimum distributions for "large" accounts** – There will be a required distribution from defined contribution retirement accounts where the ending prior year consolidated account balance exceeds $10 million. Applies to the same taxpayers in #1 above (disallowing contributions to these accounts).

3. **Elimination of "back-door" Roth conversions**- The proposed law eliminates this strategy, effective December 31, 2021.

C. Business/Corporate Taxes:

1. **15% minimum tax on profits of "large corporations"** –The Bill would impose a 15% minimum tax on the profits of corporations that report over $1 billion in profits to shareholders

2. **1% surcharge on corporate stock buybacks –** The Bill imposes a tax of 1% of the fair market value of any stock of a corporation that the corporation repurchases during the year, effective for repurchases of stock after December 31, 2021. The provision would apply to any domestic corporation whose stock is traded on an established securities market.

3. **Limitation on interest expense deduction –** The Bill limits the amount of net interest expenses of certain domestic corporations (or foreign corporations engaged in a U.S. trade or business) that are members in an international financial reporting group. The provision limits the interest expense deduction to an "allowable percentage" of 110% of the domestic corporation's net interest expense.

4. **Excess business losses –** These apply to non-corporate taxpayers and were due to expire but would now be made permanent.

D. Electric vehicle tax credits:

1. **Plug-in Electric drive motor vehicles** –The Bill provides for a refundable income tax credit up to $8,000 for new qualified plug-in electric drive motor vehicles. The credit would be available for qualified electric vehicle that cost up to $80,000 (for vans, SUVs, and trucks) or $55,000 (for other vehicles). A credit of $7,500 is available for 2 or 3 wheeled plug-in electric vehicles. The credit would phase out for taxpayers with AGI over $500,000 (married taxpayers filing jointly) or $250,000 (single taxpayers). A smaller credit would be available for used electric vehicles. The Bill also provides a credit for the purchase of certain new electric bicycles

2. **Qualified commercial electric vehicle –** The Bill would provide a credit for any qualified commercial electric vehicle placed in service by a taxpayer. The credit would equal up to 30% of the basis of a fully electric vehicle or 15% of the basis of a hybrid vehicle.

E. IRS

1. The Bill also provides substantial additional funding ($80 Billion) to the IRS for enforcement, technology, and customer service.

2. The Bill repeals the current law requirement for written supervisory approval of IRS penalties.

This report only discusses specific provisions that we consider to be of general interest to business owners and is not a complete discussion of the bill's contents. As with any proposed changes in the tax laws, there may be new planning opportunities to be considered. Please feel free to contact us with your specific questions.