Navigating the Upcoming U.S. Tax Reform

3 November 2021

AmCham Denmark & KPMG

This presentation contains time-sensitive information that may be outdated - no attempt has been made or will be made to update the content.

Program

09.00	Welcome
09.05	Presentations - Sam Riesenberg, Partner KPMG *US Tax Reform* - Kristoffer Kowalski, Partner KPMG Acor Tax *Danish Corporate Perspectives*
10.20	Wrap-up
10.30	Networking
11.00	Event concludes

US Tax Reform & OECD BEPS 2.0

Overview and What's to Come

November 2-3, 2021

Notices

The following information is not intended to be "written advice concerning one or more Federal tax matters" subject to the requirements of section 10.37(a)(2) of Treasury Department Circular 230.

The information contained herein is of a general nature and based on authorities that are subject to change. Applicability of the information to specific situations should be determined through consultation with your tax adviser.

© 2021 KPMG LLP, a Delaware limited liability partnership and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved. NDP161585-1A

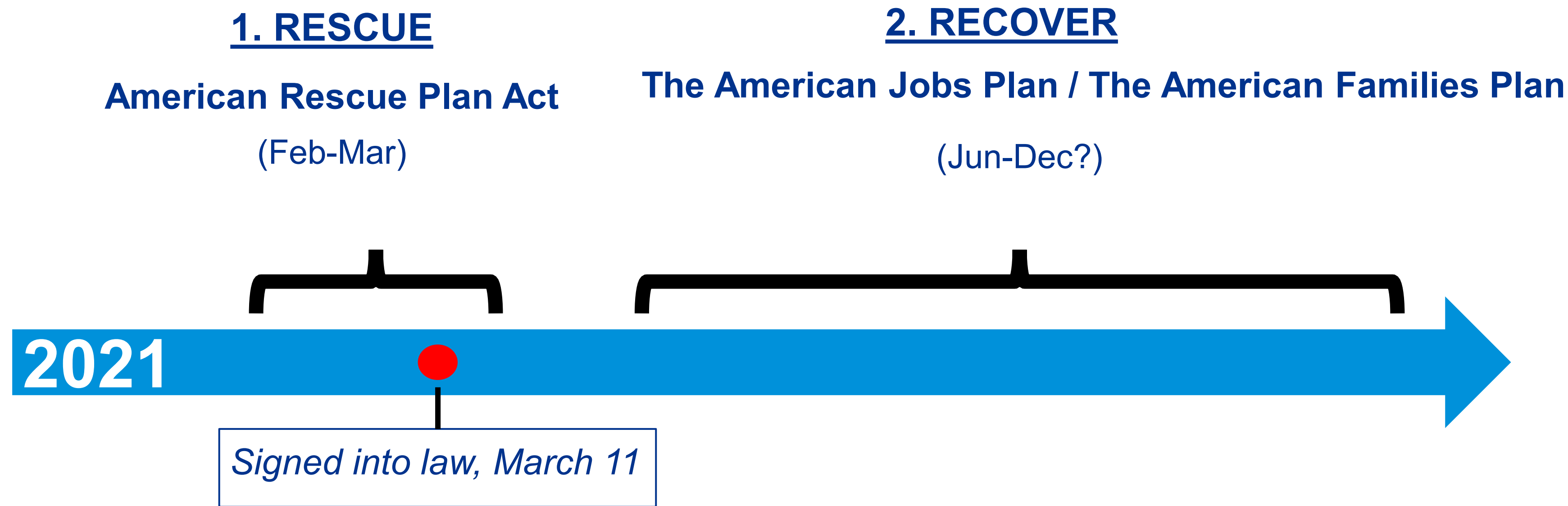
Agenda

KPMG

© 2021 KPMG LLP, a Delaware limited liability partnership and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved. NDP161585-1A

2021 Tax Legislation:
How Did We Get Here?

Major Legislative Timeline – Biden Action Plan

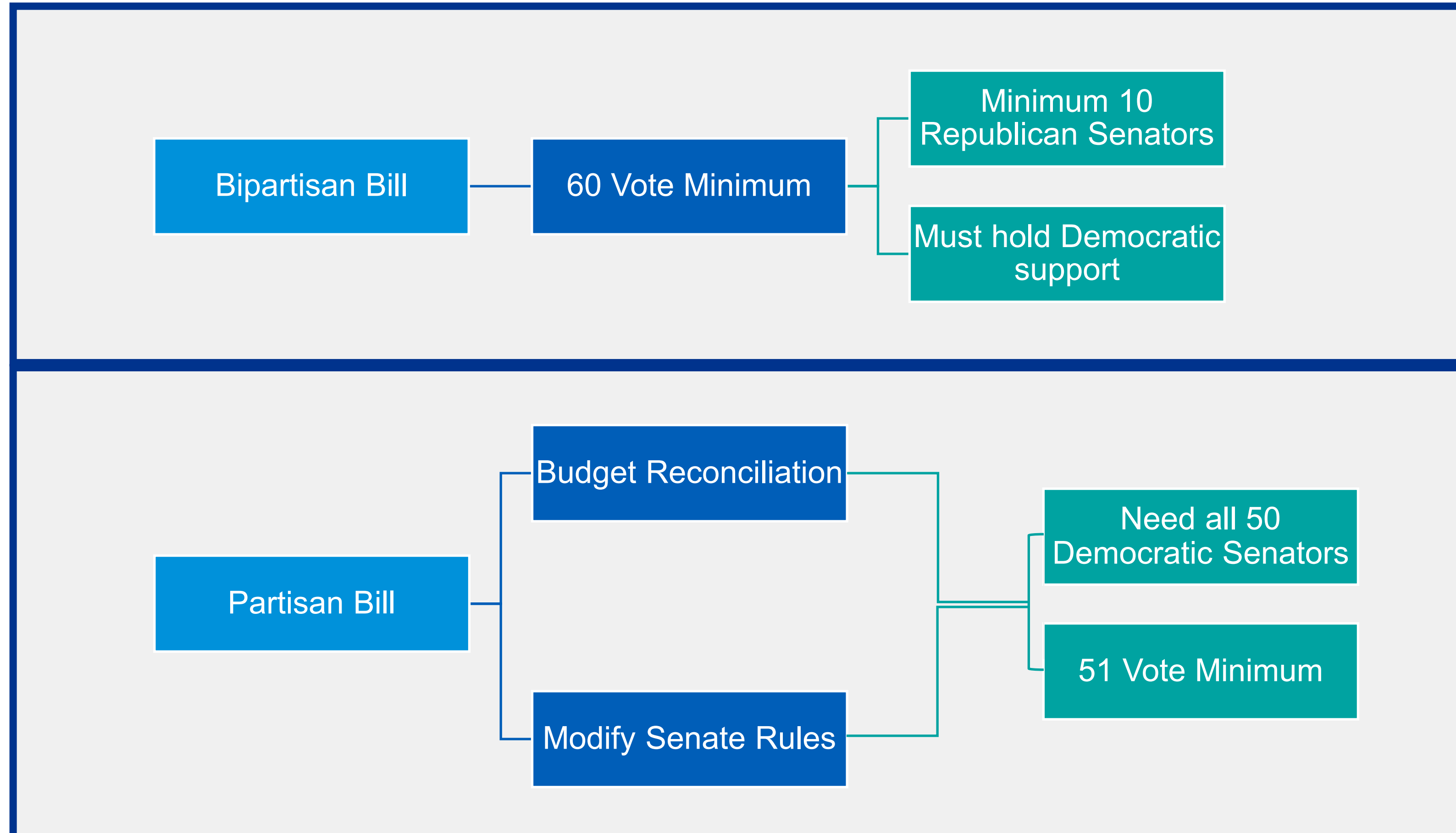


RESCUE: ($1.9T+): $1,400 direct payments, various tax credits, UI, state and local funding, small biz grants/loans. Discrete tax increases enacted – 864(f), 162(m), 461(l), 6050W.

RECOVER ($2.7T+$1.8T): Infrastructure including transportation, energy, broadband, healthcare, water, education, “human infrastructure.”

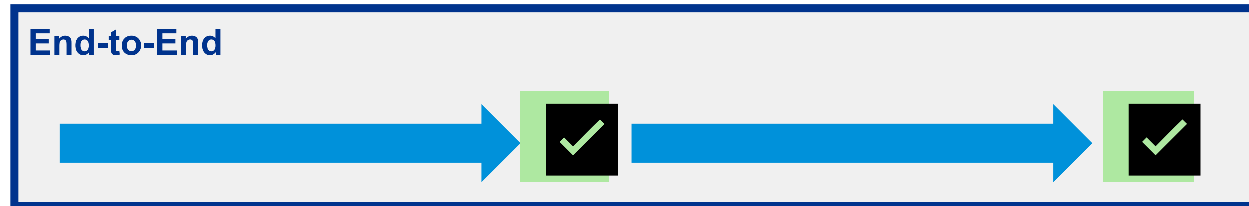
KPMG
© 2021 KPMG LLP, a Delaware limited liability partnership and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved. NDP161585-1A

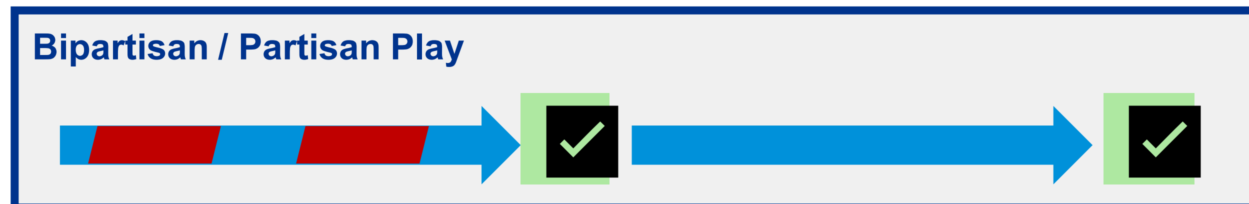
Two Senate Paths to a Major Tax Bill



© 2021 KPMG LLP, a Delaware limited liability partnership and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved. NDP161585-1A

Biden Plan(s): Path to Passage

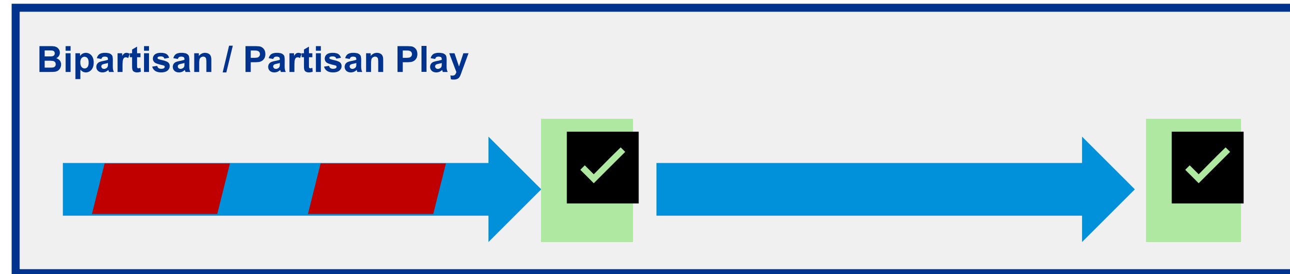




KPMG

© 2021 KPMG LLP, a Delaware limited liability partnership and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved. NDP161585-1A

Accounting for the Two-Step



Bipartisan Bill Proposal

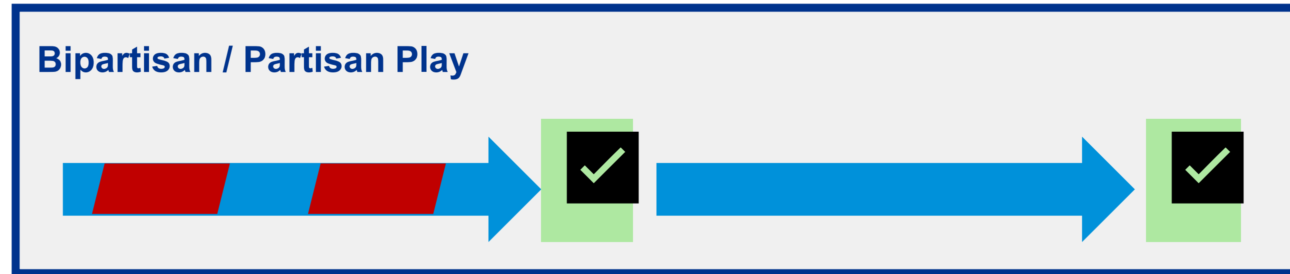
- **$1.2 trillion** in spending
- Includes transportation, water, broadband, energy investment
- Cost “fully offset”
- Includes crypto reporting and **superfund taxes**
- No other tax “raisers”

Dem Reconciliation “Deal”

- **$3.5 trillion** in spending
- Cost “fully offset”?
  - 10 vs. 15 years
  - Non-tax payfors?
  - Dynamic scoring
- Most details to be negotiated
- TBD: how big of a deal is the “deal”?

© 2021 KPMG LLP, a Delaware limited liability partnership and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved. NDP161585-1A

Accounting for the Two-Step



Reconciliation instructions:

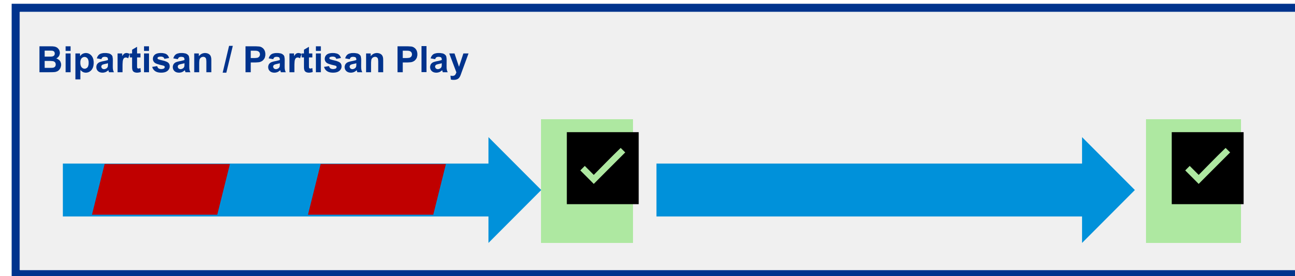
- **Bipartisan Bill Proposal**
- **$1.2 trillion** in spending
- Includes transportation, water, broadband, energy investment
- Cost "fully offset"
- Includes crypto reporting and **superfund taxes**
- No other tax "raisers"

Dem Reconciliation "Deal"

- **$3.5 trillion** in spending
- Permitted to add $1.75T to the deficit
- Senate Finance must reduce deficit by $1B
- Suggested possibility that upper end of tax increases is $1.75T

© 2021 KPMG LLP, a Delaware limited liability partnership and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved. NDP161585-1A

Accounting for the Two-Step



House bill:

Bipartisan Bill Proposal

- **$1.2 trillion** in spending
- Includes transportation, water, broadband, energy investment
- Cost "fully offset"
- Includes crypto reporting and **superfund taxes**
- No other tax "raisers"

Dem Reconciliation House Bill

- **$3.5 trillion** in spending
- $2.1T in tax increases
- $700B prescription drug pricing
- $200B IRS enforcement*
- $500B of dynamic scoring effects*

* Neither of these items "officially" scores

© 2021 KPMG LLP, a Delaware limited liability partnership and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved. NDP161585-1A

Biden vs. House: Tax Proposals

Accounting for Select Business Proposals

Select business tax proposals	Biden	House Ways & Means	House October Revised**
Increase corporate rate	(28%) 857.8	(26.5%) 540.1	(21%) 0
Minimum tax on global book income	148.3	0	325
Increase GILTI rate plus CxC	(21%) 533.5	(16.5%) 203.2	(15%) 300
Modify FDII	123.9	*	*
BEAT repeal + SHIELD replacement	390.1	24.8	30
Further limit interest deductions [163(n)]	18.6	34.8	10
Fossil Fuel proposals	121.3	0*	0*
Reinstate Super Fund	24.8	38.4	0
Research and Development (174)	0	(4.0)	(4.0)
Foreign Tax Credits	0	23.5	25
Stock buyback excise tax	0	0	125

* Included in GILTI score **non-official estimates

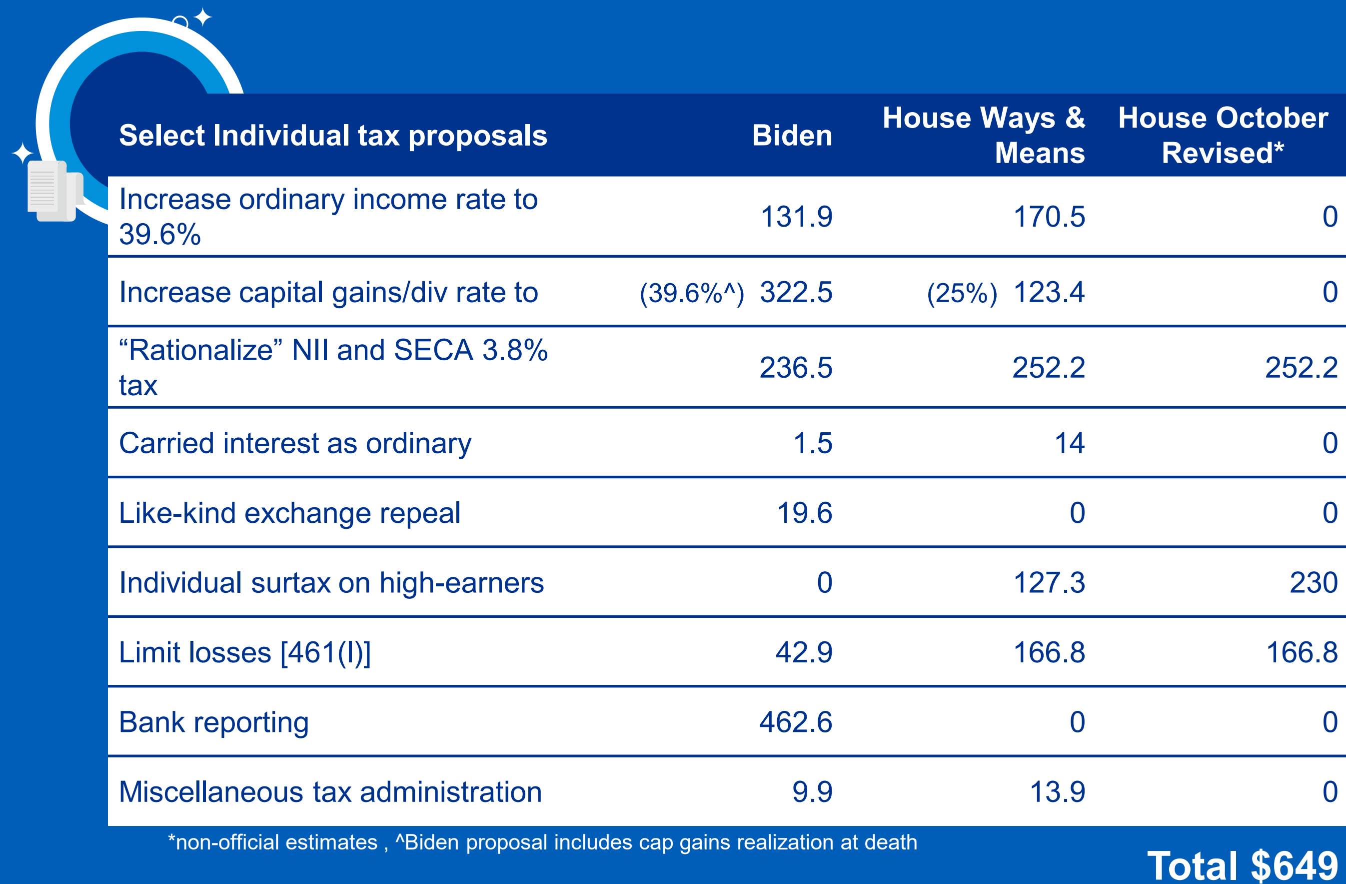
Total $811

Source: Administration's FY2022 Green Book estimates, Joint Committee of Taxation Revenue Tables

KPMG

© 2021 KPMG LLP, a Delaware limited liability partnership and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved. NDP161585-1A

Accounting for Individual Proposals



Select Individual tax proposals	Biden	House Ways & Means	House October Revised*
Increase ordinary income rate to 39.6%	131.9	170.5	0
Increase capital gains/div rate to	(39.6%^) 322.5	(25%) 123.4	0
"Rationalize" NII and SECA 3.8% tax	236.5	252.2	252.2
Carried interest as ordinary	1.5	14	0
Like-kind exchange repeal	19.6	0	0
Individual surtax on high-earners	0	127.3	230
Limit losses [461(l)]	42.9	166.8	166.8
Bank reporting	462.6	0	0
Miscellaneous tax administration	9.9	13.9	0

*non-official estimates , ^Biden proposal includes cap gains realization at death

Total $649

Source: Administration's FY2022 Green Book estimates, Joint Committee of Taxation Revenue Tables

KPMG

© 2021 KPMG LLP, a Delaware limited liability partnership and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved. NDP161585-1A

General Tax Provisions (Selected Highlights)

Rate Changes

	Current Law	House Bill (September 2021)	October Update
Corporate	Flat rate of 21%	Graduated, with top rate 26.5%	No change from current law
Individuals, estates and trusts*	Ordinary income and short-term capital gain: up to 37% Long-term capital gain: up to 20%	Up to 39.6% (and lower threshold to reach top rate) Up to 25% (and lower threshold to reach top rate)	No change from current law
Surtax for high-income individuals, estates and trusts**		3% income tax surcharge if modified adjusted gross income (MAGI) exceeds threshold	5% income tax surcharge if MAGI exceeds threshold (higher than September version); additional 3% if MAGI exceeds a yet higher threshold
Corporate alternative minimum tax			15% minimum tax on adjusted financial statement income for corporations with a 3-year average of such income in excess of $1 billion***

* Not including net investment income tax of 3.8% applicable to certain items of income

** Threshold for "high-income" may be low for estates and trusts

*** Effective for tax years beginning after December 31, 2022

KPMG

© 2021 KPMG LLP, a Delaware limited liability partnership and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved. NDP161585-1A

Excise Tax on Corporate Stock Repurchase

The October update proposes a 1% excise tax on publicly traded US corporation for the value of any of its stock that is repurchased by the corporation during the taxable year.

Certain exclusions exist:

- The repurchase is part of a tax-free reorganization;
- The repurchased stock or its value is contributed to an employee pension plan, ESOP, or similar plan;
- The total amount of stock repurchases within the year is less than $1 million
- The purchase is by a dealer in securities in the ordinary course of business;
- The repurchase is treated as a dividend; or
- The repurchase is by a RIC or REIT.

The provision applies to repurchases of stock after December 31, 2021.

© 2021 KPMG LLP, a Delaware limited liability partnership and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved. NDP161585-1A

Certain Noncorporate Items

Section 199A

Under section 199A, individuals, estates, and trusts are entitled to a 20% deduction for qualified business income, subject to limitations.

The House Bill released in September would add a dollar limitation on the section 199A deduction for a taxable year. This dollar limitation would be:

— $500,000 for married taxpayers filing jointly.

— $250,000 for married taxpayers filing separately.

— $10,000 for an estate or trust.

— $400,000 for any other taxpayer.

The October update does not include any proposed changes to section 199A.

KPMG

© 2021 KPMG LLP, a Delaware limited liability partnership and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved. NDP161585-1A

Certain Noncorporate Items (Cont.)

- **Expanding the Scope of the Net Investment Tax**
  - High-income individuals subject to NII on trade or business income not subject to FICA/SECA.
- **Making permanent the excess loss limitation of section 461(l)**
  - Net business losses may not be deducted against other income (e.g., wages and investment income).
  - Carryforward of disallowed losses possible.
- **Providing capital loss treatment for deduction for worthless partnership interest**
  - Except to the extent loss is attributable to section 751 “hot assets”.
- **Allowing tax-free conversion of S corporations to partnerships**

KPMG

© 2021 KPMG LLP, a Delaware limited liability partnership and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved. NDP161585-1A

Energy Tax Provisions (Selected Highlights)

Energy – Overview

Incentives for clean energy

— Extensions and refundability of existing tax credits but imposes new requirements to access full benefit of credits and refunds

— Adds new incentives for various technologies

No repeal of fossil fuel preferences

Nontax proposal to watch: Clean Electricity Performance Program

— $150 per MWh payment to utilities that increase their annual clean electricity by 4% year-over-year

— $40 per MWh penalty for utilities that miss their annual target

KPMG

© 2021 KPMG LLP, a Delaware limited liability partnership and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved. NDP161585-1A

Renewable Energy Tax Credits – Current Law

Wind

- Wind projects qualify for the section 45 production tax credit (PTC), which provides a federal tax credit of $0.025 per kilowatt-hour (KWHr) of production in 2021 (increased for inflation).
- The PTC will decrease per the chart to the right, based on the year in which the qualifying project starts construction.
- Wind projects may also elect the section 48 investment tax credit (ITC).

Year	PTC (% of $0.025/KWHr)
2016	100%
2017	80%
2018	60%
2019	40%
2020	60%
2021	60%
2022+	0%

Solar

- Solar projects qualify for the ITC, which provides a federal tax credit equivalent to 30% of the qualifying projects costs.
- The ITC will also decrease per the chart to the right, based on the year in which the qualifying project starts construction.
- Any solar project not placed in service by December 31, 2025 will be provided the 10% credit, regardless of when construction began.

Year	ITC (% of qual. costs)
2016-2019	30%
2020	26%
2021	26%
2022	26%
2023	22%
2024+	10%

KPMG

© 2021 KPMG LLP, a Delaware limited liability partnership and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved. NDP161585-1A

Prevailing Wage, Apprenticeships & Domestic Content

Under the House Bill, access to credits may be premised upon meeting (at least a subset of) the following requirements:

Prevailing wage

— Requires the taxpayer to ensure that laborers and mechanics employed in the construction or repair of a project are paid wages at rates not less than the prevailing rates for the locality as determined by the Secretary of Labor. A taxpayer could cure a violation by compensating each worker the deficit plus interest, together with paying a penalty to the IRS of $5,000 per affected employee.

Apprenticeships

— Requires the taxpayer to ensure that an increasing percentage of labor hours be performed by “qualified apprentices” who participate in a registered apprenticeship program. However, if there is a lack of qualified apprentices and the taxpayer makes a good faith effort to comply with the apprenticeship requirement, a failure to comply may be excused. JCT and W&M summaries indicate failure to comply can be cured with $500 penalty (not currently in legislative text).

Domestic content

— Facilities must be composed of steel, iron, and other products manufactured in the United States. A manufactured product is deemed to have been manufactured in the United States if not less than 55% of the total cost of the components of such product is attributable to components which are mined, produced or manufactured in the United States.

© 2021 KPMG LLP, a Delaware limited liability partnership and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved. NDP161585-1A

Investment and Production Tax Credits

Credit rate

— Base credit rate = 6% (ITC) and 0.5 cents/kwh (PTC)

— Bonus credit rate = 30% (ITC) and 2.5 cents/kwh (PTC)

  - Bonus credit rate available if *prevailing wage* and *apprenticeship* requirements are met OR if construction begins before enactment

— Additional credit increase available if *domestic content* requirement is met:

  — If claiming at base rate the domestic content increase is 2%

  — If claiming at bonus rate the domestic content increase is 10%

— Effective for projects placed in service after December 31, 2021

Extension/phase down

— 100% of the (base and bonus) PTC credit rate available for facilities which commence construction by the end of 2031, phases down/out thereafter

Refundability

— Elective

— If *domestic content* requirement not satisfied refundability level phases down - 100% for projects which begin construction in 2024 and before, 90% for 2025, 85% in 2026 and 0% thereafter

KPMG

© 2021 KPMG LLP, a Delaware limited liability partnership and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved. NDP161585-1A

Investment and Production Tax Credits (Cont.)

Eligibility

- Solar eligible for PTC
- Enhanced ITC available for solar in low-income communities
- New ITC eligible technologies: Energy storage, linear generators, microgrid controllers, dynamic glass, biogas property
- ITC available for investments in high voltage transmission lines and related property; available for property placed into service after December 31, 2021, and before January 1, 2032; not available for property already under construction

KPMG

© 2021 KPMG LLP, a Delaware limited liability partnership and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved. NDP161585-1A

Direct Pay Election/Refundability

A taxpayer making an election with respect to any applicable credit treated as making a payment of tax equal to the amount of that credit, with any excess available as a refund

— Applicable credits include: PTC, ITC, 45Q, transmission ITC, 48C, zero-emissions nuclear, hydrogen production, etc.

— Tax-exempt entities treated as taxpayers eligible to make direct payment election

— For partnerships, election and refund made at partnership level

— Open questions

  - Application of at risk and passive activity rules
  - Normalization
  - Process
  - Timing

KPMG

© 2021 KPMG LLP, a Delaware limited liability partnership and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved. NDP161585-1A

Selected Other Provisions

Publicly traded partnerships

— Expand the list of qualifying income categories to include income and gains from the generation of electric power or thermal energy renewable resources

Carbon oxide sequestration credit

— Extended and modified

Sustainable aviation fuel credit

— New blenders tax credit for each gallon of SAF sold as part of a qualified fuel mixture, available for fuel sold or used after 2022 and before 2032

— Credit would start at $1.25 per gallon and increase to $1.75 per gallon depending on the reduction in lifecycle emissions of the fuel

Electric vehicles and charging stations

— Extended and modified

— Starting in 2027 credit only available for vehicles for which final assembly is within the United States

Extended 48C advanced energy project credit

New ITC for zero-emissions facilities

New zero-emission nuclear power production credit

New clean hydrogen production tax credit

© 2021 KPMG LLP, a Delaware limited liability partnership and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved. NDP161585-1A

International Tax Provisions (Selected Highlights)

Proposals for New Sections 163(n) and (o)

The House Bill would introduce a new limitation on net interest deduction of a “specified domestic corporation” that is a member of an “international financial reporting group”.

- Exceptions for S Corps, RICs, REITs, and for de minimis interest ($12M net expense on 3-year average)
- Applies to US and foreign-parented multinationals
- Based on data from financial statements or books and records
- Limit generally applies if ratio of net interest expense to EBITDA is higher in the US than for the group

  Calculating allowed interest: US’s share of group’s reported net interest expense (proportionate based on EBITDA), divided by the US’s net interest expense, is the “allowable percentage” of net interest expense of US; but also a 10% uplift.
- Coordination with section 163(j) – smaller allowed expense applies
- This framework is maintained in the October update, but applies for tax years beginning after December 31, 2022.

KPMG

© 2021 KPMG LLP, a Delaware limited liability partnership and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved. NDP161585-1A

Proposals for New Sections 163(n) and (o) (cont.)

The House Bill would also provide in section 163(o) a five-year carryforward of disallowed interest expense (under section 163(j) or (n))

- Carryforwards allowed as a deduction on first-in, first-out (FIFO) basis
- Subject to section 382
- No carryforward of excess limitation
- [Five-year limitation not part of October update]

KPMG

© 2021 KPMG LLP, a Delaware limited liability partnership and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved. NDP161585-1A

Portfolio Interest

The portfolio interest exemption, which eliminates US withholding on outbound interest payments under certain conditions, does not apply where the recipient is a “10% shareholder” of the obligor. Under current law, a 10% shareholder is, in the case of an obligation issued by a corporation, any person who owns 10% or more of the total combined *voting power* of all classes of stock of such corporation entitled to vote.

- Under the proposal, the 10% threshold is based on voting power *or total value of the stock* of the corporation.
- The October update preserves this expansion of the definition of 10% shareholder (and narrowing of the portfolio interest exemption).

KPMG

© 2021 KPMG LLP, a Delaware limited liability partnership and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved. NDP161585-1A

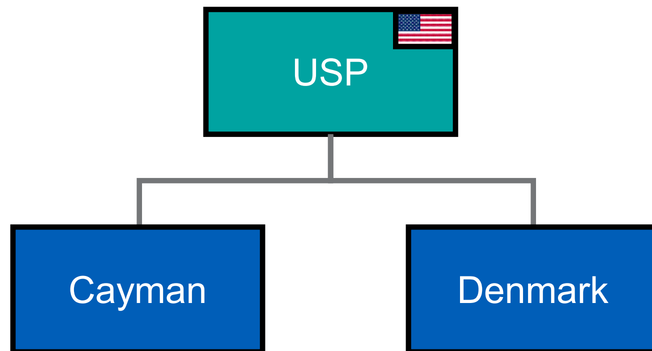
Proposals for GILTI, Section 250 Deduction and GILTI FTCs

The House Bill would make the following changes to the mechanics of section 951A (GILTI):

- GILTI inclusions determined on a country-by-country basis
- Exemption for deemed return on tangible assets (QBAI) reduced from 10% to 5%
- Reduction of section 250 deduction (for both FDII and GILTI). resulting in GILTI rate of 16.56% with a 26.5% corporate rate
- Unlimited tested loss carryforward for countries with net tested loss
- Foreign oil and gas extraction income (FOGEI) expanded and included in tested income
- Special FTC rules for section 951A
  - Section 250 deduction is the only deduction allocated to GILTI basket
  - “Haircut” on FTCs reduced from 20% to 5% (and not extended to other baskets)
  - FTCs for CFCs with net tested loss in a country qualify as tested foreign income taxes
  - But inclusion percentage (now determined by country) is retained, so that a tested loss will haircut taxes deemed paid and no taxes will be deemed paid if there is an overall loss for a country
  - FTC carryforward only applies to deemed paid taxes
  - Separate limitation losses offset other per-country baskets before offsetting per-country GILTI baskets
- The October update provides for a GILTI rate of 15% (by further reducing the section 250 deduction) and generally delay effective date by a year.

© 2021 KPMG LLP, a Delaware limited liability partnership and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved. NDP161585-1A

Example – Impact of C-by-C GILTI Computation



Current Law (Global blending)

— Cayman and Denmark's income & taxes can be blended

— May allow USP to avoid any residual US tax, even though the income in Cayman isn't taxed

Proposed Law (Jurisdictional blending)

— Cayman and Denmark's income & taxes cannot be blended

— Cayman's income will be subject to residual US tax, even if the blended foreign rate would be above the relevant threshold (16.5% under the September House bill).

KPMG

© 2021 KPMG LLP, a Delaware limited liability partnership and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved. NDP161585-1A

CFC, Subpart F and Section 898 Proposals

The House Bill would reinstate (retroactively) section 958(b)(4), which precludes the “downward attribution” of stock from a non-US person to a US person in determining CFC status

- Significantly alleviates the phenomenon of “faux” CFCs.
- May affect taxpayers who have previously (since TCJA) been subject to US tax liability on mandatory repatriation, GILTI and subpart F income.

The House Bill would limit “related person” in foreign base company sales income (FBCSI) and foreign base company services income (FBCSvI) rules to taxable units that are U.S. tax resident

- FBCSI branch rules repealed
- Intended to discourage “active planning” into subpart F income.

Repeals § 898 one-month deferral election

- Proposed to apply to tax years of specified foreign corporations beginning after November 30, 2021
  - → One-month short period

KPMG

© 2021 KPMG LLP, a Delaware limited liability partnership and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved. NDP161585-1A

CFC, Subpart F and Section 898 Proposals (Cont.)

Expands authority for guidance implementing basis adjustments under § 961(c)

Limits section 245A DRD to CFCs (not “10/50” companies)

Section 1059 “extraordinary dividends” to include “disqualified CFC dividends”

KPMG

© 2021 KPMG LLP, a Delaware limited liability partnership and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved. NDP161585-1A

FTC Limitation Architecture

“Reduced” section 904(d) categories from 4 to 3

- General, GILTI, and passive but on a country-by-country (CxC) basis
- Implement CxC by assigning income, deductions, and foreign taxes to “taxable units”
  - Taxable units identified based on separate tax residence or taxable presence from owner
  - Likely to take into account disregarded payments to assign income to taxable units
- 5-year FTC carryforward / no carryback for all baskets
- 10-year statute of limitation for claiming refunds due to changes in foreign taxes reduced to 5-years

Limited significance to branch basket repeal

- Royalties / related withholding tax on books of US home office assigned to US “general taxable unit”
- General basket subpart F income from Country X could be cross-credited against Country X branch income

KPMG

© 2021 KPMG LLP, a Delaware limited liability partnership and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved. NDP161585-1A

BEAT Proposal

Taxpayers subject to BEAT

— Under current law, BEAT applies to most corporations (with exceptions for REITS, etc.) that meet BOTH the gross receipts test and the base erosion percentage (BE%) test:

  i. Gross receipts test: average annual gross receipts of at least $500 million for the three preceding tax years

  ii. BE% test: base erosion percentage for the tax year exceeds 3% (2% for taxpayers that are members of an affiliated group that includes a bank or a registered securities dealer).

— The House Bill eliminates the BE% test for tax years beginning after December 31, 2023. (The October update has the same feature.)

— Many more corporations are therefore expected to be in scope.

KPMG

© 2021 KPMG LLP, a Delaware limited liability partnership and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved. NDP161585-1A

BEAT Proposal (cont.)

BEAT liability

- Under current law, the BEAT rate is 10% for tax years beginning after 2018 but before 2026, and 12.5% for tax years beginning after December 31, 2025.
- The House Bill would modify the BEAT rate:
  - Retain 10% for tax years beginning before 2024
  - Accelerate increase to 12.5% to tax years beginning after 2023 instead of 2025
  - Increase to 15% for tax years beginning after 2025
- The October update would further accelerate the increase, ultimately increasing to 18% for tax years beginning after 2025.
- In addition, the proposal includes:
  - Full value to **all credits**
  - Expand addbacks to include base erosion payment portion of cost of goods sold
  - Revise rules to require separate tracking of a BEAT NOL
  - **Exemption** for **payments** subject to
    - U.S. tax
    - Foreign tax at or above BEAT rate

KPMG

© 2021 KPMG LLP, a Delaware limited liability partnership and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved. NDP161585-1A

BEAT – Current Law vs. House Proposal

Selected key differences

Current Rules	House Proposals	Taxpayer Favorable?
Taxpayer with base erosion percentage less than 3% (2% for certain financials) is not subject to BEAT	Base erosion percentage test removed for tax years beginning after 12/31/23	✗
BEAT rate of 10%, increased to 12.5% for tax years beginning after 12/31/25	BEAT rate of 10%, increased to 12.5% for tax years beginning after 12/31/22, 15% for tax years beginning after 12/31/23, and 18% for tax years beginning after 12/31/24	✗
No exemption for payment subject to a high rate of tax	New exemptions for payments subject to US tax and foreign ETR at or above BEAT rate	✓
Unfavorable treatment of certain credits including FTCs	Favorable treatment of FTCs	✓
COGS payments not subject to BEAT	Certain portion of COGS payment considered base erosion payment	✗

KPMG

© 2021 KPMG LLP, a Delaware limited liability partnership and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved. NDP161585-1A

Overview of the House Proposal's U.S. Tax Framework

BEAT

— Alternative minimum tax regime
— BEAT rate times taxable income expanded by deductible and COGS payments to low-tax foreign affiliates
— Exception for payments subject to U.S. tax
— BEAT rate starts at 10%, rising to 18% by 2026
— Credits allowed

Interest Deductibility (section 163(j), (n), (o))

— Related and unrelated party debt
— Targets US and foreign MNCs
— Disallow net interest expense in excess of the greater of
  — 30% of EBITDA (EBIT in 2022)
  — Disproportionate US interest expense (based on U.S. v foreign group EBITDA)
  — 5-year carry-forward of disallowed interest

FDII

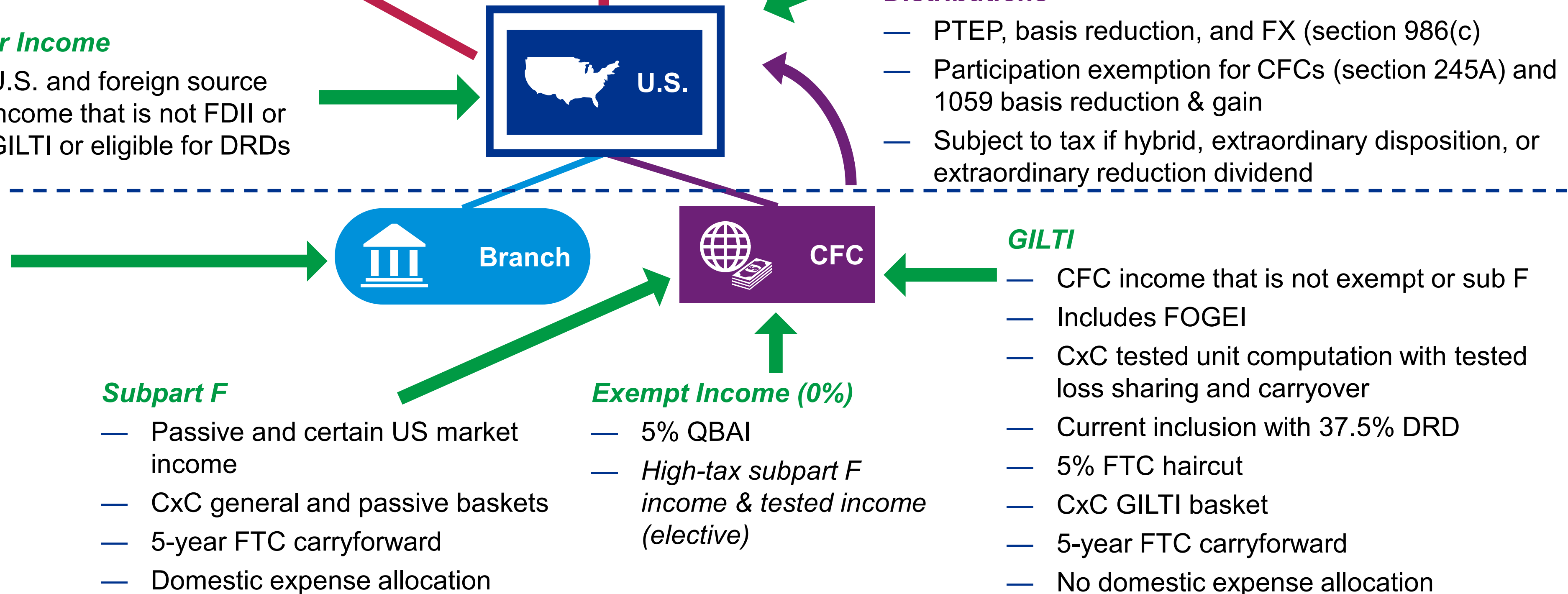
— Income from sale, lease, license, or disposition of property to foreign persons for foreign use
— Income from services to person outside the United States

Other Income

— U.S. and foreign source income that is not FDII or GILTI or eligible for DRDs

Distributions

— PTEP, basis reduction, and FX (section 986(c)
— Participation exemption for CFCs (section 245A) and 1059 basis reduction & gain
— Subject to tax if hybrid, extraordinary disposition, or extraordinary reduction dividend



Branch Income

— Current inclusion
— Cannot get FDII
— CxC general basket
— 5-year FTC carryforward
— Domestic expense allocation

Subpart F

— Passive and certain US market income
— CxC general and passive baskets
— 5-year FTC carryforward
— Domestic expense allocation

Exempt Income (0%)

— 5% QBAI
— *High-tax subpart F income & tested income (elective)*

GILTI

— CFC income that is not exempt or sub F
— Includes FOGEI
— CxC tested unit computation with tested loss sharing and carryover
— Current inclusion with 37.5% DRD
— 5% FTC haircut
— CxC GILTI basket
— 5-year FTC carryforward
— No domestic expense allocation

KPMG

© 2021 KPMG LLP, a Delaware limited liability partnership and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved. NDP161585-1A

OECD BEPS 2.0

Introduction to Pillars 1 and 2

Pillar 1

- This work is driven by a concern, particularly in Europe, that the existing international tax rules are not equipped to deal with modern "digital business models"
- However, the U.S. has for years rejected framing the issue as being limited to "Digital"
- The OECD has been working to resolve this debate and achieve a multilateral solution for more than 7 years
- Several countries have lost patience with the OECD process and implemented unilateral digital services taxes, which the U.S. views as discriminatory
- The OECD's current work in this area is called **"Pillar One"** and it is focused on the largest and most profitable companies, potentially as few as 100
- Agreement on Pillar 1 reduces the risk of a trade conflict

Pillar 2

- Seeks to establish a global minimum taxation regime that ensures that all internationally operating businesses pay at least a minimum level of tax on their income in each jurisdiction
- The OECD's work in this area is called **"Pillar Two"** and it applies to every internationally operating business with consolidated group revenue greater than €750 million
- Pillar Two is important for the U.S. because it is tied to the Biden Administration's policy goal of stopping the "race to the bottom"; it is also linked to the administration's legislative goals

Political package being negotiated by the OECD/G20 Inclusive Framework (140 member jurisdictions)

KPMG

© 2021 KPMG LLP, a Delaware limited liability partnership and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved. NDP161585-1A

Snapshot of October Inclusive Framework statement

Pillar 1

Scope

- Confirmed: In-scope MNEs with global turnover above €20 billion and profitability above 10% (i.e. PBT/revenue)
- Confirmed: Turnover threshold to be reduced to €10 billion, 7 years later, assuming successful implementation
- Confirmed: Extractives and Regulated FS excluded

Key “new” developments

- **Scope:** Averaging mechanism used in scope determination
- **Quantum:** Amt A finalized as equal to 25% of residual profit defined as profit in excess of 10% of revenue
- **Tax certainty:** Clarification of the carve-out for developing nations
- **Unilateral measures**: Moratorium on new measures, “appropriate coordination” for existing measures

Pillar 2

Scope

- Confirmed: GloBE Rules apply to MNEs that meet the €750 million CbCR threshold, with exceptions
- Confirmed: consideration of GILTI co-existence

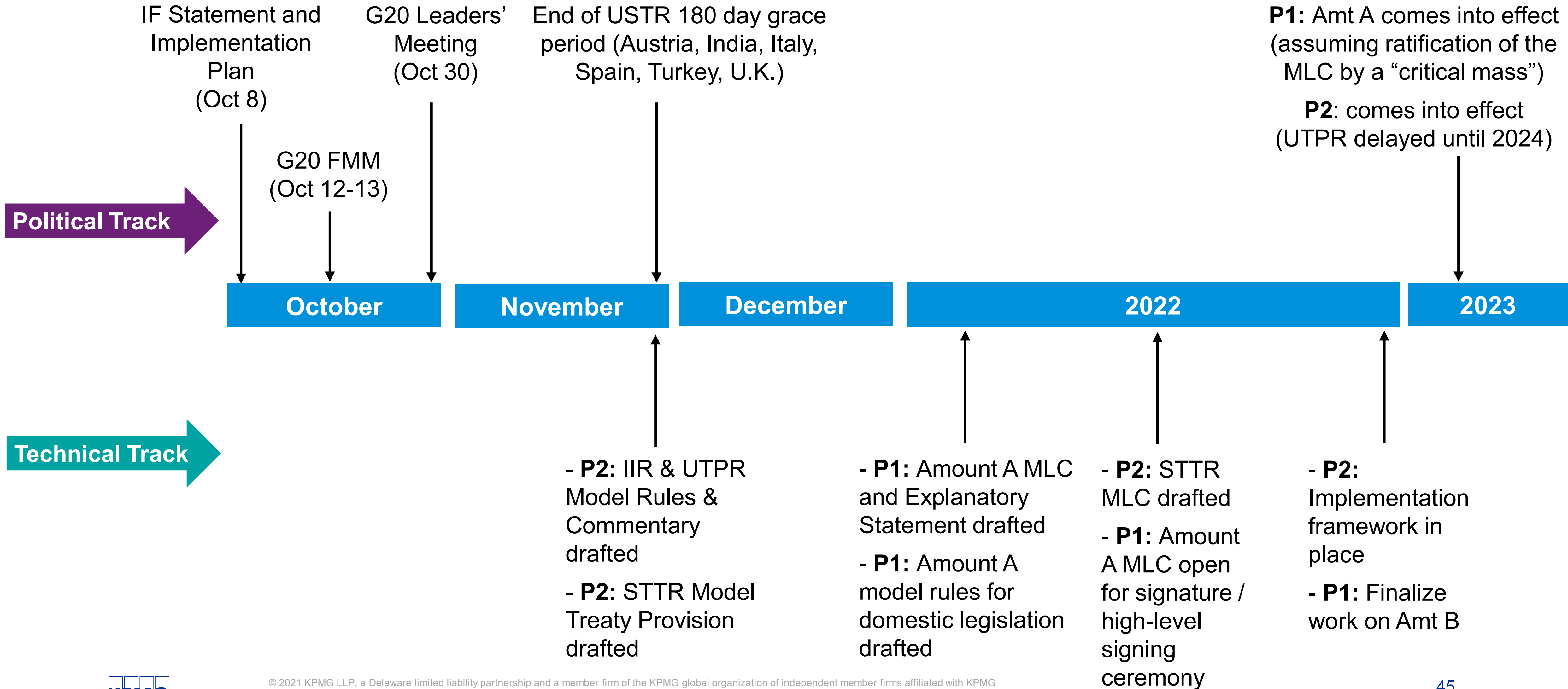
Key “new” developments

- **Minimum rate:** finalized as 15% (9% for the STTR)
- **Carve-out:** Finalized as ultimately 5% of tangible assets and payroll, but a higher mark-up is provided for a 10-year transition period (with a taper down)
- **UTPR:** 5-year exemption for MNEs in the initial phase of their international activity (to be eligible: <€50m in tangible assets abroad, and operations in <5 other countries)
- **UTPR:** 1-year delay (scheduled to come into force in 2024)

Statement joined by 136 OECD/G20 IF members (hold-outs: Kenya, Nigeria, Pakistan, Sri Lanka)

KPMG
© 2021 KPMG LLP, a Delaware limited liab
International Limited, a private English compa

Timeline



KPMG

© 2021 KPMG LLP, a Delaware limited liability partnership and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved. NDP161585-1A

Key remaining issues

Pillar 1

- Defining **sectoral exclusions**
- Defining **tax base** and treatment of losses
- Developing **revenue sourcing rules** including BtoB
- **Marketing and distribution safe harbor** mechanism, including defining the base (return on local sales, local tangible assets, local costs), and return
- **Elimination of double tax**, incl. finding the paying entity (defining "residual profit", prioritizing multiple paying entities)
- Elimination of **unilateral measures,** especially existing unilateral measures
- **Administration**, including single entity concept (secondary tax adjustments)
- **Tax certainty** scope and mechanism
- **Implementation** considerations, including US legislative vehicle
- **Amount B** scope, quantum

Pillar 2

- Defining **tax base**, including transitional issues
- Mechanism for managing **timing differences** (deferred tax accounting vs carry-forward approach)
- **Carve-outs and exclusions**, finalizing the design of the substance carve-out, de minimis exclusion and exclusion from the UTPR for MNEs in the initial phase of their intl. activity
- Development of **simplification measures,** including "safe harbors and/or other mechanisms"
- Design of the **UTPR**, incld. allocation key and caps
- **GILTI co-existence,** incld. BEAT, sandwich structures
- **STTR** incld. the scope of "other payments"
- **Implementation** considerations

© 2021 KPMG LLP, a Delaware limited liability partnership and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved. NDP161585-1A

Key Takeaways

Significant changes in U.S. and international tax policies appear likely

- The U.S. and international tax reform processes are linked
- May raise new opportunities, e.g., unbundling and pricing components of COGS that are/are not base eroding payments
- New proposals, and in particular country-by-country GILTI, may lead some taxpayers to consider restructurings, and potentially shift focus to more "defensive planning" to avoid and eliminate double taxation
  - Reorganizing or eliminating structures likely to attract controversy
  - Foreign tax credit utilization
  - Increasing use of APAs and MAP
    - The OECD is currently working on improvements to the Action 14 minimum standard

© 2021 KPMG LLP, a Delaware limited liability partnership and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved. NDP161585-1A

kpmg.com/socialmedia

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act upon such information without appropriate professional advice after a thorough examination of the particular situation.

© 2021 KPMG LLP, a Delaware limited liability partnership and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved. NDP161585-1A

The KPMG name and logo are registered trademarks or trademarks of KPMG International.