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Biden’s International Tax Proposals – No Longer a Long Shot After Democrats Win in Georgia

After last November’s presidential election, many of the Biden-Harris campaign’s policy proposals looked like a long shot. Once the results came into focus after the marathon week that followed election night on November 4, the expectation by many was that the U.S. would face a divided Congress in 2021. With Republicans expected to control the Senate and Democrats controlling the House, it looked like the U.S. was in for (at least) two more years of congressional gridlock that would make it very difficult for the new Administration to move forward with any of its policy objectives.

The results of last week’s Senate runoff election in Georgia turned that expectation on its head when the state’s two traditionally conservative Senate seats went to Democratic candidates Raphael Warnock and Jon Ossoff. These wins cemented the Democrats’ control of the Senate, which is now split 50–50 with Kamala Harris breaking the tie once she is sworn in as Vice President.

The narrow split in the Senate means that President-elect Biden’s policy proposals have a higher likelihood of becoming law. While proposals that seek to increase taxes will be subject to heighted scrutiny by moderate lawmakers, particularly in light of the current economic uncertainty related to the COVID-19 pandemic, Democratic control of both chambers means they cannot be dismissed. In light of this development, many taxpayers are taking a hard look at the cross-border implications of Biden’s tax proposals.

The broadest reaching proposals of Biden’s tax plan are increases in the corporate tax rate and the capital gain tax rates for individuals. Biden’s plan proposes to raise the tax rate for corporations from 21% to 28% and the top individual rate from 37% to 39.6%. He would also introduce a 15% minimum tax on book income of corporations with at least $100 million in net income. Further, Biden’s plan would repeal the preferential capital gains tax rate for taxpayers earning over $1 million in income. Instead, capital gains and qualified dividends for such taxpayers would be taxed at the top ordinary rate of 39.6%.

Biden's plan also proposes to double the global intangible low-taxed income (GILTI) tax rate, raising it from 10.5% to 21%. Changes to the corporate tax rate would bump the high-tax exception to around 25%. An increase in the high-tax exception would bring more income under the GILTI regime at a higher rate, reflecting a higher cost to taxpayers. Additionally, Biden's plan would eliminate the GILTI exemption for deemed returns of 10% of qualified business asset investment and would require GILTI to be computed on a country-by-country basis.

As an incentive to create and repatriate manufacturing jobs, Biden's plan includes a made-in-America tax credit of 10% for businesses that invest in U.S. manufacturing facilities, bring manufacturing or service jobs back to the U.S., or create such U.S. jobs. This is coupled with a 10% surtax on corporations that offshore manufacturing and service jobs to sell goods or services to the U.S. market.

Like any good political campaign, the Biden-Harris team painted many of its policy positions in broad strokes and, as a result, many of the details are still to come. However, these proposals should not be dismissed. Just this week, Senator Ron Wyden (D-OR), the incoming chair of the Senate Finance Committee, announced that he would move forward on legislation to implement some of the key elements of Biden's proposals. As a result, taxpayers should remain attentive to developments and begin considering the broad implications of these proposals.

For more information, please contact Scott Harty at 404.881.7867 or April McLeod at 212.210.9487.

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