TAX

Former Vice President Joe Biden Releases Tax Proposals

Key Points:
- Former Vice President Joe Biden released his tax plan which would raise $3.2 trillion over ten years.
- The plan focuses on capital gains, corporations, top income earners, and offshore corporate income.

On December 4, former Vice President Joe Biden released a plan to raise $3.2 trillion in taxes over a ten-year period in order to pay for his domestic spending proposals. The plan calls for the following:
- increasing the top income tax rate from 37% to 39.6%;
- increasing capital gains to ordinary income rates, i.e., 39.6%;
- raising the corporate tax rate from 21% to 28%; and
- increasing the maximum long-term tax rate on capital gains from 23.8% to 43.4%.

Table of Contents
Tax  1
Financial Services  3
Health  7
Trade  8
It also calls for levying a minimum “book” tax of 15% on reported profits for companies paying no income taxes, even if deductions and credits push taxable profits down to zero. Biden’s plan would also increase the Global Intangible Low Tax Income (GILTI) to 21%, doubling its current rate.

While his tax plan is expected to raise less in revenue than other Democratic candidates, the Biden campaign was reported to make the case that this proposal to be the most effective way to fund his policy priorities.

**Treasury and IRS Release Proposed and Final International Tax Regulations**

**Key Points:**
- The IRS and the Treasury Department issued proposed and final regulations on the global intangible low taxed income (GILTI) regime and the base erosion and anti-abuse tax (BEAT).
- Both regulations, impact the international tax provisions of the Tax Cuts and Jobs Act (TCJA).

On December 2, the U.S. Treasury Department and the IRS issued proposed and final regulations relating to two international tax provisions of the Tax Cuts and Jobs Act (TCJA): foreign tax credits (FTC) and the Sec. 59A base erosion and anti-abuse tax (BEAT). Changes to the treatment of FT Cs under the TCJA included providing new foreign tax credit rules related to the global intangible low taxed income (GILTI). The rule includes a provision that would allow companies to treat certain assets as 50% exempt for expense allocation purposes under GILTI. Treasury officials also proposed more generous rules for calculating foreign tax credits, including changes to the allocation and apportionment of research and experimental tax deductions. The Treasury Department expects the change to give those impacted by the GILTI tax an opportunity to increase their use of foreign tax credits, helping companies that conduct research and development in the U.S.

Sec. 59A of the BEAT final regulation provides detailed guidance regarding the applicable taxpayers subject to the BEAT, how to determine base erosion payments, the general application of the BEAT to consolidated groups, and the calculation of the base erosion minimum tax amount.

**Uncertainty Remains Around a Year-End Tax Package**

**Key Points:**
- Discussions between the House and Senate continue around a year-end tax package to meet the December 20 deadline.
- Congress has several options on what to include in the package.

House and Senate tax writers continue discussions about a year-end tax package and are expected to try to attach it to must-pass spending legislation in order to meet the December 20 deadline. That presumes a spending package (instead of a continuing resolution) will come together. If the spending bill is merely another CR, it is much less likely a tax package accompanies it. Options for tax writers for the end of the year package run from being unable to include something; to adding the SECURE Act retirement legislation (H.R.1994) onto a year-end funding bill; to adding tax extenders and some other green energy incentives; to adding TCJA technical corrections; or finally, to adding all of the above plus enhancements to the EITC and tax credits sought by Democrats.

Where the policy lands remain unclear, but decisions are likely going to be made in the coming week.
Ways and Means Could Take Action on Teachers/Emergency Responders and/or SALT Next Week

**Key Points:**
- Ways and Means may move bills on teacher expenses and the SALT deduction, mostly to make a political statement.

A bill to provide a tax deduction to reimburse teachers for personal spending on supplies and other work expenses, as well as to include first responders under the same benefit for the first time, could be considered next week in the House Ways and Means Committee. The provision could be part of a tax extenders package, should one come together, given the positive politics of teachers and emergency responders.

Another bill which would provide a temporary repeal of the SALT (state and local tax) limitation enacted in TCJA could also see introduction and possibly even committee action next week in the House Ways and Means Committee. House Democrats have been working toward floor consideration of the SALT bill, but enactment is very unlikely given Republican Senate opposition and the cost of repeal.

For more information about tax issues you may email or call Christopher Hatcher at 202-659-8201. Victoria Shoots contributed to this section.

FINANCIAL SERVICES

FSOC Approves 2019 Annual Report and Final Guidance on Non-Bank Financial Company Designations

**Key Points:**
- Issues discussed in the annual report included cybersecurity, LIBOR, leverage, financial technology, non-bank mortgage lenders, and housing finance reform.
- The Council approved final interpretive guidance transitioning the Council’s focus from entity-based designations to activities-based oversight.

On December 4, the Financial Stability Oversight Council (FSOC or the Council) held an open meeting and approved two items: (1) final interpretive guidance on non-bank financial company designations; and (2) release of the Council’s 2019 Annual Report. Both items were approved by unanimous vote.

FSOC Chairman Steven Mnuchin said the guidance was the culmination of two years of work. He said the comments on the proposed guidance were largely positive. He said the Council was prioritizing an activities-based approach, which leverages the expertise of the primary regulators.

Howard Adler (Senior Advisor, Office of Domestic Finance, Treasury Department) explained that the final guidance would replace the 2012 guidance on non-bank financial company designations. He contendred that the guidance would enhance the transparency and analytical rigor of the entity designation process. He noted that the guidance states that the Council would pursue entity-specific designations only in rare circumstances. He stated that the guidance would cut the three-step designation process down to two steps and
includes additional clarity on pre- and post-designation off-ramps.

Stephen Ledbetter (Executive Director, FSOC) provided a summary of the Council’s 2019 Annual Report, noting that key areas of focus included: (1) cybersecurity; (2) the transition away from LIBOR; (3) the increase in leverage by non-financial businesses; (4) the increasing role of non-bank mortgage companies; (5) new technologies, such as digital assets and distributed ledger technology (DLT); and (6) the role of private capital in the mortgage market.

Secretary Mnuchin Testifies in the House Financial Services Committee

Key Points:

- Democrats raised concerns that deregulatory efforts by the Trump Administration could threaten financial stability.
- Issues discussed in the hearing included cybersecurity, LIBOR, leveraged lending, climate change, financial transaction tax proposals, and international insurance regulation.

On December 5, the House Financial Services Committee held a hearing entitled “Promoting Financial Stability? Reviewing the Administration’s Deregulatory Approach to Financial Stability.” The Committee received testimony from Treasury Secretary Steven Mnuchin. Chairwoman Maxine Waters (D-CA) expressed concern about the Administration’s actions to eliminate protections for consumers. She stated that if these rollbacks continue, there will be serious consequences for U.S. financial stability. She asserted that she is dedicated to avoiding the mistakes of the past, and that she has witnessed how deregulation can lead to financial crises. She observed that the Financial Stability Oversight Council (FSOC) was granted authority to supervise non-banks, but that this authority has been limited under the current Administration. She noted that FSOC’s budget and staff have been cut. She observed growing concerns to financial security, including climate change and big tech.

Ranking Member Patrick McHenry (R-NC) stated that he is concerned about the upcoming transition from the London Interbank Offered Rate (LIBOR) to the Secured Overnight Financing Rate (SOFR). He said he wanted to hear Mnuchin’s opinion on the repo market. He emphasized he was concerned about volatility in mortgage loans that could result from the transition to SOFR, and stated it is an issue of economic growth and stability. He noted that many people are talking about a financial transaction tax, but he asserted that everyday investors, including people saving for investments, would be negatively impacted by this policy. He called for an analysis carried out by the government on this tax.

Representative Ann Wagner (R-MO) raised concerns with the potential impact a financial transaction tax. Mnuchin responded that a financial transaction tax would burden economic growth and American taxpayers. Wagner asked if this policy could result in people taking actions to avoid the tax. Mnuchin responded in the affirmative, and noted that money would likely move off-shore as a result.

Representative John Rose (R-TN) asked what concerns Mnuchin has with the Insurance Capital Standard (ICS) framework. Mnuchin expressed support for the state regulatory system for insurers. He noted his concern that some measures could force the industry to take action that could be detrimental to the state-based system.
Federal Regulators Issue Joint Statement on the Use of Alternative Credit Data by Lenders

Key Points:
- The joint statement laid out a program for lenders to consider alternative credit data while remaining in compliance with consumer protection laws.
- The statement acknowledged the benefits alternative data may have in helping consumers access credit or obtain better pricing and terms.

On December 3, the Federal Reserve Board, the Consumer Financial Protection Bureau (CFPB), the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), and the National Credit Union Administration (NCUA) issued a joint statement on the use of alternative data in credit underwriting. The joint statement noted that:

The agencies recognize that use of alternative data may improve the speed and accuracy of credit decisions and may help firms evaluate the creditworthiness of consumers who currently may not obtain credit in the mainstream credit system. Using alternative data may enable consumers to obtain additional products and/or more favorable pricing/terms based on enhanced assessments of repayment capacity. These innovations reflect the continuing evolution of automated underwriting and credit score modeling, offering the potential to lower the cost of credit and increase access to credit.

The joint statement encouraged lenders to engage in “responsible use of such data.” To promote responsible use of this data, the regulators laid out their expectations for appropriate compliance programs:

A well-designed compliance management program provides for a thorough analysis of relevant consumer protection laws and regulations to ensure firms understand the opportunities, risks and compliance requirements before using alternative data. Based on that analysis, data that present greater consumer protection risks warrant more robust compliance management. Robust compliance management includes appropriate testing, monitoring and controls to ensure consumer protection risks are understood and addressed.

Sherman Named Chairman of the Capital Markets Subcommittee

Key Point:
- Representative Brad Sherman (D-CA) was named Chairman of the Subcommittee on Investor Protection, Entrepreneurship and Capital Markets.

On December 5, Representative Brad Sherman (D-CA) was announced as the new Chairman of the House Financial Services Committee’s Subcommittee on Investor Protection, Entrepreneurship and Capital Markets. Representative Carolyn Maloney (D-NY) vacated the subcommittee chair position after being named Chair of the House Oversight and Reform Committee following the death of Representative Elijah Cummings (D-MD).

In a press release, Sherman stated:

It is an honor to be selected as Chairman of the House Financial Services Subcommittee on Investor Protection, Entrepreneurship, and Capital Markets. My colleagues are already giving me good ideas for hearings and legislation. I am
committed to defending investor protections, improving access to capital and maintaining the Wall Street reforms that have helped fuel our economy. As a CPA, I also look forward to looking at accounting issues.

Upcoming Hearings and Meetings

December 10

Nominations: The Senate Banking Committee will hold an executive session to vote on the nominations of Mitchell Silk, to be an Assistant Secretary of the Treasury; Brian Montgomery, to be Deputy Secretary of Housing and Urban Development; David Woll, Jr., to be an Assistant Secretary of Housing and Urban Development; John Bobbitt, to be an Assistant Secretary of Housing and Urban Development; and Peter Coniglio, to be Inspector General, Export-Import Bank.

SEC Oversight: The Senate Banking Committee will hold a hearing entitled “Oversight of the Securities and Exchange Commission.” The Committee will receive testimony from SEC Chairman Jay Clayton.

CFTC Open Meeting: The Commodity Futures Trading Commission (CFTC) will hold an open meeting to consider four items: (1) Proposed Rule: Capital Requirements for Swap Dealers and Major Swap Participants – Reopening the Comment Period and Requesting Additional Comment; (2) Proposed Rule: Amendments to the Swap Clearing Requirement Exemption for Inter-Affiliate Swaps; (3) Proposed Rule: Settlements in Administrative and Civil Proceedings; and (4) Final Rule: Amendments to Part 13 of the Commission’s Regulations (Public Rulemaking Procedures).

December 11

Small Business Capital Formation Advisory Committee: The SEC will hold a telephonic meeting of its Small Business Capital Formation Advisory Committee.

Market Risk Advisory Committee: The CFTC will hold a meeting of its Market Risk Advisory Committee (MRAC). The agenda for the meeting includes updates from subcommittees and discussion of the transition from the London Inter-bank Offered Rate (LIBOR) to alternative risk-free reference rates.

December 10-11

 Markup: The House Financial Services Committee will hold a markup of pending legislation. The agenda for the markup has not yet been announced.

December 12

FDIC Open Meeting: The FDIC will hold an open meeting to consider three items: (1) Notice of Proposed Rulemaking on Revisions to the Community Reinvestment Act Regulations; (2) Notice of Proposed Rulemaking on Unsafe and Unsound Banking Practices: Brokered Deposits Restrictions; and (3) Proposed 2020 FDIC Operating Budget.

December 18

SEC Open Meeting: The SEC will hold an open meeting to consider whether to approve the 2020 budget of the Public Company Accounting Oversight Board (PCAOB) and the related annual accounting support fee for the Board under Section 109 of the Sarbanes-Oxley Act of 2002.

For more information about financial services issues you may email Joel Oswald or Alex Barcham.
HEALTH

House to Vote on HR. 3 Next Week

Key Point:
- House Democratic Leadership announced floor consideration of the “Elijah Cummings Lower Drug Costs Now Act” (H.R. 3) the week of December 9.

On December 5, House Democratic Leadership announced the “Elijah Cummings Lower Drug Costs Now Act” (H.R. 3) will get a vote on the House floor the week of December 9. Consideration had been delayed due to the lack of guidance from the Congressional Budget Office (CBO) on the total financial impact of the proposal. Members say the CBO has not provided enough guidance to determine what improvements can be made to the Medicare program using the savings.

In a joint statement, House Speaker Nancy Pelosi (D-CA) and the bill’s sponsors said the bill will “reinvest it's savings in one of the most transformational improvements to Medicare since its creation.” They stressed “American seniors and families shouldn't have to pay more for their medicines than what Big Pharma changes in other countries for the same drugs.”

In addition to reforms to address prescription drug prices, the bill will support the expansion of Medicare benefits to include dental, vision, and hearing coverage. It also includes a reauthorization of the Health Profession Opportunity Grant Program, takes steps to address maternal mortality and morbidity, and bolsters National Institutes of Health funding for research into antimicrobial and antibiotic resistance.

Read a summary of the bill [here].

Upcoming Hearings and Meetings

December 9

Primary Care: The Bipartisan Policy Center will host an event on “Advancing Comprehensive Primary Care in Medicaid.”

December 10

Patents: The Bipartisan Policy Center will host an event on “Examining Pharmaceutical Patent Practices & Their Impact on Drug Prices.”

Supply Chain: The House Energy and Commerce Committee will hold a hearing on “Securing the U.S. Drug Supply Chain: Oversight of FDA’s Foreign Inspection Program.”

Universal Coverage: The House Energy and Commerce Committee will hold a hearing on “Proposals to Achieve Universal Health Care Coverage.”

December 11

Policy: Axios will host a discussion on “Health Care Vitals in D.C.”

Anti-kickback: The Bipartisan Policy Center will host an event on “Modernizing the Stark Law and Anti-Kickback Statute to Promote Value-Based Care.”

For more information about healthcare issues you may email or call Nicole Ruzinski Bertsch or George Olsen at 202-659-8201.
TRADE

Vote on USMCA Appears Unlikely This Year

Key Points:
- Meetings between USTR Lighthizer and Democrats continue to stall around a few challenging issues, and a vote on a deal this year appears unlikely to be happening.
- Mexican government officials were negotiating all week as well, and have resisted some inspection provisions in the USMCA.

U.S.-Mexico-Canada Agreement (USMCA) advocates in Congress are pushing for a vote on the trade deal before the end of the year, but Mexico’s chief negotiator said little real progress had been made in resolving a handful of outstanding differences with U.S. Trade Representative (USTR) Lighthizer during nearly seven hours of meetings on Wednesday. USTR Lighthizer last week presented Mexican Under Secretary for North America Jesús Seade proposed changes to the trade deal’s labor, environmental, pharmaceutical and enforcement provisions that the administration had negotiated with a group of House Democrats. Under Secretary Seade’s initial reaction to the accords reached in the U.S. was that they were acceptable, but some new issues have since surfaced.

The Mexican government and a prominent business group this week rejected the proposed deployment of U.S. inspectors to Mexican facilities suspected of labor rights violations as a USMCA enforcement mechanism. In an interview with Inside U.S. Trade last month Seade said dispute settlement panelists could perform inspections as part of their standard evidence-seeking duties. He said the inspections approach could be “replaced” by the use of “intervention” panels under USMCA’s dispute settlement system, adding that “the devil is in the details.”

Other issues reportedly in play include a ten-year floor for IP protections for biologic medications, and liability protections on content for the tech and internet industries.

USMCA proponents want Congress to take up the trade deal this year, contending that if the ratification process drags into 2020, election politics could jeopardize the USMCA’s chances of passage.

China Threatens to Retaliate in Response to U.S. Human Rights Bill, List 4B Tariffs Loom Dec. 15

Key Points:
- A U.S. Congressional bill expected to pass this week aimed at condemning human rights abuses by the Chinese government towards Uighur Muslims has upset the Chinese government.
- China has threatened to release an “entities list” which would restrict certain designated U.S. businesses from doing business in China.
- Nonetheless, China has continued discussions and reports suggest may reduce some agriculture tariff barriers.
- List 4B tariffs could go into effect on December 15 if no deal is reached.

The Chinese government might soon expedite the publication of an “unreliable entities list” that would restrict designated businesses’ ability to do business in China, according to a report from an official media source. The source called the potential move a response to a bill the U.S. House passed this week condemning human-rights violations against Uighur Muslims in the Xinjiang province (S. 178).

In May, Beijing announced it would formulate an unreliable entities list after the U.S.
Commerce Department added Huawei and other Chinese companies to its “Entity List.” The Chinese list will include “[f]oreign companies, organizations or individuals that violate market rules, break the contractual spirit, boycott or cut off supplies to Chinese companies for non-commercial reasons, and causing serious damages to the legitimate rights and interests of Chinese companies,” a government official said in June.

On Monday, Beijing issued sanctions on U.S. non-governmental organizations that have supported the Hong Kong protests to retaliate against the U.S. for legislation regarding Hong Kong. “China urges the U.S. to correct its wrongdoing and stop meddling in China’s affairs, including Hong Kong affairs,” Foreign Ministry spokeswoman Hua Chunying said at a press conference on Monday. “China will take further measures if necessary as the situation evolves to firmly safeguard stability and prosperity in Hong Kong and China's sovereignty, security and development interests.”

The U.S. and China have been working to finalize a phase-one trade deal after President Trump announced the two sides had reached an understanding in mid-October. However, President Trump on Tuesday suggested a deal might not be imminent, telling reporters on the sidelines of the NATO summit in London that he had “no deadline” for the trade negotiations. He said, “[i]n some ways I like the idea of waiting until after the election for the China deal.” The President then suggested on Thursday that talks were “moving along well,” confusing the exact status of the talks.

Finally, today China’s official news source indicated they would be reducing or exempting U.S. soybeans and pork from tariffs in an apparent olive branch to the U.S.

The U.S. is set to impose 15 percent tariffs on $160 billion worth of Chinese goods on December 15. Commerce Secretary Wilbur Ross on Monday told Fox Business News that December 15 would be a “logical” deadline for the phase-one talks. Ross also said that without a deal, President Trump will impose the tariffs.

For more information about tax issues you may email or call Christopher Hatcher at 202-659-8201. Cullen Neely contributed to this section.

This Week in Congress was written by Alex Barcham.