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CERTIFIED PUBLIC ACCOUNTANTS

Build Back Better Act: In-Progress

January 06, 2022

More tax changes that could affect you and your business are on the way. Over the last four years we have had a major overhaul of the Internal Revenue Code (IRC) in 2017, Coronavirus and all the associated aid packages and tax changes associated with them (2020-2021), and now we are looking at potentially another very large spending bill (with its own potential tax changes) currently rumbling its way through Congress.

Unlike the previous Infrastructure Investment and Jobs Act bill that passed through Congress in November, the Build Back Better Act (BBB Act) contains many proposed changes to tax law. Those changes could affect everyone from individuals filing their 1040 personal returns to billion-dollar corporations. We wanted to take a moment to highlight some of the items in consideration under the BBB Act that might affect you or your business.

First, we should talk about where the BBB Act is right now in Congress. At the end of November, the House of Representatives passed the BBB Act in whole. The BBB Act was then sent to the Senate for debate and discussion, and it remains there as of today. Individual Senate committees have released their portions of the Senate version of the Act. Those individual portions will need to be pieced together into a full Senate version which will then be sent back to the House of Representatives for Reconciliation. The House and Senate versions of the bill will have to be Reconciled to arrive at one comprehensive version of the bill that can be passed by both chambers of Congress. There remains much to be done and everything we discuss below is subject to change, amendment or removal from the final version of the BBB Act.

Let's dig into the possible changes to individual and trust tax law next.

- One of the issues that seems to be on everyone's mind is the lifting of the cap on the amount of deductible state and local taxes. Currently the House version of the bill increases the cap from $10,000 all the way up to $80,000 for married filing joint taxpayers (MFJ) but the Senate version keeps the $10,000 cap in place. This will be one of the major items in line for Reconciliation between the two versions of the Act.

- Another issue getting a lot of discussion is taxes potentially being raised on high-income taxpayers – defined in the BBB Act as individual taxpayers with taxable income above $400,000 ($500,000 for married filing joint). Taxpayers with taxable income over those amounts could be subject to two tax increases:
  - The expansion of the existing Net Investment Income Tax (NIIT). In its current form the NIIT imposes an additional 3.8% tax on passive income or income generated from activities the taxpayer or trust is not actively and continuously involved in if the taxpayer has modified adjusted gross income (MAGI) over $250,000 for married filing joint taxpayers and $13,050 for estates and trusts. The proposed expansion of the NIIT under the BBB Act would make all income from a trade or business subject to the additional 3.8% tax, not just passive income if the taxpayer's MAGI is over $500,000 for individual taxpayers filing joint returns and $13,050 for trusts and estates.

- A new surcharge tax on high-income individuals, trusts and estates. This potential additional tax on high-income taxpayers is a new 5% surcharge on income when a taxpayer's modified adjusted gross income (AGI) is over $10 million. The surcharge increases an additional 3% to top out at 8% for taxpayers with modified AGI over $25 million. Trusts and estates don't escape the new surcharge tax either and have much lower threshold amounts. If their taxable income exceeds $200,000 they become subject to the 5% surcharge tax, with the maximum 8% surcharge coming in when a trust or estate reaches taxable income of $500,000.

- These increases in taxes would help pay for the extension of the changes made to the Child Tax Credit under a previous bill. The changes that would be extended are the increased amounts of the credit per child ($3,600 per qualifying child) and the monthly advance payment option for those who qualify. Included in both the House and Senate versions is the extension of these two changes for the 2022 tax year. Under prior law the amount of Child Tax Credit per qualifying child is $2,000 and there was no monthly advance payment option. For those who qualify, the monthly advance payment option provides the ability to receive up to one-half of the total credit per child in monthly installments mailed or direct deposited in advance of filing your return. The remaining half of the credit is claimed on the taxpayer's personal return when it is filed.

The large change on the business side of things is the proposal to create a corporate minimum tax on corporations (other than S-Corporations and selected others) with more than $1 billion in average annual adjusted financial statement income over a three-year period. This would be a 15% tax on the adjusted financial statement income and is seen by some as a way to make large corporations pay more tax. One important note on this proposal is this minimum tax would be assessed on Generally Accepted Accounting Principles (GAAP) income which is what large corporations use for their financial statements. This is often different than taxable income calculated under the Internal Revenue Code (IRC), which is used to calculate tax due on the corporation's tax return. There could potentially be some very large differences between the minimum tax calculated under this proposal and tax calculated under the IRC for the corporation's tax return.

Changes continue to be made to the BBB Act and there is much left to be done to get this bill signed into law. We will keep you updated on any major changes to items we described above. If you would like to discuss any of these items and their potential impact on you and your business, please reach out to us and one of our professionals will be happy to discuss them with you.

Contact

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