US Inbound Corner | Navigating complexity

No meeting of minds on 'Build Back Better' as time for action dwindles

US inbound companies are following closely the path of the "Build Back Better" legislation in the House and the Senate. Will there be a corporate book minimum tax? What would BEAT look like under the new legislation? Will there be a global minimum tax rate? These are among the key questions US inbound companies are asking as this legislative process unfolds.

Democratic House and Senate leaders have been stymied in their efforts to pass the Build Back Better Act—the expansive tax-and-spending plan that they had hoped to move through Congress under fast-track budget reconciliation procedures—due to what may have been largely nonspecific objections from Sen. Joe Manchin. The West Virginia Democrat has recently offered a few details about what he would like to see in a modified version of the legislation; however, his priorities appear to be difficult to square with those of other Senate Democrats, and there continues to be considerable doubt about whether even a slimmed-down bill can reach President Biden's desk before Congress runs out of time in this election year.

A little talk, but no progress

As approved in the House last November, the roughly $1.75 trillion Build Back Better Act calls for significant tax increases impacting large corporations and high-income individuals to pay for lower- and middle-class tax relief and fund new spending for White House priorities such as expanded access to pre-kindergarten education, child care and elder care, affordable housing, and programs to

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mitigate climate change. (Some of the more notable revenue-raising proposals affecting inbound companies include limitations on interest deductibility under section 163(n); tighter rules governing the treatment of global intangible low-taxed income, the deduction for foreign-derived intangible income, and the determination of foreign tax credits; and changes to the base erosion and anti-abuse tax. A detailed summary of the tax provisions in the House-passed legislation is available from Deloitte Tax LLP.)

But shortly before Christmas, Manchin brought Senate action on the legislation to a halt when he announced that he would not support it in its current form and thus would not provide the crucial 50th vote needed to get it through the chamber. (The budget reconciliation rules allow the measure to clear the Senate by a simple majority rather than the three-fifths supermajority—typically, 60 votes—that is normally required to avert a filibuster. Because Democrats control only 50 seats in the Senate and are not expected to receive any Republican support for the bill, they need all of their own votes—plus the tie-breaking vote of Vice President Kamala Harris—to get it across the finish line.)

Manchin explained in his December 19 announcement that he "cannot explain the sweeping Build Back Better Act in West Virginia and . . . cannot vote to move forward on this mammoth piece of legislation." (For prior coverage, see Tax News & Views, vol. 22, no. 56, Dec. 20, 2021.)

Getting specific

Since then, Manchin has said there have not been official talks with the White House or his Democratic colleagues about alternatives, but he has made periodic (and relatively high-level) comments about what he might be open to supporting—and what he will not. In particular, he has highlighted his interest in using a portion of any revenue raised by the bill to pay down the federal deficit and has said he supports energy incentives, prescription drug reform, and a rollback of some of the tax cuts enacted in the Tax Cuts and Jobs Act of 2017 (P.L. 115-97).

Manchin recently elaborated on some of his priorities, telling reporters on April 26 that he wants to see the corporate tax rate raised to 25% and the long-term capital gains tax rate raised to 28%, with half of the resulting new revenue allocated to paying down the federal debt. He also said he wants the bill to eliminate tax "loopholes" to make "sure that everyone pays their fair share, but not gouge anyone or make it [punitive]." Manchin made his comments after emerging from a meeting with Senate Majority Leader Charles Schumer, D-N.Y., where the two discussed Manchin's concerns about inflation—now at its highest level since the early 1980s.

Manchin also seemed to effectively reject the social spending included in the House bill and in President Biden's original legislative agenda.

"We're not talking about going down that path again," he said, adding that any social spending legislation would have to be vetted through the congressional committee process under regular order—that is, outside of budget reconciliation.

"Reconciliation to me is about getting inflation under control, paying down this debt, getting a handle on what's going on," Manchin said.

Conflicting priorities

The vision Manchin is beginning to lay out is far different than that of Democrats in the progressive wing of the party, who began this Congress with far more ambitious goals for a tax-and-spending package. But even if those members were to resign themselves to accepting the significantly narrower bill Manchin envisions, such a measure likely still would face resistance from centrist Democratic Sen. Kyrsten Sinema of Arizona, given her stated opposition to increasing tax rates. (It's worth remembering that House Democratic leaders left proposals for tax rate increases on corporations, upper-income individuals, and long-term capital gains and dividends out of their Build Back Better legislation to help ensure Sinema's support for the measure once it reached the Senate.)

As those watching this process play out for nearly a year have said, finding the Venn diagram overlap of provisions that can win the support of both Manchin and Sinema is proving to be nearly impossible—and in this 50-50 Senate, that bodes poorly for success.

Limited time

The congressional calendar presents an additional hurdle for Democratic leaders and the White House. The fiscal year 2022 budget reconciliation instructions that authorized the Build Back Better legislation expire when the fiscal year ends on September 30, and the lack of progress to date on a possible compromise has fueled some pessimism that even a narrow version of the bill will make it reach the president's desk.

"There are varying levels of optimism" among Democrats about the prospects for a party-line bill, Senate Majority Whip Dick Durbin, D-Ill., recently told reporters. "I am the most skeptical."

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