

President Biden Announces \$2.3 Trillion Spending Plan and Corporate Tax Increases

President Biden announced and the White House released broad outlines of a \$2.3 trillion infrastructure spending plan dubbed the American Jobs Plan (“Biden’s Jobs Plan”) funded with corporate tax increases under a plan dubbed the Made in America Tax Plan (“Biden’s Tax Plan”). According to the White House release, Biden’s Jobs Plan aims to (a) repair highways, bridges, ports, airports and transit systems, (b) address clean water, electric grid and broadband access issues, (c) build, improve and preserve structures such as homes, commercial buildings, schools, hospital and federal buildings, (d) revitalize U.S. manufacturing and secure U.S. supply chains, and (e) create hundreds of thousands of quality jobs. The release further explains that Biden’s Jobs Plan will require goods and materials be made in America and shipped on U.S.-flag, U.S.-crewed vessels, as well as ensure that those Americans who have endured systemic discrimination and exclusion have a shot at obtaining good jobs and being part of a union. In total, Biden’s Jobs Plan will invest about \$2.3 trillion over a period of 8 years and be paid for by Biden’s Tax Plan within the next 15 years, with a reduction in deficits expected in the years after.

According to the White House release, Biden’s Tax Plan aims to fix the corporate tax code to incentivize job creation and investment in the United States, stop unfair and wasteful profit shifting to tax havens, and ensure that large corporations are paying their fair share of tax. The release refers to a Joint Committee on Taxation analysis that the Tax Cut and Jobs Act (“TCJA”) enacted under the Trump administration cut the average tax rate that corporations paid in half from 16 percent to less than 8 percent in 2018. In addition, the release claims that a number of the provision in the TCJA created new incentives to shift profits and jobs overseas. While specific details of Biden’s Tax Plan have not yet been released, the broad highlights are as follows:

Set the Corporate Tax Rate at 28%

The corporate tax rate would be increased from the current rate of 21% enacted under the TCJA to 28%.

Set the Minimum Global Intangibles Low Tax Income (“GILTI”) Rate at 21%

This would be an increase from the current rate of 10.5%. In addition, Biden’s Tax Plan would calculate the tax on a country-by-country basis so that profits in tax havens cannot be shielded with tax credits from taxes paid elsewhere, as well as eliminate the exemption for 10% return allowed on investment in foreign assets.

Deny Deduction for Earnings Stripping Payments

The Biden Tax Plan aims to curtail U.S. earnings stripping by denying a U.S. deduction to foreign corporations on payments to recipients based in a country that does not adopt a strong minimum tax. This portion of the Biden Tax Plan would be a replacement for the Base Erosion Anti-Abuse Tax (“BEAT”) enacted under the TCJA and would form part of the U.S. effort to reach agreement with the OECD efforts on establishing a minimum tax.

Prevent Inversions

The Biden Tax Plan would make it harder for U.S. corporations to redomicile and become a foreign corporation in order to avoid U.S. taxes.

Deny Deduction for Offshoring Jobs; Grant Credit for Onshoring Jobs

The Biden Tax Plan would deny deductions of expenses incurred in moving jobs offshore. Conversely, the Biden Tax Plan would provide a tax credit to support onshoring jobs.

Eliminate the Deduction for Foreign Derived Intangible Income (“FDII”)

The Biden Tax Plan would completely eliminate the FDII deduction and use all of the revenue generated by the repeal to expand other R&D incentives. The FDII deduction was enacted under the TCJA and currently results in a 13.125% tax rate on U.S. income from certain foreign sales.

Impose Minimum Tax on Book Income of Large Corporations

The Biden Tax Plan would impose a 15% tax on the book income of certain large corporations. The book income would be the income corporations use to report their profits to investors, and would serve as a backstop to other reforms.

Eliminate Certain Tax Preferences for Fossil Fuels and Restore Superfund Payments

The Biden Tax Plans would eliminate certain subsidies, credits and other preferences in the tax code that benefit the fossil fuel industry as well as require polluters to make payments into the Superfund Trust Fund.

Greater Enforcement of Tax Laws

The Biden Tax Plan would provide greater resources to the IRS to ramp up enforcement of tax laws against corporations and high-income earners.

Biden's Jobs Plan and Biden's Tax Plan are the first part of a two-part economic plan that will be negotiated with Congress in the coming months. It is anticipated that President Biden will announce in the near future a second part of the plan focused on additional objectives, such as health care and education. The next part of the plan is anticipated to be accompanied by tax increase proposals on high-income earner individuals.

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