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US corporate tax rate increase: What companies must expect in the future

9. August 2022

On 28 March 2022, the US Treasury Department issued “General Explanations of the Administration’s Fiscal Year 2023 Revenue Proposals.” This is President Biden’s second “Green Book” detailing the administration’s tax policy proposals. The most important proposal for companies is the possible increase in the corporate tax rate from 21% to 28%.

The tax provisions of the FY23 budget are intended to create a fairer domestic tax code while ensuring that corporations and high-income individuals “pay their fair share.” The budget reiterates the Biden administration’s commitment to the OECD’s Pillar Two proposal. It also requests a total of USD 14.1 billion in funding for the IRS, including investments in IRS tax enforcement, to increase tax compliance.

The increase in the corporate tax rate in the USA and the consequences for companies

The proposal suggests an increase in the corporate tax rate from 21% to 28% for taxable years beginning after 31 December 2022. This increase would have implications in the case of GILTI (Global Intangible Low Taxed Income) tax exposure. GILTI remains the primary method used by the US to subject low-taxed income of US-controlled foreign entities to immediate US tax.

The referenced foreign tax rate for US corporate shareholders to be protected from GILTI tax is 13.125% under current law. Under the proposed changes, the referenced GILTI rate would increase to approximately 20%. This rate increase would also affect the “GILTI high tax exemption.” Thus, if the foreign effective corporate income tax rate measured (on a qualified business unit basis) exceeds 90% of the US corporate rate, that business unit can be completely excluded in computing GILTI exposure.

The corporate tax rate in the USA is set to rise. You can discuss the consequences for your company with us.
Kristina Albarella, CPA, Marcum LLP*, New York, USA

The “GILTI high tax rate” would now be 25.2% instead of 18.9%, measured on a qualified business unit basis. US multinational corporations would therefore need higher effective foreign tax rates to avoid GILTI or meet the high tax exception.

These Green Book increases would increase the tax cost of engaging in taxable corporate transactions while simultaneously increasing the economic value of tax attributes that are tied to the corporate rate, such as net operating losses (NOLs) and disallowed interest carryforwards, explain the Marcum* experts.

US taxpayers should consider strategies to accelerate recognition of income and built-in gains into 2022 and defer otherwise deductible costs and expenses into 2023 or beyond.

The final bill that is passed can often look very different than the original proposal as it works its way through Congress and the relevant committees.

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