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News

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Comparison of Senate Finance Committee and Biden Administration International Tax Proposals

I. Overview

Democrats have promised a revamp of the current international tax system to ensure that large multinational corporations pay their "fair share," stop offshoring jobs, and are incentivized to invest in domestic growth. The international tax overhaul would also partially finance an infrastructure bill. The Biden administration has proposed the $2.3 trillion American Jobs Plan. House and Senate Democrats are working on their own infrastructure proposals as well. Both the Biden administration and the Democratic members of the Senate Finance Committee (SFC) have unveiled proposals for international tax reform. On April 5, SFC Chair Ron Wyden (D-OR), as well as Sens. Sherrod Brown (D-OH) and Mark Warner (D-VA), released an international tax framework (SFC Framework) as a starting point to discussions on revamping the current system put in place by the 2017 Tax Cuts and Jobs Act. The Biden administration's Treasury Department followed a couple of days later, releasing more details on the Made in America Tax Plan (MATP) on April 7, which was first mentioned as part of the American Jobs Act (AJP) on March 31. Treasury Secretary Janet Yellen subsequently released an op-ed in *The Wall Street Journal* on April 8, with more details on a global minimum tax, a key proposal in the MATP. Currently, neither the Biden administration nor the SFC has provided any legislative language, but the proposals have included a number of important details.

Below are three key takeaways from the two proposals:

1. **Same Starting Point But Different Policy Solutions.** Both the SFC Framework and the MATP seek to address the same issues. Democrats believe that the current U.S. international tax system has resulted in more incentives for companies to offshore operations, putting domestic companies at a comparative disadvantage. Both proposals note the need to balance two priorities: (1) maintaining U.S. competitiveness and (2) protecting the corporate tax base. However, the SFC Framework and MATP have major differences on how to achieve this result. On the international tax front, the SFC Framework makes changes to the existing global intangible low-taxed income (GILTI) regime, the foreign-derived intangible income (FDII) tax, and the base erosion and anti-abuse tax (BEAT). It stops short of repealing these provisions in their entirety and replacing them with a new system. Unlike the SFC Framework, with the exception of its approach to GILTI, the MATP is a complete overhaul of the current system. The MATP would repeal the FDII, replacing it with a foreign-derived innovation income system and it repeals the BEAT, replacing it with the SHIELD (Stopping Harmful Inversions and Ending Low-tax Developments) regime.

   Most multinational companies are likely to prefer the SFC Framework's approach.

2. **Are Wyden and Biden Colliding?** Major differences between the SFC Framework and MATP suggest that there is little to no coordination between the administration and the Senate's tax writing committee. This has resulted in two very different approaches to overhauling the international tax system and no details from the SFC on domestic corporate tax reform.

   However, after the release of the MATP, Wyden came out in support of the administration's global minimum tax of 21% on companies exceeding $20 billion in revenue annually. The Organization for Economic Cooperation and Development (OECD) was previously considering a 12.5% rate. For Wyden, this could ensure that U.S. corporations "pay their fair share" at home, without becoming uncompetitive globally. Additionally, a global minimum tax could eliminate the need for digital service taxes imposed by some foreign governments, targeting large American technology companies. Of course, the ability to sell this in the U.S. may depend on whether Treasury Secretary Janet Yellen can win broad international support for a global minimum tax in OECD negotiations.

   Wyden has not released a statement on other pieces of the MATP. However, international tax scholar and current Treasury Department Deputy Assistant Secretary Kimberly Clausing has an established working relationship with Wyden. Clausing was a professor of economics at Reed College in Portland, Oregon, for over 20 years and has often advised Wyden in an informal capacity in the past.

3. **Bye-Bye Bipartisanship.** While Senate Democrats might be applauding the MATP, Republicans have released critiques. In an April 8 letter to Yellen, House Ways and Means GOP members wrote, "[w]e are concerned that the OECD changes could directly reduce U.S. tax revenues and also leave the door open to other countries' continued attacks on U.S. companies and our domestic tax base." They also questioned whether other countries might enact minimum taxes at rates lower than the current GILTI effective rate, let alone the MATP's higher GILTI rate. This would place American workers and companies at a competitive disadvantage versus their foreign peers.

   If the administration and Senate Democrats continue to use international and domestic corporate tax reform to pay for infrastructure spending, reconciliation will be the only way to enact legislation, making bipartisan overtures largely symbolic.

Below is a chart comparing the SFC Framework and the MATP, as well as a deep dive and insights into both proposals.

II. Comparison Chart of SFC and Biden Administration's MATP

Provision	Senate Finance Committee Framework	Made in America Tax Plan (MATP)
GILTI	Eliminates the tax exemption for foreign earnings up to 10% of the adjusted basis of tangible depreciable assets owned abroad (i.e., qualified business asset investment or QBAI).	Same.
	Proposes a GILTI minimum tax rate that is 60%–100% of the U.S. corporate tax rate. With a 28% corporate rate, the GILTI rate would range from 16.8% to 28%.	Proposes a GILTI minimum tax rate that is 75% of the U.S. corporate tax rate. With a 28% corporate rate, the GILTI rate would be 21%.
	Shifts to a country-by-country system for applying the GILTI or only applying the GILTI to income from low-tax jurisdictions.	Shifts to a country-by-country system for applying the GILTI.

<table>
<tr><td></td><td>Incentivizes onshoring research and management jobs by treating expenses for research and management that occur in the U.S. as domestic expenses for foreign tax credit purposes.</td><td>No similar proposal.</td></tr>
<tr><td rowspan="3">FDII</td><td>Eliminates the 10% exclusion of QBAI.</td><td rowspan="3">Repeals the FDII.</td></tr>
<tr><td>Rebrands the current FDII as “foreign derived innovation income” focused on U.S. innovation to reward companies that continually invest in the economy and strengthen the workforce. To do so, FDII’s “deemed intangible income” would be replaced with a new metric—deemed innovation income.</td></tr>
<tr><td>Equalizes the GILTI and FDII rates.</td></tr>
<tr><td>BEAT</td><td>Restores the full value of tax credits that support domestic investment and opportunity.</td><td>Repeals the current BEAT and replaces it with the Stopping Harmful Inversions and Ending Low-tax Developments (SHIELD) system, which denies multinational corporations U.S. tax deductions for payments made to related parties that are subject to a low effective rate of tax. The rate at which the SHIELD system is triggered would be the 21% modified GILTI rate. Once a global minimum tax is established under a multilateral agreement, this would be the new trigger rate.</td></tr>
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III. Comparative Analysis and Takeaways on SFC Framework and MATP

1. Discourage Offshoring by Strengthening the Global Minimum Tax for U.S. Multinational Corporations. Democrats contend that the GILTI system gives corporations a huge reduction in the U.S. tax rate on foreign earnings by exempting the first 10% of returns on foreign tangible assets and taxing GILTI at half the corporate rate. This creates incentives to offshore jobs and puts domestic companies at a disadvantage compared to their multinational counterparts. To address this, Democrats propose the following solutions:

Problem: Tax exemption for foreign earnings up to 10% of the adjusted basis of tangible depreciable assets owned abroad (i.e., qualified business asset investment or QBAI) encourages foreign investment, or shutting down U.S. factories to move operations and jobs overseas.

- **Solution:**
  - SFC Framework: Repeals the exemption.
  - MATP: Repeals the exemption.
- **Brownstein Takeaway:** The MATP and the SFC Framework take the same approach to addressing what Democrats assert is a problem created by the GILTI’s 10% exemption for returns on foreign earnings. However, the OECD is pushing for an exemption, similar to what is included in the GILTI. This could lead to a potential misalignment between U.S. tax policy and global policy.

Problem: The GILTI tax rate on foreign income is at half the domestic corporate rate, creating a strong preference for overseas income.

- **Solution:**
    - SFC Framework: Shrinks the gap between the tax rate on U.S. earnings and foreign earnings to reduce incentives to shift more profit abroad and help level the playing field between multinational corporations and corporations operating primarily in the U.S.
    - MATP: Increases the GILTI minimum tax to 21% (up to three-quarters of the proposed new 28% corporate tax rate, as opposed to the current one-half ratio). In addition to these reforms to GILTI, the plan would disallow deductions for the offshoring of production and put in place strong guardrails against corporate inversions. Overall, the proposal seeks to create a stronger minimum tax regime that would substantially reduce the current tax law's preferences for foreign relative to domestic profits, creating a more level playing field between domestic and foreign activity.

- **Brownstein Takeaway:** Unlike the MATP, which specifies a new 21% GILTI minimum tax rate, the SFC Framework questions whether the tax rate on GILTI should equal the U.S. corporate tax rate, or remain at a lower proportion of the U.S. rate (e.g., 75%). Current Democratic proposals suggest a rate between 60% and 100% of the U.S. corporate tax rate, with the MATP suggesting a 75% ratio. The SFC Framework notes that the final rate will depend on decisions with regard to the U.S. corporate rate, base stripping protections and other potential incentives or disincentives. Assuming a corporate tax rate of 25% to 26%, assuming the MATP's ratio, the GILTI would be 18.75% or 19.5%, respectively. Under current law, the GILTI rate is set to increase to 16.4% after 2025.

Problem: The GILTI's global tax rate calculation, which encourages income shifting to low-tax jurisdictions. Specifically, GILTI tax liabilities are calculated on a global basis, which leads multinationals to prefer to earn income outside the United States. This allows a U.S. taxpayer to aggregate higher-tax jurisdictions with lower-tax jurisdictions. Since taxes paid in high-tax jurisdictions can generate tax credits that allow for untaxed profit shifting into tax havens, companies can blend the two streams of income and achieve a tax burden that is only about half that of domestic companies.

- **Solution:**
    - SFC Framework: Shifts to a country-by-country system for applying GILTI. It outlines two potential options:
        - expand the existing system for foreign tax credits—with the use of foreign tax credit "baskets"—essentially applying the current GILTI rules separately for each country in which a corporation operates. For example, if a corporation operates in nine countries, it would have nine GILTI "country baskets," with no aggregation among them.
        - divide global income into two groups—low-tax and high-tax. Rather than applying the foreign tax credit system to every country separately, GILTI would only be applied to income from low-tax jurisdictions. This would allow a significant amount of global income to be aggregated. Income from high-tax jurisdictions would be excluded—if a corporation paid a foreign country a tax rate that was above the GILTI rate, it would be excluded from GILTI altogether.
    - MATP: Calculates the GILTI minimum tax on a per-country basis, but does not include details on how this could be achieved.

- **Brownstein Takeaway:** The first option under the SFC Framework is similar to the MATP proposal—it would apply the GILTI on a country-by-country basis, which essentially results in income earned in low-tax jurisdictions being subject to the minimum tax. The second option eliminates high-taxed income from the GILTI calculation altogether, applying the tax only to income in low-tax jurisdictions. Under either option, U.S. multinational corporations could

face a significant increase in U.S. tax liability. When combined with the Biden's administration proposal to increase the corporate rate, many U.S. multinationals will face higher tax rates than before TCJA.

Problem: Foreign tax credit rules interact with GILTI to create disincentives for domestic investments. Under current law, certain expenses must be allocated to the GILTI, which results in an increase of FTC limitations thereby increasing the overall tax burden of U.S. companies. For example, taxes owed under GILTI could increase when a corporation expands a U.S. headquarters office.

- **Solution:**
  - SFC Framework: Treats expenses for research and management that occur in the U.S. as entirely domestic expenses, eliminating foreign tax credit penalties under GILTI and helping retain these activities in the U.S.
  - MATP: Does not address this issue.

- **Brownstein Takeaway:** Under current law, a corporation may claim a foreign tax credit for only 80% of foreign taxes paid or accrued on GILTI. The SFC Framework suggests that research expenses that actually occur in the U.S. should be treated as entirely domestic source expenses in an attempt to eliminate the limitation on foreign tax credits. However, key details on the policy have not been outlined, so it is unclear how this will impact businesses. The policy could benefit some businesses that want to move research back to the U.S., but may not be as valuable to others.

2. Deny Companies Expense Deductions for Offshoring Jobs and Credit Expenses for Onshoring. Democrats contend that GILTI and Foreign-Derived Intangible Income (FDII) are both contributing factors to moving jobs and equipment offshore, giving companies tax incentives for taking steps that hurt domestic jobs.

Problem: Under current law, FDII is equal to foreign-derived income minus 10% of Qualified Business Asset Investment (QBAI). Foreign-derived income is the corporation's U.S. income related to the export of goods or services. Companies may deduct 37.5% of their FDII against their taxable income, bringing the effective rate on FDII down to 13.125%. Democrats contend that under the current system, U.S. companies are penalized for growing their domestic footprint and are incentivized to offshore operations. The FDII allows companies to write off expenses that come from offshoring jobs that are deductible under current law.

- **Solution:**
  - SFC Framework: Eliminates the 10% exclusion of QBAI.
  - MATP: Eliminates the FDII entirely.

- **Brownstein Takeaway:** Unlike the MATP, the SFC Framework takes a more incremental approach and does not eliminate the FDII entirely. The SFC Framework also includes a proposal to create a new tax credit to incentivize research and development, though it does not include further details. This suggests that the SFC views FDII as a useful tool with which to encourage investment in the U.S. and, ultimately, onshoring business operations and jobs.

Problem: The current FDII does not sufficiently incentivize domestic research and development.

- **Solution:**
  - SFC Framework: Rebrands the current FDII as "foreign derived innovation income" focused on U.S. innovation to reward companies that continually invest in the economy and strengthen the workforce. To do so, FDII's "deemed intangible income" would be replaced with a new metric—deemed innovation income. The new "DII" would be an amount of income equal to a share of expenses for innovation-spurring activities that occur in the U.S., such as research and development and worker training. It would only apply if the expense were for U.S. activities.

- MATP: Eliminates the FDII entirely.

- **Brownstein Takeaway:** This proposal does not include details on how innovation expenses will be defined. If it is limited to R&D and worker training, it could reduce the benefit of the provision for some companies.

Problem: The current FDII allows companies that hold intellectual property in the U.S. to tax profits from sales to foreign customers at a lower rate of 13.125%. However, Democrats contend that this incentivizes corporations to move operations abroad since the GILTI rate is lower.

- **Solution:**
  - SFC Framework: Equalizes the GILTI and FDII rates. Democrats believe that as a result of both provisions, a company moving offshore increases its ability to earn tax-free income offshore and increases its FDII deduction, encouraging offshoring.
  - MATP: Eliminates the FDII entirely.

- **Brownstein Takeaway:** The FDII and GILTI were intended to work together as a "carrot" and "stick" approach to equalizing the treatment of foreign earnings. Equalizing the GILTI and FDII rates might help incentivize domestic investments, but this will largely depend on other policies enacted by the administration. For example, will a higher corporate rate or a potential book profits tax serve as a disincentive?

3. Reconfiguring the BEAT. The base erosion and anti-abuse tax (BEAT) rules were created to target base-eroding activities conducted by very large corporations. The BEAT is a minimum tax imposed on corporations that make certain deductible payments to foreign-related parties. Democrats have criticized the BEAT as failing to capture income stripped from the U.S. and now located with foreign companies, while also diminishing the value of U.S. investments in things like renewable energy, low-income housing and job creation in low-income neighborhoods as a result of how the tax liability is calculated. Democrats also believe the BEAT has encouraged a "race to the bottom" as countries try to gain a competitive edge by undercutting each other's tax systems. Both the SFC Framework and the MATP include the following proposals to address this issue.

Problem: Democrats contend that the BEAT has been largely ineffective at curtailing profit shifting by multinational corporations. The BEAT does not apply to payments for cost of goods sold (except for some inverted companies), and is not triggered unless certain related party payments exceed 3% (2% for financial groups) of the overall deductions taken by a multinational. Additionally, the calculation of BEAT also requires corporations to calculate tax liability without adding back any tax credits under Sec. 38 of the tax code. Democrats believe the BEAT should be reformed to capture more revenue from companies eroding the U.S. tax base, and use that revenue to support companies that are investing in America. Democrats recognize that addressing disincentives for domestic investment in the BEAT could result in further tax decreases for corporations, thereby resulting in a loss of revenue though the BEAT was intended to be a revenue raiser

- **Solution:**
  - SFC Framework:
    - Restores the full value of tax credits that support domestic investment and opportunity.
    - The current BEAT applies a 10% tax rate to both "regular" income and to income tied to "base erosion payments." As an alternative, it creates a bifurcated system that would apply different tax rates to "regular" income and income tied to "base erosion payments"—with regular taxable income still being subject to the 10% rate.

- MATP: Repeals and replaces the BEAT with the SHIELD (Stopping Harmful Inversions and Ending Low-tax Developments), which denies multinational corporations U.S. tax deductions for payments made to related parties that are subject to a low effective rate of tax. Under the MATP, the SHIELD trigger rate would be the 21% modified GILTI rate. Eventually, once a global minimum tax is established under a new international agreement, this would be the new trigger rate.

  The SHIELD proposal would also expand anti-inversion rules by generally treating a foreign corporation as a U.S. corporation if: (1) more than 50% of the value or vote of the foreign acquiring corporation's stock is owned by the former owners of the acquired U.S. corporation; or (2) a foreign acquiring corporation is managed and controlled in the United States.

- **Brownstein Takeaway:** The SFC Framework and the MATP take different approaches to the BEAT. The SFC Framework works within the current BEAT system, targeting it so that a higher rate applies to base erosion payments. Additionally, the SFC system restores the full value of certain credits to reduce BEAT liability, which is beneficial to corporations. However, it is unclear how this compares with other tax proposals from the administration, e.g., a minimum book profits tax. Based on how such a tax is structured, it could be at odds with the desired effects of a BEAT restructuring. The MATP completely eliminates the BEAT and replaces it with the SHIELD. A key component of the SHIELD regime is an international agreement on a global minimum tax rate. The administration may find it difficult to convince other Democrats to adopt their approach without an international agreement for a global minimum tax in place.

IV. What Elements of the Biden Tax Plan as Outlined in the American Jobs Act Were Excluded from the Senate Framework?

1. **Increasing the Corporate Tax Rate from 21% to 28%.** While the MATP proposes an increase in the corporate rate to 28%, the SFC Framework does not discuss the corporate rate. Senate Finance Committee Chair Ron Wyden (D-OR) has called for Congress to adopt a framework based on two propositions: (1) multinationals must pay their "fair share" of taxes, and (2) the tax code should reward companies that invest in the U.S. and create good-paying jobs. Despite the Tax Cuts and Jobs Act (TCJA) reducing the corporate tax rate, Democrats contend that it was not accompanied by a lasting boost in jobs or investment. Republicans counter that corporate rate increases will be borne by American workers through reduced wages and lower retirement account values. The nonpartisan Joint Committee on Taxation estimates that 25% of the corporate income tax is borne by workers.

2. **Prevent U.S. Corporations from Inverting or Claiming Tax Havens as Their Residence.** Under current law, U.S. corporations can acquire or merge with a foreign company to minimize U.S. taxes by claiming to be a foreign company, even though their places of management and operations are within the U.S. The MAPT proposes to make it harder for U.S. corporations to invert. This will backstop the other reforms that should address the incentive to do so in the first place. While numerous Democratic senators have introduced legislation in the past to limit corporate inversions, the SFC Framework did not include any provisions that would directly address this issue.

3. **Enact a Minimum Tax on Large Corporations' Book Income.** The MATP notes that in a typical year, around 200 companies report net income of $2 billion or more. Of these, a significant share pay zero or negative federal income taxes, despite reporting hundreds of billions of dollars in profits to shareholders in the aggregate. To address this, the MATP has proposed a 15% minimum tax on the income corporations use to report their profits to investors (book income). Companies would make an additional payment to the IRS for the excess of up to 15% on their book income over their regular tax liability. Companies would be given credit for taxes paid above the minimum book tax

threshold in prior years, for general business tax credits (e.g., R&D, clean energy and housing tax credits) and for foreign tax credits. The TCJA repealed the alternative minimum tax for corporations. Democrats intend to target companies that reported large net profits while paying little or no federal income tax. However, few details on the minimum book tax have been provided, and critics claim it will add unnecessary complexity to the tax code. The SFC Framework did not address this proposal.

4. **Eliminate Tax Preferences for Fossil Fuels and Make Sure Polluting Industries Pay for Environmental Cleanup.** Democrats say the current tax code includes billions of dollars in subsidies and special foreign tax credits for the fossil fuel industry. Oil and gas companies, for example, can take a tax deduction for a majority of their costs for drilling domestic wells. As part of the president's commitment to put the country on a path to net-zero emissions by 2050, the MATP eliminates all perceived special preferences. This coincides with Sen. Ron Wyden's (D-OR) proposal to replace existing provisions in order to equally incentivize all types of clean energy production. However, the SFC did not address these issues in its Framework.

5. **Ramping Up Enforcement Against Corporations.** Over the past decade, audits on large corporations have decreased, from substantially all large corporations to less than half. This administration's proposal pairs tax increases mentioned above with additional IRS funding to ensure the agency is able to increase tax audits on corporations. The SFC did not address this issue in its Framework, but additional IRS audits, depending on how they are conducted, could be consistent with the policy goal of having U.S. corporations pay their fair share in taxes.

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