VIRTUAL COFFEE TALK:
An Update on the Tax Reform Roller Coaster

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Agenda

1. Perspectives on Latest Democrats’ Proposals
2. OECD’s Global Minimum Tax and GILTI
3. Potential for Tax Extenders Package
4. Post-Mid Term Elections Agenda

How Did We Get Here?

2021

MAY 2021

MAY 28

FY 2022 Green Book – includes corporate and individual tax rate increases, international tax reforms, and more

OCT 2021

OCT 8

OECD Two-Pillar Agreement - reallocates taxing rights and imposes 15% global corporate minimum tax

NOV 2021

NOV 19

House-Passed BBBA - reforms GILTI, excludes rate increases, and includes other tax increases, SALT cap change, and more

DEC 2021

DEC 19

Manchin Stalls BBBA - forces Democrats to consider slimmed down BBBA

2022 - 23

MAR 2022

MAR 28

FY 2023 Green Book - generally assumes BBBA with added tax reform measures

JULY 2022

JULY 15

Manchin Limits Pre-August Bill – supports only lowering Rx drug prices and extending ACA subsidies

SEPT 2022

SEPT 30

Reconciliation Bill Deadline – provides potential for partisan bill with tax provisions

NOV 2022

NOV 8

Mid-Term Elections

JAN 2023

JAN 3

Congressional Session Ends

POLLING QUESTION

I believe tax increases on the wealthy and corporations will help fight inflation.

A. True
B. False

Select Proposals from the House-Passed Build Back Better Act (BBBA)

International

- GILTI effective tax rate of 15% computed on jurisdiction-by-jurisdiction basis

Corporate

- 15% corporate alternative minimum tax based on book income
- 1% excise tax on the value of certain stock redeemed

Individual

- Expansion of the 3.8% net investment income tax on high-income taxpayers
- Surcharge on modified adjusted gross income in excess of $10 million
- Permanent disallowance of excess business loss deduction (section 461(l))
- Limit on exclusion of gain on sale of qualified small business stock (section 1202)
- State and local tax deduction cap increased from $10,000 to $80,000

Other

- Continued immediate and full deduction of section 174 R&D expenditures until 2026
- Modifications, extensions, and additions for green energy credits
- Cryptocurrency transactions subject to wash sale and constructive sale rules

Non-Tax Items of Interest for the Democrats

- Abortion rights
- Gun rights
- Inflation
- January 6 Commission
- Judicial positions
- Same-sex marriage
- Ukraine/Russia
- United States Innovation and Competition Act (USICA)/ America Creating Opportunities, Pre-Eminence in Technology and Economic Strength Act (COMPETES)

POLLING QUESTION

Should the U.S. adopt Pillar 2?

A. Yes
B. No
C. I’m not sure what Pillar 2 is

OECD Pillar 1 – Reallocating Taxing Rights

General approach

- Reallocates taxing rights to market jurisdictions

Current status

OECD Pillar 2 – 15% Global Minimum Tax

General Approach

- Complex tax regime under the Global Anti-Base Erosion (GloBE) rules with a top-up tax under the income inclusion rule (IIR) or undertaxed payments rule (UTPR) if effective rates below 15%

Current Status

TCJA Cliff Effects - 12/31/21

- **Section 174 Full Expensing of R&D Expenditures**
  - TCJA changed the rules under section 174 effective for taxable years beginning after 12/31/21
  - Taxpayers may no longer immediately deduct R&D expenditures
  - Costs, including for software development, must be capitalized and amortized over 5 years (15 years for research conducted outside the U.S.)

- **Section 163(j) Computation of Interest Expense Deduction Limit**
  - Net business interest expense deductions generally limited to 30% of taxpayers' adjusted taxable income (ATI), with some relief for 2019 and 2020 due to the pandemic
  - Effective January 1, 2022, ATI calculation changes from effectively based on EBITDA to EBIT

POLLING QUESTION

What do you predict for mid-term election results?

A. Republicans regain control of the House only
B. Republicans regain control of the Senate only
C. Republicans regain control of the House and the Senate
D. Democrats retain control of both the House and the Senate

Post-Midterm Republicans' Agenda

Potential tax reform items of interest

- Corporate
- International
- Passthrough businesses
- Energy and climate-related
- Individual

Possible non-tax Items of interest

- Inflation
- USICA/COMPETES
- Immigration

Regulatory Authority State of Play

Selected taxpayer challenges – Administrative Procedure Act

- IRS notices regarding listed transactions
- Treasury final regulations – conservation easements
- Treasury temporary regulations – section 245A dividends received deduction

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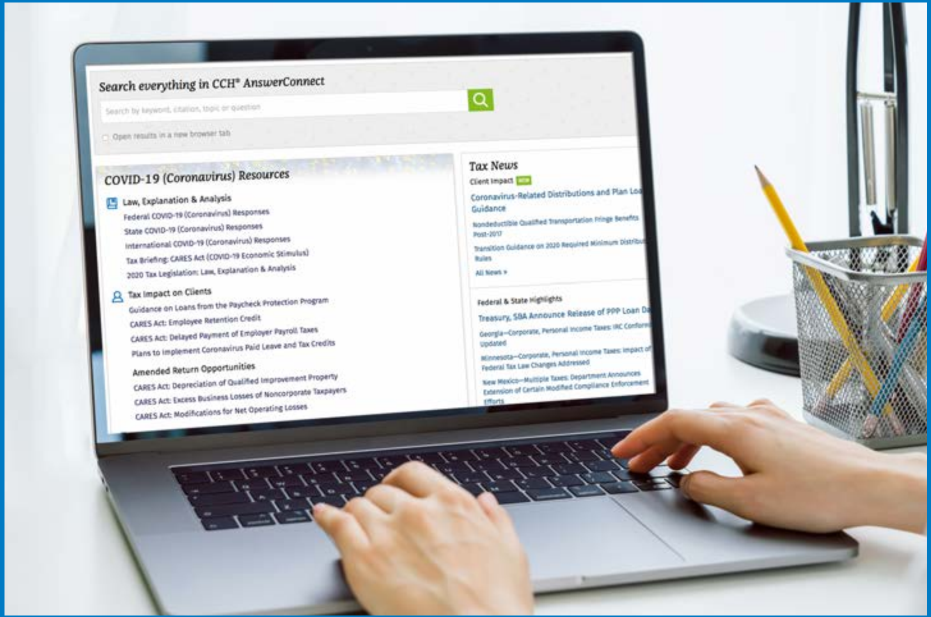

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POLLING QUESTION

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A. Yes

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Q&A

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Thank you for attending

Virtual Coffee Talk — Update on the Tax Reform Roller Coaster

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Kevin M. Jacobs

Kevin M. Jacobs is a Managing Director with Alvarez & Marsal Taxand in Washington D.C. and the National Tax Office Practice Leader. He brings more than 15 years of experience in tax matters in both the public and the private sectors.

Prior to joining A&M, Mr. Jacobs was a Senior Technician Reviewer (TCJA) with the IRS Office of Associate Chief Counsel (Corporate) for more than six years, where he advised on tax issues such as corporate re-organizations and corporation-shareholder issues, earning and profits, recovery and allocation of stock basis, liquidations, redemptions, bankruptcies, spin-offs and consolidated returns.

Mr. Jacobs was the principal Associate Chief Counsel (Corporate) attorney on several regulatory projects including the proposed section 382(h) regulations on built-in gains and losses, the global intangible low-taxed income regulations, and debt-equity regulations. He provided substantial contributions to numerous other guidance projects, such as the limitation on interest deductions regulations, and assisted in overseeing the Corporate Division's response to TCJA, including the coordination with Treasury's Offices of Tax Legislative Counsel and International Tax Counsel. Previously, Mr. Jacobs spent more than nine years at law and certified public accounting firms (Ropes & Gray LLP, Latham & Watkins LLP, Dewey Ballantine LLP and Arthur Andersen LLP).

Mr. Jacobs earned a bachelor's degree in accounting, a master's degree in accounting (with a concentration in taxation), a J.D. (magna cum laude) from the University of Florida and an LL.M. in taxation from New York University. He is admitted to practice before multiple courts, including the Supreme Court of the United States, the U.S. Tax Court and the U.S. Court of Federal Claims. He is admitted to the District of Columbia and Florida Bars and is a licensed Certified Public Accountant (CPA) in Florida and Colorado. Mr. Jacobs is a member of several organizations including the American Bar Association, the American Institute of Certified Public Accountants, the International Fiscal Association, and the New York State Bar Association. He is also a frequent speaker on numerous corporate transaction tax matters.

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