Planning for international operations

The Build Back Better Act proposes substantial changes to the existing U.S. international taxation of non-U.S. income beginning as early as 2022. These changes include, but are not limited to, the following:

- Imposing additional interest expense limitations on international financial reporting groups.
- Modifying the rules for global intangible low-taxed income (GILTI), including calculating GILTI and the corresponding foreign tax credits (FTCs) on a country-by-country basis, allowing country specific NOL carryforwards for one taxable year and reducing the QBAI reduction to 5%.
- Modifying the existing FTC rules for all remaining categories to be calculated on a country-by-country basis.
- Modifying the rules for Subpart F, foreign derived intangible income (FDII) and the base erosion anti-abuse tax (BEAT).
- Imposing new limits on the applicability of the Section 245A dividends received deduction (DRD) by removing the application of the DRD rules to non-controlled foreign corporations (CFCs).
- Modifying the rules under Section 250 to remove the taxable income limitation as well as reduce the GILTI and FDII deductions to 28.5% and 24.8%, respectively.

Businesses with international operations should gain an understanding of the impacts of these proposals on their tax profile by modeling the potential changes and considering opportunities to utilize the favorable aspects of the existing cross-border rules to mitigate the detrimental impacts, including:

- [ ] Considering mechanisms/methods to accelerate foreign source income (e.g., prepaying royalties) and associated foreign income taxes to maximize use of the existing FTC regime and increase current FDII benefits.

- [ ] Optimizing offshore repatriation and associated offshore treasury aspects while minimizing repatriation costs (e.g., previously taxed earnings and profits and basis amounts, withholding taxes, local reserve restrictions, Sections 965 and 245A, etc.).

- [ ] Accelerating dividends from non-CFC 10% owned foreign corporations to maximize use of the 100% DRD currently available.

- [ ] Utilizing asset step-up planning in low-taxed CFCs to utilize existing current year excess FTCs in the GILTI category for other CFCs in different jurisdictions.

- [ ] Considering legal entity restructuring to maximize the use of foreign taxes paid in jurisdictions with less than a 16% current tax rate to maximize the GILTI FTC profile of the company.

- [ ] If currently in NOLs, considering methods to defer income or accelerate deductions to minimize detrimental impacts of existing Section 250 deduction taxable income limitations in favor of the proposed changes that will allow a full Section 250 deduction without a taxable income limitation.

- [ ] In combination with the OECD Pillar One/Two advancements coupled with U.S. tax legislation, reviewing the transfer pricing and value chain structure of the organization to consider ways to adapt to such changes and minimize the future effective tax rate of the organization.