



## Policy Resolution Group Reconciliation & Infrastructure Update

October 15, 2021

Please find below the latest addition of the Policy Resolution Group's FY2022 Budget Reconciliation & Infrastructure Update.

Included in this newsletter are sections on:

- State of Infrastructure and Reconciliation Negotiations
- Liam Donovan's Bottom Line
- The Breakdown with Yasmin Nelson
- Energy Tax Perspectives from Timothy Urban
- Treaties, Taxes and Intrigue: What's Going on with the Global Corporate Minimum Tax? By Josh Zive
- Document Library

### **State of Infrastructure and Reconciliation Negotiations**

Negotiations over the Build Back Better reconciliation package made little public progress this week, as congressional Democrats struggle to finalize an agreement on a framework that will satisfy both wings of the party. At this point, there is still little clarity over what provisions will be included in the final reconciliation bill, with Senate moderates Joe Manchin (D-WV) and Kyrsten Sinema (D-AZ) reiterating their opposition to a top line number of \$3.5 trillion without providing further clarification on what provisions they would like to see included in a final bill. Senator Manchin's opposition to sweeping climate provisions and Senator Sinema's opposition to tax increases make it even more difficult to find a compromise bill that can be paid for without significantly adding to the deficit, the primary concern of the moderates.

Speaker Nancy Pelosi (D-CA) signaled this week that House Democrats will look to cut back the number of years funded for programs to reduce the bill's top line spending, but some social spending and climate programs will need to be eliminated entirely. However, deep cuts to or removal of these programs could jeopardize the support of the Progressive wing of the party that has repeated "no climate, no deal." While Democratic leadership hopes to reach a compromise to pass both the reconciliation package and bipartisan infrastructure framework by the end of the month, the prospects of an immediate compromise are only getting bleaker.

### Liam Donovan's Bottom Line

**Bottom Line: Triage Season.** After a week spent averting a gratuitous debt limit disaster (or at least delaying it for a few months), congressional Democrats entered the mid-October recess without a clear path forward on their agenda beyond the nominal pressure of an increasingly tenuous Halloween deadline. The most vexing—and ultimately circular—problem remains the illusory nature of the reconciliation package itself. Without agreement on a topline number, let alone key policy planks, it's impossible for Democrats to pin down exactly what can fit and how it should be structured. And without a clear sense of what will be included, efforts to message the bill to the public beyond the notional topline have largely fallen flat, despite paid advertising from outside groups and various public appearances by the President. In the meantime, those not in the proverbial room where the deal will be cut have been reduced to abstract debates over whether the bill should seek to tackle a broad suite of problems for a shorter time period, or make a select number of programs as permanent as possible.

This philosophical tension was captured by Speaker Nancy Pelosi's public statements in recent days. In a Monday "Dear Colleague" letter to the caucus, in which she cautioned of a "difficult decision" ahead, the Speaker asserted that the overwhelming guidance she was receiving from her members was to do "fewer things well," seemingly backing the position of center-left think tanks, the New Democrat Coalition, and other House moderates. On Tuesday, when asked about the letter in her weekly press conference, Pelosi made essentially the opposite case, stating that she had heard from members who "want to do everything," and suggesting that "mostly [they] would be cutting back on years." Whatever you make of that statement, Democrats probably have to do a bit of both as they seek to pare down a \$3.5 trillion plan (over \$4 trillion in its House iteration) down to roughly half that size.

And while talks continue between the administration and the key Senate holdouts in Senators Sinema and Manchin, very little of the public posturing has changed. The White House continues to float the idea of a \$1.9-2.2 trillion range, Manchin remains committed to his \$1.5 trillion number and his opposition to key climate programs (e.g. Clean Electricity Performance Program), and Sinema has thus far doubled down on her stances against tax increases and prescription drug pricing reforms that make up a huge chunk of the would-be offsets. With several notable waypoints on the horizon—the October 31 surface transportation deadline, the COP 26 UN Climate Change Conference in Glasgow, and the Virginia gubernatorial election on November 2—there is a sense of urgency in some quarters, but one that is not necessarily shared by the key players.

For its part, the White House has begun to signal impatience, knowing they need to lock down the basics of an agreement in short order if they are to break out of the current stalemate and sign a Build Back Better Act of any size by the end of the year. That remains eminently possible in the next two weeks, but it will require the President to determine what he can live with, declare victory, and sell it to the rest of the party as his agenda. As evidenced by the BIF experience, the former is the easy part; it's the vote wrangling that's tough. But as ever, the President is the only person who can adjudicate the ongoing disagreements within the party over the scope, scale, and sequence of his agenda, and unless and until he articulates what he wants, clearly and publicly, Democrats will continue to muddle along.

Follow Liam on Twitter: [@LPDonovan](https://twitter.com/LPDonovan)

### The Breakdown with Yasmin Nelson

**The Breakdown: It will (possibly?) get done.** As global tax talks speed up, U.S. conversations face a stalemate. The international community coalesced behind a ground-breaking global corporate minimum tax deal—subjecting major corporations to a 15% tax rate beginning in 2023. Over the summer, these conversations seemed to be slowing just as the infrastructure and reconciliation bills in Washington picked up. Now, with infrastructure and reconciliation talks seemingly at an impasse, global leaders are moving quickly to have more countries join the agreement. However, there's still a few more steps before a global tax deal is finalized.

Earlier this week, U.S. Secretary of the Treasury Janet Yellen said she was “confident” that the U.S. Congress would approve legislation to implement the global corporate minimum tax agreed to by 136 countries. Joining her in that chorus is Progressive Caucus Chairwoman Pramila Jayapal stating that both the reconciliation and infrastructure bills will certainly get done. This is a good signal just as folks are really starting to bet against those odds. Two key players: Senators Sinema and Manchin continue to talk with party leaders and the White House on what they can vote for and what they won't. It's clear that trust in the Democratic party has eroded as Senator Sinema demands a vote on the infrastructure bill, while many still don't know her reconciliation bill demands. This indicates that Schumer's end of October deadline on the reconciliation package in the Senate is looking more and more dubious.

Follow Yasmin on Twitter: [@YasminRNelson](https://twitter.com/YasminRNelson)

### Energy Tax Perspectives from Timothy Urban

Responding to one of the most frequently asked questions that we are getting this week here at PRG, yes, we are actually very busy lobbying on tax provisions in the FY2022 budget reconciliation package. Notwithstanding the lack of a top-line negotiated agreement between the Democratic leadership and Senators Manchin and Sinema, the congressional tax-writing committees are humming with activity as they continue to perfect their respective tax packages, respond to taxpayers' inquiries, and attempt to pre-conference the different House and Senate positions.

Some of the work is substantive, essentially lobbyists trying to parachute into the bills at the last minute with new provisions (these missions obviously face higher hurdles). But much of the ongoing continuum of meetings involves taxpayers and lobbyists collaboratively working with the members and committee staff on the granular bill drafting - polishing up definitions, proposing special rules, revising environmental standards to withstand the scrutiny of the Byrd rule challenges in the Senate, and taking second looks at tax credit coordination rules (colloquially referred to as “anti-double dip”). Other necessary projects involve providing information to the tax economists at the Congressional Joint Committee on Taxation and Treasury Office of Tax Analysis to facilitate the revenue estimates without which none of these provisions can be processed.

At some point when the bigger political decisions are made about the size of the bill, the reconciliation process will finally evolve from a methodical march into more of a sprint to the finish line. From then on, the likelihood, of mere private sector mortals getting their calls and emails to key policy makers returned in a timely fashion, and the relentless schedule of lobbying meetings, will diminish as lawmakers shift their focus to internal meetings - adjusting the legislation to secure the necessary votes. At that point we will all just have to hope that we've done a good job of educating the legislators on key issues, but until then, if you would like to weigh in, give us a call!

## **Treaties, Taxes and Intrigue: What's Going on with the Global Corporate Minimum Tax?**

**By Josh Zive**

On October 8, the Organization for Economic Development (OECD) announced that 136 of its 140 member nations, including the U.S., have agreed to set a global corporate minimum tax rate of 15%, effective in 2021. Secretary of the Treasury Janet Yellen called the agreement "a once-in-a-generation accomplishment for economic diplomacy" that will "end the race to the bottom on corporate taxation."

While coming to an agreement required no small amount of diplomacy, significant questions remain about how and if the agreement will be implemented by countries such as the U.S., and what role the reconciliation process will play with regard to the global corporate minimum tax. For example, Secretary Yellen has expressed confidence that a 15% corporate tax will be included in reconciliation legislation, allowing for it to be implemented with 51 votes in the Senate, rather than the 60+ votes required to either break a filibuster or enact a new treaty in the Senate. Senate Republicans, however, have rejected this idea and have insisted that the new corporate tax must be treated as a new international tax treaty—meaning that the new treaty will require 67 votes to pass the Senate, an exceedingly unlikely outcome. We will learn more soon, as the U.S. State Department will be providing recommendations on what process is required for the new agreement, setting the path for the types of consultations with Congress that the Biden administration will use to try to implement the new tax agreement.

Countries around the globe are watching to see if the U.S. is going to implement the minimum tax; right now it is not clear how the Biden Administration will proceed or whether Congress will be cooperative as the midterm elections grow nearer on the calendar. While the international agreement was a meaningful step, the fact is that there are many steps left to climb before the global corporate minimum tax agreement becomes law in the U.S.

### **Document Library**

#### **Background Material**

For the Congressional Research Service report on "The Senate's 'Byrd Rule'" click [HERE](#).

#### **Provisional Text**

For a preliminary budget reconciliation framework signed by Sen. Joe Manchin (D-WV) and Sen. Majority Leader Chuck Schumer (D-NY) on July 28 click [HERE](#).

For the House Committee on the Budget's full text of the Build Back Better Act click [HERE](#).

- For Part 1 of the House Committee on the Budget's report on the Build Back Better Act click [HERE](#).
- For Part 2 of the House Committee on the Budget's report on the Build Back Better Act click [HERE](#).
- For Part 3 of the House Committee on the Budget's report on the Build Back Better Act click [HERE](#).

For the summary of the Senate budget resolution click [HERE](#).

- For the text of the Senate budget resolution click [HERE](#).
- For the committee print to accompany the FY22 budget resolution click [HERE](#).

- For Senate Majority Leader Chuck Schumer’s (D-NY) dear colleague letter regarding the climate impacts of the budget resolution click [HERE](#).

For the summary of the House budget resolution click [HERE](#).

- For the text of House Resolution advancing the bipartisan infrastructure agreement, the Senate budget resolution, and H.R. 4 the John R. Lewis Voting Rights Advancement Act of 2021 click [HERE](#).

For a summary of Sen. Ron Wyden’s (D-OR) proposals for tighter tax rules on partnerships and an excise tax on stock buybacks click [HERE](#).

- For the text of Sen. Wyden’s proposals click [HERE](#).

### **Markups**

**Agriculture:** For the text of the House Agriculture Committee print containing legislative proposals click [HERE](#).

- For a summary of the proposals click [HERE](#).

**Education and Labor:** For the text of the House Committee on Education & Labor print containing legislative proposals click [HERE](#).

- For an amendment in the nature of a substitute offered by Chairman Bobby Scott (D-VA) click [HERE](#).

**Energy and Commerce:** For a fact sheet of the House Committee on Energy and Commerce markup of the Build Back Better Act click [HERE](#).

- For a memorandum on the markup click [HERE](#).
- For Subtitle A on Air Pollution click [HERE](#).
- For Subtitle B on Hazardous Materials click [HERE](#).
- For Subtitle C on Drinking Water click [HERE](#).
- For Subtitle D on Energy click [HERE](#).
- For Subtitle E on Drug Pricing click [HERE](#).
- For Subtitle F on Affordable Care Coverage click [HERE](#).
- For Subtitle G on Medicaid click [HERE](#).
- For subtitle H on CHIP click [HERE](#).
- For subtitle I on Medicare click [HERE](#).
- For subtitle J on Public Health click [HERE](#).
- For subtitle K on Next Generation 9-1-1 click [HERE](#).
- For subtitle L on Wireless Connectivity click [HERE](#).
- For subtitle M on Distance Learning click [HERE](#).
- For subtitle N on the Manufacturing Supply Chain click [HERE](#).
- For subtitle O on FTC Privacy Enforcement click [HERE](#).
- For subtitle P on the Department of Commerce Inspector General click [HERE](#).
- For a full committee action summary click [HERE](#).

**Financial Services:** For the text of the House Committee on Financial Services click [HERE](#).

- For an amendment in the nature of substitute offered by Chairwoman Maxine Waters (D-CA) click [HERE](#).
- For the committee Memorandum click [HERE](#).

- For the text of H.R. 5195, the “Native American Housing Assistance and Self-Determination Reauthorization Act of 2021” click [HERE](#).
- For the text of H.R. 5196, the “Expediting Assistance to Renters and Landlords Act of 2021” click [HERE](#).

**Homeland Security:** For the committee print of the reconciliation of the House Homeland Security Committee print containing legislative proposals click [HERE](#).

- For the amendments adopted click [HERE](#).

**Judiciary:** For the text of the House Committee on the Judiciary print containing legislative proposals click [HERE](#).

- For an amendment in the nature of a substitute offered by Chairman Jerrold Nadler (D-NY) click [HERE](#).

**Natural Resources:** For the text of the House Natural Resources Committee print containing legislative proposals click [HERE](#).

**Science, Space, and Technology:** For the committee print of the House Science, Space, and Technology Committee print containing legislative proposals click [HERE](#).

- For an amendment in the nature of a substitute offered by Chairwoman Eddie Bernice Johnson (D-TX) click [HERE](#).

**Small Business:** For the text of the House Committee on Small Business print containing legislative proposals click [HERE](#).

- For an amendment in the nature of a substitute offered by Chairwoman Nydia Velázquez (D-NY) click [HERE](#).

**Transportation and Infrastructure:** For the text of the House Transportation and Infrastructure Committee print containing legislative proposals click [HERE](#).

- For the amendment in nature of a substitute click [HERE](#).

**Ways and Means:** For a summary of the House Ways and Means Committee markup of the Build Back Better Act click [HERE](#).

- For a memorandum on the markup click [HERE](#).
- For a section-by-section summary of subtitles A-E click [HERE](#).
  - For Subtitle A on Universal Paid Family and Medical Leave click [HERE](#).
  - For Subtitle B on Retirement click [HERE](#).
  - For Subtitle C on Child Care Access and Equity click [HERE](#).
  - For Subtitle D on Trade Adjustment Assistance click [HERE](#).
  - For Subtitle E, Part 1 on Health Careers click [HERE](#). For Part 2 on Elder Justice click [HERE](#). For Part 3 on Skilled Nursing Facilities click [HERE](#). For Part 4 on Medicare Dental, Hearing, and Vision Coverage click [HERE](#).
- For a section-by-section summary of Subtitle F-J click [HERE](#).
  - For legislative recommendations relating to infrastructure financing, green energy, social safety net, and prescription drugs click [HERE](#).
  - For the estimated budgetary effects of the revenue provisions from the Joint Committee on Taxation click [HERE](#).
  - For the estimated distributional effects of the revenue provisions from the Joint Committee on Taxation click [HERE](#).

- For a description of the Chairman’s Amendment in the Nature of a Substitute from the Joint Committee on Taxation click [HERE](#).
- For a summary of Subtitle F on Infrastructure from the Joint Committee on Taxation click [HERE](#).
- For a summary of Subtitle G on Green Energy from the Joint Committee on Taxation click [HERE](#).
- For a summary of Subtitle H on the Social Safety Net from the Joint Committee on Taxation click [HERE](#).
- For a summary of Subtitle J on Drug Pricing from the Joint Committee on Taxation click [HERE](#).
- For a section-by-section summary of Subtitle I click [HERE](#).
  - For legislative recommendations relating to Funding Our Priorities click [HERE](#).
- For the Joint Committee on Taxation’s estimated budgetary effects of legislative recommendations relating to infrastructure financing and community development, green energy, social safety net, responsibly funding our priorities, and drug pricing click [HERE](#).
- For the final vote results click [HERE](#).

### **Letters**

For a letter for Senate Majority Leader Chuck Schumer on the environmental benefits of the infrastructure bill and reconciliation bill see [HERE](#).

For Senator Joe Manchin’s Opinion piece calling for a strategic pause on spending click [HERE](#).

For a letter from Rep. Stephanie Murphy (D-FL) and Rep. Henry Cuellar (D-TX) rejecting deficit spending except on climate policy click [HERE](#).

For a letter from Democrats calling for increased support for biofuels click [HERE](#).

For a letter from House Democrats supporting the Polluter Pays Climate Fund Act click [HERE](#).

For a letter from House Democrats supporting an array of international tax provisions see [HERE](#).

For a letter from Democratic governors supporting the budget reconciliation bill click [HERE](#).

For an endorsement of the environmental provisions from a coalition of environmental groups see [HERE](#).

For a letter from the United Mine Workers of America opposing the initial proposal for a Clean Electricity Standard click [HERE](#).

For a letter from America’s Power opposing the Clean Electricity Performance Program click [HERE](#).

For a letter from the National Rural Electric Cooperative Association opposing the Clean Electricity Performance Program click [HERE](#).

For a letter from the American Public Power Association opposing the Clean Electricity Performance Program click [HERE](#).

For a letter from America Electric Power opposing the Clean Electricity Performance Program click [HERE](#).

---

[bracewell.com](http://bracewell.com)

[policyresolutiongroup.com](http://policyresolutiongroup.com)



*Bracewell LLP makes this information available for educational purposes. This information does not offer specific legal advice or create an attorney-client relationship with the firm. Do not use this information as a substitute for specific legal advice. Attorney advertising.*

*Bracewell is a leading law and government relations firm primarily serving the energy, infrastructure, finance and technology sectors throughout the world.*

*Our industry focus results in comprehensive state-of-the-art knowledge of the commercial, legal and governmental challenges faced by our clients and enables us to provide innovative solutions to facilitate transactions and resolve disputes.*

*If you are an EU citizen and would like to be forgotten, please click [here](#).*

Texas

New York

Washington, DC

Connecticut

Seattle

Dubai

London