

# What to expect in Washington

Washington Council Ernst & Young

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37<sup>th</sup> Annual TEI-SJSU High Tech Tax Institute

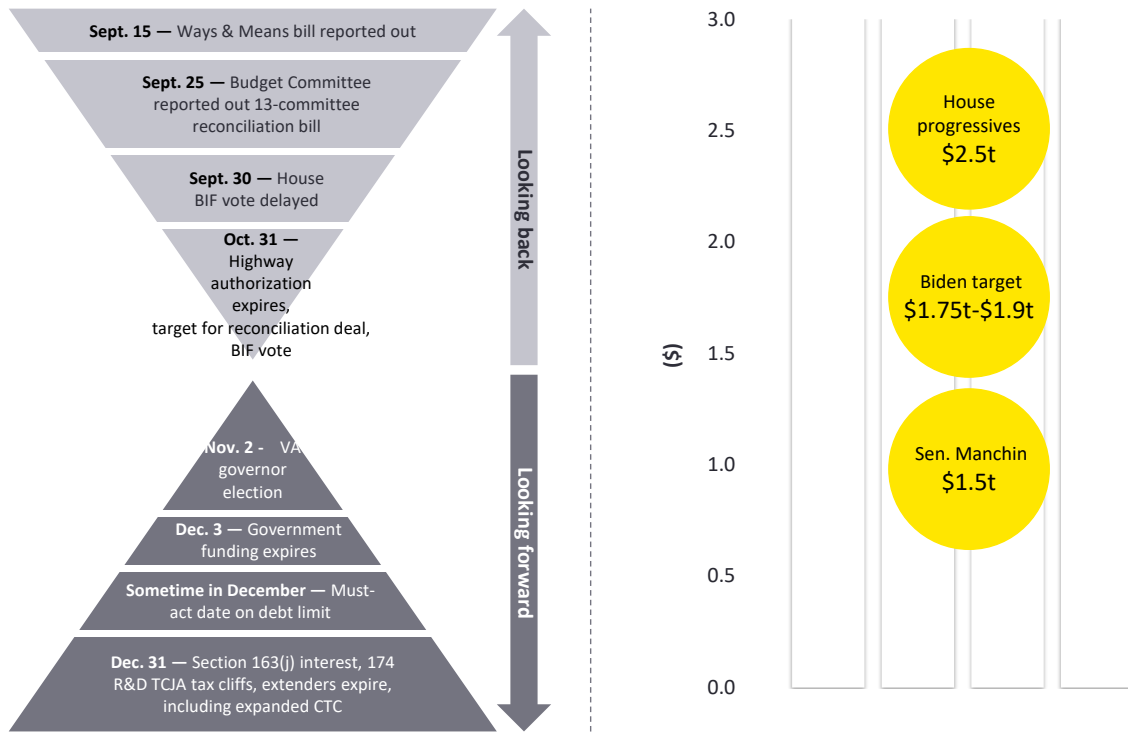


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# Timeline and reconciliation bill cost



BIF = bipartisan infrastructure, CTC = child tax credit



# Infrastructure Investment and Jobs Act (H.R. 3684)

Investment	Funding
 <ul style="list-style-type: none"> <li>Roads and bridges</li> <li>Ports</li> <li>Rail</li> <li>Transit</li> <li>Airports</li> <li>Safety</li> </ul>	 <ul style="list-style-type: none"> <li>Cryptocurrency reporting</li> <li>Pension smoothing</li> </ul>
 <ul style="list-style-type: none"> <li>Power</li> <li>Water</li> <li>Broadband</li> </ul>	 <ul style="list-style-type: none"> <li>Unspent COVID-19 funds</li> </ul>
 <ul style="list-style-type: none"> <li>EVs, electric buses</li> <li>Climate resilience: flood and wildfire mitigation, drought and coastal resiliency, ecosystem restoration, heat stress, and weatherization</li> </ul>	 <ul style="list-style-type: none"> <li>Delay Medicare rebate rule</li> <li>Extend sequester</li> </ul>
	 <ul style="list-style-type: none"> <li>Customs user fees</li> <li>Government-sponsored enterprise (GSE) fees</li> <li>Spectrum auction</li> <li>Strategic petroleum</li> <li>Superfund</li> <li>Dynamic scoring</li> </ul>

Source: Senate Democrats' summary, "Bipartisan Infrastructure Investment and Jobs Act Summary: A Road to Stronger Economic Growth"



# Perspectives on reconciliation spending

	Senate Progressives	Senate Moderates	House Progressives	House Moderates
Sequencing	House shouldn't pass infrastructure bill without reconciliation	Sens. Sinema, Warner: enact infrastructure bill ASAP	No infrastructure bill without reconciliation deal	Enact infrastructure bill ASAP, don't wait on reconciliation
Energy	Want strong climate provisions	Sen. Manchin: cut clean electricity program, methane fee	Want strong climate provisions	More open to CEPP, energy proposals than Senate moderates
Drug pricing	Sen. Sanders: Medicare Rx pricing negotiation a must-have	Sens. Sinema, Menendez have concerns over drug pricing plan	Want robust Medicare Rx pricing negotiation	Some House moderates have concerns over drug pricing plan
Health	Sen. Sanders: Medicare expansion to dental, hearing, vision a must	Manchin concerned over Medicare expansion	Want Medicare expansion to dental, hearing, vision	More focused on Medicaid expansion, permanent ACA subsidies
Low-income credits	Want programs available across broad income range	Sen. Manchin: CTC must have work req. & ~\$60k income cap	Urged rejection of "complicated methods of means testing"	Some reject means testing: don't want constituents left out

## What will be cut in a reconciliation bill smaller than \$3.5t? select provisions under House bill

Two approaches possible: narrowing scope of bill or reducing cost of provisions by limiting duration	
<b>Social safety net \$835b</b> <ul style="list-style-type: none"> <li>\$556b — extend expanded CTC</li> <li>\$135b — extend EITC</li> <li>\$98.4b — extend child/dependent care credit</li> </ul>	<b>Education \$645b</b> <ul style="list-style-type: none"> <li>\$450b — universal pre-K, lower cost of child care</li> <li>\$113b — free community college, increased Pell Grants</li> <li>\$82b — public school infrastructure</li> </ul>
<b>Health \$763b</b> <ul style="list-style-type: none"> <li>\$300b - Medicare coverage for dental, vision, and hearing</li> <li>\$323b - Medicaid expansion</li> <li>\$210b - ACA subsidy expansion</li> <li>\$34b - Reinsurance programs</li> </ul>	<b>Caregiving \$225b</b> <ul style="list-style-type: none"> <li>\$190b — home-based services for seniors and disabled</li> <li>\$35.5b — caregiver, child care worker credits</li> </ul>
<b>Energy \$505b</b> <ul style="list-style-type: none"> <li>\$235b — green energy tax incentives</li> <li>\$150b — Clean Electricity Performance Program</li> <li>\$120b — non-tax clean energy investment</li> <li>\$25.6b — nat. resources protections</li> </ul>	<b>Infrastructure \$131b</b> <ul style="list-style-type: none"> <li>\$42b — bond provisions</li> <li>\$26.5b — rehabilitation tax credit</li> <li>\$2.3b — NMTC made permanent</li> <li>\$60b — infrastructure spending</li> </ul>
<b>Paid leave \$225b+</b> <ul style="list-style-type: none"> <li>\$225b-\$500b — 12 weeks paid leave</li> </ul>	<b>Agriculture \$100b</b> <ul style="list-style-type: none"> <li>\$40b — forestry</li> <li>\$25.75b — research, job-promoting investments</li> <li>\$35b — prevent child hunger</li> </ul>
<b>Housing — \$370b</b> <ul style="list-style-type: none"> <li>\$90b — rental assistance</li> <li>\$80b — public housing</li> <li>\$80b — housing supply investments</li> <li>\$10b — first-time homebuyer assistance</li> <li>\$47b — tax-related housing assistance</li> </ul>	<b>Retirement \$47b</b> <ul style="list-style-type: none"> <li>\$23b — saver's credit</li> <li>\$22.7b — auto-enrollment</li> <li>\$1b — small business startup plans</li> </ul>
	<b>SALT cap relief?</b> <ul style="list-style-type: none"> <li>? — previous two-year repeal proposal cost \$185b</li> </ul>

EITC = earned income tax credit, ACA = Affordable Care Act, SALT = state and local tax

# Select revenue provisions under House bill

3 buckets of tax increases: corporate/international, high-income individuals, retirement			
<b>Corporate rate</b> \$540b	<ul style="list-style-type: none"> <li>\$540b - Increase in corporate tax rate to 26.5%</li> </ul>	<b>International</b> \$335b	<ul style="list-style-type: none"> <li>\$275b – Outbound, including             <ul style="list-style-type: none"> <li>GILTI: 16.5625% after 2021, country-by-country basis, 5% QBAI (except for US possessions)</li> <li>FDII at 20.7% after 2021</li> </ul> </li> <li>\$25b – BEAT</li> <li>\$35b – Limitations on deduction for interest expense</li> </ul>
<b>High-income individual tax</b> \$1t	<ul style="list-style-type: none"> <li>\$170.5b – Increase the top rate on the individual income tax to 39.6%</li> <li>\$123.4b – Increase the top tax rate on long-term capital gains and dividends to 25% (effective 9/14/21)</li> <li>\$252b – Net investment income tax (NIIT) expanded to business income of high income individuals (\$500,000 joint)</li> <li>\$127b – 3% surcharge on those with modified AGI over \$5 million</li> <li>\$78b – 199A deduction for any taxable year may not exceed \$500,000 (joint return)</li> <li>\$167b – Limitation on excess business losses made permanent</li> <li>\$62b – Estate tax: TCJA-doubled exemption expires after 2021 not after 2025, grantor trust provision</li> <li>\$14b – 5-year holding period for carried interest</li> <li>\$36b – Expand wash sale and constructive sales rules</li> </ul>	<b>Retirement, exec. Comp.</b> \$21b	<ul style="list-style-type: none"> <li>\$1.7b – Mega-IRA: Prohibit new contributions to a Roth or traditional IRA if total value of individual’s IRA &amp; def. contribution accounts exceed \$10m</li> <li>\$1.8b – RMDs: New minimum distribution requirements on those whose retirement accounts exceed \$10m and income exceeds \$400,000</li> <li>\$17b – 162(m): Accelerate American Rescue Plan Act expansion to cover CEO, CFO and next eight highest paid employees to after 2021 rather than after 2026</li> </ul>
		<b>Other business &amp; misc. tax</b> \$131b	
		<b>Medicare drug negotiation</b> \$617b	

Estimates from JCT JCX-42-21

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## Biden, Senate Finance, Ways & Means tax proposals

### Corporate, international tax

	Biden budget	Sen. Wyden proposals, including international bill	House Ways & Means Committee bill
Corp. rate	28%	Unspecified	26.5% (taxable income in excess of \$5m)
GILTI rate	21%	Unspecified	16.5625%
GILTI calculation	Country by country (CbC)	CbC, dividing global income into low-tax and high-tax, GILTI only on low-tax income	CbC (e.g., net CFC tested income, QBAI); applies to other FTC baskets
GILTI QBAI	QBAI eliminated	QBAI eliminated	5% (except for US possessions)
GILTI FTC haircut	Unspecified	Unspecified	Reduced to 5%
FDII	FDII deduction eliminated	“Deemed intangible income” = “domestic innovation income” for R&D and training Equalize FDII, GILTI rates	20.7% rate; deduction-eligible income (DEI) would exclude income that would be foreign personal holding company income if earned by a CFC
BEAT	SHIELD: if no minimum tax in a jurisdiction, deny multinational corporations (MNCs) deductions for related-party payments subject to low effective tax rate (ETR) per multilateral agreement (until consensus, GILTI rate)	<ul style="list-style-type: none"> <li>Domestic business credits under section 38 full value</li> <li>Second rate bracket for “base erosion income” added to taxable income to determine modified taxable income</li> <li>Still “considering the best way to incorporate” SHIELD</li> </ul>	<ul style="list-style-type: none"> <li>Tax credits would be taken into account when determining the base erosion minimum tax</li> <li>Rate: 12.5% after 2023, 15% after 2025</li> <li>Incorporates SHIELD’s focus on low-taxed payments (i.e., exception for ETR that equals or exceeds the applicable BEAT rate)</li> <li>Expands base erosion payments to take into account certain payments with respect to inventory</li> <li>No 3% base erosion percentage threshold after 2023</li> </ul>
Interest	Limit interest deductibility for domestic corporations part of an international financial reporting (IFR) group to allocable share of overall interest expense — foreign-parented multinationals	No proposal	Limit interest deductibility for domestic corporations that are part of an international financial reporting group to allocable share of overall interest expense — would apply to any domestic corporation that is part of an IFR group, not only foreign-parented multinationals
Buybacks	No proposal	2% excise tax on stock buybacks	No proposal

SHIELD = Stopping Harmful Inversions and Ending Low-Tax Developments

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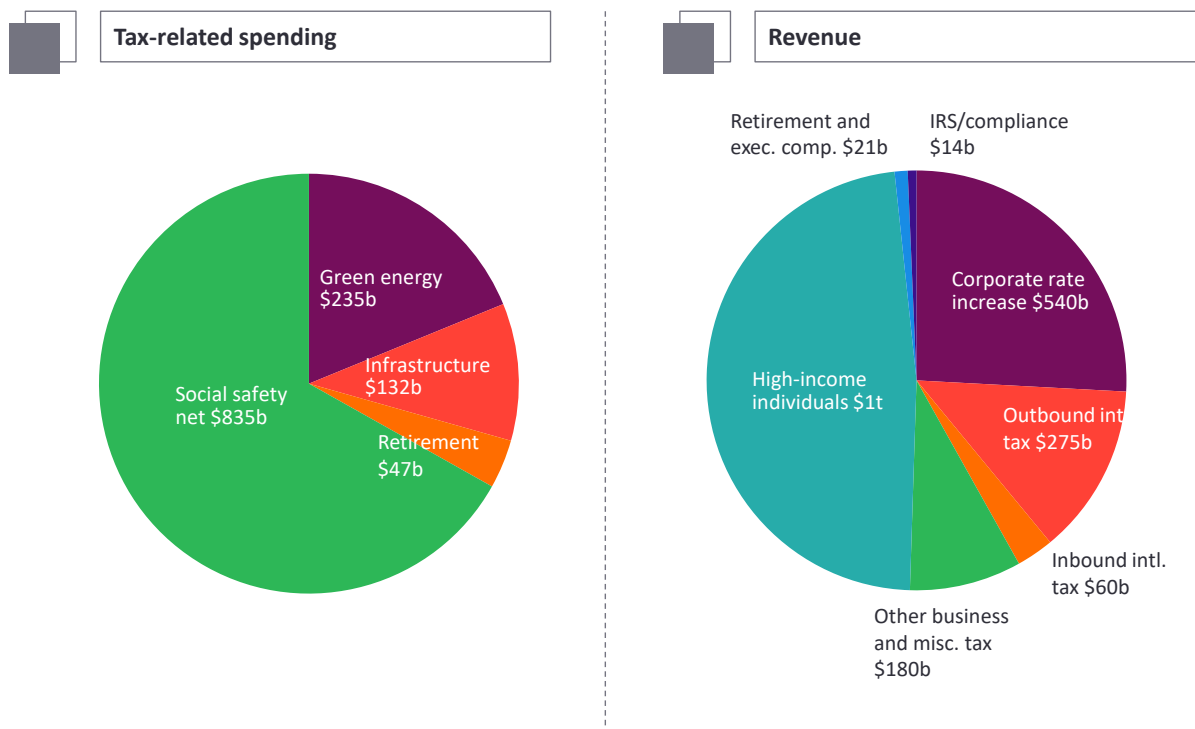


# Biden, Senate Finance, Ways & Means tax proposals

## Individual

	Biden budget	Sen. Wyden proposals, including international bill	House Ways & Means committee bill
Top individual rate	39.6%	Unspecified	39.6%
High-tax surcharge	No proposal	No proposal	3% on those with modified AGI over \$5 million
Capital gains	Ordinary income taxation for those with AGI >\$1m	Taxed at same rates as wage income, mark-to-market annual tax	Top rate of 25%
199A	No proposal	Phased out between \$400,000-\$500,000 of income	Maximum allowable deduction \$500,000 (joint), \$400,000 for an individual
Carried interest	Taxed as ordinary income	End re-characterization as investment income and deferral of tax payments	TCA three-year holding period extended to five years for taxpayers with AGI of \$400,000 or more
Derivatives	No proposal	Require investors to annually pay tax on gains or deduct losses	No proposal
Stepped-up basis	Asset valued at death but, for family business, tax not due until sale	No proposal	No proposal
Partnerships	No proposal	Package of partnership tax reforms aimed at complexity and low IRS audit rates. These include requiring basis adjustments of partnership property for disparities between the partnership's basis in its property and the partners' basis	No proposal

## Rough breakdown of Ways & Means committee tax-related spending, \$2.1t in tax increases



Source: Joint Committee on Taxation JCX-42-21



# Non-tax rate revenue sources under discussion

## Billionaires' tax

- ▶ Not yet released but an offshoot of Finance Chairman Wyden's mark-to-market proposal, which he has been working on for years
- ▶ Expected to require those with \$1b in assets or \$100m in income for 3 consecutive years to assess value of tradable assets — cash, stocks, bonds, etc. — and value when purchased, and pay one-time tax; then, annual tax on the increased value of assets
- ▶ **Revenue:** unclear, but Speaker Pelosi anticipates \$200b-\$250b over 10 years

## Corporate minimum tax

- ▶ 15% minimum tax based on book income proposed in Biden FY2022 budget but not included in Ways & Means Committee bill
- ▶ **Revenue:** \$148b over 10 years

## Stock buybacks

- ▶ Wyden and Senator Brown-sponsored Stock Buyback Accountability Act (S. 2758) for 2% excise tax on amounts spent by publicly-traded companies to buy back stock
- ▶ **Revenue:** unclear, but Senator Brown's office estimates \$100b/10 years

## Expansion of Net Investment Income Tax (NIIT)

- ▶ Under Ways & Means bill, 3.8% NIIT expanded to cover net investment income derived in the ordinary course of a trade or business for taxpayers with greater than \$400,000 in taxable income; similar proposal under Biden budget
- ▶ WH Press Secretary Psaki said October 22 there is renewed attention on the proposal to close "a loophole that allows some taxpayers, like hedge fund managers, to escape a Medicare tax imposed ... on all high income."
- ▶ **Revenue:** \$252b/10 years in Ways & Means bill, \$237b under Biden FY2022 budget

## Tax gap

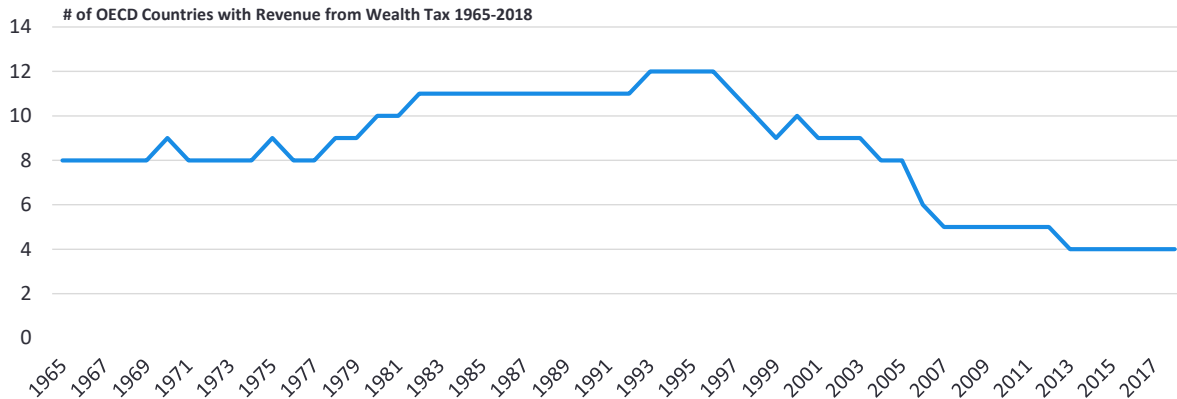
- ▶ Reporting of gross inflows and outflows from accounts with more than \$10,000 in annual deposits or withdrawals; modified from Biden budget, not in WMs bill
- ▶ **Revenue:** \$200b-\$250b over 10 years



## Wealth tax

Spain - .2%-2.5%  
 Norway - .7% municipality, 1.5% national  
 Belgium - .15% on average value of securities holdings  
 Switzerland - varies

OECD #s leave out 2 countries:  
 Italy - applies on assets and property held abroad by Italians  
 Netherlands - applies on wealth as part of income tax



1965: Switzerland, Denmark, Germany, Norway, Sweden, Finland, Netherlands, Austria had wealth taxes

Iceland has intermittently imposed a wealth tax

1978: +Spain  
 1982: + France  
 1993: + Italy

1990s: Austria, Denmark, Germany ended wealth tax  
 2000s: Finland, Luxembourg, Sweden ended wealth tax  
 2010s: France ended wealth tax

Sources: OECD, EY, Tax Foundation

# Select energy tax credit extensions under Ways & Means Build Back Better Act (BBBA)

Provision	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033
45(d) electricity from renewable resources production tax credit (PTC)		Plus, increased credit for facilities that meet domestic requirements										80%	60%
48 energy investment tax credit (ITC)				Newly eligible: energy storage, dynamic glass, etc.								80%	60%
New 48D credit for transmission property		Increased if prevailing wage, apprenticeship requirements met											
New 48E zero emissions facility credit													
45Q carbon oxide sequestration credit													
New 45W zero-emission nuclear power production credit													
Excise tax credits: biodiesel, agri-biodiesel, alternative fuels and mixtures													
New sustainable aviation fuel credit													
New 45X clean hydrogen production tax credit													
25C nonbusiness energy property credit													
25D residential energy-efficient property												26%	22%
45L energy-efficient new-home credit													
Alternative fuel refueling property credit													
48(c) advanced energy property credit													

In effect under current law
  Proposed under BBBA
  Not in effect

## Other highlights under Ways & Means BBBA energy, infrastructure titles

### Refundable EV credit

- \$7,500 for vehicles placed into service before January 1, 2027
- Labor:** increased by \$4,500 if final assembly is at a US facility that operates under a union-negotiated collective bargaining agreement
- Domestic content:** \$500 more if utilizing no less than 50% domestic content in component parts and battery cells made in US
- No credit for retail price over:**
  - Sedans: \$55k
  - Vans: \$64k
  - SUVs: \$69k
  - Pickup trucks: \$74k
- Income:** phased out by \$200 for each \$1,000 of modified AGI over \$800,000 (married filing jointly)
- Credit limited to 50% purchase price
- Only applies to US-made vehicles beginning in 2027

### Credit for used EVs

\$1,250, with additional incentives for battery capacity, capped at the lesser of \$2,500 credit or 30% of the sale price

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### 2-, 3-wheeled EV credit

10% credit, not to exceed \$2,500

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### Electric bicycles credit

15% refundable credit if placed in service before January 1, 2032

### Build America Bond-type bonds

New issuers of infrastructure bonds would receive a tax credit equal to an applicable percentage of the interest: 2022 through 2024 = 35%, 2025 = 32%, 2026 = 30%, 2027 and thereafter = 28%

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### Commercial EV credit

30% of the cost, 2022-2031

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### Personal casualty losses

Repeals the temporary TCJA limitation on casualty loss deduction

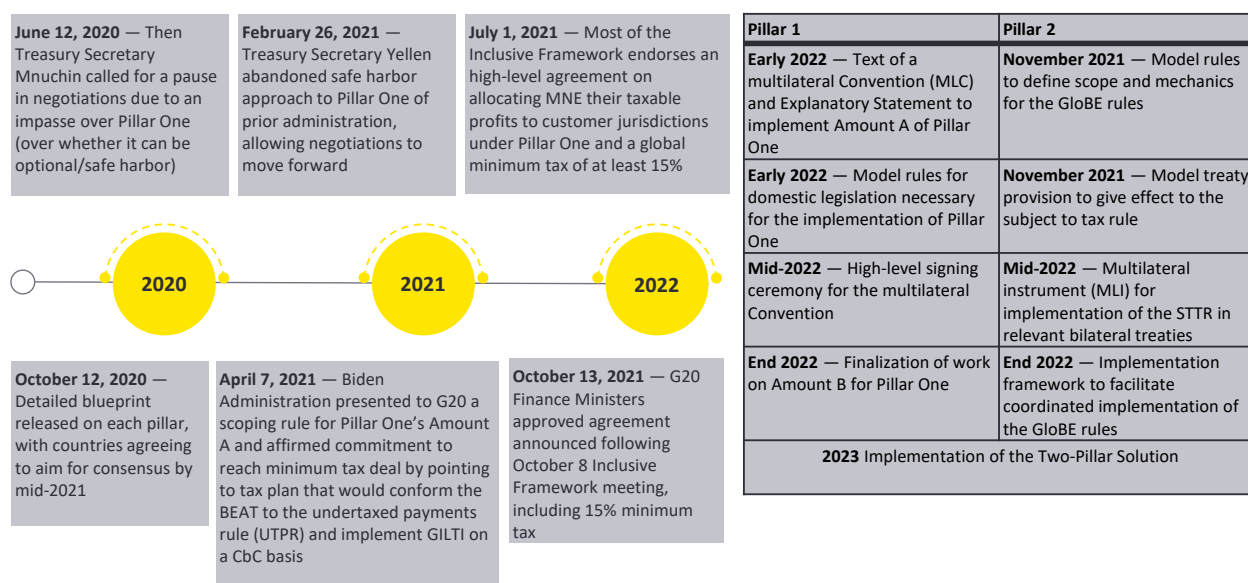
# Expiration/change dates of various tax provisions

Provision	2020	2021	2022	2023	2024	2025	2026	2027
Five-year NOL carryback, no 80% NOL limitation								
Employee Retention Tax Credit								
Interest deduction based on EBITDA	50%	30% →	EBIT thereafter					
R&D expensing			Five-year amortization starting in 2022					
> dozen tax extenders								
100% expensing				Phased down in 20% increments thereafter				
GILTI deduction at 50%							37.5% thereafter	
FDII deduction at 37.5%							21.875% thereafter	
BEAT rate: 10%/11% for banks/dealers							12.5%/13.5% thereafter	
TCJA individual rate cuts, other provisions								
20% pass-through deduction								
Tax extenders including CFC look-through rule, Work Opportunity Tax Credit (WOTC)								
Expansion of the scope of IRC Section 162(m) deduction limits								
TCJA disallowance of excess business loss disallowance							ARPA extra year	

■ In effect    ■ Not in effect

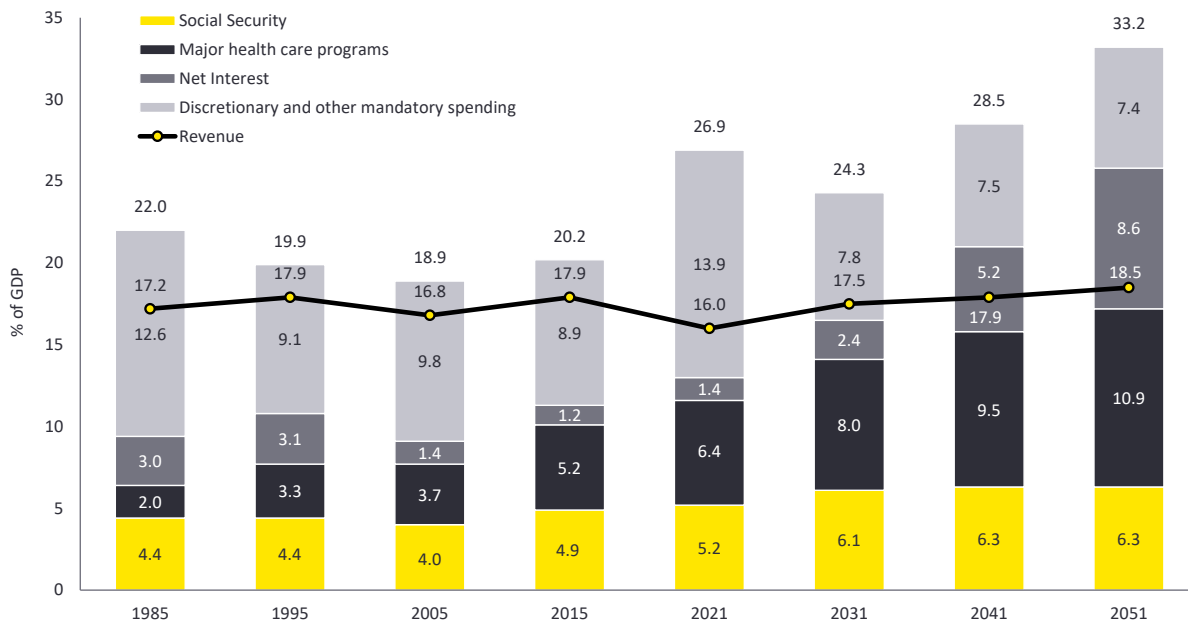


## BEPS 2.0 timeline





# Federal spending compared to revenue level, extended baseline (current law)



Note: Excludes COVID-19 relief enacted in March 2021.

Sources: Congressional Budget Office (CBO) Historical Budget Data, February 2021; CBO, The 2020 Long-Term Budget Outlook, March 2021; CBO, An Update to the Budget Outlook: 2021 to 2031, July 2021.



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