Client Update
06/08/2021

Biden Administration's Individual and Business Tax Proposals

On May 28, 2021, the U.S. Department of Treasury released the "General Explanations of the Administration's Fiscal Year 2022 Revenue Proposals," also known as the "Green Book." The Green Book provides additional details regarding the Biden Administration's tax proposals.

Here, we look at the proposals most relevant to our clients. First, we discuss the tax proposals in the American Families Plan, which primarily focuses on individual tax reform. Then, we discuss the tax proposals in the American Jobs Plan, which mainly focuses on corporate and business tax reform.

American Families Plan:

- Increase the top ordinary income tax rate from 37% to 39.6%. This top marginal tax rate would apply to taxable income over $509,300 for married individuals filing a joint return and $452,700 for unmarried individuals. The proposal would be effective for taxable years beginning after December 31, 2021.
- Tax the capital gains and qualified dividends for taxpayers with income over $1 million at the ordinary income tax rates, with 39.6% generally being the highest. Most capital gains and qualified dividends are currently taxed at graduated rates under the individual income tax, with 20% generally being the highest rate.
- Subject the flow-through income of S corporation shareholders who materially participate in the trade or business to self-employment taxes to the extent this income exceeds certain thresholds (generally $400,000). This effectively eliminates a key tax advantage currently used by many S corporation shareholders.
- Treat gifts and bequests of property as income tax realization events for gains above $1 million per person. Here, the donor or deceased owner of an appreciated asset would realize a capital gain at the time of the transfer. The proposal would be effective for gains on property transferred by gift and on property owned at death by decedents dying after December 31, 2021, and on certain property owned by trusts, partnerships, and other non-corporate entities on January 1, 2022.
- Limit gain deferral on like-kind exchanges of real property above $500,000. The proposal would allow the deferral of gain on real property up to an aggregate amount of $500,000 for each taxpayer each year for real property exchanges that are like kind. Any gains from like-kind exchanges above $500,000 during a taxable year would be recognized by the taxpayer in the year the taxpayer transfers the real property subject to the exchange.
- Make permanent the limitation on deductibility by non-corporate taxpayers of non-passive business losses above $524,000 for married individuals filing jointly and $262,000 for all other taxpayers. Taxpayers would not be able to deduct an excess business loss from taxable income, and these losses get carried forward to subsequent taxable years as net operating losses.
- Income and gains received from carried interest would now be taxed as ordinary income.
- Apply the 3.8% Medicare to all income and earnings over $400,000.

American Jobs Plan:

- Increase the corporate income tax rate from 21% to 28%. This proposal would be effective beginning after December 31, 2021. If your taxable years begin after January 1, 2021, and before

January 1, 2022, the tax rate would be equal to 21%, plus 7% times the portion of such tax year that occurs in 2022.

- Impose a new 15% minimum tax on worldwide book income for corporations with income in excess of $2 billion, effective after December 31, 2021.
- Raise the effective rate on global intangible low-taxed income (GILTI) from 10.5% to 21% by reducing the GILTI deduction to 25%. The GILTI would be applied on a jurisdiction-by-jurisdiction basis.
- Repeal the Base Erosion and Anti-Abuse Tax (BEAT), replacing it with a new regime, named "Stopping Harmful Inversions and Ending Low-Tax Developments" (SHIELD), disallowing deductions to domestic corporations or branches by reference to low-taxed income of entities that are members of the same financial reporting group.
- Strengthen the existing anti-inversion rules by reducing from 80% to 50% the continuing ownership threshold above which a non-U.S. acquiring corporation is treated as a U.S. corporation.
- Create a new general business tax credit equal to 10% of the eligible expenses paid or incurred in connection with on-shoring a U.S. trade or business. Disallow deductions for expenses paid or incurred in connection with offshoring a U.S. trade or business. These are meant to provide tax incentives for locating jobs and business activities in the U.S. and remove tax deductions for shipping jobs overseas.
- Repeal several oil, coal, and gas related tax preferences.
- Include multiple tax credits related to renewable energy and incentivize investment in energy-efficient building improvements.
- Economic and community development incentives such as the low-income housing tax credit, the creation of a new neighborhood homes investment tax credit, and making the new markets tax credit permanent.

See: May 2021 Green Book

Contact Us

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