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Tax provisions of President Biden's proposed fiscal year 2022 budget

The Treasury Department has recently released its explanations of the tax proposals (known as the “Green Book”), as part of President Biden’s proposed budget for the upcoming fiscal year.
As discussed in prior emails, President Biden has proposed extensive changes to the taxation of capital gains and the treatment of property that is gifted or is transferred at death, including taxing capital gains at ordinary income rates and treating the receipt of assets because of death as a realization event. Additional details of his proposals are below.

<u>Capital gains</u>
According to the Green Book, “long-term capital gains and qualified dividends of taxpayers with adjusted gross income of more than $1 million would be taxed at ordinary income tax rates, with 37% generally being the highest rate (40.8% including the net investment income tax), but only to the extent that the taxpayer's income exceeds $1 million ($500,000 for married filing separately), indexed for inflation after 2022."

This proposal would be effective for gains required to be recognized after "the date of announcement" (which is assumed to be late April when President Biden first discussed his proposals). Although retroactive changes in the law have previously occurred, they are unusual so it is unclear whether this change, if enacted, would be retroactive.

<u>Estate and gift</u>
In addition to the current estate and gift tax imposed, it is proposed that the deceased owner of an appreciated asset would realize a capital gain at death and the donor of an appreciated asset would realize a capital gain on the transfer of the asset.

In each case, the amount of the gain realized would be the excess of the asset's fair market value on the date of death or the date of the gift over the decedent/donor's basis in that asset. In the case of a decedent, the gain would be taxable income to the decedent on "the Federal gift or estate tax return or on a separate capital gains return."

The above proposals related to the taxation of appreciated assets transferred by gift or at death 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.

<u>Tax rates</u>
The top marginal rate for individuals would be Increased to 39.6% effective for tax years beginning after December 31, 2021. In 2022, the top marginal rate would apply to taxable income over $509,300 for married individuals filing a joint return.

Corporate tax rates are proposed to increase to 28% (Update : recent news accounts have indicated that the 28% rate is in the process of being negotiated downward).

Carried interest
Effective for tax years ending after December 31, 2021, a partner's share of income on an "investment services partnership interest" in an investment partnership (i.e., a carried interest) would be taxed as ordinary income regardless of the character of the income at the partnership level, if the partner's taxable income from all sources exceeds $400,000. In addition, such income would be subject to self-employment tax.

1031 exchanges
Any gain in excess of an aggregate amount of $500,000 for each taxpayer per year ($1 million in the case of married individuals filing a joint return) for real property like-kind exchanges would be recognized by the taxpayer in the year the taxpayer transfers the real property subject to the exchange, effective for exchanges completed in taxable years beginning after December 31, 2021.

Loss limitation rules
The excess business loss limitation for noncorporate taxpayers, scheduled to expire in taxable years beginning after December 31, 2025, would become permanent.

While the above changes are cause for concern, it must be stressed that the possibility of all of these provisions becoming law as proposed is far from certain. We will continue to monitor the proposed legislation and will keep you informed of future developments.

Please call our office if you want to discuss how these and other proposals may affect you.