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On September 15, 2021, the House Ways and Means Committee approved legislation to be included in President Biden's $3.5 trillion infrastructure bill. The legislation has a long way to go due to differences with legislation being developed in the Senate. The legislation's ultimate passage in its present state is also in doubt as Democrats have a slim majority in both the House and Senate and not all Democrats are on board with all the proposed tax hikes.
Notably absent in the House Ways and Means Committee markup are some of the provisions that were included in the Green Book proposal such as the limitation on the use of Section 1031 exchanges, tax on appreciated assets at death and the elimination of the basis step-up of assets held at death.
Following is a summary of some of the legislation's key provisions. The changes discussed below would all be effective (unless otherwise noted) for tax years beginning after December 31, 2021.

Business Tax Provisions
Replace the flat corporate income tax rate of 21% with a graduated rate ranging from 18% on the first $400,000 of taxable income to 26.5% on taxable income over $5 million.
Treat the loss on abandonment of an interest in a partnership (currently an ordinary loss) the same as a loss on the sale of a partnership interest (a capital loss).
Extend from three to five years, the holding period required for gain attributable to an applicable partnership interest (so called "carried interests") to qualify for long-term capital gain treatment.
Modify the definition of "10% shareholder" for purposes of the portfolio debt exemption rules to include any person who owns 10% or more of the total vote or value of the corporation's stock.

Individual Tax Provisions
Increase the top marginal tax rate to 39.6% for taxable income over $450,000 (MFJ) $225,000 (MFS), $425,000 (HOH) and $400,000 (Single). Estates and trusts with taxable income over $12,500 would also be subject to the 39.6% rate.
Impose a surtax of 3% on a taxpayer's modified adjusted gross income in excess of $5 million ($2.5 million for a married individual filing separately). For this purpose, modified adjusted gross income means adjusted gross income reduced by any deduction allowed for investment interest.
Increase the tax rate on long-term capital gain and qualified dividend income to 25% (28.8% - includes NIIT) for high income individuals (those individuals subject to the 39.6% rate discussed above). This provision would apply to transactions after September 13, 2021.
Amend Section 199A to limit the maximum allowable Qualified Business Income Deduction to $500,000 (MFJ), $250,000 (MFS), $400,000 (Single), and $10,000 for a trust or estate.
Permanently disallow excess business losses (currently the excess loss provision is set to expire in 2025).
Contributions to ROTH and traditional IRA accounts would be prohibited if the total value of an individual's IRA and defined contribution retirement accounts exceed $10 million as of the end of the prior year.

Estate Tax Provisions
The following changes to the grantor trust rules would take effect upon the date of enactment of the new law.
The assets of grantor trusts would be included in the deemed owner's estate. All grantor trusts existing as of the date of enactment and assets transferred to those trusts prior to the date of enactment will be grandfathered.
Any distribution from a grantor trust (other than to the deemed owner of the trust) during the deemed owner's life would be treated as a gift by the deemed owner. Additionally, if the deemed owner ceases to be treated as the deemed owner during the deemed owner's lifetime, all assets of the trust would be treated as having been gifted.
Sales of assets to a grantor trust would not longer be disregarded for income tax purposes.
Amend Section 2031 to deny a valuation discount for transfer tax purposes when a taxpayer transfers nonbusiness assets. For this purpose, nonbusiness assets are passive assets that are held for the production of income and not used in the active conduct of a trade or business.
The unified estate and gift tax exemption (currently $11.8 million) would be reduced to $5 million per individual, indexed for inflation.

We will continue to keep you apprised as this legislation develops. Please call us if you have any questions about how these provisions may affect you.