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KPMG report: Initial impressions of tax proposals in Biden Administration's FY 2024 budget

The Biden Administration today released an updated set of proposals related to the president's tax plan.

The "**Green Book**" [PDF 2.1 MB]—General Explanations of the Administration's Fiscal Year 2024 Revenue Proposals—outlines the Biden Administration's proposals including information on effective dates, revenue estimates, and design choices.

Background

The Biden Administration today transmitted its FY 2024 budget recommendations to Congress. Read ***TaxNewsFlash***

In the FY 2024 budget proposals, the administration laid out both its annual discretionary spending plan for the fiscal year beginning October 1, 2023, along with long-term investment and social spending plans.

Details of the tax proposals are provided by the Treasury Department in the Green Book.

Many of the tax proposals included in today's Green Book are familiar ones, having previously been proposed for the FY2022 and FY2023 budgets. There are, however, new proposals worth noting, discussed further below.

Another important difference between this year's Green Book and prior Biden proposals is that these are delivered to a Congress divided. The majorities in the House and Senate are narrow while the partisan divisions regarding tax policy are wide, making passage of any controversial tax legislation difficult.

All this suggests that any action on most of the Green Book tax proposals is unlikely in the short term.

Tax proposals

The tax proposals in the Biden Administration's budget for FY 2024 are generally consistent with the proposals we've seen in prior years. However, there are a number of notable new proposals as well.

What's new

- Creation of a digital asset mining energy excise tax
- Imposition of additional Medicare tax rate and increased net investment tax on high-income taxpayers
- Creation of the Neighborhood Homes Credit
- Prevention of excessive accumulations by high-income taxpayers in tax-favored retirement accounts

Corporate and international tax proposals

Corporate and international revenue-raising proposals include:

- Increasing the statutory corporate rate to 28%
- Increasing the excise tax rate on repurchase of corporate stock to 4%
- Treating certain corporate distributions to shareholders as dividend or dividend equivalents
- Modifying various rules relating to inappropriate leveraging of parties to divisive reorganizations and certain corporate liquidation transactions
- Modifying the control test under section 368(c)
- Expanding the section 162(m) compensation deduction limitation
- Reducing to 25% the deduction for "global intangible low-taxed income" (GILTI), eliminating the "qualified business asset investment" (QBAI) exemption, and imposing a jurisdiction-by-jurisdiction calculation
- Repealing the deduction for "foreign-derived intangible income" (FDII)
- Replacing the "base erosion anti-abuse tax" (BEAT) with a new undertaxed profits rule that is consistent with the Pillar Two model rules
- Limiting the ability of domestic corporations to expatriate by tightening the anti-inversion rules
- Modifying rules relating to controlled foreign corporations regarding pro rata allocation of Subpart F income and GILTI inclusion and certain E&P rules
- Modifying the dividends received deduction with respect to non-controlled foreign corporations
- Restricting the deduction of interest by a financial reporting group attributable to disproportionate U.S. borrowing
- Expanding the application of section 265 to disallow deductions attributable to income exempt from tax or taxed at a preferred rate
- Denying certain deductions related to offshoring jobs
- Reforming taxation of foreign fossil fuel income
- Repealing certain fossil fuel subsidies
- Limiting foreign tax credits from sales of hybrid entities
- Imposing a digital asset mining energy excise tax

Individual and investment-related tax proposals

Individual and investment tax proposals include the following:

- Increasing the top individual income tax rate to 39.6%
- Taxing long-term capital gains and qualified dividends at ordinary rates for taxpayers with adjusted gross income exceeding $1 million (applicable to gains required to be recognized after the date of enactment)

- Imposing a 25% minimum tax on total income, generally inclusive of unrealized capital gains, for all taxpayers with wealth greater than $100 million
- Treating transfers of certain appreciated property upon death or by gift with unrealized capital gains appreciation as realization events, with exclusions for donations and certain tangible personal property and deferral of gain for family-owned and operated businesses—special rules providing for spousal portability and treatment of capital gains attributable to a primary residence also to apply
- Taxing carried (profits) interest income as ordinary income
- Modifying rules relating to certain payments substituting for partnership effectively connected income
- Expanding access to retroactive qualified electing fund elections
- Repealing deferral of gain from like-kind exchanges completed in tax years beginning after December 31, 2023, when greater than $500,000
- Making permanent the current limitation on excess business losses of noncorporate taxpayers
- Limiting opportunities for basis shifting by related parties through partnerships
- Applying the net investment income and Self-Employment Contributions Act (SECA) taxes for high-income taxpayers with certain income related to pass-through entities
- Updating various rules regarding digital asset investments, loans of securities, etc.
- Increasing and expanding the net investment income tax rate and Medicare tax rate for high-income individuals
- Preventing excessive accumulations by high-income taxpayers in tax-favored retirement accounts
- Modifying various rules relating to the generation-skipping transfer tax, certain trusts, and valuation of certain property
- Modifying various provisions regarding tax administration to improve compliance

Tax credit-related proposals

In addition to its revenue-raising proposals, the Biden Administration also included as part of its long-term plans a number of tax credits and preferences for social programs and income support, including:

- Extending the expansion of the Child Tax Credit to certain children through 2025 and making the credit fully refundable
- Making permanent the New Markets Tax Credit (NMTC)
- Creating the Neighborhood Homes Credit (NHC)
- Expanding the Low-Income Housing Tax Credit (LIHTC)
- Making permanent certain expansions to the Child and Dependent Care Tax Credit
- Making permanent the expansions to the Earned Income Tax Credit for childless workers
- Extending the expanded Inflation Reduction Act (IRA) premium tax credits

Effective dates

Congress will ultimately determine the effective dates of any tax legislation, as well as any transition and grandfather rules it deems appropriate. In general, the Biden Administration would make its tax proposals effective January 1, 2024 (which is how budget recommendations are ordinarily submitted). There are exceptions, however, and some are notable.

The proposal to tax long-term capital gains and qualified dividends for high-income taxpayers at ordinary rates would be effective, according to the Green Book, “for gains required to be recognized after the date of enactment.”

The proposed anti-inversion provisions would apply to transactions completed after the date of enactment.

Additionally, the proposal related to the repeal of section 1031 applicability to gains in excess of $500,000 per taxpayer would be effective for exchanges completed in tax years beginning after December 31, 2023—apparently regardless of the date upon which the exchange may have begun.

The proposal to replace the BEAT with an undertaxed profits rule would generally apply to tax years beginning after December 31, 2024. This date could be intended to provide flexibility related to the ongoing BEPS 2.0 negotiations at the OECD.

KPMG observation

With a divided Washington and slim prospects for enactment of the Green Book proposals, one might ask the question as to whether these proposals have any relevance. The answer to that is they are relevant for a few reasons.

First, these budgetary proposals are relevant to the forthcoming 2024 elections. The administration has set forth its vision of what the tax system should be, and that will no doubt become a theme of the 2024 presidential and congressional elections.

Second, the international proposals included in today's budget are partly designed to speak to readers outside the United States. Countries actively negotiating the Pillar One and Pillar Two proposals through the OECD are likely paying close attention to the administration's proposals. Today's release will likely be seen by them as a reassurance of the United States' commitment to the OECD's project.

Finally, today's release is important because these budgetary proposals, once released, never truly disappear. These ideas have a long shelf life in the tax policy world and are likely to reappear in various formats in the years (perhaps decades) to come.

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