BMSS Advisors & CPAs Presents:

An Overview of "The Green Book," President Biden's Blueprint for Taxation

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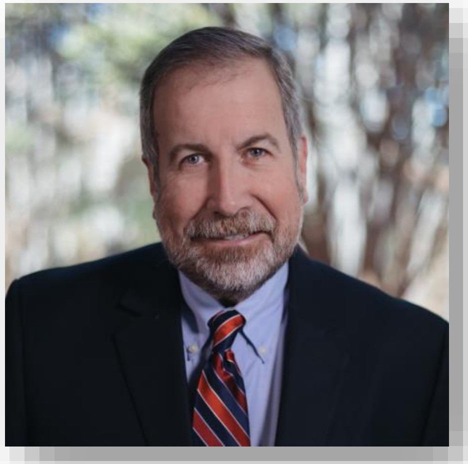
Treasury Green Book – Income Tax Considerations

(REVENUE *PROPOSALS* – AWAITING LEGISLATIVE ACTION)



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General Explanations of the Administration's Fiscal Year 2022 Revenue Proposals

"Green Book"

- American Jobs Plan
- American Families Plan
- Most changes effective after 2021
- The shot across the bow

Department of the Treasury
May 2021

Legislative Update
The Road from Proposal to Law

- H.R. 3684 Infrastructure Investment & Jobs Act -"Bipartisan Infrastructure Plan"
- Limited Tax Provisions
  - Eliminates the employee retention tax credit (ERC) effective September 30, 2021
  - Changes to IRC §118, Contributions to Capital of a Corporation, by excluding from income all contributions, regardless of source, to a regulated public utility for water or sewage disposal services
  - Includes digital assets in covered securities for which broker reporting would be required

Legislative Update

$3.5 Trillion Budget Framework

- Senate and House have approved a budget resolution that includes many of the Green Book budget proposals
- Speaker Pelosi and Democratic Party leaders have set a September 15th deadline for the various tax-writing committees to draft their portions of the budget bill
- The Speaker also expressed intention to pass the bipartisan infrastructure bill by September 27th
- The surprise in the budget resolution framework is a mention of "SALT cap relief," but the details are sparse

Treasury Green Book

Tax Rate Increases

- **Corporate Tax Rate** Increase from 21% to 28% - for tax years beginning after 2021 (phase-in for tax years ending after 2021)
- **Individual Tax Rate -** Top marginal rate would return to 39.6% before the scheduled expiration of the 37% top rate in 2026
- **Capital Income–** Long term capital gains and qualified dividends of taxpayers with AGI > $1M ($500K MFS) taxed at ordinary income rates EFFECTIVE APRIL 2021

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Close Loopholes

- Tax Carried Interests as Ordinary Income
- Repeal Deferral of Gain from Like-kind Exchanges
- Make Permanent Excess Business Loss Limitation of Noncorporate Taxpayers

Treasury Green Book

Rationalize Net Investment Income (NII) and Self-Employment (SE) Taxes

- Ensure all trade or business income of high-income taxpayers subject to the 3.8% Medicare Tax , either through the NIIT or SE tax
- For taxpayers with AGI>$400k, NIIT would include gross income and gain from any trades of businesses not subject to SE tax
- All revenue from the NIIT would be directed to the Hospital Insurance Trust Fund just as is the revenue from the 3.8% tax under FICA and SECA (2.9% Medicare and .9% Medicare surtax)
- Limited Partners and LLC members who provide services and materially participate would be subject to SECA (exemptions would remain for rents, capital gains, and certain retired partner income)

Treasury Green Book

Other Business Tax Provisions

- 15% minimum tax on book earnings of large corporations – worldwide book income > $2billion
- Several modifications to the GITLI regime, referred to as a global minimum tax regime in the Green Book – stated intent to incentivize US multinational companies to invest in tangible assets domestically
- Prioritize clean energy – eliminate 13 fossil fuel tax preferences and extend, enhance, or establish credits and incentives for clean energy production
- Support housing and infrastructure- expand low-income housing credits, establish neighborhood homes investment tax credits, make permanent the new markets tax credits

Treasury Green Book

Individual Tax Credits

Would make permanent some American Rescue Plan (Pub. L. No. 117-2) changes:

- Premium tax credit (IRC §36B)
  - Decrease in the applicable contribution percentages of household income used to determine credit
  - Expansion of credit eligibility to taxpayers with household income above 400% of federal poverty line
- Earned income tax credit (IRC §32)
  - Increase in credit availability for workers without children
  - Expansion of age eligibility
- Dependent care assistance credit and exclusion (IRC §21; IRC §129)
  - Expansion of credit amount, credit refundability, and exclusion from employee's gross income
- Child tax credit (IRC §24)
  - Increase in age limit, increase in credit amount, and extension of advance payment of credit
  - Employer-provided childcare credit amounts (IRC §45F) would be increased

Biden Proposals – IRS Funding Increase

- House Appropriations Committee draft of Financial Services and General Govt Spending Bill would give the IRS $13.6 billion in fiscal 2022 - >14% increase
- Over the next decade Pres. Biden plans to propose an $80 billion funding boost – bipartisan infrastructure deal proposes $40 billion
- Goal of increased budget – reduce the tax gap (3 components as defined by Treasury- non-filing gap, underreporting gap, underpayment gap)
- Administration projects additional funding would generate about $700 billion over 10 years, so nearly a 10:1 return

Likely Targets of Increased Compliance Efforts by the IRS

- PTEs and owners
- Crypto investors
- High Income Non-filers – a pre COVID priority that was scuttled but likely to be revived – strengthen faith in the system

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Treasury Green Book – Estate Planning Considerations

(SUBJECT TO CHANGE BASED ON LEGISLATIVE ACTION)

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Estate Planning Considerations

- Event-Triggering Gains (Deemed Sales)
  - Gifts, bequests, and transfers of appreciated property, including those into, or distributed in kind from, trusts or partnerships trigger an immediate recognition of taxable gain
  - Exclusions/Deferrals
    - Revocable, wholly owned Grantor trusts until they become irrevocable
    - Tangible Personal Property
    - General Exclusion - $1M*
    - Principal Residence - $250K
    - Qualified Small Business Stock and deferral for certain family-owned business (TBD)
  - Losses can offset gains
  - Income Tax deducted against Estate Tax and Gift Tax

* Unused portion eligible for portability

Estate Planning Considerations

- Exempt Transferees
  - Surviving Spouse
    - No Step-Up; Basis carries over
    - Does <u>not</u> include lifetime transfers (gifts) - likely an oversight
  - Charities
    - Does <u>not</u> include lifetime transfers (gifts) - likely an oversight

- Basis following transfer
  - Transfers at Death – FMV at Date of Death
  - Transfers during Lifetime – FMV at Date of Transfer
    - No basis adjustment if shielded by general exclusion

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Estate Planning Considerations

- Installments Tax Payment
  - 15-year payment plan – Nonliquid Assets
  - Currently, only applies to closely held businesses

- Valuation
  - FMV for recognition purposes is the same as for Estate and Gift purposes (but no discounts)

- Reporting
  - Estate Tax Return
  - Gift Tax Return
  - Separate Capital Gains Return

Estate Planning Considerations

- Charitable Split-Interest Trusts
  - Impact
    - Transfers to split-interest trusts will have a gain recognition event proportional to the beneficiary's interest
    - No clarity on gain recognition if the beneficiary is the Grantor or their spouse

- Intentionally Defective Grantor Trusts (IDGT)
  - Impact
    - Deemed sale on transfers to IDGT's
    - Grantor still responsible for income taxes
    - Assets are excluded from Gross Estate but not income tax

Estate Planning Considerations

- Dynasty Trusts
  - GST Tax Exempt – Retained under Biden proposal
  - Long or indefinite perpetuities period
  - 90 Year Recognition Event
    - Gain recognition on assets that have been held in trust for 90 years and a recognition event has not occurred
    - Holding period would begin as of January 1, 1940 (No effect until 2030)
  - Could create significant impact for trusts holding real estate or closely held businesses

Estate Planning Considerations

- Notable items not included in proposals
  - No change in Lifetime Estate Tax Exemption (Currently $11.7m per person)
    - Sunset is scheduled for January 1, 2026
    - Will revert to exemption prior to 2018 (~$5.5m)
  - No change in Estate Tax rate – 40%
  - No mention of claw-back provisions
    - Example: Taxpayer gifts full $11.7m during TCJA temporary period and dies after the sunset, these previously tax-free gifts will <u>not</u> be "clawed back" into Estate tax since the exemption has been reduced
  - No retroactive gift taxes on transfers that would have been subject to gain recognition under new proposal

Estate Planning Considerations

- Approach to Estate Planning
  - Investment decisions
    - Holding highly appreciated assets in anticipation of step-up basis no longer relevant
  - Who should pay the tax on gain recognition events?
    - Should the beneficiaries pay the tax on the gains recognized from the assets they receive?
    - Should the transferor pay the tax in addition to the assets that were transferred?

Estate Planning Considerations

- What to Do Now
  - Maximize use of available exemptions
  - Planning Strategies
    - Make gifts to Dynasty Trusts
    - Make gifts to Spousal Lifetime Access Trusts (SLATs)
    - Make gifts to Domestic Asset Protection Trusts (DAPTs)
    - Take advantage of discounts
    - Sell assets to an Intentionally Defective Grantor Trust (IDGT)

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If you have a question that you'd like to ask, please email us at marketing@bmss.com.

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