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# KPMG report: Initial impressions of tax proposals in Biden Administration's budget for FY 2022

The Biden Administration today released long-awaited details related to the president's proposed tax plan.

The "**Green Book**" [PDF 884 KB]—General Explanations of the Administration's Fiscal Year 2022 Revenue Proposals—outlines the Biden Administration's proposals in greater detail than seen before, including information on effective dates, revenue estimates, and design choices.

**Background**

The Biden Administration today transmitted its FY 2022 budget recommendations to Congress today. Read ***TaxNewsFlash***

In the FY 2022 budget proposals, the administration laid out both its annual discretionary spending plan for the fiscal year beginning October 1, 2021, and its long-term infrastructure and social spending plans. Those long-term plans—and tax proposals to offset their cost—were previously outlined in the "Made in America Tax Plan" (as part of the "American Jobs Plan" and "American Families Plan"). Read ***TaxNewsFlash*** and ***TaxNewsFlash***

The purported $4 trillion+ total revenue cost of the two long-term spending plans would be offset over a 15-year period by tax measures, also recommended in the budget document (read details in Treasury's **analytical perspectives** [PDF 5.2 MB] (246 pages)). Details of the tax proposals are provided by the Treasury Department in the Green Book.

The administration's budget recommendations are, of course, only recommendations. Congress can accept, reject or modify them as part of the legislative process, as well as add other proposals. It can also choose to offset all or only a part of any spending programs it approves.

**Tax proposals**

The tax proposals in the Biden Administration's budget for FY 2022 are generally consistent with the corporate, international, individual, and investment tax proposals of the Made in America Tax Plan, American Jobs Plan, and the American Families Plan. There are, however, some important new details and modifications, as well as a few new proposals and one significant recommendation with regard to an effective date.

**Corporate and international tax proposals**

Corporate and international revenue-raising proposals include:

- Increasing the statutory corporate rate to 28%
- Imposing a 15% minimum tax on global book income of certain large corporations
- 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 "SHIELD" regime that would deny U.S. tax deductions for payments to foreign related parties subject to a "low effective tax rate"
- Limiting the ability of domestic corporations to expatriate by tightening the anti-inversion rules
- 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
- Increasing the IRS enforcement budget
- Reforming taxation of foreign fossil fuel income
- Repealing fossil fuel subsidies
- Limiting foreign tax credits from sales of hybrid entities
- Reinstating Superfund taxes

**Individual and investment-related tax proposals**

Individual and investment tax proposal 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 announcement)
- Treating transfers of appreciated property upon death or by gift with unrealized capital gains appreciation in excess of $1 million 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
- Repealing deferral of gain from like-kind exchanges completed in tax years beginning after December 31, 2021, when greater than $500,000
- Making permanent the current limitation on excess business losses of noncorporate taxpayers
- Rationalizing net investment income and Self-Employment Contributions Act (SECA) taxes for high-income taxpayers with certain income related to pass-through entities
- Providing additional funding for tax administration to improve compliance
- Requiring financial institutions to report information on account flows

**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 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 Affordable Care Act (ACA) premium tax credits

And the administration recommended over $300 billion (over 10 years) of tax incentives for clean energy, including:

- Extending and enhancing of renewable and alternative energy incentives
- Establishing new tax credits for advanced energy manufacturing
- Establishing tax credits for heavy and medium-duty zero emission vehicles
- Providing tax incentives for renewable aviation fuel
- Extending and enhancing energy efficiency and electrification incentives
- Providing a disaster mitigation tax credit
- Expanding and enhancing the carbon oxide sequestration credit
- Extending and enhancing the electric vehicle charging station credit

**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, 2022 (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 announcement." It is unclear whether the applicable date would be the date of the transmittal of the budget (that is, today, May 28, 2021) or the date of release of the American Families Plan in April 2021. Either way, the proposal would be effective for future realizations, if Congress were to accept the administration's recommendation.

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, 2021—apparently regardless of the date upon which the exchange may have begun.

The proposal to replace the BEAT with the SHIELD would generally apply to tax years beginning on or after January 1, 2023. This date—one year later from most of the other corporate proposals—could be intended to provide flexibility related to the ongoing BEPS 2.0 negotiations at the OECD.

**KPMG observation**

The Biden Administration has set out an ambitious, long-term infrastructure and social support program. Congress may act on all or part of that program, or indeed, could add to it. The revenue-raising tax proposals set out in the budget are designed to offset the cost, over time, of the proposed increases in spending and tax incentives. Many will be controversial and could be modified or eliminated during congressional consideration of legislation.

Additional revenue-raising proposals could be added, as well. Several proposals put forth by President Biden during the presidential campaign have not been included in the budget—such as further changes to the taxation of estates; repeal of the section 199A deduction for pass-through businesses; a 28% cap on the tax benefit of itemized deductions; a tax on the assets of financial institutions; and a modification of the income cap for payroll taxes.

Numerous other revenue-raising proposals have been put forth by members of Congress.

It would not be surprising if there were significant modifications made to the Biden Administration's tax proposals if and when they are considered in Congress.