BIDEN ADMINISTRATION REVENUE PROPOSALS FOR FISCAL YEAR 2023

AMERICAN NATIONAL

The Biden administration recently introduced its 2023 budget proposals. The reason this tax increase is in the form of a budget proposal is because budget proposals can pass with only 51 votes in the Senate.

The key provisions impacting individual taxpayers include:

- The top individual tax rate would increase to 39.6% beginning in 2023 and apply to taxable income over $400,000 for singles and $450,000 for joint returns.
- To the extent a taxpayer's income exceeds $1,000,000, capital gains and qualified dividends would be taxed at ordinary rates of 37% or 39.6% but only on income exceeding $1,000,000.
- The bill imposes a minimum tax of 20% on total income, including unrealized capital gains on a taxpayer's wealth in excess of $100,000,000 beginning in 2023.
- Section 1031 exchanges would be limited to $500,000 per taxpayer ($1,000,000 on a joint return) with any overage taxed beginning after 12/31/2022.
- Under the proposal, section 1250 on real estate would be changed to recapture depreciation on real estate for taxpayers with adjusted gross income of $400,000 or more effective after 12/31/2022.
- The proposal changes grantor retained annuity trusts so that they have a minimum term of 10 years whereas currently one-year terms are permitted. The proposal would also require a remainder interest equal to 25% of the value contributed and annuity payment could not decrease during the GRAT term, and no tax-free exchanges would be permitted.

  Currently, grantor trust rules for income are not the same as the rules for inclusion in the gross estate. The proposal states that if a taxpayer creates a grantor trust that is not fully revocable, sales between the grantor and the trust would be taxable, effective for sales after the enactment date. The grantors payment of income tax on the trust income and gains would be treated as a taxable gift for trusts created after the date of enactment.

- A partner may receive an interest in future partnership profits for services and to the extent the partnership reports capital gains, the partner will reflect the capital gains. The proposal requires depreciation recapture on the sale of depreciable real estate for taxpayers with adjusted gross income of $400,000 or more effective after 12/31/2022.

  Under current law, there is generally a carryover basis for gifts and a basis step-up at death. The administration proposes to treat transfers of appreciated property by gift or upon death as realized taxable events. Whatever capital gains are paid at death will be deductible from estate taxes. The proposal also includes assets in trusts or partnerships be marked to market every 90 years beginning on January 1, 1940, so that the first taxable event would be on December 31, 2030. Transfers from the trust or partnership would also be taxable events and there will be no discounts for partial interests. There will be a $5,000,000 per person exclusion on property transferred by gift or at death, indexed for inflation from 2022. The change would be effective for transfers after 12/31/2022 or for people dying after that date. Trusts and partnerships would be effective on January 1, 2023.

  Each taxpayer has a GST Exemption (generation skipping tax) of $12,060,000 for 2022. The proposal allows for GST exemption to apply to Direct skips and taxable distributions to beneficiaries no more than two generations below the transferer and to younger generations who were alive at the creation of the trust and taxable terminations occurring while any person described above is a beneficiary. The provisions resetting the transferor upon payment of GST tax would not apply, and existing trusts would be treated as having been created on the date of enactment.

Conclusion

As with the Build Back Better bill last year which did not pass, this revenue proposal, which is not a law or a bill, may or may not pass. It also may not look exactly as it does today. As time goes on, we will report any changes as they happen.

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IMGNL0224 | 04.22