How Might Joe Biden's Tax Proposals Affect You?

Article
May 14, 2021

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On April 28, 2021, President Joe Biden presented his proposed "American Families Plan" in an address to the nation. The address set forth hoped-for "once in a generation" investments focused on benefits to American families. These investments included expanded government-funded education, increases in various child and earned income credits, paid leave proposals, and reformation of unemployment insurance programs. The cost of such investments, as well as various investments in traditional infrastructure programs, is expected to be borne, at least in part, by various tax law changes.

This article will focus on the tax mechanisms outlined by President Biden to fund the American Families Plan. As one reviews this summary, it is important to keep in mind that none of the changes outlined below have been presented to Congress as a comprehensive legislative package. They are merely conceptual proposals that await drafting of specific legislation by Congressional leaders. Among the proposals are:

1. Increasing the corporate tax rate to 28% from the current 21%. It is important to note that as recently as May 5th, President Biden has indicated a willingness to compromise at a rate of 25%.
2. Repeal of various tax law changes that were included as part of the 2017 Tax Cut and Jobs Act. This includes returning the top individual income tax bracket to 39.6% for those with income of more than $400,000. The proposal is unclear whether this threshold will apply to both joint filers and individuals. Most practitioners believe that the 39.6% rate, if passed, would apply to individual filers at levels of income less than $400,000.
3. Increasing the tax rate on capital gains and dividends to 39.6% for households making more than $1 million. When combined with the 3.8% Net Investment Income Tax that was put into law on investment income under President Obama, this would increase the maximum federally imposed rate of taxes on capital gains to 43.4%.
4. Eliminating the ability of hedge funds and private equity partners to pay tax on their carried interests at the capital gains rate. Although noteworthy, this provision has less impact when combined with the increase in rates on capital gains applicable to those making more than $1 million.
5. Eliminating the ability to defer capital gains from the sale of real estate from so called "like kind" exchanges for gains greater than $500,000. This would

greatly impact owners of depreciable real estate, as well as others.

6. Eliminating the so-called "step-up in basis" on property inherited at death. It is important to note that the President's proposal would only apply to gains in excess of $1 million. Mention is made of inclusion of protections for family owned businesses and farms that continue to be run by heirs, but details regarding this exemption were not provided. As important as the elimination of the basis step up, is the President's statement that the proposal will "make sure that gains are taxed if the property is not donated to charity." While not specified, the inference is that gains in excess of the excluded amounts would be taxable at death, whether the property is subsequently sold by the decedent's heirs or not. This is consistent with a proposal introduced by Senators Chris Van Hollen, Cory Booker, Bernie Sanders, Sheldon Whitehouse and Elizabeth Warren known as the Sensible Taxation and Equity Promotion (STEP) Act.

Specific information regarding the President's proposal can be found at: **Fact Sheet: The American Families Plan | The White House**. Should you visit this summary page, you will note that there is no mention of changes to the level at which estate tax is imposed. At present, the Federal estate tax only applies to estates of individuals passing more than $11.7 million to their heirs. This amount will be automatically cut in half as of January 1, 2026, under the sunset provisions of the 2017 Tax Cut and Jobs Act. However, much speculation exists regarding earlier changes which would reduce the amount to $5 million or even $3.5 million sooner than the sunset date. It is theoretically possible that this will not occur if the proposed elimination of step-up in basis and taxation of accumulated gain at death takes place.

High net worth individuals and business owners, additional perspectives on three of the more impactful changes proposed were shared in our October 2020 article, *Family Business Succession Planning in the ERA of Tax Uncertainty – Use Available Tax Advantages or Perhaps Lose Them*. Stay tuned for more information as the process of drafting legislation occurs.