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Generations Summer 2021 - The Biden Administration Tax Proposals: The Green Book Sheds Light on Effective Dates

President Biden has formally released his plans to make substantial changes to existing tax laws. The original proposals left unclear the timing of those proposed changes, and taxpayers have been left guessing as to when Congress will vote on the new legislation and, perhaps more importantly, when these new laws might go into effect. This lack of clarity is impacting tax planning across the country, as many individuals and companies are taking action in anticipation of changes that may occur in 2022 while others are left wondering if it is already too late.

The Biden administration announced the majority of its tax proposals through the introduction of two separate plans. First, the American Jobs Plan, introduced on March 30, 2021 proposed corporate tax changes such as a higher corporate income tax rate, a new minimum book income tax, and a higher global minimum tax for U.S. multinational companies. These increased taxes are intended to fund U.S. infrastructure improvements. The Biden administration subsequently released the American Families Plan on April 28, 2021, which calls for individual and estate tax changes, such as a higher individual tax rate for high-income taxpayers and a higher tax rate for capital gains and qualified dividends for taxpayers with taxable income above $1,000,000. These tax increases are intended to support education, healthcare, and other family-centered programs.

It is unclear whether or when Congress will vote on either proposal. Due to the sharp partisan divide in the Senate, there is a substantial likelihood that President Biden's tax plans might only be passed pursuant to the Senate's budget reconciliation rules. Historically, reliance on the budget reconciliation rules has led to delays because the process can only be utilized under limited circumstances. Elizabeth MacDonough, the parliamentarian of the U.S. Senate, recently indicated that the budget reconciliation process used to pass the American Rescue Plan for COVID-19 relief in March 2021 may be used to enact additional changes found in the American Jobs Plan and the American Families Plan. This interpretation of the Senate rules may accelerate passage of the plans. Yet, even if only 50 percent of the Senate is needed to pass the proposals, it seems unlikely that either the American Jobs Plan or the American Families Plan will become law in its current form. Centrist Democratic senators have pushed back on some of the proposed changes, as demonstrated by Senator Manchin's call for a less dramatic increase in the corporate tax rate. Many Democratic senators have also raised concerns about a steep increase in the capital gains tax rate. Without Republican support, the Biden administration must secure the vote of every Democratic Senator, which will provide senators with leverage to advance their own interests. For example, President Biden recently stated the corporate tax rate could be increased to a rate *between* 25 and 28 percent, a less aggressive position than his original 28 percent rate. We anticipate that these negotiations will continue, probably delaying the timing of any congressional action.

Recently, the Biden administration provided details regarding when these proposed changes could go into effect. On May 28, 2021, the administration released its "Green Book," setting forth detailed explanations of the proposed changes to tax laws and their intended effective dates. Prior to the publication of the Green Book, there was great concern that the Biden administration would seek to have these changes apply retroactively to the beginning of 2021. Congress can make tax increases retroactive, and the U.S. Supreme Court has consistently upheld retroactive effective dates for tax legislation. For example, President Clinton signed the Omnibus Budget Reconciliation Act of 1993 into law on August 10, 1993, which retroactively applied increases to the top corporate tax rate and the top individual tax rate to January 1, 1993. The effective date predated the introduction of the legislation as well as President Clinton's inauguration as president.

The Green Book indicated that most of the Biden tax proposals would become effective in 2022, or in taxable years beginning after December 31, 2021. One very important exception, however, is the proposed effective date for an increase to

the capital gains rate for taxpayers with income over $1,000,000. That change is proposed to be effective as of April 28, the date of the announcement of the American Families Plan. The concern behind a proposed effective date in 2022 was that advance knowledge of an increase in capital gains tax rates would drive investors to sell off securities in large volumes, putting downward pressure on the markets. A sharp drop in the stock market would be a negative politically and would adversely impact consumer confidence, which in turn could impede economic recovery. Politicians are always attuned to those issues, and 2022 is an election year. To date, the proposed change in the capital gains tax rate has had no discernable effect on the stock market, but there is a long way to go in this process.

Despite the release of the Green Book, a great deal is still unknown about impending tax law changes. It is unclear what version of these proposals may reach Congress, when Congress will vote on these proposals, and, if any pass, when these proposals will be effective. The lack of clarity creates significant strain on taxpayers. Day Pitney is closely monitoring the situation and will issue future alerts as the Biden administration's tax agenda and its chances of being enacted come into clearer focus.

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