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Treasury Greenbook

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Fiscal Year 2023 Revenue Proposals
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Alexa Woods, Anthony Tufo, Ben Midas, Daniel Hauffe, Lindsay Bartholomew, Kelsey Jonas, Reema Patel, Shaun Terrill, Stephanie Fiumara-Hudson, Steven Grodnitzky, & Tammara Madison

Bloomberg Tax

About This Presentation

- On March 28, 2022, the Treasury Department issued “[General Explanations of the Administration’s Fiscal Year 2023 Revenue Proposals](#)”
 - President Biden’s second “Greenbook”
 - Provides details of President Biden’s tax policy proposals for FY2023
- **This presentation highlights key proposals in the Greenbook, including:**
 - Repeal of the base erosion and anti-abuse tax and replacement with an undertaxed profits rule
 - C corporation rate increase from 21% to 28%
 - Individual top marginal rate increase from 37% to 39.6%
 - 20% minimum tax on total income (including unrealized gain) of highest earners

International Changes Mirror Pillar Two, Require More Reporting

- **Repeal and replace the base erosion and anti-abuse tax (BEAT) with an undertaxed profits rule (UTPR) that mirrors Pillar Two's UTPR**
 - The proposed UTPR would target foreign-parented multinationals operating in low-tax jurisdictions
 - Effective for taxable years beginning after December 31, 2023
 - Consistent with planned implementation of Pillar Two's UTPR
- **Treat any taxable unit as a foreign business entity for reporting purposes ([IRC §6038](#))**
 - Effective for taxable years of a controlling U.S. person that begin after December 31, 2022, and to annual accounting periods of foreign business entities that end with or are within such taxable years of the controlling U.S. person

Other Changes Target Exchange Rates, Offshore Expensing

- Create a general business credit equal to 10% of eligible expenses associated with onshoring a U.S. trade or business (USTB) and disallow deductions for expenses associated with offshoring a USTB
- Relax the rules for making a retroactive qualified electing fund (QEF) election in cases where the U.S. government is not prejudiced
- Failing to file a [Form 8854](#) would trigger an extension of the statute of limitation for assessment (with limited relief for low-income taxpayers with limited U.S. ties)
- Permit individuals living and working abroad to use an average exchange rate for the year to calculate qualified compensation received in foreign currency
- Increase the personal exemption amount for foreign currency gain from \$200 to \$500 (to be indexed annually for inflation)
- Increase the de minimis individual FTC exemption amount from \$300 to \$600 (to be indexed annually for inflation)

C Corporations Face Rate Increase, Control Definition Tweaked

- **Income tax rate for C corporations would increase from 21% to 28%**
 - The increased corporate tax rate, combined with the previously proposed reduced [IRC §250](#) deduction for GILTI, would create an effective rate of 20% for GILTI
- **Matching rule would be created in situations where a distribution of partnership property causes a step-up in basis of non-distributed partnership property due to [IRC §754](#) election**
 - Any partner related to distributee-partner would be prohibited from benefitting from the partnership's step-up in basis until distributee-partner disposed of the distributed property in a fully taxable transaction
- **Amend [IRC §368](#) to conform the definition of "control" with the affiliation test in [IRC §1504](#)**
 - Proposed [IRC §368](#) would provide that ownership of at least 80% of the voting power of all classes of stock entitled to vote and at least 80% of the total value of stock would constitute control of a corporation

Carried Interests, Depreciation Recapture, and Digital Assets

- **High-earner partner's share of income on "investment services partnership interest" (ISPI) would be taxed as ordinary income**
 - If partner's taxable income (from all sources) exceeds \$400,000
 - ISPI: Profits interest in investment partnership held by person who provides services to partnership
- **Require 100% recapture as ordinary income of depreciation deductions taken on certain depreciable real property ([IRC §1250](#))**
 - Excluding noncorporate taxpayers with adjusted taxable income below \$400,000
- **Actively traded digital assets**
 - Apply the securities loan nonrecognition rules to loans of actively traded digital assets recorded on cryptographically secured distributed ledgers ([IRC §1058](#))
 - Allow dealer/trader mark-to-market election for actively traded digital assets (including derivatives and hedges) ([IRC §475](#))

Increased Taxation of Highest Earners

- Increase top marginal tax rate for individuals from 37% to 39.6% ([IRC §1](#))

Top Marginal Tax Rate for High Earners

Comparison of Proposal to Current Law

| | Proposed 39.6% Income Brackets | TY 2022 37% Income Brackets |
|---|--------------------------------|-----------------------------|
| Married Filing Jointly/Surviving Spouse | Over \$450,000 | Over \$647,850 |
| Married Filing Separately | Over \$225,000 | Over \$323,925 |
| Single | Over \$400,000 | Over \$539,900 |
| Head of Household | Over \$425,000 | Over \$539,900 |

- Impose 20% minimum tax on total income (including unrealized gains) of taxpayers with wealth greater than \$100M
- Long-term capital gains and qualified dividends of high earners (taxable income greater than \$1M) would be taxed at ordinary rates

Statutes of Limitations for Major Omissions, Additional Penalties

- **Increased statutes of limitations**
 - Increase limitations period from three to six years for gross income omissions greater than \$100M
 - Extend limitations period for gross income omission of, or failure to report, deferred gain from Qualified Opportunity Fund investment
 - Three years from the date when IRS receives all information needed to assess deficiencies resulting from failures
 - Increase limitations period for returns reporting benefits from listed transactions from three to six years
- **Additional penalties**
 - Impose affirmative requirement to disclose a position on a return that is contrary to a regulation
 - Subject to penalty of 75% of the decrease in tax shown on the return
 - Increase penalties for paid preparers for willful, reckless, or unreasonable understatements, and for noncompliance that does not involve an understatement
 - New penalties for appropriation of PTINs and EFINs, and for failing to disclose use of paid preparer

Provisions Impacting High-Net-Worth Individuals

Grantor Retained Annuity Trusts (GRATs)

- Value of remainder interest in a GRAT must equal or exceed 25% of the assets transferred to the GRAT, and GRAT term must be between 10 years and the annuitant's life expectancy plus 10 years

Grantor Trusts

- Transfers between grantor trusts and deemed owner would result in gain recognition
- "Transfers" would include satisfaction of an obligation (i.e., annuity or unitrust payment) with appreciated property

Forced Gain Recognition

- Donor/decedent transferring appreciated assets would recognize gain at time of transfer, subject to \$5M portable exclusion amount and other exclusions
- Recognition of unrealized appreciation for trusts, partnerships, or other non-corporate entities (first deemed recognition event deemed to occur December 31, 2030)

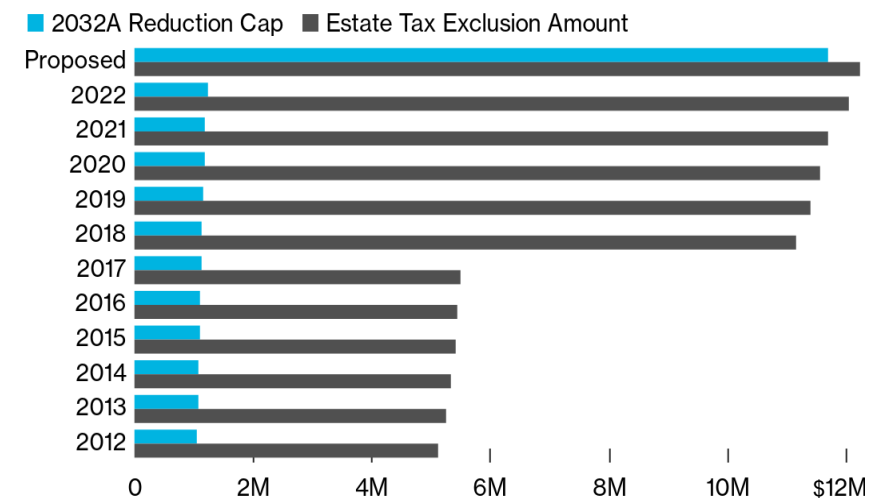
Generation-Skipping Transfer (GST) Tax

- Benefit of GST exemption would no longer span the duration for the trust (targeting dynasty trusts), but would be limited by the life of direct skips and beneficiaries alive at creation of the trust

Other EGT Proposals and Tax-Exempt Organizations

- **Limit valuation discounts for AFR promissory notes**
- **Special use property cap would be increased to \$11.7M**
 - Lessens notion that estate tax necessitates sale of family farm
 - Enhances viability of special use valuation election
 - Special use valuation cap on par with estate tax exclusion amount
- **Syndicated Conservation Easements**
 - Deduction denied if contribution amount exceeds 2.5x sum of each partner's basis in partnership
- **Private foundation distributions to donor advised funds will not be qualifying distribution, unless DAF makes distribution in tax year of receipt**

Maximum Reduction for Special Use Valuation Property



More Onerous Employer Withholding and Funding Obligations

- **Employers must withhold 20% penalty tax and any additional interest tax on nonqualified deferred compensation arrangements that violate [IRC §409A](#)**
- **A payroll period for on-demand pay arrangements offered to employees is treated as a weekly payroll period, even if employees have access to their wages during the week**
 - An on-demand pay arrangement is not considered a loan for payroll purposes
- **Fixed payments to employees under a fixed indemnity arrangement that is paid without regard to the actual cost of any incurred medical expenses are not excluded from gross income and are treated as wages subject to federal income, FICA, and FUTA taxes**
- **Post-retirement benefits generally must be funded over the longer of the working lives of covered employees on a level basis or 10 years**

[FY2023 Treasury Greenbook](#), pp. 81, 106-108. See [392 T.M.](#), *Withholding, Social Security and Unemployment Taxes on Compensation*, and [389 T.M.](#), *Medical Plans – COBRA, HIPAA, HRAs, HSAs and Disability*.



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