President Biden's March 31 Tax Proposal

On March 31, 2021, the Biden Administration announced the American Jobs Plan to invest $2 trillion during this decade in jobs and infrastructure. To pay for these investments, the Administration also released the Made in America Tax Plan that could potentially increase corporate taxes in a variety of ways. Additionally, there are other tax proposals outside of the Made in America Tax Plan that could affect high net worth individuals. **Note that the current plans are merely proposals, the terms of which could change as President Biden negotiates with legislators of both parties to make the plans law.**

The Made in America Tax Plan proposes the following changes:

- Increase the corporate tax rate from 21% to 28%;
- Increase the Global Minimum Tax for U.S. multinational corporations from 10.5% to 21%;
- Calculate the Global Minimum Tax for U.S. multinational corporations on a country-by-country basis "so it hits profits in tax havens;"
- Encourage other countries to adopt strong minimum taxes on corporations;
- Deny deductions to foreign corporations on payments that could allow them to strip profits out of the U.S. if they are based in a country that does not adopt a strong minimum tax;
- Prevent U.S. corporations from inverting or claiming tax havens as their residence;
- Deny expense deductions for offshoring jobs;
- Credit expenses for onshoring jobs;
- Eliminate the deduction for Foreign Derived Intangible Income (which relates to exports of goods with intellectual property);
- Enact a minimum tax on the book income (the income used to report profits to investors) of large corporations;
- Eliminate tax preferences for the fossil fuels industry; and
- Increase IRS resources to effectively enforce the tax laws against corporations.

President Biden's current plans do not include any changes to individual tax rates, or to the gift and estate tax exemptions or rates. However, the Biden Administration has announced that it will put forth a plan in the coming weeks to increase taxes on high-income individuals.

Additional Tax Proposals Introduced in Congress

Additional bills targeting high-income individuals have been proposed by legislators (although not the Biden administration) in March, including the Ultra-Millionaire Tax Act, the "For the 99.5%" Act, and the STEP Act. The key provisions of each bill are described below.

The Ultra-Millionaire Tax Act, introduced in the Senate on March 1st, would create an annual tax of 2% on the net wealth of households and trusts ranging from $50 million to $1 billion and an annual tax of 3% on the net wealth of households and trusts above $1 billion. The constitutionality of a wealth tax has been questioned, and it's unclear if President Biden will make this proposal a focus of future legislation.

On March 25th, Senator Bernie Sanders introduced the "For the 99.5%" Act, which casts the widest net of any of the proposed bills. Included in the proposal are the following changes that would affect individuals, trusts and estates:

- Reduce the estate tax exemption amount to $3.5 million and the gift tax exemption amount to $1 million (down from $11.7 million currently in each case);
- Increase estate tax rates (up from 40% currently) to:
  - 45% on estates between $3.5 million and $10 million;
  - 50% on estates between $10 million and $50 million;
  - 55% on estates between $50 million and $1 billion; and
  - 65% on estates over $1 billion;
- Eliminate minority discounts and lack of marketability discounts for entities controlled or majority-owned by the transferor, transferee or family members;
- Require a 10-year minimum term for GRATs and a minimum remainder interest of the greater of $500,000 or 25% of the amount contributed to a GRAT;
- Require GST tax-exempt trusts to terminate not later than 50 years after the date of creation;
- Change the annual gift tax exclusion, which is currently $15,000 per donee, to limit each donor to a cumulative $30,000 annual gift tax exclusion regardless of the number of donees for certain transfers, including:
  - Gifts in trust;
  - Gifts of interests in certain pass-through entities;
  - Transfers of assets subject to a prohibition on sale; and
  - Transfers of assets that cannot be immediately liquidated by the donee;
- Value nonbusiness assets and passive assets held in entities as if owned directly by the owners of the entity, with look-through rules applicable to interests of 10% or greater in subsidiary entities.

The "For the 99.5%" Act provisions also significantly impact grantor trusts, which are commonplace in estate plans. Among others changes, these provisions would (1) include the grantor trust assets in the grantor's gross estate, (2) treat distributions as gifts from the grantor, and (3) treat the entire trust as a gift from the grantor if grantor trust status is terminated during the grantor's life.

Finally, the Sensible Taxation and Equity Promotion (STEP) Act was introduced on March 29th. The STEP Act targets basis step-up by treating property transferred by gift or bequest, or property transferred to a non-grantor trust, as sold for its fair market value and triggering immediate capital gains taxes. This Act would effectively end basis step-up of assets at death, treating the moment of death as an income realization event. Estate taxes would also be due on the assets, although any capital gains tax liability would be deductible from a decedent's gross estate. Of the three bills discussed, the STEP Act is the only bill that would apply retroactively; the legislation would be effective starting January 1, 2021.

Again, none of these proposals is yet law, and your Choate team will continue to monitor the legislative developments.

If you have any questions about the potential effects of the Biden Administration tax plan or other proposals discussed above, please contact any member of your Choate Wealth Management team for guidance.

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