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FY 2023 budget plan continues White House focus on corporate, high wealth tax hikes

The White House released a fiscal year 2023 budget blueprint on March 28 that, as expected, echoes President Joe Biden's longstanding calls for significant tax increases targeting large corporations and high-income individuals but also amplifies them.

Thus, for example, the administration has included a familiar proposal from its fiscal year 2022 tax-and-spending plan to increase the top income tax rate to 28 percent for corporations but also includes a new proposal that would repeal the current-law base erosion and anti-abuse tax (BEAT) and replace it with an undertaxed profits rule consistent with one described in the OECD's Pillar Two Model Rules.

Likewise, the White House has renewed its call for a top rate of 39.6 percent for individual taxpayers but also added a so-called "minimum tax on billionaires" of 20 percent on total income, generally inclusive of unrealized capital gains, for all taxpayers with wealth (that is, the difference obtained by subtracting liabilities from assets) of an amount greater than $100 million. Moreover, the administration includes several new proposals that would tighten certain current-law tax rules related to estates, gifts, and trusts.

These and other proposals, which the Treasury Department describes in more granular detail in the "Green Book" that was released in conjunction with the budget, would increase federal receipts by more than $2.5 trillion (net) between 2023 and 2032, according to estimates from the Office of Management and Budget. That revenue, according to the administration, would be dedicated to paying for certain social spending priorities, offsetting the cost of tax relief for lower- and middle-income taxpayers, mitigating climate change, and shrinking the deficit.
URL: https://home.treasury.gov/system/files/131/General-Explanations-FY2023.pdf

Interestingly, while the president's social spending and tax policy bill, commonly known as Build Back Better, remains stalled in the Senate after clearing the House last November, the revenue projections in the just-released budget blueprint are built on the assumption that almost of all of those tax policies in the House-passed legislation are enacted into law. In other words, the budget proposals to raise the top marginal rate to 39.6 percent and to add the new minimum tax on billionaires would be *in addition to* the surtax on modified adjusted gross income of $10 million included in the Build Back Better legislation. Similarly, the recurring proposal to raise the top corporate rate to 28 percent would be *in addition to*, rather in lieu of, the book minimum tax proposal in the House-passed version of BBB.

This special edition of *Tax News & Views* looks at the projected debt and deficit picture under the president's proposed budget and the assumptions underlying the plan, highlights the key details of his tax proposals (with an emphasis on those provisions that are new for this year), and discusses some of the political obstacles he may need to overcome to get his plan enacted into law.

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Debt and deficit outlook, budget assumptions

At a high level, President Biden's fiscal blueprint takes a markedly different approach than those of his immediate predecessors, including President Donald Trump, whose budgets typically relied on steep spending cuts and strong economic growth assumptions to show sharply declining budget deficits, and then surpluses, over time, and President Barack Obama, whose budget plans leaned on a mixture of more moderate spending reductions and revenue increases to lower deficits with the primary goal of stabilizing and then gradually reducing the federal debt as a share of gross domestic product (GDP).

President Biden's fiscal 2023 budget, by contrast, largely accepts the premise that deficits will be elevated over the next decade. In fact, in dollar terms, the blueprint has deficits declining from a high point of almost $2.8 trillion in the prior fiscal year (fiscal 2021) to $1.4 trillion in the current fiscal year (2022) to a nadir of about $1.15 trillion in fiscal 2023, after which they would generally begin to rise again for the remaining years of the 10-year budget window. By 2032, the budget deficit would be back up to almost $1.8 trillion.

The blueprint envisions federal spending averaging about 23.4 percent of GDP over the next decade—notably higher than the average level of about 20.6 percent of GDP registered over the past 50 years. Revenues would also be higher than in the past—amounting to 18.8 percent of GDP on average over the next decade, about 1.5 percentage points higher than its five-decade average.

By the end of the 10-year budget window (fiscal 2032), revenues would be at their 10-year high of 19.1 percent of GDP, a level not seen since the late years of the Clinton administration when the federal budget was briefly in surplus.

The budget's elevated deficits as a share of the economy means that the federal debt held by the public (that is, debt not held in intragovernmental accounts such as the Social Security and Medicare trust funds) is also projected to rise steadily over the next 10 years, from about 102 percent of GDP in the current fiscal year to almost 107 percent of GDP in fiscal 2032.

In another departure from the budget blueprints of many previous administrations, which generally assumed that their proposed policies would be tonic for economic growth—which can then have favorable secondary effects on projected revenue and spending levels—the Biden administration's growth assumptions are relatively modest. Over the next decade, the budget assumes that real economic growth will come in at a bit more than 2 percent per year, roughly in line with its level in the years leading up to the coronavirus pandemic. Real growth would be slightly higher this year and next, however, reflecting a relatively stronger economy as the impact of the pandemic continues to wane.

By contrast, two other economic assumptions in the budget—with respect to projected inflation levels and interest rates—could be interpreted as somewhat optimistic, at least compared to current trends. On inflation, the blueprint assumes that growth in the Consumer Price Index (CPI) will fall from its currently elevated levels and remain at 2.3 percent per year from 2023 through the end of the 10-year budget window. Similarly, in the administration's view, rates on short- and medium-term Treasury bills and bonds will increase slightly in the

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near-term but then moderate over time. (For example, the rate on a 10-year Treasury note is projected to rise only about 1 percentage point, to 3.3 percent, over the next decade).

Notable assumptions regarding House-passed 'Build Back Better' bill: President Biden's fiscal 2023 budget plan makes a pair of notable assumptions about Democrats' Build Back Better legislation (H.R. 5376)—which passed the House of Representatives on November 19, 2021, but which presently remains stalled in the upper chamber as Senate Democrats continue their quest to find a mix of spending and tax policies that can win the favor of all 50 members of their caucus—that are important to keep in mind in analyzing the policies and revenue estimates included in the budget blueprint. (A detailed summary of the tax provisions in the House-passed bill is available from Deloitte Tax LLP.)
URL: https://www.congress.gov/bill/117th-congress/house-bill/5376/text?q=%7B%22search%22%3A%5B%22h.r.5376
URL: https://www2.deloitte.com/us/en/pages/tax/articles/build-back-better-tax-legislation.html?id=us:2em:3na:tnv:awa:tax:033022&sfid=7015Y000003WdGCQA0

First, in a nod to the fact that Build Back Better negotiations are presently ongoing and their success depends on threading a narrow legislative needle that can win the favor of the entire Senate Democratic caucus (and all but a small handful of House Democrats), the budget includes a so-called "reserve" for the budget impact of any social spending and tax package enacted under the auspices of the Build Back Better initiative. In so doing, the administration avoids wading into most of the specific policy nuances of the House-passed legislation and any changes that may have to be made to secure Senate passage.

Though the reserve is "deficit-neutral"—meaning the White House is assuming that any Build Back Better-related legislation will have no net effect on projected budget deficits—a footnote within the summary tables of the budget acknowledges the political reality of recent demands made by certain moderate Democrats (Sen. Joe Manchin of West Virginia, in particular) that a portion of any new tax increases and spending reductions (for example, through prescription drug pricing reforms) generated as part of Build Back Better legislation should be dedicated to reducing the government's red ink.
URL: https://www.whitehouse.gov/wp-content/uploads/2022/03/budget_fy2023.pdf

"The [b]udget includes a reserve for legislation that reduces costs, expands productive capacity, and reforms the tax system," the footnote states. "While the [p]resident is committed to reducing the deficit with this legislation, this allowance is shown as deficit neutral to be conservative for purposes of the budget totals. Because discussions with Congress continue, the [b]udget does not break down the reserve among specific policies or between revenue and outlays."

Budget's tax proposals measured against baseline that assumes nearly all Build Back Better revenue provisions are in law: Although the budget's top-line revenue and spending levels do not include the budgetary effects associated with the assumed enactment of H.R. 5376, a second notable assumption made by the Treasury Department—and found in the Green Book explanation of the blueprint's revenue proposals—deems nearly all of the tax-related proposals within the House-passed bill as already enacted for purposes of determining the revenue baseline against which the budget impact of the additional revenue proposals included in the fiscal 2023 blueprint is measured.

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“The revenue proposals are estimated relative to a baseline that incorporates all revenue provisions of Title XIII of H.R. 5376 (as passed by the House of Representatives on November 19, 2021), except Sec. 137601,” a note within the Green Book reads.

Sec. 137601, importantly, is the section of the House-passed legislation that would increase the limitation on the itemized deduction for state and local taxes (SALT) to $80,000 for 2021 through 2030, return the limit to its current law level of $10,000 in 2031, and eliminate it thereafter.

The rationale for carving out the House-passed SALT policy from the baseline for revenue estimation purposes may seem to further confirm that Democrats still have not found resolution to this policy dilemma which has driven a wedge between certain moderate and progressive Democrats.

The baseline assumption does, however, imply that the administration views budget policies such as the new 20 percent minimum tax on wealthy individuals, the new top individual tax rate of 39.6 percent, and the proposed increase in the top corporate rate from 21 percent to 28 percent applying after—and in addition to—the House-passed Build Back Better bill’s proposed surtax on high-income individuals (which would add a 5 percent surtax on individuals’ modified adjusted gross income over $10 million and an additional 3 percent surtax on modified adjusted gross income over $25 million) and its 15 percent minimum tax on the adjusted financial statement income of certain large corporations.

Corporate and multinational tax provisions

The administration’s budget blueprint includes familiar proposals to increase the top income tax rate on corporations to 28 percent, provide tax incentives for businesses that locate jobs and business activity in the US, and eliminate deductions for companies that move jobs overseas—all of which date back to then-candidate Joe Biden’s days on the presidential campaign trail and were part of the administration’s fiscal year 2022 budget package.

For fiscal year 2023, the administration has added two significant new proposals that would modify the tax treatment of multinational corporations.

Undertaxed Profits Rule: This proposal would repeal the BEAT and replace it with an Undertaxed Profits Rule (UTPR), intended to be consistent with the UTPR that is described in the Pillar Two of the OECD’s Model Rules. Although applicable with respect to domestic corporations and domestic branches of foreign corporations that are members of the same financial reporting group (a term the Green Book defines in detail for purposes of the proposal), the UTPR is not intended to apply with respect to income subject to an income inclusion regime (IIR) that is consistent with the Pillar Two Model Rules, including income that is subject to Global Intangible Low Tax Income (GILTI) rules. Accordingly, the UTPR is not generally expected to apply to US-parented multinationals and is instead expected by the administration to apply to foreign-parented multinationals operating in low-tax jurisdictions.

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Under the UTPR, a domestic group member would be disallowed US tax deductions to the extent necessary to collect the hypothetical amount of top-up tax required for the financial reporting group to pay an effective tax rate of at least 15 percent in each foreign jurisdiction in which the group has profits. The computation of profit and the effective tax rate for a jurisdiction would be based on the group's consolidated financial statements, with certain specified adjustments including rules to: (1) address temporary and permanent differences between the financial accounting and tax bases and (2) reduce the profits by an amount equal to 5 percent of the book value of tangible assets and payroll with respect to the jurisdiction. (During a transition period of nine years, the exclusion would equal 7.8 percent of the book value of tangible assets and 9.8 percent of payroll, declining annually by 0.2 percentage points for the first four years, by 0.4 percentage points for tangible assets, and by 0.8 percentage points for payroll for the last five years.) The amount of any top-up tax would be computed on a jurisdiction-by-jurisdiction basis, taking into account all income taxes, including the corporate alternative minimum tax.

The deduction disallowance would be applied pro rata with respect to all otherwise allowable deductions and after all other deduction disallowance provisions in the Internal Revenue Code. To the extent that the UTPR disallowance for a taxable year exceeds the aggregate deductions otherwise allowable to the taxpayer for that year, such excess amount of the UTPR disallowance would be carried forward indefinitely until an equivalent amount of deductions is disallowed in future years.

As with the Pillar 2 rules, the percentage top-up tax would be allocated among members of the financial reporting group utilizing a formula based on the portion of the employees and assets of the financial reporting group in the United States as compared to all Qualified UTPR jurisdictions utilizing the following formula:

US allocation =

- *50% × Number of employees in the US/Number of employees in all jurisdictions with qualified undertaxed profit rule plus*
- *50% × Total book value of tangible assets in the US/Total book value of tangible assets in all jurisdictions with qualified undertaxed profit rule*

The top-up tax would be further allocated among domestic group members (domestic corporations and domestic branches) under regulations prescribed by the Secretary.

To address situations in which the prior year's UTPR disallowance has not yet resulted in cash tax liability equal to the full amount of the prior year's allocated top-up tax (for instance, due to net operating losses) the proposal includes a rule providing that no additional top-up tax for the current year would be allocated to the United States until the UTPR disallowance has resulted in a cash tax liability equal to the full amount of the allocated top-up tax. In such a case, any low-taxed profits of the group for the given year would instead be subject to a Qualified UTPR applied in other jurisdictions.

The proposal also includes a domestic minimum top-up tax that would apply when another jurisdiction adopts the UTPR. This top-up tax equals the excess of:

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- 15 percent of the financial reporting group's US profit determined using the same rules as under the UTPR to determine the group's profit for a jurisdiction, over
- All the group's income tax paid or accrued with respect to US profits (including federal and state incomes taxes, corporate alternative minimum tax, and creditable foreign income taxes incurred with respect to US profits).

The Green Book explains that this proposal is intended to "ensure that taxpayers would continue to benefit from tax credits and other tax incentives that promote US jobs and investment."

A number of *de minimis* exclusions are included in the proposal. First, in order to be subject to the UTPR, the financial reporting group must have global annual revenue of $850 million or more in at least two of the prior four years. In addition, the UTPR would not apply to a group's profit in a jurisdiction if the three-year average of the group's revenue in the jurisdiction is less than $11.5 million and the three-year average of the group's profit in the jurisdiction is less than $1.15 million. Further, for groups in the initial phase of their international activity, the UTPR would not apply to a group with operations in no more than five jurisdictions outside of the group's primary jurisdiction and the book value of the group's tangible assets in those jurisdictions is less than $57 million. This exception would expire five years after the first day of the first year in which the UTPR otherwise would apply to the group.

The proposal to repeal the BEAT and replace it with the UTPR would be effective for taxable years beginning after December 31, 2023.

Expand definition of 'foreign business entity': The administration also proposes to expand the definition of "foreign business entity" to treat any taxable unit in a foreign jurisdiction as a foreign business entity for purposes of applying section 6038. Accordingly, information would be required to be reported separately with respect to each taxable unit, and penalties would apply separately for failures to report with respect to each taxable unit.

The proposal would also provide that, except as otherwise provided by the Secretary or her delegates, the annual accounting period for a taxable unit that is a branch or disregarded entity is the annual accounting period of its owner. For example, if a domestic corporation or a controlled foreign corporation (CFC) conducts activity in a foreign branch or owns a foreign disregarded entity, the annual accounting period of the foreign branch or foreign disregarded entity generally would be the annual accounting period of the domestic corporation or CFC, respectively.

Finally, for a taxpayer who is a US person (as defined in section 7701(a)(30) of the code) but who is resident of a foreign jurisdiction, the proposal would provide the Secretary with the authority to treat the taxpayer as a resident of the United States for the purpose of identifying a taxable unit subject to reporting under section 6038.

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The proposal would apply to taxable years of a controlling US 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 US person.

Conform definition of 'control' with corporate affiliation test: This proposal would change the control test under section 368(c) to be the same as the test for affiliated groups under section 1504(a)(2). Under section 368(c), control means at least 80 percent of voting power of all classes of stock entitled to vote and at least 80 percent of each class of nonvoting stock. In contrast, under section 1504(a)(2), the test for affiliated groups is based on at least 80 percent of the total voting power of stock and at least 80 percent of the total value of stock (excluding plain vanilla preferred stock under section 1504(a)(4)). Thus, the section 368(c) control test does not currently contain a value component. The section 368(c) control test is a requirement for qualification under section 351, section 355, and certain reorganizations under section 368(a). If the control test of section 368(c) is changed to include a value component, there could be an impact on (1) section 355 spin-off transactions involving high vote/low vote stock, and (2) so-called "busted 351 transactions," among other transactions. The proposal would be effective for transactions occurring after December 31, 2022, and does not provide for any transition relief.

General business tax credit for onshoring a US trade or business: On the incentive side, the budget plan would create a new general business credit equal to 10 percent of the eligible expenses paid or incurred in connection with onshoring a US trade or business. For this purpose, onshoring a US trade or business means reducing or eliminating a trade, business, or line of business currently conducted outside the United States and starting up, expanding, or otherwise moving the same trade or business within the United States, to the extent that the action results in an increase in US jobs. While the eligible expenses may be incurred by a foreign affiliate of the US taxpayer, the credit would be claimed by the US taxpayer. If a non-mirror code US territory (*e.g.*, Puerto Rico and American Samoa) implements a substantially similar proposal, the US Treasury would reimburse the US territory for the new general business credits provided to their taxpayers pursuant to a plan. In addition, the US Treasury would reimburse a mirror code US territory (*e.g.*, Guam, Northern Marina Islands, and US Virgin Islands) for the new general business credits provided to their taxpayers by reason of the enactment of the proposal.

Provisions affecting high-wealth taxpayers

In addition to calling for increasing the top income tax rate to 39.6 percent—a proposal carried over from the administration's fiscal year 2022 budget blueprint—the latest budget package proposes to increase taxes on high-wealth taxpayers through a new minimum tax for all taxpayers with wealth greater than $100 million, changes in the treatment of capital gain income for certain taxpayers, and modifications to certain rules governing estates, gifts, and trusts.

Minimum income tax on the wealthiest taxpayers: The administration proposes a minimum tax of 20 percent on total income, generally inclusive of unrealized capital gains, for all taxpayers with wealth greater than $100 million. A taxpayer's minimum tax liability would be the minimum rate of 20 percent times the sum of (1) taxable income and (2) unrealized gains, including on ordinary assets. This product would then be reduced by

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the sum of the taxpayer's unrefunded, uncredited prepayments and regular tax. Payments of the minimum tax would be treated as a prepayment to be credited against future taxes on realized capital gains, thus avoiding taxing the same amount of gain more than once. Uncredited prepayments may, subject to limitations, be refunded if unrealized capital gains are significantly reduced in a given year—for example, by reason of an unrealized loss or a charitable gift of an appreciated asset. Special refund rules would apply upon a taxpayer's death.

Taxpayers could choose to pay the first year of minimum tax in nine equal, annual installments. For subsequent years, taxpayers could choose to pay the minimum tax imposed for those years in five annual installments. No mention is made of an interest charge related to such a deferral.

Taxpayers with wealth greater than the threshold amount would be required to report to the IRS on an annual basis, separately by asset class, the total cost basis and total estimated value as of year-end of their assets in each specified asset class, as well as their total liabilities. Tradable assets, such as publicly traded stock, would be valued using end-of-year market prices. Nontradable assets would be valued using the greater of the original or adjusted cost basis; the last valuation event from investment, borrowing, or financial statements; or other methods approved by the Secretary. Thus, valuations of nontradable assets would not be required annually. However, in years where no objective data is available, the value of such assets would be increased by a floating annual return (the five-year Treasury rate plus 2 percentage points). This reporting would also be used to determine if the taxpayer is eligible to be treated as "illiquid." Taxpayers would be treated as illiquid if tradeable assets make up less than 20 percent of the taxpayer's wealth. A taxpayer that is illiquid may elect to include only unrealized gain in tradeable assets in the calculation of minimum tax liability. However, taxpayers who make this election would be subject to a deferral charge.

This proposal would be effective for taxable years beginning after December 31, 2022.

Increase tax rate on tax preferential income: Under this proposal, long-term capital gains and qualified dividends of taxpayers with taxable income of more than $1 million ($500,000 for married taxpayers filing separately) would be taxed at ordinary income tax rates. These threshold amounts would be indexed for inflation after 2023. The Green Book provides an example of a taxpayer with $1.1 million of taxable income, which includes $200,000 of preferential capital gain income, with the result that $100,000 of the capital gain income would be taxed at the preferential rate and $100,000 taxed at ordinary rates. This proposal would be effective for gains and dividends required to be recognized on or after the date of enactment.

Treat transfers of appreciated property by gift or on death as realization events: Under the proposal, "the donor or deceased owner" of an appreciated asset would realize "a capital gain" at the time of the transfer. Gain recognition on assets characterized as income in respect of a decedent is not discussed in this proposal.

A gift or transfer at death would be valued using the methodologies used for estate or gift tax purposes, except that, for purposes of this tax, a transferred partial interest would be its proportional share of the fair market value "of the entire property," provided that this rule would not apply to an interest in a trade or business to the extent its assets are actively used in the conduct of that trade or business.

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The Green Book states that "for purposes of the imposition of this capital gains tax," transfers of property into, and distributions in kind from a trust (including charitable split-interest trusts), other than a grantor trust that is deemed to be wholly owned and revocable by the donor, would be recognition events, as would transfers of property to, and by, a partnership or other noncorporate entity, if the transfers have the effect of a gift to the transferee. Special rules would apply to split interest trusts having a charitable component. For revocable trusts, capital gains tax would be computed at the death of the donor (or at the time the trust becomes irrevocable) and would be taxed to the decedent/donor.

"Gain on unrealized appreciation" also would be recognized by a trust, partnership, or other noncorporate entity that is the owner of property if that property has not been the subject of a recognition event within the prior 90 years, with such testing period beginning on December 31, 1939. The first possible recognition event for any taxpayer under this provision would thus be December 31, 2030.

The following exclusions would apply:

- Transfers by a decedent to a US spouse or to charity would carry over the basis of the decedent.
- The proposal would exclude from recognition any gain on tangible personal property such as household furnishings and personal effects (excluding collectibles).
- The $250,000 per-person exclusion for capital gain on a principal residence would apply to all residences and would be portable to the decedent's surviving spouse, making the exclusion effectively $500,000 per couple.
- The exclusion for capital gain on certain small business stock (under section 1202) would also apply.
- The proposal would allow a $5 million per-person exclusion, indexed for inflation after 2022, from recognition of other unrealized capital gains on property transferred by gift during life or transferred by reason of death. This exclusion would apply only to unrealized appreciation on gifts to the extent that the donor's cumulative total of lifetime gifts exceeds the basic exclusion amount in effect at the time of the gift. The per-person exclusion would be portable to the decedent's surviving spouse, making the exclusion effectively $10 million per married couple. No mention is made of gain recognition on gifts that utilize the donor's applicable exclusion amount.

Under the proposal, the recipient's basis in property, whether received by gift or by reason of the decedent's death, would be the property's fair market value at the time of the gift or the decedent's death.

The proposal also provides that gain arising by reason of a death would be taxable income to the decedent. How that gain is to be reported is also not entirely clear; however, "the use of capital losses and carryforwards from transfers at death would be allowed against capital gains income and up to $3,000 of ordinary income on the decedent's final income tax return," and the tax imposed on gains deemed realized at death would be deductible on the estate tax return of the decedent's estate (if any).

Payment of tax on the appreciation of certain family-owned and operated businesses would not be due until the interest in the business is sold or the business ceases to be family-owned and operated.

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Furthermore, the proposal would allow a 15-year, fixed-rate payment plan for the tax on appreciated assets transferred at death, other than liquid assets such as publicly traded financial assets and other than businesses for which the estate tax deferral election is made.

The proposal also includes authorization for other legislative changes designed to facilitate and implement this proposal, notably: the achievement of consistency in valuation for transfer and income tax purposes; coordinating changes to reflect that the recipient would have a basis in the property equal to the value on which the capital gains tax is computed; and a broad grant of regulatory authority to provide implementing rules.

The proposal would be effective for gains on property transferred by gift, and on property owned at death by decedents dying, after December 31, 2022, and on certain property owned by trusts, partnerships, and other noncorporate entities (S corporations are not mentioned in this proposal) on January 1, 2023.

Modify income, estate, and gift tax rules for certain grantor trusts: The proposal would require that the remainder interest in a GRAT at the time the interest is created have a minimum value for gift tax purposes equal to the greater of 25 percent of the value of the assets transferred to the GRAT or $500,000 (but not more than the value of the assets transferred).

In addition, the proposal would prohibit any decrease in the annuity during the GRAT term and would prohibit the grantor from acquiring in an exchange an asset held in the trust without recognizing gain or loss for income tax purposes. The proposal would require that a GRAT have a minimum term of 10 years and a maximum term of the life expectancy of the annuitant plus 10 years.

For irrevocable trusts, including GRATs, the proposal would treat the transfer of an asset for consideration between a grantor trust and its deemed owner “or any other person” as one that is regarded for income tax purposes, which would result in the seller recognizing gain on any appreciation in the transferred asset and the basis of the transferred asset in the hands of the buyer being the value of the asset at the time of the transfer. For a GRAT, the satisfaction of an annuity payment in kind would be considered a gain recognition event.

Additionally, the proposal would provide that the payment of the income tax on the income of a grantor trust is a gift on December 31 of the year the income is incurred unless the grantor is reimbursed by the trust in that same year.

The GRAT portion of the proposal would apply to all GRATs created on or after the date of enactment. The portion of the proposal characterizing the grantor’s payment of income taxes as a gift also would apply to all trusts created on or after the date of enactment. The gain recognition portion of the proposal would apply to all transactions between a grantor trust and its deemed owner occurring on or after the date of enactment.

Require consistent valuation of promissory notes: The proposal would impose a consistency requirement by providing that, if a taxpayer treats any promissory note as having a sufficient rate of interest to avoid the treatment of any foregone interest on the loan as income or any part of the transaction as a gift, that note

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subsequently must be valued for federal gift and estate tax purposes by limiting the discount rate to the greater of the actual rate of interest of the note, or (for estate tax purposes) the applicable minimum interest rate for the remaining term of the note on the date of death.

The proposal would apply to valuations as of a valuation date on or after the date of introduction.

Tax administration for trusts and decedents' estates: The budget blueprint includes proposals to:

- **Expand definition of 'executor':** The administration would impose a common definition of "executor" for all tax purposes, and would authorize such an executor to do anything on behalf of the decedent in connection with the decedent's pre-death tax liabilities or other tax obligations that the decedent could have done if still living. In situations where the definition would apply to multiple parties, special rules would apply.
- **Increase the limit on the reduction in value of special use property:** The proposal would increase the cap on the maximum valuation decrease for "qualified real property" elected to be treated as special use property to $11.7 million for decedents dying on or after the date of enactment.
- **Extend 10-year period for certain estate and gift tax liens:** The proposal would extend the duration of the automatic lien beyond the current 10-year period to continue during any deferral or installment period for unpaid estate and gift taxes. The extension would apply to any deferral in place at or coming into existence after the date of enactment.
- **Require reporting of estimated total value of trust assets:** The proposal would require certain trusts administered in the US to report certain information, including trust net asset value, to the IRS on an annual basis to facilitate the appropriate analysis of tax data, the development of appropriate tax policies, and the administration of the tax system. This reporting requirement for a taxable year would apply to each trust whose estimated total value on the last day of the taxable year exceeds $300,000 or whose gross income for the taxable year exceeds $10,000. The proposal would apply for taxable years ending after the date of enactment.

Limit duration of generation-skipping transfer tax (GST) exemption: The proposal would provide that the GST exemption would apply only to:

- Direct skips and taxable distributions to beneficiaries no more than two generations below the transferor, and to younger-generation beneficiaries who were alive at the creation of the trust and
- Taxable terminations occurring while any person described above is a beneficiary of the trust.

However, the "move-down rule" of section 2653 would no longer apply. In addition, solely for purposes of determining the duration of the exemption, a pre-enactment trust would be deemed to have been created on the date of enactment. A special rule would port the creation date of the original trust upon a decanted trust. The result of these proposals is that the benefit of the GST exemption that shields property from the GST tax may not last as long as the trust. Instead, it would shield the trust assets from GST tax only as long as the life of any trust beneficiary who either is no younger than the transferor's grandchild or is a member of a younger generation but who was alive at the creation of the trust. The Secretary or her delegate is granted a broad

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mandate to facilitate the implementation and administration of this provision and, presumably, to harmonize its provisions with the existing GST framework.

The proposal would apply on and after the date of enactment to all trusts subject to the generation-skipping transfer tax, regardless of the trust's inclusion ratio on the date of enactment.

Limit use of donor advised funds to avoid private foundation payout requirement: Under the proposal, a distribution by a private foundation to a donor advised fund (DAF) is not a qualifying distribution unless (1) the DAF expends such funds as a qualifying distribution by the end of the following taxable year and (2) the private foundation maintains adequate records or other evidence showing that the DAF has made a qualifying distribution within the required time frame. The proposal would be effective after the date of enactment.

Address compliance in connection with tax responsibilities of expatriates: The budget blueprint would make two changes to the rules for expatriates. First, it would provide that, in the case where a taxpayer is required to provide IRS Form 8854, *Initial and Annual Expatriation Statement* (a form required to be filed with a taxpayer's income tax return if a taxpayer renounces US citizenship or abandons lawful permanent resident status in order to assist in determining whether the individual is subject to the expatriation mark-to-market exit tax and to compute such tax, if applicable) with his or her tax return, the time for assessment of tax will not expire until three years after the date on which Form 8854 is filed with the IRS. Second, the proposal would grant the Secretary of the Treasury and her delegates authority to provide relief from the rules for covered expatriates for a narrow class of lower-income dual citizens with limited US ties. The proposal would be effective for taxable years beginning after December 31, 2022.

Provisions affecting noncorporate taxpayers

The budget includes several proposals intended to tighten the tax rules for noncorporate taxpayers.

Prevent basis shifting by related parties through partnerships: Under current law, a partnership may generally elect, in the case of a distribution of property (section 734), to adjust the tax basis of its partnership property under section 754. This proposal intends to "reduce the ability of related parties to use a partnership to shift partnership basis among themselves."

Specifically, the Green Book provides that, if a partnership distributes property that results in a step-up to the basis of the partnership's nondistributed property, a matching rule would apply to prohibit any partner that is related to the distributee-partner from benefitting from the partnership's basis step-up until the distributee-partner disposes of the distributed property in a fully taxable transaction. The Green Book does not define what the term "related" means for purposes of this proposal. Regulatory authority is provided to Treasury to implement the matching rule.

The proposal would be effective for partnership taxable years beginning after December 31, 2022.

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Elimination of the corporate income tax exception for publicly traded partnerships: A publicly traded partnership is subject to corporate income tax unless at least 90 percent of its income is "qualifying income," which includes, among other things, interest, dividends, rents from real property, income and gain derived from natural resources, and income and gain from certain financial transactions. Consistent with its budget blueprint for fiscal year 2022, the administration proposes to eliminate the corporate income tax exception for any publicly traded partnership with qualifying income or gains from activities relating to fossil fuels.

The proposal would be effective for taxable years beginning after December 31, 2027.

Tax carried (profits) interests as ordinary income: A taxpayer may provide services to a partnership in exchange for a partnership interest that participates in profits. This type of partnership interest is commonly known as a "profits interest" or "carried interest." As part of the Tax Cuts and Jobs Act, Congress added section 1061, which generally extends the long-term holding period requirements for certain capital gains resulting from partnership property dispositions and from partnership interest sales from more than one year to more than three years.

Consistent with the Biden administration's fiscal year 2022 budget plan, this proposal would similarly repeal section 1061 and change the taxation of certain profits interests for taxpayers with taxable income (from all sources) in excess of $400,000. Specifically, if these taxpayers held an investment services partnership interest (ISPI), as defined below, in an investment partnership, their distributive share of income would be treated as ordinary regardless of the character of the income at the partnership level. Likewise, any gain from a partner's sale of an ISPI also would be taxed at ordinary rates. Additionally, this proposal would require these taxpayers to pay SECA tax on ISPI income.

The Green Book defines an ISPI as a profits interest in an investment partnership held by a person who provides services to the partnership. A partnership would be an investment partnership if substantially all of its assets are investment-type assets, but only if over half of the partnership's contributed capital is from partners in whose hands the interests constitute property not held in connection with a trade or business.

If a partner that holds an ISPI also transfers "invested capital" (*e.g.*, generally money or other property) to the partnership and the partner's invested capital is a "qualified capital interest," the Green Book explains that income attributable to the invested capital would not be recharacterized as ordinary and would continue to be eligible for capital gain treatment. In general, in order for a partner's invested capital to be treated as a qualified capital interest, the partnership would have to make allocations with respect to the invested capital in the same manner that it makes allocations to other non-ISPI holders (and such allocations are significant to these non-ISPI holders).

Special anti-abuse rules would apply, especially in the case of "disqualified interests." The proposal is not intended to adversely affect qualification of a REIT owning a profits interest in a real estate partnership.

The proposal would be effective for taxable years beginning after December 31, 2022.

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Repeal deferral of gain from like-kind exchanges: The proposal would limit the deferral of gain from like-kind exchanges of real property to $500,000 for each taxpayer ($1 million for married individuals filing a joint US federal income tax return) for each taxable year. The proposal would be effective for like-kind exchanges completed in taxable years beginning after December 31, 2022.

Limit a partner's deduction in certain syndicated conservation easement transactions: Under current law, section 170(h) provides a charitable deduction for a qualified conservation contribution, subject to limitations, made by passthrough entities. The IRS also released Notice 2017-10, which generally provides that some conservation easement transactions are listed transactions. Accordingly, this proposal would amend section 170(h) to deny certain charitable deductions for a contribution of a conservation easement by a partnership (whether directly or as a distributive share of contribution of another partnership) if the amount of the contribution exceeds 2.5 times the sum of each partner's relevant basis in such partnership.

The proposal does not apply to donations of property that meet the requirements of a three-year holding period rule or in the case of certain family partnerships.

The proposal would be effective for contributions made in taxable years ending after December 23, 2016, or, in the case of contributions to preserve a certified historic structure, for contributions made in taxable years beginning after December 31, 2018.

100 percent depreciation recapture for section 1250 property: The proposal would treat any gain upon disposition of section 1250 property held for more than one year as ordinary income to the extent of the cumulative depreciation deductions taken after the effective date of the provision. The proposal would not apply to noncorporate taxpayers with adjusted taxable income below $400,000 ($200,000 for married individuals filing separate US federal income tax returns). The proposal would be effective for depreciation deductions taken on section 1250 property in taxable years beginning after December 31, 2022 and sales, exchanges, involuntary conversions, or other dispositions of section 1250 property completed in taxable years beginning after December 31, 2022. Partnerships and S corporations would be required to determine the character and compute the gains and/or losses on the disposition of property used in a partnership's or S corporation's trade or business (*e.g.*, section 1245 property, section 1250 property, and land) at the entity level and report the relevant amounts of ordinary income/loss, capital gain/loss, and unrecaptured section 1250 gain under the proposed law and existing law to the entity's owners, enabling the entity's owners to apply the proposed law, if applicable.

A noncorporate taxpayer's depreciation deduction taken on section 1250 property prior to the effective date of the proposal would be recaptured as ordinary income to the extent any such deduction exceeds the cumulative allowance determined using the straight-line depreciation method.

Tax treatment of digital assets

Building on proposals in its fiscal year 2022 budget blueprint, the administration has proposed several additional rules addressing the tax treatment of digital assets.

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Modernize rules treating loans of securities as tax-free to include other asset classes and address income inclusion: The administration proposes to expand the securities loan nonrecognition rule in section 1058 to apply to loans of digital assets, provided that such loans have terms that are similar to those currently required for securities loans in section 1058. The proposal would also grant Treasury and the IRS the authority to extend such securities loan nonrecognition rules to loans of other assets, such as publicly traded partnership interests. The administration further proposes that rules be enacted to (1) require lenders in such property lending transactions to take into account income on the underlying asset (*i.e.*, the security, digital asset, or publicly traded partnership interest) in a manner that clearly reflects income, (2) provide for appropriate basis adjustments to the loan contract and when the loaned asset is returned, and (3) clarify that certain loans with a fixed term are subject to the nonrecognition rules. This proposal would be effective for taxable years beginning after December 31, 2022.

Provide for information reporting by certain financial institutions and digital asset brokers for purposes of exchange of information: The administration proposes to expand US financial institution reporting obligations on non-US account holders. According to the Green Book, this proposal would result in more robust reciprocal tax information exchange between the US and jurisdictions with which it maintains reciprocal income tax treaties or intergovernmental agreements under the Foreign Account Tax Compliance Act (FATCA). The rules would require US financial institutions to report (1) account balances for financial accounts maintained in the US that are held by foreign persons, (2) non-US source income payments to accounts held by foreign persons, (3) gross proceeds from sale or redemption of property custodied in financial accounts held by foreign persons, and (4) information regarding passive entities and their substantial foreign owners. The proposal does not address the documentation or form updates that would be required to collect and report this new information.

Additionally, the proposal would require digital asset exchanges—defined as brokers under the amended section 6045—to report substantial foreign owners of passive entities. These updates would require gross proceeds reporting of digital asset sales effectuated on behalf of foreign customers and, in the case of passive entities, substantial foreign owners. By obtaining this information, the US would be able to exchange information with partner jurisdictions to reciprocally receive US taxpayer information on digital asset transactions. This reporting update would effectively bring digital assets into the scope of the Foreign Account Tax Compliance Act (FATCA) reporting requirements. The amendments are proposed to be effective for returns required to be filed after December 31, 2023.

Require reporting by certain taxpayers of foreign digital asset accounts: The administration proposes to require individuals and certain domestic entities to disclose digital assets maintained in a “foreign digital asset account,” defined as “any account that holds digital assets maintained by a foreign digital asset exchange or other foreign digital asset service provider.” Taxpayers report this information on IRS Form 8938, Statement of Specified Foreign Financial Assets, and disclosure would only be required where a taxpayer holds an aggregate of foreign accounts or assets exceeding $50,000. The amendments are proposed to be effective for returns required to be filed after December 31, 2022.

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Amend the mark-to-market rules for dealers and traders to include digital assets: The administration proposes to amend the mark-to-market rules under section 475 to include digital assets as another category of assets that may be marked to market by a dealer or trader in such assets. Under such rules, dealers or traders in digital assets would be able to elect to apply mark-to-market treatment to their actively traded digital assets and derivatives on (or hedges of) such digital assets. The rules would be similar to the section 475 rules addressing elective mark-to-market treatment for dealers and traders in actively traded commodities. Under such rules, digital assets would not be considered securities or commodities for purposes of section 475, such that taxpayers that are traders or dealers in digital assets would be able to elect mark-to-market treatment only under the rules specifically applicable to digital assets. The proposal would be effective for taxable years beginning after December 31, 2022.

Energy-related tax provisions

The president's fiscal year 2023 budget blueprint does not include specific provisions to promote production and investment tax credits related to renewable and alternative energy property, credits for production of certain alternative fuels, incentives to promote low- and zero-emission vehicles, and incentives for energy-efficient building projects. It's worth noting, though, that the budget does assume that dozens of green energy incentives that are included in the House-passed Build Back Better legislation will be enacted into law.

Repeal of fossil fuel incentives: This year's budget proposal specifically reincorporates proposals from the fiscal year 2022 budget release that would repeal certain deductions and other special provisions that, according to the administration, provide distorted incentives to produce fossil fuels. These include:

- The enhanced oil recovery credit for eligible costs attributable to a qualified enhanced oil recovery project;
- The credit for oil and gas produced from marginal wells;
- The expensing of intangible drilling costs;
- The deduction for costs paid or incurred for any qualified tertiary injectant used as part of a tertiary recovery method;
- The exception to passive loss limitations provided to working interests in oil and natural gas properties;
- The use of percentage depletion with respect to oil and gas wells;
- Two-year amortization of geological and geophysical expenditures by independent producers, instead allowing amortization over the seven-year period used by major integrated oil companies;
- Expensing of exploration and development costs;
- Percentage depletion for hard mineral fossil fuels;
- Capital gains treatment for royalties;
- The oil spill liability trust fund excise tax exemption for crude oil derived from bitumen and kerogen-rich rock; and
- Accelerated amortization for air pollution control facilities.

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These provisions generally would be effective for taxable years beginning after December 31, 2022. In the case of royalties, the proposal would be effective for amounts realized after taxable years beginning after December 31, 2022.

Oil Spill Liability Trust Fund (OSLTF), Superfund excise taxes: Under the administration's budget blueprint, eligibility of the OSLTF for drawback would be eliminated. In addition, the administration would extend the Superfund excise tax on crude oil and imported petroleum products to other crudes such as those produced from bituminous deposits as well as kerogen-rich rock. Both proposals would be effective after December 31, 2022.

Economic and community development provisions

The budget blueprint assumes that the slate of expanded credits and incentives aimed at revitalizing economically distressed communities in the House-passed version of Build Back Better legislation are enacted into law.

In addition to those provisions, the administration has proposed a permanent extension of the new markets tax credit, an enhancement to the low-income housing credit, and a new compliance provision related to qualified opportunity funds.

Make the new markets tax credit permanent: The new markets tax credit was last extended by the Consolidated Appropriations Act, 2021 (P.L. 116-260) at $5 billion each calendar year 2020 through 2025. The administration's proposal would extend the credit permanently with a new allocation for each calendar year after 2025 at $5 billion, indexed for inflation after 2026.

Allow selective basis boosts for bond-financed low-income housing credit projects: This proposal would, in certain cases, enable state or local housing credit agencies (HCAs) to give buildings financed with Qualified Private Activity Bonds (PABs) nongeographic boosts similar to the way that the current law permits HCAs to provide additional allocations of potential credits. The HCA would provide the boost by designating a PAB-financed building as requiring an increase in credit to be financially feasible as part of a qualified low-income housing project. Therefore, regardless of where the designated building is located, it would be eligible to receive a basis boost as if it were in a location that produces eligibility for such a boost under current law. This nongeographic boost, however, would apply only to new construction or to a substantial rehabilitation that adds new net units. The proposal would be effective for buildings that receive more than *de minimis* financing from certain PABs. These PABs must be part of a bond issue with an issue date after the date of enactment.

Extend the period for assessment of tax for certain qualified opportunity fund investors: Taxpayers who invest in a qualified opportunity fund (QOF) may elect to defer eligible gain from the taxpayer's income for the year the gain is realized. The gain is generally deferred until December 31, 2026. However, if an "inclusion event" occurs (*e.g.*, the fund loses its QOF status), the taxpayer must include the deferred gain in its income for the year in which the inclusion event occurs. The Green Book notes that a longer assessment statute of limitation is needed for taxpayers who defer gain from QOFs because inclusion events "may not be readily

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identifiable on the taxpayer's return" so the IRS may not know about the inclusion event before the three-year assessment statute of limitation expires. Thus, the proposal would extend the assessment statute of limitations until "three years after the date on which the IRS is furnished with all of the information that it needs to assess the deficiencies." The proposal would apply to QOF deferral elections made after December 22, 2017 (the date the Tax Cuts and Jobs Act was enacted); however, the new rule would not apply to situations where statute of limitations expired before enactment of new rule.

Tax administration and compliance provisions

The administration has argued that it can raise significant revenue by reducing the so-called "tax gap"—the difference between the amount of tax legally owed to the government and the amount actually collected. To that end, the budget blueprint notes that the White House "continues to support multiyear investments in IRS tax enforcement to increase tax compliance and revenues that the president has previously proposed." (Overall, the White House proposes to increase the Service's operating budget to $14.1 billion for the coming fiscal year, including additional funds for business systems modernization and customer service improvements.)

In addition to the proposed fiscal increases for the IRS, the budget blueprint also includes several targeted measures that are intended to ensure taxpayer compliance.

Expanded electronic filing requirements: The Treasury Department and the IRS currently have the authority to issue regulations that require electronic filing of certain specified returns if the taxpayer files a minimum number of returns during a year. The IRS also requires backup withholding on a reportable payment if a payee fails to furnish the payee's taxpayer identification number (TIN) to the payor in the manner required.

Currently, the IRS may only require that the payee furnish the TIN under penalties of perjury with respect to interest, dividends, patronage dividends, and amounts subject to broker reporting.
The budget proposal would expand the Secretary's authority to require electronic filing for forms and returns to include: (1) income tax returns of individuals with gross income of $400,000 or more; (2) income, estate, or gift tax returns of all related individuals, estates, and trusts with assets or gross income of $400,000 or more in any of the three preceding years; (3) partnership returns for partnerships with assets or any item of income of more than $10 million in any of the three preceding years; (4) partnership returns for partnerships with more than 10 partners; (5) returns of REITs, REMICs, RICs, and all insurance companies; and (6) corporate returns for corporations with $10 million or more in assets or more than 10 shareholders.

Further, electronic filing would be required for the following forms: (1) Form 8918, *Material Advisor Disclosure Statement*; (2) Form 8886, *Reportable Transaction Disclosure Statement*; (3) Form 1042, *Annual Withholding Tax Return for US Source Income of Foreign Persons*; (4) Form 8038-CP, *Return for Credit Payments to Issuers of Qualified Bonds*; and (5) Form 8300, *Report of Cash Payments Over $10,000 Received in a Trade or Business*.

Return preparers that expect to prepare more than 10 corporation income tax returns or partnership returns would also be required to file such returns electronically. In addition, the Treasury Department and the IRS

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would also be authorized to determine additional returns, statements, and other documents that must be filed in electronic form.

Separately, in order to improve information reporting for reportable payments subject to backup withholding, the proposal would permit the IRS to require payees of any reportable payments to furnish their TINs to payors under penalty of perjury. The proposal would be effective for payments made after December 31, 2022.

Address taxpayer noncompliance with listed transactions: The IRS has identified "intermediary transaction tax shelters" as listed transactions that require disclosure on a tax return to avoid certain penalties. According to Treasury's Green Book, an additional fact pattern merits closer scrutiny. In a typical case of this sort, an intermediary purchases the stock of a C corporation from the C corporation's shareholders, then sells the C corporation's assets. The C corporation does not pay the tax owed from the asset sale. The intermediary does not pay the corporate income tax liability and is judgment-proof, frustrating the IRS's ability to collect taxes that are legally owed. The transaction may yield the selling shareholders a higher sales price for their C corporation stock than could be supported if the corporate income tax liability were to be paid.

The Green Book also notes more generally that "additional time is needed for the IRS to conduct examinations and assess taxes in connection with listed transactions, which may be complex in nature and require a thorough examination of the relevant facts."

The proposal would increase the assessment statute of limitations for returns reporting benefits from listed transactions from three years to six years. The proposal also would increase the limitations period for listed transactions under section 6501(c)(10) from one year to three years.

The Green Book notes that under certain circumstances, the proposal would impose on shareholders who sell the stock of an "applicable C corporation" secondary liability ("without resort to any state law") for payment of the applicable C corporation's income taxes, interest, additions to tax, and penalties to the extent of the sales proceeds received by the shareholders.

These proposed changes would be effective for sales of controlling interests in the stock of applicable C corporations occurring on or after April 10, 2014. For taxpayers that reported a listed transaction on their tax return, this proposal could reopen the assessment statute of limitations for a year for which the assessment statute had already closed.

Amend the centralized partnership audit regime to permit the carryover of a reduction in tax that exceeds a partner's tax liability: Under section 6226, reviewed year partners (partners in the partnership's tax year to which the adjustment relates) compute the changes in tax liability resulting from adjustments to the partnership's tax return and take into account the changes in tax liability on their reporting year tax return. If the calculation results in a net decrease, then that amount can be used by the partners to reduce their reporting year income tax liabilities. The amount of the net negative change in tax that exceeds the reporting year income tax liability does not result in an overpayment that can be refunded nor can that amount be carried forward; rather, it is permanently lost.

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Several states have passed legislation in response to the centralized partnership audit regime. However, few of these states, if any, have adopted the federal mechanics for partners to reduce their state tax on the reporting year return. Most states require the partners to amend their state tax returns for the reviewed year and all subsequent years impacted by the change.

The proposal would amend sections 6226 and 6401 to provide that the amount of the net negative change in tax that exceeds the income tax liability of a partner in the reporting year is considered an overpayment under section 6401 and may be refunded.

The proposal would be effective upon enactment.

Incorporate Chapters 2/2A in centralized partnership audit regime proceedings: The centralized partnership audit regime currently provides different treatment of Chapters 1 (income tax) and 2/2A (self-employment income tax/net investment income tax) adjustments for reporting, tax calculation, and assessment purposes. The IRS currently addresses adjustments impacting the Chapter 1 liability of any person at the partnership level, meaning the IRS must generally assess and collect from the partnership an imputed underpayment amount with respect to such adjustments that would increase the taxable income of its partners. In contrast, with respect to Chapters 2/2A taxes, the IRS must assess and collect these taxes from individual partners, rather than the partnership.

The proposal would amend the definition of a Partnership-Related-Item to include items that affect a person's Chapter 2/2A taxes and would apply the highest rate of tax in effect for the reviewed year under section 1401 or 1411 of the Internal Revenue Code to these items. The proposal would be effective after the date of enactment for all open taxable years.

Authorize limited sharing of business tax return information: Current law authorizes the IRS to disclose certain federal tax information (FTI) for governmental statistical use. Business FTI may be disclosed to officers and employees of the Census Bureau for all businesses. Similarly, business FTI may be disclosed to officers and employees of the Bureau of Economic Analysis (BEA), but only for corporate businesses. The Bureau of Labor Statistics (BLS) is currently not authorized to receive FTI.

This proposal would give officers and employees of BEA access to FTI of (1) those sole proprietorships with receipts greater than $250,000 and (2) all partnerships.

The proposal would also give BLS officers and employees access to certain business (and tax-exempt entities) FTI including:

- TIN;
- Name(s) of the business;
- Business address (mailing address and physical location);
- Principal industry activity (including business description);

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- Number of employees and total business-level wages (including wages, tips, and other compensation, quarterly from Form 941, *Employer's Quarterly Federal Tax Return*, and annually from Forms 943, *Employer's Annual Federal Return for Agricultural Employees*, and 944, *Employer's Annual Federal Tax Return*); and
- Sales revenue for employer businesses only.

BLS would not have access to individual employee FTI.

Impose an affirmative requirement to disclose a position contrary to a regulation: The Internal Revenue Code imposes a 20 percent accuracy-related penalty on underpayments attributable to disregard of a rule or regulation. In general, this penalty does not apply if the taxpayer adequately discloses on a Form 8275-R, *Regulation Disclosure Statement*, a tax position contrary to a regulation when it files its return. Currently, there is no affirmative obligation for a taxpayer to disclose a tax position contrary to a regulation when it files its return.

The proposal imposes an affirmative requirement on taxpayers to disclose a position on a return that is contrary to a regulation. A taxpayer that fails to make the required disclosure would be subject to an assessable penalty that is 75 percent of the decrease in tax shown as a result of the position, unless the taxpayer can show the failure to disclose is due to reasonable cause and not willful neglect. The penalty amount shall not be less than $10,000 or more than $200,000, adjusted for inflation.

The proposal would be effective for returns filed after the date of enactment.

Extend to six years the statute of limitations for certain tax assessments: Section 6501 of the Internal Revenue Code generally provides the IRS a three-year period to assess tax after the filing of a return but is subject to several exceptions. In complex cases, completing the examination process may exceed the three-year period of limitations for assessment.

The proposed change would amend section 6501 to provide a six-year statute of limitations if a taxpayer omits from gross income more than $100 million on a return.

The proposal would be effective for returns required to be filed after the date on enactment.

Expand and increase penalties for noncompliant return preparation and e-filing: Under current law, anyone who is paid to prepare or assists in preparing all or substantially all of a federal tax return must have a Preparer Tax Identification Number (PTIN). Paid tax return preparers must sign and include their PTIN on the return. E-file providers must apply with the IRS and pass a suitability check before becoming an authorized e-file provider and receiving an Electronic Filing Identification Number (EFIN), which is required to electronically file tax returns.

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New penalties are proposed for the appropriation of PTINs and EFINs and for failing to disclose the use of a paid tax return preparer. A $1,000 penalty would apply for each appropriation of a PTIN, with a maximum penalty of $75,000 for a calendar year. A $250 penalty would apply for each appropriation of an EFIN.

Additionally, under the proposal, the limitations period to assess a penalty on a preparer for failing to furnish the preparer's identifying number would increase from three years to six years. The proposal would also clarify the Secretary's authority to regulate the conduct and suitability of persons who participate in the authorized e-file program, including setting standards and imposing sanctions to protect the integrity of the e-file program.

The proposal would also increase the amount of the tax penalties that apply to paid tax return preparers for willful, reckless, or unreasonable understatements, as well as for forms of noncompliance that do not involve an understatement of tax.

The proposal would be effective for returns filed after the date of enactment.

Increase oversight of paid tax return preparers: To ensure that paid tax return preparers are operating in a professional manner, the administration proposes to amend Title 31 of the US Code to provide the Secretary with explicit authority to regulate all paid preparers of federal tax returns, including by establishing mandatory minimum competency standards. This provision would be effective on the date of enactment.

Address compliance in connection with tax responsibilities of expatriates: This proposal is discussed in the section on individual tax provisions elsewhere in this report.

Extend the period for assessment of tax for certain qualified opportunity fund investors: This proposal is discussed in the section on economic and community development provisions elsewhere in this report.

Lawmakers weigh in

Initial reactions to the president's budget package on Capitol Hill have split largely along party lines.

Democrats endorse tax, spending priorities: Sen. Ron Wyden, D-Ore., chairman of the Senate Finance Committee, highlighted his own proposal for a "Billionaires Income Tax" (which he unveiled last October but did not formally introduce as legislation) in lauding the administration's focus on taxing the wealthiest individuals.

"There's no way to fix our broken tax code without getting at the problem of billionaires avoiding taxes for decades, if not indefinitely," he said March 28. "While there are differences between the president's proposal and the Billionaires Income Tax, we're rowing in the same direction. I look forward to working with President Biden and my colleagues to move these reforms forward."

Wyden's proposal would have imposed mark-to-market on the holdings of taxpayers with at least $1 billion in assets or at least $100 million in income for three consecutive years.

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For his part, House Ways and Means Chairman Richard Neal, D-Mass., did not specifically address any tax proposals but focused his comments largely on the administration's spending priorities.

"This budget frames the Biden administration's vision for how we can continue the momentum of the past year and bolster the nation's strong recovery from the COVID-19 crisis," he said. "We must invest in ongoing efforts to fight the pandemic and protect people's health—our economic strength depends on our ability to keep the virus at bay. This budget prioritizes addressing the nation's mental health crisis as well, an issue that touches nearly every household in some way. It also proposes improvements to Americans' long-term financial security by guaranteeing paid family and medical leave, supporting families with children, and lowering the costs of health care and prescription drugs."

In a call with reporters March 28, the White House Office of Management and Budget Director Shalanda Young said the goal in leaving the specific details of Build Back Better out of the budget and instead providing a placeholder in the form of a deficit-neutral agreement was to avoid "get[ting] ahead of congressional negotiations" and preserve maximum flexibility for the ongoing talks on the Hill.

"The deficit-neutral reserve fund is meant to leave the space, the revenue specifically, to allow congressional negotiators the room to do what President Biden has asked," Young said.

House Budget Committee Chairman John Yarmuth, D-Ky., told a Fox News reporter March 28 it was "a fair statement" that the latest budget was crafted to appease West Virginia Democratic Sen. Joe Manchin, who brought action on Build Back Better legislation to a halt late last year when he announced that he does not support the House-passed bill (and thus would not provide the crucial fiftieth vote that Democrats need to move the measure through Congress under fast-track budget reconciliation rules). Manchin has played a significant role over the past year in shaping the contours of the potential tax-and-spending bill, and his support is essential for passage in the evenly divided Senate. At the same time, detailing a scaled-down plan that would align with what Manchin has indicated he might support would likely rankle the more progressive Democrats who support the president's initial ambitious investment goals for the bill.

Manchin already has thrown cold water on the proposed "minimum tax on billionaires" in the budget blueprint, telling *The Hill* on March 29 that "[e]verybody has to pay their fair share, that's for sure, but [taxing] unrealized gains is not the way to do it, as far as I'm concerned."

Senate Budget Committee Chairman Bernie Sanders, I-Vt., laid down his concerns of his own in a news release in which he took issue with certain discretionary spending pieces of the plan, especially for national defense, and called for a windfall profits tax on business.
URL: https://www.sanders.senate.gov/press-releases/news-senate-budget-committee-chairman-sanders-statement-on-president-bidens-budget-proposal-2/

GOP focuses on inflation: Republicans, meanwhile, have seized on the US's record inflation rates to criticize the president's budget proposal, which they argue will only raise costs further for many taxpayers.

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"After inflicting the worst inflation on American families in 40 years, President Biden's new budget blunder has tax hikes that hit the middle class and small family businesses, send jobs fleeing overseas, and more socialist spending," said Rep. Kevin Brady of Texas, the Ways and Means Committee's senior Republican. "This will make inflation worse. If Americans had any hope left that President Biden could restore this economy, this budget should put an end to that."

Finance Committee ranking member Mike Crapo, R-Idaho, expressed similar concerns.

"Far from deficit neutral, the proposal includes a placeholder for the reckless tax-and-spend legislation that stalled after passing in the House on a party-line vote, hiding the true cost of the president's budget request," Crapo said in a news release. "The irresponsible result is a budget that would produce trillion-plus dollar deficits as far as the eye can see and ever-growing federal debt as a share of the overall economy. Worse, these tax-and-spend proposals come on top of record-high inflation, a stealth tax that is hitting Americans from the gas station to grocery stores."

Conversely, in the budget document, the administration argues that some of the investments it proposes—such as lowering prescription drug prices, funding affordable housing, and incentivizing domestic manufacturing—could lower costs for families over time.

Hearings in the works?: We likely will learn more from congressional taxwriters if the Ways and Means and Finance committees follow past practice and hold hearings with the Treasury secretary to discuss the administration's revenue proposals in detail.

In recent years, these hearings have taken place shortly after an administration has released its budget blueprint. No hearing dates had been announced by either panel as of press time, however.

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