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JCT projects $1.7 trillion net revenue gain under White House FY 2023 budget proposal

The tax provisions in the fiscal year 2023 budget blueprint that President Biden sent to Congress this past March would, if enacted into law, result in a net increase in federal receipts of just over $1.7 trillion between fiscal years 2023 and 2032, according to a revenue estimate released by the Joint Committee on Taxation (JCT) staff on July 25. Significantly, however, the estimate does not include revenue from the administration's proposed new income tax on certain ultra-wealthy individuals, as the JCT noted that it currently has insufficient details to score that provision.
URL: https://www.jct.gov/publications/2022/jcx-17-22/

The JCT's estimate is substantially below the $2.5 trillion (net) revenue score provided by the Treasury Department in conjunction with its release of the budget blueprint—a disparity attributable in large part to the fact that the administration measured its budget proposals against a baseline that assumes nearly all of the tax provisions in the expansive Build Back Better legislation that cleared the House last November (other than one that would relax the present-law cap on the deduction for certain state and local taxes) are enacted into law. (A detailed discussion of the tax provisions in the House-approved Build Back Better bill is available from Deloitte Tax LLP.)
URL: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-provisions-in-the-build-back-better-act.pdf

Highlights of notable tax offsets

The president's latest budget release echoes his longstanding calls for significant tax increases targeting multinational entities, large domestic corporations, and high-income individuals to pay for tax relief for low- and middle-income families and new investments in clean energy and economic development. Some of the more notable proposed offsets are highlighted below. (Descriptions of all the administration's tax proposals are available in the "Green Book" released by the Treasury Department along with the budget blueprint. For additional discussion, see *Tax News & Views*, Vol. 23, No. 12, Mar. 29, 2022.)
URL: https://home.treasury.gov/system/files/131/General-Explanations-FY2023.pdf
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/TNV/220329_1.html

Multinational and corporate provisions: The budget blueprint includes a familiar proposal from the fiscal year 2022 tax-and-spending plan to increase the top income tax rate to 28 percent for corporations, which the JCT estimates would increase revenues by nearly $873.4 billion over the 10-year budget window.

A new proposal the White House put forward this year 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. That provision, if enacted, would raise nearly $318.7 billion over 10 years, according to the JCT.

High-wealth provisions: The budget blueprint also proposes a number of provisions reiterating the president's position that the wealthiest individuals should pay "their fair share" in taxes. A proposal to increase the top individual income tax rate to 39.6 percent—an item carried over from fiscal year 2022—would raise nearly $169.9 billion over 10 years, the JCT says.

New proposals to tax long-term capital gains and qualified dividends of taxpayers with taxable income of more than $1 million ($500,000 for married taxpayers filing separately) at ordinary income tax rates and treat transfers of appreciated property by gift or on death as realization events would generate a combined total of roughly $195.2 billion over the budget window, according to the JCT. The administration would raise an additional $30.9 billion through proposed modifications to the income, estate, and gift tax rules for certain grantor trusts.

The JCT staff was *not* able to provide an estimate for a new budget proposal that would impose a minimum tax of 20 percent on total income, generally inclusive of unrealized capital gains, for all taxpayers with wealth greater than $100 million, however. The JCT notes, without elaborating, that the "proposal requires further specification."

Noncorporate business provisions: The budget includes several proposals intended to tighten the tax rules for noncorporate taxpayers, such as:

1. Preventing basis shifting by related parties through partnerships (10-year revenue gain: $27.4 billion);
2. Repealing deferral of gain from like-kind exchanges (10-year revenue gain: $30.9 billion);
3. Taxing carried interest income as ordinary (10-year revenue gain: $1.7 billion); and
4. Limiting a partner's deduction in certain syndicated conservation easement transactions (10-year revenue gain: $17.1 billion).

The White House's carried interest proposal has a revenue score that's lower than those of other proposals to modify the tax treatment of carried interests because it is stacked with the administration's proposal to impose higher rates on certain capital gain income. As a result, the incremental income picked up by the proposed carried interest change is substantially smaller than it would be if it were enacted in isolation.

Fossil fuel taxation: This year's budget blueprint renews proposals from the fiscal 2022 plan that would:

1. Repeal a host of deductions and other incentives that the administration feels unduly benefit the fossil fuel industry,
2. Expand the Superfund excise tax on domestic crude oil and imported petroleum products to apply other crudes, and
3. Eliminate eligibility of the Oil Spill Liability Trust Fund for drawback, for what the JCT estimates to be a combined 10-year revenue gain of $25.1 billion.

Tax rules for digital assets: Building on proposals in its fiscal year 2022 budget blueprint, the administration has called for several additional rules addressing the tax treatment of digital assets. A proposal to amend the mark-to-market rules for dealers and traders to include digital assets would increase revenues by $5.75 billion over 10 years and a proposal to require certain taxpayers to report foreign digital asset accounts would generate $2.5 billion over the budget window.

Tax administration and compliance: The administration would raise roughly $6.1 billion (combined) through a series of targeted proposals aimed at expanding information reporting, tightening taxpayer compliance provisions, and expanding the application of certain tax penalties.

A handful of business and individual tax incentives

On the incentive side, the budget blueprint includes business-friendly economic and community development proposals that would provide a basis boost for certain bond-financed low-income housing tax credit projects (estimated 10-year revenue loss: $7.85 billion) and permanently extend the new markets tax credit (estimated 10-year revenue loss: $3.26 billion).

Tax relief proposals for individuals taxpayers would make the adoption tax credit refundable (estimated 10-year revenue loss: $7.7 billion) and provide an income tax exclusion for certain student loan debt forgiveness (estimated 10-year revenue loss: $408 million).

Enactment of sweeping corporate, high-wealth tax hikes unlikely

The revenue-raising provisions in the administration's budget blueprint that are focused on corporations and high-wealth individuals are not expected to be enacted into law in the near term. Congressional Republicans have been adamant that they will not support major tax increases and their position appears unlikely to change. That means the best chance for the White House and congressional Democrats to advance a tax package that includes substantial revenue offsets would be through a party-line budget reconciliation bill that could clear the Senate by a simple majority vote rather than the three-fifths supermajority typically required to overcome procedural obstacles in that chamber.

But as we have seen with efforts to advance another reconciliation package—the Build Back Better Act—through Congress this year, Democrats in the evenly divided Senate have struggled to coalesce around a measure that can win the support of all 50 of their members (plus the tie-breaking vote of Vice President Harris) and they now appear to be on a path to settle for a smaller bill—with a more modest revenue title—than the roughly $1.75 trillion proposal that was approved in the House last November. (See separate coverage in this issue for the latest developments on Senate efforts to move the narrower reconciliation bill—the Inflation Reduction Act of 2022—that was unveiled this week by Majority Leader Charles Schumer, D-N.Y., and Sen. Joe Manchin, D-W.Va.)

The legislative calendar also weighs against near-term passage of another reconciliation bill. The fiscal year 2022 budget resolution that includes the reconciliation instructions that Democrats have relied on to move the Build Back Better legislation (and now its replacement, the Inflation Reduction Act) expires on September 30. Democrats could, in theory, pass a fiscal year 2023 budget resolution during the upcoming fall work period that includes a new set of reconciliation instructions, but that process would be extremely challenging and time-consuming as lawmakers look ahead to the midterm elections, making the chances of success this year highly unlikely.

Democrats would be in a position to advance a reconciliation bill in 2023 if they retain control of the House and Senate in the upcoming midterms, although their chances for getting a bill to the president's desk might be in doubt unless they also expand their majority in the Senate, which would reduce the risk that a single member of their caucus could stall their legislative agenda. The prospects for those outcomes currently appear uncertain, however.

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