Greenbook Deja'vu: Proposed Tax Increase on Wealthy

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On March 9, 2023, the Biden Administration released its budget and tax proposals for FY2024. Alongside the Budget the Treasury released its document further describing the revenue proposals in what is typically called the Greenbook. Many of the proposals are reminiscent to those in prior years' Greenbook.

The budget proposes to increase taxes for corporations and for individuals with incomes above $400,000 as part of a plan intended to reduce federal budget deficits by $2.858 trillion over 10 years. The release of the President's FY 2024 budget comes at a time when President Biden and Congress are debating how to reach an agreement on legislation to increase the federal statutory debt limit. House Republicans are expected to lay out their own budget proposals in coming weeks.

Following is a summary of some of the proposals that may be of interest to financial professionals:

	Current	Biden's Greenbook Proposal
	Estate Provisions	
Estate & Gift Exemption	$12.92 million indexed sunsets 1/1/26 to $5 million indexed	No change proposed, but see income tax provisions
Estate & Gift Rates	40%	No change proposed, but see income tax provisions
Annual Exclusion Gifts	$17,000 for present interest gifts with no limit in number of recipients	• Upper limit of $50,000 per year in addition to the $17,000 per person • Eliminate present interest requirement • Gifts after 12/31/23
Generation Skipping Transfer (GST)	GST exemption can be allocated to skipped individual or in trust potentially sheltering appreciation for multiple generations (dynasty trusts)	• Limits allocation of GST exemption to (a) direct skips to persons no more than 2 generations below transferor and (b)taxable terminations occurring while anyone in "a" is a beneficiary • Benefit of GST exemption limited to trust beneficiary who is no younger than grandchild or a younger generation alive at trust creation. After this time trust becomes subject to GST tax • Applies on and after date of enactment to all trusts subject GST
Special Use Valuation Discount	$1.31 million indexed	$13 million for decedents dying on and after enactment
Trust Reporting	No reporting of nature or value of trust assets	• Annual reporting of nature and estimated value along with name and address of grantors and trustees for trusts exceeding $300,000 in value • Information concerning modification or transaction with another trust that occurred in year • Report of inclusion ratio of trust at time of trust distribution to non-skip beneficiaries • Applicable after enactment
Defined Value Clause	Typically dependent on value of asset as determined for estate/gift tax purposes	Respected only if value is determinable by something identifiable other than activity of IRS effective for gifts or deaths after 12/31/23
Valuation	• If a loan is made at the appropriate AFR gift tax is not imputed while unpaid AFR loan balance at death receives a discount; • Marketable securities are frequently transferred to family entities where valuation discounts are claimed	• Impose a consistency requirement on valuation of the note • Where family owns at least 25% of non-public interests which owns marketable securities a transfer shall be valued as owned individually avoiding discount • Valuation dates as of the date of enactment
Loans to Trust Beneficiaries	Loan from a trust to a trust beneficiary does not carry any tax consequences	• Treated as distribution of income to extent of trust distributable net income and as a distribution for GST purposes • Applies to loans made, as well as existing loans renegotiated or renewed, after year of enactment

GRATs (Grantor Retained Annuity Trusts)	• Zeroed-Out GRATs possible (no gift or minimal gift tax) • No stated term length	• Remainder gift value must be greater of 25% or $500,000 (or if less the value of asset transferred to GRAT) • Minimum term of 10 years & maximum term life plus 10. • Effective for trusts created on or after date of enactment.
Sales/Purchases with Grantor Trust	• Sales to grantor trusts do not result in the recognition of gain • Repurchase of assets at FMV from grantor trust does not result in gain recognition	• Sales to grantor trusts, that are not fully revocable, result in seller recognizing taxable gain. • Effective for transactions on or after date of enactment.
Grantor Trust Income Tax	Grantor required to report trust income. Payment of income tax not considered a gift.	• Payment of trust income by grantor of grantor trust is considered an adjusted taxable gift. • Effective for trusts created on or after date of enactment.
CLAT (Charitable Lead Annuity Trust)	Annuity interests in CLAT are often structured as increasing deferring charitable benefit to the end	• Remainder interest must be 10%, thus causing a taxable gift on creation of trust • Annuity to charity must be annual, level and fixed amount over CLAT term • Applies to CLATs created after date of enactment
	Individual Income Tax Provisions	
Top Ordinary Income Tax Rate	37% (Beginning $693,750 joint, $578,125 single), sunsets 12/31/25 return to 39.6%	39.6% (Beginning $450,000 joint, $400,000 single)*indexed after 2024 effective for tax years after 12/31/2022
Medicare Tax	• 2.9% rate on all wages • Additional 0.9% on wages above $250,000 joint/$200,000 single for total of 3.8%	Increase the additional amount by 1.2% for a total of 5% on wages over $400,000 indexed effective after 12/31/22
Net Investment Income Tax (NIIT)	Active owners of pass-through businesses are treated differently for purposes of FICA/SECA and NIIT according to the legal form of ownership and the form of payment received	• Expand NIIT base to ensure that all pass-through business income of high-income taxpayers is subject to either NIIT or SECA • Increase NIIT by 1.2% for a total of 5% for taxpayers with more than $400,000 income indexed • Effective after 12/31/22
Wealthy Tax Minimum Income Tax	N/A	• 25% on income & unrealized gain on taxpayers with net worth over 100M. • Taxpayers with wealth greater than $100M would be required to report annually by asset class the total basis and value and amount of liability • Effective after 12/31/23
Wealth Tax Exception	N/A	• “Illiquid” taxpayers (those with less than 20% of tradable assets) can elect to pay tax on only tradable assets but will be subject to a deferral charge on sale of non-tradable assets • Effective after 12/31/23
Capital Gains Tax Rate	20% (plus 3.8% net investment income tax)	39.6% (plus increased NIIT for total of 44.6%) for income exceeding $1 million indexed after 2024 Effective date of enactment
Step-Up Basis at Death	Yes	No - Built-in gain realized at death effective for deaths after 12/31/23
Gift Basis	Donor basis carryover to donee	Built-in gain realized on transfers after 12/31/23
Assumed Gain Realized on Trusts & Non-Corp Entities	N/A	Unrealized gain taxed every 90 years. Application to property not subject to gain since 12/31/1941 so first tax on 12/31/32
Trust & Partnership Transfers/Distributions	N/A	Gain is taxable on transfers to and distributions from trusts (other transfers to and distributions from grantor revocable trusts to the grantor) & partnerships. Effective 1/1/24
Capital Gain Exemption	N/A	$5 million per-person plus tangible property excluding collectibles (plus $250,000 per-person for residence) Will be portable and indexed after 2023

Capital Gain Exclusion	N/A	Transfers to U.S. spouse and charity no gain recognized (except split-interest property), basis carryover
Gain on Family Businesses	N/A	Gain delayed until business is sold or no longer family owned.
Prevent Excessive Accumulations in Retirement Accounts	• Taxpayer are required to take RMD at 73 on pre-tax qualified retirement accounts, but not Roth IRA/Accounts • Individuals who cannot do Roth IRAs because of income limitations can do after-tax contributions and then roll to a Roth • Taxpayers generally can convert pre-tax retirement accounts to Roths	• High-income taxpayers with gross income over $450,000 joint/$400,000 single (indexed) with tax-favored retirement arrangements exceeding $10M must distribute 50% of the excess and if it exceeds $20M the distribution the distribution is subject to a floor of lesser of a) excess over $20M and b) aggregate of amount held as Roths (IRA & Account). Generally can elect where distribution comes but if the floor applies it must come first from Roth IRA then Account. These distributions not subject to 72(t) and if from Roth treated as qualified distribution, subject to 35% withholding. • High taxpayers would be prohibited from rolling to Roth IRA or Roth Account amounts not designated as Roth Accounts. Also, cannot rollover after-tax contributions to Roth. • Effective after 12/31/23
Child Tax Credit	• Maximum credit for "qualifying" children up to $2,000, partially refundable (maximum $1,600) • Credit reduced by $50 for each $1,000 that exceeds $400,000 joint/$200,000 single • Credit determined annually and claimed with filing of tax	• Increase maximum credit to $3,600 for "specified" children under 6 and to $3,000 for other children to 17, fully refundable • Credit in excess of 2,000 phased out with income exceeding $150,000 joint/$75,000 single • Credit determined monthly and starting 12/31/23 implement method to provided credit on a monthly basis • Effective beginning after 12/31/22 to 1/1/26
Student Loan Forgiveness	Certain forgiven qualifying student loans are not included in income effective for discharge after 12/31/20 to 1/1/26	Make this provision permanent
Like Kind Exchange	Appreciated real property used in trade/business or held for investment can be exchanged for real property of like kind and gain deferred to a later recognition event	Deferral of gain permitted up to an aggregate of $500,000 for taxpayer/ $1 million for married effective beginning after 12/31/2023
	Corporate Tax Provisions	
Corporate Tax Rate	21%	Increased to 28% effective after 12/31/22
Stock Repurchase	1% of FMV of stock of covered corporation	Increase tax rate to 4% for repurchases occurring after 12/31/22
Withholding on Failed Non-Qualified Deferred Comp. (NQDC) Plans	Employers required to withhold tax on employee's NQDC income	Employers required to withhold tax on employee's NQDC income plus 20% penalty and interest on plans that fail effective after 12/31/23

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