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Greenbook Deja'vu: Proposed Tax Increase on Wealthy

On March 11, 2024, the Biden Administration released its budget and tax proposals for FY2025. 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. Like the proposals over the last two years 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 deficit.

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

Estate & Gift Exemption	Current	Biden's Greenbook Proposal
Estate Provisions		
Estate & Gift Exemption	$13.61 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	$18,000 for present interest gifts with no limit in number of recipients	• Eliminate present interest requirement for annual exclusion gifts. • Create a new category of gift transfers and impose an annual limited of $50,000 per donor (on top of the $18,000) for certain transfers such as those made to trusts, and pass-through entities, partial interests and other transfers that cannot be immediately liquidated by the donee. • Gifts after 12/31/24
Generational 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 and taxable distributions to persons no more than 2 generations below transferor and younger beneficiaries who were alive at trust creation 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 all becomes subject to GST tax. • Proposal would apply to pre-enactment trusts with the transferor deemed to be in the generation immediately above the oldest generation of trust beneficiaries in existence on date of enactment. • Applies on and after date of enactment to all trusts subject GST regardless of inclusion ratio.
Special Use Valuation Discount	$1.39 million indexed	Increase to $14 million for decedents dying on and after enactment.

Trust Reporting	No reporting of nature or value of trust assets.	• Require annual reporting of nature and estimated trust value along with name and address of grantors and trustees for trusts exceeding $300,000 in value or gross income over $10,000. • Report 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 for tax years ending after date of 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 12/31/24.
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 notes. • Where family owns at least 25% of a non-public interests which owns passive assets such as marketable securities that are not used in conduct of business a transfer of a partial interest shall be valued as owned individually avoiding discount. • Applies to valuations as of a valuation date on or after date of enactment.
Loans from Trust	Loan from a trust and repayment of loans do not carry any tax consequences.	• Loans from a trust to a trust beneficiary treated as distribution of income to extent of trust distributable net income and as a distribution for GST purposes constituting either a direct skip or taxable distribution depending on assignment of the borrowing beneficiary. • Creates a special GST rule to discourage borrowing from a trust by a person who is not a beneficiary, but who is a deemed owner under the grantor trust rules. Repayment of the loan by anyone will be treated as a new contribution by deemed owner (or spouse). Depending on generation of trust beneficiaries at time of repayment it might use GST exemption, generate GST tax, or increase trust exclusion ratio. • 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. • Prohibit any decrease in the annuity and prohibit a grantor from acquiring in an exchange an asset held in trust without recognizing gain or loss for income tax purposes. • 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 unreimbursed trust income tax by grantor of grantor trust (other than fully revocable trust) is considered an adjusted taxable gift (cannot be reduced by marital, charitable, annual exclusion etc.). • 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 $731,200 joint, $609,350 single), sunsets 12/31/25 return to 39.6%.	• Increased to 39.6% (Beginning $450,000 joint, $400,000 single) indexed after 2024 using C-CPI-U. • Effective for tax years after 12/31/23.
Medicare Tax	2.9% rate on all wages (1.45 employer and 1.45 employee) and an additional 0.9% on employee wages above $250,000 joint/$200,000 single for total of 3.8%.	Increase Medicare tax rate by 1.2% for a total of 5% on wages over $400,000 indexed effective after 12/31/23.

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Net Investment Income Tax (NIIT)	• Individuals with modified AGI are subject to 3.8% tax on net investment income above $250,000 joint/$200,000. • However, 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.	• Increase NIIT by 1.2% for a total of 5% for taxpayers with more than $400,000 income indexed. • Expand NIIT base to ensure that all pass-through business income of high-income taxpayers is subject to either NIIT or SECA. • Effective after 12/31/23.
Wealth Tax Minimum Income Tax	N/A	• Imposes a minimum tax of 25% on income & unrealized gain on taxpayers with net worth over $100M. Tax is phased in for taxpayers between $100M to $200M. The first-year taxpayer can pay the tax in 9 equal annual installments while later payments would be due in 5 equal installments. Payments would be treated as prepayments to be credited against taxes on subsequent realized capital gains. • Taxpayers with wealth greater than $100M would be required to report annually by asset class the total basis and value and amount of liability. Tradeable assets would be reported at market value. Taxpayer would not be required to do an annual valuation on non-tradable assets, but would be valued at greater of original or adjusted cost basis from last valuation event and would be adjusted annually by a conservative annual floating rate. • Effective after 12/31/24.
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 12/31/24.
Capital Gains Tax Rate	20% (plus 3.8% net investment income tax)	• Increase capital gain tax to 39.6% (plus increased NIIT for total of 44.6%) for income exceeding $1 million indexed after 2024. • Applies to gains required to be recognized and dividends received on or after date of enactment.
Step-Up Basis at Death	Yes	No- Built-in gain realized at death effective for deaths after 12/31/24

Gift Basis	Donor basis carryover to donee.	Built-in gain realized on transfers, and basis adjusted, effective for transfers after 12/31/24.
Gain Recognition of Transfers/Distribution Trusts & Partnerships	N/A	• Gain is recognized on transfers of property to and distributions of property in kind from partnerships & trusts (except transfers to and distributions from grantor revocable trusts to the grantor or US spouse). • Effective for transfer and distributions in general on and after 1/1/24 and certain property owned by trusts, partnerships and other non-corporate entities on 1/1/25.
Assumed Gain Realized on Trusts & Non-Corp Entities	N/A	Unrealized gain taxed every 90 years. Application to property not subject to gain since 12/31/1943 so first tax on 12/31/33.
Capital Gain Exclusion	N/A	• No gain recognized on transfers to U.S. spouse and charity (except split-interest property); basis carryover. • No gain recognized for tangible personal property except collectibles and $250,000 per-person for residence.
Capital Gain Exemption	N/A	• $5 million per-person ($10M for couple) in addition to the above exclusion. • Will be portable and indexed after 2024.
Gain on Family Businesses	N/A	Gain on a family business can be delayed until business is sold or no longer family owned. Proposal also includes a 15-year fixed-rate payment plan.
Prevent Excessive Accumulations in Retirement Accounts	• Retired taxpayer are required to take RMD by April 1 following the year they attain 73 on pre-tax qualified retirement accounts, but not Roth IRA/Accounts. • Taxpayer who does not take RMD is subject to 25% penalty on portion not taken, reduced to 10% if taken with a specified time. • 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 exceed $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, the taxpayer can elect where distribution comes, but if the floor applies it must come first from Roth IRA then Roth Account. The distribution is treated as an RMD for purposes of applying the penalty. These distributions are not subject to 72(t) and if from Roth treated as qualified distribution. Distribution, other than from IRA, is 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 12/31/24.
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 for exchanges completed after 12/31/2024.
Corporate Tax Provisions		
Corporate Tax Rate	21%	Increased to 28% effective after 12/31/23.
Stock Repurchase	1% of FMV of stock of covered corporation.	Increase tax rate to 4% for repurchases occurring after 12/31/23.
Expand limitation of deductibility for compensation $1M	Compensation in excess of $1M paid to “covered employees” of public corporations is not deductible .	• Modified to prevent deduction for compensation paid to any employee of a public or private C corporation in excess of $1M. • Effective for tax years beginning after 12/31/24.
Life Insurance Tax Provisions		
Private Placement Life Insurance	Treated like life insurance where life insurance definition rules are met; income tax-deferred growth, tax-free withdrawals to the extent of basis, tax-free loans, and income tax-free death benefit.	• Proposal would impose harsher tax rules and reporting for “covered contracts.” • Covered contracts include any variable contract: which when sold in US requires it to be sold to an accredited investor or qualified purchaser and subject to SEC regulations; whose premium are paid in kind (directly or indirectly) rather than in cash; whose underlying assets purchased directly or indirectly from the policyholder, person related to policyholder, or a business entity which the policyholder or related person has more than a de minimis ownership interest; which in combination with contracts owned by persons related to the contract holder owns an interest in a separate account of an insurance company and the cash value of the related contract in the aggregate represents at least 5% of the value of any distinct investment option whose assets are accounted for in that separate account.

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		• Distributions would include amounts paid as a death benefit, policy loans, and amounts of policy cash value assigned or pledged to any person. A life insurance investment value is the greater of (1) cash value or (2) amount equal to the death benefit less the contracts amount at risk (pure death benefit protection). • Death benefits would be taxable as ordinary income, but only to the extent beneficiaries' share of the contract's investment value exceeds the beneficiaries' share of the contract's investment in the contract. • There would be an additional 10% tax on any taxable distribution. The current exception for the 10% penalty that apply to MEC do not apply to covered contracts. • Basis for determining gain would be similar to current law except it would be further reduced by mortality changes. • Effective for covered contracts issued or substantially modified on or after March 11, 2024.

How can DBS Help? If you have questions, call DBS's in-house advanced case design resource, Terri Getman, JD, CLU, ChFC, RICP, AEP (Distinguished).

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