A Look At President Biden's Budget Tax Proposals

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On March 9, 2023, President Biden, as part of his fiscal budget for 2024, proposed many expansive and ambitious tax changes. Among the changes are:

- An increase in the top marginal tax rate for non-corporations from 37% to 39.6%;
- Increasing the top tax rate on capital gains and dividends for non-corporate taxpayers with incomes exceeding $1 million ($500,000 if filing separately) to 37% (or 39.6% if the top rate is increased);
- Taxing the transfer of appreciated property by gift or bequest, except transfers to a U.S. spouse would not be taxed, but such a transfer would result in a carryover tax basis.
- Transfers to a charitable lead or a charitable remainder trust would be taxed, except for the charitable portion. The tax would not apply to outright transfers to charity.
- The transfer of a principal residence would be taxed, but the current exclusion would apply;
- The exclusion for transfers by gift or at death would be reduced to $5 million;
- A limit on gifts qualifying for the *per donee* current annual exclusion of $17,000 would be limited to an aggregate of $50,000 per year.
- The Generation Skipping Tax exemption would only apply to two generations below the transferor. For this purpose, current GST trusts would be deemed to have been created on the date of the enactment of the proposed legislation.
- The estate tax on family-owned and operated businesses would be deferred until the interest is sold or the business ceases;
- Taxpayers with a wealth of more than $100 million would be subject to a minimum tax of 25% on total income, including unrealized capital gains;
- GRATs would be required to have an initial term of 10 years or more and a maximum term of the life of the annuitant, plus 10 years.
- Transfers between a taxpayer and a grantor trust that is not fully revocable by the Grantor would be taxable.
- There are several proposals to restrict Taxpayers from taking certain valuation discounts;

- The Net Investment Income Tax Rate would be increased for Taxpayers in excess of $400,000 to 5% from 3.8%, and it would be extended to include gross income and gain from any trade or business even if it is not subject to employment taxes;
- Like Kind Exchanges of real estate would be limited annually to $1 million of gain for a joint return, $500,000 for taxpayers filing separately.
- Depreciation Recapture on sales of real estate would be treated similar to Depreciation Recapture on sales of personal property (all gain up to the amount of the previously deducted depreciation is taxed as ordinary income) for taxpayers with an adjusted gross income of $400,000 or more, $200,000 if filing separately.
- Taxpays with high retirement plan balances (more than $10 million) as of the last day of the previous year will be required to distribute 50% of the excess.
- Taxpayers with modified adjusted gross income of more than $400,000 single, ($450,000 joint) would be prohibited from rolling over to a Roth IRA an amount distributed from a traditional IRA or eligible retirement plan.

How likely are some of these proposals to be enacted? Not very likely for the following reasons:

- Almost all of the proposed tax changes are very aggressive. Few are “loophole closures.” Most of the changes are grounded in the principal that the “Rich are not paying their fair share.” To get these proposed changes enacted, a new mind-set in taxation would need to take place. For example, like kind exchanges have long been viewed as a legitimate tax planning technique. The proposal would essentially limit like kind exchanges to *de minimis* real estate transactions. The real estate lobby is very strong, and will not support the change. Even if the Democrats controlled both houses of Congress and the presidency, it is difficult to see most members agreeing to this change.
- At a time when the economy is unstable, tax increases will not have support. Rather, tax cuts will be supported to inject growth.
- Increasing the rate of tax on capital gains, increasing the Net Investment Income Tax Rate, and changing capital gain to ordinary income because of depreciation on real estate, will reduce the incentive to invest in real estate.