



2021 Green Book Proposals

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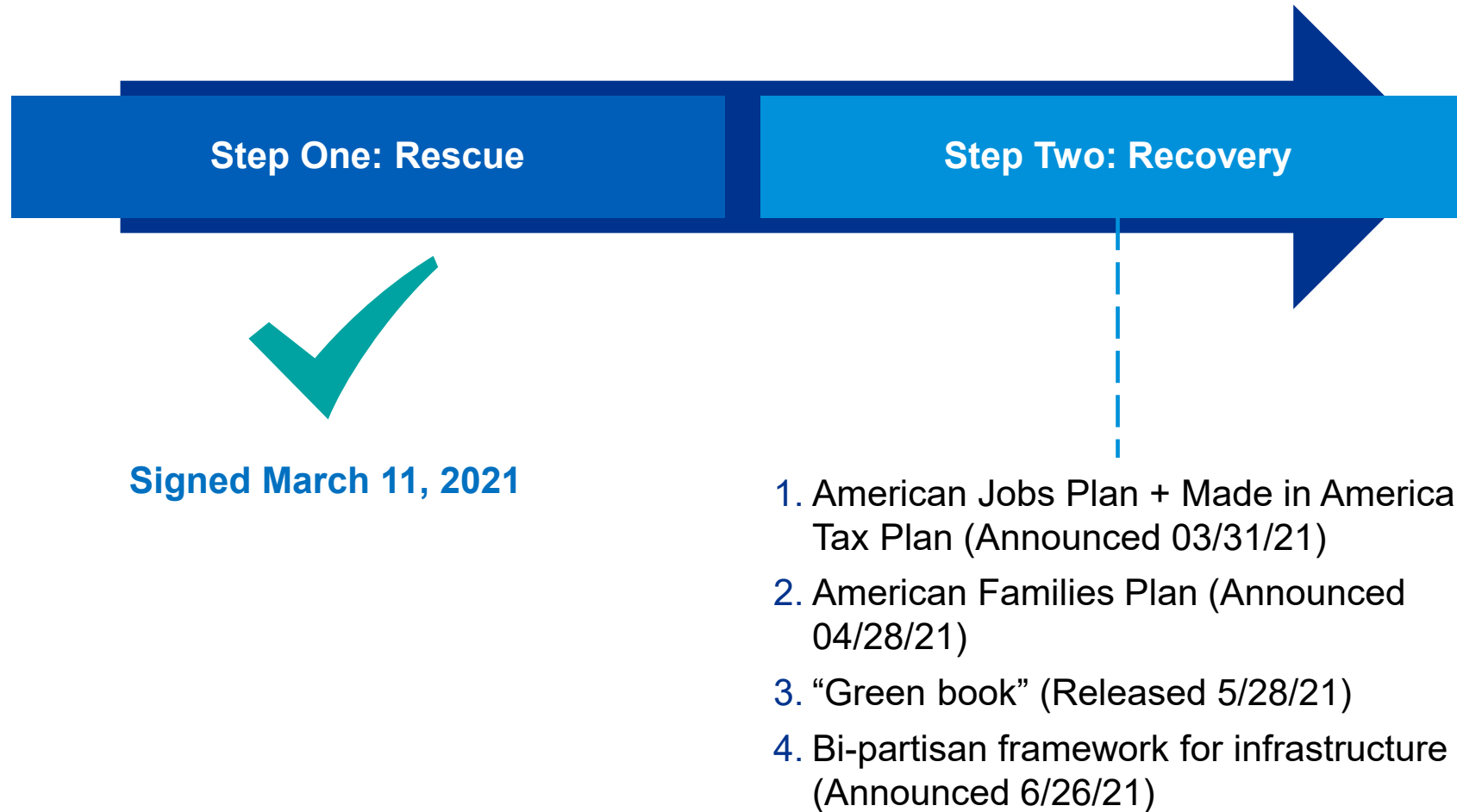
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Rescue and recovery: What has happened so far?



What's the deal with the bipartisan "deal"?

What led to the bipartisan framework?

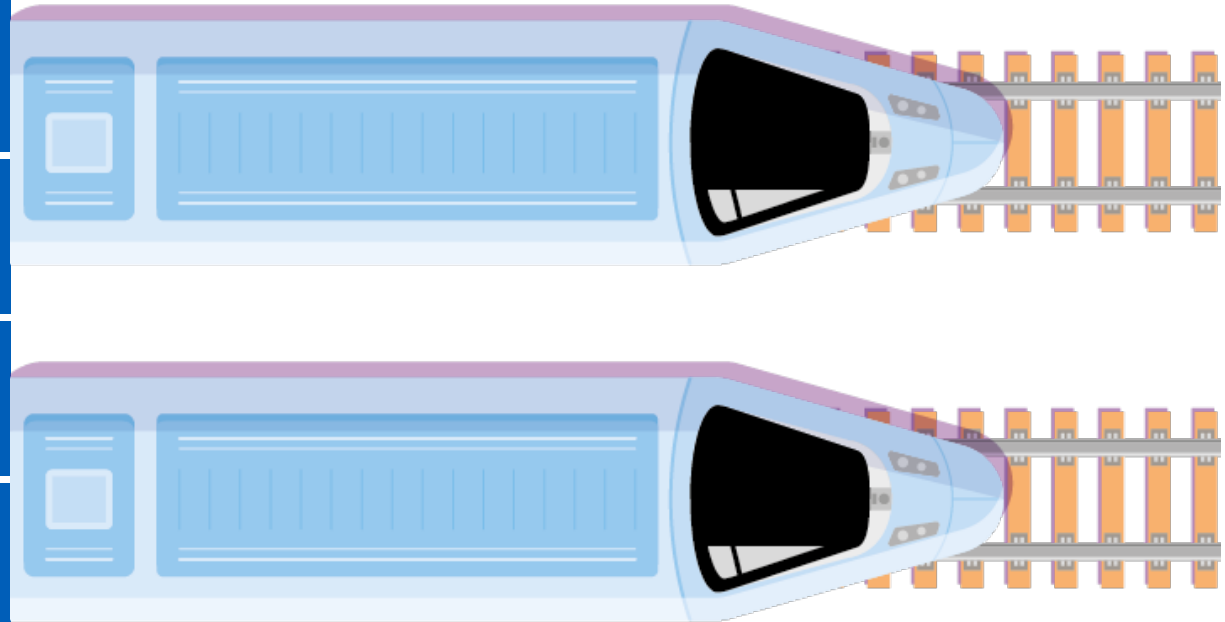
How big is it?

What's in it – and what's not?

How much political support is there for it?

How does it affect the legislative process?

Does it affect the substance of possible tax legislation – or not?



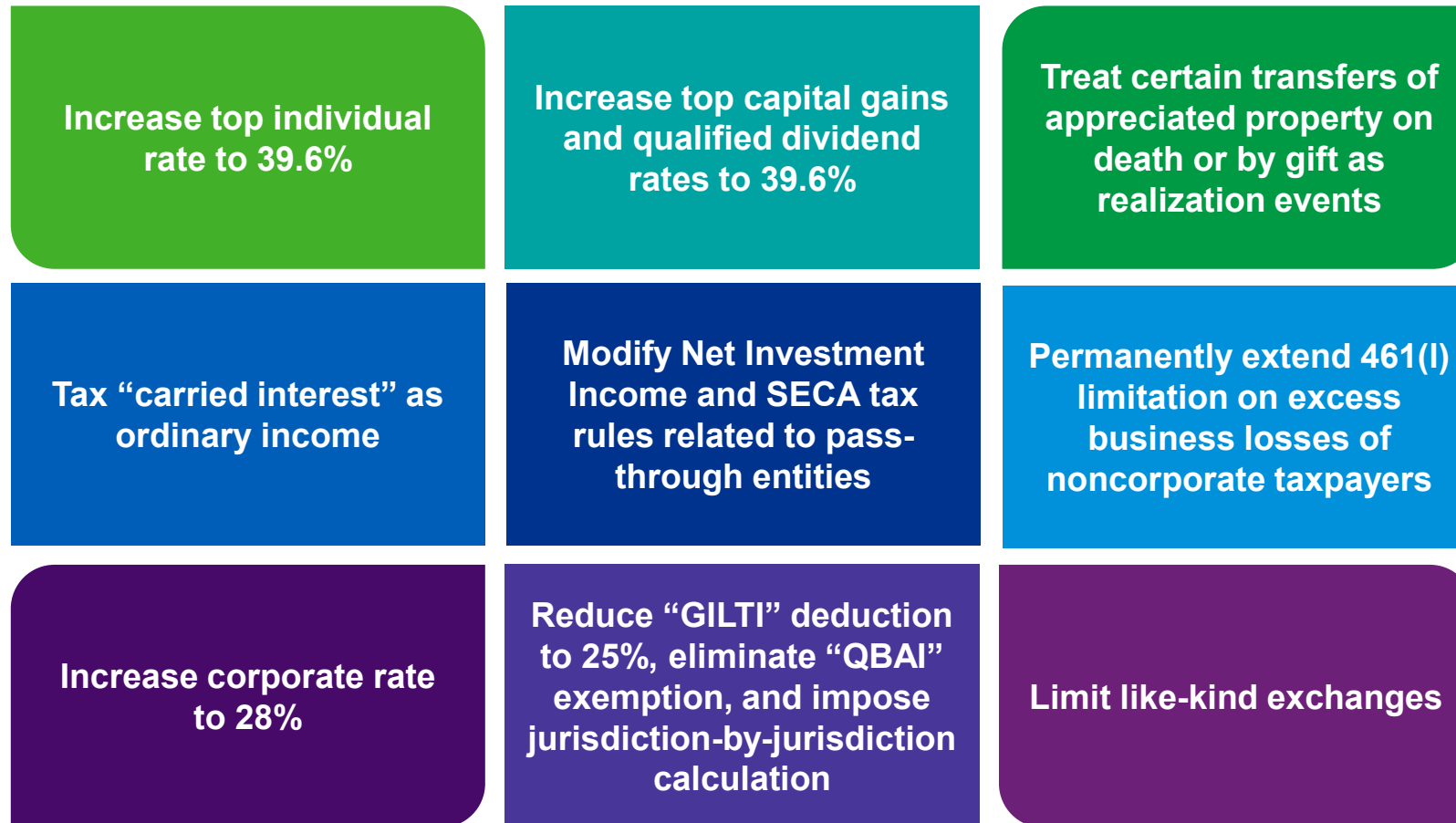
What might happen next - - and when?



- What's the degree of difficulty in getting this all done – and getting it done this quickly?
- Might the timing slip or the process change?



The Green Book: Proposals relevant to asset management



Proposed increase in individual income tax rate



Proposal would increase top marginal individual income tax rate from 37% to 39.6%

- Proposed to be effective for taxable years beginning after December 31, 2021
- Stated breakpoints – adjusted for inflation

Discussion points:

- What about other individual tax proposals relating to
 - the SALT limitation,
 - capping itemized deductions, and
 - Section 199A repeal?

Proposed changes to taxation of capital income

Increase capital gains and qualified dividend rate to 39.6%

- Proposed to apply to AGI in excess of \$1 million but only to extent the taxpayer's income exceeds \$1 million (\$500K for married filing separately/thresholds)
- Proposed to be effective as of “date of announcement” – different proposed effective date than for individual rate increase
- Gains potentially taxed (for those over \$1 million) at –
 - 20% until date of announcement
 - 37% thereafter until 12/31/2021
 - 39.6% beginning in 2022.

Discussion points:

- What might happen with effective date?



Proposed changes to taxation of capital income (more)



In General

- Treat “transfer” of appreciated assets, either at death or by gift during life, as income tax realization event
- Income-tax-free step-up in basis would no longer be available

- Combined gift and income tax rate for a zero basis asset could exceed 90% (39.6% + 40% + 3.8% + state [7%]).
- Estate tax rate may be closer to 70% due to ability to deduct income tax from estate tax calculation

Discussion points

- What exceptions and special rules does the proposal include?
- What about proposals to reduce the estate tax exemption?

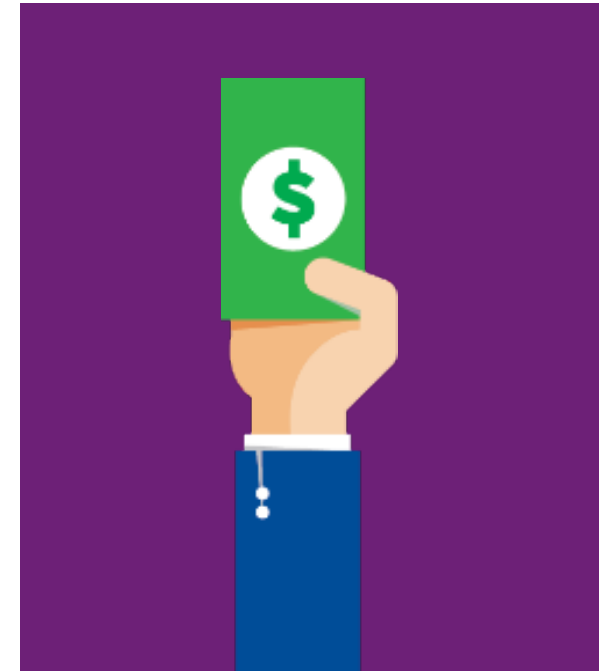
Proposed changes to taxation of capital income (and more)

Additional recognition events

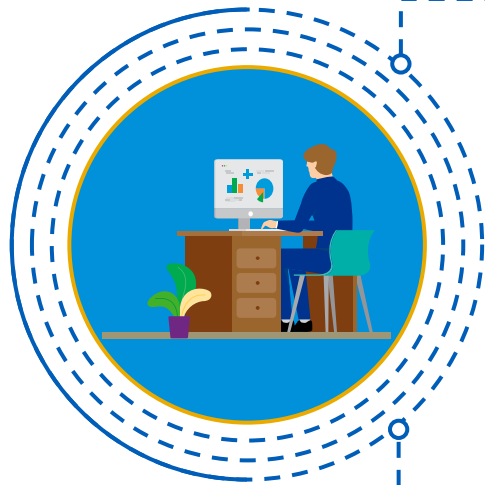
- Unrealized gains in assets held by trust, partnership, or other non-corporate entity to be recognized if not subject to recognition event within prior 90 years (with initial measuring date of 1/1/1940)
- Some transfers of property into, and distributions in kind from, certain trusts, partnerships, and other non-corporate entities to be treated as recognition events

Discussion point

- Is this proposal intended to eliminate non-recognition for all such contributions and distributions?



Proposed change in treatment of carried interest



- **Very generally, for taxpayers who earn income (from all sources) in excess of \$400K, the proposal would apply ordinary income rates to income allocated with respect to an “investment services partnership interest”**
 - Such income would also be subject to self-employment tax – regardless of limited partner status.
 - Proposed exceptions and special rules
 - Some relief for qualified capital with allocations that can be benchmarked to other unrelated non-service providers
 - Proposed to be effective for taxable years beginning after December 31, 2021
- **Discussion points:**
 - Similarities to prior Democratic proposals?
 - Possible continued relevance of current section 1061 for some?
 - What is state tax effect of recharacterization to ordinary income (as opposed to “services income”)?

Proposed “rationalization” of NII and SECA



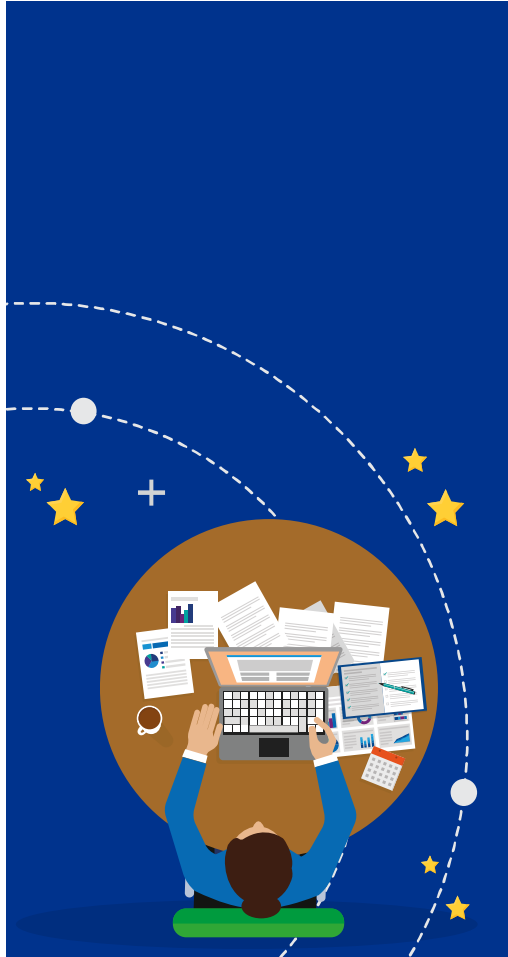
Very generally, for taxpayers with AGI in excess of \$400K, net investment income (NII) tax would be payable on all gross income and gain from any trades or businesses that is not otherwise subject to employment taxes

- Potential application to limited partners, LLC members, and S corporation shareholders
- May impact high income partners or shareholders that materially participate
- Proposed to be effective for taxable years beginning after December 31, 2021

Discussion points:

- What about campaign proposal to collect Old Age, Survivors, and Disability tax on income in excess of \$400K?
- Are you better off being subject to tax as SECA or NII (i.e., structuring as fee vs allocation)?
- What might happen during Congressional consideration?

Selected other Green Book proposals



- **Corp rates – from 21% to 28% (Obama plan) vs 35% pre-TCJA**
 - 15% min tax on corps earning \$2 billion (previously \$100mm) book income
- **Change in GILTI rate**
 - In effect, increase from 10.5% to 21%
- **Permanently extend 461(l) for excess business losses**
- **Limit like-kind exchange deferral to \$500K per taxpayer/per year**
- **Provide for funds to improve compliance and administration**



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