



# 2021 Tax Legislative Update

KPMG LLP

May, 2021

# Tax Bills



**Speaker of the House:  
Nancy Pelosi (D-CA)**



**Senate Majority Leader:  
Chuck Schumer (D-NY)**



**House Ways and Means  
Chair:  
Richard Neal (D-MA)**



**Senate Finance Committee  
Chair:  
Ron Wyden (D-OR)**



- The American Jobs Plan (aka Infrastructure Bill) – March 2021
  - Corporate Tax Rates
  - International
- The American Families Plan – April 2021
  - Individual Tax Rates
  - Investment Related Provisions
- Other Democratic Priorities?

# Biden – Overview of select tax proposals



## Major Proposals:

- ❖ Ordinary Income Rates
- ❖ Capital Gains
- ❖ Carried Interest
- ❖ Modification of rules on basis step-up upon death
- ❖ Corporate Rates
- ❖ International Reform

## Timing:

- ❖ When would legislation be passed?
- ❖ Could rates be retroactive?

# Biden Plan Highlights - Rates



## ➤ 39.6% top rate

- ❑ Generally pre-TCJA deductions would not come back
- ❑ SALT deduction not included in Biden Plan
  - ❖ Part of Congressional discussions (Schumer Bill)
  - ❖ Pelosi and Schumer are from high tax states
- ❑ Limitation on deductions to 28% also not included
  - ❖ Not included in announcement but part of Biden campaign plan
  - ❖ Akin to an Alternative Minimum Tax

# Biden Plan Highlights – Capital Gains



## ➤ Capital Gains and Qualified Dividends to 39.6%

- ❑ Would apply to households with income in excess of \$1 million
  - ❖ Prior discussions had rate starting with \$400k income brackets
  - ❖ Is \$1 million threshold total AGI or capital gains income?
- ❑ Could potentially be lower rate – 25%-30% is maximum revenue raising rate
  - ❖ Above this amount could incentives people to hold until death/change in law
    - Raises less revenue in 10 year budget window
    - Higher rates could requires MTM upon death (or elimination of step up in basis) – tied to CG more than estate tax
- ❑ Friction between policy goals and revenue needs



## ➤ Estate Tax

- ❑ No step up at death for gains in excess of \$1 million
  - ❖ \$2.5 million per couple when combined with existing real estate exemptions
  - ❖ Relief proposed for family owned business and farms
- ❑ No mention of reducing estate tax exemption
  - ❖ Biden campaign proposed reducing to \$3.5mm from \$11.58 mm

# Biden Plan Highlights – Asset Mgmt Provisions



## ➤ Carried Interest

- ❑ Proposal to change even if capital gains rates are equalized to ordinary rates
  - ❖ benefits would not return if capital gains rates are changed in the future
  - ❖ Still potential deferral benefit even if capital gains rates preferences are eliminated
- ❑ Unclear as to how this would be implemented
  - ❖ Still get the benefit of deferral?
  - ❖ Wyden –type legislation?
- ❑ Raises relatively little revenue – especially if capital gains rates are increased

## ➤ 3.8% Medicare Tax

- ❑ Eliminate “loopholes” and apply consistently across taxpayers
- ❑ Apply to taxpayers earning greater than \$400k
  - ❖ Presumably meant to address “limited partner exception” to SECA
- ❑ Since this tax is not addressing OASDI, it may be passed via reconciliation process without the 60 Senate votes required for social security legislation



# Biden Plan Highlights – Asset Mgmt Provisions



- **Eliminate 1031 exchanges for gains over \$500k – Real Estate**



- **Permanently extend 461(I) for excess business losses**

# Biden Plan Highlights – Infrastructure Bill



## ➤ **Corp rates – from 21% to 28% (Obama plan) vs 35% pre-TCJA**

- Less likely for corp conversions
- But carry issue of making passthroughs better from cap gains perspective would go away
- 15% min tax on corps earning \$2 billion (previously \$100mm) book income



## ➤ **Change in GILTI rate**

- Increase from 10.5% to 21%
- Biden proposal currently to 75% of corporate rate

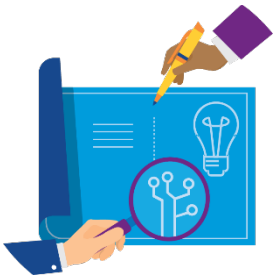


# What is not included



## ➤ **Uncapping Social Security – 12.4%**

- Applies to \$400k+ taxpayers
- Requires 60 votes or removal of filibuster
- most high income earners are self employed – LP exemption
- Would effect carried interest fees but not CG from allocations



## ➤ **State and local tax deduction**

- One option is restoring for taxpayers earning under \$400k
- Another option is to increase cap amount – (e.g. \$20,000)
- Notice 2020-75 and State “Workarounds”



## ➤ **28% cap on deductions**

- Effectively an individual Alternative Minimum Tax
- Could be combined with eliminating SALT deduction cap

## ➤ **Eliminate 199A rule for pass throughs**

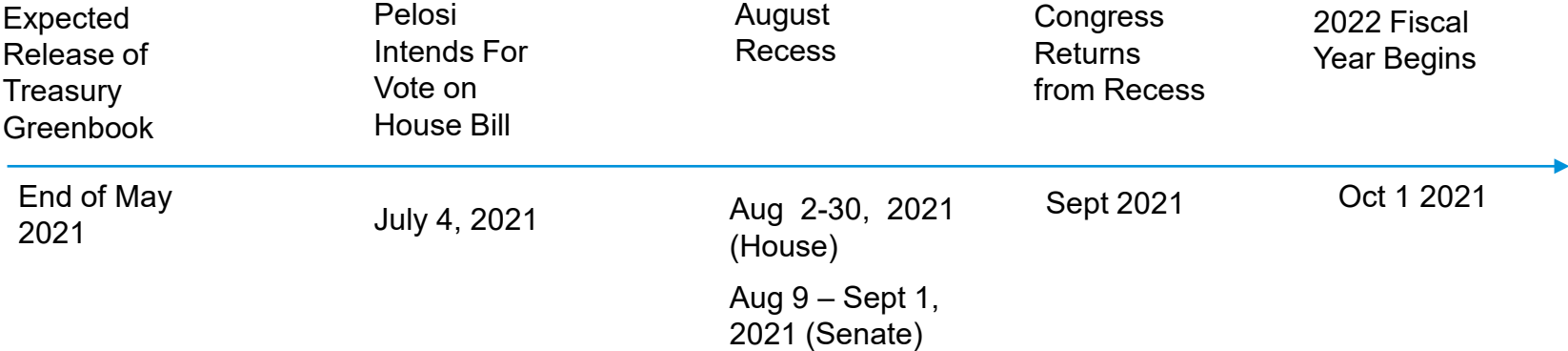
- Viewed as equalizing passthroughs for the corporate tax breaks of TCJA



# Effective Dates

- **Tax rates can be made retroactive to beginning of year**
  - ❑ 1993 Clinton tax increases
  - ❑ United States v. Carlton, 512 U.S. 26 (1994)
  
- **Retroactive tax increases are unusual**
  
- **Revenue scoring is maximized by giving taxpayers time to plan and accelerate income into the budget window (even at the lower rate)**
  
- **The later in the year legislation is passed, the less likely chance of retroactivity**
  - ❑ Senate Parliamentarian ruled that multiple reconciliation bills could be permitted in 2021
  - ❑ 2022 fiscal year begins October 1, 2021
  
- **Alternative approach could be based on date of committee action, date of introduction or date of enactment, rather than year end**
  - ❑ Especially with anti-abuse rules
  
- **Separate from with (or combination with) Infrastructure Bill which addresses corporate and international tax**
  
- **Taxpayers are beginning to explore income/gain acceleration and deduction deferral strategies**

# Timeline



# Questions





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