An overview of tax provisions in Biden's American Families Plan

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On April 29, 2021, in a joint address to Congress, President Biden unveiled details of his $1.8 trillion American Families Plan ("the Plan"), which includes numerous tax provisions aimed at providing further assistance to low- and middle-income families while increasing taxes on high-income individuals and investors. The Plan also looks to make permanent certain provisions of the American Rescue Plan (ARP), passed into law on March 11, 2021.

Highlighted below are some of the key tax changes in Biden's Plan, as outlined in a White House Fact Sheet.

Top tax rate

The Plan would raise the top tax rate for individuals to 39.6%, a restoration from the tax cut to 37% enacted in the 2017 *Tax Cuts and Jobs Act* (TCJA). The 39.6% tax rate would presumably apply to individuals in the top tax bracket, making over $400,000.

Capital gains tax rate

Biden's plan would further increase taxes on the wealthiest Americans by taxing capital gains and qualified dividends at ordinary income tax rates (39.6%, if the above change is approved) for households making over $1 million. Additionally, the Plan would require carried interest to be taxed at ordinary income tax rates. The Biden administration has also expressed a desire to eliminate the benefits of carried interests entirely.

Limitation on State and Local Tax (SALT) deductions

While it was anticipated that Biden's plan would eliminate the $10,000 SALT deduction cap, the Plan does not address this, effectively leaving the cap in place. Biden has previously stated that he would like to eliminate the cap, so it is possible it will be in future proposals.

Like-kind exchanges

Biden had previously shown support for eliminating the deferral provided by Internal Revenue Code (IRC) Section 1031, which allows real estate investors to defer gains on the sale of real property by investing such gains in similar (e.g., "like-kind") property. The Plan does not fully eliminate this benefit, but would limit deferral to the first $500,000 of gain.

Reduce basis step-up at death

The Plan would limit the step-up in basis of appreciated assets passed down to heirs to $1 million of appreciation. To protect family-owned businesses and farms, the Plan would exempt from tax gains passed down to heirs where the heirs continue to run the business.

New reporting requirements for financial institutions

In an effort to combat tax avoidance and to help improve the Treasury's ability to select individuals and businesses for audit, the Plan would require greater transparency in reporting requirements from banks and other financial institutions.

IRS authority to regulate paid tax preparers

Biden's Plan would enable the IRS to provide oversight of paid tax preparers. This provision of the Plan is intended to help reduce tax return errors, as well as to help ensure that taxpayers are better equipped to handle the new changes in the tax law.

Earned Income Tax Credit

The ARP included a provision intended to strengthen the earned income tax credit (EITC) for the 2021 taxable year for individuals with no qualifying children by generally allowing such taxpayers age 19 and older (previously age 25 and older) to claim the credit. Additionally, the ARP, for the 2021 taxable year, eliminated the current maximum age of 64 for receiving the EITC for such taxpayers. For taxpayers with no qualifying children in the 2021 taxable year, the provision also increased both the credit percentage and phaseout percentage from 7.65% to 15.3%, as well as increased the EITC amount from $4,220 to $9,820 and the phaseout amount from $5,280 to $11,610. While the Fact Sheet states that the president would call on Congress to make the expansion of the EITC permanent, it is not yet known at the time of this article whether all of the provisions above would be made permanent.

Child Tax Credit

The ARP expanded the Child Tax Credit, allowing taxpayers with qualifying children who are 17 or younger to claim the credit for the 2021 taxable year (changed from 16 or younger). Additionally, the Act increased the credit amount for each qualifying child for the 2021 taxable year from $2,000 to $3,000 ($3,600 for qualifying children who have not attained age 6 as of the close of the calendar year in which the taxable year of the taxpayer begins). The credit begins to phase out at $150,000 for joint returns or surviving spouses, $112,500 for heads of household, and $75,000 in any other case. The Plan would extend these expansions through 2025, as well as make the refundability of the Child Tax Credit permanent.

Child and Dependent Care Assistance

The Plan also looks to make permanent the ARP's temporary provisions relating to child and dependent care assistance, currently applicable only to the 2021 taxable year. The Plan would permanently increase the credit for dependent care assistance employment expenses. For taxpayers with children under the age of 13, the Plan would permanently allow the taxpayer to claim a credit for up to 50% of qualified child care expenses, up to $4,000 for one child or $8,000 for two or more children. Like in the ARP, the percentage of the credit that may be claimed would begin to phase out when an individual's AGI exceeds $125,000.

Healthcare assistance

Another temporary provision in the ARP that the Plan intends to make permanent involves the health care premium assistance. This assistance is intended to lower the costs of health insurance for individuals purchasing their own coverage, "saving families an average of $50 per person per month," according to the Fact Sheet. The ARP applied this measure only to the 2021 and 2022 taxable years.

What Does CohnReznick Think?

Coming off the heels of the American Rescue Plan Act and Biden's infrastructure proposal, the American Families Plan would spend an additional $1.8 trillion in an effort to shore up the American economy by providing tax breaks to low- and middle-income households, paid for through increased taxes on the wealthiest Americans and investors. Additional information related to the Plan is expected to be released in the coming weeks, and we are watching developments closely; visit our Tax Alerts page for updates. Please consult your tax advisor with any questions on how these tax provisions might impact you and your business.

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