

# First Look: The Biden Administration's Proposed Tax Law Changes

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**W**hen a new administration settles into the White House, you can be certain there will be proposals to change the nation's tax code. And as Walt Disney once famously said, times and conditions change so rapidly that we must keep our aim constantly focused on the future. And that's the aim of this singlette.

The fact that the Biden administration is planning to raise taxes is no surprise. The President campaigned on a promise to raise taxes on corporations (from 21 to 28 percent) and on wealthy Americans (those earning more than \$400,000 per year). If you ever complained that politicians never follow through on their promises, this is the one exception – the Biden administration will raise taxes. The only question is how?



In late May 2021, the U.S. Treasury Department presented a sneak peek into the administration's proposed tax law changes in the form of a 114-page document commonly referred to as the "Green Book." The proposed changes are part of two plans – the American Jobs Plan, geared more toward businesses, and the American Families Plan, focusing on individuals. In this singlette, we explain many of the proposed changes and highlight how they *might* impact your taxes moving forward.

The key word here is *proposed*. It's too early to tell exactly which proposed tax changes will become law or the extent to which they'll be modified as they move through Congress. Regardless, here's what we know about The American Jobs Plan and how it might impact businesses:

## **The American Jobs Plan**

The primary objective of The American Jobs Plan is to create millions of jobs while rebuilding the country's infrastructure and positioning the United States to out-compete

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nations like China. To raise revenue to pay for the plan, the administration is considering the following changes to tax law. (Note: Generally, these changes would go into effect after the 2021 tax year.)

- **Increase the tax rate on C corporations from 21 percent to 28 percent:** For fiscal year C corporations whose tax year starts after 1/1/21, the new rate would be prorated for the portion of the year that falls in 2022.
- **Impose a 15 percent minimum tax on large corporations:** Corporations with book income of \$2 billion or more would be subject to a 15 percent minimum tax on their worldwide book income.
- **Create a new 10 percent business credit for onshoring:** *Onshoring* means reducing or eliminating a trade or business (or a line of business) currently conducted outside the U.S. and starting up, expanding, or otherwise moving the same trade or business to the U.S. and creating jobs in the process. The proposal would also eliminate deductions for expenses related to offshoring a trade or business.
- **Eliminate fossil fuel tax preferences:** The proposal would repeal many of the tax benefits currently available to encourage the production of fossil fuels.

## **The American Families Plan**

The American Families Plan calls for investment in education, childcare, healthcare, and other areas to help families cover basic expenses. Several tax changes have been proposed to help cover the cost of this plan. (Note: Here too, generally speaking, the proposed changes would be effective for tax years beginning after 2021 and thresholds would be adjusted for inflation.)

### ***Increase the highest marginal rate for individuals to 39.6 percent.***

For 2022, the new rate would affect married filing joint taxpayers with taxable income of more than \$509,300; more than \$452,700 for single taxpayers; more than \$481,000 for heads of households; and more than \$254,650 for married people filing separate.

### ***Tax high-income individuals' capital gains and qualified dividends at ordinary rates.***

For taxpayers with Adjusted Gross Income (AGI) surpassing \$1 million (\$500,000 if married filing separate), the maximum tax on long-term capital gains and qualified dividends is proposed to increase from 20 percent to the top rate on ordinary income (proposed to be 39.6 percent). When factoring in the 3.8 percent net investment income tax, this effectively would raise the tax rate on long-term capital gains and qualified dividends to 43.4 percent.

### ***Treat transfers of appreciated property by gift or at death as realization events.***

Donors and deceased owners of an appreciated asset would realize a capital gain when the asset is transferred (either as a gift or at the taxpayer's death). Taxpayers would have a \$1 million per-person exemption available (adjusted for inflation after 2022). Certain other exclusions would also be available.

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### ***Tax appreciation on certain assets held in a trust, partnership, or other noncorporate entity.***

An entity would be subject to tax if the assets it holds have not been subject to a recognition event within the prior 90 years, beginning January 1, 1940. That means December 30, 2030 would be the earliest date that a taxpayer might have to recognize gain.

### ***Subject certain income to either net investment income or self-employment tax.***

Currently, married taxpayers filing a joint return with AGI surpassing \$250,000 (\$200,000 for single and head of household, \$125,000 for married filing separately) are subject to a 3.8 percent tax on their Net Investment Income (NII). Self-employment (SE) income is not subject to the NII Tax (NIIT). Under the proposal, all income not subject to SE tax would be subject to NIIT for taxpayers with AGI more than \$400,000. Also, ordinary income passed through to S corporation shareholders and limited partners/LLC members who materially participate would be subject to SE tax, effectively making this pass-through income subject to either NIIT or SE tax.

### ***Make certain tax credit changes permanent.***

The American Rescue Plan Act of 2021 (ARPA) expanded and modified several individual taxpayer credits generally for 2021 only. The American Families Plan would make the following ARPA changes permanent:

- **Premium Tax Credit.** This refundable credit is available to taxpayers who get health insurance through an Affordable Care Act (ACA) Marketplace. ARPA modified the income threshold for eligibility and decreased the contribution percentages for taxpayers.
- **Earned Income Tax Credit.** This refundable credit is available to taxpayers with low-to moderate-income levels. ARPA expanded eligibility to taxpayers as young as age 19 (age 18 for a qualified former foster youth or a qualified homeless youth), provided the taxpayer can't be claimed as a dependent on their parent's return. It also expanded the credit for workers without children.
- **Child and Dependent Care Tax Credit.** This credit is available to taxpayers who must pay for childcare to enable themselves to work. ARPA made the credit fully refundable for eligible taxpayers and increased allowable expenses (to \$8,000 for taxpayers with one qualifying child and to \$16,000 for those with two or more children).

### ***Extend child tax credit changes.***

This credit is available to taxpayers with qualifying children. ARPA made this credit fully refundable for eligible taxpayers in 2021 and increased the credit amount to \$3,000 (for children ages 6 through 17) and \$3,600 (for children under 6). These ARPA changes would be extended to tax years beginning before 2026.

### ***Limit like-kind exchange deferrals.***

The TCJA limited the ability to defer gains using a like-kind exchange to exchanges of real property. The proposed change caps the gain that can be deferred in a Section 1031 like-

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kind exchange at \$500,000 per taxpayer per year (\$1 million for married filing jointly). Gains from a like-kind exchange that exceed the cap will be subject to tax in the year the taxpayer transfers the property.

***Make excess business loss limit permanent.***

The provision that limits a noncorporate taxpayer's ability to claim excess business losses is set to expire at the end of 2026. The proposed law would make this provision permanent.

***Increase IRS funding.***

Additional funding would be used to beef up tax law enforcement and compliance efforts, enhance information technology functionality, and allocate resources to enforcement activities for taxpayers with income of \$400,000 and higher.

***Improve oversight of tax preparers.***

The proposed changes would establish minimum competency standards and increase penalties on tax preparers who don't sign the returns they prepare ("ghost preparers") to the greater of \$500 per return or 100 percent of the fee received for preparing a ghost return. The time to assess the penalty would increase from three to six years after a return is filed for returns required to be filed after 2021.

***Expand crypto asset reporting for brokers.***

The IRS sees cryptocurrency as a means for tax evasion. The proposal would expand the scope of information reporting by brokers to require information related to gross proceeds, sales, and "substantial foreign owners" in passive entities.

**Keeping an Eye on the Biden Administration's Proposed Tax Law Changes**

Time will tell which of the Biden Administration's proposals will ultimately become law. As with all proposals, it's entirely possible that some of the administration's proposals will never see daylight, and it's also possible that others will be considerably changed before being signed into law. Stay tuned for updates from us as they become available.



**Keep in touch.**

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