Tax Change Proposals: Don’t Panic, but Start Making Plans

By Helena Jonassen

Taxes, always inevitable, now seem to be heading inevitably higher. President Biden has proposed more than a dozen significant changes in federal tax laws. Here is a brief summary of the proposed tax changes that may affect high-income/high net worth individuals and families.

While they are far from certain, given the current political landscape, they remind us how quickly the wealth planning environment can change. Any decisions should make sense in the bigger picture of long-term plans.

American Jobs Plan (the Made in America Tax Plan): The plan proposes as much as $2.3 trillion to fund infrastructure investments and spending on other priorities, such as public housing, energy efficiency, education and economic development. It also proposes hiking corporate income taxes to 28% from 21%, and changing U.S. international tax rules to boost revenues from the foreign earnings of U.S. corporations.

American Families Plan: This $1.8 trillion plan to fund college education, universal preschool, childcare, paid leave, and support low- and middle-income families would include some tax relief by making permanent certain tax credits. This would be partially funded by taxing the better off, with proposals including the following (effective January 1, 2022 unless otherwise noted):

- Increasing top marginal tax rate on individuals to 39.6% from 37% for income over $509,300 for married filing jointly and $452,700 for single filers.
- Taxing capital gains as ordinary income at 40.8%[1] (37%+ 3.8% in net investment income, or NII) for individuals with adjusted gross income over $1 million, effective April 28, 2021.
- Taxing unrealized capital gains at death and at transfer by gift (exemption of $1 million individual or $2 million for joint filers and certain other exclusions). In addition, distributions in-kind from an irrevocable trust, partnership or non-corporate entity will become a capital gains-recognition event. Spousal and charitable transfers are excluded.

[1] In 2022, this rate would increase to 43.4%.

- Taxing unrealized capital gains on trusts, partnerships or other non-corporate entities on property that has not been subject to a capital gains-recognition event within the prior 90 years (beginning January 1, 1940).

- Applying the 3.8% NII to all income over $400,000 including active pass-through income unless subject to Self-Employment Contribution Act, or SECA.

- Taxing carried interest as ordinary income for those with taxable income over $400,000.

- Eliminating like-kind exchanges (1031 exchanges) on real estate gains greater than $500,000 for each taxpayer.

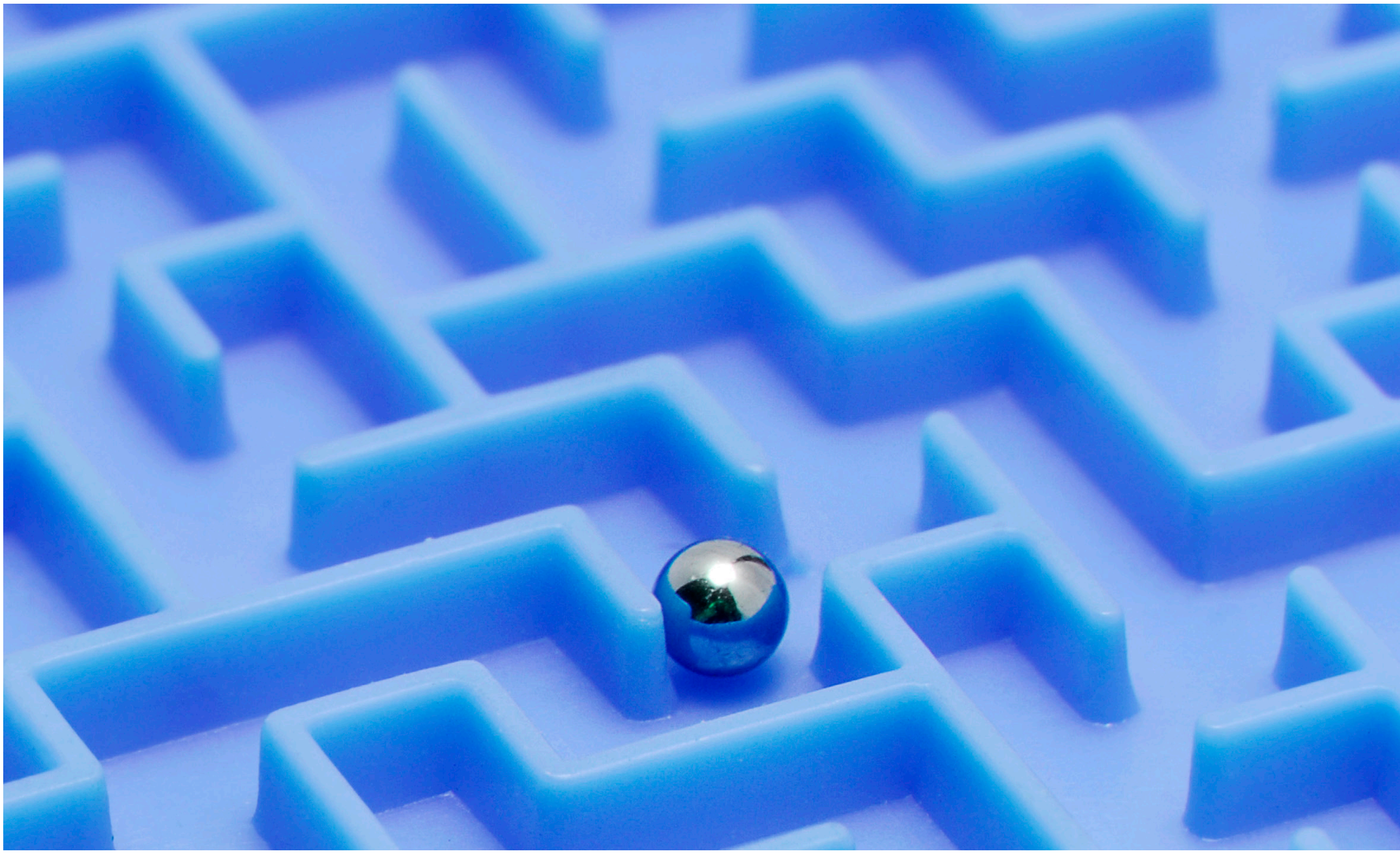
- Permanently limiting pass-through business losses.

- Increasing funding of the IRS for individual tax enforcement and enacting new reporting requirements for financial institutions.

In this very uncertain planning environment, we suggest you discuss the following with your advisors if applicable:

- If you are selling a highly appreciated real estate investment, consider a 1031 exchange into a like-kind asset while the option is still available, and if it fits in with your overall investment and financial plan. While you typically have 180 days to complete a like-kind exchange, the proposal's effective date is for exchanges that are completed after December 31, 2021. So, both parts of the exchange must be completed in the current year if this legislation passes.

- If you are considering selling an appreciated asset in the coming years, you may wish to consider selling it now, again if appropriate to your overall plan. We know what the federal tax rate is on long-term capital gains now, but it may change in the future. The Biden Administration's recently released



$6 trillion budget references capital taxes dating from April 28, 2021, so there is certainly a risk of retroactivity, but both Ways and Means Chairman Richard Neal and Finance Chairman Ron Wyden have previously stated their opposition to retroactive tax increases.

- Consider accelerating income if it makes sense in your personal plan. A conversion to a Roth IRA may also make sense for those potentially subject to higher tax rates in the future. An analysis should show if the current payment of tax is outweighed by the tax-exempt growth of assets in a Roth IRA. The conversion may be more attractive if you have a significant reduction in income or have a large offsetting deduction in the current year. If you have charitable intent, you should consider if it makes more sense in the long run to leave your tax-deferred asset like your IRA or retirement plan to charity instead of making a Roth conversion.

- Consider deferring deductible expenses such as charitable gifts, because the value of the deduction may be higher if the income tax rate is higher. It's important to note that limits to the deduction may also be on the table in the future.

In addition, although changes in estate tax and estate plan legislation is not contemplated by the budget proposal, we continue to recommend that you:

- Work with your Wealth Advisor, attorney and tax advisors to determine if you can utilize your $11.7 million per person lifetime exemption in the context of your (and your spouse's) lifetime needs and your estate-planning goals. If you have used your own exemption, consider utilizing your heirs' lifetime exemption and generation-skipping tax, or GST, exemption on a non-GST irrevocable trust for their benefit. That would mean terminating those trusts in their favor (assuming that it is permissible under the terms of the trust document) and recreating them in Delaware or another state with no limit on trust perpetuity, thereby removing those assets from estate tax for generations to come.

- Consider utilizing grantor retained annuity trusts, or GRATs, valuation discounts or other similar vehicles, taking advantage of current laws and the current low interest rate environment.

Most important, don't act precipitously. We don't know what the final legislation will include, and tax laws change all the time. President Biden will have difficulty passing any increases in taxes, particularly individual taxes, and it seems likely that his $6 trillion budget will incur some drastic reductions. Any wealth-planning decisions in anticipation of tax changes should be made in the context of your broader financial goals.

Helena Jonassen is a Partner and Wealth & Fiduciary Advisor at Evercore Wealth Management. She can be contacted at helena.jonassen@evercore.com.

EVERCORE | Wealth Management | Trust Company

THE NEW STANDARD IN WEALTH MANAGEMENT

NEW YORK
55 East 52nd Street
New York, NY 10055
212.822.7620

Jay Springer
Partner
212.822.7621
springer@evercore.com

MINNEAPOLIS
150 S. Fifth Street, Suite 1330
Minneapolis, MN 55402
612.656.2820

Martha Pomerantz
Partner
612.656.2821
martha.pomerantz@evercore.com

PALM BEACH
515 North Flagler Drive, Suite 702
West Palm Beach, FL 33401
561.812.1010

Michael Cozene
Partner
561.812.1010
michael.cozene@evercore.com

SAN FRANCISCO
425 California Street
Suite 1500
San Francisco, CA 94104
415.288.3000

Keith McWilliams
Partner
415.288.3010
keith.mcwilliams@evercore.com

TAMPA
4030 Boy Scout Boulevard, Suite 475
Tampa, FL 33607
813.313.1190

Julio Castro
Partner
813.313.1192
julio.castro@evercore.com

WILMINGTON
Evercore Trust Company, N.A.
300 Delaware Avenue, Suite 1225
Wilmington, DE 19801
302.304.7362

Alexander Lyden-Horn
Director of Delaware Trust Services
and Trust Counsel
302.304.7369
alexander.lydenhorn@evercore.com

EDITORIAL AND MEDIA
Aline Sullivan
Editor
203.918.3389
aline.sullivan@evercore.com