Ways and Means Committee Action

September 16, 2021

On September 15, 2021 the House Ways and Means Committee reported legislation to meet the Ways and Means directive in the FY 2022 Budget Resolution.

Here are the headlines for the major individual income and estate and gift tax proposals and other proposals that are likely to affect planning for high income individuals:

- **There is no change to the tax treatment of appreciated property transferred by gift or at death.**
- Individual rate increases to 39.6% for taxpayers with adjusted gross income incomes in excess of $400,000/$450,000, effective for taxable years beginning after 12/31/21.
- Capital gains and qualified dividend tax increase to 25%.
  - Effective generally for gains and dividends **received or accrued after September 13, 2021 with a binding contract exception.**
- 3% surcharge on modified adjusted gross income of individuals, trusts, and estates in excess of $5,000,000 (or in excess of $2,500,000 for a married individual filing separately).
  - Effective for taxable years beginning after 12/31/21.
- Net investment income tax of 2.8% extended to cover net investment income derived in the ordinary course of a trade or business for taxpayers with greater than $400,000 in taxable income (single filer) or $500,000 (joint filer), as well as for trusts and estates.
  - Effective for taxable years beginning after 12/31/21.
- Transfer tax exemption returns to $5 million, indexed for inflation, effective for decedents dying and gifts made after 12/31/21.
- Special rules for grantor trusts.
  - Any sale or exchange between a grantor and a grantor trust (other than a fully revocable trust) will be a taxable transaction. This provision applies to grantor trusts created after the effective date and portions of pre-effective date trusts attributable to contributions made after enactment.

- Limitation on the Use of Minority Discounts.
  - No valuation discount for the transfer of nonbusiness assets. Nonbusiness assets are passive assets that are held for the production of income and not used in the active conduct of a trade or business. Exceptions are provided for assets used in hedging transactions or as working capital of a business. A look-through rule provides that when a passive asset consists of a 10-percent interest in some other entity, the rule is applied by treating the holder as holding its ratable share of the assets of that other entity directly.
  - Effective for transfers occurring after date of enactment.
- Limitation on the use of section 199A.
  - The maximum allowable deduction is limited to $500,000 in the case of a joint return, $400,000 for an individual return, $250,000 for a married individual filing a separate return, and $10,000 for a trust or estate.
  - Effective for taxable years beginning after 12/31/21.
- $500,000 limitation of the use of excess business losses made permanent.
  - Effective with respect to taxable years beginning after **12/31/20.**
- Carried interest
  - The provision generally extends from three to five years the holding period required for gain attributable to an applicable partnership interest to qualify for long term capital gain treatment. It also expands the applicability of the section to all assets eligible for long term capital gain rates.
  - Effective for taxable years beginning after December 31, 2021.
- Qualified Small Business Stock
  - Amends section 1202(a) to provide that the special 75% and 100% exclusion rates for gains realized from certain qualified small business stock will not apply to taxpayers with adjusted gross income equal to or exceeding $400,000. The baseline 50% exclusion in 1202(a)(1) remains available for all taxpayers.
  - Effective for sales and exchanges after September 13, 2021, subject to a binding contract exception.
- Limitation on the deductibility of charitable contributions of conservation easements
  - Denies a charitable deduction for contributions of conservation easements by partnerships and other pass-through entities if the amount of the contribution exceeds 2.5 times the sum of each partner's adjusted basis in the partnership that relates to the donated property. This general disallowance rule does not apply to donations of property that meet the requirements of the 3-year holding period rule, and contributions by family partnerships.
  - Generally effective for contributions made after **12/31/16**. Effective for historic structures for contributions made in taxable years beginning after **12/31/2018.**

Observation

The timing of final passage of the bill in the House is unclear. In particular, it is expected that the SALT deduction limitation will be addressed before the vote on final passage. The bill will then proceed to the Senate where the Senate Finance Committee will take it up. Changes can be expected. Timing is also uncertain.

For questions related to any of these issues, please contact our federal tax policy leader, Hank Gutman, or a member of our Estate Planning Team.