June 2, 2021

Biden Administration FY2022 Budget Proposals
Related to the Tax Gap and other Administrative Matters
Released May 28, 2021

On May 20, the Treasury Department released the "American Families Plan Tax Compliance Agenda," which describes the President's proposals to raise revenue for the American Families Plan through closing the tax gap. The plan includes several proposals, including increasing IRS enforcement resources, increasing information reporting, and implementing other compliance rules. Treasury estimates its proposals to improve tax compliance and tax administration would raise nearly $800 billion over ten years.

Funding the IRS. The Administration proposes increasing the IRS budget by about $80 billion over the next ten years. This includes $6.7 billion for IRS Enforcement and Operations Support and $72.5 billion in mandatory funding, over the budget window. The mandatory spending would go toward expansions in enforcement and compliance activities (primarily targeting taxpayers earning more than $400,000), enhancing IT capability (including implementation of information reporting regime, described below), and customer service.

These increases in IRS funding are expected to increase revenues by $316 billion over the budget window.

Comprehensive Financial Account Reporting. Create a comprehensive financial account reporting regime, requiring financial institutions to report gross inflows and outflows with a breakdown for physical cash, transactions with a foreign account, and transfers to and from another account with the same owner. This requirement would apply to all business and personal accounts from financial institutions, including bank, loan, and investment accounts. Accounts below $600 of gross flow or fair market value are excluded from reporting requirements.

Payment settlement entities would be required to collect TINs and file revised Form 1099-Ks for all payee accounts (subject to the above de minimis threshold), reporting gross receipts, gross purchases, physical cash, payments to and from foreign accounts, and transfer inflows and outflows.

Similar reporting would apply to crypto asset exchanges and custodians. Reporting would be required for taxpayers buying crypto in one account and transferring it to another account and businesses that receive crypto assets in transactions with a FMV greater than $10,000.

Treasury has broad authority to issue regulations necessary to implement this provision.

The proposal is effective for tax years beginning after December 31, 2022. The proposal is estimated to increase revenues by $462 billion over the budget window.

Paid Tax Return Preparers. Amend Title 31 to provide the Secretary with the authority to regulate all paid Federal tax return preparers, including by establishing a minimum competency standard. The proposal is effective on the date of enactment.

The proposal would also increase the penalty to the greater of $500 per return or 100 percent of the income derived per return by a ghost preparer. It also increases the statute of limitations during which the penalty may be assessed from three years to six years. The proposal is effective for returns required to be filed after December 31, 2021. These two proposals would raise $817 million over ten years.

Increase Electronic Filing Requirements. Require taxpayers to electronically file the following returns: (1) income tax returns for individuals with gross income greater than $400,000; (2) income, estate, or gift tax returns of all related individuals, estates, and trusts with assets or gross income greater than $400,000 in any of the three preceding years; (3) partnership returns for partnerships with assets or any item of income greater than $10 million in the three preceding years; (4) partnership returns for partnerships with more than 10 partners; (5) returns of REITs, REMICs, RICs, and all insurance companies; and (6) returns for corporations with greater than $10 million in assets or more than 10 shareholders.

Electronic filing is also required for the following forms: (1) Form 8918, "Material Advisor Disclosure Statement"; (2) Form 8886, "Reportable Transaction Disclosure Statement"; (3) Form 1042, "Annual Withholding Tax Return for U.S. Source Income of Foreign Persons"; (4) Form 8038-CP, "Return for Credit Payments to Issuers of Qualified Bonds"; and (5) Form 8300, "Report of Cash Payments Over $10,000 Received in a Trade or Business."

Return preparers expecting to prepare more than 10 corporate income tax returns or partnership returns must electronically file those returns.

The proposal would also treat all information returns subject to backup withholding similarly. Specifically, the IRS would be permitted to require payees of any reportable payments to furnish their TINs to payors under penalty of perjury. The proposal would be effective for payments made after December 31, 2021.

Treasury has the authority to require additional returns and Forms to be filed electronically.

Crypto Asset Reporting. Require brokers reporting on crypto assets to include certain beneficial owner information. Further, the brokers, including crypto asset exchanges and hosted wallet providers, would be required to report information on certain passive entities and their substantial foreign owners. The proposal would also require brokers to report gross proceeds and other information the Secretary requires with respect to sales of crypto assets with respect to customers and substantial foreign owners of certain passive entities.

The proposal would be effective for returns required to be filed after December 31, 2022.

Listed Transactions. Extend the statute of limitations under section 6501(a) to six years (from three years) for returns reporting benefits from listed transactions. The proposal would also extend the section 6501(c)(10) statute of limitations for listed transactions from one year to three years. The change would be effective on the date of enactment.

Corporate Shareholder Liability for Corporation Unpaid Taxes. The proposal would add a new code section that would impose secondary liability on certain corporate shareholders selling their stock for payment of the C corporation's income taxes, interest, additions to tax, and penalties to the extent of the sales proceeds received by the shareholder. The proposal applies to shareholders who dispose, either directly or indirectly, of a controlling interest (at least 50 percent) in the stock of an applicable C corporation within a 12-month period in exchange for consideration other than stock issued by the acquirer of the applicable C corporation stock. The secondary liability arises only after the applicable C corporation was assessed income taxes, interest, additions to tax, and penalties with respect to any taxable yar within the 12-month period before or after the date its stock was disposed of and the applicable C corporation did not pay such amounts within 180 days after assessment.

For purposes of this proposal, an applicable C corporation is any C corporation (or successor) two thirds or more of whose assets consist of cash, passive investment assets, or assets that are subject of a contract of sale or whose sale has been substantially negotiated on the date that a controlling interest in its stock is sold. The proposal would not apply to dispositions of REITs traded on an established securities market, RICs offering shares to the public, or an acquirer whose stock or securities are publicly traded on an established market in the U.S. or consolidated for financial reporting purposes with such a public issuer of stock or securities.

The proposal would close the taxable year of an applicable C corporation on the later of a disposition of a controlling interest in its stock or a disposition of its assets.

The proposal would be effective for sales of controlling interests occurring on or after April 10, 2013. This provision is estimated to increase revenues by $4.7 billion over the budget window.

Centralized Partnership Audit. Amends sections 6226 and 6401 to provide that any amount of the net negative change in tax exceeding the income tax liability would be considered an overpayment under section 6041 and may be refunded.

Supervisor Approval of Penalties. Clarify section 6751(b) regarding the necessary supervisory approval of penalties to address recent court decisions that have called into question the requisite timing of the approval and who are qualified approvers. The modifications would be effective on date of enactment and would raise $1.9 billion over ten years.

