Top Tax-Related Takeaways From Biden's Budget Proposal

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U.S. President Joe Biden talks about his proposed FY2024 federal budget during an event at the ... [+] GETTY IMAGES

On March 9, 2023, President Biden released his official budget. As expected, his budget priorities include increasing taxes on corporations and high earners, boosting spending on policy items like energy and education, and moving to reduce the deficit.

Budget Proposals Are Not Law

But before you rush out and make plans based on the budget, you should understand that the President's budget, like all others that came before it, is a proposal. It's not law. It's a signal to Congress that this is what the administration wants to happen—but Congress doesn't always follow the wishes of the President. President Bush, for example, was never able to fully repealed the estate tax (it's still around), President Obama did not "cut the deficit we inherited by half" by the end of his first term in office, and President Trump did not eliminate the Affordable Care Act.

(If you'd like to read more on this topic, The New York Times did an analysis of proposed budgets and fiscal realities from the last 30 years—with charts—here.)

But presidential budgets do set the tone for—and often the stage for political showdowns over—fiscal policy for the coming year. That's why it's worth noting, even if it isn't the current rule of law.

Here's a look at some key tax-related provisions included in President Biden's recent budget proposal.

Corporations

The proposal calls for an **increase in the corporate income**

tax rate to 28%—higher than the current rate of 21% but lower than the pre-TCJA rate of 35%. For comparison, according to the Tax Foundation, the worldwide average statutory corporate income tax rate, measured across 180 jurisdictions, is 23.37%. When weighted by GDP, the average statutory rate is 25.43%. Under the OECD/G20 Inclusive Framework on BEPS (base erosion profit shifting), the global effective minimum tax rate will be 15%.

This would lead to additional changes, including the **repeal of the base erosion and anti-abuse tax, known as BEAT**. In its place, there would be an undertaxed payments rule, or UTPR, consistent with the model rules for OECD Pillar Two, which is part of the global tax deal and typically applies to high-earning companies. The UTPR would allow a country to increase the tax—sometimes called a top-up tax—on a multinational business that pays less than the proposed global minimum tax rate. The proposal makes clear, however, that US companies that benefit from US tax laws would continue to do so.

The proposal would also seek to **increase the Global Intangible Low-Taxed Income**—GILTI—tax rate on overseas income to 14% from the current 10.5%, calculated on a jurisdiction-by-jurisdiction basis.

The proposal would also **boost the stock buyback surcharge** signed into law under the Inflation Reduction Act from 1% to 4%. That should be no surprise, as it was mentioned as part of the State of the Union address. Corporate stock buybacks can be controversial since they tend to boost shareholder value rather than provide an incentive to re-invest in workers or technology. That's true across party lines—in 2020, Donald Trump criticized companies that engaged in buybacks after a 2018 tax break and promised to prevent them from doing the same with Covid funds.

There are currently only a few tax incentives for US employers to **bring offshore jobs and investments into the country**. And, costs for offshoring US jobs are deductible. The proposal would create a new general business credit equal to 10% of the eligible expenses paid or incurred for onshoring a US trade or business. At the same time, the proposal would disallow deductions for expenses paid or incurred in connection with offshoring a US trade or business.

And citing "record profits in 2022," the President's budget would **eliminate certain tax breaks for oil and gas company investments**, including deductions tied to foreign production. Credit for enhanced oil recovery, oil and natural gas produced from marginal wells, and the expensing of intangible drilling costs are also on the chopping block.

High-Earning Individuals

The proposal would **repeal the TCJA top tax rate cut for individuals**, sending the rate back to 39.6% (it's currently 37%).

The Net Investment Income Tax, or NIIT, sits at 3.8% and is imposed on certain kinds of passive income—typically investment income—of taxpayers with incomes of $200,000 or more for individuals ($250,000 for married couples filing jointly). The proposal would **raise the NIIT rate to 5% for taxpayers making more than $400,000**—at that threshold, the tax would also apply to other kinds of income, including pass-through income. The increased revenue would be directed into the Medicare Hospital Insurance trust fund.

The budget also proposes **taxing capital gains at the**

ordinary income tax rates rather than favorable capital gains for taxpayers with more than $1 million in income.

The budget also calls for a so-called **billionaire's tax**—a 25% minimum tax on the top 0.01% of taxpayers. As noted in my State of the Union cheat sheet, the name is a misnomer—the tax applies to total income, including unrealized capital gains income, for taxpayers with net wealth greater than $100 million.

The proposal would also seek to **limit contributions to tax-favored retirement accounts**, including IRAs, for single taxpayers with incomes over $400,000 ($450,000 for married taxpayers filing jointly). If that sounds familiar, it's similar to the proposal in Build Better Back that was intended to eliminate the "Mega IRA."

The **"carried interest" loophole** is also back in the public eye, and the President is seeking to close it. Under current law, certain investment managers can report part of their compensation as investment gains, which allows them to pay more favorable tax rates. The controversial tax break has been a target for years—President Trump had vowed to eliminate it in 2015, claiming that such managers were "getting away with murder" by not paying their fair share of taxes.

Another controversial tax break is also in the crosshairs again: **like-kind exchanges**. A like-kind or section 1031 exchange allows investors to delay paying capital gains on the sale of a property as long as the funds are used to immediately buy a similar property elsewhere. The break applies to properties used in a trade or business or for investment. Personal residences are treated differently—you can read about those here. The proposal would allow for a total like-kind deferral of gain up to $500,000 for single taxpayers ($1 million for married individuals filing jointly) each year. Gains over that amount would be taxed when the taxpayer transfers the property.

Cryptocurrency

The proposal includes a **ban on wash sales** for cryptocurrency. Under current rules, taxpayers can't claim a break if they sell securities for a loss and immediately repurchase them. But since cryptocurrency isn't classified as a security, there's no such wash-loss rule—that would change under the President's budget.

Tax Credits

The budget calls for the **re-expansion of the Child Tax Credit** to the levels under the American Rescue Plan. That means the credit would grow from $2,000 per child to $3,000 per child for children six years old and above and to $3,600 per child for children under six through 2025—it would also be fully refundable permanently.

Also related to refundable credits? The proposal would make permanent the **Earned Income Tax Credit (EITC) expansion** for workers without children.

The budget would also make **healthcare premium tax credits permanent** and provide "Medicaid-like coverage" to taxpayers in states that didn't okay Medicaid expansion.

Trusts and Estates

The proposal does not suggest an increase in tax rates or lower thresholds for the federal estate and gift tax. However, the budget proposes some significant changes to the way that taxpayers would treat assets—specifically those that have appreciated.

Under the proposal, the donor or deceased owner of an appreciated asset (like a stock that has grown in value) would realize capital gains at the time of the transfer. The growth would be taxable to the donor or the decedent's estate, and capital losses and carry-forwards would apply. The resulting basis after the transfer would be the property's fair market value at the time of the gift or the decedent's death.

A $5 million per-donor exclusion would apply to property transferred by gift during life. This exclusion could be used by the decedent's surviving spouse under the same portability rules for estate and gift tax purposes. Additionally, transfers to a US spouse or to charity would carry over the basis of the donor or decedent so that capital gains would not be realized until the surviving spouse disposes of the asset or dies.

Property held in trust would not be exempt under the proposal. Gain on unrealized appreciation also would be recognized by a trust, partnership, or other non-corporate entity that owns property if that property has not been the subject of a recognition event within the prior 90 years.

Spending

The Biden budget would increase discretionary spending for almost every government agency. Exceptions include Homeland Security, Transportation, and the Small Business Administration.

In particular, the **IRS budget would see a 15% boost** to $14.1 billion. That price tag includes $290 million for business systems modernization, which did not receive any annual funding in 2023.

Overall

According to the administration, the budget is fully paid for under the revenue provisions and would reduce deficits by $2.9 trillion over 10 years.

This is, of course, just a snapshot. There's a lot more to dive into if you have interest.

- You can read the official budget proposal here.
- If you'd prefer a shorter format, the fact sheet is here.
- And if you want specific information about some of the proposals, you can read Treasury's General Explanations here.

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I focus on tax law including tax planning and tax controversy matters. My goal is to help taxpayers get compliant and stay out of trouble.
I earned my J.D. and LL.M. in Taxation from Temple University School of Law in Philadelphia, PA. While at law school, I interned in the federal estate and gift tax attorney division of the IRS, and participated in the review and audit of federal estate tax returns.
I started writing using the moniker Taxgirl years ago and love making complicated information accessible to taxpayers and tax professionals.
I hate lists of awards but do have a few that I'm particularly proud of, including the Philadelphia Business Journal "40 under 40" and being named one of the Global Tax 50 by the International Tax Review for my "tireless and passionate tax reporting." I love to travel with my family and spend much of my time explaining to the kids why we can't move to Europe—this week. **Read Less**