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## The Bipartisan Infrastructure Bill - New and Changing Tax Considerations

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While the House will vote next week to avoid a US debt default and governmental shut down, it is uncertain, but likely that they will vote on the Bipartisan Infrastructure Bill, containing many tax changes. These changes will affect individuals and businesses, alike.

While it would be difficult and lengthy to summarize all the provisions, we have identified significant topics herein which we felt would be most important and significant for our clients.

### Individuals

**Ordinary Income Tax Rates** – as you may be aware, the US tax structure contains graduated rates based upon different levels of taxable income. The highest marginal rate in 2020 leading into 2021 currently is 37%. There is a proposed increase in the top marginal rate of 2.96% to 39.6% on those with taxable income of \$450,000 (married joint filers); \$425,000 (head of household); \$400,000 (single filers); \$225,000 (married filing separate); and lastly, \$12,500 for estates and trusts. We also note that the higher tax rate brackets for individuals is significantly lower in aggregate income, causing many more middle-class Americans to hit these higher brackets earlier. The effective date for these rate changes is proposed to be on January 1, 2022.

**Capital Gains Tax Rates** – The economy has been enjoying low tax rates on long term capital gain rates for a few years – and range from as low as 0% to 20% - now for those taxpayers who have taxable income above \$450,000 (married joint) and \$400,000 (married separate or individually), the long-term capital gains rate would be increased to a new rate of 25%. On top of this increase is also an additional surcharge of the net investment income tax of 3% (described later). The effective date for this proposed change is September 13, 2021.

**Net Investment Income** – this Obama era tax of 3.8% on investment income excluded trade or business income that the taxpayer actively participates in. Now, the proposed bill would suggest including ordinary trade and business income for those whose taxable income is above \$400,000 (single) and \$500,000 (joint filers), as well as trusts and estates. This change would be effective in 2022.

**Surcharge** – a new tax that would assess 3% of modified adjusted gross income in excess of \$5,000,000 for married filers or \$2,500,000 for married separate taxpayers, and 100,000 for trust and estate returns (income remaining in the trust). This surcharge would also be effective in 2022.



**Grantor Trusts** – an effective tax planning tool to transfer property out of one’s estate, but still remain taxed on the assets therein, Congress is considering any transfer of personal assets to a Grantor Trust as a sale. Thus, the sale could potentially trigger taxable events to the grantor, shutting down a significant tax planning tool. Any existing grantor trusts would be grandfathered in so as to remain excludable from one’s estate, so long as no further assets are added to the vehicle after the tax law change. Along this line, Congress is also attempting to shut down minority and lack of marketability discounts often used in gifting nonbusiness assets.

**Excess business losses** – from the Tax Cuts and Jobs Act enacted in 2017, there was a limit of losses on pass-through entities flowing into individuals returns, so long as those losses were not the taxpayers active trade or business. Proposed, the bill would permanently disallow these excess business losses, after carrying those losses to the next succeeding taxable year only.

**Qualified business income (Section 199A) deductions** – certain passthrough entities enjoyed a deduction of 20% of their taxable income subject to limits set by wages and asset basis. Proposed is an amendment that provides for a maximum allowable deduction of \$400,000 for single filers and \$500,000 for joint filers. Trusts would be limited to a \$10,000 deduction. This change is effective in 2022.

**Carried Interest** – previously, for those who participate in investment income – in the ordinary course of his or her business, taxpayers would need to hold assets three years to get the long-term capital gain rates benefit. Now proposed is a five-year holding period to qualify for the same benefits. This change would be effective in 2022.

**1202 Stock** – a provision in the law for stockholders who typically are initial investors in small businesses – providing them partial or complete exemption of capital gains. Proposed is the exclusion of such benefit for those who have income in excess of \$400,000. A break, however, of up to 50% of the tax will still hold true for all owns of 1202 Stock regardless of income levels. This provision would be effective starting with sales occurring after September 13, 2021.

**Estate and Gift Tax** – The estate and gift tax exemption levels are currently set at \$11.7 million for 2021, where a married couple can effectively shield \$23.4 million from federal taxes. The new proposal suggests reducing the exclusion to its original 2010 levels of \$5 million per individual, indexed for inflation, which would put us at around \$6 million in today’s dollars. This change would be effective in 2022. Again, Congress is also attempting to shut down minority and lack of marketability discounts often used in valuing assets, specific to nonbusiness assets.



**Corporations and Passthrough Entities**

**Corporate Tax Rates** - having enjoyed the flat tax structure for a few years at 21% for C Corporations, the new proposal is suggesting a graduated rate starting at 18% for the first 400,000 of income, 21% for up to \$5,000,000 of income, and 26.5% on income over that. The graduated rate is eliminated should the corporation make over \$10,000,000 of income. This change would be effective for years after December 31, 2021.

**BEAT Tax** – the base erosion and anti-abuse tax was a tax developed for foreign owned entities operating in the United States; and provided for an alternative tax computation to prevent income shifting. The BEAT tax rate is being proposed to be increased to 12.5% for years beginning after December 31, 2023, and for years beginning after December 31, 2024, the rate would increase from 12.5% to 15%. Other BEAT computations related to the percentage threshold would be eliminated for years ending after December 31, 2023.

The BEAT computation is also being amended to include other payments previously not included.

**Interest Expense Limitations** – for clients that are part of a multinational group, domestic corporations, the bill would modify the existing 163(j) limitation provisions at the partner level, rather than at the partnership level. Additionally, the carryover period for the disallowed interest would be limited to five years.

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While it is unknown if all these provisions will become law in the bill's final version, particularly as certain members of congress chose to refuse signing the current bill, these highlighted, proposed changes to the tax law clearly affect a significant number of our clients. Tax planning to understand the repercussions of this bill should be addressed sooner rather than later, to avoid unexpected consequences. Parring these developments with the recent passage of New York and other state - pass through entity tax deduction programs, Spielman Koenigsberg Parker LLP will guide you through these rapidly developing issues. This has been an unprecedented year of tax law changes. SKP continues to stay on top of and proactively plan for our clients, to take advantage of opportunities that present themselves. Please feel free to reach out to your SKP representative to discuss the upcoming changes so as to address, and act on what SKP and you feel is economically prudent.

