Biden FY2022 Budget, Treasury Green Book Detail Administration's Tax Proposals

28 May 2021

The Biden administration detailed its tax increase and other tax proposals in the FY2022 budget and Treasury Green Book released May 28. New details were provided on proposals outlined earlier in the Made in America Tax Plan (proposed alongside the American Jobs Plan infrastructure proposal) on March 31, and the American Families Plan "human infrastructure" plan proposed on April 28. The Green Book mostly sticks with provisions under the Jobs and Families plans and doesn't offer many new proposals in other areas. It also omits several proposals from Biden's campaign tax plans.

The Green Book said the provision under which "long-term capital gains and qualified dividends of taxpayers with adjusted gross income of more than $1 million would be taxed at ordinary income tax rates … would be effective for gains required to be recognized after the date of announcement," which could mean the April 28 rollout of the American Families Plan. There is precedent for tax committee chairmen setting such effective dates in conjunction with the legislative process, meaning there will likely be additional discussion on this topic.

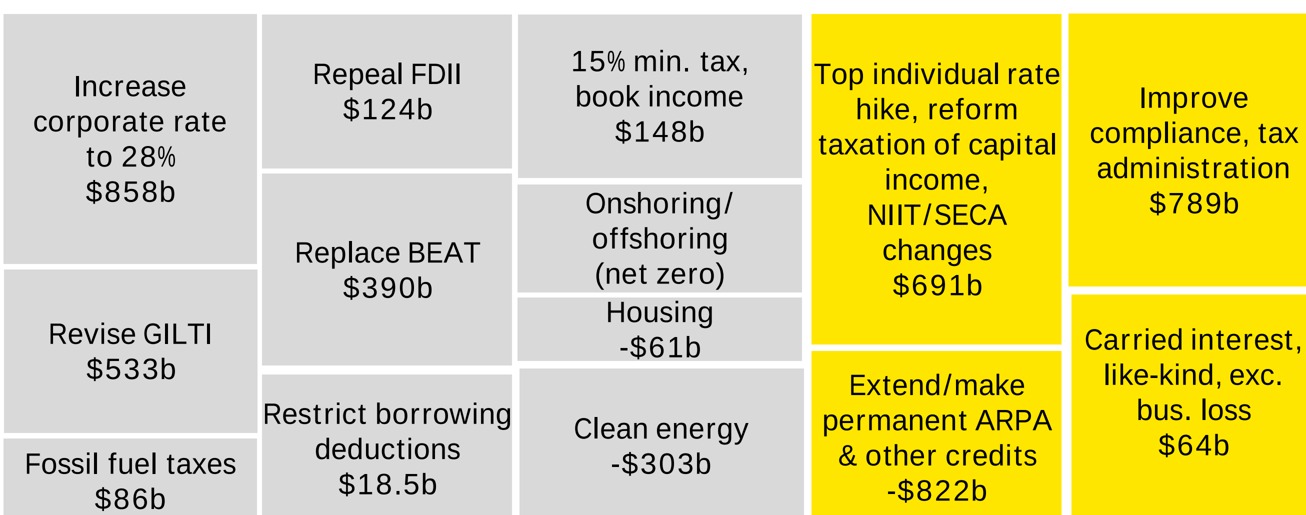
The Administration provided significant new detail on the clean energy provisions they want enacted, and specifies the fossil fuels provisions they propose to eliminate, many of which overlap with those in the Obama administration FY2017 budget.

In the international tax area, the changes to the GILTI tax regime have been expanded to include repealing the subpart F high tax exception and the statutory authority the Trump Administration relied on to issue the GILTI high tax exclusion regulations. Also key are additional details on the workings of the SHIELD proposal that would replace the BEAT.

Some Democrats in Congress have been waiting on Treasury's details on the tax proposals and estimates of their revenue impact to factor into whether they can support the proposed tax changes. The budget's release comes as the Administration is seeking bipartisan support for infrastructure plans, and Republicans have made clear they won't support tax increases. The outlook for the Families Plan is even less clear and may depend on how infrastructure comes together.

Revenue impact of major elements

American Jobs Plan *American Families Plan*



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International tax

	Description	Eff. Date	10yr score
GILTI	Proposal: End the tax exemption for the first 10% return on foreign assets (i.e., repeal QBAI); calculate the GILTI minimum tax on a per-country basis, and increase the GILTI minimum tax to 21 percent (through a 25% section 250 deduction). What's new: In explaining the details of moving GILTI to a CBC system via the GILTI FTC basket, the Administration would also: • Expand country by country to the foreign FTC branch basket • Repeal the high tax exemption to subpart F income and thereby the cross reference to that provision in the global minimum tax rules in section 951A • Repeal section 904(b)(4) and expand section 265 to address deductions related to tax exempt income with the Repeal The GILTI FTC rules would take into account any foreign taxes paid by the foreign parent, under an income inclusion rule (IIR) that is consistent with an OECD/Inclusive Framework Pillar Two agreement on global minimum taxation (if such consensus is reached). The repeal of section 904(b)(4) (enacted by the TCJA to address how U.S. expense should be allocable for FTC purposes to income that becomes exempt under the section 245A deduction) would be replaced with an expansion of section 265 (covering rules on expenses and interest related to tax-exempt income) to disallow deductions allocable to foreign gross income when only a partial deduction is allowed under section 245A with respect to a dividend or a partial section 250 deduction with respect to a global minimum tax inclusion.	Taxable years beginning after (TYBA) 12/31/21	$533b (includes estimate of inversion provisions)
BEAT	Proposal: Replace the BEAT with the SHIELD (Stopping Harmful Inversions and Ending Low-tax Developments) which would deny tax deductions on related party payments but by reference to the effective rate of tax on the deductible payment in the local jurisdiction. The effective rate of tax target would be set by OECD agreement under Pillar 2 or, absent agreement, the tax rate would be the rate on GILTI income What's new: Related deductible payments would be determined by reference to payments made to low-taxed entities that are members of the same financial reporting group (including a member that is the common foreign parent, in the case of a foreign-parented controlled group).	TYBA 12/31/ 22	$390b

International tax (continued)

	Description	Eff. Date	10yr score
BEAT (cont.)	Determining whether there is a low-taxed entity requires calculating an ETR to determine if it is below the "designated minimum tax rate trigger," including reductions in the gross amount of premiums and other consideration on insurance and annuity contracts arising out of indemnity insurance; deductions from the amount of gross premiums written on insurance contracts during the taxable year for premiums paid for reinsurance insurance policy claims and benefits accrued and losses paid during a taxable year (which would be deductible payments that are within scope of the SHIELD). The ETR would be calculated based on the members' separate financial statements or the financial reporting group's consolidated financial statements, as disaggregated on a jurisdiction by jurisdiction basis. The proposal will include authority for the Secretary to provide special rules to address differences (both permanent and temporary) between the relevant income tax base and the base as determined under financial accounting, and to provide rules to account for net operating losses in a jurisdiction. The amount of the denied deduction is generally the full amount of the payment. However, it appears deductible payments (made to related or unrelated parties) could be reduced by other types of costs (such as costs of goods sold). In addition, payments made to financial reporting group members that are not low-tax members would be partially subject to the SHIELD rule to the extent that other financial reporting group members were subject to an effective tax rate of less than the designated minimum tax rate in any jurisdiction. The proposal will include authority for the Secretary to address key areas: • Special rules to address differences (both permanent and temporary) between the relevant income tax base and the base as determined under financial accounting, and to provide rules to account for net operating losses in a jurisdiction	TYBA 12/31/22	$390b

International tax (continued)

	Description	Eff. Date	10yr score
BEAT (cont.)	• Exemptions from SHIELD in respect of financial reporting groups that meet, on a jurisdiction-by-jurisdiction basis, a minimum effective level of taxation as determined to the satisfaction of the Secretary, or determine exempt payments to domestic and foreign members that are investment funds, pension funds, international organizations, or non-profit entities, and to take into account payments by partnerships.	TYBA 12/31/22	$390b
FDII	Proposal: FDII repealed What's new: Revenue to be used to "encourage R&D"	TYBA 12/31/21	Net zero (FDII repeal $124b)
Inversion curbs	Proposal: Strengthen the anti-inversion provisions by generally treating a foreign acquiring corporation as a U.S. company based on a reduced 50 percent continuing ownership threshold and adding a provision to treat the foreign acquiring as domestic if managed and controlled in the United States What's new: The proposal would broaden the definition of an inversion transaction with a greater than 50-percent test (eliminating the 60-percent test), and expand the meaning of an inversion (without reqard to shareholder continuity) to include (1) immediately prior to the acquisition, the fair market value of the domestic entity is greater than the fair market value of the foreign acquiring corporation, (2) after the acquisition the expanded affiliated group is primarily managed and controlled in the United States, and (3) the expanded affiliated group does not conduct substantial business activities in the country in which the foreign acquiring corporation is created or organized. The meaning of "acquisition" would be expanded to consider direct and indirect assets, including through a distribution of stock of a foreign corporation by a domestic corporation or a partnership that represents either substantially all of the assets or substantially all of the assets constituting a trade or business of the distributing corporation or partnership.	Transactions completed after date of enactment (DOE)	Included in GILTI revenue estimate
FTC limitation from sales of hybrid entities	Proposal: Expand the treatment of a qualified stock purchase for which a section 338 election is made to sales of an interest in an entity that is treated as a corporation for foreign tax purposes but as a partnership or a disregarded entity for U.S. tax purposes (specified hybrid entity), or taxable changes in the classification of an entity for U.S. tax purposes that are not recognized for foreign tax purposes.	Transactions after DOE	$436m

International tax (continued)

	Description	Eff. Date	10yr score
FTC limitation from sales of hybrid entities (cont.)	The expansion of that rule, for purposes of applying the foreign tax credit rules, means the source and character of any item resulting from the disposition of the interest in the specified hybrid entity, or change in entity classification, would be determined based on the source and character of an item of gain or loss the seller would have taken into account upon the sale or exchange of stock (determined without regard to section 1248).	Transactions after DOE	$436m
Limitation of deduction on excessive interest (note, this was dropped from the TCJA)	Proposal: A member of a financial reporting group's interest deduction would be limited, determined by comparing the member's proportionate share of the financial reporting group's net interest expense and the member's proportionate share of the group's earnings (computed by adding back net interest expense, tax expense, depreciation, depletion, and amortization). The data would be reflected in the financial reporting group's consolidated financial statements. When a financial reporting group member has excess financial statement net interest expense, a deduction will be disallowed for the member's excess net interest expense for U.S. tax purposes. A member's excess limitation (if any) would be converted into a proportionate amount of excess limitation for U.S. tax purposes and carried forward as set forth below. The rule would not apply to financial services entities or financial reporting groups that would otherwise report less than $5 million of net interest expense, in the aggregate, on one or more U.S. income tax returns for a taxable year. Any FSE would need to be excluded from the financial reporting group for purposes of applying the proposal to other members of the financial reporting group.	TYBA 12/31/21	$18.6b
Onshoring tax incentives	Proposal: The proposal creates a new general business credit equal to 10 percent of the eligible expenses paid or incurred in connection with onshoring a U.S. trade or business, matched with a denial of deductions for expenses paid or incurred in connection with offshoring a U.S. trade or business. Eligible expenses may be incurred by a foreign affiliate of the U.S. taxpayer, and the U.S. Treasury will reimburse the U.S. territory for the new general business credits provided to their taxpayers pursuant to an equivalent rule. Deductions would be disallowed for expenses. Onshoring a U.S. trade or business would require a showing that operations outside the United States were moved to the United States and results in an increase in U.S. jobs.	Expenses paid or incurred after DOE	Net zero (credit for onshoring: - $112m; deduction denial: $112m)

Corporate tax

	Description	Eff. Date	10yr score
Corporate rate	Proposal: increase to 28% For taxable years beginning after 1/1/21 and before 1/1/ 22, the tax rate = 21% plus 7 % times the portion of the taxable year that occurs in 2022	TYBA 12/31/21	$857.8b
Minimum tax based on book income	Proposal: 15% minimum tax on worldwide book income of corporations with more than $2b in such income. What's new: Taxpayers would calculate book tentative minimum tax (BTMT) equal to 15 percent of worldwide pre-tax book income (calculated after subtracting book net operating loss deductions from book income), less General Business Credits (including R&D, clean energy and housing tax credits) and foreign tax credits. The book income tax equals the excess, if any, of BTMT over regular tax. A book tax credit (generated by a positive book tax liability) could be claimed against regular tax in future years but credit could not reduce tax liability below book tentative minimum tax in that year.	TYBA 12/31/21	$148.3b

Tax Compliance

	Description	Eff. Date	10yr score
Enhanced reporting of financial accounts	Proposal: Financial institutions would be required to report gross inflows and outflows from customer accounts on a modified version of the current 1099-INT, covering bank, loan and investments accounts. What's new: Gross inflows and outflows would be broken down for physical cash, transactions with a foreign account, and transfers to and from another account with the same owner. Applies to all business and personal accounts except for accounts below a gross flow threshold of $600 or fair market value of $600. Accounts with characteristics similar to financial institution accounts are covered. Payment settlement entities would collect TINs and file a revised Form 1099-K expanded to all payee accounts (subject to the same de minimis threshold), reporting not only gross receipts but also gross purchases, physical cash, as well as payments to and from foreign accounts, and transfer inflows and outflows	TYBA 12/31/22	$462.6b

Tax Compliance (continued)

	Description	Eff. Date	10yr score
IRS regulation of paid tax return preparers	The Secretary would be given authority to regulate tax return preparers	DOE	$575m
Increase penalties on "ghost" preparers	The penalty would be increased to the greater of $500 per return or 100% of the income derived per return by a ghost preparer. The proposal would also increase the limitations period during which the penalty may be assessed from three years to six years.	Returns required to be filed after 12/31/21	$242m
Expand broker reporting for crypto-currency assets	Brokers – including entities such as U.S. crypto asset exchanges and hosted wallet providers – reporting on crypto assets would include reporting on certain beneficial owners of entities holding accounts with the broker. Combined with existing law, the proposal would require a broker to report gross proceeds and such other information as the Secretary may require with respect to sales of crypto assets with respect to customers, and in the case of certain passive entities, their substantial foreign owners.	TYBA 12/31/22	De minimis
Certification of taxpayer ID numbers for reportable payments	Permit IRS to require payees of any reportable payments to furnish their TINs to payors under penalty of perjury.	Payments made after 12/31/21	$1.8b
Enhanced compliance re: listed transactions	Numerous proposals, including increasing the section 6501(a) limitations for returns reporting benefits from listed transactions from three years to six years, increasing the limitations period for listed transactions under section 6501(c)(10) from one year to three years; impose penalties on shareholders who sell the stock of an "applicable C corporation" secondary liability (without resort to any State law).	Various	$5.4b
Other	Amend the centralized partnership audit regime; enhance penalties related to notices and tax court cases	Effective upon enactment	$1.8b

Individual tax

	Description	Eff. Date	10yr score
Rate	Proposal: Increase the top marginal individual income tax rate to 39.6% What's new: In taxable year 2022, the top marginal tax rate would apply to taxable income over $509,300 for married individuals filing a joint return, $452,700 for unmarried individuals (other than surviving spouses), $481,000 for head of household filers, and $254,650 for married individuals filing a separate return.	TYBA 12/31/21	$132b
Capital gains & dividends	Proposal: "Long-term capital gains and qualified dividends of taxpayers with adjusted gross income of more than $1 million would be taxed at ordinary income tax rates" What's new: "would be effective for gains required to be recognized after the date of announcement"	"date of announce-ment."	$322b
Stepped-up basis	Proposal: End stepped-up basis What's new: Payment of tax on the appreciation of certain family-owned and operated businesses would not be due until the interest in the business is sold or the business ceases to be family-owned and operated.	Gains on property transferred by gift & on property owned at death by decedents dying after 12/31/21 & property owned by non-corporate entities on 1/1/22	
Carried Interest	Proposal: Tax carried (profits) interests as ordinary income What's new: Tax as ordinary income a partner's share of income on an "investment services partnership interest" (ISPI) in an investment partnership, regardless of the character of the income at the partnership level, if the partner's taxable income (from all sources) exceeds $400,000.	TYBA 12/31/21	$1.5b
NIIT & SECA taxes	Proposal: Rationalize Net Investment Income and Self-employment Contributions Act taxes What's new: For taxpayers with AGI in excess of $400,000, the definition of NIIT would be amended to include gross income and gain from any trades or businesses not otherwise subject to employment taxes; limited partners and LLC members who provide services and materially participate in their partnerships and LLCs would be subject to SECA tax on distributive shares of partnership or LLC income above thresholds.	TYBA 12/31/21	$237b

Individual tax (continued)

	Description	Eff. Date	10yr score
Like-kind	Proposal: End Section 1031 like-kind exchanges for gains greater than $500,000 What's new: Allow the deferral of gain up to an aggregate amount of $500,000 for each taxpayer ($1 million in the case of married individuals filing a joint return) each year for real property exchanges that are like kind	TYBA 12/31/21	$20b
461(l)	Proposal: Make permanent the TCJA's 461(l) disallowance of excess business loss for non-corporate taxpayers	TYBA 12/31/26	$43b
Child tax credit	Make permanent the full refundability of the Child Tax Credit, while extending the other expansions to the CTC through 2025	TYBA 12/31/21	-$449b
Childcare	Make permanent the temporary Child and Dependent Care Tax Credit (CDCTC) expansion	TYBA 12/31/21	-$104b
	Increase the employer-provided childcare tax credit for businesses	TYBA 12/31/21	-$302m
EITC	Make permanent the EITC expansion	TYBA 12/31/21	-$105b
ACA	Make permanent American Rescue Plan expansion of premium tax credits	After 12/31/22	-$163b

Housing/Infrastructure

	Description	Eff. Date	10yr score
Expand Low-income Housing Tax Credit	Create an additional type of Housing Credit Dollar Amount (HCDA) called an "Opportunity HCDA." Housing Credit Agencies would have a separate ceiling for OHCDAs from their existing allocation ceilings of HCDAs. Buildings in difficult development areas (DDAs) receiving either allocations of HCDAs or OHCDAs would receive basis boosts of up to 50 percent. The DDA basis boost provision is permanent.	Calendar years beginning w/2022	-$32b
Neighbor-hood Homes Investment Tax Credit	New tax credit, the Neighborhood Homes Investment Credit (NHIC), to support new construction for sale, substantial rehabilitation for sale, and substantial rehabilitation for existing homeowners	Calendar years after 2021	-$13b
NMTC	Permanently extend the New Markets Tax Credit (NMTC); annual allocation of $5 billion indexed for inflation after 2026.	After DOE	-$3.9b
Bonds	Create Qualified School Infrastructure Bonds (QSIBs), similar to BABs; expand the category of transportation infrastructure private activity bonds (PABs) created by SAFETEA-LU and exempt from state PAB volume caps.	Calendar years beginning w/2022	-$11.8b

Energy

The Administration's clean energy tax proposals all reference plans to work with Congress on pairing tax incentives with strong labor standards. This language was generally expected and has been part of the Administration's effort to draw support from organized labor for their clean energy agenda.

	Description	Eff. Date	10yr score
Reform taxation of foreign fossil fuel income	Modify foreign oil and gas extraction income and foreign oil related income rules	Unless specified, TYBA 12/31/21	$84.8b
	Modify tax rule for dual capacity taxpayers		$1.4b
Clean Electricity Tax Credits	Extends the PTC (section 45) and ITC (section 48) at full credit levels for 5 years and phases down by 20% over five years. In addition, the ITC is expanded to include stand-alone energy storage. Includes direct payment option in lieu of the tax credit.	Construct-ion after 12/31/21	-$249b
25D	Extends the Residential Energy Efficiency Credit (section 25D) for five years with a phase-out by 20% over five years. The credit is expanded to include battery storage technology.		-$16.1b
New Transmission ITC	30% ITC for electric transmission property with a minimum voltage of 275 kv and capacity of 500 megawatts. Includes direct payment option.	After 12/31/21	-$23.8b
New Credit for Existing Nuclear Facilities	$1 billion of tax credits (with a direct payment option and with strong labor standards) would be allocated to existing nuclear facilities based on the goal of maximizing the preservation of existing nuclear generation over the next 10 years. Taxpayers bid every two years with priority, among other criteria, to those facilities demonstrating financial operating losses and where emissions of various air pollutants would increase if facility ceased operations.	After 12/31/21	-$9.8b
New 48C Energy Mfg. Credit	Additional $10 billion of 48C tax credits allocated to advanced energy manufacturing projects with $5 billion specifically allocated to projects in coal communities. Includes direct payment option.	After 12/31/21	-$7.9b
New Tax Credit for Heavy and Medium-duty zero-emission vehicles	Similar to the existing section 30D tax credit, heavy battery zero-emission vehicles such as electric and fuel in the class 3 to class 8 category would qualify for up to a maximum of $25,000 for class 3 and up to $120,00 for class 8 long-haul vehicles with the incentives phasing down over six years.	After 12/31/21	-$10.6b
Sustainable aviation fuel	New $1.50 per gallon tax credit for sustainable aviation fuel defined as fuel that is 50% lower emissions than conventional jet fuel. Fuels with a 100% emissions reduction would qualify for a $1.75 per gallon credit. The credit expires after 6 years (1/1/2028).	After 12/31/21	-$6.6b

Energy (continued)

	Description	Eff. Date	10yr score
New Hydrogen Production Tax Credit	$3 per kg production tax credit for low-carbon hydrogen production. To qualify for the credit the hydrogen must be produced using zero-carbon emissions electricity (renewables or nuclear) and water as a feedstock, or hydrogen produced using natural gas as a feedstock with all the carbon emitted in the production process captured or sequestered. Credit phases down to $2 per kg between 2025-2027. Includes direct payment option.	After 12/31/21	-$4.1b
Commercial and home incentives	Extends/expands energy efficient commercial and residential incentives 5 years through 2026.	After 12/31/21	-$18.7b
New disaster mitigation credit	New non-refundable credit for homeowners and businesses equal to 25% of the cost of qualified disaster mitigation expenditures capped at $5,000 phased out based on taxpayer's income.	After DOE	-$4b
Carbon seq.	Expand/extend 45Q carbon capture and sequestration credit for 5 years (1/1/2031) with enhanced credit of $35 per ton for hard-to-abate industrial emissions like cement production, steelmaking, hydrogen production and petroleum refining, and $70 per ton enhanced credit for direct air capture projects. Includes direct payment option.	After 12/31/21	-$6.1
EV Charging Stations	Increases credit limit to $200,000 per device for commercial use (up from $30,000) and extends for 5 years (12/31/2026) the 30% EV charging station credit. Includes direct payment option.	After 12/31/21	-$6.3b
Superfund	Reinstates and doubles Superfund excise taxes; eliminates eligibility of OSLTF for drawback.	After 12/31/21	$25.3b
Fossil fuels provisions repealed	• enhanced oil recovery credit • credit for oil & gas produced from marginal wells • expensing of intangible drilling costs • exception to passive loss limitations provided to working interests in oil & natural gas properties • percentage depletion with respect to oil and natural gas wells • geological and geophysical amortization period for independent producers • expensing of exploration and development costs • percentage depletion for hard mineral fossil fuels • capital gains treatment for royalties • exemption from corporate income tax for fossil fuel publicly traded partnerships • excise tax exemption for crude oil derived from bitumen and kerogen-rich rock • amortization of air pollution control facilities	Generally TYBA 12/31/21. Repeal of exemption from corporate tax for PTPs TYBA 12/31/26	$35b

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