First Look: Select Tax Provisions in the Proposed American Families Plan

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On April 28, President Biden announced the American Families Plan. The American Families Plan is touted as an investment in America's children and families – helping families cover basic expenses that so many struggle with now, lowering health insurance premiums and continuing reductions in child poverty. The American Families Plan will:

- Add at least four years of free education.
- Provide direct support to children and families.
- Invest in education and preparation for America's teachers.
- Extend tax cuts for families with children and American workers.
- Provide for unemployment insurance reform.
- Provide for tax reform that rewards work – not wealth.

In order to accomplish the goals of the American Families Plan, President Biden has announced the following tax changes:

- **Revitalize Enforcement**. The President's proposal would require financial institutions to report information on account flows so that earnings from investments and business activity are subject to reporting more like wages already are. It would also increase investment in the IRS, while ensuring that additional resources go toward enforcement against those with the highest incomes (Americans with income more than $400,000).
- **Increase the Top Tax Rate to 39.6%.** The top tax rate was decreased from 39.6% to 37% as part of the 2017 tax act. The President's proposal would restore the top tax bracket to what it was before the 2017 tax act. However, it has been reported that the change would apply to individuals earning more than $452,700 and married couples earning more than $509,300 – meaning a married person could earn less than $400,000 and see their tax rate increase.
- **End Capital Gains Breaks**. Currently, the top tax rate on capital gains is 20%. The President's proposal would reform the tax rate on capital gains and dividends for certain taxpayers. For households making over $1 million, such taxpayers will pay the same 39.6% rate on all of their income.
- **Reduce the Step-Up in Basis at Death for Certain Taxpayers.** The President's plan would eliminate step up in basis for gains in excess of $1 million ($2.5 million per couple "when combined with existing real estate exemptions") and make "sure that gains are taxed if the property is not donated to charity." The proposal would have certain protections for family-owned businesses and farms that are continued to be run by heirs.
- **Eliminate Certain Like-Kind Exchanges**. Tax-free real property exchanges (i.e., 1031 exchanges) would be eliminated for gains greater than $500,000 under the President's plan.

- **End Loopholes with the 3.8% Medicare Tax**. The President's plan provides that the 3.8% Medicare tax on earnings would be applied "consistently to those making over $400,000" (possibly referring to changing the application of the net investment income tax to active owners of passthrough entities and/or to eliminating the provision exempting limited partners from liability for the self-employment tax).
- **Make the Excess Business Loss Rules Permanent.** For non-corporate taxpayers for tax years beginning after December 31, 2020 and before January 1, 2026, the "excess business loss" of the taxpayer for the tax year, if any, is currently disallowed. The President's proposal would make this rule permanent.
- **Change Taxation of Carried Interest.** The President's plan would close the carried interest "loophole" so that hedge fund partners will pay ordinary income rates on their income.

It remains to be seen which of these proposals Congress will enact and the President may introduce additional tax proposals as the process moves forward. If the President's proposal is enacted in full, these new changes will affect a number of American households and businesses.