



## Business Transition Advisory Services

# The 2024 Greenbook – Implementation Unlikely, But Not Impossible

June 16, 2023

On March 9, 2023, the Treasury Department released their summary of President Joe Biden's proposals for the 2024 fiscal year budget, known as the "Greenbook." These new recommendations recycle several previously suggested changes to various tax laws, with a specific aim to increase taxation on high-income households, trusts and estates, and corporations. Below is a curated summary of select proposals impacting high-net-worth individuals and closely held business owners:



### Increase Taxation of High-Income Taxpayers

- Increase the top marginal income tax rate **from 37% to 39.6%**.
- Increase the Net Investment Income Tax and additional Medicare tax rates **from 3.8% to 5% for all taxpayers with an Adjusted Gross Income over \$400,000**.
- **All pass-through income would now either be subject to the Net Investment Income Tax or Self-Employment Contributions Act tax**, for taxpayers with an adjusted gross income greater than \$400,000.
- **For individuals with income over \$1 million**, capital gains and qualified dividends would now be taxed at the much higher ordinary income tax rates. Such income **could see taxation increase from 23.8% to 40.8%** (which includes the current 3.8% Net Investment Income Tax).
  - As noted above, the 2024 Greenbook includes proposals to raise the highest ordinary income tax rate to 39.6%, and the Net Investment Income Tax rate to 5%. **If all of these proposals become law, the maximum taxable rate associated with qualified dividends and capital gains could increase from 23.8% to 44.6%.**



## Proposed Wealth Tax

- For individuals with a net worth greater than \$100 million, a **new wealth tax would be imposed, totaling 25% of their total income each year.** Under this wealth tax, unrealized capital gains would be included in total income.
- Affected individuals would be required to report to the IRS on an annual basis, separately by asset class, the total basis and total estimated value of their assets in each class, and the total amount of liabilities.
- **Non-tradable assets would not be required to conduct an annual valuation** but would instead increase in value by a floating annual return (the five-year Treasury rate plus two percentage points) in between valuations, with avenues to appeal valuations.
- **Exceptions may apply for individuals considered “illiquid,”** e.g., tradeable assets comprising less than 20% of the individual’s net worth.

## Transfer Taxes

- **Cap annual exclusion gifts to \$50,000 per donor, per year.** Current law allows a donor to gift up to \$17,000 annually to an unlimited number of recipients.
- **Transfers of appreciated property (whether by gift during life or at death) would trigger a realization event and subject all underlying appreciation to income tax.** For example, a gift of Fifth Third Bank common stock with a cost basis of \$1.00 and a present value of \$35.00 would result in \$34.00 of taxable gain to the donor or the donor’s estate even if transferred in kind rather than sold. Note that some exclusions would apply.
- **Generation-skipping transfer (“GST”) tax exemption would only be applicable for the lifetimes of grandchildren and/or younger beneficiaries** who are alive upon the creation date of the trust.

- All preexisting trusts would be deemed to be created upon the date of enactment.
- **The result of this proposal would be that the benefit of the GST exemption would not necessarily run with the trust in perpetuity;** rather, it could end upon the death of the younger generation described above, and the assets could become exposed to GST tax liability taxation for future generations.
- **Any loans from a trust to a beneficiary would be considered a distribution** for income tax and GST tax purposes.
- **Valuation discounts for gifts of partial interests, due to lack of marketability and lack of control, would be eliminated or minimized for intrafamily transfers of partial interests** (when families hold a collective interest of 25% of the business), which has the ultimate effect of mitigating the net benefit of gifting discounted shares of closely held businesses to irrevocable trusts.
- **Trusts and partnerships will be required to realize capital gain on property every 90 years,** beginning with trusts or partnerships owning property as of January 1, 1942, that has not yet been subject to a recognition event. The first recognition event would be deemed to occur on December 31, 2032, for the applicable trust or partnership.

## Reporting

- **Trusts with at least \$300,000 in assets or gross income in excess of \$10,000** would be required to provide a report of assets and their values to the IRS annually.
- Annual GST reporting **would be required for distributions to certain beneficiaries.**
- Annual reporting would be required on information regarding trust modifications or transactions with another trust that occurred during the year.

## Recognition of Gain

- Any capital gains from like-kind exchanges of property used in a trade or business in excess of \$500,000 (or \$1 million for married individuals filing a joint return) would be recognized by the taxpayer in the year of the exchange.

## Grantor Trusts

- A grantor's payment of trust income tax would be considered a gift for gift tax purposes. This would only apply to trusts created post-enactment. As a result, any taxes incurred by a grantor trust and paid by the grantor would utilize the grantor's annual gift tax exclusion amount. If such gifts were in excess of the annual gift tax exclusion amount, this proposal would require the grantor to utilize his or her lifetime estate tax exclusion amount, if available, or pay gift tax if not.
- Any transfer of assets in/out of irrevocable trusts would result in a realization event (except for distributions to the grantor or his/her U.S. citizen spouse). Some exceptions apply, including a \$5 million per donor lifetime exemption and a deferral exception in the case of a gift of a family-owned and -operated business.
- Grantor retained annuity trust ("GRAT") remainder interests would be required to be at least 25% of the value of the assets transferred to the GRAT or \$500,000, whichever is greater. GRATs would require a minimum term of 10 years. This proposal would apply to post-enactment GRATs only.
  - The cumulative effect of these changes would be to introduce downside risk and minimize the impact of this popular wealth transfer technique.
- Any sale by a grantor of appreciated assets to a grantor trust would be considered a realization event and the resulting capital gain subject to taxation.
- A loan from a trust to a beneficiary would be treated as a distribution for income tax purposes and GST tax purposes.

## Could the Treasury Department Independently Implement Proposals?



The foregoing proposals have the net effect of significantly increasing income and transfer tax liability for high-net-worth individuals and families. In addition to increased tax rates and new tax assessments, the proposals also target many popular planning tools to mitigate or defer tax liability.

That said, based on the current political composition of Congress, it is unlikely that these sweeping proposals are enacted through any sort of legislative process. However, a group of several senators (Elizabeth Warren of Massachusetts, Chris Van Hollen of Maryland, Sheldon Whitehouse of Rhode Island, and Bernie Sanders of Vermont) called upon the Treasury Department in a March 21, 2023, letter to exercise its regulatory authority to effectively eliminate grantor trusts as a tool to minimize estate tax exposure and efficiently transfer family wealth. Specifically, the senators suggest that the Treasury Department exercise its authority to revoke specific revenue rulings

which permit certain grantor trust strategies. The revocation of the revenue rulings in question would, in theory, allow for the enforcement of select grantor trust proposals identified in the 2024 Greenbook without legislative or executive action. The Treasury Department has yet to respond to this request but does maintain the authority to revoke prior revenue rulings which could jeopardize the efficacy of grantor trusts.

**To learn more, contact your Fifth Third Relationship Manager or Advisor.**

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## About Fifth Third's Business Transition Advisory Team

Fifth Third's Business Transition Advisory Team (BTAT) is a Private Bank Team solely dedicated to financially and personally preparing business owners for their business transition. With more than 95 years of combined experience, BTAT provides deep education and expert advice across a diverse range of industry sectors.

\*Data as of March 31, 2023.

## About Fifth Third Private Bank

We bring more than 160 years of experience as trusted advisors to high-net-worth and ultra-high-net-worth individuals and families — with over \$33 billion in managed assets and named for the second year in a row as the Best Private Bank for High Net Worth Clients by The Digital Banker and Global Private Banker as part of the Global Private Banking Innovation Awards. The Private Bank has received top honors in the global category in 2023 and 2022. In addition, the Private Bank was named Highly Acclaimed as Outstanding Private Bank for Growth Strategy.



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\*Data as of March 31, 2023.

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