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Biden Administration Releases Budget and Green Book, Providing Details on Corporate and Individual Tax Proposals

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On May 28, 2021, the Biden administration released its fiscal year 2022 budget proposal, which includes two major legislative plans previously released by the administration, the American Jobs Plan and the American Families Plan. On the same day, the Treasury Department released its highly anticipated "Green Book," which provides additional detail around the administration's tax proposals.

As expected, the Biden administration proposes significant tax increases on corporations and high-income individuals as a means to help pay for its ambitious spending plans, including its broad-based infrastructure plan and its direct support to low- and middle-income families. The administration projects that its tax proposals would generate an additional $3.6 trillion of federal tax receipts between 2022 and 2031 and $2.4 trillion of net receipts after taking into account new and expanded tax credits and other incentives.

While Congressional Republicans have indicated a willingness to negotiate on an infrastructure plan, they have largely rejected tax increases as a means to pay for the package. As a result, Democrats likely will be forced to rely on the budget reconciliation process in order to enact material tax increases, which will require nearly all House Democrats and all Senate Democrats to be on board.

Although not free from doubt, we think it is likely that Congress will use the reconciliation process to pass an increase in the tax rates for both individuals and corporations. We think it is unlikely, however, that the corporate tax rate will be increased to 28% as proposed by the Biden administration or that capital gains and qualified dividends will be taxed at the top ordinary income tax rate for those with incomes over $1 million. In our opinion, the most likely outcome is a compromise on both rates.

While the Biden administration generally proposes that tax increases be prospective in nature, a notable exception is the administration's proposal that the increased rate applicable to capital gains and qualified dividends be effective for "gains required to be recognized after the date of announcement" (which may mean the April 28, 2021 announcement of the American Families Plan or the May 28, 2021 release of the budget and Green Book). Again, our prediction is that this likely will be an area of compromise.

We highlight below those proposals most relevant to our clients. The first section discusses the tax proposals in the American Families Plan, which are primarily focused on individual tax reform, and the second section discusses the tax proposals in the American Jobs Plan, which are primarily focused on corporate and business tax reform.

I. American Families Plan

The Biden administration describes its American Families Plan as "an investment in our children and our families — helping families cover the basic expenses that so many struggle with now, lowering health insurance premiums, and continuing the American Rescue Plan's historic reductions in child poverty." To help pay for the plan, the administration proposes what it characterizes as "tax reform that rewards work — not wealth."

The plan calls for significant tax increases on higher-income individuals that would not only reverse certain tax cuts enacted as part of the 2017 tax act, but would also tax certain capital gains and dividend income as ordinary income, a fundamental change to the tax system. In addition, the plan proposes to end the taxpayer-favorable rule allowing for a step-up in tax basis (without recognition of gain) for property transferred at death. Additional resources would be allocated to the IRS under the plan, to help fund audit initiatives focused on higher-income individuals, as well as on large corporations, businesses and estates. The Green Book expands on these proposals, as outlined below.

A. Taxation of High-Income Individuals

Increase Top Marginal Income Tax Rate:

- Increase the top ordinary income tax rate from 37% to 39.6%, effective for tax years beginning after 2021. This change would accelerate the return of the top income tax rate of 39.6%, which, under current law, would have occurred automatically for tax years after 2025.
- The top bracket threshold would be indexed for inflation — applying to income over $509,300 for married individuals filing jointly and $452,700 for single individuals for 2022. This top rate would apply at lower income thresholds than under current law (for 2021, $628,300 for married individuals filing jointly and $523,600 for single individuals).

Tax Capital Gains and Qualified Dividends at Ordinary Rates for High-Income Taxpayers:

- Tax capital gains and qualified dividends at ordinary income tax rates (highest rate of 43.4% if the ordinary income rate is increased to 39.6%, together with net investment income tax of 3.8%) for taxpayers with income of over $1 million (but only to the extent the taxpayer's income exceeds $1 million).
- Effective for gains recognized after "the date of announcement." As previously noted, it is not clear if this date is May 28, 2021, the date the budget and Green Book were released, or April 28, 2021, the date the American Families Plan was released.

Treat Transfers of Appreciated Property by Gift or on Death as Realization Events:

- Treat a donor or deceased owner of an appreciated asset as realizing a capital gain at the time of transfer, equal to the difference between the fair market value of the asset on the date of gift/death and the donor's/decedent's basis in the asset (with an election for certain transfers at death of illiquid assets to be taxed over 15 years). This proposal applies only to property transfers among individuals or entities owned by or benefitting individuals, as opposed to charitable donations of appreciated property to donor-advised funds or Section 501(c)(3) organizations. The proposal would provide a number of exclusions, including a $1 million per-person exclusion, $250,000 per-person exclusion for all residences (not only principal residences), transfers to a spouse (until the spouse disposes of the property or dies) and transfers of certain small business stock and family businesses. The tax on the capital gains triggered at death would be deductible for estate tax purposes, reducing the impact by 40% at current estate tax rates. If this provision were enacted in this or a similar fashion, it would make charitable transfers of appreciated property even more attractive from a tax perspective.

- Treat a trust, partnership or other non-corporate entity that is the owner of appreciated property as recognizing a capital gain if the property has not otherwise been the subject of a recognition event within the prior 90 years, with a testing period beginning on January 1, 1940 (such that the first possible recognition event for any taxpayer would be December 31, 2030). Transfers of property into, and distributions in kind from, an irrevocable trust, partnership or other non-corporate entity would be recognition events.
- Effective for gains on property transferred by gift, and on property owned at death by decedents dying, after December 31, 2021, and on certain property owned by trusts, partnerships and other non-corporate entities on January 1, 2022.

<u>Extend Net Investment Income and Self-Employment Taxes:</u>

- Extend the 3.8% net investment income tax to cover all business income of taxpayers with income over $400,000, to the extent not otherwise subject to employment taxes, effective for tax years beginning after 2021. Currently, the net investment income tax only applies to passive income, including interest, dividends, and other income from businesses in which the taxpayer does not materially participate.
- Impose self-employment tax on the distributive shares of limited partners, LLC members and S corporation owners that materially participate in their businesses and whose income generally exceeds $400,000, effective for tax years beginning after 2021. Current exclusions for certain types of income (e.g., rents, dividends and capital gains) would continue to apply.

B. Carried Interest

<u>Tax Carried Interest as Ordinary Income:</u>

- Tax carried (profits) interest income as ordinary income subject to self-employment tax for taxpayers whose income (from all sources) exceeds $400,000, effective for tax years beginning after 2021.
- The proposal would apply to a partner’s share of income from an “investment services partnership interest” (“ISPI”). An ISPI is a partnership substantially all of the assets of which are investment-type assets (e.g., cash, securities, real estate) and more than 50% of the contributed capital of which is from passive owners.
- Qualified capital interests would not be subject to this rule, so long as allocations to the qualified capital interest are made in the same manner as allocations to other capital interests held by non-ISPI partners, and the allocations to the non-ISPI

partners are significant. Contributed capital for this purpose excludes proceeds from loans made or guaranteed by any partner or the partnership (or related persons).

- Gain on the sale of an ISPI would generally be taxed as ordinary income, but the proposal suggests that Congress may create a mechanism to treat gain attributable to goodwill (or otherwise unrelated to the services of the ISPI holder) as capital gain.
- An anti-abuse rule would tax as ordinary income any income or gain from certain "disqualified interests" (such as contingent/convertible debt, options or derivatives) in an entity for which a taxpayer performs services.
- Although the breadth of this proposal is unclear, ordinary income treatment may extend to profits interest recipients who are not affiliated with private equity or hedge fund sponsors (e.g., portfolio company employees).
- Separate proposal to tax long-term capital gains as ordinary income for taxpayers with income over $1 million may eliminate the need for this provision.

C. Like-Kind Exchanges and Excess Business Losses

<u>Limit Deferral of Gain from Like-Kind Exchanges:</u>

- Limit gain deferral on "like-kind exchanges" of real property to an aggregate amount of $500,000 per year per taxpayer ($1 million for married individuals filing jointly), effective for tax years beginning after 2021. It is unclear how the threshold would be determined for entities (e.g., whether the limit would apply at the partnership or partner level).

<u>Make Permanent Excess Business Loss Limit for Noncorporate Taxpayers:</u>

- Make permanent the limitation on deductibility by non-corporate taxpayers of net excess business losses (non-passive business losses) above a certain threshold ($524,000 for married individuals filing jointly and $262,000 for all other taxpayers in 2021). Current law limitations would otherwise expire beginning in 2027.

D. Tax Credits for Lower-Income Workers and Families

<u>Make Permanent and Expand Existing Tax Credits:</u>

- Make permanent and/or expand certain existing credits for lower-income and other taxpayers, including premium assistance tax credits for those purchasing health insurance through an Affordable Care Act marketplace, earned income tax credit for workers without children, child and dependent care tax credit, child tax credit and employer-provided childcare tax credit for businesses.

E. Compliance and Reporting Initiatives

Implement Initiatives to Increase Compliance:

- Implement a number of changes designed to, in the administration's view, promote voluntary compliance and ensure confidence in the tax system. The proposed changes range from more fulsome information reporting with respect to both traditional and crypto assets, to regulation of paid tax return preparers, to increased funding for the IRS's enforcement and compliance activities.
- If the proposals are enacted, we can expect a marked increase in IRS audit activity, focused on high-income individuals that historically have been subject to low audit rates, as well as on large corporations, businesses and estates.

Create Financial Account Reporting Regime:

- Create a comprehensive financial account reporting regime, effective for tax years beginning after 2022. Under the regime, financial institutions would be required to file an annual information return reporting, for each account, gross inflows and outflows with a breakdown for physical cash, transactions with a foreign account and transfers to and from another account with the same owner. The requirement would apply to all business and personal accounts above a $600 *de minimis* amount.
- The reporting is intended to give the IRS increased visibility into gross receipts and deductible expenses, particularly with respect to certain categories of business income that is not currently subject to comprehensive information reporting. It is not clear, however, as a practical matter how the IRS would utilize this information.

II. American Jobs Plan

President Biden pitched his $2-trillion-plus infrastructure-focused American Jobs Plan as a "once-in-a-generation investment in America." The plan is a bold proposal designed to transform the future of infrastructure in the United States.

The Biden administration proposes to pay for the plan by reversing certain portions of the 2017 tax act, with broad-sweeping tax increases and with the elimination of certain oil and gas industry tax preferences. In addition, as part of the plan, the administration is focused on incentivizing certain infrastructure investments through the tax code, with tax credits benefitting renewable energy (including energy storage), carbon sequestration and electric transmission. The Green Book provides additional details regarding these tax proposals, as outlined below.

A. Corporate Tax Changes

Increase Corporate Tax Rate:

- Increase corporate income tax rate to 28% from 21%, effective for tax years beginning after 2021.
    - For fiscal year taxpayers (i.e., those with tax years beginning after January 1, 2021 and before January 1, 2022), the tax rate increase of 7% (i.e., 28% *minus* 21%) would be multiplied by the portion of such tax year that occurs in 2022.

- While this would represent a one-third increase from the current rate, the rate would remain lower than the maximum corporate tax rate of 35% as in effect prior to the 2017 tax act.
- Certain members of Congress (including Democratic Senator Joe Manchin) have expressed concerns with raising the rate to 28%, and have made competing proposals, some of which include a smaller rate increase.

Impose 15% Minimum Tax on Financial "Book" Income:

- Impose a new 15% minimum tax on corporations with worldwide pre-tax book income (i.e., reported financial profits) of at least $2 billion, effective for tax years beginning after 2021.
- A corporation to which this minimum tax applies would pay tax equal to the greater of (i) 15% of such corporation's worldwide pre-tax book income (calculated after subtracting book net operating losses from prior years), less general business credits (including R&D, clean energy and housing credits) and foreign tax credits ("FTCs") and (ii) such corporation's regular tax liability without regard to the minimum tax. To the extent that a corporation pays additional tax as a result of the minimum tax, it would receive a credit that may reduce its regular tax liability in future tax years.

Revise the Global Minimum Tax Regime:

- Under current law's "GILTI" regime, U.S. shareholders of controlled foreign corporations ("CFCs") are taxable on net CFC tested income, reduced by a 10% return on foreign tangible property (referred to as "QBAI"). The tax on this inclusion, which the proposal refers to as the "global minimum tax inclusion," may be offset by a 50% deduction for an effective tax rate (before taking into account expense allocations and other adjustments) of 10.5%.The amount of the inclusion is determined on an overall basis such that results from high-tax foreign jurisdictions (including FTCs) are blended with results from low-tax foreign jurisdictions, and regulations allow for the exclusion of "high-tax" income from GILTI altogether.
- Effective for tax years beginning after 2021, the proposal would:
  - increase the effective tax rate on GILTI to 21% via a reduced Section 250 deduction (25%, instead of 50%) and the proposed increase in the U.S. corporate income tax rate to 28%;
  - eliminate QBAI and thus increase the GILTI tax base;
  - calculate this "global minimum tax" on a jurisdiction-by-jurisdiction basis (to prevent "cross-crediting" of taxes from high-tax jurisdictions against income from low-tax jurisdictions); and
  - eliminate the high-tax exception from GILTI (and subpart F income).

Replace BEAT with SHIELD:

- Under current law, U.S. corporate taxpayers with average gross receipts in excess of $500 million that make "base eroding" payments to non-U.S. related persons are subject to a minimum tax on "modified taxable income" (referred to as the "BEAT").
- Effective for tax years beginning after 2022, the proposal would repeal the BEAT and replace it with a new regime, named "Stopping Harmful Inversions and Ending Low-Tax Developments" ("SHIELD"). Under SHIELD, which would apply to financial reporting groups with greater than $500 million in global annual revenues, deductions would be disallowed for payments by U.S. group members to "low-taxed members" of the group subject to tax at a rate below a designated minimum tax rate (and in certain cases to high-tax members of groups that include such low-taxed members).
- The designated minimum tax rate is to be determined by reference to the rate determined by the OECD's ongoing "Pillar Two" negotiations (or, in the absence of such agreement, at the GILTI rate (*i.e.*, 21% under the proposal)).

Strengthen Anti-Inversion Rules:

- Tighten the existing anti-inversion rules by reducing from 80% to 50% the continuing ownership threshold above which a non-U.S. acquiring corporation is treated as a U.S. corporation (i.e., fully subject to U.S. corporate tax in the same manner as a U.S. corporation), effective for transactions completed after the date of enactment.

- In addition, expand the anti-inversion rules to cover situations where the continuing ownership threshold is not met if (i) the fair market value of the U.S. corporation exceeds the fair market value of the non-U.S. acquiring corporation, (ii) after the combination, the group is primarily managed and controlled in the United States and (iii) the group does not conduct substantial business activities in the jurisdiction in which the non-U.S. acquiring corporation is organized, effective for transactions completed after the date of enactment.
- While the reduction in the continuing ownership threshold from 80% to 50% is not unexpected, the potential application of anti-inversion rules to transactions with less than 50% (or even no) continuing ownership by the shareholders of the U.S. corporation could be very significant in certain cross-border M&A transactions.

<u>Repeal FDII:</u>

- Under current law, a domestic corporation is allowed a deduction equal to 37.5% of its foreign-derived intangible income ("FDII"), thus lowering its effective tax rate on certain export transactions.
- Effective for tax years beginning after 2021, the proposal would repeal FDII, with the resulting revenue used to encourage R&D (the form of such encouragement is not specified).

<u>Impose Additional Limitation on Interest Deductions by Multinationals:</u>

- Under current law, a multinational group's ability to deduct interest expense is limited relative to its U.S. earnings, but existing limitations do not consider the leverage that such multinational group employs outside of the United States relative to its leverage in the United States.
- Effective for tax years beginning after 2021, the proposal would subject members of a multinational group preparing consolidated financial statements to an additional limitation on their ability to deduct interest expense. The limitation would be imposed to the extent that a member's net interest expense for financial accounting purposes exceeds its proportionate share of the group's net interest expense reported on the multinational group's consolidated financial statements (the "excess financial statement net interest expense"). This "proportionate share" would be based on the member's proportionate share of the multinational group's EBITDA. The disallowed deduction would be equal to the member's net interest expense for U.S. federal income tax purposes multiplied by the ratio of the member's excess financial

statement net interest expense to the member's net interest expense for financial reporting purposes.
- Any disallowed interest expense could be carried forward indefinitely.
- The proposal 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 tax year.

Incentivize Onshoring and Discourage Offshoring:

- Allow a new general business credit equal to 10% of the expenses paid or incurred in connection with "onshoring" a U.S. trade or business (i.e., reducing or eliminating a business conducted outside the United States and starting up, expanding or moving the same business to the United States) "to the extent that this action results in an increase in U.S. jobs," effective for expenses paid or incurred after the date of enactment.
- Disallow a deduction for expenses paid or incurred to "offshore" a trade or business (i.e., the reverse of the "onshoring" movement), to the extent the action results in a loss of U.S. jobs, effective for expenses paid or incurred after the date of enactment.

Limit FTCs from Sales of Hybrid Entities:

- Under current law, the deemed asset sale that results from a Section 338 election is treated as a stock sale for purposes of the FTC regime, thereby preventing taxpayers from using earnings generated from the deemed asset sale to enhance their FTC position. However, this treatment does not apply to deemed asset sales involving the sale of an entity that is treated as a corporation for non-U.S. tax purposes but as a partnership or disregarded entity for U.S. tax purposes (a "specified hybrid entity").
- Effective for transactions occurring after the date of enactment, the proposal would extend this stock sale treatment to specified hybrid entities. As a result, the source and character of any item resulting from the sale of an interest in a specified hybrid entity would be determined based on the source and character the seller would have taken into account upon the sale or exchange of a stock transaction (rather than a deemed asset sale), thereby limiting the utilization of FTCs in the manner described above.

B. Fossil Fuel Preferences

Repeal Certain Oil and Gas Tax Benefits:

- Repeal the following credits, deductions and other special provisions targeted towards oil, gas and coal production, effective for tax years beginning after 2021 (except as otherwise noted below):
  - *Expensing of IDCs* — Taxpayers would no longer be allowed to expense intangible drilling costs ("IDCs"), which include expenditures necessary for drilling and preparing wells for production (e.g., operator expenditures for wages, fuel, repairs, etc.). Expensing IDCs provides a significant timing benefit to equity owners of E&P companies, which generate losses in early years when drilling occurs.
  - *PTP Exemption from Corporate Income Tax* — Publicly traded partnerships that derive at least 90% of their gross income from activities related to fossil fuels would no longer be eligible to be treated as partnerships and would therefore be subject to corporate income tax for tax years beginning after 2026.
  - *Percentage Depletion for Oil and Gas Wells and Hard Minerals* — Taxpayers would no longer be allowed to take percentage depletion. Currently, oil and gas independent producers and royalty owners, along with coal and other hard-mineral fossil fuel miners, can generally recover well capital costs through the greater of cost depletion or percentage depletion. Percentage depletion can often allow for depletion deductions in excess of the costs incurred to produce resources because the amount of percentage depletion deductions are based on a statutory percentage of the gross income from the property and are not limited to costs incurred. The loss of percentage depletion will limit the recoverable deductions to the cost of the producing property.
  - *Working Interest Exception to Passive Loss Limitations* — Generally, deductions and losses from passive activities can only offset income and gains from passive activities. The proposal would eliminate the current exception for losses generated from any working interest in an oil or gas property held through an entity that does not limit the liability of the taxpayer, which allows losses from such working interests to offset wages and other non-passive income.
  - *Two-Year Amortization of Independent Producers' Geological and Geophysical Expenditures* — Independent producers would be required to amortize geological and geophysical expenditures incurred in connection with oil and natural gas exploration in the United States over seven years (rather than two years) like integrated oil and natural gas producers.
  - *Expensing of Exploration and Development Costs* — Exploration costs incurred in exploring for domestic oil, gas, coal and other minerals would be required to be capitalized rather than expensed.
  - *Enhanced Oil Recovery Credit* — The 15% general business credit for eligible costs attributable to enhanced oil recovery projects would be eliminated (although the credit was already phased out for 2020, because the reference price from prior years exceeded a specified range).

- *Capital Gain Treatment for Coal Royalties* — Royalties received on the disposition of coal or lignite would no longer qualify for long-term capital gain treatment.
- *Credits for Oil and Gas Produced from Marginal Wells* — The general business credit for oil and gas produced from marginal wells, which was already subject to phase-out ranges, would be eliminated.
- *Deduction of Costs Paid or Incurred for any Tertiary Injectant* — Taxpayers would no longer be allowed to deduct the cost of qualified tertiary injectant expenses.
- *GILTI Exemption for Foreign Oil and Gas Extraction Income* — Foreign oil and gas extraction income would no longer be exempt from the GILTI rules.
- *Facts and Circumstances Method for Dual Status Taxpayers* — Certain taxpayers (dual-status taxpayers) are subject to foreign taxes and other levies while receiving a specific economic benefit, including many oil and gas companies. Such dual-status taxpayers would no longer be allowed to choose a facts and circumstances method for bifurcating the taxes paid on income and the amounts paid for the economic benefit (such as drilling/extraction rights); the safe harbor method, which bifurcates based on the generally applicable rate of income tax in the foreign jurisdiction, would be mandatory.

C. Clean Energy Incentives

Extend and Enhance Solar and Wind Tax Credits (PTCs and ITCs):

- Allow taxpayers to make an election to receive a cash payment in lieu of the production tax credit ("PTC") or investment tax credit ("ITC").
- Under current law, wind facilities must begin construction before the end of 2021 to be eligible for the PTC and wind facilities that begin construction in 2021 are eligible for a 60% PTC. The PTC amount is indexed for inflation and is currently 2.5 cents per kWh. The proposal would extend the full 100% PTC for wind and certain other qualified facilities that begin construction after 2021 and before 2027, with the following revised phasedown schedule:

Year Construction Began	New PTC
2022–2026	100%
2027	80%
2028	60%

2029	40%
2030	20%
2031	0%

- Under current law, solar energy facilities that begin construction before the end of 2022 are eligible for a 26% ITC. The credit is 22% for projects that begin construction in 2023 and 10% for years thereafter. The proposal would extend the full 30% ITC for solar and geothermal electric energy property and other qualified facilities that begin construction after 2021 and before 2027, with a phase-down of 20% each year starting in 2027 (see chart below). It also expands the ITC to include stand-alone energy storage facilities with a capacity of at least 5 kWh.
- The table below summarizes the applicable new ITC percentages under the proposal and the currently applicable ITC percentages for solar projects under existing law:

Year Construction Began	New ITC	Current ITC for Solar
2022	30%	26%
2023	30%	22%
2024–2026	30%	10%
2027	24%	10%
2028	18%	10%
2029	12%	10%
2030	6%	10%
2031	0%	10%

- Extend the Residential Energy Efficiency Credit available for certain residential energy efficiency property, including solar electric property, by restoring the full 30%

credit for property placed in service after 2021 and before 2027, with a 20% phasedown each year starting in 2027.

Expand and Enhance Carbon Oxide Sequestration Credit:

- Allow taxpayers to make an election to receive a cash payment in lieu of the carbon sequestration credit.
- The amount of the credit depends on when and how the carbon oxide is sequestered. Under current law, in 2020 and 2021, qualified carbon oxide disposed of in secure geological storage and not used as a tertiary injectant in a qualified enhanced oil or natural gas recovery project could receive a credit of $31.77 and $34.81 per metric ton, respectively. The credit is increased to $50 by 2026 and is adjusted for inflation in later years. Similarly, under current law, in 2020 and 2021, qualified carbon oxide that is used as a tertiary injectant in an enhanced oil or natural gas recovery project could receive a credit of $20.22 and $22.68 per metric ton, respectively. The credit is increased to $35 by 2026 and is adjusted for inflation in later years.
- The proposal would extend the beginning of construction deadline to be eligible for the credit to January 1, 2031 and provides an enhanced credit of an additional $35/metric ton for carbon oxide captured from certain hard-to-abate industrial carbon oxide capture sectors (i.e., total credit of $85) and provides an enhanced credit of an additional $70/metric ton for carbon oxide captured from certain direct air capture objects (i.e., total credit of $120), in each case, only if disposed in secure geological storage.

Create, Extend and/or Enhance Electric Vehicle and Related Credits:

- Create a tax credit for new medium and heavy-duty zero-emission vehicles, including battery EVs and fuel cell EVs. Initial credit amount would range from $25,000 to $120,000, depending on the type of vehicle, with a scheduled phasedown depending on the vehicle purchase date. A direct pay option would also be available.
- Allow taxpayers to claim EV charging station credits on a per-charging device basis and increase the limit on individual devices to $200,000. Extend the credit through 2026, with a direct pay option available. Also extend the $1,000 tax credit for refueling property installed at a taxpayer's residence through 2026.

Create, Extend and/or Enhance Other Renewable Tax Incentives:

- Create, extend and/or enhance various types of tax credits to encourage investment in clean energy, including the following:
  - *Qualifying Transmission Property* — Create a 30% investment tax credit for certain qualifying electric transmission property (e.g., overhead, submarine and underground transmission facilities, as well as any ancillary facilities and equipment necessary for transmission facility operation) with a minimum voltage of 275kv and a minimum transmission capacity of 500 MWs that is placed in service after 2021 and before 2032. Taxpayers would have the option to elect a cash payment in lieu of the tax credits.
  - *Nuclear Power Facilities* — Create an allocated production credit for electricity generation from eligible existing nuclear power facilities that submit a bid. Up to $1 billion in credits would be available annually through the end of 2031, with an option to elect a cash payment in lieu of the tax credits.
  - *Qualifying Advanced Energy Manufacturing* — Expand eligibility for the current 30% advanced energy manufacturing tax credit to include industrial facilities, recycling and energy storage and components, among others. The amount of allocable tax credits would also be increased by an additional $10 billion, with $5 billion of the credits specifically allocated to projects in coal communities. Taxpayers would have the option to elect a cash payment in lieu of the tax credits.
  - *Sustainable Aviation Fuel* — Create a $1.50/gallon production tax credit for sustainable aviation fuel produced after 2021 and before 2028 that achieves at least a 50% reduction in emissions relative to conventional jet fuel, with a supplementary credit of up to $0.25/gallon available on a sliding scale based on the relative emission reduction amount.
  - *Low-Carbon Hydrogen* — Create a low-carbon hydrogen production tax credit, at the rate of $3/kg of hydrogen between 2022 and 2024, and $2/kg between 2025 and 2027, subject to an annual inflation adjustment. Construction of a qualified facility must begin by the end of 2026 to be eligible for the credit. Taxpayers would have the option to elect a cash payment in lieu of the tax credits.
  - *Energy Efficiency* — Enhance various existing tax credits and deductions for nonbusiness energy property, the construction of new energy efficient homes and energy efficient commercial buildings and provide a new tax credit for certain mechanical insulation labor costs.

D. Housing and Infrastructure Support

Provide Support for Housing and Infrastructure:

- Create, extend and/or expand tax credits and provide federally subsidized state and local bonds to encourage investment in housing and infrastructure, as follows:
  - *Low-Income Housing Tax Credit* — Create new pool of low-income housing tax credits that would generally be allocated to "Census Tracts of Opportunity," while retaining the existing allocations of credits to states, to help address the fact that existing demand for low-income housing tax credits exceeds the pools of credits made available to states each year. Expand the existing "basis boosts" subsidies for projects in difficult development areas.
  - *Neighborhood Homes Investment Credit* — Create a new tax credit program, the Neighborhood Homes Investment Credit, to support construction and rehabilitation of single-family homes. The Treasury Secretary would establish rules to allocate potential credits to each state, and the states would then identify qualified areas and eligibility guidelines. The initial total credits for 2022 would be limited to $2 billion.
  - *New Markets Tax Credit* — Make permanent the existing New Markets Tax Credit, which provides a tax credit for investments in qualified community development entities (the credit is currently scheduled to expire in 2025).
  - *School Infrastructure Bonds* — Allow the issuance annually by education agencies for a three-year period starting in 2022 of up to $16.7 billion of qualified School Infrastructure Bonds, modeled after the Build America Bonds program, to renovate educational facilities and to construct new facilities. Authorize an additional $15 billion of private activity bonds under the SAFETEA-LU program and expand the use of such bonds to cover public transit, passenger rail and infrastructure for zero emissions vehicles.

Conclusion

The Green Book provided some much needed detail around the Biden administration's tax proposals, but there are many open questions that will only be addressed once legislative text is released. While some of the proposals are far-reaching and would change key aspects of the U.S. tax system, this is only the first step in what is expected to be a months-long process. The proposals must still be vetted by Congress, and it would not be surprising if there were significant changes made as the legislative process plays out on the Hill over the coming months.

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Suggested Reading

- 02 June 2021 KirklandPEN Biden Administration Releases Budget and Green Book, Providing Details on Corporate and Individual Tax Proposals that Would Have Significant Impact on Private Equity Industry
- 02 June 2021 Press Release Kirkland Advises Indigo on Merger with Southwestern for $2.7 Billion
- 01 June 2021 Press Release Kirkland Represents Shentel on $1.95 Billion Sale of Wireless Assets to T-Mobile