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Client Alert

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United States: Greenbook offers few surprises for a second Biden term

Tax News and Developments March 2024

In brief

On 9 March 2024, the Biden Administration released its proposed budget for fiscal year 2025, and the Treasury Department released its General Explanations of the Administration's Fiscal Year 2025 Budget Proposals, commonly known as the "Greenbook." Many of the proposals in this year's Greenbook appeared in earlier years, but a few proposals are new or modified (as noted below). Due to the divided Congress and competing political priorities during a general election year, there is little chance that any of the Greenbook proposals will be passed into law in 2024. However, the Greenbook illustrates the consistency of the President's tax policy objectives during his first term and maps out priorities for a possible second term. Accordingly, taxpayers should consider the Greenbook's provisions when identifying and advocating for their 2025 legislative priorities. In this article, we focus our analysis on new or modified proposals and review certain carryover proposals.

Key takeaways

As the saying goes, the President proposes [a budget], and Congress disposes [of it]. As we saw with the failed effort to pass the Build Back Better Act, the Biden Administration was unable to garner enough support to pass several of the Greenbook proposals when Democrats had the majority in both the House of Representatives and Senate. That said, the Greenbook provides a platform for an Administration to propose tax policies, so that those provisions can be studied further and potentially developed for future implementation. Proposals in past Greenbooks that were not enacted in the short term have been picked up in legislation years later. As a result, it is important for US businesses to continue educating Congress of the projected consequences of any tax proposals to guide the evolution and adoption of these proposals in the future.

Though many of the proposals in the FY25 Greenbook are carry-overs from the FY24 Greenbook, there are some new recommendations and modifications to prior proposals. We will highlight some of these changes, as well as some carry-over proposals that would be significant if enacted, including:

- increases to various rates affecting corporations and high net worth individuals
- proposals for aligning the Code with the OECD Pillar Two rules and modifying other US international tax rules
- new rules for tax-free spin-offs
- expansion of the denial of deductions for salaries of highly compensated employees
- measures that align with recently announced IRS enforcement efforts
- reforms aimed at modernization of IRS administration
- modifications to previously-proposed crypto rules

Rate hikes

Consistent with the Biden Administration's enforcement plans for large MNEs and the wealthiest Americans, the Greenbook focuses on provisions affecting large companies and high net worth individuals, including through rate increases. The Greenbook includes several rate increases as revenue raisers over the next 10 years. Except for the proposed increase in the Corporate Alternative Minimum Tax (CAMT), these proposals all appeared in previous versions of the Greenbook. The following table illustrates five proposed rate hikes.

Rate	Current	Proposed	Projected Revenue (10 Year)	New or Notable
Corporate Income Tax	21%	28%	$1.35T	The largest revenue raiser with the most impact on US corporations.
Corporate Alternative Minimum Tax	15%	21%	$137.4B	This rate increase is a new proposal and a surprise to many who viewed CAMT as a compromise to a higher corporate rate when the Inflation Reduction Act (IRA) was narrowly passed. The Administration selected 21% as the proposed rate to maintain relative parity between CAMT and the proposed 28% corporate income tax rate.
GILTI	10.5%	21%	$373.9B	This rate is significantly higher than the scheduled 2026 GILTI tax rate, estimated to range between 13.1-16.4%.
Stock Repurchase Excise Tax	1%	4%	$166B	In addition to a proposed rate increase, this proposal expands the Stock Repurchase Excise Tax's application to an acquisition of stock of an applicable foreign corporation by a specified affiliate that is a CFC.
Billionaire's Minimum Tax	ETR	25%	$502.6B	Would apply on total income, including unrealized capital gain income, for taxpayers with net wealth above $100 million.

Aligning the Code with the OECD's global minimum tax and updating other international provisions

The Biden Administration's recommendations with respect to aligning with OECD Pillar Two have evolved in the Administration's Greenbooks as the OECD negotiations have progressed. Because the core concepts and structure of Pillar Two have remained relatively consistent over the past year, aside from announcing the release of proposed regulations addressing Pillar Two, the Biden Administration's recommendations for FY25 largely replicate its recommendations for FY24. For more on future proposed regulations, see our client alert, Notice 2023-80 — When the US Tax Code Meets Pillar Two. For updates regarding Pillar Two guidance, subscribe to our mailing list or visit InsightPlus.

The FY25 Greenbook also includes other proposed modifications to the US international tax rules that are unrelated to the Pillar Two developments, including the repeal of FDII and modification of the anti-inversion rules, discussed further below.

Repeal the BEAT and replace it with the UTPR

The Greenbook notes that GILTI, if modified pursuant to the recommendations in the following section, generally aligns with Pillar Two's income inclusion rule (IIR) by requiring a minimum, per-jurisdiction effective tax rate on CFCs of US-based companies. To further align with the Pillar Two regime, the Biden Administration proposes to adopt the under taxed profits rule (UTPR), which would deny deductions or require an equivalent adjustment to tax liability to the extent low-taxed income of a company's global group is not subject to an IIR.

The Biden Administration proposes to implement the UTPR through the disallowance of domestic corporations' and domestic branches' deductions in an amount determined by reference to low-taxed income of foreign entities and branches that are members of the same financial reporting group. This means that deductions would be denied to the extent necessary to collect the hypothetical amount of top-up tax required for the financial reporting group to pay an effective tax rate of at least 15% in each jurisdiction in which the group has profits. The amount of the hypothetical top-up tax is a jurisdiction-by-jurisdiction calculation. The additional US top-up tax imposed by the United States to raise the taxpayer's effective tax rate takes into account all income taxes, including the corporate alternative minimum tax.

The Greenbook notes that the computation of profit and effective tax rate is based on the group's consolidated financial statements, with certain adjustments. Group profit for a jurisdiction is reduced by an amount equal to 5% of the book value of tangible assets and payroll (with a higher percentage reduction in transition years). Certain de minimis rules apply such that the UTPR will not apply with respect to a jurisdiction if the taxpayer does not recognize

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a certain amount of revenue in the jurisdiction. The proposed threshold is $10.9 million three-year average of revenue, and $1.09 million three-year average of profit. The UTPR also would not apply to a group with (1) operations in no more than five jurisdictions outside the group's primary jurisdiction; and (2) less than $55 million in tangible assets (determined by book value) in those jurisdictions. This exception only applies in a company's first five years of satisfying the other threshold requirements under the UTPR.

Deduction disallowance under the UTPR applies after all deduction disallowance provisions in the Code, and then applies pro rata to all allowable deductions. If the UTPR deduction disallowance exceeds the aggregate allowable deductions for the taxable year, the excess amount of UTPR disallowance is carried forward indefinitely.

The US UTPR deduction disallowance would also be coordinated with UTPRs imposed by other jurisdictions on other members of the financial reporting group. The various UTPRs are coordinated among the imposing jurisdictions based on the proportion of employees and tangible assets in each jurisdiction. Specifically, half of the top-up tax amount would be allocated based on the ratio of employees in the United States to the number of employees in all jurisdictions imposing the UTPR. The other half would be allocated based on the ratio of the total book value of tangible assets in the United States to the total book value of tangible assets in all jurisdictions imposing the UPTR. The Greenbook provides that the UTPR top-up tax amount allocated to the United States should be allocated among domestic group members based on regulations prescribed by Treasury.

Further, if a prior year UTPR deduction disallowance has not produced cash tax liability equal to the full amount of the top-up tax allocated to the United States in the prior year, no further UTPR deduction disallowance is allocated to the United States until that amount is reached. The UTPR top-up tax amount is instead allocated to other UTPR jurisdictions. The Greenbook notes that the question of whether a foreign jurisdiction has implemented a qualifying UTPR or IIR that is consistent with the Pillar Two Model Rules will be addressed in regulations.

Consistent with the Pillar Two Model Rules, the UTPR would not apply to income that is subject to a Pillar Two-compliant IIR. Because GILTI, if reformed as proposed (again, see following section), should qualify as an IIR, the UTPR generally should not apply to US-parented multinationals. Instead, the US UTPR would primarily apply to foreign-parented companies, the financial reporting group of which have global annual revenue of €750 million or more in at least two of the prior four years.

The Biden Administration has also proposed to implement a domestic minimum top-up tax alongside the UTPR, reasoning that this would ensure that the UTPRs of other countries would not apply to US income that has fallen below the minimum effective tax rate. Instead, the United States would claim taxing jurisdiction. The domestic minimum top-up tax would equal the excess of 15% of the financial reporting group's US profit over the group's income tax paid or accrued with respect to US profits. This includes federal and state income taxes, the CAMT, and creditable foreign income taxes incurred with respect to US profits.

Finally, the Greenbook notes that, if a UTPR in another jurisdiction applies, the proposal would ensure that taxpayers continue to benefit from tax credits and other tax incentives that promote US jobs and investment, including the clean energy tax provisions under the Inflation Reduction Act.

The Greenbook specifies that the UTPR would replace the Base Erosion and Anti-Abuse Tax (BEAT), thus requiring the BEAT to be repealed. In addition to aligning with Pillar Two, the Greenbook notes the Biden Administration's recommendation to repeal the BEAT is also attributable to certain features of the provision. This includes the fact that the BEAT does not apply to payments that constitute COGS, and that the BEAT can have a disparate impact on manufacturing versus services-based industries, as well as low-margin versus high-margin businesses. If the BEAT persists and is not replaced by the UTPR, it is important to keep an eye on future modifications to the BEAT to address these concerns.

Modifications to GILTI

The Administration's proposals with respect to GILTI have remained consistent with its FY23 proposal to overhaul the GILTI regime. As in prior years, the FY25 Greenbook explains that these changes are intended to eliminate the incentives within GILTI to invest in tangible assets abroad and locate profits and operations offshore, and to align GILTI with Pillar Two.

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To address concerns regarding incentivizing the shifting of investment abroad, the Greenbook first proposes to eliminate the exemption for QBAI. This exemption reduces a US shareholder's tested income by a 10% deemed return to certain tangible property used in the production of tested income. By eliminating this exemption, all of a US shareholder's tested income would be subject to GILTI, not just the excess above this deemed return.

The Administration also proposes to reduce the section 250 deduction against a US shareholder's GILTI inclusion from 50% to 25%, which would increase the US effective tax rate on GILTI income to 21% if the corporate income tax rate were increased to 28%. The Greenbook notes that this proposal is meant to ensure that income earned abroad and taxed under GILTI is not subject to a lower US effective tax rate than income earned directly by a US corporation.

The Greenbook then addresses the global blended calculation under GILTI, noting that it can create an incentive to locate operations in a jurisdiction with a higher rate of tax than the United States to offset operations and investments in low-tax jurisdictions. The report also notes that the lack of a jurisdiction-by-jurisdiction calculation under GILTI is not in line with the IIR. The Administration therefore recommends that the global averaging mechanism be replaced by a jurisdiction-by-jurisdiction approach throughout the GILTI calculation – including the determination of tested income/loss, and the FTC limitation. This proposal would also apply to foreign branch income.

The Greenbook also proposes to decrease the current haircut on foreign tax credits with respect to tested income from 20% to 5%. In addition, the Administration proposes to allow NOLs to be carried forward (presumably indefinitely) with respect to a single jurisdiction, and foreign tax credits to be carried forward for ten years (again, with respect to a single jurisdiction). The Greenbook also includes a proposal to repeal the high-tax exemption within the Subpart F regime, as well as cross-reference to that provision in the GILTI regulations.

Notably, the Greenbook provides that the proposal would account for any foreign taxes paid by a foreign parent under an OECD Pillar Two-compliant IIR with respect to CFC income that would otherwise be part of a domestic corporation's GILTI inclusion.

Finally, the Greenbook proposes to remove the exemption for foreign oil and gas extraction income from the GILTI regime. As a result, income derived from foreign oil and gas extraction activities would be included in the GILTI calculation, similar to the current treatment of foreign oil related income. The Greenbook also proposes to modify the definition of foreign oil and extraction income and foreign oil related income to include income derived from shale oil and tar sands activities.

Repeal of FDII

The Biden Administration also proposes to eliminate the deduction for foreign-derived intangible income (FDII). The FDII deduction currently provides a 37.5% deduction, though the deduction is set to reduce to 21.875% for taxable years beginning after 31 December 2025. The Biden Administration maintains that FDII is not an effective way to encourage R&D, asserting that the benefit is claimed mostly by companies with excess profits derived from past investments, rather than new investments. In addition, the Greenbook notes that FDII can create disparate outcomes for companies that export and companies that have significant domestic sales. As with GILTI, the Greenbook notes the potential for the QBAI-based element of FDII to incentivize certain economic activity abroad.

The Greenbook notes that the revenue resulting from the repeal of the FDII deduction "will be used to encourage R&D," but does not provide specific details for how that revenue would be deployed.

Anti-Inversion Rules

The FY25 Greenbook carries over a legislative proposal that would cause a major shift for the anti-inversion rules of section 7874. The Administration is concerned that the current anti-inversion rules may allow domestic entities to substantially reduce their US income tax liability by combining with smaller foreign entities in transactions that fall short of the existing 80% ownership test under section 7874 (which would cause the foreign parent to be treated as a US corporation for all US tax purposes), but satisfy the 60% ownership test, which respects the foreign status of the repatriated entity but, among other consequences, requires certain income be subject to US tax for a period of 10 years. The Biden Administration does not see the existing deterrents under the 60% ownership test as a sufficient disincentive to inversion transactions. The Administration is of the view that an inverted structure should not be respected in situations where the owners of a domestic entity retain a controlling interest in the group, the business

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makes only minimal operational changes, and there is potential for substantially eroding the US tax base. Accordingly, this proposal would create a broad cliff effect that would treat non-US entities as US entities after certain expatriation events.

First, the proposal would eliminate the 60% ownership test entirely, and replace the 80% ownership test with a greater than 50% ownership test. The proposal would also provide that, regardless of the ownership percentage, an inversion transaction occurs if:

- immediately before the acquisition, the domestic entity has a fair market value that is greater than the foreign acquiring corporation's fair market value,
- after the acquisition the group is primarily managed and controlled in the United States, and
- the group does not have substantial business activities in the foreign acquiring corporation's country of incorporation.

In addition, the proposal would further expand the scope of transactions covered under section 7874 to include any transaction in which a foreign corporation directly or indirectly acquires of substantially all of the assets of a trade or business of a domestic corporation, substantially all the assets of a domestic partnership, or substantially all of the assets of a US trade or business of a foreign partnership. These changes would more closely align the standards for acquisitions of corporations and partnerships and would also account for situations in which a US business is conducted through a foreign partnership. Finally, the proposal would expand the scope of transactions potentially covered under section 7874 to include certain distributions of stock of a foreign corporation by a domestic corporation or partnership.

New requirements for spin-offs

Two proposals, which have been carried over from the FY24 Greenbook, would significantly alter the treatment of divisive reorganizations, including spin-offs. The first proposal originated in the failed Build Back Better Act (BBBA) and would remove tax-favorable treatment for debt-for-debt exchanges, in which the distributing entity ("Distributing") receives newly issued debt "securities" (i.e., longer-term debt instruments) of the controlled entity ("Controlled") and uses them to retire outstanding Distributing debt, often through an investment bank. Instead, debt-for-debt exchanges would be tax free only to the extent a single, aggregate tax basis limitation applies to the:

- total amount of liabilities assumed by Controlled
- amount of Controlled boot transferred to Distributing's creditors, and
- total principal amount of Controlled debt (including fair market value of nonqualified preferred stock) transferred to Distributing's creditors.

Distributing would be taxed then on built-in-gain in the divisive business to the extent that the above aggregate amount exceeds Distributing's basis in the assets transferred to Controlled.

The second proposal would impose two additional requirements under section 355 that, if not satisfied, would result in gain recognition by Distributing (but not Distributing's shareholders)

- Controlled must be adequately capitalized as a result of the divisive reorganization
- Controlled must continue to be an economically viable entity after the completion of the divisive reorganization

The satisfaction of both requirements would be based on all relevant facts and circumstances, including the projected and actual amount of contingent liabilities assumed by Controlled and whether Controlled declares bankruptcy within five years after the transaction.

Distributions pursuant to a divisive reorganization would be grandfathered if described in a pending ruling request submitted to IRS on or before the date of enactment.

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Expansion of section 162(m) deduction disallowance for highly compensated employees

The FY25 Greenbook modifies a proposal from the FY24 Greenbook to amend section 162(m). Section 162(m) strictly limits public companies' tax deduction for compensation to "covered employees" to $1 million per individual. The Greenbook proposal would expand the 162(m) limitation so that it applies **to all C corporations** – **publicly held and privately held** – and to **all compensation** paid by the corporation over $1 million to any employee. Further, it applies an aggregation rule that would treat all members of a controlled group as a single employer for purposes of determining the covered employees and applying the deduction disallowance.

Proposals focused on IRS enforcement priorities

Several new Greenbook provisions focus on and align with recent IRS enforcement priorities, including combatting fraudulent Employee Retention Credit claims and pursuing large partnership compliance efforts.

Increase the Statute of Limitations on Assessment of the Covid-related Paid Leave and Employee Retention Tax Credits

During the COVID-19 pandemic, Congress enacted two refundable tax credits against employment taxes, the paid sick and family leave tax credit and the employee retention credit ("ERC"), (collectively, "payroll-related credits"), meant to enable employers to compensate and retain their workforces during the economic downturn. The payroll-related credits applied to wages paid during the second, third, or fourth quarters of 2020, and subsequent legislation extended these credits for certain quarters of 2021.

A significant number of ERC claims were made on amended tax returns, often with a substantial delay relative to the quarter of the underlying activity that generated the credit, and amended returns with new ERC claims continue to be filed. The IRS believes that many of the most recently filed amended returns are fraudulent or erroneous and has struggled to process amended ERC claims in a timely fashion. Civil and criminal cases regarding ERC claims are pending.

In September 2023, the IRS announced a moratorium on processing new ERC claims to allow for additional review of pending claims. The IRS also created a temporary voluntary disclosure program that would allow participants with questionable claims to return to the IRS 80% of the amount of the ERC that they had received to avoid repayment, interest and penalties.

The payroll-related credits are claimed on quarterly employment tax returns, with all quarters for a calendar year being considered filed on 15 April of the succeeding calendar year. The taxpayer generally has three years from this date to claim a payroll-related credit on an amended employment tax return. The taxpayer is then required to file an amended income tax return for the year in which the wages were paid.

Recognizing that the period to complete this process expired at the same time as the statute of limitations on assessment and refund for income taxes, Congress partially fixed this issue and extended the limitation on the period for the assessment of any amount attributable to the payroll-related credits that was improperly claimed from three to five years. However, the extension of the limitations period applies only for two of the six quarters in which an employer may claim the paid leave tax credit and only for two of the eight quarters in which an employer may claim the ERC. This proposal would apply the extension of the limitations period to assessment of employment tax in all quarters in which the payroll-related credits are available (as proposed in the FY24 Greenbook) and to assessments of income taxes in years in which the taxpayer did not make a corresponding downward adjustment to its wage deduction on its income tax return (new in the FY25 Greenbook).

> **Note:** The House recently passed the Tax Relief for American Families and Workers Act (Act) with overwhelming bipartisan support. The Act would end the ERC program as of 31 January 2024 and extend the statute of limitations of assessment of the refunds from five years to six years after the claim was filed. That bill remains stalled in the Senate, however.

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Extend Penalty for ERC Claims

As mentioned above, the IRS is actively auditing and conducting criminal investigations related to false ERC claims and is concerned that there may be a large volume of ERC claims filed by entities that did not exist or did not have employees during the period of eligibility. Extending penalties to improper claims for refunds or credits with respect to employment taxes in cases where the reasonable cause exception is not substantiated would discourage these sorts of fraudulent claims. The proposal would extend the penalty under section 6676 to erroneous claims for refund or credit with respect to employment taxes. The proposal would be effective for claims for which the statute of limitations has not expired as of the date of enactment.

> **Note:** Under a separate provision proposed in the Act, the existing penalty imposed on tax advisors that aid and abet the understatement of a taxpayer's tax liability would be increased for the newly created category of "ERTC promoters."

Expand IRS Summons Authority for Large Partnerships

In September of 2023, the IRS announced the expansion of its Large Partnership Compliance (LPC) program. The FY25 Greenbook proposes to extend the designated summons provisions available under the IRS's Large Corporate Compliance program to examinations of large partnerships under the LPC program or any successor program. This summons provision allows the IRS to suspend the statute of limitations for taxpayers under exam in these programs by issuing a designated summons that requires judicial enforcement to be fully effective for 120 days. The administrative procedures for partnership designated summonses would parallel the current procedures applicable to designated summonses issued to corporations, whereby approvals would be required by the IRS Chief Counsel and the IRS Large Business and International Division Commissioner. Given the government's increasing audit focus on large partnerships, this provision does not come as a surprise. See our previous client alert, IRS warns of imminent compliance alert and examinations for large partnerships.

Proposals relating to private, business jets

The FY25 Greenbook includes two proposals that align with the recent announcement that the IRS plans to increase audits of business aircraft usage for potential personal use. The first proposal would lengthen the period over which "general aviation passenger aircraft" must be depreciated from 5 to 7 years, or, if using the alternative depreciation system, 12 years. For this purpose, "general aviation passenger aircraft" is defined to mean any airplane not used in commercial or contract carrying of passengers or freight, but which primarily engages in the carrying of passengers.

The second proposal would reform excise taxes on business aviation by raising the taxes on kerosene used for private jet travel. The current rate is 21.8 cents per gallon, and the proposal would increase that rate to $1.05 per gallon. This increase would be phased in over a 5-year period.

Proposals aligning with IRS modernization efforts

The Greenbook also introduces several new proposals aimed at modernizing tax administration and improving tax compliance.

Modernize reporting foreign tax credits

The Biden Administration proposes to grant the Secretary broad authority regarding taxpayers' obligation to substantiate foreign taxes paid for determining foreign tax credits (FTCs) and to report a foreign tax redetermination (FTR) in a subsequent taxable year. The proposal would clarify that FTRs include not only changes in liability for foreign income taxes, but also other changes that may affect a taxpayer's US tax liability (e.g., a change to foreign taxes that affects the subpart F or GILTI inclusion amounts).

Rather than filing amended returns for individual FTRs, the proposal would allow for the assessment and collection of any US tax liability resulting from an FTR in the year of the redetermination and under deficiency procedures, using the form and manner of notification prescribed by the Secretary. Alternative adjustments to account for FTRs, would include:

- appropriate netting or offsetting of adjustments, overpayments, underpayments, and interest in different years with respect to FTRs reportable in the same taxable year, and
- special rules for FTRs involving taxpayers that do not claim a FTC but report foreign income taxes to their owners, such as partnerships, trusts, or certain regulated investment companies.

As demonstrated in the table below, the proposal would double the threshold for the exception to certain FTC rules and reporting requirements, alter the penalty structure for failure to respond to any IRS information requests relating to substantiation of an FTC or FTR, and extend the statute of limitations for failure to report the required information relating to FTCs and FTRs.

Provision	Current Law	Greenbook Proposal
Individual threshold for the exception to certain FTC rules and reporting requirements	$300 ($600 if married filing jointly) or less of creditable foreign income taxes on passive investment income	Increase threshold to $600 ($1200 if married filing jointly), indexed for inflation. Would apply to future tax years.
Penalty for failure to report an FTR	5% of any deficiency arising from the failure to report, increasing by 5% for each month during which the failure continues, up to 25%	Greater of 5% or $10,000 for each failure, or 20% for willful failures. Would apply to FTRs that relate back to FTCs from prior years.
Penalty for failure to respond to any IRS information requests relating to substantiation of an FTC or FTR	No specific penalty available.	Greater of 5% or $10,000 after 90 days of failing to respond, increased by the greater of 5% or $10,000 for each subsequent 30-day period up to a maximum of the greater of 25% (40% in the case of willful failures) or $50,000. Would apply to FTRs that relate back to FTCs from prior years.
Statute of limitations	No specific extension available.	Increase the statute of limitations to three years after the date the Secretary receives the required information. Would apply to FTRs that relate back to FTCs from prior years.

Allow Partnerships to Resolve Audits Earlier

The IRS must issue a partnership a Notice of Proposed Partnership Adjustments (NOPPA) to make an adjustment to partnership items under the centralized partnership audit regime. This notice sets a 270-day countdown for the partnership to submit its supporting documentation to the IRS as well as the minimum amount of time the IRS must wait to issue the partnership's Final Partnership Adjustment (FPA), without the consent the partnership. Under current law, the partnership must wait until 45 days after the issuance of the FPA before the partnership can elect to push out the partnership adjustments to its partners, even if the adjustments will not be contested. Under the Greenbook proposal, the partnership could elect to push out the adjustments any time after the issuance of the NOPPA until 45 days after the issuance of the FPA.

Set Earlier Filing Deadlines for Information Returns

To improve taxpayer compliance and efficiency, the Biden Administration proposes to require information returns made under sections 6041 through 6050Z (other than returns and statements required to be filed with respect to nonemployee compensation) to be filed with the IRS on or before the date returns are required to be furnished to payees and other recipients.

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Permit the IRS to Send Electronically Provided Notices

Several Code provisions require notice be provided to taxpayers by mail (including notice by certified or registered mail sent to the taxpayer's last known address). The Biden Administration proposes to allow a taxpayer to elect to receive electronic notice that would have the same legal effect as a mailed notice. The IRS would still be obligated to send these notices by mail unless the taxpayer elected to receive such notices only electronically.

> **Observation:** This proposal is clearly consistent with the IRS's plans to increase its use of electronic communications, which may appear to be a laudable goal. However, the IRS's issuance of electronic notices is not without taxpayer risk—for electronic notices to be as effective as notices that are provided by mail, taxpayers must (among other things) ensure that their spam filters are set appropriately and that IRS records are updated when, for example, an employee leaves a company or moves to a job with different responsibilities.

Addition of *de minimis* rule for application of wash sale rules to digital assets

The FY25 Greenbook proposals with respect to digital assets have not substantially changed from the proposals made in the FY24 Greenbook. The Biden Administration did propose a new *de minimis* rule for the application of the wash sale rules to digital assets. Under this modification, the Secretary would have the authority to promulgate regulations to provide an exception to the application of the wash sale rules for *de minimis* losses for assets subject to the wash sale rule. For a more detailed discussion of the Biden Administration's proposals regarding digital assets, see our client alert Crypto Tax Proposals in the 2024 Greenbook.

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