
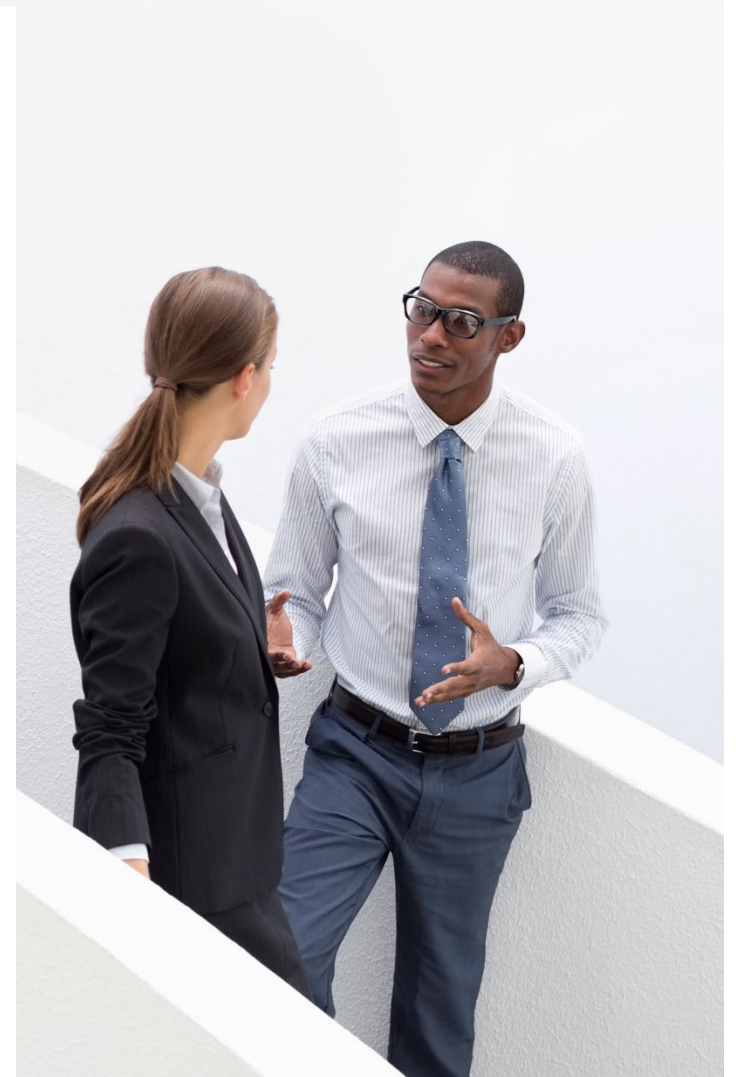




WASHINGTON DC TAX UPDATE

November 10, 2021



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PROPOSALS AFFECTING PRIVATE CLIENT SERVICES



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BUILD BACK BETTER ACT - REWRITE 10/28/2021

- Tax proposals eliminated from the original Build Back Better Act
 - Marginal Individual Tax Rate
 - Capital Gains Rate
 - Grantor Trusts
 - Estate Tax Basic Exclusion Amount
 - Special Use Valuation - §2032A
 - Valuation Discounts
 - Carried Interests
 - Qualified Business Income (QBI) Deduction
 - Retirement Plans - minimum distributions, contributions limits, “Backdoor” IRAs, self-dealing



BUILD BACK BETTER ACT - REWRITE 10/28/2021

- Tax proposals that remain in the Build Back Better Act
 - Surcharge Tax
 - Section 1202 - Qualified Small Business Stock
 - Excess Business Losses
 - Net Investment Income Tax





SURCHARGE TAX

- **Effective after December 31, 2021**

- Implements 5% surcharge tax
 - Applies to Modified Adjusted Gross Income in excess of
 - \$5 million for MFS
 - \$200,000 for estates and trusts
 - \$10 million for all other filers

- **PLUS**

- Implements 3% surcharge tax
 - Applies to Modified Adjusted Gross Income in excess of
 - \$12.5 million for MFS
 - \$500,000 for estates and trusts
 - \$25 million for all other filers





SECTION 1202 - QUALIFIED SMALL BUSINESS STOCK

- Section 1202 - Qualified Small Business Stock (QSBS)
 - Applies to taxpayers with AGI equal to or more than \$400,000 and to trusts and estates
 - Eliminates 100% and 75% exclusions for sales of QSBS acquired after February 17, 2009, and sold **after September 13, 2021**
 - Written binding contract already in place, and not materially modified thereafter, is not impacted
 - Rewrite of the Build Back Better Act clarified that the provision applies to sales and exchanges occurring **after** September 13, 2021 - there was some ambiguity in the original text that the provision applied to sales and exchanges **on or after** September 13, 2021



EXCESS BUSINESS LOSSES - \$461 (L)

- **Effective after December 31, 2020**
- Current temporary provision would be made permanent
- Rather than treat as an NOL in the following year, disallowed loss would be treated as a deduction attributable to a taxpayer's trades or businesses when computing the excess business loss (EBL) in the subsequent year
- Excess Business Loss thresholds remain the same
 - Noncorporate taxpayers in excess of \$500,000 for joint filers
 - All other filers in excess of \$250,000





NET INVESTMENT INCOME TAX

- **Effective after December 31, 2021**
- Eliminates carveout for income derived in ordinary course of trade or business or income attributable to the disposition of property earned outside of a passive activity
- Applies to “specified net income,” which includes
 - Net investment income even if derived in ordinary course of a trade or business
 - Other gross income and net gains attributable to the disposition of property, even if earned outside of a passive activity or the trade or business of trading financial instruments or commodities
- Applies to Modified AGI that exceeds
 - \$500,000 for MFJ and surviving spouses (\$250,000 MFS)
 - \$12,500 for estates and trusts
 - \$400,000 for all other filers





What are we seeing

- Back to “normal” planning.
 - Sales to intentionally defective grantor trusts
 - GRATs
 - SLATs
 - Outright gifts
 - Charitable gifts


- Future
 - Grantor trusts at risk?
 - Basic Exclusion Amount reduces to about one-half in 2026





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