

House Passes Substantially Altered Version of Build Back Better Act



Our Advice: Keep Calm and Carry On (with Planning)

By [Timothy Tallach](#), *Executive Managing Director*

While tax planning in 2021 has been particularly challenging because of the uncertain legislative environment, we continue to recommend that clients focus on the fundamentals and take advantage of planning strategies and high exemptions while still available, particularly as many remain targeted for elimination during this 117th Congress. Early on November 19th, the House passed a leaner version of the original H.R. 5376, the Build Back Better Act, that removed many of the more controversial and broader individual income and transfer tax changes included in earlier draft legislation. As outlined below, the new architecture relies heavily on international and corporate minimum taxes, as well as select provisions targeting high earning individuals and trusts, as revenue raisers. All would be effective beginning in 2022 unless specified otherwise.

- 15% minimum tax on corporations with over \$1b in profits
- 1% tax on corporate stock buybacks
- 15% global minimum tax on corporations
- Introduces new surtaxes for high income individuals and trusts

<i>Rate</i>	<i>Individuals</i>	<i>Trusts</i>
5%	Income > \$10m	Income > \$200k
Additional 3%	Income > \$25m	Income > \$500k

- Expands the 3.8% Medicare surtax to apply to all trade or business income (but not W2 wage income) of individuals with earnings over \$400k (single) \$500k (joint)
- Clarifies the wash and constructive sale rules to explicitly include cryptocurrency
- Increases funding for IRS enforcement
- Prohibits the use of ‘back door’ Roth IRA planning strategies regardless of income
- Limits tax-favored retirement account accumulations of >\$10m for high income individuals *[effective 1/1/2032]*
- Limits Qualified Small Business Stock exclusion to 50% if income >\$400k *[effective 9/13/21]*
- Raises the SALT deduction cap to \$40k (single) \$80k (joint) *[effective 1/1/2021]*

While the House passed version is indicative of middle-ground and the themes, scope and focus of a final tax bill, this remains an iterative and dynamic political process. With unified Republican opposition, congressional Democrats still need to unify to secure final passage and enactment. Factions and ideological fissures are still apparent with “must have” provisions for some lawmakers becoming “must omit” provisions for others. We therefore expect to see continued brinksmanship as this Bill now moves to the Senate for further review and debate, likely modification and ultimately, bicameral reconciliation.

Of course, tax provisions eliminated within this version may once again appear as the House’s Bill is further negotiated in the Senate. We therefore recommend that clients continue to pursue prudent, flexible planning that aligns with long-term family goals and objectives. While this most recent development may ease the urgency for certain planning, it does not eliminate the opportunity or possible need for it. Taking steps to assess and capture today’s opportunities might include:

- Exploring income acceleration, deferral and multi-tax year smoothing opportunities for individuals and irrevocable non-grantor trusts susceptible to the proposed surtax
- Accelerating large planned or necessary capital gains transactions (business sale, real estate transactions, prudent portfolio diversification, etc.)
- Assessing current and future distribution policies and/or other planning opportunities for large irrevocable, non-grantor trusts
- Accelerating gift planning to lock-in the elevated \$11.7m lifetime transfer tax exemptions utilizing new or existing trust structures, debt forgiveness or other strategies

- Analyzing Roth IRA conversion strategies
- Reviewing year-end charitable planning opportunities considering the proposed 2021 SALT cap increase and the 2021 unlimited deduction for cash contributions to public charities

We encourage you to contact your Pathstone team to discuss how you can best utilize current opportunities while maximizing flexibility for an unpredictable future.

Disclosure

This communication and its content are for informational and educational purposes only and should not be used as the basis for any investment decision. The information contained herein is based on publicly available sources believed to be reliable but is not a representation, expressed or implied, as to its accuracy, completeness or correctness. No information available through this communication is intended or should be construed as any advice, recommendation or endorsement from us as to any legal, tax, investment or other matters, nor shall be considered a solicitation or offer to buy or sell any security, future, option or other financial instrument or to offer or provide any investment advice or service to any person in any jurisdiction. Nothing contained in this communication constitutes investment advice or offers any opinion with respect to the suitability of any security, and this communication has no regard to the specific investment objectives, financial situation and particular needs of any specific recipient. Past performance is no guarantee of future results. Additional information and disclosure on Pathstone is available via our Form ADV, Part 2A, which is available upon request or at www.adviserinfo.sec.gov.

Any tax advice contained herein, including attachments, is not intended or written to be used, and cannot be used, by a taxpayer for the purpose of (i) avoiding tax penalties that may be imposed on the taxpayer or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.