The Biden Administration Tax Plan: Implications on Real Estate

On August 10, 2021, the Senate passed a $1 trillion infrastructure package 69-30. This sets the stage for greater discussion around a proposed $3.5 trillion spending package and associated American Jobs Plan (AJP). Included in the AJP was the administration's tax plan, intended not only to pay for the infrastructure spending, but also a far-reaching attempt at reforming the tax code.

Managing Director and Office Lead on the Colliers Capital Markets Board of Advisors, Frank Petz, sat down with accounting firm KLR to discuss the package's implications on commercial real estate.

FP: What increases, if any, do you expect for corporate and individual income tax rates?

KLR: Under the Biden Tax Plan, the corporate income tax rate, currently 21%, would be increased to 28%. This got some early push back, and there is a real feeling among some in Congress that the US needs to keep the corporate income tax rate competitive with the rest of the world. Limiting the increase to 25% has been mentioned by some moderates.

The Tax Plan would also increase the top individual tax bracket to 39.6% for households with income exceeding $400,000. We expect this will pass. Going from 37% to 39.6% seems like an easy one that will likely get through.

FP: One of the major components of the Tax Plan that will impact the real estate industry is a change in the capital gains tax rate. What is being considered and where do you think this will ultimately fall?

KLR: Under the proposed plan, the capital gain tax rate would increase to 39.6% for households earning over $1 million; however, this is making many centrist Democrats uncomfortable. Look for the final tax rate to settle in at high twenties -- 28% is what we are hearing most often as a compromise.

FP: We are often asked about the Tax Plan's proposed elimination of 1031 exchanges for gains more than $500,000. How likely is this to survive?

KLR: We don't believe this is very likely. 1031 exchanges don't raise enough money for lawmakers to get into a fight with the real estate industry.

FP: What about the current $500,000 limit on excess business losses? Should we expect any changes there?

KLR: Under the Tax Plan, the $500,000 limit currently expected to sunset after 2025, would be made permanent. We expect this to pass. This limitation had bipartisan support when it was introduced in 2017 as part of the Tax Cuts and Jobs Act (TCJA). Making the limit permanent will likely pass again.

FP: Estate taxes have been a big target of the Tax Plan. How would tax rates, exemptions and the current "step up" in basis upon death be affected?

KLR: Change is definitely coming here. It appears to us that an increase in the top estate tax rate is likely. An increase from 40% to 45% has been proposed for the maximum estate tax rate.
Also expect a reduction in the estate tax exemption. The Tax Plan would reduce the estate tax exemption down from $11.7 million per person in 2021, with $5 million being the best-case scenario and $3.5 million being the worst case.

More difficult to pass will be the elimination of the step up in basis at death, which is proposed in the Tax Plan and would tax any appreciation in assets at the time of death or subsequent sale. Although this has had growing support over the years, the problem is how to administer it. The recordkeeping requirements would be a huge burden for families.

FP: How quickly could the Tax Plan be implemented?

KLR: We expect the effective dates of any tax legislation that is enacted to generally be January 1, 2022. But be aware that there may be certain provisions that could take effect as early as the date of enactment. We believe it unlikely that these proposals would take retroactive effect.
Lots of twists and turns in Washington these days, but as we said, the Biden tax plan will be repackaged so it bears watching. As details become more solidified, we will keep you posted.

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About KLR

KLR is a New England Regional Public Accounting Firm that is ranked among the Top 100 firms in the United States. From its seven office locations in Boston, Lausanne, Pawtucket, Providence, Newport, Waltham & Shanghai, the 250+ person firm provides assurance, tax, and business advisory services to private and publicly-held companies throughout the United States and abroad. KLR is a member of Leading Edge Alliance Global, the 2nd largest international professional association of independently-owned accounting, financial, and business advisory firms.