



Legislative Proposals That Could Impact Real Estate

The Biden Administration's
FY 2022 Revenue Proposals and
Other Legislative Proposals



July 2021

Green Book FY22

Key provisions

Provision	Description of Proposal	Effective Date
Like-Kind Exchanges	<p><i>Limit the deferral of gain from like-kind exchanges of real property</i></p> <ul style="list-style-type: none">Limited to an aggregate amount of \$500,000 per taxpayer (or \$1 million for married individuals filing joint returns) each yearAny gains from like-kind exchanges in excess of this limit during a taxable year would be recognized by the taxpayer in the year of the exchange	Exchanges completed in taxable years beginning after 12/31/2021
Carried Interest	<p><i>Treat carried interest income as ordinary</i></p> <ul style="list-style-type: none">Change taxation of profits interests for taxpayers with gross income over \$400,000Repeal section 1061 for taxpayers with gross income in excess of \$400,000For these taxpayers who hold an investment services partnership interest (“ISPI”) in an investment partnership, treat as ordinary their distributive share of income regardless of character at partnership levelTax gain from partner’s sale of an ISPI at ordinary rates	Taxable years beginning after 12/31/2021

Green Book FY22

Key provisions (cont.)

Provision	Description of Proposal	Effective Date
Carried Interest (continued)	<ul style="list-style-type: none">• If a partner that holds an ISPI also transfers invested capital (<i>e.g.</i>, money or other property) to the partnership and the partner’s invested capital is a “qualified capital interest,” income attributable to the invested capital would <u>not</u> be recharacterized as ordinary• Gain from sale of an ISPI attributable to invested capital <u>not</u> recharacterized• Anti-abuse rule – Any person who performs services for any entity and holds a “disqualified interest” subject to tax at ordinary income rates on income/gain with respect to that interest<ul style="list-style-type: none">○ Includes convertible or contingent debt, options, or derivative instruments○ Does <u>not</u> include partnership interests, stock in certain taxable corporations, or stock in S corporations• Treasury clarified that the proposal is <u>not intended to adversely affect qualification of a REIT</u> owning a profits interest in a real estate partnership	Taxable years beginning after 12/31/2021

Green Book FY22

Key provisions (cont.)

Provision	Description	Effective Date
Capital Gains Rate	<p><i>Increase tax rate on tax preferential income</i></p> <ul style="list-style-type: none">Long-term capital gains and qualified dividends of taxpayers with adjusted gross income over \$1 million (\$500,000 for married filing separately) would be taxed at ordinary income tax rates	Gains and dividends required to be recognized after the date of announcement
Ordinary Income Rate	<p><i>Increase top marginal tax rate for individual and fiduciary taxpayers</i></p> <ul style="list-style-type: none">Increase the top marginal income tax rate to 39.6%Rate would be applied to taxable income in excess of the 2017 top bracket threshold, adjusted for inflation<ul style="list-style-type: none">In taxable year 2022, the top marginal tax rate would apply to taxable income over \$509,300 for married filing jointly taxpayers (\$452,700 for single taxpayers)	Taxable years beginning after 12/31/2021

Small Business Tax Fairness Act

20% Deduction for Qualified Business Income

S. 2387 proposes to make the following changes to the deduction section 199A:

- Phase out the deduction for individuals earning more than \$400,000, and no deduction allowed for individuals with taxable income of \$500,000 or more
- Treat **specified service trades or businesses** (e.g., the businesses engaged investing and investment management) as **qualified trades or businesses**
- **Eliminate the limitations** based on **W-2 wages** and **the unadjusted basis immediately after acquisition** of qualified property
- Eliminate deduction for trusts and estates
- **REITs**
 - Subject to the phase out, **qualified REIT dividends continues to qualify** for the deduction
 - Dividends of regulated investment companies (e.g., mutual funds) eligible for the deduction to the extent attributable to qualified REIT dividends and other qualified trades or businesses

The Retail Revitalization Act of 2021

Related Party Tenant Rule

H.R. 840 proposes to make the following changes to the related party rent rules that apply to REITs:

- **Increase the ownership threshold** for a “**related party**” tenant from **10% to 50%**, which would allow a REIT to own 50% of a tenant
 - **Increase certain ownership thresholds** required to attribute equity interests to and from corporations and partnerships to **50%** for purposes of the **constructive ownership rules**
 - **Increase from 10% to 50%** the amount of space a REIT can **rent to a taxable REIT subsidiary** without generating related party rent so long as the rent is comparable to non-related party rents
 - Eliminate “**double down**” **attribution** rule for the related party rent rule
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Parity for Non-Traded REITs Act

Foreign Investment in Real Property Tax Act (FIRPTA)

H.R. 3123 proposes to make the following changes to FIRPTA for REITs:

- Allow “**publicly offered**” REITs to benefit **from the following FIRPTA exceptions** that currently apply only to REITs whose stock is regularly traded on an established securities market
 - No FIRPTA withholding or tax on **gain from the sale of REIT stock** by owners of **no more than 10%** of the applicable class of REIT’s stock during the applicable holding period (lessor of five years or the owner’s holding period in the stock)
 - No FIRPTA withholding or tax on **a distribution from a REIT** to an owner that held **no more than 10%** of the applicable class of REIT stock during the one-year period ending on the date of the distribution
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