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Revenue-Raising Proposals in President Biden's Fiscal Year 2023 Budget Plan

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The budget plan released by President Biden on March 28 includes proposals that would raise $2.5 trillion in new revenue. While many of these reforms appeared in his previous budget, some of them are brand new, such as his proposal to prevent basis-shifting in partnerships and his Billionaires Minimum Income Tax.

The FY23 budget plan does not include any revenue proposals that are part of the Build Back Better Act (BBBA) approved by the House of Representatives in November. The reasoning is that Congress is negotiating those proposals right now and is likely to include them or some combination of them in a reconciliation bill this year, even if the final legislation differs from the House-passed BBBA.

The estimates shown here for the revenue proposals in the President's FY23 budget come from the Department of the Treasury. They assume that the revenue provisions in the House-passed BBBA would already be in effect and these budget proposals would build on those reforms.

The table below lists some of the most significant revenue-raising provisions in the FY23 budget, which are described in more detail on the following pages.

Significant Revenue-Raising Proposals in President's Fiscal Year 2023 Budget

	10-Year Revenue Impact
Raise Corporate Tax Rate from 21% to 28%	$1.32 trillion
Adopt Undertaxed Profits Rule (UTPR)	$239 billion
Prevent Partnerships from Shifting Basis	$62 billion
Repeal Fossil Fuel Tax Breaks	$45 billion
Reverse Trump Cut in Top Tax Income Tax Rate	$187 billion
Limit Capital Gains Breaks for Millionaires	$174 billion
Adopt a Billionaires' Minimum Income Tax	$361 billion
Close Loopholes in Estate Tax	$48 billion
Limit Like-Kind Exchanges	$20 billion
Pass other Revenue-Raising Proposals	$88 billion
TOTAL	$2.54 trillion

Source: U.S. Department of Treasury

Raise the Corporate Tax Rate from 21% to 28%
$1.3 trillion over ten years

The President's budget would partly reverse the cut in the corporate income tax rate that was signed into law by former President Trump as part of the Tax Cuts and Jobs Act (TCJA). President Biden's plan would raise the corporate income tax rate from 21 percent to 28 percent, still lower than the 35 percent rate that applied to most corporate profits before TCJA came into effect.

Drafters and supporters of TCJA claimed that the rate cut would make the United States more globally competitive. But it is not the case that the pre-TCJA corporate tax code made the United States less competitive than other countries or the that the rate cut made the U.S. more so.

As ITEP has explained previously, even before TCJA was enacted, corporations were able to compete, profit and grow in the United States more than in any other country. This is not simply reducible to favorable tax treatment but instead is the result of an educated and skilled workforce, robust infrastructure, trade and tax agreements with global markets, and many other factors that create strong economies. Raising the corporate tax rate would ensure that companies are contributing back to the country that has made them enormously successful.

Most corporations are not even paying the full 21 percent income tax rate that is in effect today. Through a variety of deductions and credits, most companies pay an effective tax rate much lower than the statutory rate. Corporate tax revenue as a percentage of GDP is in fact quite low in the United States compared to other large economies. The President's proposal to increase the statutory corporate tax rate as well as other proposals in this budget and proposals included in the House-passed BBBA would begin to address these problems.

Adopt an Undertaxed Profits Rule (UTPR)
$239 billion over 10 years

The President proposes to adopt an "undertaxed profits rule," or UTPR, which would crack down on foreign corporations based in countries that do not carry out the international deal negotiated by the Biden administration to stop offshore tax dodging. The UTPR would conform to a similar rule in the OECD (Organization for Economic Cooperation and Development) agreement.

Under a separate part of the OECD agreement, participating countries implement an Income Inclusion Rule (IIR) to ensure that their own corporations pay a total tax rate of at least 15 percent on their foreign profits. (Provisions to implement the IIR are included in the House-passed BBBA and explained in more detail in another ITEP report.)

The UTPR is the other half of the agreement, designed to address the concern that some countries might refuse to join the agreement, giving their corporations an unfair advantage. The UTPR would address this problem by allowing participating countries to impose a "top up" tax on foreign-owned corporations operating in their borders if they are based in a home country that does not require them to pay a total tax rate of at least

15 percent. Under the OECD agreement, countries imposing a top up tax under the UTPR would allocate the revenue raised amongst themselves through a formula (based on employees and assets a corporation has in each country), which the President's proposal spells out. The proposal would apply to foreign-based corporations with global annual revenue of at least $850 million.

The President's proposal would implement the UTPR by limiting deductions for US taxes for subsidiaries or branches of a low-taxed, foreign-owned company operating in the US. Under current law, these deductions are often used to strip earnings out of the United States and shift them to countries where they will not be taxed.

For example, a foreign corporation can arrange to "loan" money to its U.S. subsidiary, which then makes large interest payments back to the foreign parent company. The U.S. subsidiary deducts the interest payments from its U.S. income and tells the IRS that it has little or no taxable income as a result. Or a foreign corporation can arrange to "buy" a patent from its U.S. subsidiary which then pays royalties to the foreign parent company. The U.S. subsidiary deducts the royalties from its U.S. income and tells the IRS that it has little or no taxable income as a result.

In these situations, the parties on both sides of the transactions are really controlled by the same people. The "borrower" and "lender" are parts of the same company, and the same is true for the company holding a patent and the subsidiary paying royalties to it. These arrangements exist only on paper and only to shift profits out of the US to a foreign country with a low tax rate or no corporate tax at all.

For multinational corporations based in countries implementing the OECD agreement, the participating governments' implementation of the IIR (ensuring that their companies pay an effective rate of at least 15 percent on all their profits) would limit the benefits from this type of earning-stripping. For multinational corporations based in countries that do not implement the agreement (and thus do not implement the IIR), this type of earning-stripping would be limited by the UTPR.

The Tax Cuts and Jobs Act (TCJA) includes a provision called the Base Erosion and Tax (BEAT) that is supposed to serve a similar purpose but is generally recognized as being weak. The House-passed BBBA would strengthen the BEAT and make it conform more to the UTPR concept. The UTPR proposal in the President's budget is designed to align with more recent details hammered out in the OECD negotiations and would replace the BEAT entirely.

Republicans in Congress have argued that other countries might use their own implementation of the UTPR to impose top-up taxes on the profits of American corporations, which have been known to pay effective tax rates of less than 15 percent at times. The House-passed BBBA would mostly address this by imposing the minimum tax on US corporations equal to 15 percent of their book income (the income they report to shareholders and potential investors).

The minimum book income tax for corporations in BBBA would not always ensure effective tax rates of at least 15 percent, because some tax credits like the research and development tax credit would be allowed against it. To address situations where another country might attempt to impose a UTPR on an American corporation, the President's proposal would introduce a "domestic minimum top-up tax" that would bring the company's effective tax rate to 15 percent and ensure that the U.S. collects the revenue rather than another country implementing a UTPR.

Prevent Related Business Partners from Shifting Basis

$62 billion over 10 years

The budget includes a reform that would prevent related partners in business partnerships from generating deductions by shifting the "basis" among themselves.

The "basis" is usually the amount of money a taxpayer has invested in an asset and is used to calculate the income generated from selling the asset. For example, if a taxpayer buys an asset for $3,000 and, a few years later, sells it for $10,000, the income generated from the sale is calculated by subtracting the $3,000 basis from the $10,0000 sale price, which comes to a capital gain of $7,000. In some situations, determining the basis can be more complicated, particularly when assets are owned by a partnership rather than a single individual.

Under current law, related partners in partnerships can generate tax losses on the distribution of property. This can happen when one partner receives property from the partnership that is greater in value than their actual investment (basis) in the partnership.

For example, if a partner who has invested $100,000 in the partnership receives property with a basis of $150,000 from the partnership in redemption, their basis in the property is stepped down to $100,000 (representing the partner's "outside" basis in the partnership). In theory, this means if they sold the property immediately and received $150,000, they would pay income taxes on a gain of $50,000. (The $150,000 sale price minus the $100,000 basis comes to a capital gain of $50,000.)

The tax rules allow the partnership to offset that step-down in basis for the partner receiving the property by stepping up the basis for the remaining property in the partnership. In this example, if the remaining property held by the partnership is worth $200,000 and has a basis of $100,000, the basis would be stepped up to $150,000. This reduces the capital gains that would be taxed (in the event that the partnership sells its property) by $50,000. If the property is depreciable, the remaining partner can immediately start claiming depreciation deductions relating to the stepped-up basis of $50,000.

In an ideal world, the step-down of basis for the partner receiving property would be perfectly offset by the step-up in basis for the other partner or partners. In this example, if all the partners sell the property involved, the $50,000 increase in income for one taxpayer is offset by a $50,000 decrease in income for others. Unfortunately, this is not what usually happens in real life. Often the partner with the stepped-down basis never sells the property, meaning, in this example, the $50,000 gain is never taxed. The property remaining with the other partner(s) is often depreciable property, so their step-up in basis results in tax deductions they can claim right away. The transfer is often arranged to shift basis from non-depreciable property to depreciable property to maximize these tax deductions.

President Biden's budget calls for a new rule that would allow the remaining related partner to benefit from the step-up in basis only after the property is sold and has become a taxable gain.

Repeal Fossil Fuel Tax Breaks
$45 billion over 10 years

The White House proposes closing a variety of tax breaks that benefit fossil fuel producers. While fuel prices are soaring and Congress is considering taxing the excess profits of oil companies, it is worthwhile for policymakers to take a second look at the smorgasbord of tax preferences that are already on the books.

The largest subset of these tax breaks provide special expensing, depreciation, and amortization breaks for oil and gas production. These tax benefits allow fossil fuel companies to write off their costs more quickly, thus reducing their final tax bill. Repealing this subset of breaks alone would raise revenues by $38 billion during the next ten years.

The tax code also provides special credits and benefits to producers when oil and gas prices are exceptionally low or to producers who are using more costly wells. Another subset of benefits creates special business and income rules for fossil fuel companies, for example, allowing corporate income to be treated as partnership (pass-through) income.

Finally, the administration would repeal several provisions that allow fossil fuel companies to reduce their contributions to the Oil Spill Liability Trust Fund, an important and immediate source of funds for federal agencies to respond to oil spills.

Reverse Trump's Cut in the Top Income Tax Rate
$187 billion over 10 years

The President's budget would reverse the provision in TCJA that cut the top marginal personal income tax rate from 39.6 percent to 37 percent. The proposal would also make the top rate apply to single taxpayers with taxable income exceeding $400,000 and married couples with taxable income exceeding $450,000, which is lower than the floor for the top income tax bracket in effect now.

This provision would raise revenue mainly from 2022 through 2025, the years when the personal income tax cuts are in effect under the 2017 tax law.

Limit Capital Gains Breaks for Millionaires
$174 billion over 10 years

The budget would close several breaks that reduce taxes on the income of the ultrawealthy. Unlike the majority of Americans who receive most of their income from work, millionaires and billionaires receive the largest share of their income from wealth. This income is taxed at a lower rate than ordinary wage and salary income and is often not taxed at all.

Currently, income from capital gains and dividends is taxed at a top rate of just 20 percent, compared to a top rate of 37 percent for ordinary income (39.6 percent under the President's budget). The White House proposes to tax all income over $1 million at the top ordinary personal income tax rate regardless of whether it is capital gains, dividends, or some other type of income.

The tax code also provides a special benefit to heirs called the "stepped up basis" rule. When assets are passed on, the heirs receive those assets at a basis (original value) set to the date at which the assets are inherited. For example, if some asset is originally purchased at a value of $50 million and is then passed to an heir at a current value of $100 million, the heir can immediately sell the asset for $100 million without reporting any capital gain. This rule allows an enormous amount of capital gains to go untaxed.

The President's budget would partially address this problem by treating unrealized gains as taxable income for the final year of a taxpayer's life. Still, generous exemptions would apply. This proposal would exempt $5 million of unrealized gains per individual and effectively $10 million per married couple. The President also proposes allowing any business (including farms) to delay the tax if the business continues to be family-owned and -operated.

Adopt a Billionaires' Minimum Income Tax

$361 billion over 10 years

The Billionaires' Minimum Income Tax would limit another capital gains tax break for the ultrawealthy, which is their ability to defer paying income taxes on gains until they sell assets. The President's proposal to limit this tax break would phase in for taxpayers with a net worth between $100 million and $200 million.

Those wealthy enough to be subject to the proposal would generally be required to pay at least 20 percent of their total income, including unrealized capital gains, each year. When this equals more than they owe under the regular tax rules, affected taxpayers would have five years to pay the difference (nine years for the tax assessed in the first year the proposal is in effect). This gradual payment would smooth out long-term calculations of the tax for someone whose assets fluctuate dramatically in value. (If unrealized gains in one year are followed by unrealized losses in another year, only a portion of the minimum tax is paid for the first year and then potentially refunded in the following year.) Payments of the minimum tax would also serve as prepayments of the tax that would otherwise be due later when a taxpayer sells an asset or passes it to an heir.

Some other proposals, like Sen. Ron Wyden's "Billionaires Income Tax" create something closer to a "mark-to-market" system of taxation, which would treat unrealized gains as income each year. The President's proposal is different because it is structured as a minimum tax, ensuring that very wealthy people pay at least 20 percent of their total income, including the unrealized gains that escape taxation under current law.

ITEP has provided more detailed analysis of the President's Billionaires' Minimum Income Tax **here**.

Close Loopholes in Estate Tax
$48 billion over 10 years

The President's budget includes several proposals to close loopholes in the federal estate and gift taxes. The most important of these proposals address the ways that wealthy people use trusts to avoid taxes.

The tax code should prevent wealthy people from avoiding taxes when they transfer assets to other people. Normally, a wealthy person would pay federal gift tax if they give away an asset to a family member or friend, and their estate could be taxed if they bequeath the asset to them when they die. The taxpayer could sell the asset to their friend or family member but would pay income tax on any capital gain.

The problem is that loopholes in our tax laws allow wealthy people to use trusts to avoid federal taxes in all of these situations when they transfer assets (usually to family members). These loopholes effectively subsidize the transfer of huge sums of wealth down through generations within a dynasty. This is especially true of assets that owners expect to appreciate significantly over the coming years.

Wealthy people use two tactics to transfer these assets to others (the heirs, usually) without paying gift tax or estate tax on the subsequent increase in the assets' value.

First, a wealthy person can place assets in a Grantor Retained Annuity Trust (GRAT), which is set up to provide them with an annuity payment from the assets. The trust is arranged to give the remaining value of the assets – any value that the assets have above and beyond what will be paid back to the grantor in annuity payments – to the beneficiaries of the trust as a gift, which is subject to the federal gift tax. However, wealthy people often create "zeroed out" GRATs, meaning the gift (the value of the assets beyond the annuity payments) is zero according to the formula specified in the tax law. Over the duration of the trust, sometimes that turns out to be true – the assets might perform only as well or more poorly than calculated, meaning there really is no gift to the trust beneficiaries – and the grantor takes back the assets placed in the trust. But if the assets perform better than expected, the trust pays the annuity payments to the grantor and then the remaining assets go to the trust as a tax-free gift. The formula used to determine the value of the assets when the trust was set up (which determined that no taxable gift was provided to the beneficiaries of the trust) is never retroactively corrected. This means that asset value has been passed to the trust beneficiaries (usually family members of the grantor) without triggering the federal gift tax or estate tax that would normally be due on such a transfer.

Wealthy people set up multiple GRATs knowing that they will avoid taxes whenever the assets in the trusts perform better than expected under the formula used in the law, and that they will lose nothing when the assets do not.

Second, a grantor can set up a trust and sell an asset to it. No gift tax applies because the transfer was a sale, not a gift. For purposes of the income tax, the sale has not occurred at all because the grantor owns the trust, which means no tax is due on any capital gains. But for purposes of the gift and estate taxes, the asset is owned by the trust (and eventually, its beneficiaries), which means that any further increase in the value of the asset will be free of gift and estate tax. Further, the grantor can make additional gifts to the trust free of tax by paying the income taxes due on the income generated by the assets in the trust.

The President's proposals would make GRATs far less attractive by barring zeroed out GRATs (requiring a minimum amount of the initial transfer when the trust is created to be subject to gift taxes) and requiring the trust to have a duration of at least 10 years to make it less common for assets to outperform and create untaxed gifts. It would make sales to grantor trusts taxable events and would count income taxes paid on behalf of trusts as taxable gifts to the trust.

Limit Like-Kind Exchanges

$20 billion over 10 years

President Biden proposes to bar taxpayers from using "like-kind exchanges" to shield more than half a million dollars of capital gains from income taxes.

Capital gains on property sales can be the main type of income received by large-scale real estate investors but they can avoid paying taxes on this income by structuring their transactions as "like-kind" exchanges. In these deals, one property is traded for another similar property rather than sold for cash. (The transfer can also be partly for cash and partly a like-kind exchange.) The general idea is that no income tax is due on a profit from the sale to the extent that the seller received another property rather than cash.

This policy was originally intended as an administrative convenience in situations where farmers traded land or livestock without any money changing hands. Today, the definition of like-kind is extremely generous, "allowing a retiring farmer from the Midwest to swap farmland for a Florida apartment building tax-free," according to the Congressional Research Service. The New York Times reported that Jared Kushner, who is heavily invested in real estate, avoided paying income taxes for several years, partly by using like-kind exchanges.