Proposed Billionaire Minimum Income Tax

An Unprecedented Tax on Unrealized Capital Gains

The recent reintroduction of the Billionaire Minimum Income Tax bill has rekindled discussions around tax reform, especially for high–net–worth individuals. The legislative outcome of this proposal and the pending Moore v. U.S. case before the Supreme Court has significant implications for high–net–worth taxpayers.

The origins of the Billionaire Minimum Income Tax bill can be traced back to President Joe Biden's Fiscal Year 2023 Revenue Proposals released on March 28, 2022. At its core, this tax aims to target unrealized capital gains for ultra–high–net–worth taxpayers.

The concept gained traction in June of 2022 when Rep. Steve Cohen, D-Tenn, championed the idea, which was then referred to the House Committee on Ways and Means. On November 29, 2023, Reps. Steve Cohen and Don Beyer, D-VA, reintroduced the Billionaire Minimum Income Tax bill, reigniting discussions around its potential implementation. This bill was then referred to the House Committee on Ways and Means, and if it makes it out of that committee, will be brought to the House floor for a vote. If passed by the House, the bill would move to the Senate for consideration.

Similar to the 2022 proposal, the revised 2023 bill stipulates that households worth over $100 million are subject to the tax, with households with a net worth over $200 million subject to the top rate of 25%. All taxpayers impacted would be required to pay this tax on unrealized capital gains every year. This is a stark departure from the

current tax regime, where capital gains taxes are typically assessed only upon the sale of the asset.

Proponents of the tax argue that ultra-wealthy individuals can circumvent capital gains taxes indefinitely by leveraging their investments as collateral for low-interest loans, thus avoiding taxable events until death. Upon death, these loans (which likewise reduce the value of the taxable estate and thus reduce estate tax liability) are repaid, and the underlying collateral receives a step-up in cost basis as of the taxpayer's date of death, erasing embedded unrealized capital gains. This strategic maneuver potentially allows for massive wealth transfer without triggering any income tax.

While the focus of this proposed tax might seem limited to ultra-high earners, historical parallels, such as the alternative minimum tax ("AMT"), offer a cautionary tale. The AMT, introduced in 1969 for taxpayers with over $200,000 in taxable income (equivalent to approximately $1.9 million today), initially impacted a mere 155 taxpayers. However, by 2017, it affected 5.2 million taxpayers, demonstrating how tax policies intended for a select few can gradually expand to encompass a broader spectrum of earners.[1] Understanding this historical context is critical, as the proposed Billionaire Minimum Income Tax could likewise undergo future revisions and expansions, potentially impacting a larger demographic over time.

The ongoing discourse surrounding the Billionaire Minimum Income Tax has gained a new dimension with the unfolding case of Moore v. U.S., presently under consideration by the Supreme Court. This case's core contention revolves around the constitutionality of a tax that the Internal Revenue Service seeks to collect, specifically challenging its validity as an unconstitutional levy on unrealized income under the 16th Amendment.

The implications of Moore are profound, potentially establishing a precedent that could significantly influence the fate of the proposed Billionaire Minimum Income Tax bill. At the heart of both the lawsuit and the proposed legislation lies the contentious issue of taxing unrealized capital gains for high-net-worth individuals.

The outcome of this case may offer critical insights into the viability and constitutionality of taxing unrealized income, thereby significantly impacting the future direction of tax policies for ultra-wealthy individuals. As the Billionaire Minimum Income Tax bill works its way through the House and the Supreme Court deliberates on Moore, stakeholders, including high-net-worth individuals, tax advisors, and financial professionals, are advised to closely monitor the proceedings.

Notes:

[1] While the Tax Cuts and Jobs Act ("TCJA") of 2017 reduced this number to approximately 200,000 taxpayers as of 2018, the TCJA sunsets at the end of 2025 and the AMT is projected to impact 7 million taxpayers in 2026.

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