

Large Corporations and Wealthy Individuals Beware: The Tax Man is Coming

A Practical Guidance® Article by Alan Winston Granwell, Andrea Darling de Cortes, Joshua David Odintz, and Bibiana A. Cruz, Holland & Knight LLP



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Tax compliance has become front page news. On April 13, 2021, the Internal Revenue Service (IRS) Commissioner in testimony before a Congressional Committee said that the U.S. government may be losing nearly \$1 trillion in unpaid taxes every year and called for increased IRS funding and resources enforcement to close the “tax gap.” The tax gap is the difference between the amount that should have been reported on tax returns and the amount actually collected by the Internal Revenue Service. In fact, Internal Revenue Service (IRS) Commissioner Chuck Rettig on April 13, 2021, told a U.S. Senate panel that the tax gap in the U.S. may total \$1 trillion per year. In his view, the increase from prior estimates is due, in part, to the rise in use of cryptocurrencies, offshore tax evasion and the use of pass-through businesses that underreport income to the IRS.

After the Commissioner’s statement, the focus on tax compliance was further heightened when it became a central part of how to pay for the Biden Administration infrastructure proposals contained in the American Jobs Plan and the American Families Plan currently wending their way through Congress. A key component of President Joe Biden’s infrastructure bills – the American Jobs Act and the American Families Plan – apart from proposed corporate and income tax increases, is a “pay for” each plan approach with revenue raised through increased IRS tax enforcement (funding, information, resources and technology) to ensure that large corporations and wealthy individual taxpayers pay their fair share.

In addition, with current resources, the IRS and tax administrations internationally are now focusing their attention on enforcement, particularly on cryptocurrency. Taxpayers should not ignore these developments. They should review their situation and, if necessary, seek to remediate any noncompliance. This Holland & Knight article provides an overview of significant developments.

Biden Administration Proposals

The Biden Administration seeks to overhaul the tax administration system to ensure that large corporations and wealthy individual taxpayers pay their fair share. This tax initiative is reflected in the Biden Administration's infrastructure legislative proposals, as well as in its upcoming fiscal year 2022 budget.

- **First, the American Jobs Plan**, dealing with “hard” infrastructure, is proposed to be paid for through corporate tax increases and ramping up enforcement against corporations and an increase in the IRS enforcement budget so more revenue agents can be hired and trained to “identify when corporations – and the wealthy individuals who own them – underpay.”
- **Second, the American Families Plan**, dealing with “human” infrastructure, is proposed to be paid for through a series of individual income tax increases and directing approximately \$80 billion to the IRS to modernize technology infrastructure and increase hiring and training of auditors. The additional resources are intended to be utilized for auditing large corporations, partnerships and high-net-worth individuals. Another element of this enhanced enforcement initiative is legislation to require financial institutions to include in their annual reports additional information about their account holders. This includes information about aggregate account outflows and inflows. This additional information should assist the IRS in its collection efforts. It is anticipated that these reforms would generate an additional \$700 billion in tax revenues over the next decade. Recently, five former IRS Commissioners have come out in support of the Biden Administration proposal to increase funding of the IRS, commenting that his proposal would restore the IRS tax administration system to make it fairer and more effective. This would be accomplished through information, resources and technology. See [“Opinion: Five former IRS commissioners: Biden’s proposal would create a fairer tax system,”](#) *The Washington Post* (May 4, 2021).

(See Holland & Knight's previous articles, [“Biden Administration's Made in America Tax Plan: Procedural Aspects,”](#) April 8, 2021; [“Biden Administration's Made in America Tax Plan: Interaction with OECD Inclusive Framework,”](#) April 15, 2021; and [“Biden's American Families Plan Proposes Income Tax Hikes,”](#) April 29, 2021.)

- **Third, the Biden Administration's \$1.5 trillion budget** for fiscal year (FY) 2022 also focuses on enhancing taxpayer compliance – including an additional \$900 million for audits, as part of a 10.4 percent increase in the IRS' budget. In addition to IRS spending, the discretionary spending proposal includes \$191 million for the U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) to create a database that tracks the ownership and control of certain companies and organizations. The FY 2022 budget will likely include additional proposals to address the tax gap.

Congressional Initiatives

A number of Senate and House members also have introduced initiatives relating to enhancing IRS compliance of large corporations and wealthy individual taxpayer. While not the prime focus given the Biden Administration's infrastructure proposals, some portions of the below proposals could become part of the legislative deal making.

Sens. Elizabeth Warren (D-Mass.), Sheldon Whitehouse (D-R.I.) and Rob Portman (R-Ohio) and Rep. Lloyd Doggett (D-Texas) are among the members of Congress seeking stricter enforcement of tax laws against the ultra-rich and big corporations.

Sen. Warren has proposed the [Ultra-Millionaire Tax Act of 2021](#) (S. 510), introducing a wealth tax. The bill includes a proposal to increase IRS funding by \$100 billion over the next 10 years, 70 percent of which new money would be required to be used for wealth tax's enforcement. In addition, the bill would expand information reporting requirements and would mandate the IRS to create new regulations that would require taxpayers subject to the wealth tax to report information related to the net value of their assets. Taxpayers (as well as financial institutions, business entities or other persons) would have the responsibility for reporting such information). Moreover, the bill would require the Treasury Secretary to annually audit no less than 30 percent of the taxpayers required to pay the wealth tax.

Rep. Doggett and Sen. Whitehouse have reintroduced the [Stop Tax Haven Abuse Act](#) (S. 725), which intends to close

offshore loopholes that allow taxpayers to book profits in tax havens. The bill includes proposals that deter the use of tax havens for evading U.S. taxes by:

1. Imposing sanctions against foreign institutions and others that impede U.S. tax enforcement
2. Treating certain foreign corporations worth \$50 million or more that are managed and controlled in the U.S. as U.S. taxpayers
3. Requiring banks and brokers who discover money laundering by U.S. taxpayers to disclose such information to the IRS –and–
4. Increasing penalties for corporate insiders who fail to disclose stock holdings and transactions with affiliated offshore entities, among others

In addition, the Foreign Account Tax Compliance Act of 2010 (FATCA) would be strengthened in various ways.

Sen. Portman is also working toward combating cryptocurrency tax evasion. In the Senate Finance Committee meeting of April 13, 2021, the senator indicated that his office is working on a bill that would define cryptocurrency for tax purposes and would impose new reporting rules.

Further, the Senate Committee on Finance's Subcommittee on Taxation and IRS Oversight will hold a hearing on May 11, 2021, to address closing the tax gap from noncompliance and offshore tax evasion. Current and former government officials will testify and describe tax gap issues and potential solutions.

Not to be outdone by the Senate, the House Committee on Ways and Means will hold a hearing on May 12, 2021, entitled Funding Our Nation's Priorities: Reforming the Tax Code's Advantageous Treatment of the Wealthy. This hearing will likely discuss the tax gap and enforcement initiatives targeting high-income taxpayers.

Enforcement Efforts

IRS Global High Wealth Industry Group

The Global High Wealth Industry (GHW) Group, within the Large Business and International Division, focuses on conducting audits of high-income/high-wealth taxpayers. In 2020, the GHW initiated a campaign of auditing hundreds of high-net-worth individuals. With the Biden Administration's increased attention on tax enforcement and evasion, the activities of this group should be central

to continued enforcement efforts. See "[The IRS global high wealth industry group: how the IRS targets high net worth individuals](#)," Alan W. Granwell and Andrea Darling de Cortes, International Bar Association, Private Client Tax Committee Publication (Oct. 7, 2020).

Cryptocurrency

The IRS has also been combatting tax evasion with a major emphasis in cryptocurrency. For taxable year 2019, the IRS added a question in Schedule 1 of the U.S. individual tax return (Form 1040) that queried whether the individual taxpayer had received, sold, exchanged or otherwise acquired any financial interest in any virtual currency. For tax year 2020, the IRS moved the cryptocurrency question from Schedule 1 to a more prominent spot on Page 1 of the Form 1040, right after the taxpayer's name and address. The location change of this question is consistent with Commissioner Rettig's intention to look closer at cryptocurrency transactions and pursue its tax evaders.

Other tools that the IRS uses to uncover crypto noncompliance are the new Operation Hidden Treasure and the "John Doe" summons. Under the Operation Hidden Treasure initiative, the IRS' Criminal Investigation and Fraud Enforcement Office collaborate to find taxpayers that have unreported income from virtual currency transactions. Through a "John Doe" summons, the IRS requests information from crypto exchanges related to U.S. taxpayers who conducted the equivalent of at least \$20,000 in transactions in cryptocurrency during 2016 to 2020. (A "John Doe" summons is an investigative tool used by the IRS to seek information about unnamed taxpayers from a third party.) In March and April 2021, two virtual currency exchanges were subject to these types of summonses.

International Efforts

The Joint Chiefs of Global Tax Enforcement (known as the J5) is also directing their efforts toward cryptocurrency tax enforcement. The J5, an international group of tax regulators committed to combatting transnational tax crime. It recently held an annual event called "The Challenge," which this year focused on cryptocurrency and the involvement of the financial technology (FinTech) industry in global tax evasion. During the event, experts from each country collaborated and shared information to generate leads and find tax offenders using cryptocurrency. A list of companies identified from leads suggesting criminal behavior was created, and it is anticipated that these companies will be part of the countries' tax investigation efforts.

Information Received from IRS Compliance Initiatives

The IRS has several offshore voluntary disclosures initiatives, to include the Streamlined Foreign Offshore Procedures, the Streamlined Domestic Offshore Procedures, the Offshore Voluntary Disclosure Program and the Criminal Investigation Voluntary Disclosure Practice, among others. A byproduct of these initiatives is that the IRS receives detailed data providing insight into taxpayers' dealings with foreign financial institutions, activities of foreign account managers and other fiduciaries who may have assisted taxpayers in evading U.S. tax, and the flow of funds among various offshore financial centers.

Other Initiatives

The IRS' Large Business and International Division has several active campaigns to address specific tax issues through audits. In fall 2020, the IRS hired audit and tax specialists to address partnership audits. The new hires are undergoing training, and it is anticipated partnership audits will increase in fall 2021.

Noncompliant U.S. Taxpayers Would Be Advised to Take Action to Come into Compliance

As can be seen, there is a concerted effort now to ramp up IRS funding so as to enable the agency to better perform its compliance and audit responsibilities and close the "tax gap." On April 28, 2021, the U.S. Department of the Treasury [issued a press release](#) in connection with the Biden Administration's American Families Plan. In the release, the Treasury Department announced several significant tax administration reforms that would provide additional resources to the IRS to combat sophisticated tax evasion: through a sustained, multiyear funding stream, access to more complete information and the ability to cross-check the accuracy of tax filings, an overhaul of the IRS' information technology (IT) systems and increased complex investigations auditor training. The focus would be on large corporations, partnerships and wealthy taxpayers.

Taxpayers within this group would be well advised to prepare for possible IRS audits.

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Alan Granwell is a tax attorney with more than 45 years of experience in the area of international taxation, resident in Holland & Knight's Washington, D.C. office. In his long and wide-ranging career, Mr. Granwell has had the opportunity and privilege to work in the public and private sector.

Mr. Granwell's tax practice encompasses counseling both corporate and private clients. He represents multinational corporations on cross-border planning, transfer pricing, tax controversy and tax compliance. In his private client practice, Mr. Granwell advises high-net-worth individuals on cross-border income, estate and gift tax planning, controversy and compliance, to include foreign persons becoming U.S. persons, and U.S. persons moving offshore or expatriating. Mr. Granwell also has served as an expert witness in international tax controversy matters. With the recent enactment of U.S. tax reform legislation, Mr. Granwell has been active in counseling clients on the legislation's impact on existing international transactions and structures, new planning opportunities and pitfalls.

Over the past few years, Mr. Granwell also has advised financial institutions and their clients on international tax enforcement initiatives, with special emphasis on the U.S. Department of Justice Swiss Bank Program, the Foreign Account Tax Compliance Act (FATCA) and the Common Reporting Standard (CRS).

Mr. Granwell's administrative practice includes representing clients before the Internal Revenue Service and the U.S. Department of the Treasury, including negotiating advance pricing agreements and conducting competent authority proceedings. He also assists clients in obtaining tax rulings and regulatory changes and advises clients on tax legislation matters.

In the early 1980s, Mr. Granwell was the International Tax Counsel and Director in the Office of International Tax Affairs at the U.S. Department of the Treasury. In that capacity, Mr. Granwell was the senior international tax adviser at the Treasury Department and was responsible for advising the Assistant Secretary for Tax Policy on legislation, regulations and administrative matters involving international taxation and directing the U.S. tax treaty program.

Mr. Granwell began his career working at Wall Street law firms. He then moved to Washington, D.C., to accept his government appointment to work for the Treasury Department. Thereafter, he returned to private practice in Washington, D.C. Prior to joining Holland & Knight, Mr. Granwell was a tax attorney for a boutique international tax law firm.

Mr. Granwell is a well-known, frequent commentator and lecturer on international tax matters. He has authored articles for publications both in the United States and abroad. Mr. Granwell has made presentations for the American Bar Association, Section of Taxation, the International Bar Association, the International Fiscal Association, the Society of Trust and Estate Practitioners (STEP) and other organizations in numerous countries around the world. He has been active in participating in programs on the international provisions of the recent U.S. tax reform legislation sponsored by the American Bar Association, Section of Taxation; Tax Analysts and local sponsors, in England, Ireland, Italy and the Netherlands; the Irish Tax Institute; STEP; and others.

Andrea Darling de Cortes, Partner, Holland & Knight LLP

Andrea Darling de Cortés is an attorney in Holland & Knight's Tampa office. Ms. Cortés focuses her practice in the areas of inbound international income and estate tax planning, international tax controversy and compliance, cross-border tax planning and related transactional matters. Ms. Cortés has advised clients on a broad array of tax and legal, transactional and operational matters, including U.S. income and estate tax planning for non-U.S. high-net-worth individuals with U.S. and non-U.S. assets, pre-U.S. residency tax planning, planning with respect to foreign investment in U.S. real property and U.S. trade or business analysis.

Ms. Cortés has in-depth experience in assisting noncompliant U.S. taxpayers to become U.S. tax compliant. Over the past several years, Ms. Cortés has served as lead counsel or co-counsel and has successfully resolved more than 1,000 taxpayer disclosures under the various Internal Revenue Service (IRS) Voluntary Disclosure Programs, Streamlined Foreign Offshore Procedures and Streamlined Domestic Offshore Procedures.

Prior to joining Holland & Knight, Ms. Cortés was a tax attorney for a boutique international tax law firm.

Joshua David Odintz, Partner, Holland & Knight LLP

Joshua D. Odintz is a tax attorney in Holland & Knight's Washington, D.C., office. Mr. Odintz focuses on tax policy, tax controversy and withholding tax matters. He also advises clients on domestic and international tax controversy matters at all phases, from audit and administrative appeals through litigation.

Mr. Odintz also has experience handling cases involving methods of accounting, transfer pricing, Section 199, research credit, tax accounting, privilege and work product, among others.

Mr. Odintz represents clients before the U.S. Department of the Treasury, Internal Revenue Service (IRS), U.S. Congress and the Organisation for Economic Co-operation and Development (OECD). He assists clients in seeking legislative and regulatory changes to tax laws, as well as monitoring key legislative and regulatory developments. He has successfully worked with clients to obtain changes in U.S. tax reform bills, Section 385 regulations of the Internal Revenue Code (debt/equity rules) and Foreign Account Tax Compliance Act (FATCA) regulations.

In addition, Mr. Odintz focuses on withholding tax issues, FATCA and the OECD's Common Reporting Standard (CRS). He advises domestic and foreign entities on FATCA and CRS issues, including the FATCA and CRS status of entities, reporting, documentation and FATCA withholding.

Furthermore, Mr. Odintz has extensive experience representing clients under investigation by the Congress, including the Permanent Subcommittee on Investigations (PSI). He assists clients during all phases of investigation, including responding to information and document requests, witness interviews and hearings.

Mr. Odintz is a frequent speaker at the International Fiscal Association (IFA), Tax Executives Institute (TEI), American Bar Association (ABA), the University of Chicago Tax Conference and the D.C. Bar Association.

Prior to joining Holland & Knight, Mr. Odintz was a tax attorney at a multinational law firm's Washington, D.C., office, where he was on the management committee of the firm's North America tax practice.

In addition, Mr. Odintz has held high-level government positions with the U.S. Department of the Treasury and the Senate Committee on Finance. He previously served as a senior advisor for tax reform to the assistant secretary at the Treasury Department, where he advised senior treasury officials on tax reform options and issues. Mr. Odintz also served as the chief tax counsel to President Barack Obama's National Commission on Fiscal Responsibility and Reform and was instrumental in formulating the tax proposals in the commission's report. Additionally, Mr. Odintz served as the acting tax legislative counsel at the Treasury.

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Bibiana A. Cruz is a tax attorney in Holland & Knight's Miami office and a member of the firm's Corporate Services Team. Ms. Cruz focuses her practice on domestic and international tax issues. In addition, she is a certified public accountant (CPA).

Prior to joining Holland & Knight, Ms. Cruz worked for several law firms in Puerto Rico where she advised local and international clients on state and local tax planning as well as tax controversies in both English and Spanish. She further assisted clients in the application for and negotiation of tax incentives grants with the Puerto Rico tax authorities.

During law school, Ms. Cruz served as an associate director of the *University of Puerto Rico Law Review*.

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