As part of their proposals for a $2.3 trillion American Jobs Plan (AJP) and $1.8 trillion American Families Plan (AFP), the Biden Administration included a series of tax elements that would directly affect real estate markets.

The real estate-related tax-related proposals fall into six main categories:

- Tax provisions to support affordable housing
- Corporate and business taxes
- Capital gains
- Investment real estate
- Owner-occupied real estate
- Taxes on individuals

Tax provisions to support affordable housing

As part of the AJP, the administration is proposing to invest "$213 billion to produce, preserve, and retrofit more than two million affordable and sustainable places to live." According to the plan, "Through targeted tax credits, formula funding, grants, and project-based rental assistance, President Biden's plan will extend affordable housing rental opportunities to underserved communities nationwide, including rural and tribal areas." The expectation is that this would take the form of an expansion and revision to the ***Low-Income Housing Tax Credit (LIHTC)*** and perhaps the creation of a new ***Middle-Income Housing Tax Credit (MIHTC)***. The plan also includes ***affordable housing-related expenditures***, including the Neighborhood Homes Investment Act (NHIA), which would offer $20 billion worth of NHIA tax credits over five years for approximately 500,000 homes to be built or rehabilitated, efforts to address exclusionary zoning and $40 billion of investment in public housing.

Corporate and business taxes

The most significant "pay-for" in the American Jobs Plan is an increase in the ***corporate tax rate*** from 21% to 28% -- estimated by the Committee for a Responsible Federal Budget to raise $850 billion over ten years. The plan also proposes a ***minimum book tax*** for corporations of 15 percent, although the Administration later suggested this only apply to companies with net income exceeding $2 billion, up from the original Biden campaign proposal which showed $100 million.

While there has been discussion of changes to the ***199A*** provisions of the TCJA affecting taxation of individual income from pass-through entities, no formal proposals have yet been released.

Capital gains

In terms of impact on real estate, the most important set of provisions are likely centered around the treatment of capital gains. For households making more than $1 million the AFP proposes an increase in the ***capital gains*** rate to 39.6%, putting it on par with proposed top tax rate for income. Adding in the Medicare tax on investment earnings, the top rate would increase to 43.4%. The proposal would also eliminate the ***step-up in basis*** of assets passed on at death for gains in excess of $1 million ($2.5 million per couple when combined with existing real estate exemptions). The Administration indicates that the provisions should be designed so that family-owned businesses and farms will not have to pay taxes when given to heirs who continue to run the business.

Gains on investment real estate

In addition to the changes to capital gains taxation noted above, the proposal also recommends eliminating ***carried interest*** (while noting that the matching of income and capital gains rates will eliminate any tax-based disparities). The ***1031 like-kind exchange*** deferral of capital gains taxation would also be eliminated for gains greater than $500,000.

Owner-occupied real estate

No changes were proposed for the capital gains exclusion on primary residences. There was also no mention of changes to individual provisions from the TCJA that will sunset after 2025.

Taxes on individuals

The AFP includes proposals that would increase the ***top tax rate*** from 37 to 39.6 percent, reversing a change made during the Tax Cuts and Jobs Act (TCJA). The proposal includes provisions to expand the ***Child Tax Credit*** from $2,000 per child to $3,000 per child for six-years old and above, and $3,600 per child for children under six.