

Section-By-Section: Billionaire Minimum Income Tax Act
Proposed by President Biden | Introduced by Reps. Cohen and Beyer

Contacts: [Quentin Dupouy](#) (Rep. Cohen)
[Dylan McGowan](#) (Rep. Beyer)

SECTION 1481 – MINIMUM TAX ON CERTAIN WEALTHY TAXPAYERS

Subsection 1481(a). General Provisions.

This provision imposes the 20% minimum tax on all applicable taxpayers. The tax is calculated by first adding such taxpayer's taxable income and unrealized capital gains and multiplying the sum by 20%. To the extent the resulting product is greater than the taxpayer's regular tax liability, then the greater amount is the tax owed. Taxpayers keep a record of the sum of the payments that they have made in excess of their regular tax liability; this total is called the "minimum tax account balance" (see Section 1481(c)). After the first year a taxpayer is subject to the minimum tax, they may subtract their minimum tax account balance from their taxable amount; in this way, they do not pay tax on the same unrealized gains twice.

Subsection 1481(b). Limitation on Minimum Tax.

The minimum tax imposed cannot be greater than 40% of the amount by which the taxpayer's net worth exceeds \$100,000,000 (or half in the case of a separate return), such that the 20% rate fully kicks in for taxpayers with a net worth over \$200mn. For example, the minimum tax on a joint-filing taxpayer with net worth of \$200mn would be capped at \$40mn (40% times \$200mn - \$100mn).

Subsection 1481(c). Applicable Taxpayer.

Subsection 1481(c)(1) defines applicable taxpayers subject to the tax as taxpayers with a net worth for such taxable year exceeding \$100,000,000 (half such amount in the case of a married individual filing a separate return). In certain circumstances, a trust can be an applicable taxpayer (see Subsection 1481(g)).

Subsection 1481(c)(2-5) defines net worth as the estimated value of all net assets of a taxpayer. It is used only for determining applicability. Taxpayers are not taxed on their worth. Net worth includes the net assets of a trust for which the taxpayer would be considered the owner under current law and a proportion of the assets of a trust equal to the share of the assets or income from the assets that are distributable to the taxpayer. Gifts other than to charitable organizations or a spouse are also taken into account in determining net worth for five years after the gift.

Subsection 1481(d). Minimum Tax Account Balance.

The minimum tax account balance is the sum of all minimum tax imposed beyond the taxpayer's regular tax liability, reduced by the credits made available under Section 25E and 36C.

Subsection 1481(e). Net Unrealized Gain.

Subsection 1481(e)(1) defines net unrealized gain as the aggregate gain that would be recognized if the taxpayer sold each asset for its estimated value at the end of the taxable year minus the aggregate losses that would be so recognized.

Section-By-Section: Billionaire Minimum Income Tax Act

Subsection 1481(e)(2-3) defines estimated value as the fair market value determined in such manner as the Secretary may provide. For non-tradeable assets, the default method for determining estimated value is to start with the greatest of three baselines (original basis, adjusted cost basis, or most recent fair market valuation) inflated by the rate of an average Treasury security with 5 years remaining plus 2 percentage points. The Secretary can also issue regulations as to valuations, which may include rules for formulaic valuation. The Secretary may also require the use of ULTRAs (see Section 1481(f)). Alternatively, the Secretary may permit taxpayers to elect to use an ULTRA for some of their assets (see Section 1481(f)).

Subsection 1481(e)(4) allows illiquid taxpayers to elect to have their net unrealized gain calculated by only taking into account net unrealized gain on their readily tradeable assets. A taxpayer is treated as an illiquid taxpayer for any taxable year if the estimated value of their readily tradable assets as of the close of that taxable year does not exceed 20 percent of the taxpayer's net worth for the taxable year. The Secretary may require illiquid taxpayers to make all of their non-tradeable assets subject to the ULTRA rules (see Section 1481(f)).

Subsection 1481(f). Unliquidated Tax Reserve Accounts.

This Section authorizes the Secretary to establish rules for Unliquidated Tax Reserve Accounts (ULTRAs), a mechanism for imposing an additional tax amount, reflecting the time value of money, in the case where a taxpayer defers a minimum tax payment (for example, in the case of deferrals for illiquid taxpayers under section 1481(e)(4)). At a minimum, the regulations will establish that, as nearly as possible, the additional tax payment will equal the economic value taxpayer received by deferring their minimum tax payment. The Section also provides other required features of any ULTRA rules:

First, the ULTRA is generally structured as a notional interest on behalf of the government in each asset subject to ULTRA treatment ("in the ULTRA"), that is, a proportionate claim on the value of the asset when sold or otherwise disposed of (or in certain other instances), but not granting the government any other rights of ownership. This share is 20% in the first year that a taxpayer is subject to ULTRA treatment.

Second, to take into account future growth of the asset in the ULTRA, the notional interest percentage shall be increased each subsequent year by multiplying a deemed rate of return deemed appropriate by the Secretary by 20% and multiplying that sum by 1 minus the notional interest percentage immediately prior to the increase and adding this fraction to the notional interest percentage. That is, the government's notional share of the asset grows each year by 20% of the expected appreciation in the portion of the asset's value not already subject to a government claim.

Third, any distribution of an asset shall result in the taxpayer paying tax equal to the estimated value of the asset multiplied by the notional percentage at the time of the distribution. For these purposes, distributions include not only complete sales or other dispositions, but also other transfers of value from the asset, such as a dividend paid by a corporation to its

Section-By-Section: Billionaire Minimum Income Tax Act

shareholder. The Secretary shall provide rules for treating transfers made in the ordinary course of business and exchanges of non-readily tradeable assets as other than distributions.

Fourth, the Secretary shall establish a special valuation regime for valuing assets distributed in kind from an ULTRA. A taxpayer may reject the resulting valuation and instead maintain the ULTRA.

Fifth, an ULTRA will resolve upon the death of the taxpayer, distribution of all the assets in the ULTRA, election by the taxpayer or by the determination of the Secretary. Upon resolution, all the remaining assets will be taxed as if sold, subject to valuation rules set out by the Secretary and taking into account prior distributions and tax payments. However, the heirs of a deceased taxpayer can choose to initiate a carry-over ULTRA that will begin with the predecessor taxpayer's notional interest percentage.

Subsection 1481(g). Treatments of Trusts and Estates as Applicable Taxpayers.

All trusts, other than certain trusts treated as owned by an individual (and thus included in the individual's Net Unrealized Gain, see Section 1481(e)) shall be considered applicable taxpayers if any of their assets are distributable to an applicable taxpayer (see calculation of Net Worth, Section 1481(c)). If a foreign trust would have been taxable under the trust rules over the preceding 10 years, but for not having a US beneficiary and such trust acquires a US beneficiary, then the transferor, if there is one, shall be taxed as if the minimum tax applied during the whole period. If there is no living transferor, then the tax shall be owed by the beneficiaries in proportion to their interests.

An estate is an applicable taxpayer beginning with the third taxable year following the date of death of the decedent if the decedent was an applicable taxpayer for any tax year ending within five years of death.

Subsection 1481(h). Installment Election.

An applicable taxpayer, including a trust or an estate, may elect to pay the minimum tax in 5 equal installments. For taxpayers having liability in 2023, the liability for the first year may be paid in 9 equal installments. If the minimum account balance of the taxpayer for any taxable year (reduced by the amount of any credit allowed under section 25E for such taxable year) exceeds 20 percent of the taxpayer's net unrealized gain for such taxable year (which means credit would be due under section 36C), such excess shall be applied to reduce the amount of any installment payments of the taxpayer.

Subsection 1481(i). Information Reporting.

The Secretary shall, not later than 1 year after the date of the enactment of this section, issue regulations requiring such persons as the Secretary determines appropriate to report such information to the Secretary as is necessary to carry out this section, including information to such other persons as the Secretary determines appropriate.

Section-By-Section: Billionaire Minimum Income Tax Act

Subsection 1481(j). Regulations.

The Secretary shall issue such regulations or other guidance as may be necessary or appropriate to carry out the purposes of this section and sections 25E and 36C, including regulations or other guidance to discourage applicable taxpayers from inappropriately converting assets into non-readily tradable assets or to treat assets held indirectly by the applicable taxpayer as held by the applicable taxpayer.

Subsection 1481(k). Standards for Making Certain Determinations.

In making certain determinations in subsections (e) and (f), related to net unrealized gain and ULTRAs, the Secretary shall balance the goals of ensuring valuation accuracy, minimizing the potential for taxpayer gaming, and avoiding unduly excessive compliance and administrative costs. This is the balance the Secretary is directed to achieve as to all the regulations relating to valuation.

SECTION 1482 – CERTAIN OTHERWISE EXEMPT TRANSFERS BY CERTAIN WEALTHY TAXPAYERS TREATED AS TAXABLE

Gifts, charitable contributions, and bequests of covered taxpayers shall be treated as recognition events. Covered taxpayers are applicable taxpayers in the current year or one of the past nine taxable years. The Secretary shall issue regulations or other guidance as may be necessary or appropriate to carry out the purposes of this section, including regulations or other guidance that provide for exceptions with respect to (1) transfers which are de minimis or which otherwise do not pose a risk of circumventing the purposes of this chapter, and (2) taxpayers who do not pose such a risk.

SECTION 25E. MINIMUM TAX ON CERTAIN WEALTHY TAXPAYERS CREDITED AGAINST RECOGNIZED GAINS.

A credit against tax will be allowed in any taxable year equal to the lesser of the taxpayer's minimum tax account balance (see Section 1481(c)), unless such amounts are still unpaid under an installment plan (see Section 1481(g)), and the net amount of tax paid on recognized gains. That is, in years in which the taxpayer recognizes gains, they may reduce tax on those gains by the amount of minimum tax previously paid. This provision makes the minimum tax effectively a prepayment of unrealized capital gains.

SECTION 36C. CREDIT FOR EXCESS MINIMUM TAX ON CERTAIN WEALTHY TAXPAYERS.

A credit against tax will be allowed and calculated by subtracting 20% of the taxpayer's net unrealized gain (see Section 1481(d)) and credits already allowed under Section 25E (and any reductions permitted in connection with installment payments) from the taxpayer's minimum account balance. In general, this provision grants taxpayers a credit when the sum of their previous minimum payments exceeds the tax they would owe on any remaining unrealized gains, such as in the case where an asset falls in value after being subject to minimum payments.

Section-By-Section: Billionaire Minimum Income Tax Act

Subsection(f). Sense of Congress Regarding State Residency Rules.

It is the sense of Congress that silence on the part of the Congress shall not be construed to impose any barrier to reasonable efforts by the states or the District of Columbia to treat an individual as resident of the taxing jurisdiction for purposes of imposing taxes on the ultra-wealthy similar to those adopted here.