Campaign 2020:

Highlights and Comparison of Current Tax Law and Biden Tax Plans

By Stanley Barsky, Michael Grant and Brent Lipschultz

EisnerAmper

Individual Highlights

Campaign 2020: Highlights and Comparison of Current Tax Law and Biden Tax Plans By Stanley Barsky, Michael Grant and Brent Lipschultz

As the race for the White House reaches its final weeks, our tax experts compare the current tax regime and the proposed tax plan under a potential Biden administration ("Biden Tax Plan")[1] We look at the impact on both businesses and individuals as well as provide some insightful observations about how the taxpayers might address the potential impact potential changes.

INDIVIDUAL HIGHLIGHTS	CURRENT LAW	BIDEN TAX PLAN	OBSERVATIONS
INDIVIDUAL TAX RATES	Currently the top rate is 37% beginning at $622,050 for taxpayers filing jointly.	There would be a return of the top ordinary rate to pre-Tax Cuts and Jobs Act ("TCJA") rate of 39.6%. The top bracket would start at income above $400,000.	Taxpayers may consider accelerating income and deferring deductions where possible. Consider the use of Roth IRA conversions at lower rates.
QUALIFIED BUSINESS INCOME ("QBI") DEDUCTION	The IRC Sec. 199A QBI deduction enacted by the TCJA will remain in effect until it sunsets under current law after 2025.	The IRC Sec. 199A QBI deduction would be phased out for taxpayers with taxable income above $400,000.	The phase-out of QBI would effectively raise the top ordinary rate on flow-through income from 29.6% to 39.6%. Taxpayers should examine the appropriate form of business in comparing the top individual rate for pass-through entities with the proposed top corporate rate of 28% under the Biden Tax Plan.
LONG TERM CAPITAL GAINS AND QUALIFIED DIVIDENDS	Capital gains and qualified dividends are currently taxed at a maximum rate of 20%. These amounts are also generally subject to the 3.8% Net Investment Income tax.	Long-term capital gains and qualified dividends would be taxed at the top ordinary rate of 39.6% for taxpayers with income in excess of $1 million. These amounts would also generally be subject to the 3.8% Net Investment Income tax. The beneficial tax treatment of carried interests would be eliminated.	Taxpayers may contemplate accelerating any gain transactions if possible. Taxpayers should also consider electing out of the installment sale method if a transaction will straddle multiple years.
SOCIAL SECURITY (“FICA”) TAX	Social Security tax is currently withheld on wages up to $137,700 increased annually.	Social Security taxes would continue to be imposed on wages up to $137,700 (adjusted for inflation), and would also be imposed on wages greater than $400,000, creating a so-called "donut hole." The rate would remain at 12.4%, split evenly between employer and employee.	The proposed increase in wages subject to Social Security taxes could make an S corporation a more attractive vehicle than an LLC for certain taxpayers. Salary, bonus, and other compensation arrangements should be revisited.

[1] Information aggregated from a number of sources including taxfoundation.org, joebiden.com, and bloomberg.com.

INDIVIDUAL HIGHLIGHTS	Current Law	Biden Tax Plan	Observations
ITEMIZED DEDUCTIONS	There is no overall limitation on itemized deductions under current law. The TCJA suspended the Pease Limitation for tax years 2018-2025. Specific limitations exist for medical deductions, state and local taxes (SALT), mortgage interest deduction and charitable contributions.	The tax benefit of itemized deductions would be capped at 28% of the value, meaning that taxpayers in higher brackets would not receive the full benefit of their deductions. The Pease Limitation on the overall itemized deductions that can be taken would be restored for taxpayers with AGI in excess of $400,000. The overall itemized deductions would be reduced by 3% of the amount of AGI that exceeds $400,000. The cap on SALT deductions would be eliminated.	Taxpayers in the highest bracket would not receive the full tax benefit of their deductions. Taxpayers may consider accelerating certain deductions such as charitable contributions, and accelerating larger donations to a donor-advised fund (DAF) or private foundation.
CHILDCARE TAX CREDIT	The credit is currently limited to up to $3,000 of expenses per child ($6,000 for two or more children).	An up to $8,000 credit per child for the cost of childcare ($16,000 for two or more children) would be available for certain taxpayers.	
RETIREMENT CONTRIBUTIONS	Contributions to traditional retirement accounts (such as 401(k)s, IRAs) are generally deductible, subject to certain limitations.	Contributions to retirement accounts would be creditable rather than deductible.	Taxpayers should ensure that they are currently making the maximum allowable deductible contributions.
HOMEOWNERS/RENTERS CREDIT		A tax credit would be provided for up to $15,000 for first time homebuyers. A renter's tax credit would also be provided	

Estate Tax Highlights

ESTATE TAX HIGHLIGHTS	Current Law	Biden Tax Plan	Observations
LIFETIME EXCLUSION	The TCJA increased the lifetime exclusion to $11,500,000 ($23,000,000 joint) increased annually for tax years 2018-2025. This is set to sunset after 2025.	The amount that a taxpayer can gift others free of tax during their lifetime ("lifetime exclusion") would be reduced to $5,500,000 ($11,000,000 for joint taxpayers).	There is a question as to whether under the Biden plan there is a realization event at death or a reduction of the lifetime exclusion. Given record-low government interest rates and low valuations, clients may consider utilizing the larger exemption before any future change occurs.
BASIS STEP-UP	Transfers of appreciated property at death are stepped up to fair market value.	Stepped-up basis of appreciated property at death would be eliminated. This would create higher future tax to beneficiaries on a subsequent sale of property.	Elimination of the basis step-up on assets at death would ultimately put the tax burden on the heirs should they dispose of the property in the future with low basis. It may be advantageous to accelerate gains prior to death if the heirs are in a higher tax bracket or swap out high basis assets currently in trust, assuming the trust contains appropriate swap power provisions.

Business Highlights

BUSINESS HIGHLIGHTS	CURRENT LAW	BIDEN TAX PLAN	OBSERVATIONS
CORPORATE TAX RATE	The current corporate income tax rate is 21%.	The corporate tax rate would be increased to 28%, but would remain lower than the pre-TJCA rate of 35%. A 10% offshoring penalty surtax would be imposed on the profits from any production by a U.S. company overseas for sale in the U.S., resulting in a tax on these activities to 30.8%. Conversely, a 10% "Made in America" tax credit would be created for companies that create U.S. jobs.	Taxpayers may consider accelerating income and deferring deductions where possible and accelerating any M&A transaction by seller with major capital gains, if possible. Companies with NOLs (and particularly unrestricted NOLs) may see increased valuations. Taxpayers may want to consider NOL limitations and utilization planning opportunities. Taxpayers may also take into account possible new penalties and/or credits in locating manufacturing activities within or outside the U.S.
MINIMUM TAX	The Alternative Minimum Tax was repealed by the TCJA.	A 15% minimum tax for corporations that have $100,000,000 or more in book profits would be created. This would be enacted as an Alternative Minimum Tax where the taxpayer would pay the greater of the regular tax or the 15% minimum tax while allowing for NOLs and foreign tax credits.	As of now, there is not enough information to fully analyze the impact of this proposal. However, this could have significant effect on taxpayers if the tax is based on gross revenue vs. net income per financial statements.
GLOBAL INTANGIBLE LOW-TAXED INCOME ("GILTI')	TCJA taxes the GILTI inclusion of U.S. corporations at a 10.5% effective tax rate.	The plan would increase the tax rate on the foreign profits that U.S. multinational corporations earn by reducing the GILTI deduction to 25%; resulting in a 21% effective tax rate on GILTI.	The Biden Tax Plan seems to indicate that GILTI should not be taxed at the same U.S. tax rate of 28%. However, a major unknown is what would happen with the foreign-derive intangible income deduction, which could lower the U.S. effective tax rate ("ETR") on foreign source income by 37.5% to 17.5% ETR, based on current law (28% x 37.5% = 10.5%). Transfer pricing, check-the-box elections and other tax planning opportunities may be revisited along with overall business operation models. Foreign investors may want to carefully review their future investment strategies into U.S. markets.
LIKE-KIND EXCHANGES	The TCJA allows deferral of gain through like-kind exchanges ONLY for exchanges of real property.	The plan would completely eliminate the deferral of gain through like-kind exchanges for ALL types of property for taxpayers with AGI in excess of $400,000.	Real estate investors with low basis property may consider the timing of exit from certain properties.

Tax Credits

The Biden Tax Plan would introduce new tax credits and expand certain existing tax credits, including the Manufacturing Communities Tax Credit, the New Markets Tax Credit, the Earned Income Credit and the Pension Refundable Credit.

Please note: This worksheet presents a brief discussion of proposed tax changes stemming from the U.S. presidential campaign. This does not constitute accounting, tax, or legal advice, nor is it intended to convey a thorough treatment of the subject matter. Please always check with your tax advisor before implementing any tax planning strategies.