



The Tax Outlook for 2021: A Post Election Evaluation

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Agenda

- What happened at the end of the 116th Congress
- Where we are today
- The Biden tax proposals
- Other pending tax proposals
- The path to enactment

What Happened at the End of the 116 Congress

- Consolidated Appropriations Act, 2021
 - Funding FY 2021
 - COVID Relief
- National Defense Authorization Act
 - Beneficial ownership disclosure

Major Tax Provisions of Consolidated Appropriations Act, 2021

- Comprehensive Revenue Table—JCX-24-20- See www.jct.gov
- Tax Legislation contained in Division N—Additional Coronavirus Response and Relief and Division EE-The “Taxpayer Certainty and Disaster Tax Relief Act of 2020
- Major Provisions
 - Section 276(a) provides that “no deduction shall be denied, no tax attribute shall be reduced and no basis increase shall be denied, by reason of the” [forgiveness of a PPP loan].
 - See, Rev. Rul. 2021-2
 - 6 “Extenders” made permanent, e. g.,
 - Medical expense deduction for expenses in excess of 7.5 % of AGI
 - Excise taxes on beer, wine and distilled spirits
 - 11 “Extenders” extended for 5 years, e. g.,
 - CFC look through rule
 - New markets tax credit
 - Work opportunity tax credit
 - Empowerment zone tax incentives
 - Employer credit for paid family and medical leave
 - Classification of certain race-horses as three-year property
 - Alternative motor vehicle credit for qualified fuel cell motor vehicles
 - Other “Extenders” extended for one year
 - Most important of all—2-year temporary allowance of full deduction for business meals
 - Depreciation of certain residential rental property over 30-year period
 - Employee retention credit
 - Special rules for qualified disaster-related personal casualty losses
 - Low-income housing tax credit

Where We Are Today

- Joe Biden is the President
 - Treasury Department—Secretary Janet Yellin
 - Lily Batchelder—Assistant Secretary for Tax Policy Designate
 - Office of Tax Policy reorganized with 6 Deputy Assistant Secretaries
- The Congress
 - The Senate
 - 50 D-50
 - Democrats control due to Vice President Harris as tie breaker
 - Organizing resolution allows majority to bring tie committee votes to floor and gives scheduling control to Leader Schumer
 - Finance Committee
 - New Chairman-Ron Wyden (Oregon), Ranking Member –Mike Crapo (Idaho)
 - Notable addition—Elizabeth Warren
 - Ratio 14D-13R
 - The House
 - 220D-211R- 4 Vacant
 - 218 for majority
 - Ways and Means Committee—26D-18R
 - Chairman—Richard Neal, Ranking Member –Kevin Brady

America Rescue Plan Act of 2021 enacted March 11, 2021

- Comprehensive Revenue Table- JCX-14-21 (March 9,2021)-see www.jct.gov
- Phased out recovery rebates of \$1,400 for singles/\$2800for married couples filing jointly
- Enhanced child-care credits
- Enhanced earned income credits
- Premium assistance
- Exclusion for forgiven student loan debt through 2025
- Extended limitation on business losses of non-corporate taxpayers through 2025
- Repealed world-wide interest allocation
- Increased the scope of the denial of deduction for compensation in excess of \$1 million to the highest eight paid employees, plus the CEO and CFO, of publicly traded companies

President Biden's Tax Proposals (1)

- **Key question**—Effective Dates
- **Individual taxation increases**
 - Restore pre-TCJA rates above \$400,000 of **taxable income**
 - Restore limitation on itemized deductions above \$400,000 of **AGI**
 - Phase out qualified business income deduction above \$400,000 of **taxable income**
 - Tax capital gains and dividends at the same rate as ordinary income above \$1,00,000 of **income**
 - Increase payroll tax withholding for annual incomes above \$400,000
 - Repeal section 1014 (tax free “step-up” in basis)
 - Reduce transfer tax exemption to \$3.5 million and increase maximum rate to 45%
 - Increase tax compliance of high- income earners

President Biden's Tax Proposals (2)

- **Individual Taxation Benefits**

- Extend EITC to childless workers above age 64
- Repeal SALT limitation for those with incomes below \$400,000
- Tax credit of up to \$5000 for family caregivers of individuals with physical and cognitive needs
- Increase maximum child and dependent care credit to \$4,000 (\$8,000 for two or more children) and make it refundable
- Temporarily increase child tax credit to \$3,000 (\$3,600 for children under 6) for 2021 and 2022 and make it refundable
- \$15,000 refundable tax credit for first time homebuyers
- Establish automatic IRAs and a small business start-up credit for offering retirement plans
- Replace deductibility of worker IRA/DC pension contributions with 26% refundable tax credit
- Exempt forgiven student loans from income
- Reinstate tax credits for residential energy efficiency
- Restore full electric vehicle tax credit and target it to middle income consumers
- Provide refundable low- income renter credit

President Biden's Tax Proposals (3)

- **Business Tax Increases**

- Increase corporate rate to 28%
- Replace GILTI with country-by-country 21 % minimum tax on profits earned by foreign subs of US firms
- 15% minimum tax on global book income for corporations with net income exceeding \$100 million
- 10% offshoring tax penalty on profits of offshore production on sales back to the U.S.
- Tighten anti-inversion rules
- Eliminate tax preferences for fossil fuels
- Establish a financial risk fee on certain liabilities held by financial institutions with more than \$50 billion of assets
- End tax deductions for direct-to-consumer prescription drug advertising
- Tighten rules for classifying independent contractors

President Biden's Tax Proposals (4)

- **Business Tax Benefits**

- Provide a 10 percent tax credit for new investments in domestic manufacturing
- Manufacturing communities tax credit
- Expand tax deductions for various energy technology upgrades
- Enhance tax incentives for carbon capture, usage and storage
- Tax benefits for low carbon manufacturing sector
- Expand low income housing credit
- Expand new markets tax credit
- Reinstate renewable energy investment tax credit

Other Democratic Tax Proposals

- Senator Wyden – “Treat Wealth like Wages”
 - Eliminate capital gains preference
 - Annual mark-to-market (accrual) taxation of “tradable assets” for taxpayers with annual income in excess of \$1 million and assets in excess of \$10 million
 - Gifts are realization events
 - Non-tradable property taxed on realization with a lookback deferral charge
 - Exemptions for personal residences, family farms and retirement accounts of “middle class” families
 - Anti-abuse rules to avoid stuffing into closely held corporations
- Other Democratic Proposals
 - Annual wealth tax
 - Financial transaction tax
 - Carbon tax

Other Pending Tax Issues

- R & E credit
 - Restore deductibility
- Retirement savings
 - Bi-partisan bills in House (Neal-Brady) and Senate (Cardin-Portman)

The Path to Enactment of Tax Legislation

- The Congress
 - Congressional procedural rules
 - Filibuster and Budget Act points of order in the Senate
 - Reconciliation
 - Only one per fiscal year
- The Economic Situation
 - Need for stimulus
 - Deficit Consequences
- Other Priorities
 - Infrastructure
 - Additional Economic Stimulus
 - Health Care
 - Immigration
- Unfinished Business
 - Technical Corrections
- Effect of OECD initiatives
- **UFOs** –Unforeseen Events
- Lurking Issue—Expiration of the Debt Ceiling in middle of year
- Most likely as revenue offsets in a spending bill

Something to Remember

- “You can always count on Americans to do the right thing, **after they’ve tried everything else.**” Winston Churchill (emphasis added)

Thank You.

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