Nationwide® is on your side

The Advanced Consulting Group, powered by Nationwide Retirement Institute®

White paper

Unpacking Joe Biden's tax plan

Proposals for business, tax and estate planning

Ryan Patton, JD, MBA
Consultant, Advanced Consulting Group

The Biden tax plan

In early June of 2020, Joseph R. Biden became the presumptive Democratic presidential nominee. The former vice president is running on a broad platform of multiple reforms, but the one that we will focus on in this paper is his potential approach to tax reform. While Mr. Biden alone couldn't implement economic and tax reform, he is positioned to potentially be the leader of a party with unified governmental control and a mandate to get these reforms done.

In short, the Biden plan would raise taxes for corporations and wealthy households which would increase the federal revenue by a projected $4 trillion over the next decade.[i] The following is a detailed analysis of Joe Biden's tax proposals.

Individual income and payroll tax changes:

Under the Biden plan, individuals will see that many Trump-era tax rates will revert back to prior levels. Specifically, the following:

- A 12.4% Survivors, Old-Age, and Disability Insurance (Social Security) payroll tax on income earned above $400,000 will be split evenly between employers and employees. Unique under the plan is a range, between $137,700-$400,000, where Social Security payroll tax would not be imposed.
- Long-term capital gains and qualified dividends would be taxed at an ordinary income tax of 39.6% on income above $1 million and would eliminate step-up in basis for capital gains taxation. This would nearly double the current top rate 23.8% (20% long-term capital gains rate plus 3.8% Net Investment Income Tax) to 43.4%. Biden's campaign estimates that current lower tax rates on capital gains reduces federal revenue by as much as $127 billion.[ii]
- Individual top income tax rates for those earning over $400,000 would be taxed at 39.6%. This reversion to pre-Tax Cuts and Jobs Act (TCJA) legislation is a slight increase from the current 37% under the TCJA.
- Itemized deduction tax benefits will be capped at 28% of their value. Individuals with tax rates higher than 28% will see their itemized deductions limited. Additionally, these limitations on itemized deductions for taxable income over $400,000 would be restored.
- An expansion to the Earned Income Tax Credit would be put in place for those childless workers 65 or older.
- There would also be a tax credit for electric vehicles, renewable energy and other energy-efficient technology investments.[iii]
- Tax payers with income above $400,000 will see the qualified business income deduction (IRC 199A) phased out.[iv]

Business tax changes:

Under Biden's tax plan, businesses will also see many large changes. Several of the changes are a mix of pre-Trump era tax law and others are a mixture of old and new:

- Corporate income tax rates would increase from 21% to 28%.
- The current Global Intangible Low Tax Income (GILTI) earned by foreign subsidiaries of US firms will double from 10.5% to 21%.
- A new Manufacturing Communities Tax Credit (MCTC) would be established to help reduce tax liabilities of businesses that have experienced government institution closure[v] or labor layoffs. It will also expand the New Markets Tax (NMT) Credit making NMT permanent. MCTC would also expand various renewable energy related tax credits and deductions while ending subsidies for fossil fuels. Lastly, it would provide tax credits to small business that adopt workplace retirement savings plans.
- A minimum tax would be imposed on corporations with a book profit of $100 million or higher. This tax is structured as an alternative minimum tax where corporations will pay the greater of: 1.) their regular corporate income tax rate or 2.) 15% minimum tax. Companies will still be able to take net operating losses and foreign tax credits.[vi]

Estate tax planning and other significant changes:

- Loopholes for the real estate industry will be limited or eliminated. One provision that will have sweeping impact to the real estate industry is the elimination of "like-kind exchanges" under Section 1031 of the Internal Revenue Code. Americans for Tax Reform estimates this would generate roughly $70 billion in tax revenues over the next decade.[vii]
- Tax benefits of defined contribution plans would be equalized. Under current law, individuals generally utilize the concept of deferral of taxation by electing to contribute to their retirement plan on a tax deferred basis and see growth within their account as tax free while in their plan. Taxes would then be owed by these individuals when they take withdrawals from their accounts. Biden's plan would create stronger tax savings for middle- and low-income workers, similar to what high income earners receive today. No further specifics have been released as to how these benefits would be equalized.[viii]
- As noted above, capital gains taxes would see a higher long-term capital gains tax rate of 39.6% for those individuals earning more than $1 million annually. In addition to this higher tax rate, Biden's plan would also eliminate the "step-up in basis" that allows a deceased party to pass capital gains to their heirs without incurring taxation. This creates a double taxation event for the original owner. At the original owner's death capital gains taxes would be owed in addition to any estate taxes owed. Under Biden's plan, high net worth individuals could see their assets taxed as high as 79.6% (long-term capital gains rate + highest federal estate tax rates) assuming top rates are not increased over current federal estate tax rates.[ix]
- Many popular estate planning strategies are also potential areas of curtail or repeal. These include 10-year term limits for Grantor Retained Annuity Trust (GRATs), Grantor trust changes to address gift tax advantages, valuation discounts for closely held businesses and eliminating GST exemptions for long-term trust.[x]

Impact on revenue

Biden's plan is estimated to increase federal tax revenue by $3.8 trillion between 2021-2030 compared to current tax law. The following table from Tax Foundation illustrates the revenue source from each provision of the plan.[xi]

Conventional and Dynamic Revenue Effect of Former Vice President Biden's Tax Plans (Billions of Dollars)

Conventional	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2021-2030
1. Apply a Social Security payroll tax of 12.4% to earnings above $400,000	$72	$70	$72	$72	$76	$83	$87	$89	$92	$95	$808
2. Raise the rate on top ordinary income	$27	$29	$30	$31	$33	$0	$0	$0	$0	$0	$151
3. Reactivate the Pease limitation for income above $400,000	$10	$11	$11	$12	$12	$0	$0	$0	$0	$0	$56
4. Tax capital gains and dividends at 39.6 percent on income $1m+ and repeal step-up in basis	$17	$32	$49	$51	$56	$53	$57	$59	$63	$66	$503
5. Limit tax benefit of itemized deduction at 28% of the value	$24	$25	$26	$28	$29	$30	$33	$34	$35	$36	$301
6. Phase out qualified business income deduction for income above $400,000	$36	$38	$39	$41	$43	$0	$0	$0	$0	$0	$197
7. Raise the corporate income tax to 28%	$97	$106	$119	$133	$143	$142	$136	$142	$143	$144	$1,306
8. Impose a corporate minimum tax on book income	$24	$26	$29	$32	$35	$35	$33	$34	$35	$36	$318
9. Double the tax rate on GILTI	$30	$33	$36	$40	$43	$28	$26	$25	$23	$20	$303
10. Miscellaneous credits	$-8	$-10	$-12	$-13	$-14	$-16	$-17	$-18	$-19	$-20	$-146
Total Conventional Revenue	$331	$359	$400	$426	$455	$355	$355	$365	$372	$378	$3,796
Total Dynamic Revenue	$303	$307	$333	$367	$387	$349	$300	$290	$294	$293	$3,223

Source: Tax Foundation General Equilibrium Model, November 2019.

Impact on revenue

Biden's proposal indicates that if he were to win, and we will see high net-worth individuals paying more in income, capital gain and estate taxes, Biden's plan also allow for financial firms to help reduce the cost imposed on those individuals. Life insurance has been a way to address Federal estate tax and settlement cost for decades. If changes do occur and estate tax limits are reduced and capital gains tax rates increase, more individuals will be facing the question of, "how do I pay for those taxes at death?" For many individuals with significant wealth, their wealth is invested into businesses, physical assets and other assets that are not immediately accessible. To avoid the issue of the family selling off one of those assets in a "fire sale", life insurance could be used to plan for any estate tax or settlement cost of the deceased family member.

It is important to keep in mind that changes in politics could result in significant change to how planning will be done for high net-worth individuals. Education and motivation will be essential as we head into the 2020 election to ensure that individuals are able to maximize any planning or financial strategies they have available before they are changed or eliminated.

NFM-19915AO (07/20)

---

[i] https://americansfortaxfairness.org/issue/analysis-biden-sanders-unity-task-force-tax-policy-recommendations/
[ii] https://taxfoundation.org/joe-biden-tax-proposals/
[iii] https://www.cshco.com/articles/early-analysis-of-bidens-proposed-tax-plan/
[iv] https://www.aei.org/wp-content/uploads/2020/06/An-Analysis-of-Joe-Bidens-Tax-Proposals.pdf
[v] https://www.taxpolicycenter.org/sites/default/files/publication/158624/An_Analysis_of_Former_Vice_President_Bidens_Tax_Proposals_1_1.pdf; https://www.treasury.gov/resource-center/tax-policy/Documents/General-Explanations-FY2017.pdf
[vi] *Id.*
[vii] https://www.atr.org/joe-bidens-top-ten-tax-hikes
[viii] https://joebiden.com/older-americans/; https://www.napa-net.org/news-info/daily-news/biden-unity-task-force-outlines-retirement-priorities-populist-agenda
[ix] https://www.atr.org/joe-bidens-top-ten-tax-hikes
[x] https://www.jdsupra.com/legalnews/the-perfect-storm-for-estate-planning-91436/
[xi] https://files.taxfoundation.org/20200429102525/Details-and-Analysis-of-Former-Vice-President-Biden%E2%80%99s-Tax-Proposals..pdf