

TAX ALERT

IMPACT OF A BIDEN PRESIDENCY ON CORPORATE TAX PLANNING

Tax and economic policies have been a major campaign focus during the 2020 election. Tax policy is a core driver of business decisions and the winning candidate/party will play a central role in pushing further economic stimulus forward and determining the long-term course for recovery following the economic fall-out from the COVID-19 pandemic.

Businesses must pay close attention to how the proposed policies of the candidate/party will affect their total tax liability and be prepared to make any changes or updates, in some cases, during the two months ending the 2020 tax year.

With the Presidential Election largely decided, but considerable uncertainty regarding leadership of the Senate, we can begin to consider the potential impact on tax and economic planning the rest of 2020 and into 2021.

2020 Prospective Results Overview

[Biden Victory | Democratic Senate Majority](#)
[Biden Victory | 50/50 Senate Split](#)

In the case of a 50/50 split in the Senate, the tie-breaking vote goes to the Vice President, giving de facto Senate leadership to the party in the White House.

The Biden campaign's proposed tax plan focused on rolling back tax breaks and "loopholes" for corporations, specifically related to changes made in the 2017 Tax Cuts and Jobs Act (TCJA). Biden also proposed a number of significant tax breaks and stimulus efforts targeted at spurring growth in historically-disadvantaged communities and the renewable energy sector, while simultaneously rolling back fossil fuel industry subsidies.

Economic Stimulus

In the case of a Biden/Democratic win, it seems unlikely that an out-going President Trump will be motivated to support a new COVID-19 economic stimulus plan before leaving office. On the other hand, an incoming President Biden will likely immediately push for stimulus upon taking office, and will be successful with control over the Senate.

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Biden Victory | Republican Senate Majority

Any outcome that has White House and Senate leadership at loggerheads will likely result in the blocking of any major economic and tax policy changes. With Senate Majority Leader Mitch McConnell's re-election, there is little reason to suspect he'll alter his long-standing obstructionist stance against Democrat-sponsored and supported bills.

Tax Planning Considerations

Increase in Corporate Tax Rate

- Accelerate income in 2020 under preferable tax rate
- Defer deductions until after tax rate is raised
- Revisit tax accounting methods
- Elect out of bonus depreciation to defer the deductions
- Capitalize R&D expenses
- Avoid accelerating deduction of prepaid expenses
- Time the recognition of gain/losses






Social Security Tax Expansion

- Reorganize or elect to be taxed as a C-Corporation
 - C-corporation owners with \$400,000 - \$1,000,000 of income could have an effective rate on dividends of 45.1%
 - C-corporation owners with greater than \$1,000,000 of income could have an effective rate on dividends of 51.9%
- Executive Compensation
 - Incentive Stock Options (ISOs) – No FICA tax on option spread
 - Non-Qualified Stock Options (NQSOs) – FICA tax on option spread is delayed until exercise
 - Deferred Compensation – There may be timing benefits down the road






Final Thoughts

A Democrat-led White House and Congress has the most drastic potential impact on immediate tax planning. However, pressure to create a COVID-19 relief bill will likely be the priority for the in-coming administration, pushing any substantive tax reform to an effective date after 2022. Even so, understanding proposed changes and early planning are recommended to minimize any negative impact stemming from tax reform.

Corporate Tax Policy

	Current Policy	Biden Policy
 <p>Corporate Tax Rate</p>	<p>Flat 21% corporate tax rate.</p>	<p>Raise the flat rate to the pre-TCJA level of 28%.</p>
 <p>Corporate Alternative Minimum Tax (AMT)</p>	<p>No AMT.</p>	<p>Reinstate the AMT, requiring corporations with book income of \$100 million or more to pay the greater of their regular corporate income tax or the 15% minimum tax.</p> <p>Still allows for net operating loss (NOL) and foreign tax credits).</p>
 <p>Capital Gains and Qualified Dividend Income</p>	<p>20% top tax rate for individual income over \$441,450 and \$496,600 for married filing jointly.</p> <p>Additional 3.8% net investment income tax.</p>	<p>Eliminate breaks for long-term capital gains and dividends for income above \$1 million and tax at ordinary rates.</p>
 <p>Payroll Taxes</p>	<p>12.4% payroll tax is divided evenly between employers and employees and applies to the first \$137,700 of an individual's income, goes up to \$142,400 in 2020.</p> <p>2.9% Medicare Tax split equally between the employer and the employee with no income limit.</p>	<p>Maintain the 12.4% tax split between employers and employees.</p> <p>Keep the \$142,400 cap and institute a tax on earned income above \$400,000.</p> <p>The gap between wage levels gradually closes with annual inflationary increases.</p>
 <p>Qualified Business Income (QBI) Deduction</p>	<p>Non-C-corp taxpayers may deduct 20% of QBI from pass-through entities or qualified real estate investment trust.</p> <p>To expire 12/31/25.</p>	<p>Phase out QBI deduction for taxpayers earning more than \$400,000.</p>

Corporate Tax Policy

	Current Policy	Biden Policy
 <p>Real Estate</p>	<p>Taxes on gains of real property are deferred when exchanged for “like-kind.”</p> <p>Owners of some residential properties occupied by low-income tenants may claim a tax credit of the qualified basis of the property over a 10-year period.</p> <p>To expire 12/31/25.</p>	<p>Remove the “like-kind” exchange deferral.</p> <p>Expand low-income housing credit.</p> <p>Establish \$15,000 tax credit for first-time home buyers.</p> <p>Establish renter’s tax credit for low-income residents.</p>
 <p>Manufacturing Credit</p>	<p>N/A.</p>	<p>Enact Manufacturing Communities Credit to promote renovating and modernizing existing or recently closed facilities and reduce tax liability for businesses that experience workforce layoffs or government institution closure.</p>
 <p>New Markets Tax Credit (NMTC)</p>	<p>Available for qualified equity investment in low-income communities.</p> <p>Limited to \$5 billion.</p> <p>No allocation after 2020.</p>	<p>Expand NMTC and make permanent.</p>
 <p>Small Business Retirement Savings Plan Tax Credit</p>	<p>Current tax credits allow some of the costs of establishing retirement plan.</p>	<p>Offer tax credits to businesses that adopt a retirement savings plan and offer employees without pension/401(k) access to “automatic 401(k).”</p>
 <p>Renewable Energy and Fossil Fuels</p>	<p>Numerous deductions exist for companies that invest in fossil fuels, including deductions for intangible costs for oil and gas drilling and depletion.</p>	<p>End fossil fuel subsidies.</p> <p>Expand renewable-energy-related tax credits, including tax credits for carbon capture, use, and storage as well as credits for residential energy efficiency.</p> <p>Restore Energy Investment Tax Credit (ITC) and the Electric Vehicle Tax Credit.</p>