

Dissecting 2021's Tax Proposals: What CPAs Need to Know

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From Biden's ambitious legislative agenda to the bills sponsored by his Democratic colleagues, here are the most important tax proposals CPAs and their clients should be aware of.

Over the past few weeks, President Joe Biden has outlined an ambitious agenda composed of three parts: the Made in America Tax Plan, the American Jobs Plan, and the American Families Plan. All three plans include major tax implications: The Made in America Tax Plan would increase corporate taxes to pay for the \$2.3 trillion in infrastructure investment contained in the American Jobs Plan, while the American Families Plan would raise tax rates on taxpayers earning more than \$400,000 a year and increase capital gains taxes. At the same time, other big tax bills are being floated: Sen. Bernie Sanders released his For the 99.5 Percent Act, Sen. Elizabeth Warren introduced the Ultra-Millionaire Tax Act, and a Democratic coalition proposed the Sensible Taxation and Equity Promotion (STEP) Act.

With so many tax measures in the works, here are the most important changes CPAs and financial planners should be considering and discussing with their clients.

Higher Individual Income Tax Rates

In the American Families Plan, Biden proposes raising the top individual tax rate on earners with more than \$400,000 of annual income from 37 percent to 39.6 percent. Individuals earning more than \$1 million would be subject to ordinary income tax rates as high as 39.6 percent on their long-term capital gains and qualified dividends.

Expansion of the Net Investment Income Tax

Under current law, a 3.8 percent net investment income tax is imposed on investment

income. Biden's proposal doesn't give many details but references expanding this tax to all income in excess of \$400,000, including active business income.

Elimination of Tax-Free Like-Kind Exchanges

Currently, gains on transfers of real estate can be tax-free if the taxpayer defers the gain on a property by exchanging it for a different one. Biden's plan would eliminate this strategy for gains exceeding \$500,000.

Elimination of Carried Interest

Biden's plan calls for the elimination of the favorable capital gains tax treatment of carried interest. Although the benefit of capital gains rates on carried interest would be eliminated by the general increase in tax rates for high-wealth individuals, Biden has expressed an intent to make structural changes to the treatment of carried interest so that any future reduction in capital gains rates would not benefit allocations on carried interest.

New Ultra-Wealth Tax

Warren's Ultra-Millionaire Tax Act would implement an annual 2 percent tax on wealth over \$50 million and a 3 percent tax on wealth that exceeds \$1 billion.

Changes to Estate and Gift Taxes

The 2021 estate tax exemption threshold is \$11.7 million per individual (indexed for inflation) with a top tax rate of 40 percent. After 2025, this amount is scheduled to revert to the pre-2018 exemption, an indexed amount that would equate to approximately \$5.8 million. While not in the his American Families Plan, Biden's campaign platform would accelerate the reduction and lower the exemption to \$3.5 million with a flat tax rate of 45 percent. Sanders' For the 99.5 Percent Act also proposes to reduce the estate tax exemption amount to \$3.5 million for an individual or \$7 million for a married couple. Sanders' proposal would tax estates of \$3.5 million to \$10 million at 45 percent, but larger estates would be taxed at higher rates, topping out at 65 percent for estates of \$1 billion or more. Additionally, Sanders' plan proposes that certain estate planning trust strategies and structures, such as valuation discounts of non-business transfers, grantor-retained annuity trusts (GRATs), spousal lifetime access trusts (SLATs), or dynasty trusts, could be modified or eliminated, changes which could be effective as early as the date of the enactment of the bill into law. Sanders' plan would also reduce the current gift tax exemption to only \$1 million from \$11.7 million and impose a new annual limit of \$30,000 on non-taxable gifts that cannot be immediately liquidated such as gifts to trusts, in any one year, effective Jan. 1, 2022.

Elimination of the "Basis Step-up"

The American Families Plan includes a proposal to eliminate the basis step-up by taxing all unrealized gains in excess of \$1 million for individuals or \$2.5 million for couples as of the date of death. The STEP Act also would eliminate the "basis step-up" at death, retroactive to Jan. 1, 2021. Currently, a future capital gains tax upon disposition of an inherited asset is based on its value at the time of death or six months later, referred to

as the basis step-up. The STEP Act would cause gain recognition on assets transferred by gift, by a distribution from a trust, and upon death, subject to limited exceptions.

Interestingly, Biden's plans thus far have not included several of his key campaign proposals, such as limits on itemized deductions, changes to retirement plan contributions, increased payroll taxes, and changes to estate tax exemptions and rates. The \$10,000 state and local tax limitation was also not addressed. This may mean more tax proposals are on the way—and if even half of the above-mentioned proposals become law, there will be enormous changes to the tax system which we need to start preparing for now. This is the perfect time to reach out to your clients to discuss these proposed changes and to propose new tax strategies for them and their families.