

What could 2021 tax law revisions look like under a Biden administration?

Below are provisions Joe Biden and Kamala Harris generally agree on and the platform on which they are running. Be mindful that it would not only take a Democratic win in the White House, but also a swing in Congress to get any estate/income tax law passed. Additionally, the Senate races around the nation are tight, so it is possible due to special runoff rules that we will not know which party will control the Senate until January. Ideally, Biden/Harris would like to see a repeal of Trump's Tax Cuts and Jobs Act as a starting point, but below are the highlights of changes we're likely to see:

- **Individual Income Tax Rates** – Expect the highest individual marginal bracket to return to the 39.6 percent rate beginning as low as \$400,000 of taxable income. *Side note – Kamala has touted a 4% tax on families earning over \$100,000 as a way to pay for 'Medicare For All', but Biden has not offered support of this tax. He consistently reiterates that taxes will not go up for taxpayers earning less than \$400,000/year.*
- **Higher Social Security Tax** - Under current law, the 12.4% Social Security tax hits the first \$137,700 of 2020 wages or net self-employment income. The Biden tax plan would restart the 12.4% Social Security tax on wages and net SE income above \$400,000. This is the so-called doughnut hole approach to increasing the Social Security tax. Over the years, the doughnut hole would gradually close as the lower edge of the hole is adjusted upward for inflation, while the \$400,000 upper edge of the hole remains static.
- **Dividend and Capital Gain Rates** – Both dividends and capital gains may be taxed at ordinary income rates for the highest earners – In general, 'highest earners' are defined as those with taxable income in excess of \$ 1 million.
- **Like-Kind Exchanges** – A frequently used tax deferral strategy in the real estate space, Biden has suggested the elimination of real estate swaps for those with incomes over \$400,000. Exchanges of personal property have been disallowed since 2018.
- **Basis of Inherited Assets** – Look for the elimination of the stepped-up basis of most assets on death. This may apply only to heirs of larger estates.
- **Student Loans** – Under Biden's plan, forgiveness of student loans would be excludable from income and he also would introduce a new plan to cancel student loan debt for families making less than \$125,000 if they attended a public college or university.

- **Qualified Business Income Deduction** – The QBID, a deduction designed to match pass-through entity tax rates with lower corporate tax rates and scheduled to expire after 2025, may be phased out for all higher income individuals and not just those with income from specified service businesses.
- **Itemized Deductions** – The \$10,000 cap on deducting state and local taxes, also scheduled to expire after 2025, may be repealed but the benefit of this restoration could be offset by a proposal to limit the tax benefit of all itemized deductions to 28 percent. It appears that the 28 percent tax benefit limit also includes charitable contributions at this point.
- **Itemized Deduction** – Biden’s plan also calls for the resurrection of the ‘Pease Limitation’ for those making more than \$400,000. The Pease limitation is an old law that reduces itemized deductions by 3% of adjusted gross income in excess of a threshold amount.
- **Tax Credits** – Candidate Biden generally favors expanding existing tax credits and in particular, would increase the child tax credit to \$8,000 for one child and \$16,000 for two or more, phasing out at adjusted gross income between \$125,000 and \$400,000. He would also make this refundable and payable in advance. He favors expanding the earned income credit for lower income individuals without dependents to include those over age 65. He supports an advanced and refundable tax credit of up to \$15,000 for first-time homebuyers as well as a renters’ tax credit of up to 30 percent of income for low-income individuals. Harris supports additional refundable credits (LIFT Act) to families earning less than \$100,000.
- **Corporate Taxes** – Biden is in favor of increasing the corporate rate from 21% to 28% and Harris has stated she would like to see the corporate rate at 35%
- **Corporate Tax – Alternative Minimum Tax** – Biden’s plan creates a minimum tax on corporations with book profits of \$100 million or higher. Corporations will pay the greater of their regular corporate income tax or the 15 percent minimum tax while still allowing for net operating loss (NOL) and foreign tax credits.
- **Financial Transaction Tax** – Both Biden and Harris favor a tax on investment transactions - .2% stock; .1% bond; .002% derivative
- **Estate Taxes** – Expect the current estate and gift tax exemption of \$11,580,000, already scheduled to sunset in 2026, to be reduced to probably \$5.8 million (one-half of the current

amount as indexed in 2021.) An exemption as low as \$3.5 million has also been discussed.

So what can you do now to mitigate the potential pitfalls?

Planning ideas to think about before year-end if Biden/Harris get elected:

1. Accelerate income into 2020 – bonuses, sale of business interests, sale of real estate, and capital gains (for those with AGI over \$1M)
2. Convert IRA's to ROTH – especially if losses incurred in 2020 which will offset conversion income
3. Defer tax loss harvesting until 2021
4. Charity - consider accelerating outstanding pledges into 2020 to get the biggest benefit now. Under Biden's plan, the tax benefit of all itemized deductions, including charitable deductions would be limited to 28% for those making more than \$400,000. Also consider reviewing your charitable gifting strategy.
5. Consider locking in current low capital gain rates to diversify portfolios
6. Sell Non-Qualified Stock Options in 2020
7. Opt out of bonus depreciation in 2020
8. Defer payment of property taxes and estimated state and local taxes into 2021 due to the potential elimination of the current \$10,000 cap.
9. First time homebuyer – wait on purchase of property due to potential first time homebuyer credit of \$15,000.
10. Estate – gifting of assets to next generation to utilize current exemptions; Congress has already pledged that there will be no claw-back, although a new Congress could always reverse this.

As we see who ultimately wins the election and as we go into year-end planning and year-end meetings, we'll be addressing how the above may impact you directly.