

Tax Proposals of President-Elect Biden and Other Prominent Democrats

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This blog summarizes some of the tax proposals of President-elect Joe Biden and other prominent Democrats.

Biden's Proposals

Individuals

Increased Individual Tax Rate

Biden would increase the top marginal income tax rate for individual taxpayers with income above \$400,000 from 37% to 39.6% (the top marginal income tax rate in effect prior to the enactment of the Tax Cuts and Jobs Act (the "TCJA")).^[1] For income subject to the additional 3.8% tax on net investment income, the rate would be 43.4%.

Increased Capital Gains Tax Rate

Biden would increase the long-term capital gains and qualified dividend rate for individual taxpayers with income in excess of \$1 million from 20% to the proposed ordinary income tax rate of 39.6%.^[2] It is unclear whether the 39.6% rate would include the additional 3.8% tax on net investment income; if it did not, the marginal rate for capital gains could be as high as 43.4%.

Repeal the \$10,000 Cap on the State and Local Tax Deduction

Biden would repeal the \$10,000 cap on the state and local tax deduction. However, for taxpayers with income of more than \$400,000, the 28% cap on the benefit of deductions and the restoration of the Pease limitation (both described below) will reduce the benefit of the repeal.^[3]

Death as Realization Event

Under current law, the death of a taxpayer is not a taxable event. The basis of property acquired from a decedent is stepped-up to the fair market value at death, with the result that appreciation in the property during the life of the decedent is not subject to income tax. Biden would treat death as a realization event.[\[4\]](#) As a result, the decedent would be treated as if he or she sold all of his or her assets for fair market value at death and would be taxed on any unrealized appreciation at the rate applicable to long-term capital gains (which, in the case of taxpayers with income above \$1 million, would be the ordinary income tax rate of 39.6%).

Limitations on Itemized Deductions

Biden would cap the tax benefit of itemized deductions at 28% of value for taxpayers with income above \$400,000.[\[5\]](#)

Biden would also restore the “Pease” limitation on itemized deductions. The Pease limitation would reduce the value of certain itemized deductions by 3% for every dollar of a taxpayer’s taxable income above \$400,000, with a maximum reduction equal to 80% of the total value of the taxpayer’s itemized deductions.

For a taxpayer with itemized deductions, the 28% cap on the tax benefit of itemized deductions and the Pease limitation reduce the value of a taxpayer’s deductions – and increases his or her taxes – by 12.44% of the amount of the deductions.[\[6\]](#)

Phase Out of Passthrough Deduction

Section 199A provides individuals (and certain trusts and estates) with a “passthrough deduction” of up to 20% that reduces the income tax rate from 37% to 29.6% for ordinary income items from certain passthrough entities, such as partnerships, S corporations, REITs, trusts and estates. Biden would phase out this deduction for taxpayers with taxable income above \$400,000.[\[7\]](#)

Payroll Tax

Biden would impose the 12.4% social security payroll tax on taxpayers with earnings above \$400,000.^[8] Under current law, wages above \$142,800 (for 2021) are not subject to the 12.4% social security tax. Biden would keep the existing threshold, so that wages between \$142,800 and \$400,000 would not be subject to the payroll tax. However, because the existing cap of \$142,800 is adjusted over time for wage growth and the \$400,000 threshold is fixed, the gap would gradually close so that all wages would eventually be subject to the 12.4% social security tax. For an employee, the payroll tax is split evenly between the employer and the employee. Self-employed taxpayers with earnings above \$400,000 would be required to pay the full 12.4% social security payroll tax.

Businesses

Increased Corporate Tax Rate

Biden would increase the corporate income tax rate from 21% to 28%.^[9]

Corporate Minimum Tax

Biden would introduce a new 15% minimum tax on book income of companies that report net income of more than \$100 million. Corporations would pay the higher of the regular corporate income tax or the 15% minimum tax. The minimum tax would still permit corporate taxpayers to use foreign tax credits and any net operating loss carryovers.

Changes to GILTI

Biden would double the current effective tax rate on “global intangible low-taxed income” (“GILTI”) from 10.5% to 21% (and from 13.125% to 26.250% starting in 2026).

In addition, Biden would calculate GILTI tax liability on a country-by-country basis, rather than a global basis, and thereby deny taxpayers the ability to blend high-taxed foreign income with low-taxed foreign income. Under current law, the GILTI tax exempts earnings up to a 10% deemed return on “qualified business asset investment.” Biden would eliminate the exemption.

Offshoring Tax Penalty and Made in America Tax Credit

Biden would establish a 10% penalty surtax on companies that offshore manufacturing and service jobs to foreign countries to sell goods or provide services back to the U.S. market. Companies would also be denied deductions for expenses related to moving jobs and production overseas if these could be performed in the United States. Biden would also offer a “Made in America” tax credit, which would be a 10% advanceable tax credit for companies making investments that create jobs for U.S. workers and accelerate economic recovery by revitalizing existing closed or closing facilities, retooling or expanding facilities to advance manufacturing employment, or expand manufacturing payroll.

Repeal of Like-Kind Exchanges

Biden would repeal section 1031, which allows taxpayers to exchange “like-kind” real estate tax-free.[\[10\]](#)

Estate and Gift Tax

Under current law, the estate and lifetime gift exemptions for 2021 are both \$11.7 million (increased from \$11.58 million in 2020) and the maximum estate and gift tax rates are both 40% (applicable to taxable amounts above \$1 million). Biden would reduce the exemptions to \$3.5 million for the estate tax exemption and \$1 million for the lifetime gift tax exemption and would increase the maximum estate and gift tax rates to 45%. This would restore the exemptions and rates to 2009 levels.[\[11\]](#)

Other Proposals

Biden also proposes to expand the new markets tax credit and several renewable-energy-related tax credits, and establish new credits for businesses that experience workforce layoffs or major government institution closure.[\[12\]](#) He has also proposed replacing the deduction for contributions to retirement savings plans with a 26% credit.[\[13\]](#)

Biden also has proposed expanding the earned income tax credit, the child and dependent care tax credit, and the child tax credit and reintroducing the first-time homebuyers’ tax credit.[\[14\]](#)

Other Key Proposals by Democrats

Mark-to-Market Proposal

Wyden's Proposal

Sen. Ron Wyden (D-OR) has proposed a “mark-to-market” tax on wealthy and high-income individuals that would tax unrealized gains in publicly-traded property and would impose an additional tax in the nature of an interest charge upon the sale of nontraded property.[\[15\]](#) The proposal would also increase the capital gains tax rate so that it is equal to the ordinary income tax rate for these taxpayers.

Wyden's mark-to-market proposal would apply to individuals, estates or trusts with income in excess of \$1 million or assets exceeding \$10 million in each of the three prior tax years.[\[16\]](#) For purposes of determining whether the \$10 million asset test is satisfied, the first \$2 million of combined value of a taxpayer's primary and secondary personal residences would be excluded, the value of a taxpayer's operating family farm would be included only to the extent it exceeds \$5 million, and the first \$3 million of a taxpayer's retirement savings would be excluded.

These taxpayers would be required to “mark-to-market” their publicly-traded assets on an annual basis and pay a tax on any appreciation (or take a loss on any depreciation) at the end of the tax year as if they had been sold.

In addition, a “look-back charge” in the nature of an interest charge would be imposed on gains from non-publicly traded assets like closely-held businesses, investment real estate, and art and collectibles, upon a realization event, which would generally include any transfers of these types of property or the death of the owner. Proceeds from the primary and secondary residences of a taxpayer only in excess of \$2 million, and proceeds from a family farm only in excess of \$5 million, would be subject to the look-back charge rule. Wyden's proposal would not apply to assets held in tax-preferred savings accounts, which would continue to be taxed in the same manner as under current law.

Wyden's proposal would also include transition rules that would require taxpayers to pay tax on pre-proposal built-in gains over an unspecified period.

Publicly-traded corporations would generally not be subject to Wyden’s proposal, but there would be anti-abuse rules that would prevent taxpayers from using a corporation to avoid application of the mark-to-market rules. The Wyden proposal would apply the regime at the partner or S corporation shareholder level, and an interest in a partnership or S corporation would generally be treated as a nontraded asset.

Ocasio-Cortez’s and Schakowsky’s Proposal

Rep. Alexandria Ocasio-Cortez (D-NY) and Rep. Jan Schakowsky (D-IL) previously indicated that they plan to introduce a bill that would implement a mark-to-market system and increase the capital gains tax rate to match ordinary income tax rates.^[17] Ocasio-Cortez’s and Schakowsky’s bill would also increase the top marginal individual income tax rate to 59%. The details of the proposal have not yet been released.

Financial Transaction Taxes

There have been several proposals to impose a financial transactions tax on trades of stocks, bonds, and derivatives. The Wall Street Tax Act of 2019, sponsored by Sen. Brian Schatz (D-HI) and Rep. Peter DeFazio (D-OR), would to impose a 0.1% a tax on securities transactions.^[18] Sen. Bernie Sanders (I-VT) and Sen. Kirsten Gillibrand (D-NY) previously introduced a bill that would apply tax of 0.5% for stocks, 0.1% for bonds and 0.005% for derivatives and would provide an income tax credit to offset the financial transaction tax for taxpayers with income of less than \$50,000 (or \$75,000 for couples).^[19]

^[1] See Biden, “A Tale of Two Tax Policies: Trump Rewards Wealth, Biden Rewards Work,” Biden Harris, <https://joebiden.com/two-tax-policies/>.

^[2] See *id.*; Biden, “Healthcare,” Biden Harris, <https://joebiden.com/healthcare/>.

^[3] This proposal does not appear on the Biden website but has been widely reported. See e.g., Richard Rubin, “How Joe Biden’s Tax Plan Could Affect You,” The Wall Street Journal, <https://www.wsj.com/articles/how-joe-bidens-tax-plan-could-affect-you-11603307433>.

^[4] See Biden, “Healthcare.” While his website only states that his capital gains proposals “will close the loopholes that allow the super wealthy to avoid taxes on capital gains altogether,” Biden has confirmed during campaign events that this means treating death as a realization event. See Rubin, “How Joe Biden’s Tax Plan Could Affect You.”

[5] These proposals do not appear on the Biden website but have been widely reported. See e.g., Tony Nitti & Charlie Forsyth, “U.S. Taxation in 2020: Tax Policy & the Presidential Election,” Bloomberg Tax (Nov. 2, 2020), <https://news.bloombergtax.com/daily-tax-report/u-s-taxation-in-2020-tax-policy-the-presidential-election>.

[6] $39.6\% - 28\% + (3\% * 28\%)$.

[7] This proposal does not appear on the Biden website but has been widely reported. See e.g., Rubin, “How Joe Biden’s Tax Plan Could Affect You.”

[8] This proposal does not appear on the Biden website but has been widely reported. See e.g., *id.*

[9] The proposals in this section appear in Biden, “The Biden-Harris Plan to Fight for Workers by Delivering on Buy America and Make It in America,” Biden Harris, <https://joebiden.com/wp-content/uploads/2020/09/Buy-America-fact-sheet.pdf>.

[10] See Biden, “Caregiving,” Biden Harris, <https://joebiden.com/caregiving/>. Although the plan does not specifically mention like-kind exchanges under section 1031, according to Bloomberg News, a Biden campaign official has said that “a Biden administration would take aim at so-called like-kind exchanges, which allow investors to defer paying taxes on the sale of real estate if the capital gains are reinvested in another property.

The official also said they would prevent investors from using real-estate losses to lower their income tax bills.” Tyler Pager, “Biden’s \$775 Billion ‘Caring Economy’ Plan Paid for with Real Estate Taxes,” Bloomberg (July 21, 2020),

<https://www.bloomberg.com/news/articles/2020-07-21/biden-proposes-775-billion-plan-funded-by-real-estate-taxes>.

[11] See Biden, “Highlights of Joe Biden’s Plans to Support Women During the COVID-19 Crisis,” Biden Harris, <https://joebiden.com/plans-to-support-women-duringcovid19/>;

Biden-Sanders Unity Task Force, “Combating the Climate Crisis and Pursuing Environmental Justice,” Biden Harris, <https://joebiden.com/wp-content/uploads/2020/08/UNITY-TASK-FORCE-RECOMMENDATIONS.pdf>.

[12] These proposals appear in Biden, “The Biden-Harris Plan to Fight for Workers by Delivering on Buy America and Make It in America.”

[13] Biden, "Older Americans," Biden Harris, <https://joebiden.com/older-americans/>.

[14] See Biden, "A Tale of Two Tax Policies: Trump Rewards Wealth, Biden Rewards Work," Joe Biden, "Housing," Biden Harris, <https://joebiden.com/housing/>. The expansion of the earned income tax credit does not appear on the Biden website but has been widely reported. See e.g., Kaustuv Basu, "Biden Tax Credit Proposals Could Gain Traction in Split Congress," Bloomberg Tax, (Nov. 12, 2020), <https://news.bloombergtax.com/daily-tax-report/biden-tax-credit-proposals-could-gain-traction-in-split-congress>.

[15] See Ron Wyden (R-OR), Senate Fin. Comm., Treat Wealth Like Wages (Sept. 2019), <https://www.finance.senate.gov/download/treat-wealth-like-wages-rm-wyden>.

[16] These thresholds would apply to both single and joint filers and would be indexed for inflation. A taxpayer with income or assets that exceed either of the thresholds would be subject to the regime until the taxpayer fails to meet both income and asset requirements for three consecutive tax years, at which point the taxpayer could elect out of anti-deferral accounting.

[17] Laura Davison, "Alexandria Ocasio-Cortez Plans Bill to Boost Top Individual Tax Rate to 59%," Bloomberg, (Nov. 15, 2019), <https://www.bloomberg.com/news/articles/2019-11-15/ocasio-cortez-plans-bill-to-boost-top-individual-tax-rate-to-59>.

[18] Wall Street Tax Act of 2019, H.R. 1516, 116th Cong. (2019), <https://www.congress.gov/bill/116th-congress/house-bill/1516?q=%7B%22search%22%3A%5B%22S.+139%22%5D%7D>.

[19] See Inclusive Prosperity Act of 2019, S. 1587, 116th Cong. (2019), <https://www.congress.gov/bill/116th-congress/senate-bill/1587#:~:text=This%20bill%20imposes%20an%20excise,tax%2Dexempt%20municipa>

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