As the incoming Biden Administration begins to take shape, and the 117th Congress gets underway, we update you on the tax policy priorities that President Biden set forth during the 2020 Presidential campaign, and set the stage regarding the likely path forward for these priorities during the coming two years. Periodically since the start of his campaign in April 2019, President Biden has released a number of tax proposals affecting both individuals and corporations. Taken at face value, they call for a substantial increase in tax exposure for corporations and the wealthy, while providing targeted relief to middle and lower-income individuals and certain industries. And, while the proposals have not been scored by the Joint Tax Committee of Congress, non-governmental think tanks are fairly consistent in their estimates that his proposals as a whole would raise roughly $3.5+/- trillion in revenue over 10 years.

Most of the tax proposals set forth by President Biden during the campaign were offered more as a means to pay for, or offset, revenue losses associated with the underlying broad policy objective being pursued (e.g., infrastructure spending), rather than simply to increase taxes on individuals and corporations. Yes, he did campaign on a theme of ensuring that wealthy individuals and corporations “pay their fair share” of taxes. That said, we doubt the Biden Administration will push a broad stand-alone tax proposal during the coming year. Considering the very slim majorities the Democratic Party enjoys in the Senate (50-50 tie) and House of Representatives (5–7 seat majority at best), pushing broad stand-alone tax legislation through to enactment would be difficult at best. That said, it is likely that the Administration, working with and through the Budget and Tax-writing committees of Congress, will seek to utilize a procedural tool, “Budget Reconciliation,” to enhance the prospects for moving tax legislation through the Senate. Because Reconciliation provides a streamlined manner for considering certain legislation in the Senate (including tax bills), and only requires 51 votes for passage, it almost becomes a necessity in a 50-50 Senate where the Vice President can cast the tie-breaking vote. Yet, with no margin for error in a 50-50 Senate, tax legislation considered even via Reconciliation must be pursued in a manner that ensures either no defections from within the Democratic caucus, or in a manner that engenders bi-partisan support.

A likely path forward, for any of the proposed tax changes that were offered during the campaign, will be to tie revenue increases to particular spending proposals, not only as a means to at least partially offset the increased spending, but also as a way to highlight the reason for those increased revenues. In that regard, and by way of example only, possible policy proposals during the coming year could, based upon the proposals as set forth during the campaign, be paired with revenue increases in the following manner:

- An increase in the corporate rate to somewhere between 25% - 28% (currently at 21%), along with other business tax law changes (e.g., a 15% minimum tax on companies with book income in excess of $100 million; a 21% GILTI rate; elimination of subsidies for fossil fuels) – could be used to help offset the cost of enacting broad infrastructure/renewable energy legislation
  - *Tying corporate tax increases to an infrastructure bill is a possibility at some point in 2021 and could occur later this year;*
- A risk fee on large financial institutions with over $50 billion in assets - could be used to pursue changes in federal housing policy;
- Changes to the marginal tax rates for individuals with incomes above $400k and to the capital gains tax rate for individuals with income exceeding $1 million – could be used to enact legislation to addressing health care and the Affordable Care Act.
While increasing the marginal tax rate to 39.6% for wealthy taxpayers, and tying the capital gains rate to the marginal rate for individuals with income exceeding $1 million per year, were central themes of the Biden campaign, the economy as well as the legislative calendar this coming year may work against early consideration of these campaign proposals. Should the focus this year center on a stimulus bill, followed by an infrastructure bill that is supported by increases in corporate taxes, then changes to the marginal rate, the capital gains rate, and other individual tax provisions like the elimination of step-up in basis on inherited assets (see just below), may await consideration in the second session of the 117th Congress;

- Ending step-up in basis on inherited assets, along with capping itemized deductions for wealthy taxpayers at 28% - could be used for education reform

While the inclusive revenue costs associated with President Biden’s tax policy proposals are substantial, the focused nature of their proposed use indicates a piecemeal approach to tax law change and the resultant spreading of the revenue increases over time, rather than all at once. This is reinforced by the political reality that policy proposals as broad and varied as put forth during the campaign (from infrastructure, to energy, to housing, to education reform) cannot possibly be enacted all at once, if at all for some. It is when a particular policy change is pursued that a revenue offset is likely identified for inclusion therein, should one be necessary.

Of course, there is also the economic and political landscape to consider this year that will influence the prospects for tax-increase legislation. As an initial matter, the continued health and economic fallout from the Covid-19 pandemic will necessarily focus the immediate attention of the Biden Administration on policy measures necessary to provide stimulative and other relief to individuals and businesses. Other policy priorities, some that could implicate tax policy, may simply have to await later attention once the nation begins to emerge from the pandemic and the economy rests on better footing. And, as for the political considerations, with the margin of control in the House and Senate razor thin, the Democratic majorities may face severe political headwinds should significant tax policy changes be pursued that are partisan in nature.

Stay tuned. The direction of tax policy this year and beyond will come more into focus as the country begins to emerge from the pandemic. In the meantime, negotiations over the power structure in the Senate, including the composition of the various Senate Committees, should provide near-term clarity regarding the operation of the Senate these coming two years and, in turn, the prospects for tax and other legislation to move through that Chamber.
President Biden – Compilation of Main Campaign Tax Proposals:

Business:
- Move the corporate rate to 28%
- Double the GILTI rate from 10.5% up to 21%
- Apply a 15% minimum global book income tax (financial statement profits)
  - Apply to any company with net book income in excess of $100 million in the U.S. that otherwise would pay zero or negative federal income taxes for the year
- Impose a financial risk fee on financial institutions with in excess of $50 billion in assets
- Phase-out 20% deduction on pass through business income of taxpayers with $400k+ in income
-Disallow deduction for direct-to-consumer prescription drug advertising
- Eliminate the deferral of capital gains from like-kind exchanges (1031 exchanges)
- Impose tax on pharmaceutical companies if drug price increases exceed inflation
- Expand clean energy tax incentives

Individuals:
- Restore the top marginal income tax rates to 39.6%
- Restore pre-Tax Cuts and Jobs Act of 2017 rates for taxpayers with income in excess of $400k
- Impose a cap on itemized deductions of 28%
  - Also reinstate the “Pease” deduction limitation for taxpayers with income above $400k
- Tax capital gains/dividends - as ordinary income for single and joint filers with over $1 million in income (at the newly reinstated 39.6% rate)
- Estate Tax – revert to 2009 levels; eliminate step-up in basis for inherited assets (exceeding $100k at death or by gift, and excluding surviving spouse and/or charity)
- Eliminate the deferral of capital gains from like-kind exchanges (1031 exchanges)
- Apply the 12.4% FICA tax to earnings above $400k (6.2% for employer/6.2% for employees):
  - Wouldn’t apply to earnings between $137k and $400k
- Impose a Financial Transactions Tax (no details other than an indication of support)
- Retirement - replace the deduction for worker contributions to IRAs and DC plans with a refundable tax credit – set possibly at 26%
- Auto-enroll workers with no employer-sponsored plan into an IRA; allow caregivers not receiving wages to make catch-up contributions to retirement account
- Repeal the $10,000 SALT limitation

Tax Credits and other incentives for individuals and businesses:
- Expand eligibility for premium tax credits (health care)
- Provide for a homebuyers credit of up to $15k for first-time homebuyers
- Increase the child/dependent care tax credit
- Create a $5k tax credit for certain family caregivers
- Extend EITC to workers age 65 and older without qualifying children
- Exclude student loan forgiveness from taxable income
- Reinstall tax credits for residential energy efficiency
- Provide tax credits for small businesses to encourage plan sponsorship
- Restore full electric vehicle tax credit – and target to middle income taxpayers
- Reinstall solar investment tax credit
- Expand deductions for energy retrofits, smart meter systems, and emissions reductions in commercial building
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i Unless otherwise noted, the sampling of tax proposals included herein as put forth by former Vice-President Biden have been described in campaign literature and or in one or several research papers, including the following:
- Joe Biden for President: Official Campaign Website, and found at: https://joebiden.com
- (Gordon B. Mermin, Surachai Khitatrakun, Chenxi Lu, Thornton Matheson, Jeffrey Rohaly, 2020) The Tax Policy Center, An Analysis of Former Vice President Biden’s Tax Proposals, March 5, 2020 and found at: https://www.taxpolicycenter.org/publications/analysis-former-vice-president-bidens-tax-proposals
- (Huaqun Li, Garrett Watson, Taylor LaJoie, 2020) The Tax Foundation, Details and Analysis of Former Vice President Biden’s Tax Proposals, April 29, 2020, and found at: https://taxfoundation.org/joe-biden-tax-plan-2020
- The Committee for a Responsible Federal Budget, Understanding Joe Biden’s 2020 Tax Plan, July 30, 2020, and found at: https://www.crfb.org/papers/understanding-joe-bidens-2020-tax-plan

ii Wall Street Journal, Read Joe Biden’s Lips: New Taxes; Editorial Board, July 31, 2020
New York Times, Biden Proposes Smaller Tax Increases Than Rivals Do, Jim Tankersley, December 14, 2019