

Keeping score: President Biden's tax agenda

With all eyes on President Biden and his first 100 days, the reality is that a slim Democratic majority in Congress and the need to address the overwhelming health and economic effects of COVID-19 mean that enacting sweeping tax legislation is unlikely early in his first year in office. However, that doesn't mean that some of President Biden's campaign tax policy agenda won't be implemented.

Legislation isn't the president's only tool for realizing his tax policy goals. Regulatory and administrative actions are powerful tools for the president to use to move forward with his tax policy agenda.

TAX REGULATORY CHANGES COULD BE ON THE HORIZON

While legislation is required to make many of the tax changes that President Biden proposed during his campaign, the administration might consider regulatory action in the following areas to more quickly move closer to achieving its tax policy goals.

- **International tax provisions enacted by the *Tax Cuts and Jobs Act of 2017 (TCJA)*.** Tighten regulations implementing the international tax provisions enacted by the TCJA, including limiting safe harbors and exceptions like the recently added global intangible low-taxed income high-tax exclusion.
- **20% pass-through deduction.** Narrow eligibility for the 20% pass-through deduction under IRC Section 199A, including expanding the types of services subject to phaseout of the income-based deduction.
- **Like-kind exchanges.** Limit the definition of real estate for purposes of eligibility for Section 1031 like-kind exchange deferral.
- **Opportunity zones.** Revisit eligibility requirements and increase reporting.

- **Compensation and benefits.** Eliminate regulatory obstacles to increase retirement savings opportunities for low- and middle-income individuals, and revoke the prior administration's health plan changes that affect employers.
- **Energy credits.** Better align regulations and other guidance with President Biden's climate policy goals.

CLUES FOR FUTURE LEGISLATION EXIST

Previously introduced bills and tax proposals provide clues about legislation that current Democrats in the Congress might introduce.

For instance, many of the tax proposals included in President Biden's campaign materials were described in the "General Explanations of the Administration's Fiscal Year 2017 Revenue Proposals" that accompanied the budget for fiscal year 2017. Other campaign tax proposals are included in bills that recently were introduced or passed in the House, such as the *Securing a Strong Retirement Act of 2020* and the *Social Security 2100 Act*.

MOVING THE PRESIDENT'S TAX POLICY AGENDA

President Biden's campaign proposals included significant tax increases for corporations and wealthy individuals that some thought would be enacted immediately after he took office. Given the current economic and political climate, however, immediate increases in taxes on corporations or wealthy individuals seem unlikely.

In addition, remarks from administration officials indicate a hesitancy to retroactively raise taxes. Given Congress and the president's other priorities, it is unlikely that a tax legislation package not related to COVID-19 will be effective before 2022.

In the meantime, the U.S. Department of the Treasury and the IRS are likely to work on regulations and other administrative action to move President Biden's tax agenda forward. Whether these new rules will apply to the 2021 tax year will depend on how quickly they are issued.

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