

## Crystal Gazing: A Look at the Presidential Candidates' Major Income Tax Proposals

### AUTHOR



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With the primaries and conventions behind us, Joe Biden and Donald Trump are now the official presidential nominees. Since the November 3rd elections are looming, we expect increased focus on the major policy differences between the two candidates that may very well impact executive compensation planning.

While Biden has no formal tax plan with all federal proposals in one document, his campaign website contains over 40 plans on a wide range of policy topics including climate change, infrastructure, health care, domestic manufacturing, rebuilding US supply chains, housing, racial inequalities, child care, elder care, and the opioid crisis. Many of these plans have tax components that are designed to further policy goals or offset the costs of the plans.

Fewer details have been released on President Trump's tax proposals. Trump's 2021 budget proposal, released in February 2020, before the pandemic was at full tilt, provides some expectations. Also helpful is the recently released Second Term Agenda outlining the key points of Trump's policy vision. Within this agenda are a few policy items such as expanding existing tax breaks, creating credits for specific industries and activities, and unspecified tax cuts for individuals. The president has also expressed support for other policy changes related to capital gains and middle-class tax cuts. So far, none of the campaign documents have included a plan to extend the expiring provisions under the 2017 Tax Cuts and Jobs Act (TCJA), although that topic takes center stage in the 2021 budget proposal. While the Trump proposals are light on details, the specifics are promised to be shared in the coming weeks.

Of course, proposals from either a Trump or Biden administration will be influenced by a variety of unpredictable forces before actually becoming laws—such as what might happen in the Congressional races, the status of the economic recovery next year, and the severity of the COVID-19 virus at that time. Candidate Biden has an aggressive agenda, proposed to be financed, in large part, by raising tax revenue. Should Democrats win the presidency,



maintain control of the House of Representatives, and secure a majority in the Senate, we may see substantive changes. On the other hand, Biden’s agenda is likely to be more moderate if there is a Democratic presidential victory with Republicans maintaining control of the Senate.

Despite the unpredictability of the elections, the economy, and COVID-19, there seems to be more than an outside chance that changes are on the horizon and, as a result, making sense of where next year’s tax legislation might be heading is in order. Below are charts summarizing some of the major tax policies that have been put forward to date, formally or informally, by the Presidential candidates.

Individual and Estate Tax Proposals			
Tax Provision	Current Law	Joe Biden	Donald Trump
Ordinary Income (OI) Tax	<ul style="list-style-type: none"> <li>Top rate of 37% through 2025</li> </ul>	<ul style="list-style-type: none"> <li>Increase the top rate to 39.6% for those earning more than \$400,000</li> </ul>	<ul style="list-style-type: none"> <li>Decrease the rate for an unspecified group of middle-class taxpayers by 10%</li> <li>Make 37% rate and other TCJA changes permanent</li> </ul>
Capital Gains (CG) Tax, dividends	<ul style="list-style-type: none"> <li>20% maximum rate on long-term CG (LTCG) and qualified dividends</li> <li>Additional 3.8% net investment income (NII) tax applies to individuals with income &gt; \$200,000 (single) and \$250,000 (joint)</li> </ul>	<ul style="list-style-type: none"> <li>Tax CG and dividends as ordinary income for taxpayers over a \$1 million income threshold</li> <li>No change to 3.8% NII tax</li> </ul>	<ul style="list-style-type: none"> <li>Possible support for indexing CG for inflation, further reducing the rate from the current maximum of 20%</li> <li>No change to 3.8% NII tax</li> </ul>
Carried Interest	<ul style="list-style-type: none"> <li>Treat as LTCG if held for at least 3 years</li> </ul>	<ul style="list-style-type: none"> <li>No specific written proposal on carried interests but Biden has stated that carried interests should be taxed as OI</li> <li>PM Comment: Taxing CG at OI rates would effectively eliminate the benefit associated with most carried interests.</li> </ul>	<ul style="list-style-type: none"> <li>No specific proposals to change carried interest taxation. However, Trump has proposed to end carried interest taxation previously</li> </ul>



Individual and Estate Tax Proposals (cont.)			
Tax Provision	Current Law	Joe Biden	Donald Trump
Passthrough Income	<ul style="list-style-type: none"> <li>Generally taxed at owner's tax rate, subject to 20% deduction under Section 199A for domestic business profits (deduction expires after 12/31/2025)</li> </ul>	<ul style="list-style-type: none"> <li>Phase out Section 199A deduction for individuals with over \$400,000 in taxable income and for REIT dividends</li> </ul>	<ul style="list-style-type: none"> <li>Make Sec 199A 20% deduction permanent</li> </ul>
Itemized Deductions	<ul style="list-style-type: none"> <li>"Pease" limitation (which reduced the value of itemized deductions for high income taxpayers) repealed through 2025 with the TCJA</li> </ul>	<ul style="list-style-type: none"> <li>Cap tax benefits of itemized deductions to 28% of value</li> </ul>	<ul style="list-style-type: none"> <li>Make current law permanent</li> </ul>
Payroll Taxes	<ul style="list-style-type: none"> <li>6.2% Social Security tax on wages up to \$137,700 and 1.5% Medicare (both employer and employee)</li> <li>Additional .9% Medicare tax on wages &gt; \$250,000 (MFJ)/\$200,000 (single)</li> </ul>	<ul style="list-style-type: none"> <li>Impose 6.2% tax on wages &gt; \$400,000 (both employer and employee); wages between \$137,700 and \$400,000 not taxed</li> <li>No change to Medicare taxes</li> </ul>	<ul style="list-style-type: none"> <li>Supports temporary payroll tax holiday as pandemic relief</li> <li>No specific proposal for permanent changes to payroll taxes</li> </ul>
Estate Taxes	<ul style="list-style-type: none"> <li>40% estate, gift and generation skipping tax; basic exclusion of \$10 million per taxpayer, adjusted annually for inflation (\$11.58 million in 2020); increased exemption sunsets 12/31/2025</li> </ul>	<ul style="list-style-type: none"> <li>Reduce the estate tax exemption amount to pre-TCJA level of \$5 million</li> <li>Tax unrealized capital gains at death and eliminate "step-up" in asset value</li> </ul>	<ul style="list-style-type: none"> <li>Maintain current law and make permanent</li> </ul>

Business and Corporate Tax Proposals			
Tax Provision	Current Law	Joe Biden	Donald Trump
Corporate Tax	<ul style="list-style-type: none"> <li>21% tax rate</li> </ul>	<ul style="list-style-type: none"> <li>Increase rate to 28%</li> </ul>	<ul style="list-style-type: none"> <li>No change to current 21% tax rate</li> </ul>
Corporate Minimum Tax	<ul style="list-style-type: none"> <li>No provision</li> </ul>	<ul style="list-style-type: none"> <li>Require C Corporations with over \$100 million in book income to pay the greater of normal corporate tax liability or 15% of book income</li> </ul>	<ul style="list-style-type: none"> <li>No proposal</li> </ul>

## About the Author

Margaret Black is a managing director in the Los Angeles office and a member of the firm's Technical Services team. She has consulted for over 25 years in the field of tax and over 20 years on all aspects of compensation and benefits matters. Margaret has extensive experience in issues related to corporate acquisitions, divestitures and restructurings, as well as with change-in-control provisions, IRC Sections 280G, 409A, and 162(m) compliance.

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