

# Potential Tax Legislation in the Post Election Era

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# AGENDA

- Broad (and short) discussion on election results and likelihood of tax reform
- 114<sup>th</sup> lame-duck year-end tax legislation
- Trump campaign proposals and House GOP proposals
  - Individual taxes
  - Business taxes
  - Estate taxes
- Observations and notes from AICPA National Tax Conference

# Election Results – Some of the Important Players

- President-elect: Donald Trump (R-NY)
- Speaker of the House: Paul Ryan (R-WI)
- Senate Majority Leader: Mitch McConnell (R-KY)
- House Ways and Means Committee
  - Kevin Brady (R-TX), Chairman
  - Sander Levin (D-MI), Ranking Member
- Senate Finance Committee
  - Orin Hatch (R-UT), Chairman
  - Ron Wyden (D-OR), Ranking Member
- House of Representatives (as of December 6, 2016)
  - Makeup: Republicans 240, Democrats 194
  - Note: All bills regarding revenue (taxes) must originate in the House of Representatives
- Senate (as of December 6, 2016)
  - Makeup: Republicans 51, Democrats 46, Independents 2
  - Note: Need at least 60 votes in Senate to close debate (“invoke cloture”) on bills other than bills relating to federal budget.



# Major Internal Revenue Code Re-Writes in History

- 1939 – Franklin Roosevelt (Democrat)
- 1954 – Dwight Eisenhower (Republican)
- 1986 – Ronald Reagan (Republican)
- 2017 or 2018????? – Donald Trump (Republican)

# The Case for Tax Reform.....

- The current system is antiquated and not sustainable.
- Other countries are forcing the hand of the U.S. with tax reforms of their own.
- Similarity in plans between GOP and President-elect. Lots of groundwork has been laid.
- Incoming Senate Democratic leader Schumer is thought to be more open to tax reform than Harry Reid was.



# And the Anchors to Tax Reform...

- Politics remain broken.
- Parties have deep differences in tax policy, and the Republicans don't have 60 seats in the Senate.
- Tax reform entails difficult choices, and the 2018 midterm elections are less than 750 days away.
- External events could re-direct the legislative process.

# Old Business – 114<sup>th</sup> Congress

- Lame-duck session in December likely to address “extenders” including:
  - Credit for qualified fuel cell motor vehicles
  - Credit for alternative fuel vehicle refueling property
  - Credit for two-wheeled plug-in electric vehicles
  - Second generation biofuel producer credit
- Also stand-alone “targeted” tax bills – disaster relief, etc.

# Proposals

Two “competing” ideas:

1. Donald Trump campaign proposal / promises
2. House GOP blueprint (Ryan/Brady Framework)

Similar and different in many ways – Trump proposal is light on details in some places



# Individual Tax

# Individual Rates

## Current Rates for 2016

Ordinary Income	Qualified Dividends	Capital Gains	Single	Married Filing Joint	Married Filing Separate	Head of Household
10%	0%	0%	\$0 to \$9,275	\$0 to \$18,550	\$0 to \$9,275	\$0 to \$13,250
15%	0%	0%	\$9,276 to \$37,650	\$18,551 to \$75,300	\$9,276 to \$37,650	\$13,251 to \$50,400
25%	15%	15%	\$37,651 to \$91,150	\$75,301 to \$151,900	\$37,651 to \$75,950	\$50,400 to \$130,150
28%	15%	15%	\$91,151 to \$190,150	\$151,901 to \$231,450	\$75,951 to \$115,725	\$130,151 to \$210,800
33%	15%	15%	\$190,151 to \$413,350	\$231,451 to \$413,350	\$115,726 to \$206,675	\$210,801 to \$413,350
35%	15%	15%	\$413,351 to \$415,050	\$413,351 to \$446,950	\$206,676 to \$233,475	\$413,350 to \$441,000
39.6%	20%	20%	Over \$415,051	Over \$446,951	Over \$233,476	Over \$441,000

# Individual Rates (continued)

## Proposed Rates – Trump Plan

Ordinary Income	Capital Gains	Single	Married
12%	0%	\$0 to \$37,500	\$0 to \$75,000
25%	15%	\$37,501 to \$112,500	\$75,001 to \$225,000
33%	20%	\$112,501 and above	\$225,001 and above

- Head of Household filing status eliminated
- No specific information in proposals regarding:
  - Married Filing Separate filing status
  - Tax rates for qualified dividends

# Individual Rates (continued)

## Proposed Rates – House GOP Blueprint

Ordinary Income	Capital Gains and Dividends	Single	Married Filing Joint	Head of Household
12%	6%	\$0 to \$37,650	\$0 to \$75,300	\$0 to \$50,400
25%	12.5%	\$37,651 to \$190,150	\$75,301 to \$231,450	\$50,401 to \$210,800
33%	16.5%	\$190,151 and above	\$232,450 and above	\$210,800 and above

- Taxes capital gains and dividends as ordinary income
- 50% exclusion from tax for capital gains, dividends and interest
- No special tax rate for qualified dividends

# Individual Tax Deductions

## Current Individual Tax Deductions for 2016

Filing Status	Standard Deduction	Itemized Deduction Phase Out	Personal Exemption	Personal Exemption Phase Out
Single	\$6,300	AGI > \$259,400	\$4,050 per exemption	AGI > \$259,400
Married Filing Joint	\$12,600	AGI > \$311,300	\$4,050 per exemption	AGI > \$311,300
Married Filing Separate	\$6,300	AGI > \$155,660	\$4,050 per exemption	AGI > \$155,660
Head of Household	\$9,300	AGI > \$285,350	\$4,050 per exemption	AGI > \$285,350



# Individual Tax Deductions

## Proposed – Trump Plan

Filing Status	Standard Deduction	Itemized Deduction Cap	Personal Exemption	Personal Exemption Phase Out
Single	\$15,000	\$100,000	Eliminated	Eliminated
Married	\$30,000	\$200,000	Eliminated	Eliminated

\*\*Phase out for itemized deductions is eliminated and replaced with a cap on total itemized deductions based upon filing status.\*\*

# Individual Tax Deductions

## Proposed – House GOP Blueprint

Filing Status	Standard Deduction	Personal Exemption	Personal Exemption Phase Out
Single	\$12,000	Eliminated	Eliminated
Married Filing Joint	\$24,000	Eliminated	Eliminated
Head of Household	\$18,000	Eliminated	Eliminated

- Personal Exemption replaced with \$500 non-refundable credit for dependents who are not children.
- Eliminates all itemized deductions except for mortgage interest and charitable contributions.
- No specific information on whether phase out for itemized deductions will be retained.

# Childcare Provisions

## Proposed Childcare Provisions – Trump Plan only

- Above the line deduction for childcare costs:
  - From birth to age 13
  - Use for up to four children per family
  - Limited to average cost of childcare in state of residence for age of the child
  - Benefit would also be provided to families who utilize a stay at home parent or have grandparents watching their children
  - For lower-income households, the Earned Income Tax Credit (EITC) would be expanded to cover childcare costs
  - Deduction will not be available for individuals earning more than \$250,000 (or \$500,000 if filing jointly)

# Childcare Provisions (continued)

- **Dependent Care Savings Accounts (DCSAs)**
  - Set aside up to \$2,000 per year to save for childcare costs
  - Contributions would be tax deductible
  - Balances in DCSAs will rollover to the following year
  - When child reaches age of 18, the funds remaining in the account can be used for higher education expenses
  - For lower-income families, the government will provide a 50% match on contributions up to \$1,000

# Eldercare Provisions

- Above-the-line deduction for eldercare costs:
  - Applies to costs associated with elderly dependents (home health care, adult day care, in-home nursing)
  - Deduction limited to \$5,000 per year
- DCSAs also available to save for eldercare costs
  - Use for home health care, adult day care, in-home nursing, etc.
  - No government match to contributions



# Child Tax Credit

## Proposed Child Tax Credit – Trump Plan

- No proposed changes to Child Tax Credit under Trump plan

## Proposed Child Tax Credit Changes – House GOP

- Increase Child Tax Credit to \$1,500 per child
- Limit refundability of credit to \$1,000
- Raise phase out threshold for Child Tax Credit for married households from \$110,000 to \$150,000

# Other Individual Tax Changes

## Alternative Minimum Tax (AMT):

### Current

Rate	All Statuses Except for Married Filing Separate	Married Filing Separate
26%	\$0 to \$186,300	\$0 to \$93,150
28%	Over \$186,301	Over \$93,151

### Proposed

Full elimination under both Trump and House GOP plans

# Other Individual Tax Changes

## Additional Medicare Hospital Insurance Tax

Income from wages, compensation and self-employment income

### Current

Filing Status	AGI	Rate
Single	Over \$200,000	0.9%
Married Filing Joint	Over \$250,000	0.9%
Married Filing Separate	Over \$125,000	0.9%
Head of Household	Over \$200,000	0.9%
Qualifying widow(er) with dependent child	Over \$200,000	0.9%

### Proposed

Full elimination under both Trump and House GOP plans



# Other Individual Tax Changes

## Net Investment Income Tax (NIIT):

Investment income from dividends, capital gains, rent/royalties, partnerships, S-Corporations, Trusts and Estates

### Current

Filing Status	AGI	Rate
Single	Over \$200,000	3.8%
Married Filing Joint	Over \$250,000	3.8%
Married Filing Separate	Over \$125,000	3.8%
Head of Household	Over \$200,000	3.8%
Qualifying widow(er) with dependent child	Over \$250,000	3.8%

### Proposed

Full elimination under both Trump and House GOP plans



# Other Individual Tax Changes

## Carried interest:

- Current – Taxed as capital gains
- Trump Proposal – Taxed as ordinary income
- House GOP Proposal – No changes



# Business Tax

# Business Tax

## Current Rates 2016

Rate	Taxable Income
15%	\$0 to \$50,000
25%	\$50,001 to \$75,000
34%	\$75,001 to \$100,000
39%	\$100,001 to \$335,000
34%	\$335,001 to \$10 million
35%	\$10 million to \$15 million
38%	\$15 million to \$18.33 million
35%	Over \$18.33 million

# Business Tax (continued)

## Proposed Changes – Trump Plan

Per Trump campaign website (paraphrased):

“Lower business tax rate from 35% to 15%. This rate is available to all business that want to retain profits within the business.”

- Interpretation per Tax Foundation:
  - C-Corporation rate lowered to flat 15% rate
  - Income from pass through businesses (S-Corporations, Partnerships, LLCs, Sole Proprietors) to be taxed at business rates (15%??).

# Business Tax (continued)

## Proposed Changes – Trump Plan

### ***Election to expense capital investment:***

- Available to firms engaged in manufacturing in the United States.
- If election is made, the firm loses the ability to deduct corporate interest expense on the purchase.
- Election can be revoked only within the first 3 years of the election.

# Business Tax (continued)

## Proposed Changes – Trump Plan

### ***Childcare changes for businesses:***

- Credit authorized by Sec. 205 of EGTRRA of 2001 for on-site childcare at a business:
  - Annual cap increased to \$500,000 per year (up from \$150,000)
  - Recapture period would be reduced to 5 years (down from 10 years)
- Credit is 25% for on-site care and 10% for child care resource and referral services



# Business Tax (continued)

## Other Proposed Changes – Trump Plan

- Most tax credits eliminated except for Research and Development (R&D) credit
- Domestic Production Activities Deduction (DPAD) eliminated
- Business AMT eliminated

# Business Tax (continued)

## Other Proposed Changes – Trump Plan

### *Foreign Tax Changes:*

- Retain current U.S. system of **worldwide taxation**
- Eliminate deferral of tax on foreign earnings
- Tax credit for foreign taxes as paid
- Firms that have existing offshore corporate profits may complete a deemed repatriation at one time tax rate of 10%

# Business Tax (continued)

## Proposed Changes – House GOP Plan

- C-Corporation rate lowered to flat 20% rate
- Income from pass through businesses (S-Corporations, Partnerships, LLCs, and Sole Proprietors) to be taxed at a maximum rate of 25%
- Business AMT eliminated
- Changes to Net Operating Losses (NOLs)
  - Eliminate NOL carryback
  - Permit indefinite carryforward and increased by a factor reflecting inflation and the real return of capital
  - Deduction capped at 90% of taxable income for the year without regard to the NOL

# Business Tax (continued)

## Proposed Changes – House GOP Plan

- Full expensing in year one of all assets (tangible and intangible), other than land
- Most tax credits eliminated except for Research and Development (R&D) credit
- Domestic Production Activities Deduction (DPAD) eliminated
- Eliminates deductibility of net interest expense on future loans

# Business Tax (continued)

## Proposed Changes – House GOP Plan

### *Foreign Tax Changes:*

- **Fully territorial tax system**, exempting from U.S. tax 100% of dividends from foreign subsidiaries
- One-time deemed Repatriation payable over eight years at the taxpayer's election:
  - 8.75% rate for cash and cash-equivalent profits
  - 3.5% rate on other profits (non-cash)
- Eliminate most subpart F rules, retain foreign personal holding company rules for passive income.



# Business Tax (continued)

## Other tax proposals on the watch list

- LIFO (Last In, First Out) inventory accounting
  - House GOP plan retains; Trump plan does not address.
- Taxation of “inside build up” in life insurance policies for high-income earners
  - House GOP plan retains; Trump plan originally proposed to tax.
- Treatment of employer-provided health care benefits
  - House GOP plan (before ACA repeal) was to cap the exclusion; Trump plan does not specify changes.
- 1031 (like-kind exchanges) not addressed in either plan but under some stress

# Estate Tax

# Estate Tax

## Current (2016 Rates)

- Unified Federal estate and gift tax kicks in at:
  - \$5.45 million for single people
  - \$10.90 million for married individuals
- Top rate of 40% for estates valued over \$1 million

# Estate Tax (continued)

## Proposed Changes – Trump Plan

- Estate Tax will be eliminated
- Exceptions:
  - No step-up in basis for capital gains held until death and valued over \$10 million
  - Exemption for small businesses and family farms
  - To prevent abuse, contributions of appreciated assets into a private charity established by the decedent or the decedent's relatives will be disallowed
- Interpretation per Tax Foundation:

“Our reading of the intent of the plan is that step-up basis would be disallowed and that the gain would be subject to tax when the inheritor sells the asset, not upon the death of the decedent. This is the understanding most consistent with the idea that the plan will repeal the death tax.”



# Estate Tax (continued)

## Proposed Changes – House GOP Plan

- Estate Tax and generation-skipping tax will be eliminated.



# Revenue Estimates

- Tax Policy Center static estimate of Trump tax plan (10-year revenue effect) = \$6.2 trillion
- Tax Foundation static estimate of Trump tax plan (10-year revenue effect) = \$4.4 - \$5.9 trillion

# Observations from AICPA National Tax Conference

## Notable speakers

- John Koskinen: IRS Commissioner
- Nina Olsen: National Taxpayer Advocate
- Maya MacGuineas: Committee for a Responsible Federal Budget/Head of the Campaign to Fix the Debt
- Thomas Barthold: Chief of Staff for The Joint Committee on Taxation
- Bill Wilkins: Chief Counsel and Assistant General Counsel - IRS

# Observations from AICPA National Tax Conference

Observation #1 – There is a tremendous gap in expectations between IRS and taxpayers regarding what constitutes “good taxpayer service.”

- Commissioner touts a 70% response rate on telephone calls as “success.”
- Division between IRS and taxpayer advocate on how taxpayers wish to be served.
- Commissioner overestimates capabilities and courtesy of rank-and-file IRS personnel (Rob’s opinion).

# Observations from AICPA National Tax Conference

Observation #2 – If you want to play the audit lottery, do it in the partnership form of taxation.

- Partnerships are audited at a rate that is fractional when compared to other entity types, despite the increase in LLCs.
- TEFRA made it administratively very difficult to actually assess and collect.
- The new partnership audit regime is no better.

# Observations from AICPA National Tax Conference

## Observation #3 – IRS infrastructure is stressed.

- Using long out-of-date technology
- They do not have refund fraud under control
- IRS being made watchdog for many programs (foreign account reporting, ACA, etc.)
- Funding not keeping pace



# Sources

## Income tax proposal information sources:

- [www.taxfoundation.org/article/details-and-analysis-donald-trump-tax-reform-plan-september-2016](http://www.taxfoundation.org/article/details-and-analysis-donald-trump-tax-reform-plan-september-2016)
- [www.taxfoundation.org/article/details-and-analysis-2016-house-republican-tax-reform-plan](http://www.taxfoundation.org/article/details-and-analysis-2016-house-republican-tax-reform-plan)
- [www.donaldjtrump.com](http://www.donaldjtrump.com) – official Presidential campaign website for Donald Trump & Michael Pence

## See also:

- “Post Election Tax Policy Update.” Wolters Kluwer, CCH Incorporated and its Affiliates. 9 November 2016.
- “Tax Policy Decisions Ahead: Impact of the 2016 Elections.” Deloitte Tax LLP Tax Policy Group. 10 November 2016.
- “Tax Insights from Washington National Tax Services.”, PricewaterhouseCoopers, LLP. 9 November 2016.
- “Revenue Procedure 2015-53.” Internal Revenue Service. 21 October 2016.

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# Questions?

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