# What Trump's tax plans for a possible second term might entail: Frequently asked questions

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**NOTE: This report does not reflect developments after 10:00 AM EDT on September 28, 2020.**

# Introduction

Voters will elect the next U.S. president in November. They also will elect the members of the House of Representatives and thirty-five Senators. These elections will determine whether there will continue to be divided government at the federal level or whether one party will control the White House and both chambers of Congress beginning in early 2021.

The Republican presidential nominee is the current president, Donald J. Trump, while the Democratic presidential nominee is the former vice president in the Obama administration, Joe Biden.

This document addresses at a high level what Trump's tax agenda might look like and what its prospects might be, if he is re-elected president. (For information about the possible tax agenda if Biden is elected, see KPMG's report on **Joe Biden's Tax proposals: Frequently asked questions**. [PDF 1.87 MB]) This document is in question-and-answer format and is organized as follows:

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# FAQ 1: Where is Trump's second term federal tax plan?

President Trump has not released a formal plan describing his federal tax proposals for a second term. Nonetheless, there are some clues as to what a possible second term Trump tax agenda might entail.

The enactment of the 2017 tax bill commonly called the "Tax Cuts and Jobs Act" (TCJA) with a Republican controlled Congress was a signature accomplishment of Trump's first term and is touted on his campaign website. Trump may well be expected to support preserving, if not also expanding upon, some of the major taxpayer-favorable provisions of the TCJA. The Trump administration also signaled some tax priorities in the course of negotiations of COVID-19 legislation this year. Further, Trump and his advisers have from time to time mentioned other tax proposals in budget proposals, speeches, and interviews—as well as through less formal mechanisms.

This report draws from these sources, as well as from general experience with Trump's presidency so far, in an attempt to answer some "frequently asked questions" (FAQs) about what Trump's tax priorities might be if he is re-elected president.

# FAQ 2: What federal tax law changes might Trump propose with respect to businesses?

A Trump administration might be expected to support preserving, if not also expanding, some of the major business tax reforms in the TCJA. He might also be expected to seek to limit or repeal some of the revenue-raising provisions that were included in the TCJA primarily to satisfy requirements associated with the budget reconciliation process used to move the TCJA through the Senate.[1] Depending on the state of the economy and COVID-19, he might also propose extending certain temporary tax relief provisions that were enacted this year or enacting additional economic stimulus measures. Further, he might continue to pursue proposals that he or his administration raised in the past, including in prior budget proposals.

For example, it is possible that Trump might advocate:

*Possible proposals relating to TCJA*

- Preserving the 21% statutory corporate tax rate—or possibly even reducing it further (perhaps to 20%)
- Eliminating or postponing scheduled reductions in the "GILTI" and "FDII" deduction rates, as well as the scheduled increase in the "BEAT" rate—changes to these rates currently are scheduled to go into effect in 2026
- Extending or making permanent the deduction against qualifying business income of noncorporate

[1] The TCJA moved through the Congress using special budget reconciliation procedures that allowed it to be passed by a simple majority vote in the Senate. The ability to use these rules was "unlocked" when the House and the Senate (both of which were controlled by Republicans) passed a budget resolution permitting a "reconciliation bill" to increase the deficit by $1.5 trillion over the 10-year budget window. To retain the protection from a Senate filibuster provided by the budget reconciliation rules, the bill also needed to meet a number of complex requirements, including that no title could result in a net tax cut in any year beyond the 10-year window unless offset by an equivalent amount. The legislation phased out some taxpayer-favorable provisions and included various revenue raisers (some with prospective dates) to "hit" the $1.5 trillion 10-year target without increasing the deficit outside the 10-year budget window.

owners (i.e., the "section 199A deduction")

- Repealing the excess business loss limitation rules for taxpayers other than corporations—the CARES Act in effect repealed these rules for tax years beginning prior to 2021, but the rules are scheduled to apply in 2022 before sunsetting after 2025.
- Expanding qualified opportunity zones
- Eliminating the change in the base of the business interest expense limitation from EBITDA to EBIT that is scheduled to go into effect in 2022
- Eliminating the scheduled phase-down and expiration of 100% expensing (and perhaps expanding the scope of expensing)
- Eliminating the provision that would make certain meals and entertainment expenses nondeductible after 2025 and, possibly, restoring the *full* deductibility of meals and entertainment expenses on either a temporary or permanent basis
- Eliminating the provision that would, beginning in 2022, require certain research or experimental (R&E) expenditures to be capitalized and amortized over a five-year period.

*Possible economic stimulus and other tax measures*

- "Made in America" tax credit to promote domestic manufacturing, and other tax credits to "bring back jobs from China"
- Tax incentives for "essential industries" (such as pharmaceuticals) to produce critical supplies in the Unites States
- Tax incentives to promote infrastructure-related expenditures and investments
- Expansion of business credits for on-site childcare and expanded ability of companies to provide payments for employee childcare expenses that are excluded from employee taxable income
- Making available a specified amount of income tax credits for corporate donations to state-identified nonprofit education scholarship granting organizations

*Some revenue-raising proposals previously mentioned by Trump or his administration*

- Restoring the corporate alternative minimum tax (AMT) in some form
- Eliminating the qualified plug-in electric drive motor vehicle credit
- Repealing the exclusion of utility conservation subsidies to non-business customers who invest in energy conservation measures
- Repealing accelerated depreciation for renewable energy property
- Repealing the energy investment credit
- Repealing the credit for residential energy efficient property

## FAQ 3: What federal tax law changes might Trump propose with respect to individuals and estates?

Trump might be expected to support extending or making permanent some of the temporary individual tax law changes made by the TCJA. Likewise, depending on the state of COVID-19 and the economy, he might propose additional tax relief measures relevant to individuals. He also might continue to pursue other proposals that he or his administration raised in the past (including in budget proposals). Thus, for example, he might advocate:

- Extending or making permanent the TCJA's individual tax rate structure for all income tax brackets[2]
- Extending or making permanent the TCJA's increase in the estate, GST, and gift tax exemption amount[3]
- Cutting capital gains taxes (perhaps through indexing)
- Modifying or repealing the net investment income tax
- Forgiving payroll taxes that were deferred pursuant to the executive memorandum Trump issued on August 8, 2020, and perhaps providing broader payroll tax relief
- Providing a middle income tax cut
- Making available a specified amount of income tax credits for individual donations to state-identified nonprofit education scholarship granting organizations
- Expanding access to various health savings accounts (such as health reimbursement accounts, health savings accounts, or medical savings accounts), including for certain Medicare beneficiaries.
- Providing additional benefits for child and dependent care, including rebates, exemptions, and Dependent Care Savings Accounts
- Providing tax benefits for certain distance learning and home schooling expenses and scholarship donations

## FAQ 4: If Trump is elected for a second term, is it certain that tax law changes he proposes would be enacted?

No. A number of factors could affect what might actually be enacted in a possible second term of Trump's presidency, including (perhaps most significantly) the results of the upcoming congressional elections. Other factors that might affect the agenda include: the state of the economy, what's happening in the United States and globally, and what other policy issues Trump might make priorities. Read FAQs 5 and 6, below.

## FAQ 5: How might the results of the 2020 congressional elections affect the prospects and timing of tax law changes Trump might propose?

As a general matter, the House, the Senate, and the president all need to agree to the same version of legislation for that legislation to become law. The current partisan divide means major policy changes are often possible only when one party controls the White House and both chambers of Congress. Indeed, major pieces of legislation such as the TCJA and the Affordable Care Act were enacted under single party control, with no minority-party support.

For example, if Trump is re-elected and Democrats control at least one chamber of the next Congress, reaching bipartisan consensus on major tax policy changes in at least the first two years of Trump's

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[2] The individual rate structure (including the section 199A deduction) is currently scheduled to sunset after 2025. The TCJA made the individual rate structure temporary as part of the effort to satisfy budget reconciliation requirements. See note 1, supra.
[3] The TCJA's increase in the exemption amount is currently scheduled to sunset after 2025. See notes 1 and 2, supra.

second term[4] might be quite difficult.

It might be possible, though, to reach consensus on other, less dramatic, tax law changes on which significant numbers of lawmakers in both parties might agree, such as providing incentives for domestic manufacturing and domestic research and development. Likewise, depending on the state of COVID-19 and the economy next year, bipartisan consensus might be achievable on using the Tax Code to respond to health and economic repercussions of the virus. And bipartisan consensus also might be achievable in developing a response to European digital tax initiatives.

It's worth considering however, whether the ongoing BEPS 2.0 project work at the OECD could be the impetus for significant future tax legislation, even in a divided government. For example if the OECD work produces an agreement on new sourcing rules and global taxing rights, the US might propose new tax legislation to adopt that consensus. If, on the other hand, the OECD fails to produce a consensus, the result could be a series of unilateral digital services taxes that fall especially hard on US companies. This too could lead to a US tax response. In either of these scenarios, a bipartisan response would be necessary with a divided government.

On the other hand, if Trump is re-elected and Republicans control both the House and Senate, it might be easier to achieve consensus on major policy changes than in a divided government scenario.[5] Under this scenario, Trump and congressional Republicans might address major policy issues in 2021 and 2022—in case Democrats regain control of one or more chambers of Congress in 2023. As discussed in the next FAQ, however, other factors might affect the timing and prospects of enacting major tax proposals.

One further consideration is that the 2020 election results will determine the key players in the congressional tax-writing process, such as caucus leadership and the chairs and members of the House and Senate tax-writing committees, as well as the mix of political views of the members. Thus, the interests and views of key congressional players and larger politics can be expected to shape congressional tax priorities and may affect how dramatic tax law changes might or might not be, even if Republicans "sweep" the elections.

## FAQ 6: If there is a Republican "sweep," what other factors might affect the prospects and timing of tax proposals Trump might make?

If Republicans control the House and Senate and Trump is re-elected president, future conditions and developments that are not currently knowable also could affect the substance and timing of the legislative tax agenda. These include, for example, the course of the COVID-19 pandemic, the state of the economy, future events that might dominate the news cycle, and global tax and nontax developments. Here are just a few of the questions that might be relevant to the short-term tax agenda:

- What will the state of the economy and COVID-19 be in 2021? Would a second Trump administration

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[4] Presidents serve four-year terms. Elections for all the seats in the House and some of the seats in the Senate take place every two years. Thus, a president faces a new Congress for the last half of the presidential term.

[5] Currently, in the Senate, at least 60 votes are needed to avoid filibusters of tax legislation, unless special budget reconciliation rules are used to allow passage by a simple majority. See note 1, *supra.* As indicated in text *infra*, it is possible that the next Senate might eliminate the filibuster rule, allowing tax legislation to pass the Senate by a simple majority without using the reconciliation rules.

and congressional Republicans view some form of additional COVID-19 response legislation or economic stimulus legislation as necessary next year? If so, would they use the Tax Code to target relief to certain individuals or to provide stimulus to certain businesses? Would business relief be targeted to certain sectors or to small businesses? Would concerns about the size of the deficit and the financial conditions of various trust funds (such as the social security trust fund and the highway trust fund) have an impact on the agenda?

- How might foreign countries change their tax regimes (in particular in response to the ongoing BEPS 2.0 project at the OECD as discussed above)—and how might this affect the domestic tax landscape?

- Might events happen in the United States or the world that could affect what legislative items are at the top of the agenda? Keep in mind that events like COVID-19 and other past crises have substantially changed legislative priorities, both from a tax and nontax perspective.

- Might the Senate choose to change the Senate filibuster rules? Current Senate rules generally require a supermajority of 60 to end debate and enact legislation. A change to the rules of the Senate could make it significantly easier, both in substance and from a procedural perspective, for Republicans to pass tax legislation if they control the House as well as the Senate.[6]

## FAQ 7: In the case of a Republican "sweep," might possible proposals other than those suggested in these FAQs become law?

Absolutely. If Trump is re-elected, he can be expected to modify and add to his tax law priorities depending in part on what's happening in the United States and the world during his second term. Further, congressional lawmakers (including members of the tax-writing committees) can be expected to raise their own priorities. And, of course, the "sausage-making" that goes into putting together a tax bill often results in provisions of interest to various members of Congress being included.

[6] See note 1 supra.

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