The Biden Administration and the 117th Congress: Possible Tax Legislation

First issued February 2, 2021

NOTE: This report was updated at 10:30 AM EST on February 4, 2021, and does not reflect developments after that time.

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This report updates and substantially modifies a report issued on January 6, 2021 to reflect developments through 10:30 AM EST on February 4, 2021, including: the inauguration of Joe Biden and Kamala Harris as president and vice president of the United States; the change in party control of the Senate; the implications of the Biden Administration's "rescue and recovery" proposals for this year's legislative agenda; and the confirmation of Janet Yellen as Treasury Secretary.* The report also has been re-named and includes new graphics.

Introduction

Democrats Joe Biden and Kamala Harris on January 20, 2021, were sworn in as president and vice president of the United States. Later that day, the U.S. Senate switched from being controlled by Republicans to being controlled by Democrats (when two Democratic Senators from Georgia, as well as the temporary replacement for former Senator Kamala Harris, were sworn in). Democrats also hold the majority of seats in the House, but by a narrow margin. As a result, the White House as well as both chambers of Congress are controlled by Democrats.

This report includes preliminary observations regarding the potential tax legislative agenda of the Biden Administration and the Democratic controlled Congress. As explained below, significant tax law changes may be on the horizon. These could include new incentives and credits for certain activities and categories of taxpayers, as well as potential tax increases for some taxpayers intended to discourage certain activities or to raise revenue for various initiatives. The narrow margin of Democratic control in the Congress, however, presents some legislative challenges and might affect the details of tax provisions that ultimately may be enacted.

Contents

*The updated report was initially issued the evening of February 2, 2021. Further updates were made on February 4, 2021, primarily to reflect a Senate power-sharing agreement approved on February 3, 2021.

The new administration

Joe Biden and Kamala Harris were sworn in as president and vice president, respectively, on January 20, 2021.

Possible tax agenda

On January 14, 2021, several days before his inauguration, Biden described a two-step plan for "rescue and recovery" in response to the COVID-19 health and economic crises—the "American Rescue Plan" and the "Build Back Better Recovery Plan." Biden expressed a desire to work with members of Congress from both parties to move quickly to enact the rescue proposal, and then to move with "equal urgency and bipartisanship" to the recovery proposal.

American Rescue Plan proposal

A 19-page fact sheet released by the Biden-Harris transition team prior to the inauguration explained that the American Rescue Plan is a proposed emergency legislative package designed to fund vaccinations, provide relief to families "bearing the brunt" of the COVID-19 crisis, and support struggling communities.[1] The plan includes both nontax and tax components and reportedly would cost around $1.9 trillion over the budget window.

Although the fact sheet does not mention any tax increases to offset the costs of the plan, it describes the plan as including the following tax benefits and incentives, most of which are of limited duration:

- One-time cash payments of $1,400 per person for some individuals (in addition to the $600 payments provided by legislation enacted last December), presumably through the tax credit mechanism used for previous "recovery rebates"
- Extending the refundable credit for certain paid leave programs
- Temporarily expanding and making refundable childcare tax credits
- Temporarily making the child tax credit fully refundable, making 17-year-olds qualifying children, and increasing the amount of the credit
- Temporarily expanding the earned income tax credit
- Increasing the value of the health insurance premium tax credit.

The administration's rescue plan proposal might be viewed as similar in some respects to emergency COVID-19 response legislative packages enacted (or proposed) last year. Those packages were largely deficit-financed and included a number of temporary programs and temporary tax incentives and benefits.

The **legislative prospects of the rescue plan** are discussed later in this report.

Build Back Better Recovery Plan proposal

In his January 14, 2021 speech, then president-elect Biden indicated that he would provide information about his proposed Build Back Better Recovery Plan in his first appearance before a joint session of Congress in February. This session is scheduled to take place the evening of February 23, 2021.

In his January speech, Biden provided a short, very general, preview of his recovery plan. He stated that the plan "will make historic investments in infrastructure and manufacturing, innovation, research and development, and clean energy," as well as investments in the caregiving economy and in skills and worker training. He also indicated that the costs of permanent investments would be paid for by making sure that everyone pays their fair share in taxes, stating that "we can do it without punishing anyone by closing tax loopholes for companies that ship American jobs overseas or that allow American companies to pay zero in federal income taxes."

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[1] More specifically, the fact sheet describes the rescue plan as including the following components: mounting a national vaccination program; containing COVID-19 (including through testing, eliminating supply shortage problems, and investing in treatments); safely reopening schools; sending additional checks to certain households; providing direct housing and nutrition assistance; expanding access to childcare and affordable healthcare; increasing the minimum wage; extending and expanding unemployment insurance benefits while providing a $400 per week supplement to some through at least September 2021; and supporting struggling communities by providing support for the hardest hit small businesses, especially businesses owned by entrepreneurs of colors, and protecting the jobs of essential workers.

Thus, it appears that the recovery plan might be a massive proposal, with major nontax policy initiatives as well as revenue-raising proposals. Although details of the administration's recovery proposal are not yet available, the administration might include in its proposal some of the tax policy changes Biden raised as part of his presidential campaign, as well as other tax proposals (including, perhaps, proposals raised during the Obama Administration). These proposals might include tax incentives and benefits, as well as revenue raisers.

Many of the proposals raised during the campaign and in the Obama Administration are discussed below.

The **legislative prospects of the recovery plan** are discussed later in this report.

Campaign tax proposals

During the course of the presidential campaign, the Biden campaign posted on its website over 40 plans on various policy topics—including, for example, infrastructure, clean energy, domestic manufacturing, rebuilding U.S. supply chains, housing, racial inequities, child care, elder care, and health care. Many of these plans included tax components designed to further the underlying policy goals or to offset the costs of such goals. Other tax proposals also were mentioned on the campaign trail.[2] As a general matter, Biden indicated that he would not raise taxes on individuals with under $400,000 of income.

For the most part, Biden's campaign tax proposals were short and high level. They were described using language that would make sense to the general electorate, rather than technical tax language designed for tax professionals. As a result, the details of many of the proposals are not clear.[3]

Charts listing campaign tax proposals relevant to businesses, individuals and estates, and retirement savings are provided as **exhibits** at the end of this report. These charts generally mirror the language used by the campaign to the extent possible. As indicated in these charts, major campaign tax proposals included:

Business

- Increase the top statutory corporate income tax rate to 28%
- Create a new 15% corporate minimum tax on global book income of $100 million or more
- Increase the tax rate on certain foreign income from the 10.5% imposed by the current "global intangible low-taxed income" (GILTI) regime to 21%, shift to a country-by-country analysis, and eliminate the qualified business asset investment return (similar to the Obama Administration's international tax reform proposal)
- Provide new or expanded business tax credits for various activities (including domestic manufacturing)
- Make various changes relevant to specific industries (such as pharmaceuticals, real estate, fossil fuels, energy, natural resources, and banking)

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[2] On July 8, 2020, the Biden campaign released a series of policy proposals crafted by joint task forces composed of allies of both Biden and Senator Bernie Sanders (I-VT) that were formed to bring together progressive and moderate Democrats. Some of these "Unity Task Force Recommendations" included tax proposals, as well as general language supporting a more progressive federal tax system. Some of the items listed in the exhibits to this report are drawn from these recommendations.

[3] For example, while the campaign indicated support for limiting the ability of some investors to use real estate losses, it did not spell out whether this might be accomplished through changes to passive activity loss rules, depreciation rules, passthrough loss limitation rules, or otherwise. It also is not clear how income thresholds for some individual income tax proposals would apply to different filing statuses (single, joint, etc.)

Individuals and estates

- Increase the top individual tax rate to 39.6% (presumably prior to the currently scheduled return in 2026 to that tax rate upon the expiration of the changes made by the 2017 tax act)
- Phase out the Code section 199A "passthrough business deduction" at incomes over $400,000
- Cap tax benefits of itemized deductions at 28% of value
- Phase out itemized deductions
- Subject wages in excess of $400,000 to the Old Age, Survivors, and Disability Income (OASDI) portion of the Social Security tax
- Tax capital gains and qualified dividends for individuals with over $1 million in income at ordinary income rates[4]
- Create new tax credits for some home buyers, renters, renovators of properties in distressed communities, and informal caregivers
- Increase the child and dependent care credits
- Expand the earned income tax credit (EITC) for some older workers without children
- Expand the Affordable Care Act (ACA) premium tax credits
- Exclude from income certain forgiven student loan debt
- Modify incentives for retirement savings
- Tax unrealized capital gains at death (or, possibly, eliminate stepped up basis at death)
- Reduce the estate tax exemption amount, possibly to 2009 levels

Obama Administration proposals

It is possible the Biden Administration might look to tax proposals made during the Obama Administration in assessing what tax policy changes should be addressed in the recovery plan or other legislation.

For example, in 2012, the White House and the Treasury Department ("Treasury") released "**The President's Framework for Business Tax Reform**" [PDF 585 KB], a document that outlined the need for reform of the business tax system and presented various elements of reform. The Obama Administration issued an **update** [PDF 629 KB] to the "framework" in April of 2016. President Obama's budget proposals also included a host of tax proposals, some of which referenced the framework.

Some of the prior tax proposals made by the Obama Administration appear similar to some of the Biden campaign proposals, including a proposal to make the top statutory corporate rate 28%—which would have reflected a reduction from the 35% rate that was in effect during the Obama Administration.

For more information on many of the Obama Administration's tax proposals, read the **103-page report** [PDF 1.9 MB] KPMG issued in February 2016 shortly after the Obama Administration released its FY 2017 budget proposals.[5]

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[4] In addition, one of the Unity Task Force Recommendations refers to limiting the ability of wealthy taxpayers to defer and avoid taxes on income (especially that relates to financial investments). Although it is not certain, this language might refer to a possible mark-to-market regime. Senate Finance Committee chairman Ron Wyden (D-OR) released a report in the previous Congress (when he was the ranking Democrat on the committee) describing a proposed mark-to-market system for taxing capital income of certain individuals who satisfy income or asset thresholds. Read ***TaxNewsFlash***.

[5] Keep in mind that the Obama Administration proposals were put forth prior to the enactment of the significant tax law changes made by the law commonly referred to as the "Tax Cuts and Jobs Act" or "TCJA" (Pub. Law No. 115-97).

Treasury

On January 25, 2021, Janet Yellen, the former chair of the Federal Reserve, was confirmed as the new Secretary of the Treasury Department (Treasury). In her confirmation hearing before the Senate Finance Committee, Yellen indicated that the first priority would be providing economic relief immediately and that additional spending to fight the pandemic was necessary despite the debt it creates. She also indicated that that the Biden Administration would work over time for a second relief package; that she believed in a fair and progressive Tax Code where the wealthy and corporations pay their fair share; and that tax increases should be thought of, not in the abstract, but in the context of a larger investment program.[6] She also testified that it was necessary for U.S. companies to be competitive on taxes.

Treasury Department - Senate confirmed positions

Secretary	Asst. Secretary – International Markets & Development
Deputy Secretary	Asst. Secretary – International Affairs
Commissioner of Internal Revenue*	Asst. Secretary – Legislative Affairs
Comptroller of the Currency*	Asst. Secretary –Tax Policy
Director – Office of Financial Research#	Under Secretary – Terrorist Financing
Director – Office of Thrift Supervision*	Chief Financial Officer
Under Secretary – Domestic Finance	General Counsel
Under Secretary – Terrorism & Financial Intelligence	Chief Counsel – International Revenue Service
Under Secretary – International Affairs	Director of the Mint*
Asst. Secretary – Economic Policy	Inspector General
Asst. Secretary – Financial Institutions	Inspector General – Tax Administration
Asst. Secretary – Financial Markets	Special Inspector General – TARP
Asst. Secretary – Financial Stability	
Asst. Secretary – Intelligence & Analysis	
Asst. Secretary – International Finance	

* 5-year term
\# 6-year term

Source: Congressional Research Service

Treasury also has recently announced some temporary appointments. For example, Mark Mazur, who served as Treasury's Assistant Secretary for Tax Policy during the Obama Administration, is temporarily serving as Treasury's Deputy Assistant Secretary for Tax Policy, while Jeffrey Van Hove, who has years of both government and private sector tax experience, is temporarily serving as acting Assistant Secretary for Tax Policy.

Further, Treasury has filled several senior positions that do not require Senate confirmation, including:

- Tom West is the new Deputy Assistant Secretary for Domestic Business Tax in the Office of Tax Policy. Tom formerly was a principal with KPMG. He also previously served as Treasury tax legislative counsel during the Obama and Trump administrations.

- Kim Clausing, formerly an economist and tax professor with the UCLA School of Law, is Deputy Assistant Secretary for Tax Analysis.

[6] During her confirmation hearing, Secretary Yellen stated: "The President has said that eventually as part of a larger package that would include significant spending and investing proposals—but not right now while the pandemic is really depressing the economy—that he would want to repeal parts of the 2017 tax cuts that benefited the highest income Americans and large companies. And he wants to reverse the law's incentives to offshore operations and profits. But he's been very clear that he does not support a complete repeal of the 2017 tax law."

- Itai Grinberg, a law professor at Georgetown University who has previously served in the Office of the International Tax Counsel, is returning to Treasury as Deputy Assistant Secretary for Multilateral Tax in the Office of Tax Policy.

- Aruna Kalyanam, who recently served as Staff Director for the Select Revenue Measures Subcommittee of the House Ways and Means Committee, has joined Treasury's Office of Legislative Affairs as Deputy Assistant Secretary for Tax Policy and Budget.

- Rebecca Kysar, a Fordham law professor, will serve as counselor to the Assistant Secretary in the Office of Tax Policy.

Thus, even though Secretary Yellen is the only Treasury official requiring Senate confirmation who has been confirmed so far, Treasury has people in positions critical to fleshing out and advancing tax policy proposals quickly.

Regulatory freeze

On the evening of January 20, 2021, President Biden's Chief of Staff, Ronald A. Klain, issued a **memorandum** to the heads of executive departments and agencies regarding a freeze on new regulations and rules pending review by the new administration. This freeze affects some regulations and rules that the Trump Administration put into the pipeline for issuance.

The memorandum includes language indicating that the freeze applies to sub-regulatory guidance of general applicability with future effect, which could include revenue rulings, revenue procedures, notices, or frequently asked questions (FAQs). For more information, read ***TaxNewsFlash***.

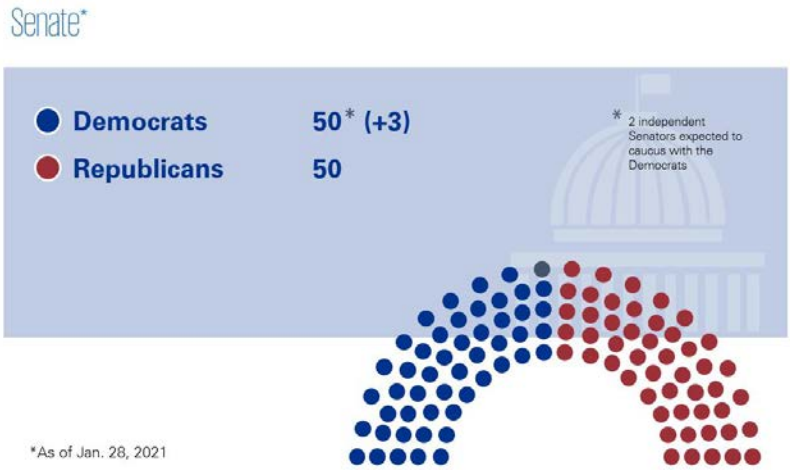
The new Congress

The new Congress (the 117th Congress) began on January 3, 2021, with the House narrowly controlled by Democrats and the Senate narrowly controlled by Republicans. On January 20, 2021, several hours after the inauguration, Democrats gained control of the Senate when the winners of two Georgia run-off elections, as well as the temporary replacement for former California Senator Kamala Harris, were sworn in as Senators.

The new Senate

Composition

On January 5, 2021, run-off elections were held in Georgia for two Senate seats. The results of these races were certified on January 19, 2021, and the winners were sworn in on January 20, 2021 (after the inauguration). Rev. Raphael Warnock (D) defeated Senator Kelly Loeffler (R) to fill the



remaining two years of the term of former Senator Johnny Isakson, who resigned in late 2019, and Jon Ossoff (D) defeated former Senator David Perdue, whose term expired at the end of 2020. [7]

In addition, Kamala Harris resigned her Senate seat on January 18, 2021, two days before being sworn in as vice president. California Governor Gavin Newsom (D) appointed Alex Padilla (D), formerly California's secretary of state, to temporarily fill Kamala Harris's Senate seat. Senator Padilla was sworn into the U.S. Senate at the same time as Senators Warnock and Ossoff.[8]

As a result, the Senate currently is split equally (50-50) between Republicans and Democrats (counting as Democrats two Independents who caucus with Democrats—Senators Bernie Sanders (VT) and Angus King (ME)). As vice president of the United States, Kamala Harris is president of the Senate and may vote in the Senate in the case of a tie. Thus, the Democrats control the Senate and its legislative agenda.

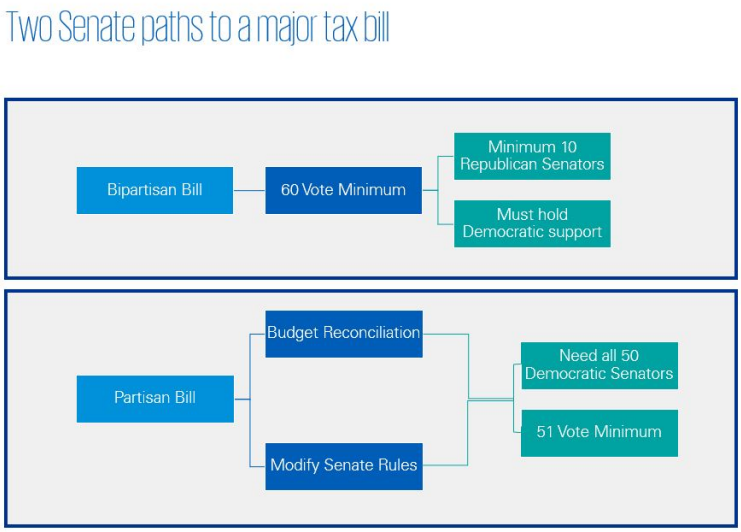
Leadership

Senator Schumer (D-NY) is the Senate majority leader, while Mitch McConnell (R-KY) is minority leader.

Power-sharing agreement

Given the 50-50 split between Democratic and Republican Senators, Leaders Schumer and McConnell negotiated a power-sharing agreement. The agreement provides for committees to have equal numbers of members of each party. It also allows Schumer or McConnell to move for a Senate floor vote to approve or disapprove the release to the full Senate a piece of legislation that received a tie during a committee vote on whether to report the bill to the full Senate. The agreement was approved by unanimous consent on February 3, 2021—two weeks after the Senate changed control.[9]

In January, before entering into the agreement, Minority Leader McConnell had indicated that Republicans would not agree to a power-sharing agreement unless Democrats agreed not to eliminate the filibuster. However, on January 25, 2021, McConnell said he was willing to proceed with reaching an agreement after two Democratic senators (Manchin (WV) and Sinema (AZ)) publicly stated that they opposed eliminating the filibuster. The filibuster rules are discussed below.



The filibuster and reconciliation rules

Senate cloture rules generally require 60 votes to end debate before

[7]Senator Loeffler had been appointed by Georgia's governor to temporarily fill the Senate seat of retired Senator Johnny Isakson pending a special election. As such, Warnock's term runs only until the end of 2022 (the scheduled end of Senator Isakson's term of office).

[8] Under California law, this seat will be on the ballot for a full six-year term during the 2022 mid-term election.

[9] For the period before the power-sharing agreement, chairs of Senate committees generally remained the same as in the 116th Congress, which was controlled by Republicans,

Senators can proceed to vote on legislation. Thus, absent 60 votes, one or more Senators can delay movement on legislation by filibustering—for example, by speaking at length on any topic.

As indicated above, Democratic Senators Manchin (WV) and Sinema (AZ) have stated that they oppose eliminating the filibuster. As a result, unless Senate Democrats (including Senators Manchin and Sinema) agree to modify the filibuster rules in some situations or Senators Manchin and Sinema change their views regarding eliminating the filibuster, bipartisan agreement generally would be needed for the Senate to move legislation with at least 60 votes.

Importantly, however, special "budget reconciliation" procedures allow some types of legislation, including tax legislation, to move through the Senate by only a majority vote, without being subject to a filibuster. Reconciliation procedures are set forth in the Congressional Budget Act of 1974 (as amended) and include complex and intricate rules that can affect the design and substance of legislation.[10] Under those procedures, as a very general matter:

- A reconciliation bill generally can only increase the deficit by an amount set forth in the budget resolution within the 10-year budget window and cannot increase the deficit at all in any year outside that window;
- Each provision in a reconciliation bill must modify spending or revenue and those changes cannot be "merely incidental" to the non-budgetary purpose of the provision;
- Only one reconciliation bill for a fiscal year can contain provisions related to each of revenue, entitlement spending, or the debt limit[11]—in other words there can be only one reconciliation bill with tax provisions for a fiscal year; and
- A reconciliation bill cannot contain changes to the OASDI program established by the Social Security Act or decrease social security trust fund surpluses (or increase such deficits).[12]

In order to put reconciliation into play, the House and Senate first have to agree to a joint budget resolution, which sets forth revenue and spending goals for the federal budget for the relevant fiscal year. Generally, a Congress only authorizes one budget resolution with respect to a fiscal year.

Because the 116th Congress did not agree to a budget resolution with respect to the current fiscal year that began October 1, 2020 (i.e., FY 2021), the 117th Congress could draft and pass a FY 2021 budget resolution prior to the end of the 2021 fiscal year (i.e., by September 30, 2021) that would provide instructions and spending and revenue targets for relevant committees to put together their parts of reconciliation legislation.[13] After that reconciliation legislation moves through Congress, the House and Senate could agree to another joint budget resolution with respect to FY 2022, thereby providing the opportunity for an additional reconciliation bill with tax provisions to be considered in 2021 (before or after the beginning of FY 2022 on October 1, 2021).[14] Once that legislation has moved through the

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[10] The TCJA passed the Senate on a party-line vote using budget reconciliation procedures. The use of these procedures resulted in design complexities such as phase-outs of individual rate reductions, "ramping up" of business revenue raisers in future years, and the lack of an official title and a table of contents.

[11] These three items could be addressed in three separate bills or in one or two bills addressing some combination of the three subjects.

[12] If an objection is raised as to whether the procedural requirements are satisfied, the Senate parliamentarian advises the Senate presiding officer on whether the procedural requirements are met.

[13] As indicated in note 11 *supra*, there could be up to three pieces of reconciliation legislation under a budget resolution—one dealing with revenue, one dealing with spending, and the other dealing with the debt limit.

[14] In other words, Congress does not have to wait until FY 2022 has begun to adopt a budget resolution and enact budget reconciliation measures for that fiscal year. However, Congress would have to wait to complete (or abandon) the FY 2021 effort

legislative process, Congress could even do another budget resolution with respect to FY 2023 that contemplates tax law changes. Thus, the 117th Congress could have multiple bites at the tax reconciliation apple.

Finance Committee

With the power-sharing agreement in place, Senator Wyden (D-OR) becomes chair of the Senate Finance Committee. Senator Wyden previously served as chair of the Finance Committee in 2014 and 2015.

Due to Republican term limits for committee chairmen and ranking members, Senator Crapo (R-ID) replaces Chairman Grassley (R-IA) as the top Republican on the committee. Senator Crapo has been a member of the committee since 2005.

Senate Finance Committee

Majority (14)	Minority (14)
– Ron Wyden, OR* – Chairman	– Mike Crapo, ID* – Ranking Member
– Debbie Stabenow, MI	– Chuck Grassley, IA*
– Maria Cantwell, WA	– John Cornyn, TX
– Bob Menendez, NJ	– John Thune, SD*
– Tom Carper, DE	– Richard Burr, NC* #
– Ben Cardin, MD	– Rob Portman, OH*#
– Sherrod Brown, OH	– Pat Toomey, PA*#
– Michael Bennet, CO*	– Tim Scott, SC*
– Bob Casey, PA	– Bill Cassidy, LA
– Mark Warner, VA	– James Lankford, OK*
– Sheldon Whitehouse, RI	– Steve Daines, MT
– Maggie Hassan, NH*	– Todd Young, IN*
– Catherine Cortez Masto, NV*	– Ben Sasse, NE
– Elizabeth Warren, MA	– John Barrasso, WY

*In Cycle 2022
Retiring

Chairman Wyden has indicated that he looks forward to taking the lead on President Biden's COVID-19 relief plan. Read the **press release**.

In a press briefing on January 13, 2021, Wyden also indicated that his priorities include raising the 21% corporate rate, eliminating incentives to shift jobs overseas, rewarding those who create U.S. jobs, using tax policy to help small businesses and communities of color, increasing the capital gains rate to the ordinary income rate, moving forward with his proposal to "mark to market" capital gains for the top

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before beginning the process for FY 2022 because the adoption of a budget resolution for a fiscal year ends the ability to move reconciliation legislation under a prior budget resolution.

0.01%,[15] closing the "carried interest loophole," making the child tax credit fully refundable, and expanding the earned income and child care tax credits.

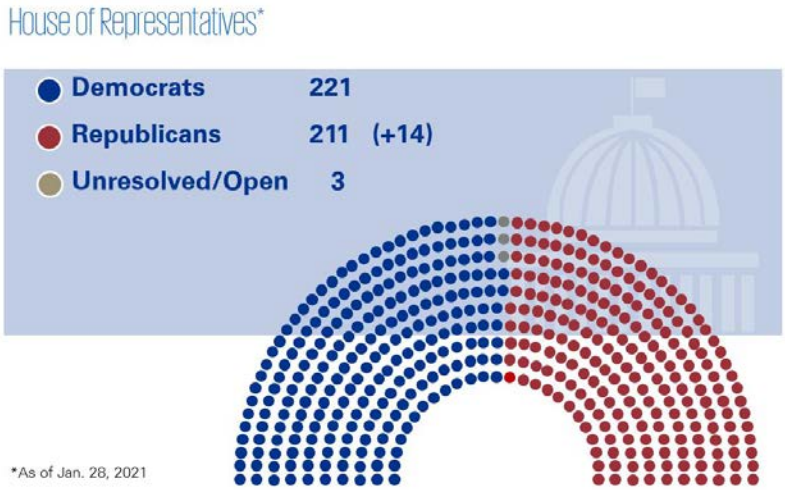
Further, in a **press release** regarding one of the new members of the Finance Committee, Senator Elizabeth Warren (D-MA), Senator Wyden indicated that he looked "forward to working with her on a range of issues, particularly fixing our broken tax code and ensuring billionaires and mega corporations pay their fair share." He further indicated that income inequality would be a major focus of his legislative and investigative work and that Senator Warren would play a significant role in advancing that agenda.

The new House

Composition

At the end of the previous Congress (the 116th Congress), the House consisted of 233 Democrats, 196 Republicans, one Libertarian, and five vacant seats.

At the start of the 117th Congress, Democrats held 222 House seats and Republicans held 211 House seats, with two vacant seats (one in Louisiana and the other in New York).[16] Thus, Democrats controlled the House by an 11-seat margin.



On January 15, 2021, however, Rep. Cedric Richmond (D-LA) resigned in anticipation of becoming a White House senior adviser and director of the Office of Public Engagement in the Biden Administration. In addition, President Biden has nominated two Democratic House members—Reps. Marcia Fudge (D-OH) and Deb Haaland (D-NM)—to cabinet positions.[17] Assuming both are confirmed by the Senate, their seats also would become vacant pending special elections, further reducing the margin of Democratic control at least temporarily.

Leadership

Nancy Pelosi (D-CA) remains Speaker of the House, while Kevin McCarthy (R-CA) continues to be the minority leader.

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[15] In the 116th Congress, Senator Wyden released a report describing a proposed mark-to-market system for taxing capital income of certain individuals who satisfy income or asset thresholds. Read ***TaxNewsFlash.***

[16] A special election will be held for the seat of Congressmen-elect Luke Letlow (R) of Louisiana, who died December 29, 2020, before taking the oath of office. This special election is currently scheduled for March 20, 2021. As of the release of this report, the race for New York's 22nd congressional district has not yet been called. Fewer than 30 votes separate the two candidates, and it remains unclear how and when that election will be resolved.

[17] Rep. Fudge has been nominated as Secretary of Housing and Urban Development while Rep. Haaland has been nominated as Secretary of the Department of the Interior. These nominations have not yet been approved by the Senate.

Ways and Means Committee

Rep. Neal (D-MA) continues to be chair of the House Committee on Ways and Means. Rep. Brady (R-TX) continues to be the ranking member.[18]

Ways & Means Committee

Majority	Minority
– Richard Neal, MA – Chairman	– Kevin Brady, TX, Chairman
– Lloyd Doggett, TX	– Devin Nunes, CA
– Mike Thompson, CA	– Vern Buchanan, FL
– John Larson, CT	– Adrian Smith, NE
– Earl Blumenauer, OR	– Kenny Marchant, TX
– Ron Kind, WI	– Tom Reed, NY
– Bill Pascrell Jr., NJ	– Mike Kelly, PA
– Danny Davis, IL	– George Holding, NC
– Linda Sánchez, CA	– Jason Smith, MO
– Brian Higgins, NY	– Tom Rice, SC
– Terri Sewell, AL	– David Schweikert, AZ
– Suzan DelBene, WA	– Jackie Walorski, IN
– Judy Chu, CA	– Darin LaHood, IL
– Gwen Moore, WI	– Brad Wenstrup, OH
– Dan Kildee, MI	– Jodey Arrington, TX
– Brendan Boyle, PA	– Drew Ferguson, GA
– Don Beyer, VA	– Ron Estes, KS
– Dwight Evans, PA	
– Brad Schneider, IL	
– Tom Suozzi, NY	
– Jimmy Panetta, CA	
– Stephanie Murphy, FL	
– Jimmy Gomez, CA	
– Steven Horsford, NV	
– Stacey Plaskett, VI	

In a **press release** issued on January 14, 2021, Chairman Neal applauded Biden's vision for the next COVID-19 relief package. Chairman Neal stated that "from extending unemployment insurance, to expanding key tax measures, to providing critical child care supports, this plan builds on several successful provisions spearheaded by the Ways and Means Committee that we know work." He also indicated that, after providing additional relief, the next step is "working together to make historic investments in our country's economic recovery, create new jobs, and build back better and more equitably than ever before."

Chairman Neal also has introduced his first bill in the 117th Congress—an updated version of legislation to address the multi-employer pension crisis (also known as the "Butch Lewis Act"). See Ways and Means **press release** dated January 21, 2021 for more information.

In addition, on January 11, 2021, Ways and Means Democrats released a "**framework to achieve health and economic equity**" that includes "pillars and policy priorities focusing on achieving equity in health and the economy that will steer the Committee's work in the 117th Congress and beyond." Tax

[18] House Democrats and House Republicans made their respective decisions regarding committee chairs and ranking members for the 117th Congress in December 2020.

proposals in this framework include:

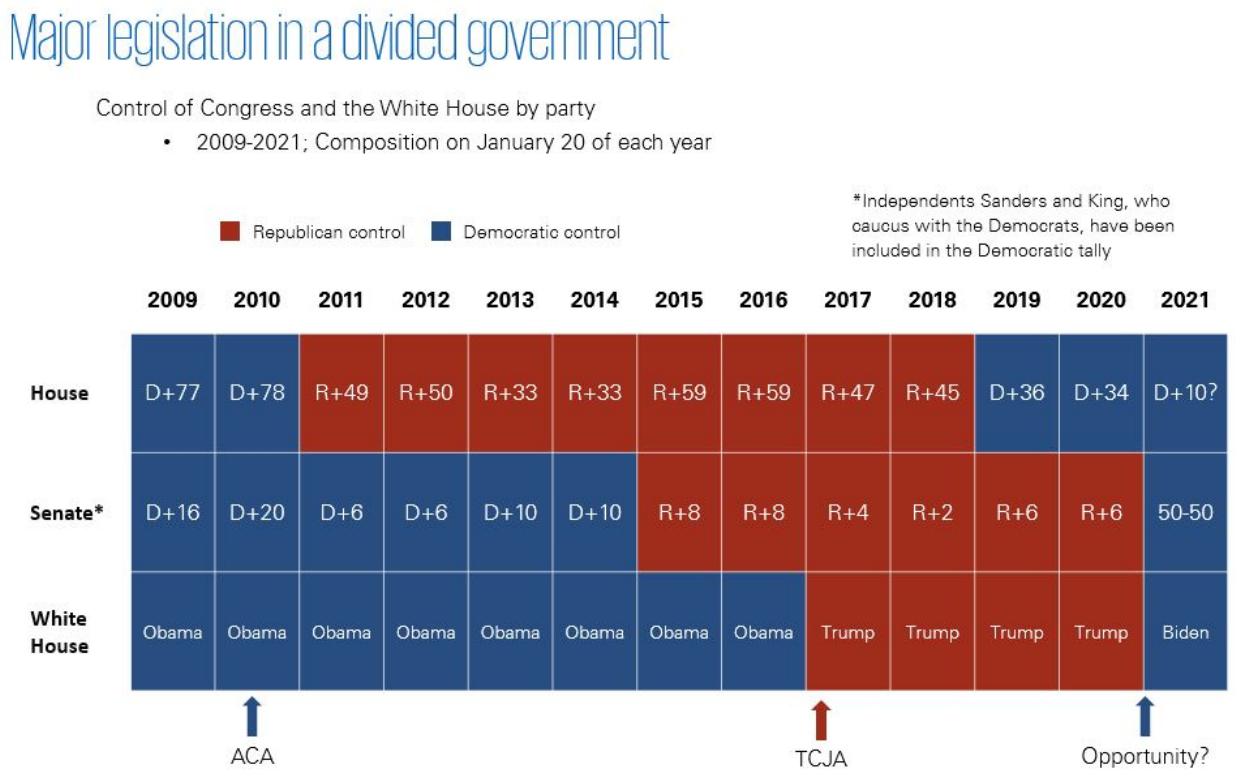
- Ensure that the employee retention tax credit (ERTC) helps companies the pandemic has harmed keep workers on the payroll
- Extend the work opportunity tax credit (WOTC)
- Increase the earned income tax credit (EITC) for childless workers, reduce the minimum age of eligibility from 25 to 19, and support extension of the EITC to U.S. possessions
- Expand and make fully refundable the child tax credit and improve access to that credit for residents of U.S. possessions
- Enhance the refundable portion of the American Opportunity Tax Credit
- Increase the amount of employer-sponsored dependent care individuals can receive without incurring tax liability
- Allow tax-paying immigrant families to qualify for economic stimulus payments
- Implement automatic IRAs and 401(k)'s and require automatic enrollment in "401(k)-type" plans
- Make the saver's credit refundable
- Adjust the provision regarding part-time workers in 401(k) plans to require only two years of service
- Make it easier for military spouses to save within their employer retirement plans
- Ensure that small businesses can take full advantage of the start-up credit when participating in a multiple employer plan (MEP)
- Provide deeper targeting of the low-income housing tax credit to those with extremely low incomes
- Increase investments in community facilities, housing, and other development in low-income communities through the new markets tax credit (NMTC) program and ensure that tribal areas receive a proportionate share of NMTC investments
- Provide enhanced bond incentives to state and local governments

Prospects for legislation

In general

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. As a result, major policy changes have often been possible in recent years only when one party controls the White House and both chambers of Congress. Indeed, both the 2017 tax law ((Pub. L. No. 115-97), commonly referred to as the "Tax Cuts and Jobs Act" (TCJA)) and the Affordable Care Act (ACA) were enacted under single party control using the budget reconciliation process, with no or very little minority-party support.[19]

[19] Note that passing major policy changes on a partisan basis can make it more difficult to fix mistakes that might be made in drafting the legislation. Further, it can result in instability in major policy areas given the possibility that the minority party at the time of enactment may subsequently take control of Congress and the White House.



Consequently, significant tax policy changes are more likely now than in the 116th Congress when the White House and Senate were controlled by Republicans but the House was controlled by Democrats. Moreover, based on President Biden's rescue and recovery proposals, his campaign proposals, and other public announcements by the Biden Administration and Congressional Democrats so far, tax law changes appear likely to be part of the legislative agenda for the 117th Congress.

Nonetheless, with small margins of control in both the House and the Senate, enacting major tax policy changes that could pass both chambers and become law still could be challenging. Some of the hurdles that need to be addressed include:

- As long as current filibuster rules continue to apply, Democrats would need to use budget reconciliation procedures to pass any tax bill that lacks sufficient Republican support to garner 60 votes in the Senate. As indicated in the **discussion above** using budget reconciliation would require the bill to comply with reconciliation requirements and could affect the design and substance of the bill. Moreover, using budget reconciliation procedures could require Democrats to package major tax policy changes together in a limited number of tax reconciliation bills.

- Even if budget reconciliation rules are used to pass legislation without significant Republican support, Democratic leadership in the House and Senate need to take into account political considerations—such as potentially differing views of progressive and moderate members of their caucuses—in assessing the substance of policy proposals included in a reconciliation bill and in counting Democratic votes in support of such legislation. Notably, if Democrats seek to move legislation that does not have any Republican support, they could not lose **any** Democratic votes in the Senate and could not lose many Democratic votes in the House.

  For example, as long as Democrats only control the Senate by virtue of the role of Vice President Harris, they either (1) would need **every** Democratic senator to support legislation or (2) would need

to at least get **some** Republicans on board. The potential need to secure the support of every Senate Democrat would give each Democratic senator tremendous power over the content of the bill, likely resulting in compromises affecting the substance and design of legislation.

Likewise, in the House, Speaker Pelosi faces the challenge of putting together legislation that almost all House Democrats will support, notwithstanding potentially different perspectives of different members of the Democratic caucus. Thus, reconciliation bills may need to be carefully crafted to garner the necessary support, which may require modifying proposals to secure the necessary votes as the legislation is being put together.

- The White House and Congressional Democrats have a host of policy priorities, many outside the tax realm. Election reform, for example, remains a front burner priority for Congressional Democrats, apart from the rescue and recovery initiatives. Democrats also recognize that they need to move high priority items quickly for a variety of reasons, including to demonstrate to their supporters that they can get things done ahead of the 2023 Congressional elections and to beat the clock in the event any unforeseen event might take place that could cause them to lose control of Congress.[20] The number of competing proposals viewed as urgent could crowd out action on some matters.

As 2021 progresses, the state of the overall economy and of particular economic sectors, as well as the state of COVID-19, also could affect which policy proposals move through Congress—as well as the technical details of those proposals.

Possible tax priorities

As explained below, Congress already has started to move forward with putting together legislation based on Biden's American Rescue Plan. After rescue legislation is enacted, Congressional Democrats and the Biden Administration are likely to turn to legislation based on Biden's Build Back Better Recovery

[20] Keep in mind that Senate control changed from Republican to Democrat in 2001 when then-Senator Jeffords from Vermont left the Republican party to become an Independent who caucused with the Democrats. Also, in January 2010, Republican Scott Brown won the Massachusetts Senate seat that had become vacant on the 2009 death of Edward Kennedy; this resulted in Senate Democrats no longer having the 60 votes needed to pass legislation and required the use of budget reconciliation to pass part of healthcare legislation.

Plan. Action on the recovery plan might be expected to take more time than on the rescue measure, with the process possibly taking several months.

Both rescue legislation and recovery legislation are likely to include some tax provisions. However, the tax law changes in the recovery measure might end up being more substantial overall than those in the initial rescue package.

Other tax measures also might be addressed by the 117th Congress, including relatively noncontroversial measures with bipartisan support.

Rescue package

As explained above, President Biden's rescue proposal includes nontax components as well as tax benefits and incentives (most of which are temporary), such as using the Tax Code to facilitate the IRS making additional direct payments to individuals, extending the refundable credit for certain paid leave programs, and extending and/or making more beneficial certain tax credits available to individuals. The fact sheet that accompanied the release of the plan does not mention revenue raisers.

Both House Speaker Pelosi and Senate Majority Leader Schumer have indicated that they would work expeditiously to turn the rescue plan into legislation that can pass both chambers of Congress and become law. The apparent goal is to enact the rescue legislation as quickly as is possible, given that some programs (such as enhanced unemployment benefits) are scheduled to expire in mid-March. Congress might make changes to the administration's proposal and the possible addition of some revenue-raising provisions cannot be ruled out. Congress can be expected to work closely with the administration in putting together the legislation.

Reaching consensus within a month or so could be challenging in the Senate, particularly given the beginning of impeachment proceedings the week of February 8, 2021. Nonetheless, Democrats likely already have done a lot of work and coordination behind the scenes and can build on past proposals (such as the HEROES Act that passed the House in the prior Congress but was not considered by the Senate). Thus, it is possible (although not certain) that rescue legislation might be enacted by mid-March, if not earlier.

At the time this report was drafted, Congressional Democrats were pursuing a two-track approach to a rescue package: (1) negotiating with Republicans to see if bipartisan consensus could be reached on rescue legislation while, at the same time, (2) using the budget reconciliation process as the path for moving legislation forward. To this end, Speaker Pelosi and Majority Leader Schumer unveiled budget resolutions for FY 2021 the week of February 1, 2021, that—if approved by both chambers—would instruct Congressional Committees to craft their respective parts of reconciliation legislation by February 16, 2021—i.e., very quickly. The budget resolutions provide for a reconciliation bill that may contain an increase in the deficit of approximately $1.9 trillion over the 10-year budget window.[21] According to a **press release** issued by Speaker Pelosi:

[21] In the House, the resolution instructs the Ways and Means Committee to submit changes in laws within its jurisdiction (to increase the deficit by no more than approximately $940.7 billion over the budget window. The Committee's jurisdiction includes taxation, tariffs and other revenue-raising measures, Social Security, unemployment insurance, Medicare, enforcement of child support laws, Temporary Assistance for Needy Families, and foster care and adoption programs.

> [t]he joint budget resolution . . . gives Congress an additional legislative tool to pass the urgently-needed bipartisan COVID relief legislation that enacts President Biden's comprehensive American Rescue Plan which helps defeat the virus and provide workers and families the resources they need to survive the pandemic while the vaccine is distributed to every American.
>
> Introduction of a joint budget resolution is the first step to potentially enacting a Budget Reconciliation bill, one legislative tool available to Congress to quickly pass bipartisan COVID relief legislation.

On February 3, 2021, the House passed the budget resolution by a mostly party-line vote of 218-212. On the previous day, Senators began debating the resolution, with a vote on final passage expected later in the week. During consideration of the budget resolution, Senators will be able to offer an unlimited number of amendments on the Senate floor. Given that the House and Senate ultimately need to agree to the same resolution, Senate Democrats generally might be expected to oppose amendments. If amendments are adopted, the House and Senate would need to resolve their differences so that each can approve the same resolution.

Once the resolution is approved by both chambers, House and Senate committees would craft their parts of the reconciliation bill based on the instructions provided in the budget resolution so that each chamber could put together its reconciliation bill. House and Senate leadership may need to be highly involved in this process to make sure that the legislation that ultimately is packaged together in each chamber can garner sufficient support to pass that chamber by a majority vote—keeping in mind the small margin by which Democrats control the House and the 50-50 composition of the Senate.

If the House and Senate pass different versions of rescue legislation, differences would need to be reconciled. Leadership, again, can be expected to be very involved in this process given the need for both the House and Senate to agree to identical legislation by a majority vote in each chamber before such legislation could be sent to President Biden for signature.

The chairs of the House and Senate budget committees can be expected to play a significant role in moving the reconciliation legislation. Rep. John Yarmuth (D-KY) is chair of the House Budget Committee, while Senator Bernie Sanders (I-VT) is chair of the Senate Budget Committee.

Recovery package

As explained above, President Biden is expected to provide more information on his "Build Back Better Recovery Plan" proposal in conjunction with an appearance before a joint session of Congress on February 23, 2021. Nonetheless, as a very general matter, he appears to be contemplating a massive bill that addresses multiple policy areas, including infrastructure, manufacturing, innovation, research and development, clean energy, investments in the caregiving economy, and worker training. He also has suggested that the costs of permanent investments may be paid for by making sure that everyone pays their fair share in taxes. As a result, the Build Back Better Plan might be a legislative vehicle for substantial tax law changes, including both tax incentives and revenue raisers.

Possible timing and legislative process

Given the potential for major changes in a number of different policy areas, the likely scale of the proposal, and the possible inclusion of some significant revenue raisers, the odds of much Republican support for a recovery package appear low. Thus, assuming the filibuster rules are not modified or

eliminated, Congressional Democrats likely would need to use budget reconciliation to move a legislative recovery package through the Senate with only a majority vote.

Assuming Democrats use budget reconciliation for FY 2021 to move rescue legislation, the House and Senate could adopt a FY 2022 budget resolution for a recovery package after action on the rescue legislation is completed.[22] Thus, for example, assuming the rescue package is enacted by the beginning or the middle of March, the House and Senate might move to a FY 2022 budget resolution shortly thereafter.

Reaching agreement between the House and Senate on an FY 2022 budget resolution that sets spending targets for major Democratic priorities such as clean energy, infrastructure, manufacturing, and training, however, could be a much more complex task than for the FY 2021 budget resolution with respect to rescue legislation and could take some time to put together.[23] House and Senate leadership can be expected to be highly involved in structuring a resolution that can garner sufficient Democratic support in both chambers. The chairs of the House and Senate budget committees also can be expected to be actively engaged in structuring the budget resolution and moving it through their respective chambers.

After the House and Senate agree to an FY 2022 joint budget resolution that provides reconciliation instructions, committees with jurisdiction over the multiple policy areas involved in the recovery package likely would proceed to put together their parts of the legislation, subject to dollar targets and instructions allocated to the various committees in the budget resolution. Given the likely scale and scope of the package, this could take some time and could require balancing competing priorities of different Democratic members. House and Senate leadership may need to be deeply involved in this process to make sure that the proposed legislation that ultimately is packaged together in each chamber can garner sufficient support to pass that chamber—keeping in mind the likely need to keep virtually every Democrat on board in the House and every Democrat on board in the Senate (assuming no Republican support). Senate Democratic leadership could have the additional challenge of ensuring that the proposed legislation, which will likely be a careful balance of varying priorities designed to garner the approval of every Democratic Senator, emerges from a likely active amendment process on the Senate floor still able to pass by a majority vote.

Assuming the House and Senate pass different versions of recovery legislation, differences would need to be reconciled and, ultimately, the House and Senate would have to agree to identical legislation. This process, again, could be challenging and may require significant involvement of leadership given the inability to lose many Democratic votes and the possibility of differing priorities between Senate and House Democrats.

Therefore, all in all, the process is likely to be complicated and, given the scope of the expected recovery bill and the numbers of policy priorities involved, might be expected to move significantly more slowly than the process associated with the rescue bill. It's also possible the process could fall apart at one or more points or that significant modifications to legislative proposals may be required, causing further delay. As a result, it might take several months for recovery legislation to move through the process.

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[22] As was explained in note 14 supra, adopting the FY 2022 budget resolution too soon could eliminate the ability to move the rescue plan through the Senate with only a majority vote.

[23] The House Budget Committee described the FY 2021 budget resolution as "not a comprehensive fiscal blueprint for the next 10 years. It is designed solely to provide the option of using reconciliation to deliver critical relief and achieve the goals of the American Rescue Plan. As such, the total spending and revenue levels in the resolution simply reflect current-law projections…" *The Budget Resolution and Reconciliation: An Alternative Path for the American Rescue Plan,"* House Committee on the Budget (February 1, 2021)

Possible tax provisions

Pending the release of more information, it would be reasonable to expect proposals set forth by Biden during the presidential campaign to be "on the menu" for inclusion in a recovery package. (See **discussion above** and **Exhibits A, B, and C**.) Consistent with the campaign proposals, the Administration's recovery package might include tax incentives and tax relief targeted to some taxpayers and industries, as well as possible revenue raisers with respect to others. Treasury and Congress also might consider some proposals made during the Obama Administration. (See **discussion above**.)

Although Congressional Democrats might be expected to give considerable deference to President Biden's views as to what the tax package ought to include, Congress is likely to add, subtract, or modify proposals as a package moves through the legislative process. Some of these changes might reflect priorities of key members of Congress (such as the chairs and members of the House and Senate tax-writing committees), while others might reflect the need to secure the necessary number of votes for passage in both chambers. Further, some proposals might need to be modified or eliminated simply because of the need to meet budget reconciliation requirements.

The extent to which revenue raisers ultimately are included in recovery legislation and the details of any raisers that are included might be expected to depend on a variety of factors, including how much the overall rescue plan costs; how much of those costs the Administration and Congressional Democrats decide should be offset (rather than deficit-financed); the extent to which the Administration and Congress might decide to redistribute income tax liability; how much revenue the Administration and Congressional Democrats determine should be raised from corporations relative to higher income individuals or other sources; whether macroeconomic estimates are provided for any components of the bill (such as infrastructure); and the state of the economy at the time the bill is being put together. If the economy is still struggling, some tax increases might be modified, phased in, or have delayed effective dates.

Moreover, given that some revenue raisers might be supported by some Democrats but opposed by other Democrats, the Administration and Congressional leadership can be expected to be sensitive to how including particular raisers might affect the ability to move the bill through both the House and the Senate given the potential need to secure the vote of every Democratic Senator and virtually every Democratic House member. Thus, political considerations might affect the substance and size of tax increases as well as whether phase-ins or delayed effective dates are employed.

Effective dates for revenue raisers

Effective dates can take a variety of forms and can be keyed off a variety of different dates, including, for example, the date of enactment, the beginning or end of a tax year, the date of action by a tax-writing committee, the date of a public announcement, or the date of a binding agreement, transaction, or other event.

Retroactive tax increases are not uncommon in the case of anti-abuse measures but are rare in the case of increases in rates of existing taxes. Nonetheless, there are historical precedents for tax rate increases being applied retroactively. For example, the Omnibus Budget Reconciliation Act of 1993 ("OBRA '93"),[24] which was enacted on August 10, 1993, generally provided for higher income tax rates for some individuals and corporations effective for tax years beginning after December 31, 1992.[25] OBRA '93 also

[24] Public. Law No. 103-66.

[25] Individuals could elect to pay the increased tax liability attributable to the new rate over a three-year period without interest or penalty; fiscal year corporations were required to use a "blended rate" for the fiscal year that included January 1, 1993. OBRA '93

reinstated the two highest estate and gift tax rates that had expired at the end of 1992, effective for decedents dying, gifts made, and generation-skipping transfers occurring after December 31, 1992.[26]

In terms of the "legality" of retroactive tax law changes, the Supreme Court has upheld some retroactive changes to existing tax laws against challenge under the "due process" clause of the U.S. Constitution. As discussed in *Mertens Law of Federal Income Taxation*:

> Retroactive taxation is allowed because taxation is neither a penalty imposed on the taxpayer nor a liability which the taxpayer assumes by contract, but rather a method of apportioning the cost of government among those who enjoy its benefits and who must bear the resulting burdens. In addition, some limited retroactivity may be necessary as a practical matter to prevent the revenue loss that would result if taxpayers, aware of a likely impending change in the law, were permitted to order their affairs to avoid the effect of change.[27]

Thus, Congress could include in recovery legislation retroactive increases in rates of existing taxes. Nonetheless, it appears increasingly unlikely that they would do so, particularly given the likely inability to lose **any** Democratic votes in the Senate or to lose more than a small number of Democratic votes in the House. Concerns about the fragile state of the economy also could raise concerns about increasing rates retroactively. Further, the likelihood that recovery legislation might take some time to enact might lower the odds of any rate increases being retroactive to the beginning of the year.

Other possible tax bills

The Biden Administration and the 117th Congress might pursue tax legislation other than as part of repair and recovery legislation. While it is possible that some such legislation might have little if any Republican support, other legislation might have significant bipartisan support.

For example, Congress might address relatively noncontroversial measures to enhance retirement savings or to extend provisions that are scheduled to expire in the next couple of years. Congress might also postpone or eliminate changes scheduled to go into effect in 2022 with respect to the treatment of research and experimentation expenditures and to the business interest deductibility limit (assuming these are not addressed in recovery legislation).

It's also worth considering whether the ongoing BEPS 2.0 project work at the OECD could be the impetus for significant future bipartisan tax legislation. For example, if the OECD work produces an agreement on new sourcing rules and global taxing rights, the United States might propose new tax legislation in response to 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 U.S. companies. This too could lead to a U.S. tax response, possibly on a bipartisan basis.

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was enacted during the first year of the Clinton Administration. President Clinton was sworn into office on January 20, 1993. Thus, the rate increases applied to a portion of January during which George W. Bush was still president.

[26] Even some prospective tax law changes have had retroactive elements. For example, the Tax Reform Act of 1986, which was enacted on October 22, 1986, generally eliminated preferential treatment of capital gains for tax years beginning after December 31, 1986. However, the provision generally applied even when the sale or transaction that gave rise to the gain occurred in a prior year.

[27] See Mertens §4.15, Retroactivity. Case cites omitted from quote. See also Treatise on Const. L. § 15.9(a)(iv), Retroactive Tax Legislation.

Additional resources

KPMG's ***Catching up on Capitol Hill* podcast series** includes insights from KPMG professionals about current developments in Washington and what might happen next. So far, around 30 podcasts have been released that cover topics relating to the rescue and recovery proposals, the organization of the 117th Congress, the possible 2021 tax agenda, Biden's campaign tax proposals, COVID-19, regulatory matters, and more. Additional podcasts will be released soon.

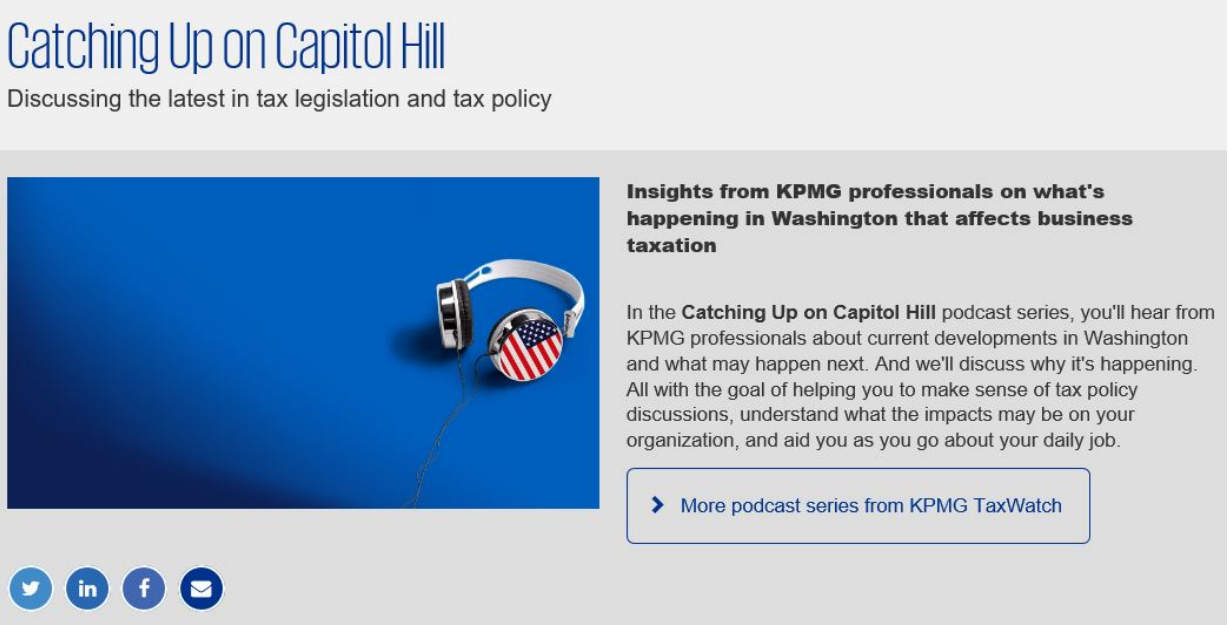

Exhibit A - General business campaign proposals

Business – General campaign proposals

TOPIC	CITE TO CAMPAIGN PLAN OR OTHERWISE
Increase statutory corporate tax rate from 21% to 28%	Plan to Invest in Middle Class Competitiveness and Climate Change Plan reference generally.
Create a new corporate minimum tax of 15% on global book income of $100 million or more	Widely reported
Phase out section 199A deduction for individuals with over $400,000 in taxable income	Widely reported

Business – Domestic manufacturing campaign proposals

TOPIC	CITE TO CAMPAIGN PLAN OR OTHERWISE
Provide Manufacturing Communities Tax Credit that promotes revitalizing, renovating, and modernizing existing or recently closed down facilities; expand and extend tax credits that "turbocharge" growth in domestic manufacturing; provide 10% advanceable credit to companies making investments in domestic manufacturing by revitalizing closed facilities, retooling existing facilities, "reshoring" production to United States, or (possibly) increasing manufacturing wages	Plan to Ensure the Future Is "Made in All of America" by All of America's Workers; Plan to Invest in Middle Class Competitiveness; Fact Sheet on the Biden-Harris Plan to Fight for Workers by Delivering on Buy America and Make It in America (released on September 9, 2020)
Establish new incentives (including tax credits) for companies to make critical new products in United States	Plan to Ensure the Future Is "Made in All of America" by All of America's Workers; Plan to Rebuild U.S. Supply Chains and Ensure the U.S. Does Not Face Future Shortages of Critical Equipment

Business - International campaign proposals

TOPIC	CITE TO CAMPAIGN PLAN OR OTHERWISE
Increase Global Intangible Low Tax Income ("GILTI") rate from 10.5% to 21%.	Fact Sheet on the Biden-Harris Plan to Fight for Workers by Delivering on Buy America and Make It in America (released on September 9, 2020)
End TCJA incentives that "allow multinationals to dramatically lower taxes on income earned overseas"	Plan to Ensure the Future Is "Made in All of America" by All of America's Workers; Fact Sheet on the Biden-Harris Plan to Fight for Workers by Delivering on Buy America and Make It in America (released on September 9, 2020)
Establish "claw back" provision to force a company to return tax benefits when it closes down U.S. jobs and send jobs overseas; deny deductions and expensing write-offs "for moving jobs or production overseas – where those jobs could plausibly be offered to American workers"	Plan to Ensure the Future Is "Made in All of America" by All of America's Workers; Fact Sheet on the Biden-Harris Plan to Fight for Workers by Delivering on Buy America and Make It in America (released on September 9, 2020).
Offshoring tax penalty –10% surtax on certain profits of U.S. companies with offshore production that sell back to the United States	Fact Sheet on the Biden-Harris Plan to Fight for Workers by Delivering on Buy America and Make It in America (released on September 9, 2020)
Confront global tax secrecy and avoidance	Plan to Ensure the Future Is "Made in All of America" by All of America's Worker's; tax havens also mentioned generally in Plan to Invest in Middle Class Competitiveness and Climate Change Plan
Tighten anti-inversion rules	Plan to Ensure the Future Is "Made in All of America" by All of America's Worker's; Fact Sheet on the Biden-Harris Plan to Fight for Workers by Delivering on Buy America and Make It in America (released on September 9, 2020)

Business - Pharmaceuticals campaign proposals

TOPIC	CITE TO CAMPAIGN PLAN OR OTHERWISE
Change Tax Code to eliminate incentives for pharmaceutical and other companies to move production overseas; pursue other Tax Code changes to encourage pharmaceutical production in United States	Plan to Ensure the Future Is "Made in All of America" by All of America's Worker's; Plan to Rebuild U.S. Supply Chains and Ensure the U.S. Does Not Face Future Shortages of Critical Equipment
Tax penalty on drug manufacturers that increase costs of certain drugs over general inflation rate	Plan for Older Americans
Terminate pharmaceutical corporations' tax break for advertising spending	Plan for Older Americans; Plan for Health Care; Plan to End the Opioid Crisis
Oblique reference to raising taxes on profits of pharmaceuticals to offset costs of responding to opioid crisis	Plan to End the Opioid Crisis

Business - Energy campaign proposals

TOPIC	CITE TO CAMPAIGN PLAN OR OTHERWISE
Reform and extend tax incentives that generate energy efficiency and clean energy jobs	Plan to build a Modern, Sustainable Infrastructure and an Equitable Clean Energy Future
"Double down" on research investments and tax incentives for technology that captures and permanently sequesters or utilizes carbon	Plan to build a Modern, Sustainable Infrastructure and an Equitable Clean Energy Future; Climate Change Plan
Tax credits to help businesses upgrade equipment and processes, invest in new or expanded factories, and deploy low-carbon technologies	Plan to Invest in Middle Class Competitiveness/Infrastructure; Climate Change Plan
Repeal fossil fuel subsidies	Mentioned generally in Plan to Invest in Middle Class Competitiveness/Infrastructure; Climate Change Plan
Restore full electric-vehicle credit (possibly targeted to middle class consumers and to domestic made vehicles)	Plan to Invest in Middle Class Competitiveness/Infrastructure; Climate Change Plan
Reinstate tax credits for residential energy efficiency	Plan to Invest in Middle Class Competitiveness/Infrastructure
Expand tax deductions for energy retrofits, smart metering systems, and other emissions-reducing equipment in commercial buildings	Plan to Invest in Middle Class Competitiveness/Infrastructure
Reinstate solar investment tax credit, slated to scale back in two years	Plan to Invest in Middle Class Competitiveness/Infrastructure

Business - Opportunity zones/housing & community credits/real estate campaign proposals

TOPIC	CITE TO CAMPAIGN PLAN OR OTHERWISE
Expand and make permanent the new markets tax credit (NMTC)	Lift Every Voice: The Biden Plan for Black America; Plan to Invest in Middle Class Competitiveness; Plan for Investing in Our Communities through Housing; Plan to Build Back Better by Advancing Racial Equity across the American Economy
Expand low-income housing tax credit	Lift Every Voice: the Biden Plan for Black America; Plan for Investing in Our Communities through Housing
Expand tax deductions for energy retrofits, smart metering systems, and other emissions-reducing equipment in commercial buildings	Plan to Invest in Middle Class Competitiveness/Infrastructure
Possibly, repeal like-kind exchange rules (potentially only for investors with incomes in excess of $400,000)	Widely reported
Limit ability of investors to use real estate losses (possibly only for investors with incomes in excess of $400,000) – details not specified but might involve changes to passive activity loss rules, depreciation rules, or loss limitation rules	Widely reported
Direct Treasury to review Qualified Opportunity Zone benefits to ensure they are only being allowed where there are clear economic, social, and economic benefits to a community and not just high returns (like from luxury apartments and luxury hotels). Require detailed reporting and public disclosure by recipients of zone tax breaks regarding impact on local residents, including poverty status, housing affordability, and job creation.	Plan to Build Back Better by Advancing Racial Equity across the American Economy
See "Individuals" chart for incentives for buyers and renters and "Business-Other Credits" for child care construction credit	

Business –Financial institutions campaign proposals

TOPIC	CITE TO CAMPAIGN PLAN OR OTHERWISE
Tax liabilities of "ultra large banks to promote financial stability and fund investments in American productivity" – possibly with "over $50 billion in assets" threshold for applicability	Unity Task Force Recommendations; Plan for Investing in Our Communities through Housing references using taxes on large financial institutions as revenue offset

Business - Other campaign proposals

TOPIC	CITE TO CAMPAIGN PLAN OR OTHERWISE
Childcare construction tax credit to encourage businesses to build childcare facilities at places of work	Plan to Build Back Better by Advancing Racial Equity across the American Economy
Increase tax credits for small businesses to improve accessibility and comply with the Americans with Disabilities Act	Plan for Full Participation and Equality for People with Disabilities
Provide an employer hiring a person with a disability a tax credit of up to $5,000 the first year and $2,500 if the worker completes a second year of employment, and up to $30,000 in tax credits to improve workplace accessibility	Plan for Full Participation and Equality for People with Disabilities
Refundable tax credit to reimburse companies and nonprofits for extra costs of providing full health benefits of all workers during a period of work hour reductions	Plan to Scale Up Employment Insurance by Reforming Short-Time Compensation Programs
Expand work opportunity tax credit (WOTC) to include military spouses	Plan to Fulfill Our Commitment to Military Families, Caregivers, and Survivors
Tighten independent contractor classification rules	Widely reported
See Retirement Savings & Qualified Plans for small business savings plan tax credits	

Exhibit B – Individual and estate campaign proposals

Individuals – Revenue raisers campaign proposals

TOPIC	CITE TO CAMPAIGN PLAN OR OTHERWISE
Increase top individual tax rate to 39.6% for taxpayers with income over $400,000 (with whether threshold varies by filing status not specified)	Referenced generally in Plan for Health Care
Phase out section 199A deduction for individuals with over $400,000 in taxable income	Widely reported
Cap tax benefits of itemized deductions at 28% of value	Widely reported
Phase out itemized deductions for taxpayers with income over $400,000	Widely reported
Subject wages in excess of $400,000 to OASDI portion of Social Security tax.	Lift Every Voice: The Biden Plan for Black America; Plan for Older Americans
Increase capital gains and qualified dividends tax rate for individuals with over $1 million in income by adding a fourth bracket for long-term capital gains and qualifying dividends at a 39.6% rate.	Referenced generally in Plan for Health Care
Limit ability of wealthy taxpayers to defer and avoid taxes on income (especially that relates to financial investments) – not specified, but might relate to "marking to market" investments	Included in Unity Task Force Recommendations
Close loopholes allowing the "super wealthy" to avoid taxes on capital gains altogether	Plan for Health Care
Increase tax compliance with respect to high income earners	Press reports of Caregiving Economy Plan

Individuals – Credits & other campaign proposals

TOPIC	CITE TO CAMPAIGN PLAN OR OTHERWISE
Increase refundability of child and dependent care tax credits to 100% and provide for credits to be "advanceable"	Unity Task Force Recommendations
Increase child and dependent care tax credit up to $8,000	Plan for Full Participation and Equality for People with Disabilities
Refundable and advanceable tax credit of up to $15,000 to help families purchase first homes	Plan for Full Participation and Equality for People with Disabilities; Lift Every Voice: The Biden Plan for Black America; Plan for Investing in Our Communities through Housing; Plan to Build Back Better by Advancing Racial Equity across the American Economy
Renter's tax credit to reduce rent and utilities to 30% of income of certain low-income individuals	Plan for Investing in Our Communities through Housing; Plan to Build Back Better by Advancing Racial Equity across the American Economy
Low and middle income family refundable tax credit of as much as $8,000 to help pay for child care	The Biden Agenda for Women
Expand earned income tax credit (EITC) for childless workers over 65	Plan for Older Americans and Retirement
Expand Affordable Care Act (ACA) premium tax credit; other changes to lower premiums and deductibles through changes in credit calculations	Plan for Full Participation and Equality for People with Disabilities; Lift Every Voice: The Biden Plan for Black America; Plan for Health Care
$5,000 tax credit for informal caregivers	Plan for Full Participation and Equality for People with Disabilities; The Biden Agenda for Women; Plan to Fulfill Our Commitment to Military Families, Caregivers, and Survivors (in context of veterans); Plan for Older Americans
Student loan debt forgiven through income-based repayment program not taxed	Plan for Education beyond High School
Downpayment assistance for buying or renting safe quality housing through refundable and advanceable credit	Plan for Investing in Our Communities through Housing
Tax credit for families to renovate distressed properties in distressed communities (Neighborhood Homes Investment Act)	Plan to Build Back Better by Advancing Racial Equity across the American Economy
Temporary expansion of child tax credit for an indeterminate period depending on the course of the pandemic as proposed in House-passed "HEROES" bill (i.e., increase the credit to $3,000 or $3,600 per child depending on child's age, make credit fully refundable, and allow families to choose monthly payments)	A Tale of Two Tax Policies campaign website document

Death/estates campaign proposals

TOPIC	CITE TO CAMPAIGN PLAN OR OTHERWISE
Tax unrealized capital gains at death, using the proposed increased capital gains and dividend rates, or eliminate stepped up basis at death.	Widely reported
Reduce the estate tax exemption possibly to 2009 levels.	Plan to Support Women During the Covid-19 Crisis.

Exhibit C - Retirement savings, qualified plan, and ABLE plan campaign proposals

Retirement savings, qualified plans, etc. campaign proposals

TOPIC	***CITE TO CAMPAIGN PLAN OR OTHERWISE***
Tax credits for small businesses to offset much of costs of workplace savings plans. Provide that almost all workers without 401(k) or pension have access to "automatic 401(k)," providing opportunity to save for retirement	Plan to Build Back Better by Advancing Racial Equity across the American Economy; Plan for Older Americans and Retirement
Equalize tax benefits of defined contribution plans across the income scale so that low and middle income workers get a deferral tax break when put money away for retirement (possibly through refundable tax credit mechanism)	Lift Every Voice: The Biden Plan for Black America; Plan for Older Americans and Retirement; Plan to Build Back Better by Advancing Racial Equity across the American Economy
Remove penalties for caregivers who want to save for retirement by allowing them to make catch up contributions even if they're not earning income in the formal labor market	Lift Every Voice: The Biden Plan for Black America
Expand access to tax-advantaged "ABLE" accounts, providing people with disabilities a way to pay for qualified disability-related expenses	Plan for Full Participation and Equality for People with Disabilities
Treat recovering from domestic violence or sexual assault as qualifying condition for hardship withdrawal	Plan to End Violence against Women
Allow survivors of domestic violence or sexual assault to take distributions from retirement savings without penalty to achieve safer life	Plan to End Violence against Women

Contact us

For questions on legislative matters, contact a professional in the Federal Legislative and Regulatory Services group of KPMG's Washington National Tax:

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