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Tax Law Changes:

Proposals vs. Proposed Legislation to Date

Tax Proposals

Proposals to increase seemingly every income tax rate abound. Still, it's important to note that – as of this writing – all are merely just that: proposals. None are yet included in bills introduced in either the House or the Senate. As such, there are few details and no proposed legislation to study and decipher.

Various proposals have been reported to:

- Raise the corporate tax rate from 21% to 28%.
- Increase the top marginal income tax rate to 39.6% for those with over $400,000 in income.
- Tax capital gains at the top marginal ordinary income tax rate for those with more than $1M in income.
- Cap the itemized deduction tax benefit to 28% for those with over $400,000 in income.
- Subject wages in excess of $400,000 to the Social Security payroll tax.

Tax Legislation

Two bills have been introduced in the Senate and a third has been announced. Again, bear in mind that proposed legislation is simply that – proposed. Changes can come in committee, on the floors of the House and Senate and in conference committee.

S. 510, Ultra-Millionaire Tax Act of 2021, introduced by Sen. Warren on March 1, 2021:

- Tax household net wealth above $50 million at a 2% rate per year and above $1 billion at a 3% rate.

S. 994, For the 99.5% Act, introduced by Sen. Sanders on March 25, 2021:

- Reduce current exemption from $11.7M to $3.5M, not indexed.
- Increase transfer tax rates from current max of 40% to rates from 45% to as high as 65%.
- Separate gift tax exemption and lower it to $1M, not indexed.
- Eliminate marketability and lack of control discounts for non-business assets.
- Require minimum 10-year period for GRATs (a financial instrument used in gifting and estate planning to minimize taxes) and eliminate zeroed-out GRATs by requiring a remainder interest gift amount "determined as of the time of the transfer, which is not less than an amount equal to the greater of 25% of the fair market value of the property in the trust or $500,000".
- Include in a client's gross estate the value of those assets owned by grantor trusts reduced only by taxable gifts made to the trust (current grantor trusts grandfathered but new additions not grandfathered).
- Limit the application of the GST (generation skipping trust) exemption to a maximum of 50 years.
- Remove the present interest requirement for annual exclusion gifts (still indexed) but then cap any gifts to a trust by two times the annual exclusion (regardless of number of beneficiaries).
- Effective dates vary with some effective on the date of enactment and others on 1/1/2022.

Sensible Taxation and Equity Promotion (STEP) Act, discussion draft released by Sen. Van Hollen on March 29, 2021:

- Any property transferred by gift, in trust, or upon death treated as sold for its fair market value to the transferee on the date of such gift, death, or transfer.
- Up to $1M of unrealized capital gains per individual excluded over lifetime or death.
- Up to $250,000 per individual or $500,000 per married couple from the sale of a principal residence exempted.
- Any income taxes paid deducted against any estate tax due.
- Assets held in non-grantor trust deemed sold every 21 years, triggering gain on any unrealized appreciation.
- Income tax owed upon death can be paid over 15 years; no extension for income tax owed for lifetime gifts.
- Effective date is retroactive to 1/1/2021.

Keep Current & Proceed with Caution

Tax uncertainty may be at an all-time high. It is up to individual clients and their tax and legal advisors to determine what, if any, steps may be needed now. Given the myriad moving parts, it's prudent to expect many changes between what is proposed and what is finally enacted.