



CENTRAL INTELLIGENCE: SPECIAL EDITION

November 2016

Tax Proposals of President-Elect Donald J. Trump

On November 9, 2016, Donald J. Trump was elected the 45th President of the United States. To give our readers some background against which to contemplate what may lie ahead, we offer this summary of the major tax proposals enunciated by President-Elect Trump during the campaign. It is well to remember that these represent proposals suggested before the election and may well not ultimately be pursued in exactly the same form. Likewise, any such proposals would have to be introduced and passed by both houses of the U.S. legislature before becoming law. While the Republicans now control both the House and the Senate, the members of both houses will be likely to impose their own thinking and will upon any tax proposal that becomes law. Thus, the reader should not interpret these proposals as what will eventually come to be law, but at this point merely what has been suggested by the campaign of the President-Elect in the very many months leading up to the election. Finally, please remember that during any campaign, all proposals tend to be fairly broad-brush products, intending that the particulars will be worked out in the legislative drafting phase.

Trump Tax Proposal Summary

Transfer Taxes: Federal estate taxation would be eliminated. (Many commentators also interpret the published proposals to include elimination of gift and generation-skipping transfer taxation as well, but the proposals released by the Trump campaign make no specific mention of these taxes. The released proposals contain no specific provisions related to the existing step-up in tax basis for property received from a decedent. However, the proposals state that "capital gains held until death and valued over \$10 million will be subject to tax." While not entirely clear, this appears to suggest that the step-up in basis for property received from a decedent under §1014 of the Internal Revenue Code would still be available for estate values up to \$10 million. It is not clear whether taxation of amounts in excess of the \$10 million would be due at the time of death or simply as a function of carry-over basis at such time as the property is disposed of by beneficiaries.

The proposals also state that "[t]o prevent abuse, contributions of appreciated assets into a private charity established by the decedent or the decedent's relatives will be disallowed." Presumably, this means that deductions for such contributions would be limited to the amount of the decedent's basis at the time of death.

Some thoughts: If enacted as proposed, tax and estate planning would be deeply affected. Estate planning has always been about much more than estate and gift tax planning, and primarily about providing for the recipients of the client's bounty according to the client's wishes and goals. The federal estate tax has been repealed many times before, and estate and death taxes of the many states are in constant flux. The Trump tax proposals may change some client's short-term tax goals, but long-term estate planning should discount its effect.

Income Taxes – Individuals: The current seven income tax brackets would be replaced with three brackets as set forth below. This table represents the income brackets for married taxpayers filing jointly; the brackets for single taxpayers would be precisely one-half the income amounts.

| INCOME | ORDINARY | CAPITAL GAINS |
|-------------------------|----------|---------------|
| < \$75,000 | 12% | 0% |
| \$75,000 but <\$225,000 | 25% | 15% |
| \$225,000 and greater | 33% | 20% |

Carried interest, most common to private equity arrangements and hedge funds, would be taxed as ordinary income. The 3.8% net investment income tax under IRC §1411 on certain types of income in excess of income thresholds (e.g., \$250,000 for married filing jointly) would be eliminated. The alternative minimum tax imposed under IRC §55 et seq., would be eliminated as well.

The standard deduction for married taxpayers filing jointly would be increased from its current level of \$12,600 to \$30,000 and from \$6,300 to \$15,000 for taxpayers filing single. Personal exemptions would be eliminated (claimed for the filing taxpayer and spouse, \$4,050 each for tax year 2016). Itemized deductions would be capped at \$100,000 for taxpayers filing single and at \$200,000 for married filing jointly. Presumably, the Pease limitation on itemized deductions would be repealed as well. The Pease limitation phases out itemized deductions for taxpayers over certain income levels (in 2016, \$259,400 single and \$311,300 married).

Costs of childcare and care of the elderly would be deductible up to an average cost set for the state of domicile of the taxpayer for households with income below \$250,000 filing single and \$500,000 married filing jointly. Tax-favored savings accounts would be created to provide incentive to savings for school tuition and the care of the children and elderly parents of the taxpayer.

Income Taxes – Business: Income of corporations is currently taxed at six rates (15, 25, 34, 35, 38, and 39%) applied across eight brackets; these brackets result in a flat rate of 35% for taxable income in excess of \$18,333,333. These brackets would be replaced with a single rate of 15% that would be applied to all businesses regardless of size. As with individual income taxation, the alternative minimum tax would be eliminated. Businesses engaged in manufacturing within the United States would be allowed by formal election to choose to expense capital investment currently or, in the alternative, to deduct corporate interest expense. Once made, this election could only be revoked within three years of the election. If revoked, returns for prior years must be amended to conform to the revised status.

The annual tax-credit cap for businesses that provide on-site childcare would be increased from \$150,000 to \$500,000 and the recapture period would be decreased from ten years to five years. Furthermore, businesses that pay some or all of employees' childcare expenses would be able to exclude such payments from the taxable income of the business. (An employee receiving such a benefit must include its value in taxable income for income tax purposes, however.)

Currently deferred foreign profits of businesses subject to U.S. income taxation would incur a one-time "deemed repatriation" tax at a flat rate of 10%.

Note: It is not clear how the corporate income tax rate changes above are intended to apply to income earned by so-called “pass-through” entities such as partnerships, subchapter S corporations, limited liability companies electing to be taxed as partnerships, etc. The proposals appear to make the proposed low corporate tax rate of 15% “available to all businesses, both small and large,” which would seem to include such pass-throughs. However, strict application of existing tax provisions, but employing the proposed flat 15% corporate rate, would dramatically shift the tax considerations of choice of entity without an articulated policy foundation.

This is what has been provided thus far. The coming months will give a developing and more focused view of what the final proposals will be, how the legislature is responding to the proposals, and therefore one would expect a more useful estimation to what future tax environment within which our clients will be planning. John Hancock Advanced Markets will be watching and will report to you all that will be useful for you to know.

Further details of Donald Trump’s tax plan can be found on his official campaign web site:
<https://www.donaldjtrump.com/policies/tax-plan/?/positions/tax-reform>

Correction: A previous version of this Special Edition CI stated that President-Elect Trump proposed to repeal both the estate and gift tax. Although commentators have indicated that the gift tax likely could be repealed if the estate tax is repealed, Trump’s current position on the gift tax is unclear.

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LIFE-7022 12/16 MLINY111616164

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