TAX ALERT

An Overview of Presidential Candidates' Tax Plans

Now that the races are down to a manageable number of candidates, we want to provide some information on their tax proposals (as of May 17th). No political commentary, just an overview to help keep you informed. Although many of these proposals may never become law, they nonetheless provide valuable insight into the underlying principles that will guide tax reform efforts from the next president.

Hillary Clinton

Ms. Clinton's proposals include significant details. Many are identical or at least very similar to changes proposed by President Obama over the past few years:

Ms. Clinton would reform individual taxes by:

Individual Tax Reform
. . . Imposing the "Buffett rule" requiring taxpayers earning more than $1 million per year to pay at least 30% in taxes, and "broadening the base of income subject to the rule."
. . . Enacting the "Fair Share Surcharge"-i.e., an extra 4% surtax on taxpayers who make more than $5 million per year.
. . . Cutting taxes for "hard-working families."
. . . Establishing a 20% "caregiver credit" to help taxpayers offset up to $6,000 in caregiving costs (for a maximum credit of $1,200) for their elderly family members.
. . . Modifying the treatment of capital gains for taxpayers in the highest bracket by implementing a graduated holding period where the rate decreases, from 39.6% to 20%, over a 6-year period, to promote long-term investment.
. . . Limiting the tax value of certain tax breaks, primarily retirement plan contributions and itemized deductions, to 28%.

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An Overview of Presidential Candidates' Tax Plans (cont.)

Ms. Clinton's business tax proposals include:

Business Tax Reform
. . . Restricting corporate inversions by increasing, from 20% to 50%, the post-merger threshold of foreign shareholder ownership for an American company to be considered foreign.
. . . Imposing an "exit tax" on companies that undergo an inversion to ensure that U.S. taxes are paid on unrepatriated earnings held overseas.
. . . Cracking down on earnings stripping.
. . . Creating a $1,500 "apprenticeship tax credit" for every new worker that a business trains and hires.
. . . Providing for a new 15% tax credit for employers that share profits with their workers.
. . . Creating tax incentives to encourage investment in communities that have faced (or are about to face) significant manufacturing job losses.
. . . Simplifying tax filing and providing targeted tax relief for small businesses.
. . . Modifying and reauthorizing the "Build America Bond" program.
. . . Imposing a risk fee on large banks and financial institutions (generally, those with more than $50 billion in assets and/or which have been designated by regulators for "enhanced oversight").
. . . Imposing a tax on high-frequency trading.
. . . Ending "wasteful tax subsidies" for oil and gas companies.

Ms. Clinton would modify the estate and gift tax system by:

Estate Tax Reform
. . . Exempting the first $3.5 million of an individual's estate from estate tax ($7 million for married couples), without adjustment for inflation. Currently roughly the first $5.4 million ($10.8 million for married couples) is exempt and subject to annual inflation adjustments.
. . . Increasing the top rate to 45%.
. . . Capping the lifetime gift tax exemption at $1 million.

An Overview of Presidential Candidates' Tax Plans (cont.)

Other tax reform proposals of Ms. Clinton include:

Miscellaneous Tax Reform
. . . Providing a tax credit of up to $5,000 (per family) for consumers buying health coverage on Affordable Care Act exchanges, to offset a portion of out-of-pocket and premium costs above 5% of their income.
. . . Enhancing the premium tax credit so that taxpayers eligible for it would pay less of a percentage of their income than under current law, and ensuring that families purchasing on the exchange won't spend more than 8.5% of their income for premiums.
. . . Ending the "carried interest loophole" (under which private equity and hedge fund managers are taxed at capital gains rather than ordinary income rates on fund income).
. . . Preventing tax avoidance by closing the "Bermuda reinsurance loophole" (essentially, a way to divert investment income to an insurance company set up in a low-tax jurisdiction like Bermuda).
. . . Preventing taxpayers with "mega IRAs" from contributing further.
. . . "Asking the wealthiest to contribute more" to Social Security, including "options to tax some of their income above the current Social Security cap, and taxing some of their income not currently taken into account by the Social Security system."

Bernie Sanders

While it now appears clear that Mr. Sanders will not secure the Democratic nomination, many of his policies have been widely embraced by the Democratic voter base. As a result, some of those policies may eventually end up as part of Ms. Clinton's proposals.

Mr. Sanders would leave the existing rates in place for married couples with income below $250,000 and single filers with incomes below $200,000. However, he would replace the existing top three rates (of 33%, 35%, and 39.6%) as follows:

Individual Tax Reform
. . . 37% on income between $250,000 and $500,000;
. . . 43% on income between $500,000 and $2 million;
. . . 48% on income between $2 million and $10 million; and
. . . 52% on income of $10 million and above.

An Overview of Presidential Candidates' Tax Plans (cont.)

Mr. Sanders would also replace the alternative minimum tax (AMT), personal exemption phase-out (PEP), and "Pease" limitation on itemized deductions with a provision limiting the tax savings for each dollar of deductions to 28¢ for "high-income households."

In addition, he would repeal the favorable rates on capital gains and dividends for married couples with incomes over $250,000 (which would instead be subject to the otherwise applicable income tax rates noted above), while retaining the existing favorable treatment for taxpayers who fall under that threshold. He would also increase the 3.8% surtax on net investment income to 10%.

Mrs. Sanders' tax plan would:

Business Tax Reform
. . . End deferral of foreign-source income, instead requiring corporations to pay U.S. taxes on offshore profits as they are earned.
. . . Not allow a corporation to "claim to be from another country" if its management and control operations are primarily located in the U.S.
. . . Prevent American companies from using corporate inversions to avoid U.S. taxes by treating a corporation as American for tax purposes if it is still majority-owned by U.S. interests.
. . . Not allow U.S. corporations to "artificially inflate or accelerate foreign tax credits" by limiting foreign tax credits to offset income only from the country in which it is earned.
. . . Eliminate favorable tax provisions and subsidies that benefit oil, natural gas, and coal interests.

Mr. Sanders would significantly reform the estate tax by:

Estate Tax Reform
. . . Exempting the first $3.5 million of an individual's estate from the estate tax.
. . . Establishing a new progressive estate tax rate structure: 45% on the value of an estate between $3.5 million and $10 million; 50% for the value of an estate between $10 million and $50 million; and 55% for the value of an estate in excess of $50 million, with an "additional billionaire's surtax" of 10%.
. . . Strengthen the generation-skipping tax by applying it with no exclusion to any trust set up to last more than 50 years.
. . . Preventing perceived abuses of grantor retained annuity trusts (GRATs) by barring donors from taking assets back from these trusts just a couple of years after establishing them to avoid gift taxes (while earnings on the assets are left to heirs tax-free).
. . . Limiting the annual exclusion from gift tax for gifts made to trusts.
. . . Closing "other loopholes in the estate and gift tax, including valuation discounts."
. . . Protecting farm land (by allowing farmers to reduce the value of their farmland by up to $3 million for estate tax purposes) and conservation easements (by increasing the maximum exclusion for them to $2 million).

An Overview of Presidential Candidates' Tax Plans (cont.)

Mr. Sanders would also:

Miscellaneous Tax Reform
. . . Enact a "Wall Street" or "financial transaction" tax on trades of stock (0.5%), bonds (0.1%), and derivatives (0.005%).
. . . Eliminate the cap on the Social Security wage base (for 2016, $118,500) so that everyone pays the same percentage of their income.
. . . End the "carried interest loophole."
. . . Enact a new payroll tax to fund paid family and medical leave.
. . . Create a 6.2% income-based health care payroll tax paid by employers, and a 2.2% income-based tax paid by households (both referred to as "premiums"), to help fund Medicare for all.

Donald Trump

Mr. Trump has not yet provided a significant amount of detail. Without speculating, highlights of his plan thus far include:

The individual tax rates under Mr. Trump's tax plan would be:

Individual Tax Reform
. . . 0% for single filers earning up to $25,000, married filers earning up to $50,000, and heads of household earning up to $37,500;
. . . 10% for single filers earning $25,001 to $50,000, married filers earning $50,001 to $100,000, and heads of household earning $37,501 to $75,000;
. . . 20% for single earners earning $50,001 to $150,000, married filers earning $100,001 to $300,000, and heads of household earning $75,001 to $225,000; and
. . . 25% for single filers earning $150,001 and up, married filers earning $300,001 and up, and heads of household earning $225,001 and up.
The long-term capital gain and dividend rates would be:
. . . 0% for taxpayers in the 0% and 10% income tax rate brackets;
. . . 15% for taxpayers in the 15% income tax rate bracket; and
. . . 20% for taxpayers in the 25% income tax rate bracket.

According to Mr. Trump's website, with these reductions in rates, "many of the current exemptions and deductions will become unnecessary or redundant." His plan also calls for "steepening the curve" of the "PEP" and "Pease" limitations. Taxpayers in the 10% brackets would keep "all or most" of their current deductions, those in the 20% bracket would keep "more than half" of their current deductions, and those in the 25% bracket would keep "fewer" deductions. Two of the most popular deductions, charitable giving and mortgage interest deductions, would remain unchanged for everyone. Mr. Trump would also allow individuals to fully deduct health insurance premium payments.

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Mr. Trump's tax plan would cut the corporate tax rate to 15% and also create a new "business income tax rate" within the personal tax code (i.e., because pass-through entities are subject to taxation under individual rates) that would match the 15% corporate tax rate for pass-through businesses and freelancers. Other business tax reforms include:

Business Tax Reform
. . . Providing a one-time deemed repatriation of corporate cash held overseas at a 10% rate.
. . . Ending deferral of taxes on corporate income earned abroad.
. . . Reducing or eliminating corporate deductions that "cater to special interests," as well as "deductions made unnecessary or redundant" by the new lower rates, and phasing in a "reasonable cap" on the deductibility of business interest expenses.

Estate Tax Reform
Mr. Trump's tax plan would eliminate the estate tax.

Other reforms proposed by Mr. Trump include:

Miscellaneous Tax Reform
. . . Ending the current tax treatment of carried interest.
. . . Repealing the Affordable Care Act.