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News Alert: Tax Hikes for Wealth Transfers on the Negotiating Table

Increasing taxes on wealth transfers is particularly attractive to President Biden and the Congressional majority party—especially since there is such an extreme need for tax revenues. After months of campaign promises and speculation about how Democrats may hike taxes, specific legislative proposals are starting to trickle into the public domain.

Over the past few weeks, a number of bills that could impact wealth transfer planning have been introduced in Congress. President Biden, on the other hand, has only released his proposals for corporate, international, and similar business taxes so far, intended to pay for his “American Jobs Plan” proposal for infrastructure investment. Biden has indicated he will offer personal tax proposals in a few more weeks, to pay for his forthcoming “American Families Plan.”

For the 99.5 Percent Act

On March 25, Senator Bernie Sanders, joined by Sens. Kirsten Gillibrand, Sheldon Whitehouse, Chris Van Hollen, and Jack Reed, reintroduced a package of estate and gift tax changes similar to bills he has authored a few times in previous years. Key provisions of the latest bill would:

- Establish a \$3.5 million estate tax exclusion, down from \$11.7 million currently.
- Increase the gift and estate tax rates from the current flat 40% to 45% for the excess value over \$3.5 million, 50% for the excess over \$10 million, 55% for the excess over \$50 million, and 65% for the excess over \$1 billion.
- Limit *annual* exclusion gifts to trusts and certain other restricted gifts to twice the standard exclusion amount (i.e. \$30,000), even if the trust has Crummey withdrawal rights for more than two beneficiaries. Limit *lifetime* gift exclusion to \$1 million.
- Eliminate many valuation discounts, especially for the transfer of “nonbusiness” assets.
- Eliminate short-term zeroed out grantor-retained annuity trusts (GRATs).
- Eliminate the benefit of using certain techniques such as a sale, exchange, or comparable transaction with a grantor trust.
- Require generation skipping transfer tax (GSTT) exempt trusts to terminate within 50 years after the date the trust is created.

Changes to exclusion amounts and tax rates would be effective after December 31, 2021; most of the other changes would be effective on the date of enactment.

Sensible Taxation and Equity Promotion (STEP) Act

On March 29, Senator Chris Van Hollen—together with Senators Cory Booker, Bernie Sanders, Sheldon Whitehouse, and Elizabeth Warren—introduced legislation to “close the stepped-up basis loophole,” treating gifts and bequests (other than between spouses or certain charities) as realization events for recognizing capital gains.¹ At death, \$1 million would be excluded from the capital gains tax, and an aggregate of \$100,000 in gains would be excluded for lifetime gifts. (These exclusions would be in addition to the \$250,000 per person exclusion for gains on the sale of a primary residence.) Additional rules would limit the use of trusts to avoid or reduce these taxes. These changes would be retroactive to January 1, 2021. Representative Bill Pascrell, Jr. also introduced a similar bill in the House of Representatives on the same day (H.R. 2286), but his proposal would become effective *after* December 31, 2021.

What Is the Significance of These Proposals?

It is unlikely that any of these bills will be enacted in full as stand-alone legislation, at least as long as Republicans are able to filibuster their passage in the Senate. However, if legislation is moved under “budget reconciliation” procedures, it only needs simple majority support to move through the Senate. Even so, there are limits on the types of legislative language that can be included under budget reconciliation, and with a razor thin majority, Democrats will need to be very strategic about crafting it to have support from both the left and centrist flanks of the party. President Biden’s priority legislative packages are likely to be the only viable vehicles for tax increases because of consistent Republican opposition.

Various pieces of these Congressional proposals may well be incorporated into Biden’s personal tax proposals in the coming weeks. In addition, more arcane changes that are not patently “tax increases,” such as limiting the longevity of GST-exempt trusts, could be included in bipartisan legislation to offset spending or tax cuts elsewhere. Some changes, such as limiting valuation discounts, could even be made through Treasury regulations and not require Congressional action at all.

Preparing Clients

Some form of tax increases on the transfer of wealth appear to be imminent, though the exact terms and timing are still up in the air. Clients should talk with their tax professionals as soon as possible. (See [Preparing Clients for a Quick Estate Planning Pivot](#) for techniques to maximize flexibility when funding trusts in the face of this uncertainty.) And perhaps even more so than ever, clients should definitely consider life insurance as a trust-funding vehicle with unique tax attributes that are not directly impacted by these proposals.

The potential for political and tax changes is on your clients’ minds. Show your value with timely strategies for helping your clients stay ahead of the game. Need help starting the conversation? Contact your Crump representative today.

¹ Losses may only be accounted for at death and not lifetime transfers.



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