

2016 Tax Policies Of The Major Presidential Candidates

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Special Report

HIGHLIGHTS

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Major Presidential Candidates Describe Tax Policies

Americans go to the polls November 8, 2016, to elect the 45th President of the United States. The next President will play a key role in shaping tax policy and possibly reforming the entire Tax Code. This special briefing describes the tax policies of the candidates of the two major parties: Hillary Clinton, the Democratic candidate for President and Donald Trump, the Republican candidate for President.

NOTE. Between the date of publication of this briefing and Election Day, the positions of the candidates may change. Wolters Kluwer has based this briefing on what it considers accurate, nonpartisan and unbiased information at the time of publication. The candidates are presented in alphabetical order.

COMMENT. The next President is likely to take up tax reform. The Protecting Americans from Tax Hikes Act of 2015 (PATH Act) as well as the American Tax Relief Act of 2012 (ATRA) were “mini” tax reform bills in that both laws made permanent a number of temporary items, including the existing individual tax rates, federal estate tax, research tax credit, and many tax extenders. Lawmakers from both sides of the aisle have cited the PATH Act and ATRA as examples of bipartisan tax reform.

INDIVIDUAL TAXATION

Both candidates have proposals related to individual tax rates, credits and deductions.

Income Tax Rates

Under current law, individual income tax rates are 10, 15, 25, 28, 33, 35, and 39.6 percent.

Clinton

Clinton has proposed a four percent “Fair Share Surcharge” on the “top 0.02 percent of taxpayers on their incomes over \$5 million per year.” Clinton also has endorsed the so-called “Buffett Rule,” to ensure that “no millionaire would pay a lower effective rate than their secretary.”

Trump

Trump has proposed three individual tax rates: 12, 25 and 33 percent.

COMMENT. Trump has indicated he would partially fund these tax decreases through limiting the value of deductions, especially among higher-income taxpayers. Trump has said that those in the highest bracket “will keep fewer deductions.” Two deductions, however, will apparently remain available at full value and to all income levels: the charitable deduction and the mortgage interest deduction, based on Trump’s campaign materials.

COMMENT. The 12, 25 and 33 percent rates proposed by Trump are the same as rates proposed by House Republicans.

Capital Gains/Dividends

Under current law, qualified capital gains and dividends are taxed at zero percent for taxpayers in the 10 and 15 percent income tax brackets, 15 percent for taxpayers in

the 25, 28, 33, and 35 percent brackets, and 20 percent for taxpayers in the 39.6 percent bracket.

Clinton

Clinton has proposed “raising capital gains rates for short-term trading in order to encourage long-term investment.” Clinton also said that she would “explore additional measures to prevent high-income taxpayers from misclassifying income as capital gains.”

Trump

Trump’s campaign materials do not describe any specific changes to the capital gains and dividends tax rates.

Alternative Minimum Tax (AMT)

For federal tax purposes, a parallel tax structure -- the AMT -- exists to ensure that individuals, corporations, estates, and trusts with substantial income do not avoid tax liability.

Clinton

Clinton’s campaign materials do not describe any changes to the AMT.

Trump

Trump has proposed to eliminate the AMT.

COMMENT. Loophole closing and deduction limits proposed by both candidates effectively weaken the case for continuing an AMT that is viewed as overly complex and a trap for certain taxpayers within income ranges that the original AMT did not envision. One of the more practical reasons for keeping the AMT has been an inability to replace it as a significant revenue source. Major tax reform may provide enough net revenues otherwise available to offset the cost of eliminating the AMT.

Net Investment Income (NII) Tax

The Affordable Care Act (ACA) imposes a 3.8 percent tax on net investment income (NII tax) of qualified taxpayers with income above certain threshold amounts.

Clinton

Clinton has expressed her support for the ACA, and presumably this includes the NII tax.

Trump

Trump has proposed to repeal the ACA, and has not mentioned any specific carryover of the NII tax.

COMMENT. Some taxpayers have commented that the NII tax has become complex beyond what Congress had intended to be a relatively simple tax.

Additional Medicare Tax

The ACA imposes an Additional Medicare Tax on qualified taxpayers with income above certain threshold amounts.

Clinton

Clinton has expressed her support for the ACA, and presumably this includes the Additional Medicare Tax.

Trump

Trump has proposed to repeal the ACA, and presumably this includes the Additional Medicare Tax.

Federal Estate Tax

For estates of decedents dying after December 31, 2012, the maximum federal estate tax rate is 40 percent with an inflation-adjusted \$5 million exclusion (inflation-adjusted to \$5.45 million in 2016).

Clinton

Clinton has proposed to restore the federal estate tax to the parameters in effect in 2009 (a maximum estate tax rate of 45 percent with a \$3.5 million exclusion).

Trump

Trump has proposed to repeal the federal estate tax.

INDIVIDUAL TAX INCENTIVES

Both candidates have proposed measures addressing certain individual tax deductions and credits.

Child Tax Incentives

Both candidates have proposed tax incentives for taxpayers with children.

Clinton

Clinton has proposed up to a \$1,200 tax credit for caregiver expenses. The Democratic Party platform has proposed that the “child tax credit should be expanded, for example, by making more of it refundable, or indexed to inflation.”

Trump

Trump has proposed to “help reduce the cost of childcare by allowing parents to fully deduct the average cost of childcare spending from their taxes.”

Education

Education incentives include the American Opportunity Tax Credit (AOTC), the Lifetime Learning credit, the tuition and fees deduction, the deduction for student loan interest and, among others.

Clinton

Clinton’s campaign materials do not describe any specific changes to the AOTC or other education incentives. However, Clinton has called for tax relief from college costs for middle-income families.

Trump

Trump’s campaign materials do not specifically discuss the AOTC or other education incentives over and above capping deductions and credits based upon tax bracket.

Charitable Giving

A deduction is available to individuals for their qualified charitable contributions, subject to certain rules and limitations.

Clinton

Clinton has proposed no changes to the charitable giving deduction.

Trump

Trump has proposed no changes to the charitable giving deduction.

COMMENT. Both parties have cited the need to preserve the unique “American way” of supporting charities primarily through private donations, in contrast to many governments that fund the arts, community programs, and even some religious organizations directly.

COMMENT. *Trump's campaign has indicated that the candidate would support repeal of the prohibition on churches endorsing candidates for public office and engaging in certain political activities. Clinton's campaign has not addressed this.*

Mortgage Interest Deduction

Qualified mortgage interest may be deductible if it is paid or accrued during the tax year on acquisition and/or home equity indebtedness secured by the taxpayer's principal or second residence, subject to certain limitations.

Clinton

Clinton has proposed no changes to the current mortgage interest deduction.

Trump

Trump has proposed no changes to the current mortgage interest deduction.

COMMENT. *In considering tax reform proposals in the past, elimination of the mortgage interest deduction has been off-limits for most politicians. Nevertheless, Congress has been successful in limiting the size of the mortgage interest deduction by both a \$1.1 million mortgage cap and including it in the Pease limitation on overall itemized deductions. Further reduction of the value of the mortgage interest deduction for higher-income taxpayers might be expected in the future.*

Pease Limitation/Personal Exemption Phaseout

The Pease limitation reduces the total amount of a higher-income taxpayer's otherwise allowable itemized deductions, subject to certain limitations. The Personal Exemption Phaseout (PEP) reduces the total amount of exemptions that may be claimed by higher-income taxpayers.

Clinton

Clinton has proposed to limit the value of itemized deductions to 28 percent for higher-bracket taxpayers.

Trump

Trump has proposed to "steepen the curve of the Personal Exemption Phaseout and the Pease Limitation on itemized deductions."

Carried Interest

Both candidates have proposals related to carried interest.

Clinton

Clinton has proposed to "close the carried interest loophole that allows taxpayers to avoid paying ordinary income tax rates on what is essentially remuneration for services."

Trump

Trump has proposed to "eliminate the carried interest deduction."

BUSINESS TAXATION

Both candidates have a number of proposals related to business taxation.

Corporate Tax Rates

The maximum corporate tax rate currently tops out at 35 percent.

Clinton

Clinton's campaign materials do not describe any specific change to the corporate tax rate. Clinton has called for unspecified measures to "broaden the tax base" in order to lower the rate as a necessary component to being more competitive in the global economy.

Trump

Trump has proposed to reduce the maximum corporate tax rate to 15 percent. Trump would also tax all business income at the 15 percent rate, including income passed through from S corporations and partnerships, or earned by freelancers.

COMMENT. *Trump's campaign materials do not discuss how to coordinate any difference between the 15 percent rate for freelancers and the projected top rate for individual wage earners.*

Small Businesses

Both candidates have tax proposals for small businesses.

Clinton

Clinton has stated that she will release new plans to "simplify tax filings for millions of small businesses." Clinton would also promote immediate expensing for small businesses.

Trump

Trump has proposed a new "business income tax rate within the personal income tax code that matches the 15 percent corporate tax rate."

COMMENT. *This equivalent treatment for corporations and other types of taxable business entities raises the issue of double taxation for corporations, once at the corporate level and again to shareholders as dividends or capital gains distributions. Neither candidate has gone into detail on this issue.*

BUSINESS TAX INCENTIVES

Both candidates have proposed reforms to some business tax incentives as well as proposing new incentives.

Clinton

Clinton has proposed a tax credit for businesses that hire apprentices at \$1,500 per apprentice and a "bonus on that tax credit to businesses providing opportunities specifically for young people." Clinton also has proposed a "Manufacturing Renaissance Tax Credit."

Trump

Trump has proposed "reducing or eliminating some corporate loopholes that cater to special interests, as well as deductions made unnecessary by the new lower tax rate on corporations and business income." Additionally, Trump has proposed "to allow businesses to immediately expense new business investments."

ENERGY

Various tax incentives promote energy production, efficiency and conservation.

Clinton

Clinton has proposed to extend and expand the New Markets Tax Credit (NMTC) program “to all communities suffering from a decline in coal production or a coal plant closure.” Additionally, Clinton has proposed “closing tax loopholes for oil and gas companies” to pay for a clean-energy plan.

Trump

Trump’s campaign materials do not discuss specific tax proposals related to energy.

INTERNATIONAL

The candidates address international tax in several ways.

Repatriation

The American Jobs Creation Act of 2004 (AJCA) temporarily allowed U.S. companies to repatriate earnings from their foreign subsidiaries at a reduced tax rate, subject to certain limitations.

Clinton

Clinton’s campaign materials do not discuss any specific repatriation tax proposals.

Trump

Trump has proposed a one-time deemed repatriation of “corporate cash held overseas at a discounted 10 percent tax rate.” Additionally, Trump has proposed to end the deferral of taxes on corporate income earned abroad. The foreign tax credit, however, would remain, according to Trump’s campaign materials.

Insourcing

Both candidates have broadly discussed “insourcing” jobs.

Clinton

Clinton has proposed “to provide support for companies that move jobs and production back to the U.S. from abroad.”

Trump

Trump’s campaign materials do not specifically discuss “insourcing” from the tax

perspective although a major campaign theme is to “bring jobs back to the United States.”

TAXES AND HEALTH CARE

Since passage of the ACA, taxes and health care have become more intertwined than in previous years. The ACA created a number of new taxes and fees.

Clinton

Clinton would retain the ACA but change certain parts. Clinton would, among other things, support Medicare buy-ins for people over 55 years old; lower copays and reduce the cost of prescription drugs; incentivize states to expand Medicaid; and repeal the excise tax on high-dollar health plans (so-called “Cadillac plan” tax).

Trump

Trump would repeal the ACA, although also saying that he would keep “the good parts.” Trump has also indicated that he would address the rising cost of prescription drugs.

SOME TAX REFORM BILLS AWAITING ACTION IN CONGRESS

Before recessing for an extended summer break, the House and Senate, and their respective tax writing committees, took up a number of tax bills, including:

- **Restoring Access to Medication and Improving Health Savings Bill of 2016 (HR 1270)** – to repeal the prohibition on using health FSA dollars to pay for over-the-counter medication – approved by House, awaiting vote in Senate.
- **Small Business Health Care Relief Bill (HR 5447)** – to allow small employers to continue using pre-tax dollars to give employees a defined contribution for health-care expenses – approved by House, awaiting Senate action.
- **Stolen Identity Refund Fraud Prevention Bill (Sen 3157)** – to provide guidelines for the IRS in handling stolen identity refund fraud cases and increase the criminal penalty for tax-related identity theft - before the Senate Finance Committee.
- **First-Time Homebuyer Credit Bill (Sen 3175)** – to create a permanent first-time homebuyer tax credit – before the Senate Finance Committee.
- **Olympians and Paralympians Bill (Sen 2650)** – to exempt Olympic medals and prizes from income tax – approved by the Senate, awaiting House action.
- **Clyde-Hirsch-Sowers RESPECT Bill (HR 5523)** – to limit the IRS’s civil asset forfeiture authority – awaiting House vote.

TAX REFORM

“Tax reform” has been a label placed upon a variety of proposals recently, both in scope and scale. Both candidates characterize their proposed changes to the Tax Code as “tax reform.” More frequently in the spotlight, however, have been changes to the tax rates and tax benefits aligned with the candidates’ overall positions.

COMMENT. *Tax reform, whether part of a “grand bargain” of sweeping scope or part of a patchwork of improvements to the existing system, will turn on a number of variables. Will the new President characterize victory in the polls as a mandate? Will the Democrats win control of the Senate? And will the new President be willing to expend his or her political capital to move a sweeping tax law forward in 2017. Or will the new President’s early capital be used in other areas, such as immigration or trade, even though tax changes are high on both Trump and Clinton’s to-do list.*