



2021 Tax Unknown: The Risk in the Uncertainty

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CORPORATE UNCERTAINTY

- Corporate Tax Rates
- GILTI
- Ownership reporting for non-public companies

INDIVIDUAL UNCERTAINTY

- Individual Ordinary Income Tax Rates
- Individual Capital Gains Tax Rates
- Deductions
- Estate Tax Rates and Exemptions
- Common estate planning techniques

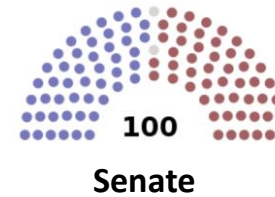
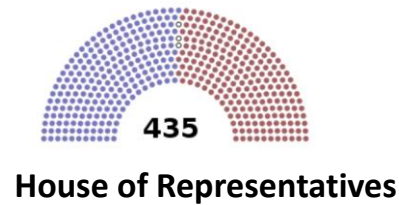
TRUSTS UNCERTAINTY

- All of the above, plus reporting

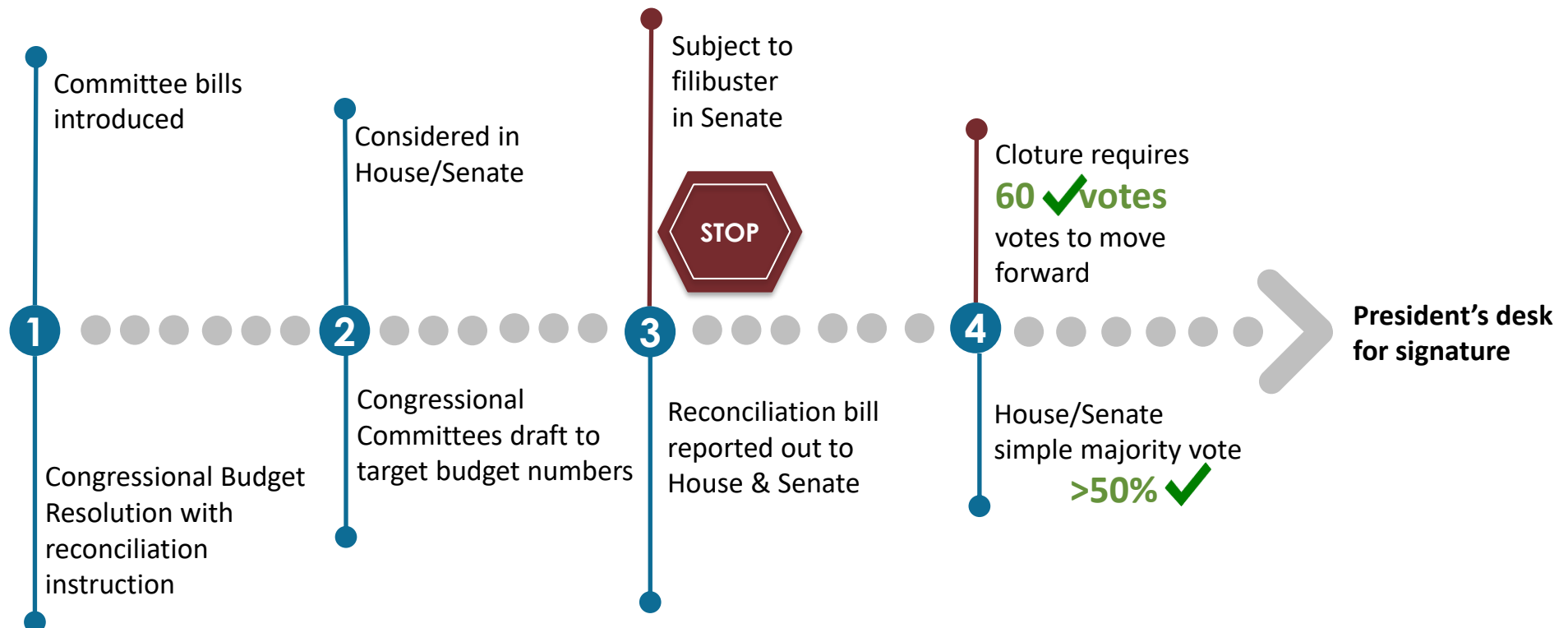
2021 RATES & EXEMPTIONS

Individual income tax rates and brackets	7 brackets, 37% top rate at \$523,600/\$628,300 (single/joint); 20% top rate for qualified dividends and long-term capital gains
Standard deduction	\$12,550 per person
Personal exemption	None
State and local tax deduction	\$10,000 cap on deductions for aggregate state, local and property tax
Mortgage interest deduction	Deduction for new mortgage interest limited to \$750,000 acquisition indebtedness; no deduction for home equity loan; this is the same whether you are filing single or jointly
Medical expense deduction	Deduction for expenses in excess of 7.5% of income
Charitable deduction	Deduction for cash gifts to qualified public charities up to 100% of AGI; \$300 for non-itemizers; 30% for marketable securities
Miscellaneous itemized deductions	None. No deduction for investment fees, unreimbursed business expenses, tax prep fees, etc. Casualty and theft deduction only for federally disaster areas.
Alternative minimum tax	In place but applies to very few because of limited deductions
Retirement accounts	RMD beginning date age 72; IRA non-taxable Qualified Charitable Distribution up to \$100,000 (over age 70-1/2); review other new beneficiary rules
529 Plans	Permitted to pay for K-12 private school, college, trade school, graduate school (but state rules may vary); \$10,000 of student loan
Annual Exclusion Gifts	\$15,000 per donor to unlimited number of persons
Estate and Gift Tax	40% rate; 2021 exclusion is \$11,700,000 per person

TAX REFORM IS MORE LIKELY THAN OTHER SWEEPING CHANGES



Budget Reconciliation Requires Less Bipartisan Support



Proposed: April 28, 2021

Proposer: Biden Administration

Income Tax

- Increase in individual rate from 37% to 39.6% for income > \$400,000
- Net investment income tax of 3.8% on income > \$400,000 (up from \$200,000)
- For households earning >\$1 million annually, increase long-term capital gains rate from 20% to 39.6%
- Income from a carried interest in a partnership will be taxed as ordinary income, not cap gains

Deductions /Exceptions

- Imposes \$500,000 limitation on Section 1031 exchanges (like-kind exchanges currently can defer capital gains on exchange/sale of real estate)
- Makes permanent the Child Tax Credit and Child and Dependent Care Tax Credit
- Permanent limitation on deductibility of excess business losses

Death and Taxes

- Death creates a deemed sale of decedent's assets. Capital gains tax imposed on gains in excess of \$1,000,000
- Current cost basis step-up at death eliminated
- Exemptions will apply for small businesses and farms if heirs continue to run them

Financial Institution Reporting Requirement (receipts/disbursements)

Proposed: March 31, 2021

Proposer: Biden Administration

Income Tax

- Raise the corporate tax rate to 28%
- Double the GILTI tax rate and impose GILTI on a country-by-country basis in line with the OECD global minimum tax proposal
- Create new 15% alternative minimum tax on a company's net book income if book profits > \$100 million

Deductions /Exceptions

- Prevent inversions by denying deductions to foreign companies based in countries without a strong minimum tax
- Eliminate deductions for expenses for "offshoring" jobs
- Reduce/eliminate subsidies and tax credits for the fossil fuel industry

Reporting

- Requires non-public entities to report names of owners of > 25%
- Increased KYC burden on financial institutions?

Proposed: March 29, 2021

Proposers: Van Hollen, Sanders, Warren, Booker, Whitehouse et al

Capital Gain realization event = death or gift (or 21 years for a trust)

- Deemed sale at date of death or date of gift
- Irrevocable trusts are subject to deemed sale rule every 21 years. All pre-2005 trusts will have a deemed realization event in 2026.

Exemptions/Exceptions

- \$1 million of unrealized gain ; \$100,000 may be used on lifetime gifts
- Transfers to grantor trust not taxed if trust includible in grantor's estate
- Transfers to spouse or charity
- Exclusion for \$250,00/\$500,000 gain on primary residence
- Payment of cap gain tax over 15-year period for illiquid family businesses and farms

Proposed effective date: January 1, 2021

Proposed: March 25, 2021

Proposers: Sanders, Whitehouse

Estate & GST tax exemption = \$3.5 million

- Gift tax exemption = \$1 million

New Estate Tax rates

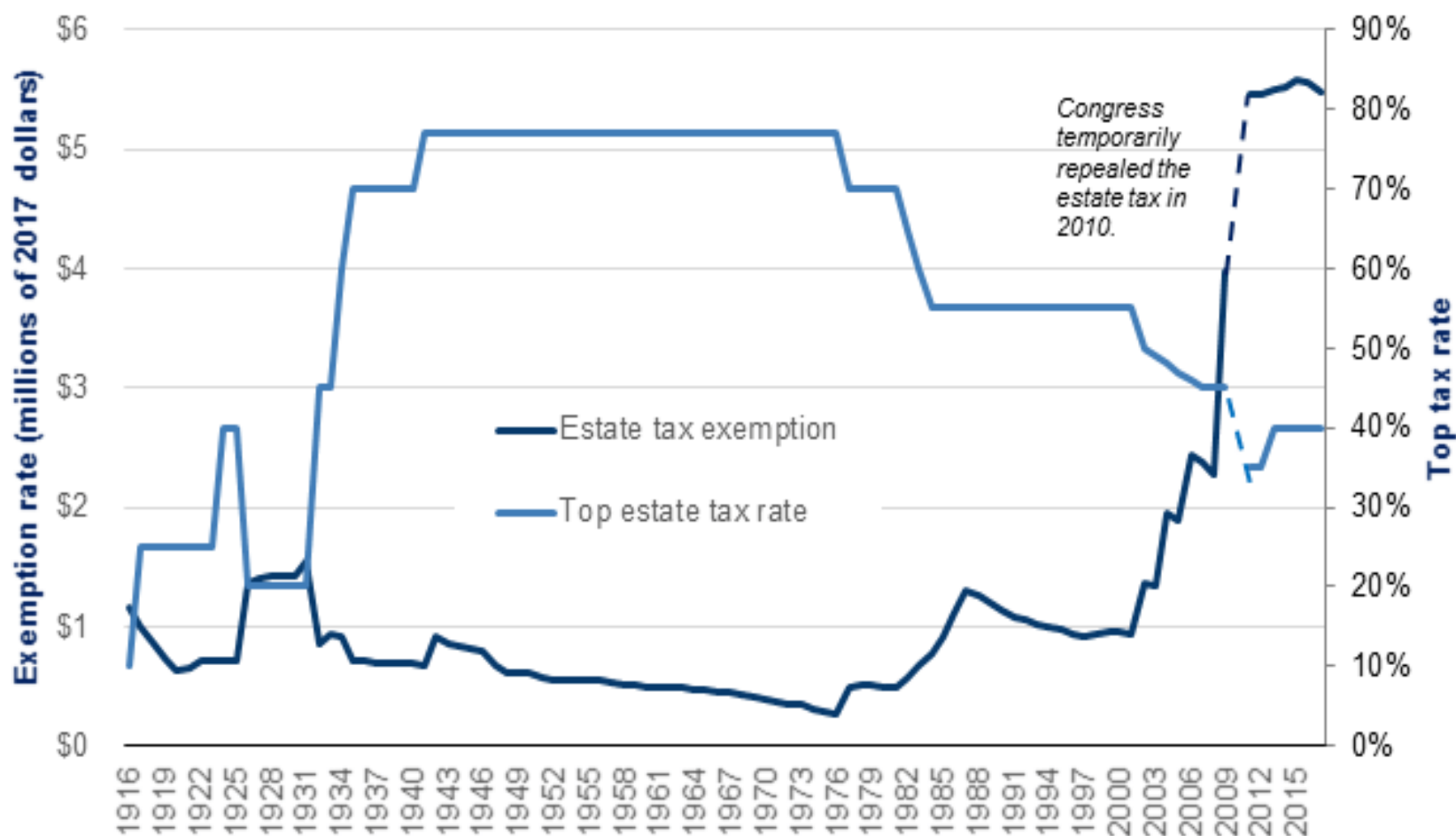
- 45% - \$3.5 to 10 million
- 50% - \$10 to 50 million
- 55% - \$50 million to \$1 billion
- 65% - excess over \$1 billion

Other Provisions

- Restrict GRATs (10 years, 25% gift)
- Eliminate valuation discounts on passive interests
- Limit annual exclusion gifts in size and number
- Limit GST exemption to 50 years (new federal perpetuities period)

Proposed effective date: March 25, 2021 or January 1, 2022?

HISTORIC ESTATE TAX EXEMPTION SET TO EXPIRE IN 2025 (OR BEFORE....)



Note: Exemption levels were adjusted for inflation using the CPI for all urban consumers, September-August annual averages. The effective exemption rate has been adjusted for inflation since 2011, when it was \$5 million.

Sources: Jacobson, Darien B., Brian G. Raub, and Barry W. Johnson, "The Estate Tax: Ninety Years and Counting," Internal Revenue Service (2007), <https://www.irs.gov/pub/irs-soi/ninetyestate.pdf>; USDA Economic Research Service, "Federal estate taxes," <https://www.ers.usda.gov/topics/farm-economy/federal-tax-issues/federal-estate-taxes.aspx>

BROOKINGS



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Budget Model

Table 1. Conventional Revenue Estimates, Fiscal Years 2022-2032

Billions of dollars, Change from Current-Law Baseline

	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	Budget window
39.6% with stepped-up basis @ death	-15	-7	-3	0	-2	-2	-2	-1	-1	-1	-33
39.6%, no stepped-up basis	-4	7	11	14	13	13	14	14	15	16	113

Source: <https://budgetmodel.wharton.upenn.edu/issues/2021/4/23/revenue-effects-of-president-bidens-capital-gains-tax-increase>

- Currently, timing of capital gains realization is largely discretionary and cost basis is “stepped-up” at death
- Raising the top statutory rate on capital gains to 39.6% would decrease revenue by \$33 billion over fiscal years 2022-2031
- If cost basis step-up at death is eliminated, and death is a deemed realization event, revenue could increase by \$113 billion over 10 years
- Taxable investors hold less than one-third of corporate stock, minimizes impact

POTENTIAL TAX REFORM

	CURRENT*	BIDEN PROPOSAL	COMPROMISE?
Top marginal tax bracket	37%	39.6% on income > \$400k	39.6% on income > \$400k
Long-term capital gains and dividend rate	20% top rate	20%, but increase to 39.6% for income > \$1mil	25-28% on cap gains for Income > \$1 mil
Itemized deductions	SALT deduction capped at \$10,000; limited itemized deductions*	Permit SALT deductions, impose AMT and Pease limitations at \$400,000 (campaign only)	Permit SALT deductions, impose AMT and Pease limitations at \$400,000
199A real estate deductions	Deduction for up to 20% of qualified business income	Phase out (campaign only)	Postpone phase out
Estate and gift tax	40% tax over \$11,700,000 exemption (\$10mil exemption with COLA from 2017); back to \$5 mil in 2026*	\$3,500,000 exemption, no COLA 45% estate tax rate (campaign only)	\$5,000,000, 40% rate
Cost basis step-up at death	Full step-up of assets	Step-up eliminated; tax gains at death or gift	Elimination of step-up increasingly likely
Corporate tax rate	21% top rate*	28% - 35%	25-28%, phased in 2022

*Most provisions of the 2017 Tax Cuts and Jobs Act (TCJA), other than the corporate tax rate, expire December 31, 2025 at which time tax rates and other provisions would generally return to 2016 limits and rates.