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Generations Fall 2020 - Federal Income Tax Implications of the Election

On October 1, Day Pitney held the third installment of its annual Palm Beach Family Office Forum, with a panel of experts discussing the potential tax implications of the upcoming election. The panel was moderated by Daniel L. Gottfried, chair of Day Pitney's Tax and International Transactions groups, who was joined by Amanda Agati, Chief Investment Strategist at PNC Financial Services Group, Adrian Alfonso, a principal at Kauffman Ralston, and Julio Castro, a partner at Evercore Wealth Management.

In general, there was a consensus that there is little likelihood for substantial change in tax policy absent a Democratic sweep of the House, Senate, and Presidency. Of course, overshadowing the entire conversation was the ongoing COVID-19 pandemic. Ms. Agati was quick to note that regardless of the outcome of the election, for the short term it was likely that the ongoing economic impact of the pandemic would slow down the pace of tax reform by a potential Biden administration, for fear that such reform—in particular, tax increases—could stall economic recovery.

Among Mr. Biden's proposals are an increase in the top marginal tax rate back to the pre-Tax Cuts and Jobs Act rate of 39.6 percent, up from the current rate of 37 percent, taxing long-term capital gains and qualified dividends at ordinary income rates, capping tax benefits for itemized deductions, increased employment taxes (both to the employee and the employer), and phasing out the qualified business income (QBI) deduction. However, it is not all about tax increases for Mr. Biden, as he is also in favor of restoring deductions for state and local taxes, which is a very popular tax issue with residents of states in the Northeast.

If Mr. Biden should win the Presidency and succeed in implementing his tax proposals, there could be income tax increases for higher-income individuals. Specifically, his proposals target individuals with income over $400,000, but, as Mr. Alfonso noted, it is not clear whether that $400,000 figure is adjusted gross income, taxable income, or modified adjusted gross income.

On the corporate side, Mr. Biden has proposed increasing the corporate tax rate from 21 percent to 28 percent and doubling the minimum tax paid by U.S. shareholders of controlled foreign corporations under the recently enacted GILTI regime from 10.5 percent to 21 percent.

Mr. Biden is also interested in making changes to the tax treatment of retirement savings. Whereas under current law, qualified contributions to retirement savings plans are deductible for tax purposes, Mr. Biden has proposed providing a 26 percent refundable tax credit instead, with the intention of equalizing the tax benefit of making retirement contributions regardless of the taxpayer's marginal income tax benefit. While such a change might be beneficial to lower-income taxpayers, taxpayers in tax brackets above 26 percent would see the tax benefits of retirement savings decline.

In contrast, Mr. Trump's income tax policy goals have largely been implemented by the Tax Cuts and Jobs Act, enacted in 2017. However, since many of the provisions of that Act are scheduled to sunset in 2026, if Mr. Trump is reelected, his priority will likely be to make those changes permanent.

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