What to expect in Washington

November 2021
What to expect in Washington

**Midterms — presidents typically lose seats in first midterm**
- Trump lost 40 House seats and gained 2 Senate seats in 2018
- Obama lost 63 House and 6 Senate seats in 2010
- Bush gained 8 House and 2 Senate seats in 2002
- Clinton lost 54 House and 8 Senate seats in 1994

**Up for re-election in 2022:**
- 20 Republicans
- 14 Democrats

**Vacancy:** Late Rep. Hastings’ (D-FL) seat considered safely Democratic in January 11 election

**Likely ratio 222-213, narrowest since at least 2003**
State of Play – Pending and Upcoming Legislative activity

- **Bipartisan Infrastructure Bill** – $1 trillion over 5 years for roads, bridges, transit and broadband
  - Signed into law Nov 15
- **“Build Back Better” plan** – spending and tax reconciliation bill
  - Original $3.5 trillion House bill lacked votes
  - Revised $1.8 trillion plan in House
  - Republican opposition
  - Ongoing negotiations with President and Senate moderates (Manchin and Sinema) on smaller bill
- **Funding the federal government** – Dec 3 deadline
- **Debt limit** – extended to December 3 + extraordinary measures
- **End-of-year Omnibus Spending bill with expiring programs and tax provisions**
  - Expiration of higher charitable deduction limits (individuals and corporations)
Main categories of Build Back Better spending provisions

**Energy/climate**
- $320b in green energy tax incentives
- $29b Greenhouse Gas Reduction Fund

**Education**
- Universal pre-K, childcare costs

**Caregiving**
- Home-based services for seniors and disabled

**Low-income tax credits**
- Expanded Child Tax Credit for 2022
- Expanded Earned Income Tax Credit for 2022

**Paid leave**
- 4 weeks of universal paid family and medical leave

**Health care**
- Medicare coverage expansion for hearing only (no dental, vision)
- ACA subsidy expansion and subsidies for Medicaid “gap” population
- Reinsurance programs

**SALT Cap**
- Increase in state & local deduction cap to $80,000 through 2030

**Housing**
- Rental assistance
- First-time homebuyer assistance
- Low-income tax credit increase

**Corporate**
- R&D amortization requirement delayed from after 2021 to after 2025
Select tax increase sources in latest reconciliation bill

High-income surcharge
- Top tax rate remains 37% (increases to 39.6% in 2026 under current law)
- 5% surtax on income in excess of $10 million, and an additional tax of 3% on income in excess of $25 million
- Based on AGI so no deduction for charitable gifts to reduce income subject to tax
- Trusts subject to surtax at lower levels -- $200,000 and $500,000
- **Revenue:** $228 billion

Retirement Accounts
- Deny contributions to Roth or traditional IRA if all retirement accounts exceed $10 million.
- If combined retirement account balances exceed $10 million, a minimum distribution would be required for the following year.
- Limits apply at $400,000 (single), $425,000 (Head Household) and $450,000 (Married).
- Current allowable qualified charitable rollover (up to $100,000) still available.

- 3.8% NIIT expanded to cover net investment income derived in the ordinary course of a trade or business for taxpayers with greater than $400,000 in taxable income
- **Revenue:** $252 billion

Source: Joint Committee on Taxation, X-45-21
Tax proposals considered but NOT included in House Bill

- **Taxation of Build in Gains and Step up in Basis at Death**
  - President Biden Proposal
    - Tax unrealized capital gains upon transfer – death, gift or to trust
    - Transfer to spouse or charity retain carryover basis
    - $1 million in gain exempt
  - Senator Wyden proposal -- “Billionaire’s Income Tax”
    - Tax unrealized capital gains at end of year (ie., mark to market for tradable assets)
    - Transfers of nontradable assets subject to tax and annual interest charge with payment deferred until asset sold
    - Apply to taxpayers with $100 million in income or $1 billion in assets

- **Grantor Trusts**
  - Directly impacted by build in gains and billionaire income tax proposals

- **Increases in top marginal rate (39.6%) and capital gains tax (25%) dropped from House bill**

- **Reduction in Estate Tax Exemption amounts not included**
Accelerate Charitable Efforts Act (ACE Act)

► Introduced in Senate (S. 1981) – Sens. King (I-ME) and Grassley (R-IA)
  ► Why? To accelerate pace of giving from Donor Advised Funds (DAF)

► Key Provisions:
  ► Qualified DAF -- Agreement to distribute funds within 15 years
  ► Nonqualified DAF
    ► No agreement to distribute
    ► No charitable deduction until property sold or donated property is distributed to charity
  ► Special rules for Qualified Community Foundation DAF
  ► Undistributed contributions to DAF subject to 50% excise tax:
    ► In year 15, for qualified DAF
    ► In year 50 for nonqualified DAF

► Other changes to foundation rules
► Similar bill being considered for introduction in House
Outlook

► General Theme – Additional spending and higher taxes on business and high income taxpayers likely

► “Build Back Better” plan
  ► House bill to change amid ongoing negotiations with President and Senate moderates
  ► Expected to produce smaller bill with goal for passage by end of year

► Funding the federal government and Debt limit
  ► Likely extension into early 2022
What have we done with tax law changes that have been implemented?

► Cash contributions to charity with higher AGI limitations
  ► CARES Act
    ► For 2020 and 2021, taxpayers may apply up to 100% of their AGI, for calendar-year 2021 qualified contributions. Qualified contributions are cash contributions to qualifying charitable organizations.
    ► The 100% limit is not automatic; the taxpayer must choose to take the new limit for any qualified cash contribution. Otherwise, the usual limit applies.
    ► C corporations may apply an increased corporate limit of 25% of taxable income for charitable cash contributions made to eligible charities during calendar year 2020 and 2021.

► Donations of closely held business interests to the Church and UBIT
  ► Alternative options to reduce/eliminate UBIT in light of CARES Act
    ► E.g., Fidelity, National Philanthropic Trust, Community Foundation of Utah, etc.
    ► Trusts benefit from 100% AGI deduction limit, same as individuals
    ► Donations to DAF sponsor structured as trust may allow 100% elimination of UBIT
What have we seen as a result of tax law changes that have been threatened/proposed?

► Increased M&A Transactions.
  ► Clients/Donors have pushed to put deals into 2020 and 2021 tax years when capital gains appear to be lower.
  ► We have seen more transactions in the past 18 months than probably the prior 2-3 years.

► Estate planning clients are using estate/gift tax exemption
  ► Direct gifts to heirs.
  ► Use of irrevocable trusts
    ► IDGTs
    ► GRATs
    ► SLATs
  ► Accelerating contributions to ILITs (to avoid potential loss of grantor trusts).
  ► Use of LLCs/LPs
    ► Minority interest and Lack of Marketability Discounts.