# The Biden Tax Plan: Estate Planning Considerations


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**OVER THE PAST MONTH,** the Biden administration has begun outlining its tax plan, which will undoubtedly prove one of the most noteworthy policy initiatives of the president's first term. The plan will feature the first major tax hike on high earners since 1993, but there are many other significant provisions, including:

- Raising the corporate income tax rate from 21 to 28 percent
- Applying a 15 percent minimum tax to global income of $100 million or more
- Phasing out the 199A deduction, which allows for a deduction of up to 20 percent of the domestic qualified business income earned by the business on the owner's tax return
- Reinstituting the top individual income tax rate to 39.6 percent from 37 percent
- Taxing capital gains as ordinary income for taxpayers with more than $1 million in income
- Imposing additional social security taxes on wages above $400,000
- Reducing the benefit of itemized deductions to no more than 28 percent
- Increasing the global, intangible, low-taxed income rate from 10.5 percent on un-repatriated amounts to 21 percent

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Some of the most significant changes, however, relate to estate and gift taxes. The administration has discussed the possibility of reducing the estate tax exemption from the $11.7 million for individuals in 2021 ($23.4 million for married couples) to $3.5 million. It has also discussed increasing the top estate tax rate to 45 percent and eliminating the basis step-up at death for inherited property.

The estate tax exemption has allowed the wealthy to pass their assets to the next generation with a sizeable buffer before taxes. For many of us, while the $11.7 million exemption was more than enough to cover our estates, the potential reduction of the exemption by more than 70 percent causes concern. As well, dissolving the step-up in basis would eliminate a common wealth transfer planning tool: waiting to sell a low-basis stock — for example, Amazon stock purchased in 1998 at around $8 per share — until the original owner of the stock passes away in order to avoid capital gains on the increase in value during their lifetime. With no step-up in basis, the inheritor would have to pay capital gains taxes on the increase in value from that $8 to where it sits today, around $3,050 per share. To compound the issue, considering one of the proposed changes to taxing capital gains, if the heirs have an income of more than a million dollars the year they inherit this asset, the capital gains could be taxed as ordinary income.

There are potential solutions, or at least aids, to decreasing your tax liability under the proposed tax plan.

These changes could spark fear where they apply, but there are potential solutions, or at least aids, to help address these issues. The first potential aid is time. While the Biden administration has cited changes to the estate tax laws as talking points, the current applicable laws do not sunset until 2025. As well, several other tax changes are higher priorities for the administration. "The estate tax is not a big revenue raiser…it's a drop in the bucket in terms of paying for things like the stimulus package," says Wilmington Trust's Chief Wealth Strategist Alvina Lo.

Even with a Democratic Senate, House, and president, investors should have a couple of years before the more stringent estate tax laws are in effect. Until then, investors can use the generous current estate tax exemptions and gifting laws to pass wealth to the next generations and decrease their taxable estate before death. Under the current laws, an individual can gift any one person $15,000 tax-free per year — up to $30,000 if you're filing jointly. Over the course of an investor's lifetime, he or she can rid their estate of up to $11.7 million through tax-free gifting. There is no limit on the number of people one investor can gift to in a year; the investor can gift $15,000, or $30,000 jointly, in a single year to as many as it takes to dispose of the estate before the potential tax law changes.

If gifting the entirety of your estate before death is not your cup of tea, you have other options, including two popular estate planning tools, the Charitable Lead Trust (CLT) and the Charitable Remainder Trust (CRT).

- In a CLT, the investor acting as donor locks up a certain amount of assets in an irrevocable trust. A portion of these assets will pass tax-free to a tax-exempt organization. The remainder of these assets will continue to grow within the trust, and after the donor's death or a pre-determined period of time, be passed on to the donor's beneficiaries.
- In a CRT the investor acting as donor transfers an appreciating asset to an irrevocable trust. During the donor's lifetime the asset will provide a fixed stream of income to the donor, even though the asset itself is outside of the donor's estate. Once the donor dies, the appreciating asset will pass through to a charity and the donor's estate will be reduced by the value of the asset.

Both the CLT and CRT have the effect of decreasing the donor's estate, one leaving the donor's beneficiaries as the final recipient and the other leaving one or several charities as the final recipient(s).

You might consider another popular option for avoiding taxes in the Biden plan — just spend your money — responsibly, of course!

The grantor retained annuity trust (GRAT) is another option. With this instrument the donor transfers an asset that is expected to appreciate into an irrevocable trust. Throughout the set time period of the GRAT, the donor receives a stream of income from the appreciating asset or as a set percentage of the value of the assets in the trust. After the set period of time the beneficiaries of the trust will receive the asset without having to pay taxes on its appreciation. This option is popular with individuals with assets they expect to appreciate greatly over the time period set forth in the GRAT.

There is one more popular option. It's not often recommended, nor is it considered the most responsible, but it is the most fun. Just spend it — or at least part of it. As long as your goals are covered, and you are aware of your options to protect your assets responsibly, you can always have a little extra fun. So take that trip, or heck, buy that villa. You've earned it.

The changes to the tax code being discussed may be worrisome, but there are many options available to you to protect your assets now and for your heirs. These instruments can be deeply customized to suit your particular situation. Consult your financial planning professional for all the details.

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