Insight into Kamala Harris's tax policy reforms and legislative goals if elected president

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Kamala Harris's presidential campaign recently announced its endorsement of a bill reintroduced by Senator Elizabeth Warren (D-Mass), as well as expressing its continued support of the proposed budget for fiscal year 2025 released by the Biden-Harris administration earlier this year. Both the proposed budget and the Senate bill contain a number of federal tax law changes for gift, estate, and income taxes in order to fund their respective priorities.

On March 11, 2024, the White House released its proposed budget for fiscal year 2025. The budget outlines the Biden-Harris administration's fiscal priorities, which include raising revenues, expanding tax credits for workers and families, and improving tax administration and compliance. On the same day, the Treasury Department published *General Explanations of the Administration's Fiscal Year 2025 Revenue Proposals*. That publication is commonly referred to as the "Green Book," and it describes in detail the tax reform proposals included in the budget. Now endorsed by the Harris campaign, the proposal includes federal tax law changes intended to align the Internal Revenue Code (Code) with these priorities.

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The Senate bill endorsed by Harris is the "American Housing and Economic Mobility Act of 2024."[1] Harris's endorsement of the bill is notable and is likely an effort to unify the Democratic Party on tax policy, potentially enhancing the bill's chances of passing if Harris wins the presidential election. The legislation proposes a variety of measures to address America's housing crisis and aims to bring down costs for renters, encourage home buying, and help working families find affordable places to live. The bill projects to "create nearly 3 million new housing units and reduce rents by 10% for American families—entirely paid for by reforms to the estate tax."[2]

It is important to note that the bill has not advanced at this time as it is one of many proposals in the tax area. Many of these proposals have been included in past budgets and draft bills but have yet to be enacted. However, if Harris wins the election in November, these tax reforms could provide valuable insight on her future policy goals and tax legislation agenda during her presidency.

The following is a summary of the major changes to the gift, estate, and personal and corporate income taxes proposed by both the budget proposal and the Senate bill.

Proposals to increase tax rates on corporations

Like past proposals, the budget would increase the income tax rate on C corporation income from 21% to 28% and increase the excise tax on corporate stock repurchases from 1% to 4%. Prior to the enactment of the Tax Cuts and Jobs Act of 2017, the corporate tax rate was 35%.

Proposals to increase income taxes on high-income taxpayers

As described below, the most notable proposals impacting high-income taxpayers would (1) impose a 25% minimum tax on taxpayers with net worths exceeding $100 million, (2) increase income tax rates on ordinary income and capital gains, and (3) treat gifts and transfers at death as gain recognition events.

Tax on unrealized capital gains

Perhaps the most prominent proposal (at least in terms of press coverage) is the proposal to impose a 25% minimum tax on total income, including unrealized capital gains, for taxpayers with net worths greater than $100 million. Payments of the minimum tax would be treated as prepayment available to be credited against subsequent taxes of realized capital gain, to avoid the gain being taxed twice. The proposal would require annual reporting and outlines methods to value non-tradeable assets. This type of tax would likely be administratively challenging to implement. Absent from the proposal are details on whether assets held in trust or by family members would be aggregated for purposes of determining the minimum net worth.

Income tax rates

The proposed tax changes include increasing the highest marginal individual income tax rate from 37% to 39.6% for individual taxpayers with taxable income of $400,000 or more and $450,000 or more for married taxpayers filing jointly. Additionally, Biden's budget proposal increases the tax rate on long-term capital gains and qualified dividends to the highest marginal ordinary income tax rate of 39.6%. However, during an economic speech in New Hampshire on September 4, Harris deviated from Biden's budget and announced a new proposal to increase the long-term capital gains tax rate to a maximum of 28% to incentivize taxpayers to invest money in small businesses and startups. Under both Biden and Harris's proposals, the increase would apply to taxpayers with taxable income above $1 million and would be in addition to the net investment income tax (NIIT). The top marginal NIIT and Medicare tax rates for high-income taxpayers would also be increased from 3.8% to 5%. These increases by the Harris administration would bring the highest marginal tax rate on capital gain (assuming the above proposals are enacted) to 33%.

Gifts and transfers at death treated as gain recognition events

The budget proposal would treat transfers by gift or at death as recognition events to the extent the fair market value of the property transferred exceeds the adjusted basis of the donor (in the case of a gift) or the decedent (in the case of a transfer upon death). The proposal also would subject certain unrecognized gains on assets held in trusts and pass through entities to tax. Losses recognized at death and loss carryforwards could offset capital gain and up to $3,000 of ordinary income. The proposal contains several exclusions, for example, transfers to a U.S. citizen spouse or a charity would not be taxed. In addition, each transferor would have a $5 million exclusion available to shelter gain from tax during life or at death. The proposal also excludes capital gain on qualified small business stock, subject to the limits on such gain exclusion under Section 1202

[1] American Housing and Economic Mobility Act of 2024, S._4824____, 118th Cong. (2024).

[2] *Warren, Warnock, Cleaver Lead Reintroduction of Landmark Bill to Tackle U.S. Housing Crisis,* Senator Elizabeth Warren, *www.warren.senate.gov/newsroom/press-releases/warren-warnock-cleaver-lead-reintroduction-of-landmark-bill-to-tackle-us-housing-crisis (July 29, 2024).*

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of the Code. This tax would be in addition to, not in lieu of, gift and estate taxes.

Proposals affecting estate, gift, and generation-skipping transfer taxes and the taxation of irrevocable trusts

Gift and estate tax exemption amount and rates

The Tax Cuts and Jobs Act of 2017 doubled the gift and estate tax exemption for estates of decedents dying or gifts made between January 1, 2018, and December 31, 2025. In 2024, the exemption amount is $13.61 million. With no action, the exemption will revert to the prior base amount of $5 million (adjusted for post-2016 inflation). The Senate bill proposes a reduction in the exemption to $3.5 million (adjusted for post-2016 inflation), effective for estates of decedents dying after the enactment of the bill.

In addition to the reduction in the exemption amount, the Senate bill also increases the tax rate from a current 40% rate to a progressive rate ranging from 55% to 65%. On estates of not more than $13 million, the rate is 55%. On estates over $13 million but not more than $93 million, the tax is $7.15 million plus 60% of the excess over $13 million. For estates in excess of $93 million, the tax is $55.15 million plus 65% of the excess over $93 million.

Additionally, for any estate of a decedent the value of which exceeds $1 billion, the proposal imposes a surcharge. The tax surcharge increases the tax determined under the rates above by 10%.

Grantor retained annuity trusts

A grantor retained annuity trust (GRAT) is an irrevocable trust that can be designed to transfer future appreciation on an asset with little to no gift tax cost. To effectuate a GRAT, the trust agreement must dictate a term of years in which the annuity is to be paid annually to the grantor. Currently, there are no statutory requirements as to the length of the annuity period of a GRAT. Annuity payments from a GRAT are permitted to decrease or increase each year, but any increase cannot exceed 20% each year. Both the Senate bill and the budget proposal would impose a ten-year minimum annuity period on any GRAT created after the enactment of the bill. The Senate bill and the budget proposal both contain other proposed changes to the way a GRAT currently works, but the proposals are not exactly the same. Both however, mandate that the remainder interest must have a value equal to or greater than a certain percentage of the assets initially transferred to the GRAT (ranging from 10% – 25% depending on the proposal).

Grantor trust rule changes

When a trust qualifies as a grantor trust with respect to the grantor due to certain powers the grantor has retained under the terms of the trust, the grantor is treated for federal income tax purposes as the owner of the trust's assets. The benefit of this treatment is that the trust assets can grow without paying income tax out of the trust's assets, and the grantor's payment of the tax reduces the grantor's taxable estate by the income tax payments, thereby enhancing the amount of wealth transferred to the trust. In addition, because the grantor and trust are treated as one for income tax purposes, the grantor can sell assets to the trust with no federal income tax consequences. In some cases, a trust can be a grantor trust with respect to a beneficiary, in which the beneficiary is generally treated for federal income tax purposes as the owner of the trust's assets.

The bill and the budget proposal both make several changes to grantor trust rules. First, the assets of a grantor trust would generally be included in the estate of the grantor upon the grantor's death solely by reason of it being a grantor trust. Second, if grantor trust status is terminated prior to the death of the grantor, or a distribution is made from the trust, the value of the trust or the amount of the distribution would generally be treated as a gift. Third, for purposes of any transfer or sale between a grantor and a grantor trust, grantor trust status will be disregarded, which will result in income tax recognition for sales between a grantor and a grantor trust. Fourth, in some cases, under the Senate bill, these new rules would apply to a beneficiary of a trust if the trust qualifies as a grantor trust with respect to the beneficiary.

The changes to the grantor trust rules would apply to trusts created on or after the date of the enactment of the bill and would apply to any contribution to an existing trust on or after that date.

Generation-skipping transfer taxes

The Senate bill and the budget proposal both seek to limit the duration of the generation-skipping transfer (GST) tax exemption by changing the rules that apply to GST-exempt trusts. Under current law, a GST-exempt trust may continue for the benefit of future generations free from the GST tax for the maximum time permitted under state law. Under the proposals, however, the GST tax exemption would generally apply

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only to distributions from an otherwise GST-exempt trust to individuals who are two or fewer generations below the transferor (e.g., grandchildren) and to individuals who were alive at the time of the trust's creation. The Senate bill notes that special rules apply to trusts created before January 1, 2024, and trusts funded through decanting. Once there is no beneficiary of a GST-exempt trust who is two or fewer generations below the transfer or or was alive at the time of the trust's creation, then the assets would be fully subject to the GST tax.

Annual exclusion gifts
An exception from federal gift tax is the annual gift tax exclusion, which is a $10,000 base exclusion (adjusted for post-2016 inflation). In 2024, the amount is $18,000 per donee, per year, to an unlimited number of individuals. The Senate bill, however, places a cap at $20,000 (adjusted for post-2016 inflation) per donor annually. On the contrary, the budget proposal maintains the current exclusion amount but places a cap at $50,000 (adjusted for post-2016 inflation) per donor annually. Both proposals note that certain transfers may not qualify for the annual exclusion, which include a transfer in trust, a transfer of an interest in a passthrough entity, a transfer of an interest subject to a prohibition on sale, and any other transfer that cannot be immediately liquidated by the donee.

Valuation of nonbusiness assets
The Senate bill and the budget proposal both also target the valuation of certain nonbusiness assets for estate and gift tax purposes. The measure provides that no valuation discount, including for lack of marketability or lack of control, is permitted for nonbusiness assets. Nonbusiness assets are passive assets that are held for the production of income and not used in the active conduct of a trade or business. There are exceptions for assets used as the working capital of a business or in hedging transactions and for real property used in certain businesses.

Tax surcharge
The Senate bill would also impose a tax surcharge on high income trusts and estates. The bill would impose an additional 5% tax on modified adjusted gross income in excess of $200,000 for any trust or estate plus 3% on any excess of $500,000. Modified adjusted gross income is a trust's or estate's adjusted gross income less certain adjustments, such as deductions for certain investment expenses. The tax surcharge does not apply to charitable trusts.

Conclusion

"These proposals will be in play if Democrats sweep the election" according to Shane Lieberman, Senior Governmental Affairs Advisor in UBS's Office of Governmental Affairs. "There will be some Democrats that have questions and reservations about the full impact of these policies and that may stymie the full range of these proposals. Short of a sweep, a victory in the White House or one of the bodies of Congress, Democrats may have some leverage to allow the estate tax exemption levels be cut in half with the expiration of the 2017 tax law at the end of next year," says Lieberman. The proposals would increase the number of individuals exposed to the federal estate tax and increase the amount of individuals who seek estate and wealth planning. While much is flux and proposals may change, Harris's endorsement of the bill and 2025 budget proposal offers some insight into the tax policies that her administration might pursue if she wins the presidential election.

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