

## HEALTH WEALTHY & WISE

Tax Changes on the Horizon - March 31, 2021

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### GENERAL TAX INFO

1. Retroactive Tax Law Changes
  - a. To be retroactive, it must be rationally related to a legitimate legislative purpose. Raising revenue during a pandemic would seem sufficient to meet this
  - b. Several times in recent history (Trump tax act) was retro but beneficial to people
  - c. **Omnibus Budget Reconciliation Act** of 1993 (“OBRA ‘93”), which was enacted on August 10, 1993, generally provided for **higher income tax rates** for some individuals and corporations effective for tax years beginning after Dec. 31, 1992.
2. Budget Reconciliation
  - a. Allows legislation to be passed by simple majority and avoid filibuster
    - i. Currently Dems control because VP has tie breaker vote
  - b. Allowed for 3 areas: **spending, revenues, and debt limit**
  - c. Only one budget reconciliation per budget year (can be combined or separate)
  - d. **Possible to have 2 in 1 year**
    - i. Recent act was passed for 2021 budget (which was late); later this year can pass the 2022 budget and use reconciliation again
    - ii. History – 2017 – occurred for 2017 and 2018
  - e. **2022 budget reconciliation is expected to have significant tax changes**
    - i. This way Dems don’t risk any election losses or have to get 60 senators on board for legislation

### INCOME TAX INFO

3. **Corp tax rate**
  - a. 21% to **28%** (thinking is probably end somewhere around 25%)
    - i. **15%** minimum Corp tax on earnings
  - b. 13% to **21%** Minimum tax on profits of US corps made overseas
    - i. Additional penalties for moving assets & jobs offshore
  - c. **199A (20% deduction)** potential phase out for high income earners (\$400K+)
4. **Income tax rate**
  - a. 1031 exchanges potential elimination
  - b. SALT (potential to eliminate or more likely raise \$10K cap)
    - i. Biden plan left as-is (likely to have Dem push back)
  - c. Social security increase (12.4% - phase out at \$142K and back in \$400K+)
  - d. Personal rates
    - i. Top 37% to **39.6%**
      1. Need to also keep in mind the 3.8% NIIT tax for certain investments (max then of **43.4%** not including state tax)
    - ii. Strategy:
      1. **Convert traditional qualified retirement** accts to ROTH to lock in current income tax rates
        - a. No NIIT on a conversion
5. **Capital gains tax rate**
  - a. Elimination pref rate on all or more likely only high earners (Ordinary income)
  - b. **Income Tax at death of unrealized capital gains** (\$1M exemption)
  - c. Strategy:
    - i. **Accelerate gains**: Sell before rates go up
    - ii. Can use a trust if you want to keep asset but get the lower tax rate

## **ESTATE & GIFT TAX INFO**

6. Potential elimination of Step up in basis at death
7. Exemption \$11.7M to \$5M or **\$3.5M** (Biden proposal)
  - a. Current tax 40% but Sanders proposal –
    - i. \$3.5M exemption
    - ii. **45% tax** \$3.5-10 million
    - iii. 50% tax \$10-50 million
    - iv. 55% tax \$50-billion
    - v. **65% tax** on excess over a billion
8. Decouple gift & estate tax
  - a. Sanders **\$1M gift tax limit**
9. **Grantor Trusts**
  - a. Income tax on earnings in trust taxed to grantor
  - b. Sanders – **2901- death/gift tax on grantor trust** at death of grantor or termination of grantor trust status
10. GRATs
  - a. Made famous by Walmart heirs
  - b. Sanders
    - i. 10 year minimum
    - ii. Minimum 25% gift (no zeroed out GRATS)
11. **Discounts for transfers**
  - a. Common to see combined discounts equating to 30% give or take
  - b. Sanders – eliminate for family businesses for minority/lack of marketability
12. Dynasty Trusts
  - a. long terms trusts get taxed on net value every 50 or 90 years
  - b. Sanders – every 50 years (new proposal by Dems offers every 21 years)
13. **Annual exclusion (lower amount and cap total permitted)**
  - a. \$15K gift limit per person and
    - i. max of \$30K for total gifts per year per donor for certain types of gifts (to trusts or of business interests)
14. Strategies:
  - a. Charitable planning and charitable trusts
  - b. Selling assets at low interest rate
  - c. SLATs (irrevocable spousal trusts)
    - i. QTIP (type of spousal trust w/ planning flexibility)
    - ii. Disclaimer
  - d. SCINs (promissory note that terminates upon death of the lender)