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Biden tax proposals: Why your board must inform itself

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During the 2020 presidential campaign, then-candidate Joe Biden put forth several proposed changes to the federal tax code designed primarily to increase taxes on corporations and wealthy individuals. While a divided government in Washington, D.C. would have prevented some of these changes from being enacted into law, it now appears likely that the Biden administration will pursue some or all of these proposals.

Few things can alter the lens through which businesses—including banks—view their strategic outlook like significant changes to the tax code. And, unlike other types of businesses, banks cannot alter strategic paths as quickly in reaction to tax changes given potential regulatory implications for certain material changes in business plans. For these reasons, bank boards should hold a special strategic planning session to inform themselves of the impact these proposed federal tax changes could have on an institution’s unique strategic vision and circumstances. These tax changes could have a variety of impacts depending on whether, for example, a bank is a C-Corp or S-Corp, is closely- or widely-held, is part of a family’s larger asset portfolio, desires liquidity at some point in the future, or relies on annual valuations for any reason.

Listed below are a few of the potential changes that boards should inform themselves of now in the exercise of their fiduciary obligations.

Tax principle	Description	Impact
Corporate income tax rate	Increase from 21% to 28% (or higher).	Among other things, this change will impact C-Corporation earnings (and therefore capital and dividend yields).
Capital gains	Increase long term capital gains rate for income more than $1 million from 20% to ordinary income tax rates (likely increased to 40%).	This change could materially alter net proceeds from any taxable sale of a bank owned by a large shareholder. It may also provide an

Tax principle	Description	Impact
		advantage to public company acquirers with the ability to offer stock to selling banks (and therefore a deferral of capital gains tax).
Step-up in basis	Elimination of the step-up in basis on inherited property.	This change could substantially increase the tax liability owed on inherited shares, and, taken together with the increase in capital gains rates, could severely impact the net proceeds of any sale by a large shareholder who inherits shares from a family member.
Gift/estate tax exemption	Reduction of the per person gift and estate tax exemption from current levels ($11.7 million) to 2009 levels ($3.5 million).	Without proper planning, this change could impose a 40% (or possibly higher) federal estate tax on more of a large shareholder’s estate at death, reducing the shareholder’s legacy for future generations. In some circumstances, the burden of funding the estate tax liability could also force a sale of the bank.

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