Considering selling your business? See how proposed tax law changes could affect you

Proposed tax law changes under the Biden administration may impact the sale of your business.

President Joe Biden and his administration have indicated that they may propose legislation to change current tax policies. Generally, most proposals are likely to be focused on the philosophy that corporations and wealthier Americans should assume a larger share of the nation's tax burden.

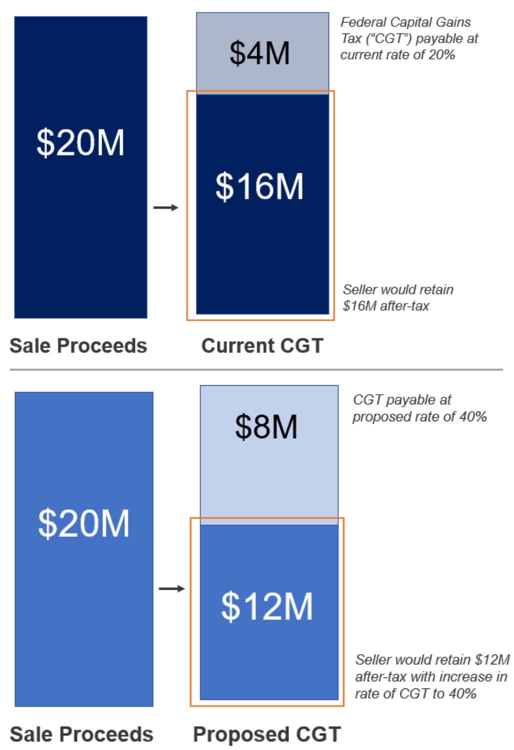
While details of President Biden's tax proposals are yet to be finalized, it's important to be prepared for an altered tax landscape. And if you're a business owner considering selling your business, you may wish to take steps toward that process in the months to come.

Following are two potential tax law changes that could impact an impending sale.

Increase in federal capital gains tax rate

As a business owner, much of your net worth may be tied up in your business. If you sell your business today, you'd keep about 80 percent of the net sale proceeds, as the current capital gains tax rate is 20 percent (excluding any state capital gains tax). To illustrate, if you sell your business for $20M (and you have a low-cost basis, as many do), the federal capital gains tax payable would be $4M (20 percent of $20M).

If the proposed rate increase is passed, those amounts would be taxed at the higher capital gains tax rate. In addition, any earn-outs and seller notes you'd accept as part of the consideration for selling your business would simply defer payment of the selling price to later.



 Important disclosures provided on page 3.

Estate planning changes

Changes could also be coming to the federal estate tax laws. The Biden administration is proposing to lower the federal estate tax exemption to $3.5 million (from the current $11.7 million) and eliminate the "step-up in cost basis," which could preclude you from being able to pass on assets, tax free, to heirs on your death.

If the estate tax exemption level is lowered to 2009 levels, any estate with taxable assets over $3.5 million for individuals and $7 million for married couples would be exposed to an estate tax of 40%, in addition to any state estate tax liability. It could also expand the impact of estate taxes on a much larger percentage of families.

If the step-up in cost basis is eliminated, your heirs would assume your cost basis in the assets inherited (and not the current market value on your death) and your death could trigger a capital gains liability for your estate (on the basis that your death is equivalent to your selling your assets at market value).

Estate planning is particularly important today in light of these potentially significant changes. You may want to consider estate planning in concert with any plans to sell your business.

Timing

If these proposals are passed, it's thought that they would apply from either the date the legislation is passed (it could take six-nine months to be signed into law from the time it's introduced) or on January 1, 2022.

The timing for a sale in 2021 is favorable, as current exit multiples are high, driven by the abundance of available capital and the low interest rate environment. And from a tax planning perspective, selling in 2021 could potentially save on the capital gains tax to be paid.

With these proposed tax changes, you should review the impact on any plans to sell your business and your estate plan structures. As it usually takes an average of six months to sell a business, if you're thinking about selling in 2021, you may want to start the process soon.

We're ready to help

Contact your U.S. Bank Wealth Management team for questions about how tax law changes could impact your finances and estate plan, or, reach out to the Business Owner Advisory Services team at U.S. Bank Wealth Management, wmboas@usbank.com, to help you navigate the sale of your business.

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