Deloitte.

2016 Real Estate Industry Update

Breakthrough trends. Forward-looking insights.

Tax Update

Tax Agenda

- Legislative Update
- Path Act Summary
- Final, Proposed, and Temporary Regulations – Disguised Sales and Liabilities Allocations
- Final Regulations – Definition of Real Property
- Regulations – Debt/Equity
- Other Changes

The election in two words

Election 2016 – a few initial observations

- **Despite a clear electoral win, President-elect Trump seems to have a strong mandate for “change” but not necessarily for his agenda, especially since the campaign was light on policy**
- **The new President will confront a Congress with sharp divisions and its own agenda(s) and political dynamics**

Election 2016 – a few initial observations

- Despite a clear electoral win, President-elect Trump seems to have a strong mandate for “change” but not necessarily for his agenda, especially since the campaign was light on policy
- The new President will confront a Congress with sharp divisions and its own agenda(s) and political dynamics
- **Senate Majority Leader Mitch McConnell has expressed strong interest in acting on tax reform in 2017, matching the long-held position of House Speaker Paul Ryan**
- **Incoming Senate Democratic Leader Chuck Schumer is more open to tax reform than outgoing Democratic leader Harry Reid**

Election 2016 – a few initial observations

- Despite a clear electoral win, President-elect Trump seems to have a strong mandate for “change” but not necessarily for his agenda, especially since the campaign was light on policy
- The new President will confront a very divided Congress with its own agenda(s) and political dynamics
- Senate Majority Leader Mitch McConnell has expressed strong interest in acting on tax reform in 2017, matching the long-held position of House Speaker Paul Ryan
- Incoming Senate Democratic Leader Chuck Schumer is more open to tax reform than outgoing Democratic leader Harry Reid
- **In the House, Republicans saw the size of their majority reduced slightly, from 246-186 to 239-194 (with 2 races outstanding)**
  - **This presents further governing challenges even under the best of circumstances**
  - **Those challenges will be made greater because almost none of the members leaving Congress at the end of this session are from the cohort typically reluctant to follow leadership’s chosen strategy**

Setting the stage for 2017:
Summarizing the Trump Tax plan

Trump tax plan
Business taxes

Corporate rate	15%
Pass-through rate	15%, but unclear to which entities and income it applies/other restrictions
Tax Expenditures	Eliminate most corporate tax expenditures except R&D credit
Full expensing Interest deduction	U.S. manufacturers may elect full expensing *or* interest deductibility; election irrevocable after three years

Trump tax plan
Business taxes

International	• No changes currently specified to current regime (2015 plan called for retaining current-law worldwide regime and foreign tax credit but repealing deferral) • Deemed repatriation at 10% tax rate
Affordable Care Act	Repeal Affordable Care Act and all related taxes
Corporate AMT	Eliminate
Employer-provided childcare	• Increase credit cap to $500k • Shorten recapture period to five years

Trump tax plan
Individual taxes

Individual rate	• New brackets: 12% on <$75k; 25% on $75k-225k; 33% top rate on >$225k
Capital gains/Dividends	20% top rate; eliminate 3.8% net investment income tax
Carried interest	Ordinary income
Indivdidaul AMT	Eliminate
Deductions	• Standard deduction $15k/$30k;eliminate personal exemptions and head of household filing status • Cap itemized deductions at $200k/$100k

Trump tax plan
Individual taxes

Estate & Gift Tax	• Eliminate, but capital gains held until death subject to tax, with first $10m tax-free • Disallow “contributions of appreciated assets into a private charity established by the decedent or the decedent’s relatives”
New Tax Benefits	• Deduction for childcare (avg. state cost) and eldercare (inflation-adjusted $5k cap), for those with income <$500k/$250k • Refundable childcare credit for EITC recipients • Dependent care savings accounts with 50% government match for low-income families

Note that Congress will want to be heard on tax policy…

And it won’t be with one voice

House Republicans

House Democrats

Senate Republicans

Senate Democrats

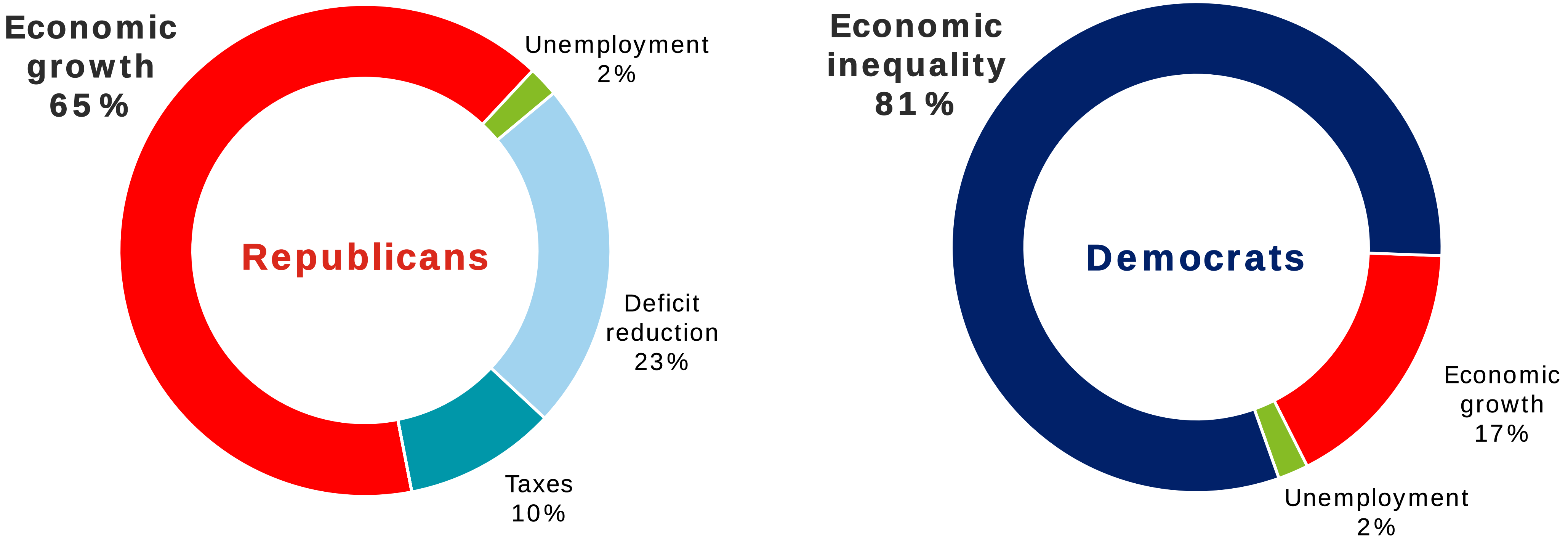
House Republicans

Continued focus on tax reform

- House Republicans released a tax reform “blueprint” on June 24, showing where they want to take the debate
- Unlike prior GOP tax plans, which were designed to be good tax policy, the GOP has pivoted into supporting policies designed to create economic growth
- With Republicans also controlling the White House and Senate next year, House Republicans can be expected to press hard for action on tax reform; it is one of the few issues that their members are enthusiastic about doing

Why the House GOP is focused on “growth”

What is the most important economic issue driving the 2016 presidential campaign?



Source: POLITICO Caucus November 2015 survey of a bipartisan group of influential political strategists, operatives and activists in Iowa, New Hampshire, South Carolina and Nevada

House Republicans
Blueprint summary

Business Tax

- 20% corporate tax rate; 25% rate on pass-through business income
- 100% expensing (rather than depreciation); repeal deductibility of business interest
- Repeal corporate AMT
- R&D credit and LIFO retained; most other business tax credits and deductions assumed to be repealed

International Tax

- Full territorial system (no tax on repatriation of future foreign profits)
- Transition rule that has a deemed repatriation of past foreign profits (8.75% rate on cash and cash equivalents; 3.5% rate on everything else; payable over eight years)
- Border adjustable, which the blueprint says will obviate the need for most base erosion safeguards

House Republicans
Blueprint summary

Individual Tax

- Reduce seven tax brackets down to three – 33%, 25%, 12%
- 50% exclusion for investment income (capital gains, dividends, interest)
- Combine and expand the standard deduction and personal exemption, allowing fewer taxpayers to go through the complexity of itemizing
- Retain, though possibly in a modified form, the deductions for mortgage interest and charitable contributions as well as incentives for savings and education
- Repeal most other individual income tax preferences, including for state and local taxes
- Repeal AMT
- Repeal estate and gift tax

Tax Plan Revenue Estimates

Joint Tax Committee estimates of H.R. 1 (Camp / 2014)

- Revenue neutral / 10 years on a “static” basis
- +$50 to +$700 billion on a “dynamic” basis *

Tax Policy Center estimates of Trump plan

- -$6.2 trillion / 10 years on a “static” basis
- -$6.0 trillion / 10 years on a “dynamic” basis

Tax Foundation estimates of Trump plan **

- -$4.4 trillion to -$5.9 trillion / 10 years on a “static” basis
- -$2.6 trillion to -$3.9 trillion / 10 years on a “dynamic” basis

“Dynamic” Estimates of House GOP Blueprint

- Tax Policy Center: -$2.5 trillion to -$3 trillion / 10 years
- Tax Foundation: -$191 billion / 10 years

* Ranges depending on which assumptions and models are used to make the calculations

** Ranges provided because of uncertainty about application of pass-through tax rate

Congressional Democrats

Focused more on “flaws” in the tax code

- Some Ways & Means Democrats seem interested in tax reform and have led the way on discrete parts (e.g., Rep. Richie Neal pairing with GOP Rep. Charles Boustany in 2015 to unveil an innovation box)
- However, the general approach of Ways & Means Committee Democrats is to continue to push for action to address what they say are deep flaws in the tax code
- They are unlikely to be supportive of the sort of tax reform that Trump and House Republicans will pursue
- Senate Finance Committee Ranking Member Ron Wyden has urged Congress to act in the short term on the issue of inversions
- Unlike his House counterparts, he is also working on a broader vision of tax reform and this year released discussion drafts on three pieces of tax reform
- Incentives for Senate Democrats to push for tax reform are unclear under a Trump presidency, but there may be areas of agreement on which legislation can be built

Senate Republicans

Looking at an alternative way of doing tax reform

- Senate Finance Committee Chairman Hatch is working on proposal for “corporate integration”
  - Generally expected to give corporations a deduction for dividends paid while requiring all dividend recipients to pay tax on them at ordinary income rates
  - Prospects for any action are unclear; Chairman Hatch has so far delayed releasing it in 2016
- In 2017, Senate Republicans are likely to continue to be supportive of tax reform, though they may find themselves pivoting back toward a more “traditional” approach

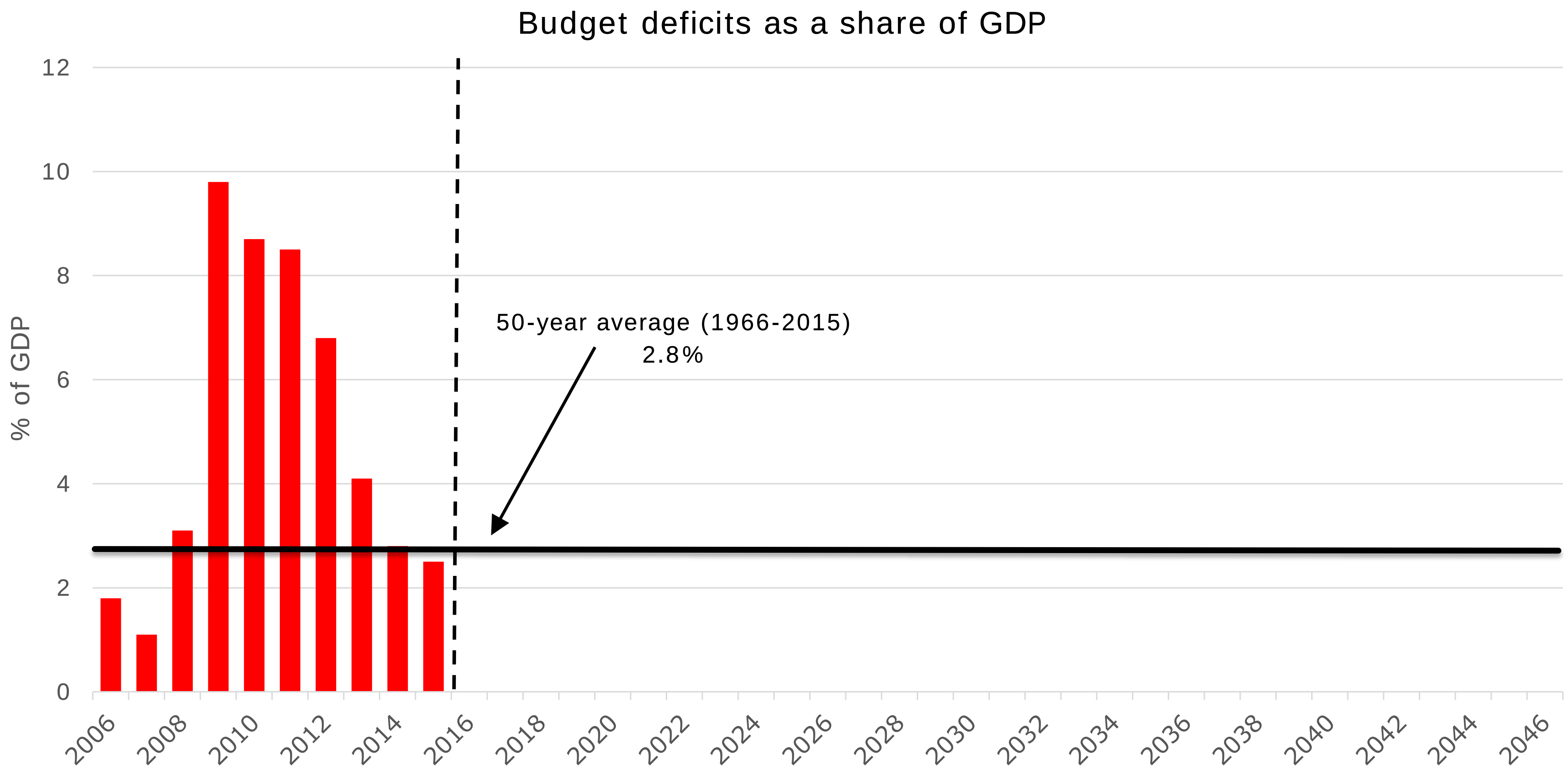
Bottom line question:

Is tax reform “more likely than not” in 2017?

There are at least five reasons to keep expectations in check

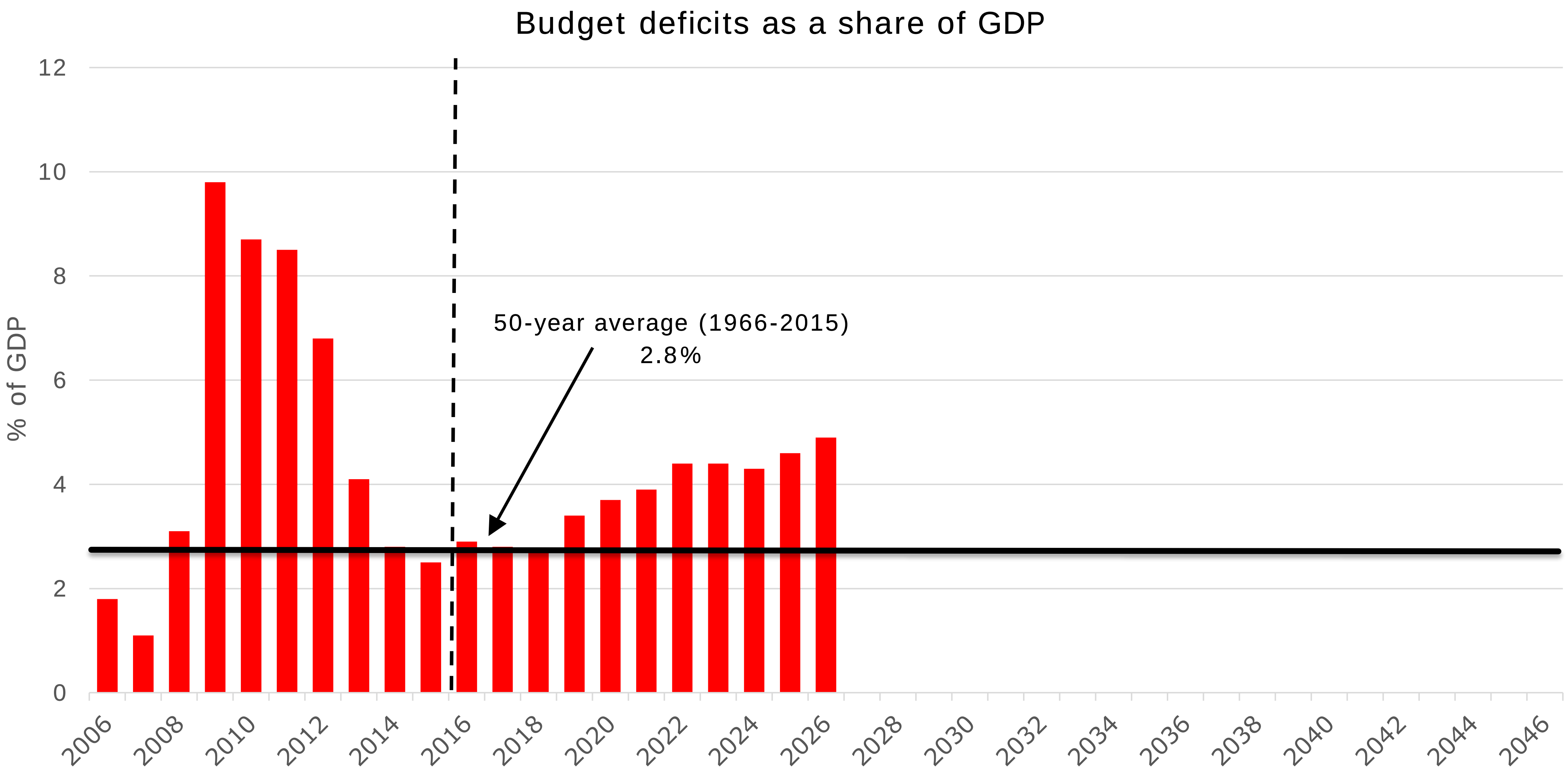
1. Parties have real and deep differences over whether tax reform should raise more revenue

Red ink falling but for how long?



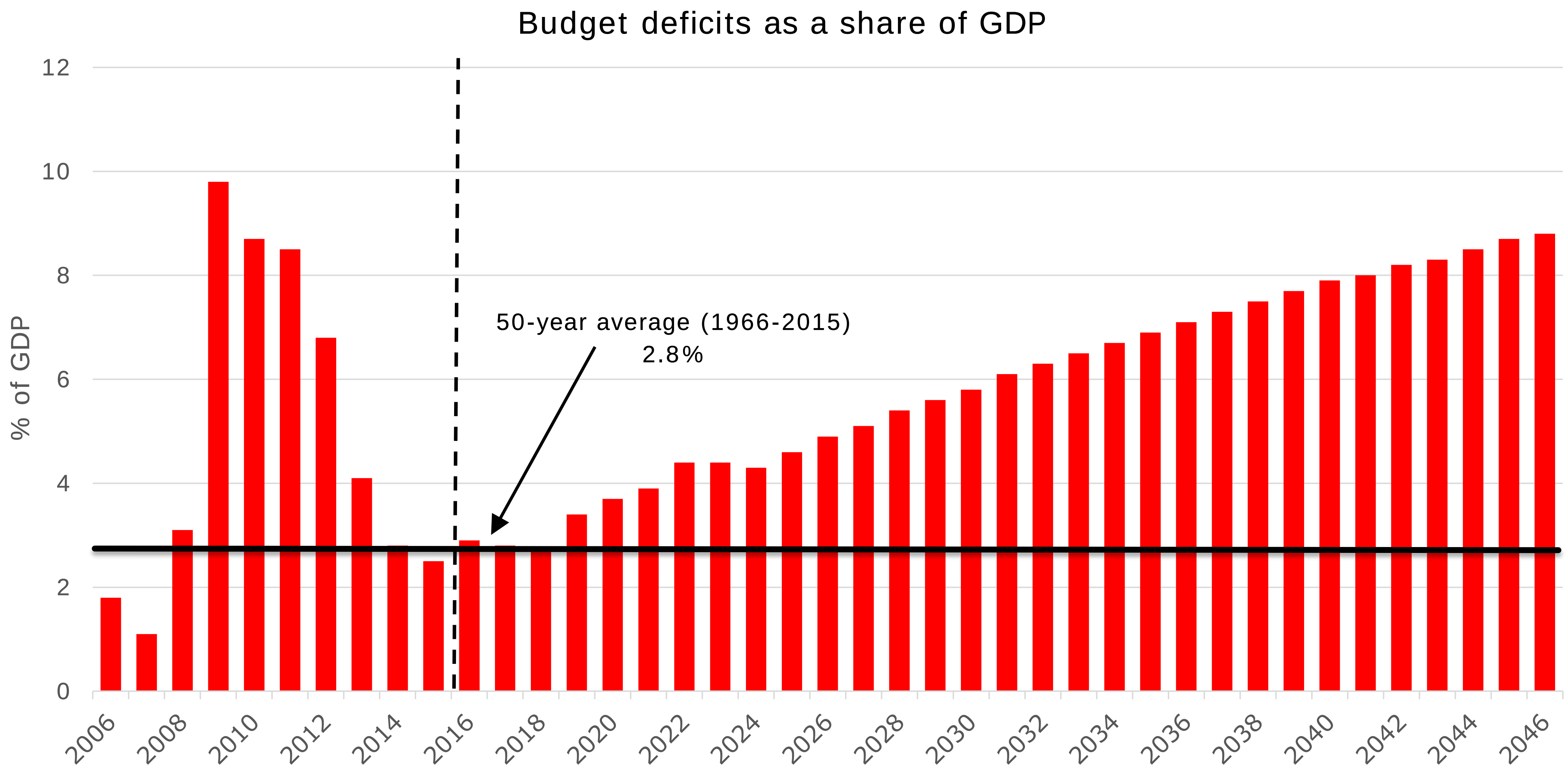
Source: Congressional Budget Office, Updated Budget Projections: 2016 to 2026 (Mar. 2016), The 2016 Long-Term Budget Outlook (Jul. 2016)

Red ink falling but for how long?



Source: Congressional Budget Office, Updated Budget Projections: 2016 to 2026 (Mar. 2016), The 2016 Long-Term Budget Outlook (Jul. 2016)

Red ink falling but for how long?



Source: Congressional Budget Office, Updated Budget Projections: 2016 to 2026 (Mar. 2016), The 2016 Long-Term Budget Outlook (Jul. 2016)

There are at least five reasons to keep expectations in check

1. Parties have real and deep differences over whether tax reform should raise more revenue
2. Parties remain badly divided over whether to reduce the top marginal rate for individuals; relatedly, they have very different views as to whether the tax code should be made more progressive or not

THE TAX

POLICY

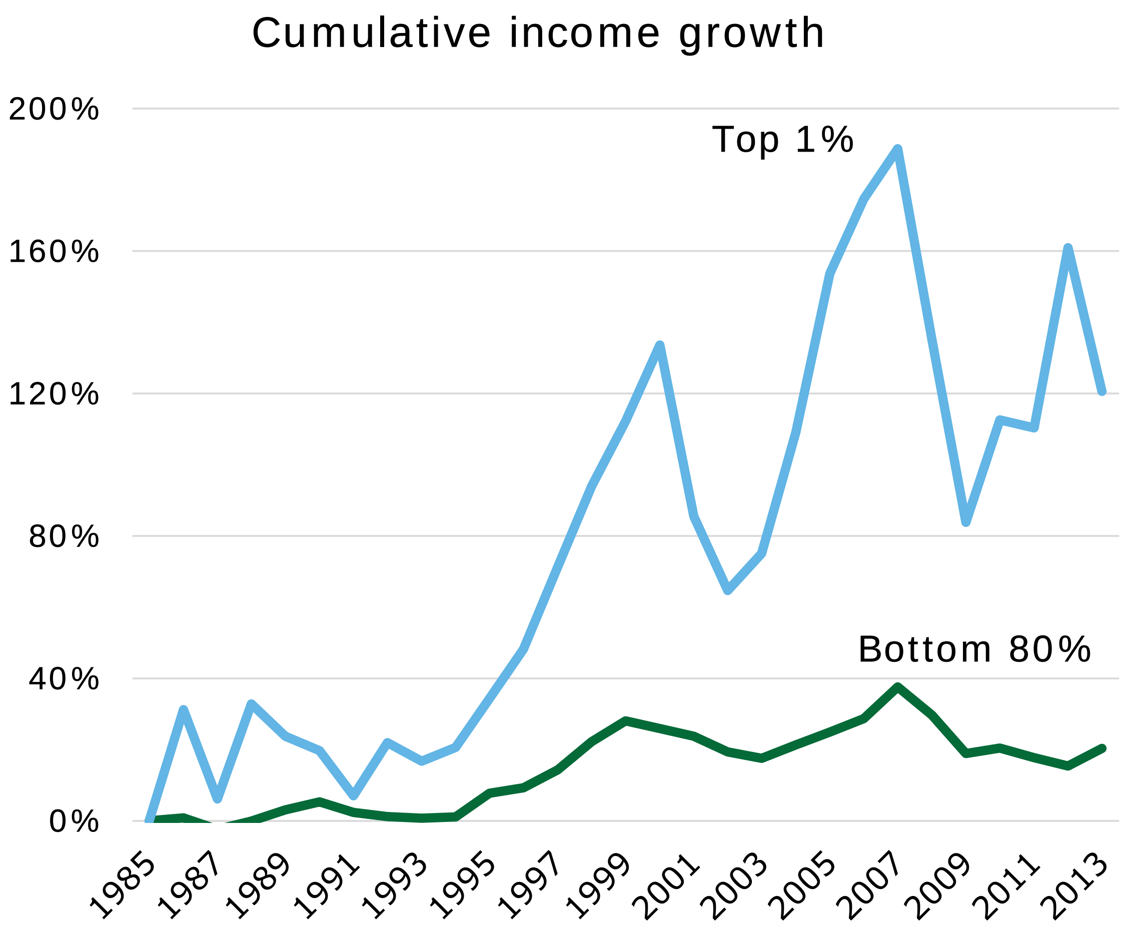
“F A I R N E S S”

“W4PGN2AZ”

EYE TEST

The “Fairness” eye test

Better Left?

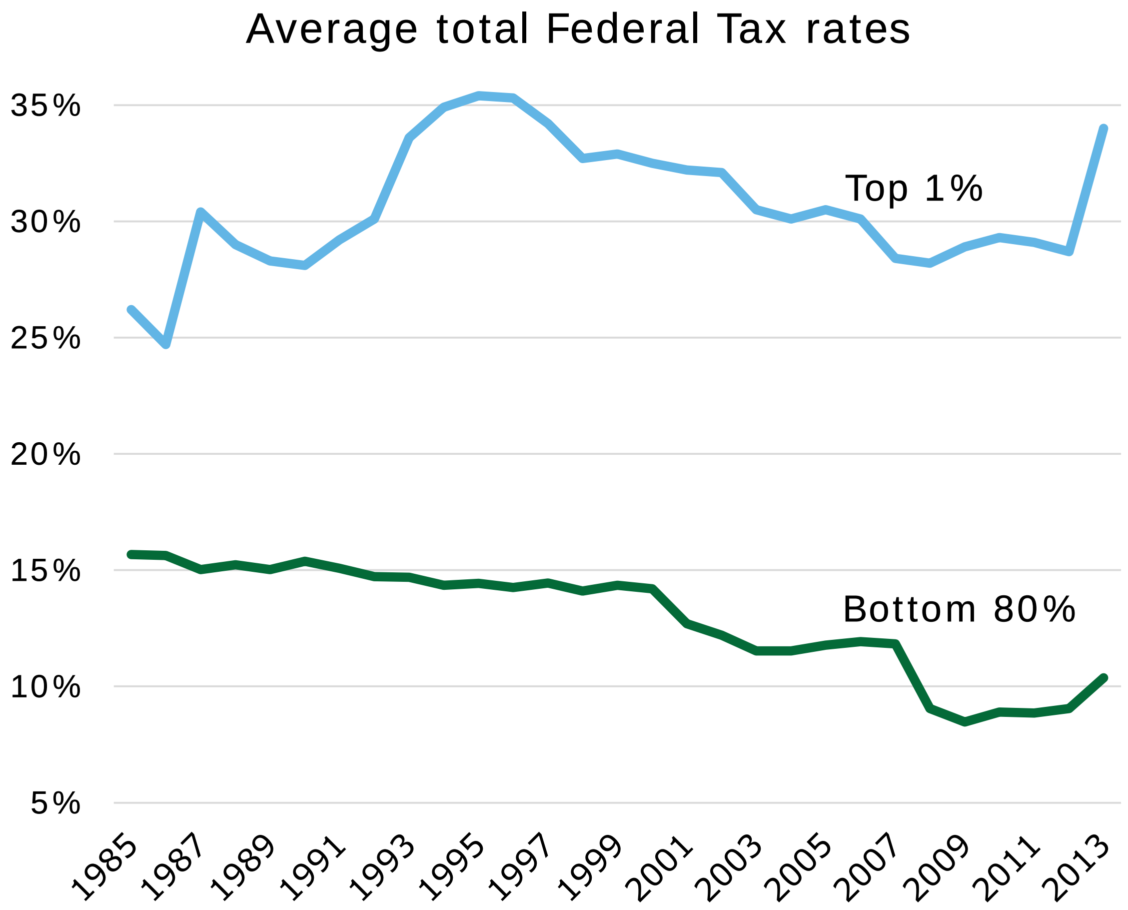


Source: Deloitte calculations from Congressional Budget Office (CBO), *The Distribution of Household Income and Federal Taxes, 2013* (June 2016), supplemental data.

Note: For a family of four, the *maximum* income in 2013 of the Bottom 80% was $165,499; the *minimum* income for a similar household in the Top 1% was $710,400.

The “Fairness” eye test

Better right?

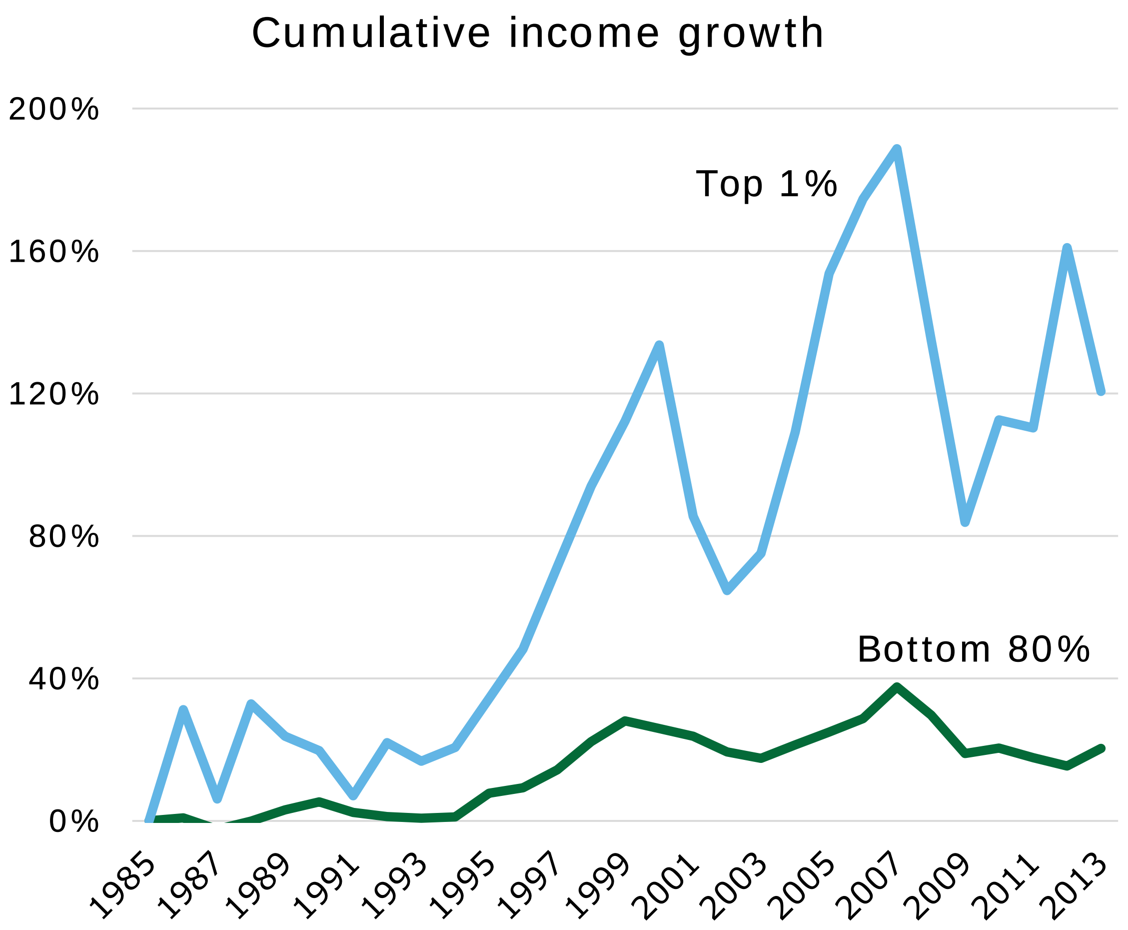


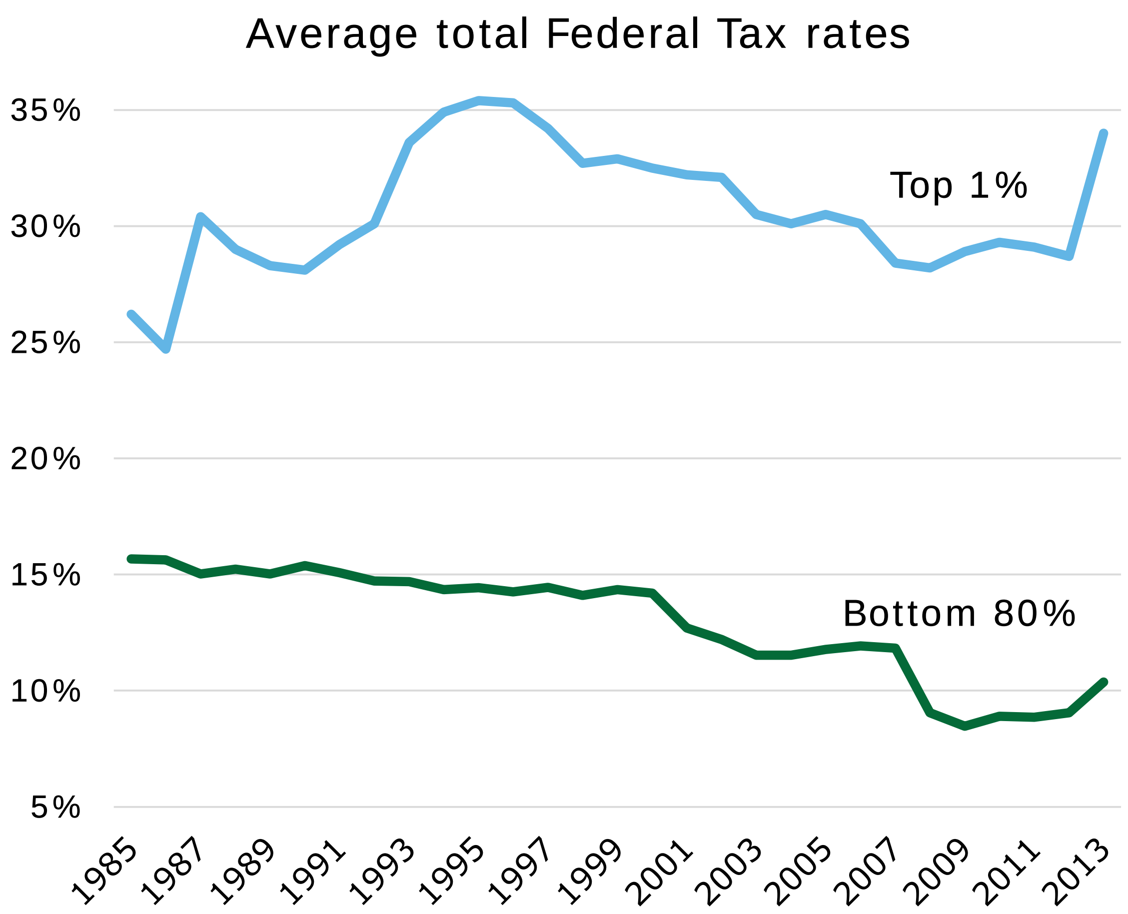
Source: Deloitte calculations from Congressional Budget Office (CBO), *The Distribution of Household Income and Federal Taxes, 2013* (June 2016), supplemental data.

Note: For a family of four, the *maximum* income in 2013 of the Bottom 80% was $165,499; the *minimum* income for a similar household in the Top 1% was $710,400.

The “Fairness” eye test

Now both together





Source: Deloitte calculations from Congressional Budget Office (CBO), *The Distribution of Household Income and Federal Taxes, 2013* (June 2016), supplemental data.

Note: For a family of four, the *maximum* income in 2013 of the Bottom 80% was $165,499; the *minimum* income for a similar household in the Top 1% was $710,400.

There are at least five reasons to keep expectations in check

1. Parties have real and deep differences over whether tax reform should raise more revenue
2. Parties remain badly divided over whether to reduce the top marginal rate for individuals; relatedly, they have very different views as to whether the tax code should be made more progressive or not
3. Tax reform entails very difficult choices — Members of Congress are rarely excited about taking away specific tax benefits for specific groups/industries

Broadening the base

More than just “closing loopholes”

Largest Business Tax Expenditures – 2015	$ Billion
Deferral of active CFC income	99.3
§199 deduction	11.7
Deferral on like-kind exchanges	11.0
Exclusion for muni bond interest	9.7
Low-income housing tax credit	7.3
Deferral of gain on installment sales	6.9
§179 expensing	4.8
Expensing of R&D expenditures	4.7
Reduced tax on corporate income below $10M	4.0
Special treatment of life insurance co. reserves	2.9
Accelerated depreciation	-20.0*

Largest Individual Tax Expenditures – 2015	$ Billion
Tax-preferred retirement plans	157.4
Exclusion of employer-provided health benefits	145.5
Reduced rates on LT cap gains/dividends	131.7
Earned Income Tax Credit	72.7
Mortgage interest deduction	71.0
State and local tax deduction	62.2
Child tax credit	57.1
Charitable contribution deduction	45.6
Exclusion of Social Security benefits	37.6
Property taxes deduction	32.4
Exclusion of cap gains at death	32.4

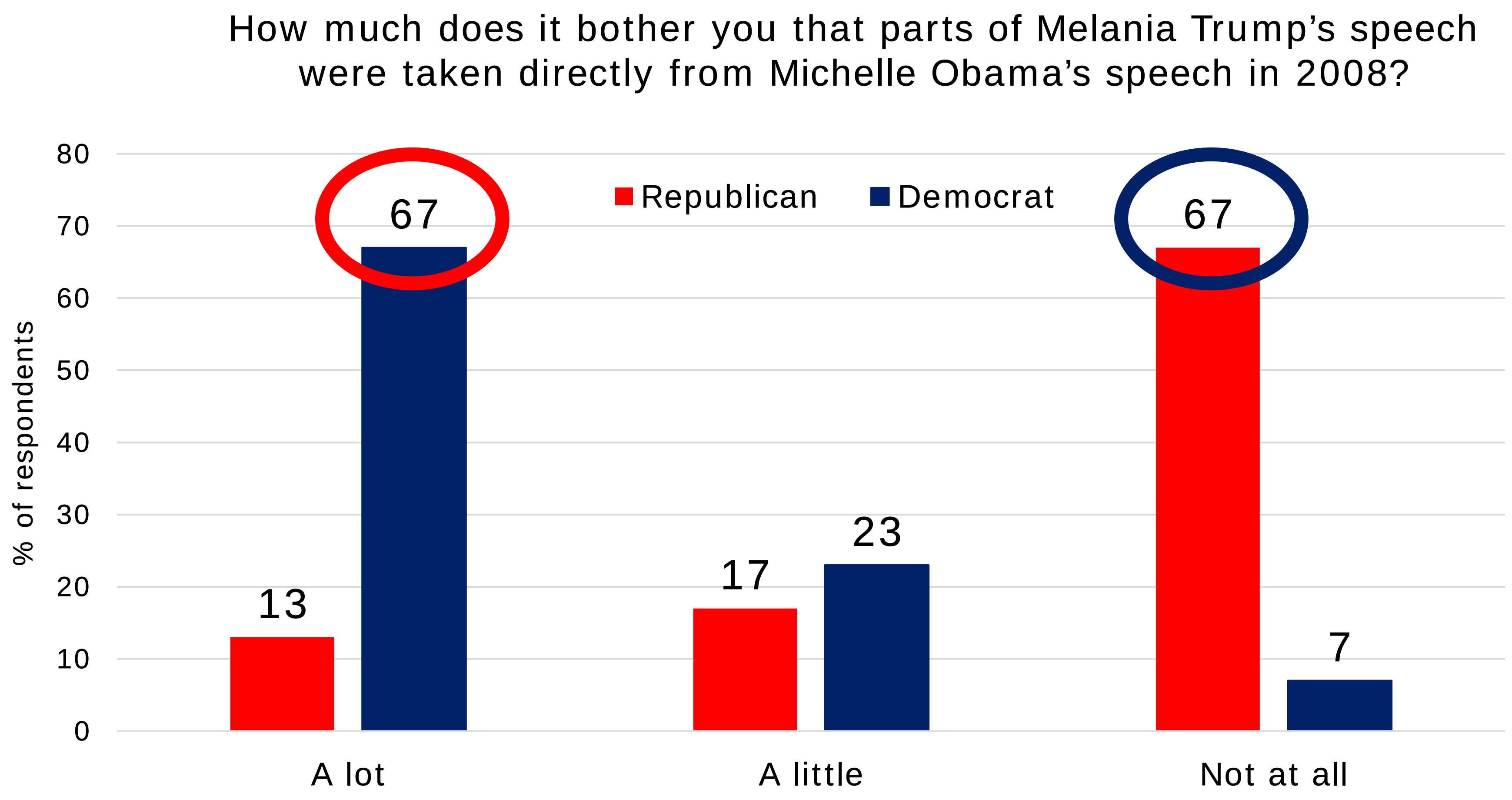
*Accelerated depreciation is a negative expenditure (brings in revenue) in the short term but a revenue loss in the longer term.
Source: Joint Committee on Taxation publication JCX-141R-15, “Estimates Of Federal Tax Expenditures For Fiscal Years 2015-2019,” Dec. 7, 2015.

There are at least five reasons to keep expectations in check

1. Parties have real and deep differences over whether tax reform should raise more revenue
2. Parties remain badly divided over whether to reduce the top marginal rate for individuals; relatedly, they have very different views as to whether the tax code should be made more progressive or not
3. Tax reform entails very difficult choices — Members of Congress are rarely excited about taking away specific tax benefits for specific groups/industries
4. Politics as a whole seems to be broken

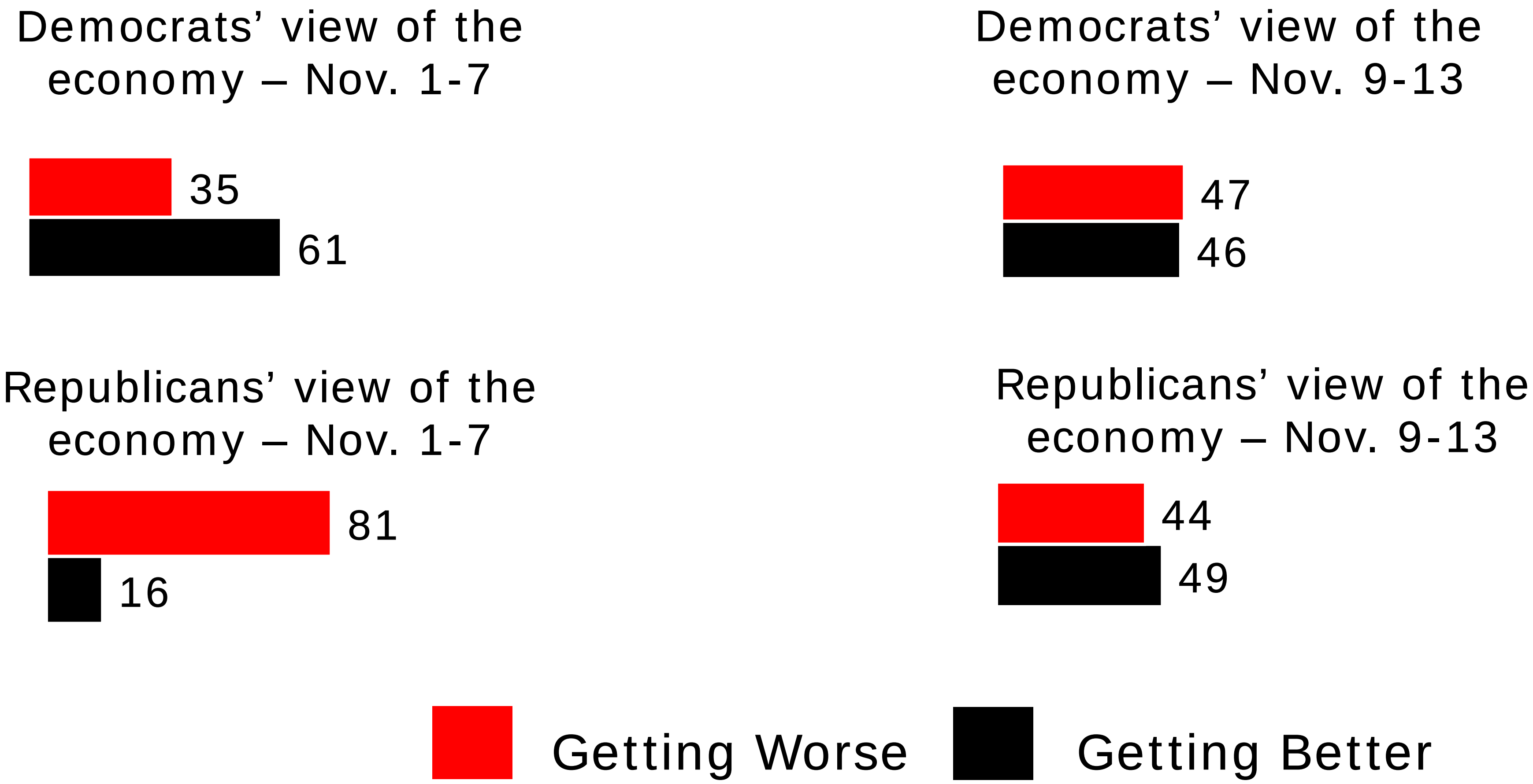
The partisan divide

“Plagiarism” is in the eye of the beholder



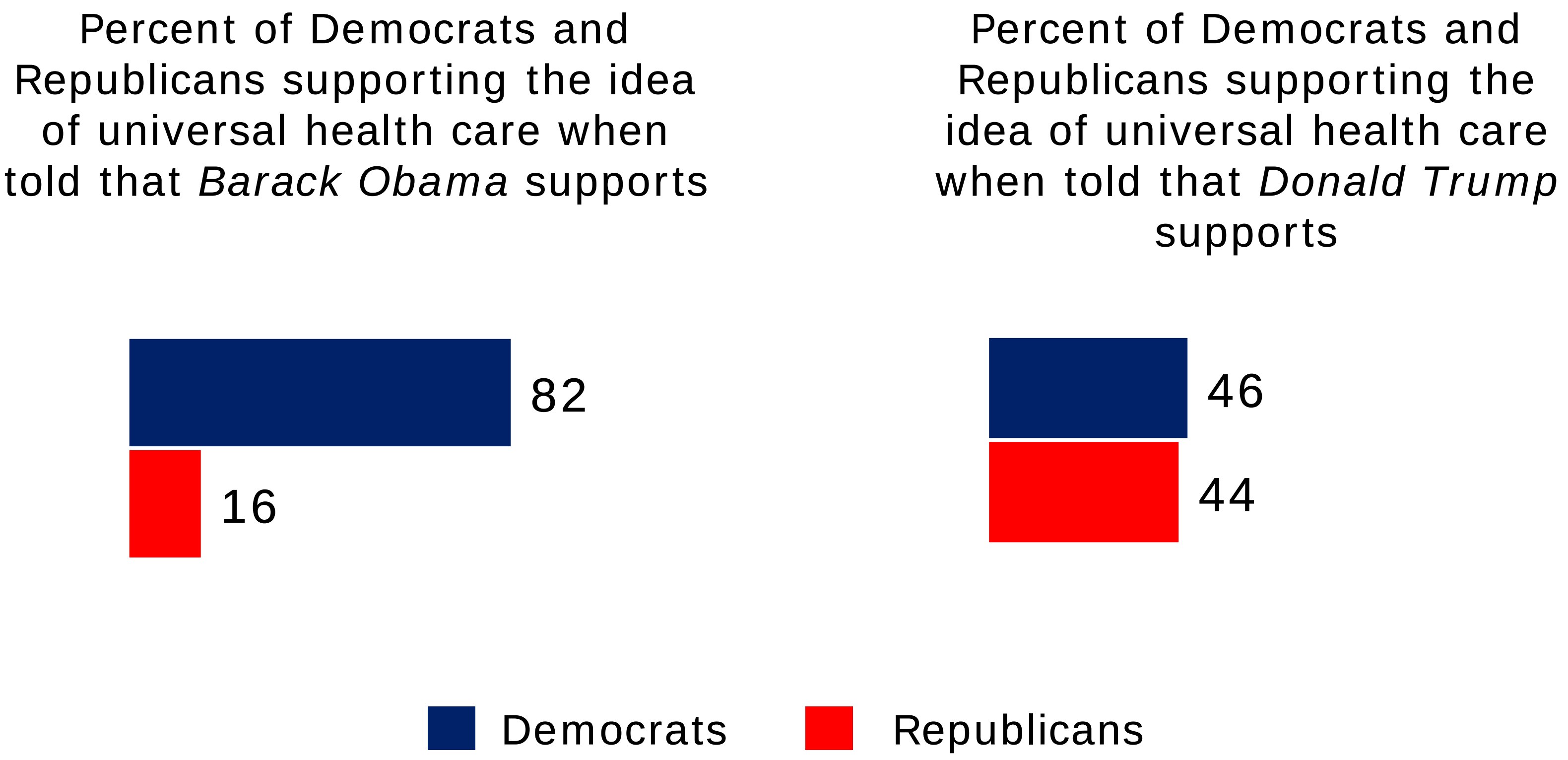
Source: Economist/YouGov poll, July 23-24, 2016; asked of those who watched any part of the Republican National Convention or read or watched news about the convention

The economy is suddenly getting much **worse** or **better**



Source: Gallup polls taken Nov. 1-7 and Nov. 9-13; http://www.gallup.com/poll/197474/economic-confidence-surges-election.aspx?g_source=Economy&g_medium=lead&g_campaign=tiles

“Anchoring” of political views prevalent



Source: YouGov Poll, Aug. 2015

There are at least five reasons to keep expectations in check

1. Parties have real and deep differences over whether tax reform should raise more revenue
2. Parties remain badly divided over whether to reduce the top marginal rate for individuals; relatedly, they have very different views as to whether the tax code should be made more progressive or not
3. Tax reform entails very difficult choices — Members of Congress are rarely excited about taking away specific tax benefits for specific groups/industries
4. Politics as a whole is broken; the system today rewards "purists" not dealmakers
5. You can never rule out the possibility of a "Black Swan" event (natural disaster, financial market turmoil, terrorism, etc.) that could stymie or re-direct the legislative process; and the 2018 midterm elections are barely 700 days away

Five reasons to think it could really happen this time

1. There is substantial agreement that the current system — with high corporate tax rates, a narrow tax base riddled with credits and deductions, and an antiquated worldwide tax system — is not sustainable

Are voters buying what tax reformers have been trying to sell?

Match the "net favorable" number to each proposed policy change

Net Favorabilty Of Five Policy Options	+ / - %
1. Reducing the top indiv. income tax bracket to 33%	A.
2. Cutting the corporate tax rate to 15%	B.
3. Raising taxes on the wealthy	C.
4. Raising the estate tax	D.
5. Limiting the pay of corporate executives	E.

-6%

+41%

+49%

-24%

-17%

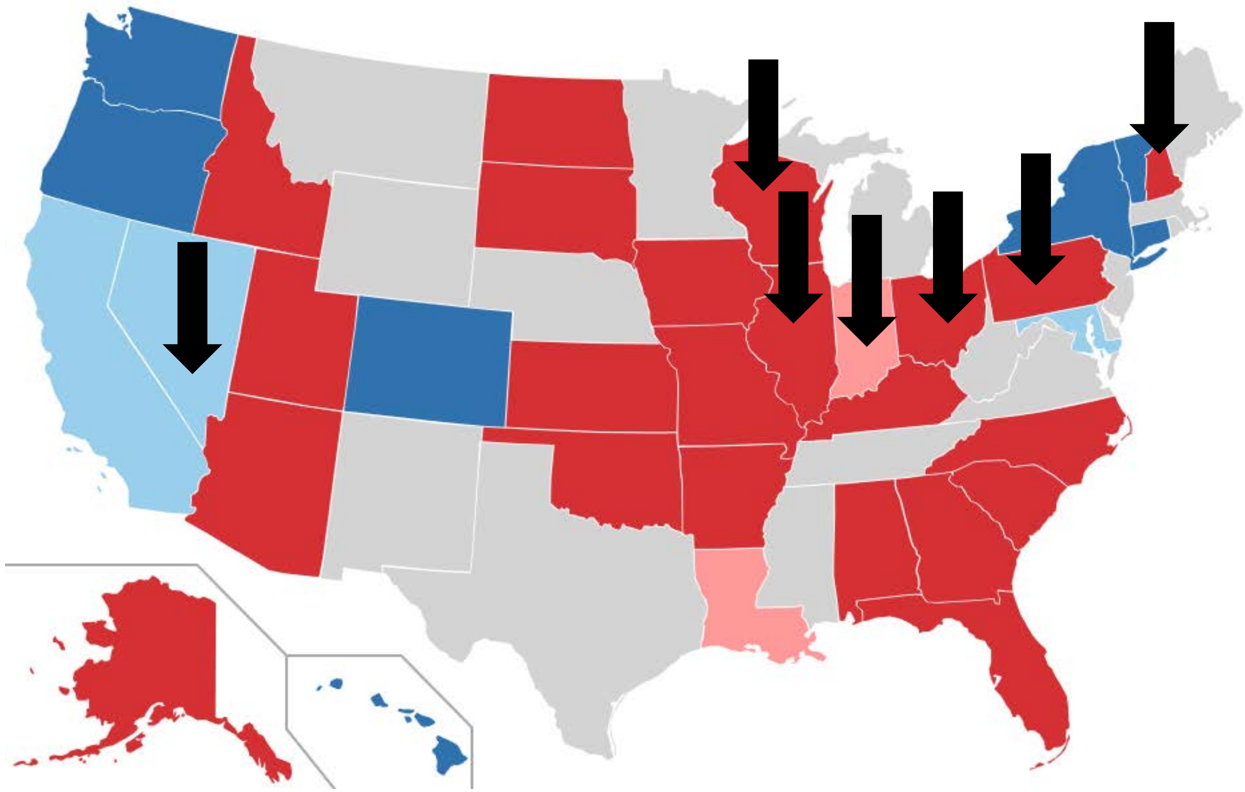
Net support numbers = (strong support + somewhat support) – (strongly oppose + somewhat oppose)
Source: Morning Consult/Bloomberg Poll; Aug. 11-14, 2016

Five reasons to think it could really happen this time

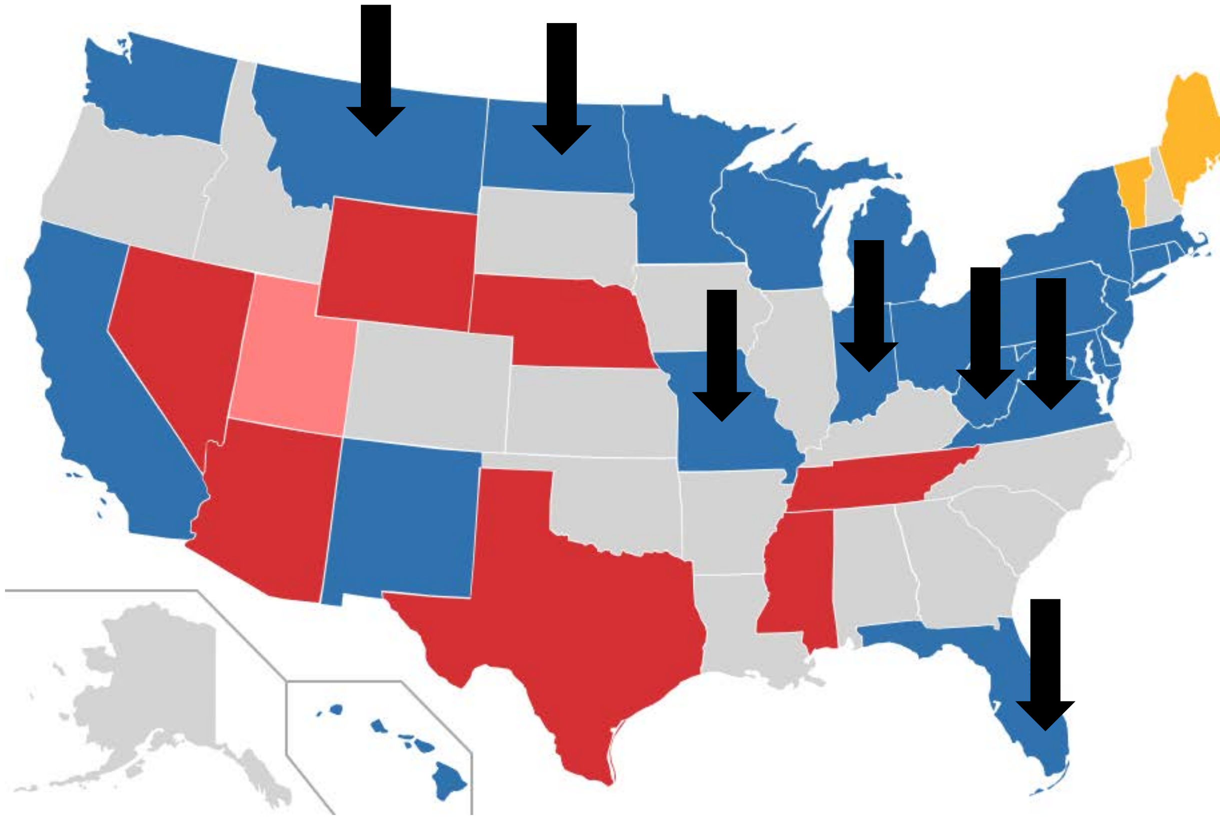
1. There is substantial agreement that the current system — with high corporate tax rates, a narrow tax base riddled with credits and deductions, and an antiquated worldwide tax system — is not sustainable
2. External factors (including inversions, foreign acquisitions of U.S. firms, and the state aid cases in the EU) are imposing real costs on U.S. companies and the Treasury, making it harder and harder to stall
3. Lots of groundwork has been laid
4. Reform is a high priority for key House and Senate leaders, so this likely won’t fall off the radar

2016: A good map (on paper) for Democrats; 2018: A different story

Key Senate Seats Contested In 2016



Key Senate Seats To Be Contested in 2018



Five reasons to think it could really happen this time

1. There is substantial agreement that the current system — with high corporate tax rates, a narrow tax base riddled with credits and deductions, and an antiquated worldwide tax system — is not sustainable
2. External factors (including inversions, foreign acquisitions of U.S. firms, and the state aid cases in the EU) are imposing real costs on U.S. companies and the Treasury, making it harder and harder to stall
3. Lots of groundwork has been laid
4. Reform is a high priority for key House and Senate leaders, so this likely won’t fall off the radar
5. Republicans are generally united on the idea of tax reform, and with the executive and legislative branches under the control next year, they may try to enact tax reform under reconciliation

The budget process: Theory and practice

- The President's budget is due by the first Monday in February... but budgets are rarely submitted on time, especially by incoming administrations
  - B. Clinton's first budget submission: April 8, 1993; G.W. Bush's: April 9, 2001; Obama's: May 7, 2009
- The House and Senate are supposed to agree on a budget resolution by April 15
  - Establishes a *spending ceiling* and a *revenue floor* designed to constrain the budget impact of subsequent legislation... but those restraints are often waived or ignored
  - The budget resolution can be used to make "reconciliation" bills in order – valuable to the majority party, because they are not subject to filibuster in the Senate

GOP control raises prospects of “budget reconciliation”
How does it work?

- Reconciliation instructions cannot be prescriptive – may only specify:
  - The committee(s) charged with reporting legislation
  - The budget impact of legislation to be reported
  - May also be used to raise the statutory debt limit
  - Date by which committee(s) must report conforming legislation

- A maximum of three reconciliation bills can be moved in one year – one each for revenues, spending, and the debt limit

- Recent uses: 1996 welfare reform, 2001 tax cuts, 2003 tax cuts, 2010 health reform law

Tax reform through reconciliation – is it really an option?

Arguments for Using Reconciliation

Cannot be filibustered, meaning it can pass the Senate with just 51 votes (or 50 plus the tie-breaking vote of the Vice President)

Democrats may demand concessions on key issues (overall cost, estate tax, marginal rates, distribution of tax burden, etc.) that some Republicans may find unacceptable

Tax reform through reconciliation – is it really an option?

Arguments for Using Reconciliation

Cannot be filibustered, meaning it can pass the Senate with just 51 votes (or 50 plus the tie-breaking vote of the Vice President)

Democrats may demand concessions on key issues (overall cost, estate tax, marginal rates, distribution of tax burden, etc.) that some Republicans may find unacceptable

Arguments Against Using Reconciliation

Procedural rules can have major substantive impacts by preventing inclusion of provisions that:

- Have no budgetary or have budget effects that are “merely incidental”
- Increase the deficit outside the budget window

Increased political durability of passing major legislation on a bipartisan basis (for example, see what may happen to the ACA next year)

Final observations, takeaways, and questions?

PATH Act

Summary

PATH Act

Selected REIT provisions

REIT spin offs

Restrictions on tax free spin offs:

- Corporations involved in non-REIT tax free spin may not elect REIT status for 10 years
- Generally cannot qualify for tax free treatment if either distributing or distributed corporation is a REIT.
- Exceptions — certain transactions may qualify for tax free treatment:
  - Distributions where both the distributing and distributed corporation are REITS immediately after the spin, or
  - Certain distributions of taxable REIT subsidiaries

Preferential dividends

REIT friendly rule to eliminate certain foot faults

- Publicly offered REITs – preferential dividend rules no longer apply
- All other REITs – government has authority to provide appropriate remedy to cure violations if
  - The government determines that the failure to be non-preferential is inadvertent or is due to reasonable cause and not due to willful neglect, or
  - The failure is a type of failure identified by the government as meeting this standard (e.g. through published rulings)

Ancillary personal property

Certain property treated as real property for REIT tests

- Personal property — To the extent the rent from personal property is considered rent from real property (because rent from such personal property does not exceed 15% of total rent), such personal property will qualify as real property under the 75% asset test
- If an obligation is secured by real and personal property, and the personal property does not exceed 15% of the total FMV, the obligation is considered a real estate mortgage under for the 75% asset test and the interest on it is mortgage interest for the 75% gross income test.

PATH Act

Selected REIT provisions (cont.)

Earnings and profits

Changes generally designed to protect dividend paid deduction

- E&P is increased by the amount of gain on the sale of real property taken into account during the year
- Current E&P (but not accumulated E&P) is not reduced by any amount not allowable in computing its taxable income for the year.
- Complexities generally protect DPD where regular tax deduction precedes E&P deduction; does not necessarily provide DPD protection where E&P deduction precedes regular tax deduction.

Prohibited transactions

Safe harbors from prohibited transaction tax expanded

- A REIT can sell up to 20% of basis or 20% of FMV, provided that on a 3-year rolling average its sales do not exceed 10% of basis or 10% of FMV, respectively (old safe harbor limited to 10% of basis or FMV per year)
- To utilize the new safe harbor, substantially all of its marketing and development expenditures must be made through either an independent contractor from whom the REIT does not derive any income or, as added by the PATH Act, a TRS

Taxable REIT subsidiaries

Two new rules for TRS

- For years beginning after December 31, 2017, TRS limit is 20% of REITs total assets (as opposed to the current 25% limit)
- 100% excise tax applies to redetermined TRS service income
- For services on behalf of the REIT to tenants of the REIT and to the REIT itself.

Significant FIRPTA Changes by the PATH Act

- 5% publicly traded exception increased to 10% for stock of REITs
- New exception for certain listed and traded investment entities owned by foreign persons in certain treaty countries
- Section 1445 rate of withholding tax on dispositions of US real property interest to 15%, from 10%. The increased rate does not apply to the sale of a personal residence where the amount realized is $1,000,000 or less
- Interests in REITs and RICs are not eligible for the "cleansing exception" under §897(c)(1)(B). This could be helpful in cases of recovering stock basis in the liquidation of a foreign controlled REIT.
- Exception from FIRPTA for certain "qualified foreign pension funds" (QFPFs)
- Rules on defining a Domestically Controlled REIT

Final, Proposed, and Temporary Regulations for disguised sales and liability allocations

Sections 707/752

Final, temporary, and proposed regulations

Topic	Purpose
Final Disguised Sale Regulations	• Provides guidance under section 707 relating to the disguised sales of property to or by a partnership. • Provides guidance under section 752 relating to allocations of liabilities of a partnership to partners for disguised sale purposes.
707 Temporary Regulations and 752 Temporary Regulations	• These temporary regulations together impact how liabilities are taken into account for purposes of the disguised sale rules. • Include rules on the treatment of “bottom dollar payment obligations.”
752 Proposed Regulations	• Rules address when certain obligations to restore a deficit balance in a partner’s capital account are disregarded for purposes of determining the substantial economic effect of partnership allocations. • Rules address when partner bears the economic risk of loss for purposes of determining whether a liability is recourse to such partner with respect to the allocation of partnership liabilities.

Final regulations

Definition of real property

Treas. Reg. Sec. 1.856-10 definition of real property

- **Real property** means land and improvements to land. Local law definitions are not controlling for purposes of determining the meaning of the term real property.

- **Land** includes water and air space superjacent to land and natural products and deposits that are unsevered from the land.
  - Natural products and deposits, such as crops, water, ores, and minerals, cease to be real property when they are severed, extracted or removed from the land.

- **Improvements to land** means inherently permanent structures and their structural components
  - Inherently permanent structure means any permanently affixed building or other permanently affixed structure. Must serve a passive function, such as contain, support, shelter, cover, protect, or provide conduit or a route and do not serve an active function, such as manufacture, create, produce, convert, or transport.
  - Building encloses a space within its walls and is covered by a roof
    - Building includes apartments, hotels, motels, enclosed stadiums/arenas, enclosed shopping malls, factory and office buildings, warehouse, barns, enclosed garages, enclosed transportation stations and terminals, and stores

Treas. Reg. Sec. 1.856-10 definition of real property

Facts and circumstance determination

- If a distinct asset does not serve an active function and is not listed in the Regulations, the determination of whether that asset is an inherently permanent structure is based on all the facts and circumstances. The following factors must be taken into account:
  - The manner in which the distinct asset is affixed to real property;
  - Whether the distinct asset is designed to be removed or to remain in place;
  - The damage that removal of the distinct asset would cause to the item itself or the real property to which it is affixed;
  - Any circumstances that suggest the expected period of affixation is not indefinite; and
  - The time and expense required to move the distinct asset.

- Distinct asset is analyzed separately from any other assets to which the asset relates to determine if the asset is real property, whether as land, an inherently permanent structure, or a structural component of an inherently permanent structure.

Debt/equity regulations

Final debt/equity regulations

- **On October 13, 2016**, the US Treasury and the IRS published broadly applicable final and temporary regulations under Code section 385 that would:
  - treat as stock certain related party interests that would otherwise be treated as indebtedness for US federal income tax purposes; *and*
  - establish threshold documentation requirements that ordinarily must be satisfied in order for certain related-party interests in a corporation to be treated as indebtedness for US federal income tax purposes.

- REITs are **generally excluded** from the new regulations.
  - The final and temporary regulations would apply to a REIT if a C corporation, directly or indirectly, owned 80% of the vote or value of the REIT and *would* subject intercompany debt between the REIT and the expanded group (as defined in the regulations) to analysis under the recharacterization rules.
  - Even if a REIT is the parent of a group and the group as a whole is not an expanded group, if a TRS within that group owns 80% or more of any other TRSs, the TRS and those subsidiaries would be an expanded group. A consolidated group is exempt from many provisions of the Final Regulations, but a consolidated group is not exempt from the documentation requirement. Recharacterization of debt between TRSs within a consolidated group, however, may not have material economic consequences.

The Final Regulations have complex effective date provisions for the foregoing. The Final Regulations documentation requirements apply only to debt instruments issued on or after January 1, 2018.

Other changes

Other changes

- **Built-in gain tax**
  - Effective for tax years beginning after December 31, 2014, the “recognition period” under for S Corporations is changed to 5 years (down from 10).
  - Consistent with existing thinking, the Blue Book states that this change also applies to the C corporation built-in gain recognition period of REITs.
    - However, proposed regulations issued June 8, 2016 reversed this position for acquisitions after June 7, 2016 and applies a 10 year recognition period for REITs. Taxpayers are hopeful that Treasury will adjust this rule to allow REITs a 5 year recognition period.

- **Hedging rules**
  - “Offsetting” hedge treatment clarified and may be ignored for REIT income tests if certain requirements are satisfied.
  - General curative provisions for inadvertent failures to identify may apply.
  - Effective for tax years beginning after December 31, 2015.

- **Fractions Rule Proposed Regulations issued**
  - Relevant to UBTI impact from leveraged real estate.
  - Generally taxpayer friendly clarifications and adjustments to rules.
  - Can be applied to tax years ending after 11/23/16.

Other changes (cont'd)

- **Bonus depreciation extended for qualified property placed in service through 2019, subject to a phase out schedule:**
  - 50% bonus for 2015, 2016, 2017
  - 40% bonus for 2018
  - 30% bonus for 2019
- **Completed contract method for home builders**
  - Master planned community completion determination costs include common improvement and amenity costs in determining whether the contract for a single home is complete and taxable income recognition is thereby triggered. Shea Homes v. Commissioner, 2016 US App. Lexis 15570
  - Facts and circumstances test on the common improvement and amenity cost timeline. US Court of Appeals warned taxpayers against taking too broad a reading of the case to support creating unreasonably long common improvement or amenity time lines.

New tax return due dates

	Effective for taxable years beginning before Dec. 31, 2015		Effective for taxable years beginning after Dec. 31, 2015	
	Original	**Extended**	**Original**	**Extended**
Form 1065	April 15	Sept. 15	**March 15**	Sept. 15
Form 1120-S	March 15	Sept. 15	March 15	Sept. 15
Form 1120-REIT and Form 1120	March 15	Sept. 15	**April 15**	Sept. 15; **Oct. 15 for taxable years beginning after Dec. 31, 2025**
Form 1041	April 15	Sept. 15	April 15	**Sept. 30**
Form 990	May 15	Aug.15/Nov. 15	May 15	**Nov. 15**
FBARs	June 30	Not available	**April 15**	**Oct. 15**

Enacted by H.R. 3236, the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015

Deloitte.

Official Professional Services Sponsor

Professional Services means audit, tax, consulting, and advisory.