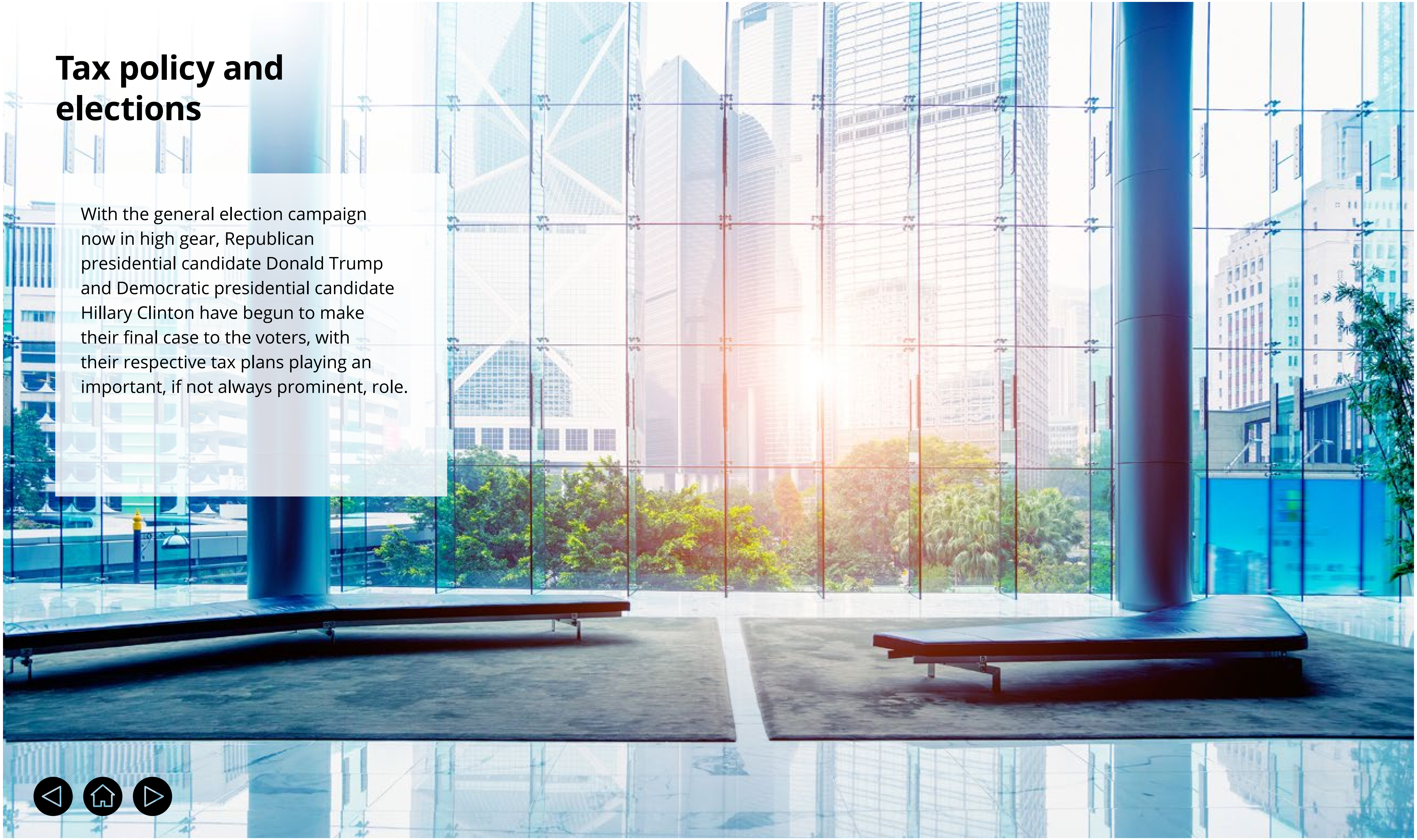
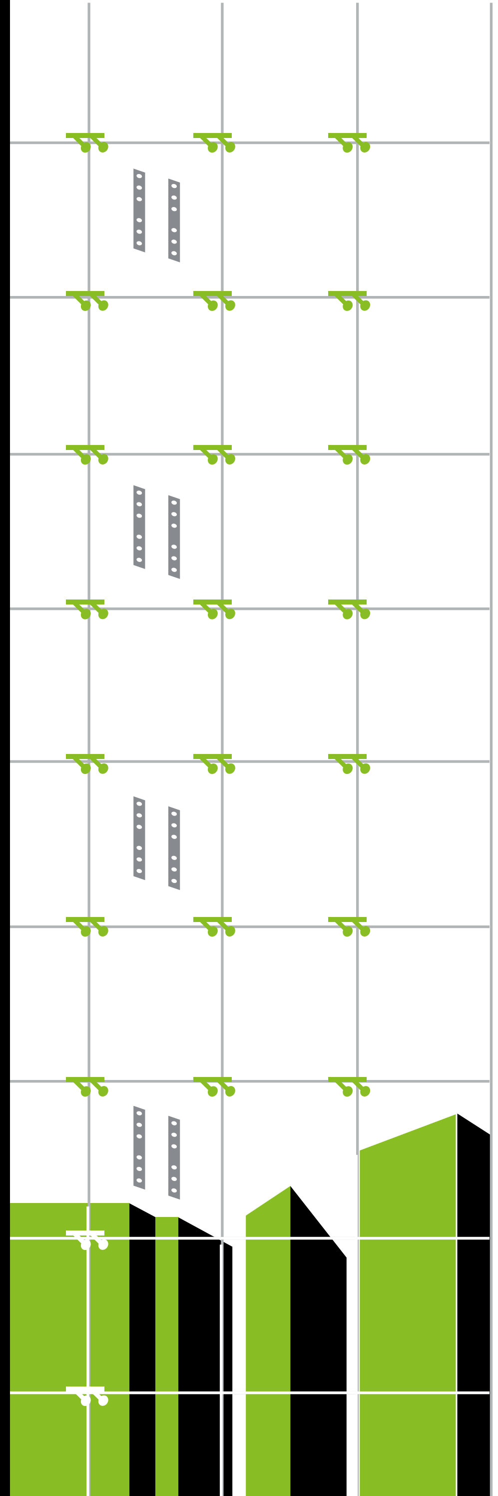
Tax policy and elections

With the general election campaign now in high gear, Republican presidential candidate Donald Trump and Democratic presidential candidate Hillary Clinton have begun to make their final case to the voters, with their respective tax plans playing an important, if not always prominent, role.



Download the first issue



Tax policy and elections

Potential impact of the 2016 elections

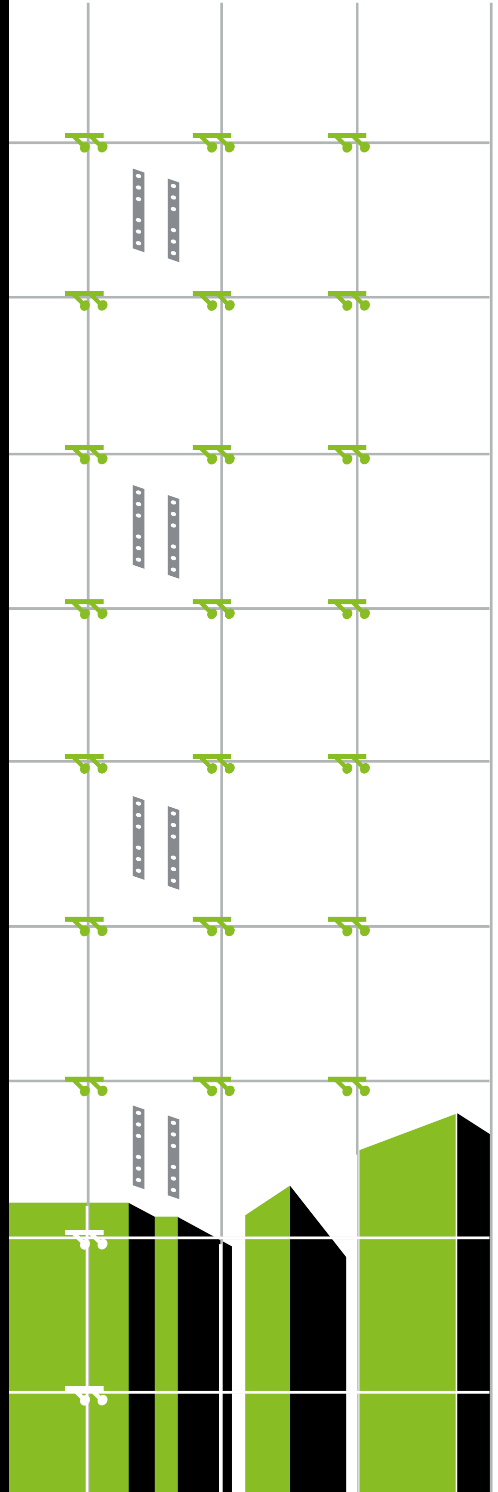
Trump and Clinton have so far discussed taxes in broad strokes, without the technical detail necessary to explain how many of their specific proposals would operate. The information they have provided suggests that both are working within the current income tax rules rather than moving toward a consumption-based or other alternative system and both are largely following their respective party orthodoxies. Trump has adopted the traditionally Republican rate-lowering, base-broadening approach similar to past House GOP tax reform plans, while Clinton is following the Democratic model of using the federal tax code to address perceived income inequality and raise revenue for new spending and deficit reduction.

Highlights of their respective proposals affecting high net worth individuals appear below. Details of Trump's proposals are based on the tax plan he unveiled in late 2015, along with clarifications and revisions he released in conjunction with a speech at the Detroit Economic Club on August 8 and a speech at the Economic Club of New York on September 15. Details on Clinton's plan come from her campaign website and remarks at an economic address she gave in Warren, Michigan on August 11.

Ordinary income rates and incentives

Trump would compress the individual income tax rate brackets from seven under current law (top rate: 39.6 percent) to three—12 percent, 25 percent, and 33 percent—and increase the standard deduction to $30,000 for married filing jointly (MFJ) filers and $15,000 for individuals. He also would eliminate personal exemptions and the head-of-household filing status.

Download the first issue



Tax policy and elections

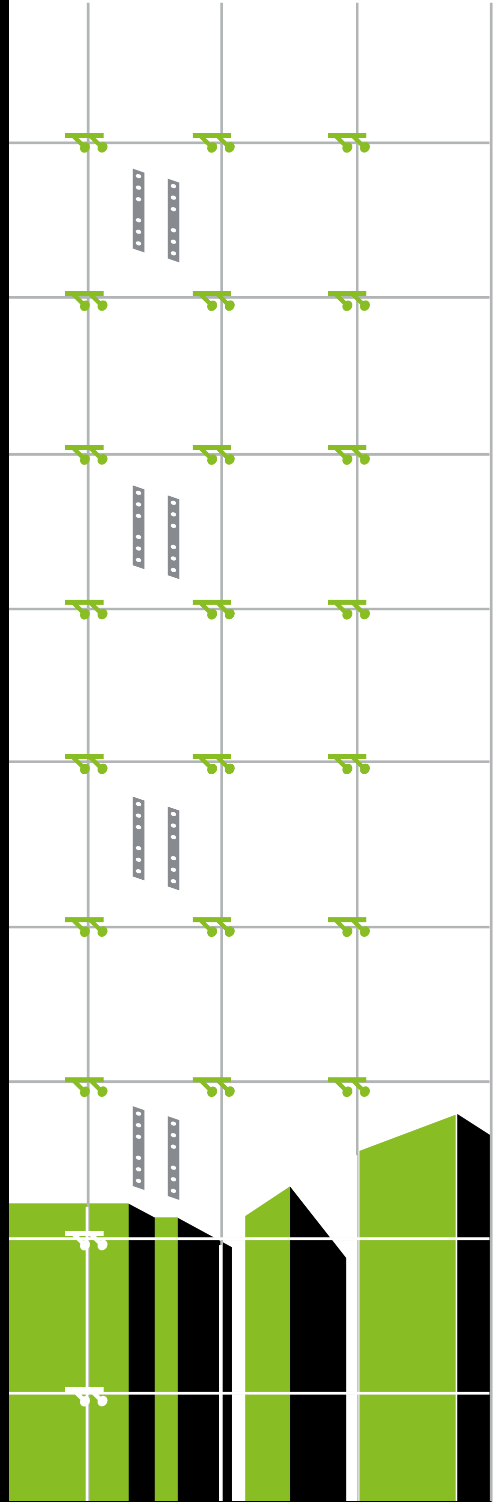
Potential impact of the 2016 elections

In a significant change from his original plan, the revised proposal Trump released in September calls for capping itemized deductions at $200,000 for MFJ filers and $100,000 for single filers. Trump originally proposed to phase out most itemized deductions, tighten the so-called "Pease" limitation, and keep the deductions for mortgage interest and charitable giving unchanged for all taxpayers.

Clinton proposes a series of tax increases on upper-income individuals to, among other goals, pay for new spending programs to make college affordable for middle-class families. Her plan would retain the seven existing income tax brackets and essentially create a new eighth bracket of 43.6 percent by imposing a 4 percent "fair share" tax on income over $5 million. Clinton also calls for a minimum tax rate of 30 percent on taxpayers earning $1 million or more (the "Buffett Rule"), a 28 percent cap on the tax value of most itemized deductions, and limits on contributions to certain tax-preferred retirement accounts with high balances.

Even as they propose to reduce or eliminate many individual tax deductions, both candidates have proposed new tax benefits targeted at families. Trump proposed a new family tax relief package in September that includes above-the-line deductions for taxpayers facing child care and elder care expenses (available to itemizers and nonitemizers alike with a maximum income of $500,000 for MFJ filers and $250,000 for single filers) as well as tax-preferred savings accounts to encourage families to set aside funds for caregiving expenses.

Clinton has proposed—without substantial elaboration—to assist families taking care of elderly relatives by creating a new tax credit of up to $1,200 for caregivers and to assist insured individuals facing high out-of-pocket costs for prescription drugs by creating a new refundable credit of up to $2,500 ($5,000 for families). She also has called for expanding the child tax credit for working families as part of a larger plan to limit the cost of child care to 10 percent of family income.



Tax policy and elections

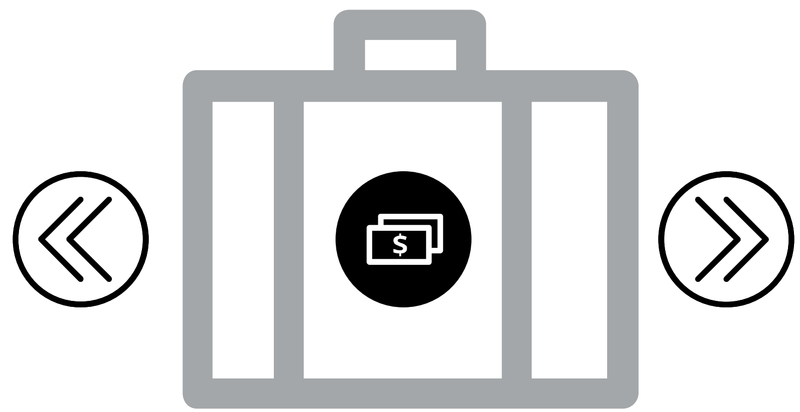
Potential impact of the 2016 elections

Passthrough income

Trump's position on the treatment of business passthrough income has been inconsistent over the course of the campaign and was unclear as this publication went to press. His original tax plan released in 2015 proposed to reduce the top rate on corporate and passthrough business income to 15 percent and offset the rate reductions in part by reducing or eliminating unspecified corporate tax preferences. A fact sheet the campaign initially released in conjunction with his September 15 speech in New York reaffirmed Trump's commitment to reducing the corporate tax rate to 15 percent, but was silent on the issue of passthrough income. An updated fact sheet released later on September 15 affirmatively states that the 15 percent rate would be "available to all businesses, both big and small, that want to retain the profits within the business."

A Trump policy advisor subsequently sought to clarify the candidate's position in comments to the press, stating that Trump's proposal would in fact allow passthrough entities to elect to be taxed as if they were corporations, thus letting them benefit from the lower business rate. However, owners of passthrough entities that make such an election would also be subject to a second layer of tax on distributions from the business—just as shareholders generally must pay tax on corporate dividends. Under Trump's original plan, dividends would be taxed at a top rate of 20 percent, and the 3.8 percent net investment income tax (NIIT) would be repealed.

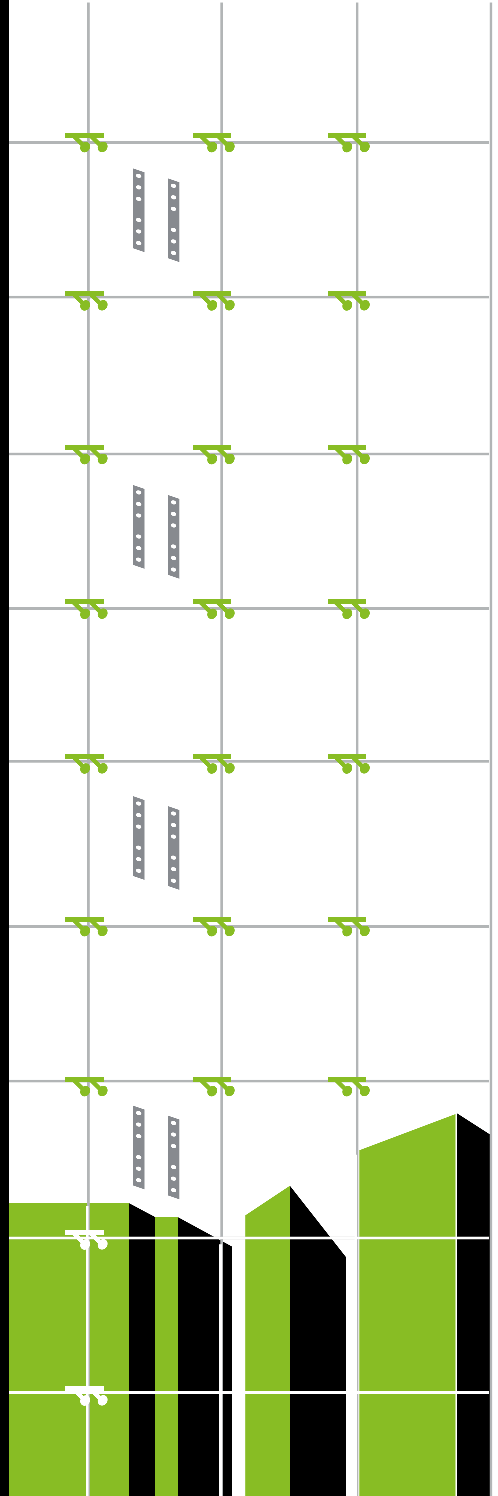
The campaign also indicated that a Trump administration would work with Congress to develop anti-abuse rules to prevent passthrough business owners from recharacterizing wage income as more lightly taxed business income.



Certain small passthrough entities reportedly would be exempt from the second layer of tax, but the campaign did not elaborate on where that threshold would be set and by what measure (for example, assets or gross income). A campaign official indicated that those details would be worked out with Congress after the election.

Clinton thus far has not offered changes to the treatment of passthrough income, so absent further proposals, the top corporate rate would remain at 35 percent and passthrough owners would continue to be taxed on the individual side of the federal tax code. Based on her proposals regarding individual income taxes, however, Clinton's plan could result in a tax increase on wealthy passthrough owners.

Download the first issue



Tax policy and elections

Potential impact of the 2016 elections

Capital gains

Consistent with his original plan, Trump continues to call for a top capital gains rate of 20 percent and repeal of the 3.8 percent NIIT. He also would retain the current-law 20 percent rate on dividend income.

Clinton's plan would tax capital gains of certain wealthier individuals on a sliding scale at statutory rates ranging from 20 percent (for assets held over six years) to 39.6 percent (for assets held two years or less). Individuals subject to the 3.8 percent NIIT, the Buffett Rule, and the 4 percent "fair share" tax would face even higher effective tax rates.

Clinton has not thus far proposed changes to the tax rate on dividend income.

Carried interests

Both candidates would tax carried interest income as ordinary rather than capital gain; however, the impact of that change would be more severe under Clinton's plan (which calls for a top individual rate of 43.6 percent) than under Trump's plan (which calls for a top rate of 33 percent).

Estate and gift tax

Trump has consistently called for repealing the estate, gift, and generation-skipping transfer taxes. However, in a significant change from the original plan, his September 15 fact sheet states that he would tax capital gains on appreciated assets held at death to the extent such gains exceed $10 million. The fact sheet does not specify whether the $10 million threshold would apply per person or per "couple." Without elaborating, the document also states that, in order to prevent abuse, "contributions

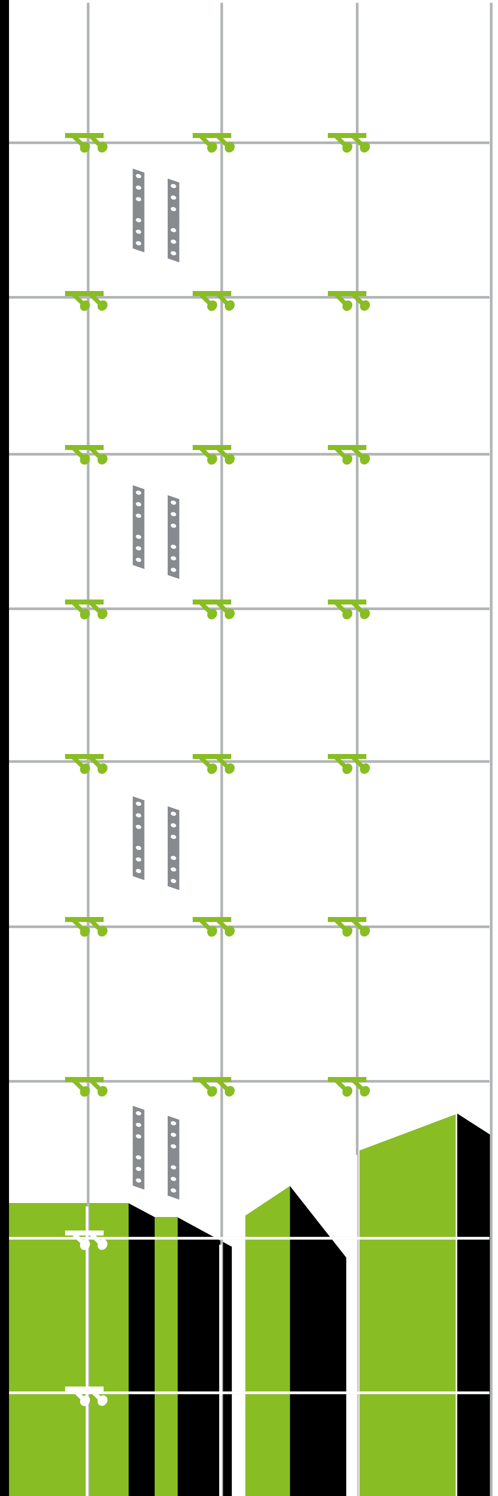
Politics of policymaking

As the campaign continues, the media's focus when it comes to tax policy will be directed primarily at the presidential candidates. But getting tax code changes enacted into law in the next administration—whether at the margins or as a comprehensive reform package—will require active engagement by and cooperation between Congress and the new president.

If the election places one party in control of the House, the Senate, and the Oval Office, the path forward for tax reform potentially becomes less difficult. But even then, problems could arise: for example, if the minority party in the Senate holds 40 or more seats, it can use procedural means to block legislation it does not support.

If Congress is controlled by one party and the White House by another or if control of the House and Senate is split between Republicans and Democrats—two scenarios we have witnessed in recent years—there will be greater opportunities for gridlock on tax legislation and, indeed, on most significant legislative proposals.

Download the first issue



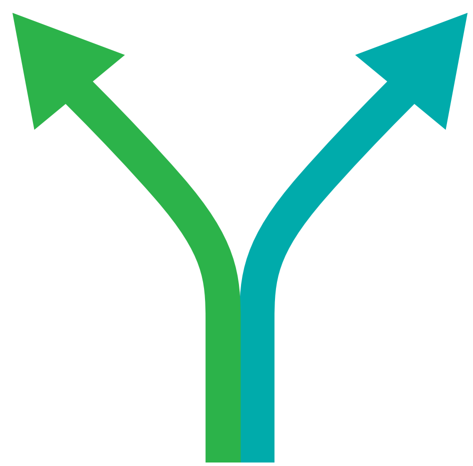
Potential impact of the 2016 elections

of appreciated assets into a private charity established by the decedent or the decedent's relatives will be disallowed."

Clinton's original tax plan, unveiled earlier this year, proposed to return the estate tax to the parameters in effect in 2009—that is, a top rate of 45 percent and an exemption of $3.5 million per person—as well as establish a $1 million lifetime gift tax exemption and require consistency in valuation for transfer tax and income tax purposes.

In an announcement on September 22, Clinton expanded her proposal by calling for increased taxes on the largest estates. According to her campaign website, Clinton's latest proposal would impose "higher rates as values rise," culminating in a top rate of 65 percent on estates larger than $500 million per person ($1 billion per couple). Other news sources, citing details provided by the Clinton campaign to the Center for a Responsible Federal Budget, have reported two intervening rate thresholds—a 50 percent rate on estates over $10 million per person and a 55 percent rate on estates over $50 million per person. For 2016, a federal estate tax of 40 percent applies after an exemption of $5.45 million per person.

In addition to the new rate structure, Clinton proposes to eliminate the basis step-up for capital gains at death. She also proposes to "limit the tax benefits of like-kind exchanges" as part of a larger effort to "prevent high-income taxpayers from misclassifying income as capital gains or avoiding paying tax on some income at all."



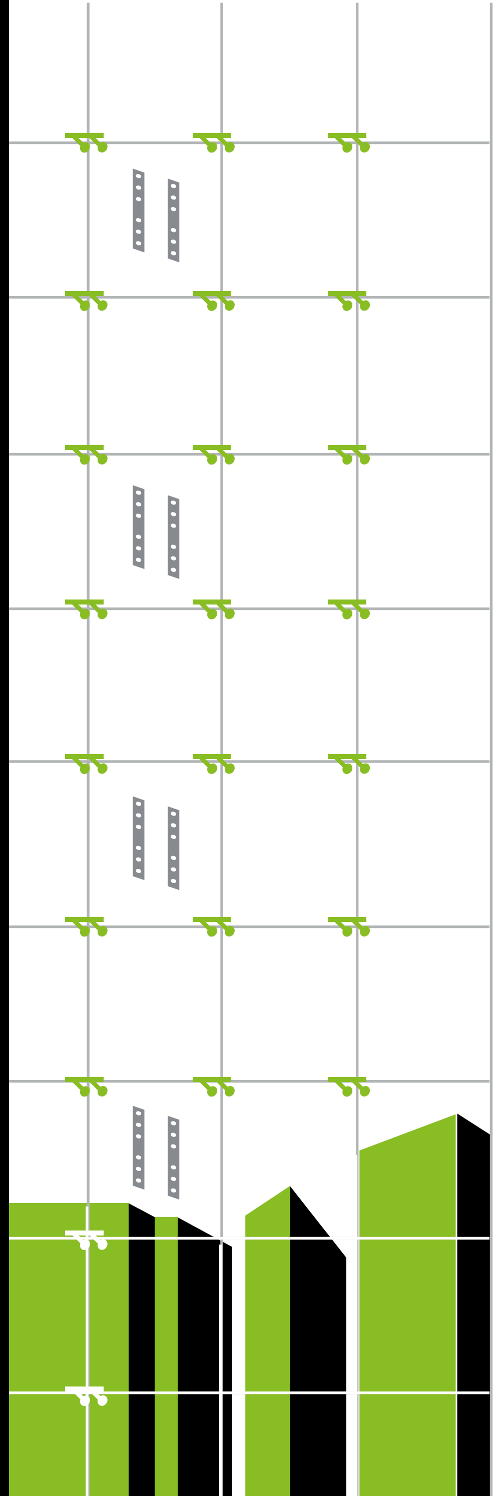
The new provisions reportedly are intended to offset the cost of Clinton's proposals to simplify the tax code for small businesses and expand the child tax credit to help working families cover the cost of child care.

Patient Protection and Affordable Care Act (PPACA)

Trump proposes to repeal the PPACA and, presumably, the taxes enacted under that legislation, including the 0.9 percent Federal Insurance Contributions Act Hospital Insurance (commonly known as Medicare Hospital Insurance or FICA-HI) tax on wage income and the 3.8 percent NIIT, both of which are imposed on individual filers with adjusted gross income (AGI) over $200,000 and MFJ filers with AGI over $250,000.

Clinton would retain the PPACA and related individual taxes.

Download the first issue



Tax policy and elections

How the Clinton and Trump tax proposals stack up

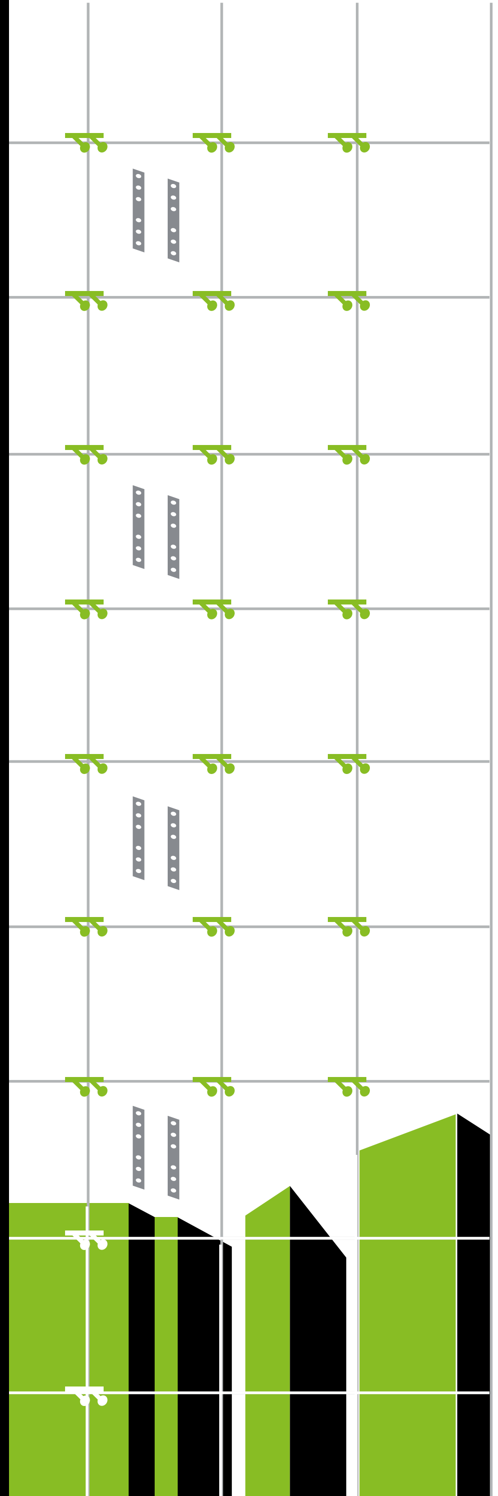
The table below provides a high-level overview of how selected provisions affecting high net worth individuals in the Clinton and Trump tax plans compare with each other and with proposals in the House Republican tax reform blueprint released on June 24.

Overview of selected provisions affecting high net worth individuals

Issue	Clinton	Trump	House GOP blueprint
Tax brackets	• Retain the seven current-law brackets and essentially create a new eighth bracket of 43.6% by imposing a 4% "fair share" surcharge on income over $5 million • Implement Buffett Rule: Minimum 30% rate on those earning $1 million or more • Presumably retain current-law 0.9% FICA-HI tax on high-income taxpayers	• Three brackets: 12%, 25%, and 33% • Repeal 0.9% FICA-HI tax	• Three brackets: 12%, 25%, and 33% • Repeal 0.9% FICA-HI tax*
Passthrough income	• No changes specified (although the wealthiest passthrough owners would be subject to Clinton's proposed new top ordinary rate of 43.6% on income over $5 million)	September 15 proposal calls for a 15% rate "available to all businesses, both big and small, that want to retain the profits within the business" Trump campaign has since indicated that: • Passthrough businesses may elect to be taxed at the 15% corporate rate or under the individual side of the tax code • Large passthroughs electing the 15% rate would be subject to second-level tax on dividends, but small ones would not (no details on threshold for determining when or how second-level tax would apply)	• Top rate of 25% will apply to active business income of sole proprietorships and passthrough entities, such as partnerships, limited liability companies (LLCs), and S corporations • Passthrough entities will pay or be treated as having paid reasonable compensation to their owner-operators, which will be deductible by the business and will be subject to tax at the graduated individual income tax rates

* Provisions included in the health care reform blueprint that House Republicans released on June 22.

Download the first issue

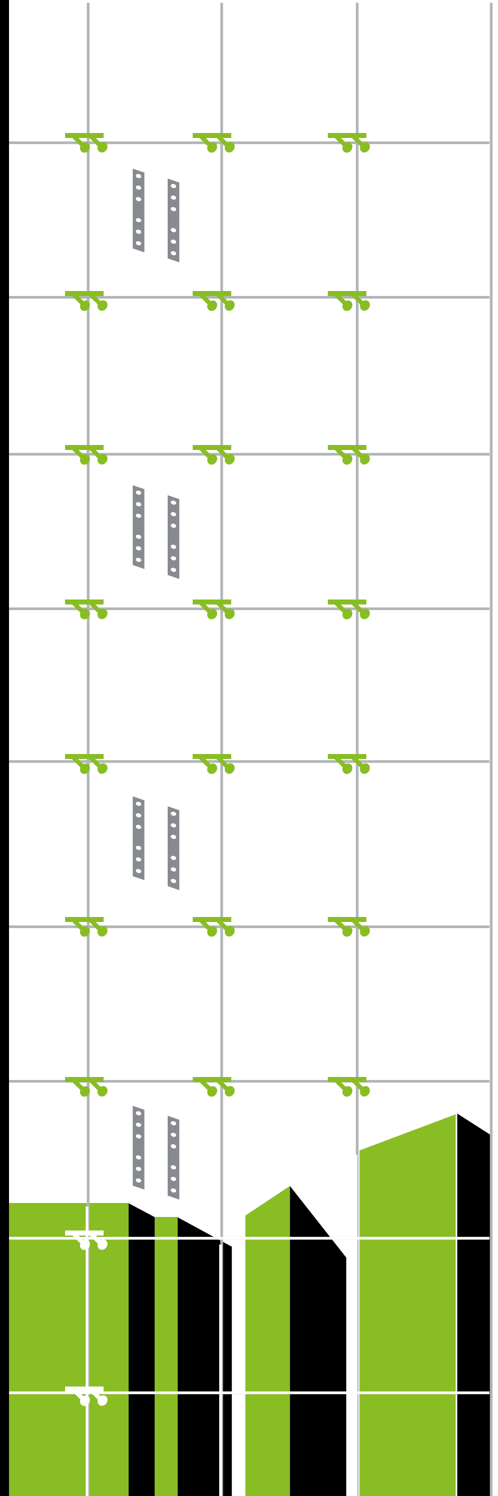


Tax policy and elections

How the Clinton and Trump tax proposals stack up

Issue	Clinton	Trump	House GOP blueprint
Passthrough income (cont.)		• Anti-abuse provisions to prevent taxpayers from misclassifying wage income as business passthrough income to take advantage of 15% rate would be negotiated with Congress (2015 proposal called for 15% top rate for all passthroughs)	
Capital gains/ Dividend rate	• For taxpayers in top two income tax brackets: Top statutory capital gain rate of 39.6% (assets held ≤2 years), gradually reduced to 20% (assets held >6 years) • Presumably retain current-law 3.8% NIIT • No changes specified for dividend rate	• Retain current-law capital gain structure with top rate of 20% • Repeal 3.8% NIIT • No changes specified for dividend rate	• Taxed at ordinary rates with 50% exclusion (effective tax rates of 6%, 12.5%, and 16.5%) • Exclusion also applies to interest, which is currently taxed as ordinary income • Repeal 3.8% NIIT*
Carried interest	• Tax as ordinary income (maximum rate: 43.6%)	• Tax as ordinary income (maximum rate: 33%)	• Follows proposed treatment of capital gain (*i.e.*, taxed at ordinary rates but with 50% exclusion for a maximum effective rate of 16.5%)
Itemized deductions	• Cap tax value of most itemized deductions at 28% for wealthier individuals (exception would apply for charitable giving deduction) • Cap may also apply to some items of income currently excluded from tax	• Cap itemized deductions at $200,000 for MFJ filers and $100,000 for single filers	• Retain deductions for mortgage interest and charitable giving; eliminate most others
Standard deduction and personal exemptions; other credits	• No specific proposals to change current-law deductions or exemptions	• Increase standard deduction to $15,000 for individuals and $30,000 for MFJ filers • Eliminate personal exemptions and head-of-household filing status	• Consolidate standard deduction and personal exemption into one larger standard deduction of $12,000 for single taxpayers, $18,000 for single taxpayers with a child, and $24,000 for MFJ filers

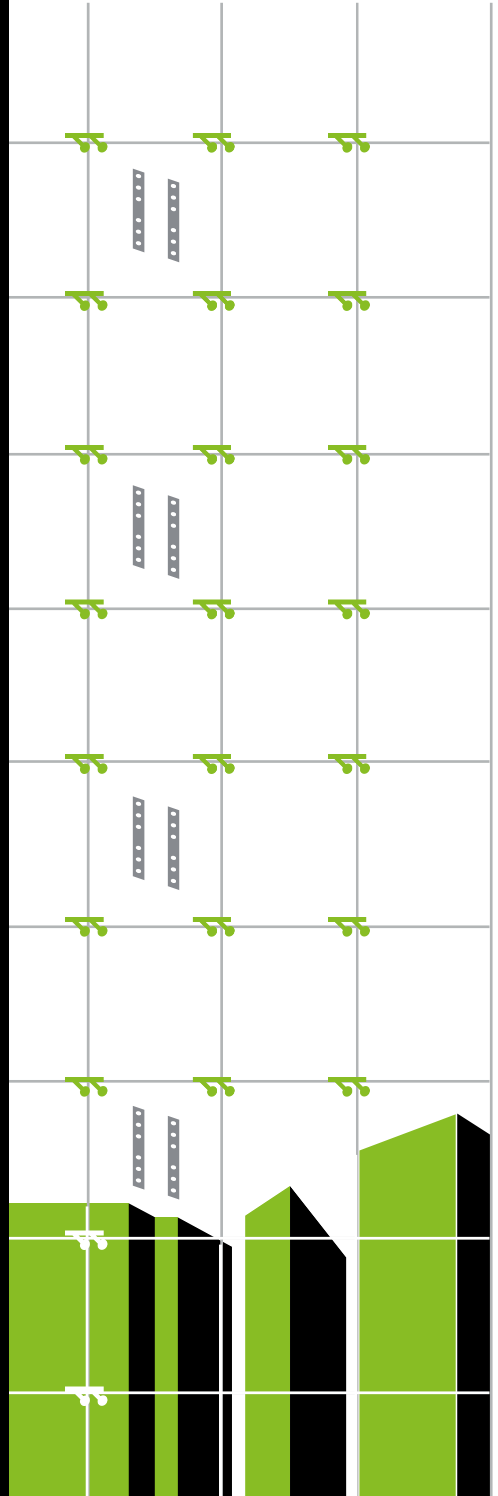
Download the first issue



How the Clinton and Trump tax proposals stack up

Issue	Clinton	Trump	House GOP blueprint
Standard deduction and personal exemptions; other credits (cont.)	• Expand child tax credit; create new tax credit for caregivers; create new refundable credit to assist insured individuals facing high out-of-pocket costs for prescription drugs	• Create new above-the-line tax deductions for child care and elder care expenses and new tax-preferred savings accounts to encourage families to set aside funds for those expenses	• Consolidate personal exemption for children and child tax credit into a single $1,500 credit, $1,000 of which is refundable
Estate tax	• Return to 2009 parameters: 45% top rate and $3.5 million exemption per spouse • Implement tiered rate structure for larger estates; top rate: 65% on estates larger than $500 million per person ($1 billion per couple) • Eliminate basis step-up of capital gains at death	• Repeal, but tax capital gains on appreciated assets held at death to the extent they exceed $10 million • Disallow "contributions of appreciated assets into a private charity established by the decedent or the decedent's relatives"	• Repeal
Treatment of asset sales/ transfers	• Limit tax benefits of like-kind exchanges	• No changes specified	• No changes specified
Patient Protection and Affordable Care Act	• Retain	• Repeal	• Repeal*

Download the first issue



Clinton's and Trump's proposed individual rate brackets: Ordinary income

The following table compares the proposed marginal rates on ordinary income under the Trump and Clinton plans—and the income thresholds at which those rates would apply—with current-law brackets and the inflation-adjusted income thresholds in effect for 2016. The House GOP tax reform blueprint, like the Trump plan, calls for three rate brackets of 12 percent, 25 percent, and 33 percent; but the blueprint does not supply beginning and ending points for the rate brackets and is not included in this comparison.

Tax rate on ordinary income[1]	Single			MFJ		
	Current law	Clinton	Trump	Current law	Clinton	Trump
10%	$0 – $9,275	$0 – $9,275	—	$0 – $18,550	$0 – $18,550	—
12%	—	—	$0 – $37,500	—	—	$0 – $75,000
15%	$9,276 – $37,650	$9,276 – $37,650	—	$18,551 – $75,300	$18,551 – $75,300	—
25%	$37,651 – $91,150	$37,651 – $91,150	$37,501 – $112,500	$75,301 – $151,900	$75,301 – $151,900	$75,001 – $225,000
28%	$91,151 – $190,150	$91,151 – $190,150	—	$151,901 – $231,450	$151,901 – $231,450	—
33%	$190,151 – $413,350	$190,151 – $413,350	$112,501 and above	$231,451 – $413,350	$231,451 – $413,350	$225,001 and above
35%	$413,351 – $415,050	$413,351 – $415,050	—	$413,351 – $466,950	$413,351 – $466,950	—
39.6%	$415,051 and above	$415,051 up to $5 million	—	$466,951 and above	$466,951 up to $5 million	—
43.6%[2]	—	$5 million and above	—	—	$5 million and above	—

Notes

[1] Current law imposes an additional 0.9 percent Medicare Hospital Insurance tax on certain upper-income individuals. This tax would be retained under the Clinton plan but would be repealed under the Trump plan.

[2] Rate reflects Clinton's proposed 4 percent "fair share" surcharge on income of $5 million and above.

Sources: Inflation-adjusted brackets in effect for 2016 listed in Internal Revenue Service (IRS) Revenue Procedure 2015-53. Clinton data assumes income thresholds for current-law brackets would remain in effect under her plan. Trump data from the candidate's website.

Download the first issue

Clinton's and Trump's proposed individual rate brackets: Capital gain income

The following table compares the proposed marginal rates on capital gain income under the Trump and Clinton plans—and the income thresholds at which those rates would apply—with current-law brackets and the inflation-adjusted income thresholds in effect for 2016. The House GOP tax reform blueprint calls for taxing capital gain income at ordinary rates with a 50 percent exclusion; however, the blueprint does not supply beginning and ending points for the rate brackets and is not included in this comparison.

	Single			MFJ		
Bracket[1]	**Current law**	**Clinton**	**Trump**	**Current law**	**Clinton**	**Trump**
0%	$0 – $37,650	$0 – $37,650	$0 – $37,500	$0 – $75,300	$0 – $75,300	$0 – $75,000
15%	$37,651 – $415,050	$37,651 – $415,050	$37,501 – $112,500	$75,301 – $466,950	$75,301 – $466,950	$75,001 – $225,000
20%	$415,051 and above	—	$112,501 and above	$466,951 and above	—	$225,001 and above
20–39.6%[2]	—	$415,051 and above	—	—	$466,951 and above	—

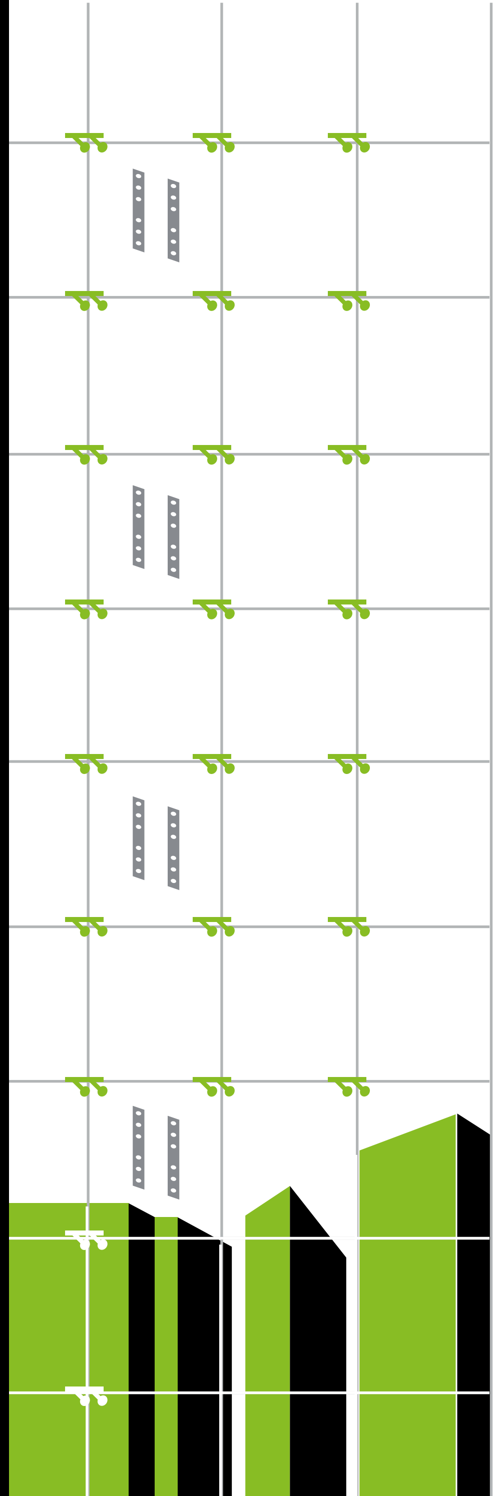
Notes

[1] Rates shown in this table do not reflect the 3.8 percent NIIT imposed on certain high net worth individuals that is in effect under current law and would be retained under the Clinton plan. The NIIT would be repealed under the Trump plan.

[2] For taxpayers in the 39.6 percent and 43.4 percent income tax brackets, Clinton would tax realized gains on a sliding scale—at statutory rates ranging from 20 percent to 39.6 percent—based on the asset's holding period. The lowest rate would apply to assets held longer than six years and the highest would be imposed on assets held for two years or less. The additional 3.8 percent NIIT also would apply, as would any applicable Buffett Rule and "fair share" taxes. See the table on the following page for additional details.

Source: Current-law rates from IRS Publication 17 (2015), *Your Federal Income Tax*; inflation-adjusted brackets for 2016 from IRS Revenue Procedure 2015-53. Clinton data assumes income thresholds for capital gains tax brackets follow current law. Trump data from the candidate's website.

Download the first issue



A closer look at Clinton's proposed top capital gain rates

For individuals in the top two income tax brackets under the Clinton plan,[1] realized capital gains would be taxed on a sliding scale—at statutory rates ranging from 20 percent to 39.6 percent—based on the asset's holding period. The lowest rate would apply to assets held six years or longer and the highest would be imposed on assets held for less than two years. The additional current-law 3.8 percent NIIT also would apply, resulting in top effective tax rates ranging from 23.8 percent to 43.4 percent. The top rate on dividend income presumably would remain subject to the current-law rate of 23.8 percent (inclusive of the 3.8 percent NIIT).

The table below shows how the top capital gains rates under the Clinton plan compare with current law, with the Trump tax plan and with the House GOP blueprint.

Top capital gain rates

Asset holding period	Current law	Clinton plan	Trump plan	House GOP blueprint
(Years)	(Statutory Rate + NIIT)	(Statutory Rate + NIIT)[2]	(NIIT Repealed)	(NIIT Repealed)
Less than 1	39.6% + 3.8% = **43.4%**	39.6% + 3.8% = **43.4%**	33%[3]	Presumably 33%[3]
1–2	20% + 3.8% = **23.8%**	39.6% + 3.8% = **43.4%**	20%	16.5%[4]
2–3	20% + 3.8% = **23.8%**	36% + 3.8% = **39.8%**	20%	16.5%[4]
3–4	20% + 3.8% = **23.8%**	32% + 3.8% = **35.8%**	20%	16.5%[4]
4–5	20% + 3.8% = **23.8%**	28% + 3.8% = **31.8%**	20%	16.5%[4]
5–6	20% + 3.8% = **23.8%**	24% + 3.8% = **27.8%**	20%	16.5%[4]
More than 6	20% + 3.8% = **23.8%**	20% + 3.8% = **23.8%**	20%	16.5%[4]

Notes

[1] Under Clinton's plan, the top two income tax brackets would be 39.6 percent and 43.6 percent. The 39.6 percent bracket would apply to income ranging from $415,051 up to $5 million for single filers and $466,951 up to $5 million for MFJ filers. The 43.6 percent bracket would apply to income over $5 million for single and MFJ filers.

[2] Rates shown do not reflect the 30 percent Buffet Rule tax that Clinton would impose on income over $1 million or the 4 percent fair share tax on income above $5 million.

[3] Neither the Trump plan nor the House GOP blueprint specifies whether a separate tax rate would apply to short-term capital gains. Presumably, both will follow current law and tax short-term gains at the maximum rate for ordinary income, resulting in a short-term capital gains rate of 33 percent.

[4] Long-term capital gain rates under the House GOP blueprint reflect the proposed top ordinary income rate of 33 percent with a 50 percent exclusion.

Source: Clinton and Trump data from the Tax Policy Center. House GOP blueprint data from *A Better Way—Our Vision for a Confident America: Tax,* published by the House Republican Tax Reform Task Force on June 24, 2016 (http://abetterway.speaker.gov/_assets/pdf/ABetterWay-Tax-PolicyPaper.pdf).

Download the first issue

Resources

Private wealth	Private Wealth: Sustain, enhance and protect your wealth
Tax policy and elections	Tax News and Views
Individual income tax planning	Private wealth tax controversies: Deep experience navigating interactions with taxing authorities US Estate and gift tax rules for resident and nonresident aliens
Wealth transfer planning	Wealth Planning: securing your legacy Private Foundations: Establishing a vehicle for your charitable vision
Unique investments	Art & Finance: Art is your passion...Tax is ours Private aircraft: Flying private makes sense for those with the right information

Download the first issue

Coming soon

In December

Post-election tax policy update

Post-mortem considerations

Philanthropy

Tax implications of fund investing

In 2017

Family office

Globalization

Deloitte.

About Deloitte
Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee ("DTTL"), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as "Deloitte Global") does not provide services to clients. Please see www.deloitte.com/about for a detailed description of DTTL and its member firms. Please see www.deloitte.com/us/about for a detailed description of the legal structure of Deloitte LLP and its subsidiaries. Certain services may not be available to attest clients under the rules and regulations of public accounting.