

9 November 2023

## Senate Finance Committee Holds Hearing on High-Income Individuals

The November 9 Senate Finance Committee hearing, “Examining How the Tax Code Affects High-Income Individuals and Tax Planning Strategies,” largely focused on the disparity in taxation of work income versus investment income and proposals for mark to market taxation of capital gains, which have long been areas of focus for Chairman Ron Wyden (D-OR). Chairman Wyden has sponsored a Billionaire’s Tax under which tradable assets like stocks would be marked-to-market every year and billionaires would pay tax on gain and take deductions for losses on tradable assets annually. President Biden’s FY2024 budget also proposed a Billionaire’s Tax. There was also some scrutiny of efforts to roll back TCJA tax changes for businesses.

In an opening statement, Chairman Wyden bemoaned a “Buy Borrow Die” tax planning regime. “A corporate raider buys a business, and then borrows against its growing, untaxed value to fund their extravagant lifestyle: Everything from superyachts to luxurious vacations, expensive art deals, you name it. It goes up and up in value all while not paying a dime in tax,” he said. “And when they die, their assets are passed to their kids – often entirely tax-free – and the cycle continues.” He closed the hearing by suggesting senators were “putting the final details on our proposal that we have been working on for some time” to address billionaires avoiding taxes.

Ranking Member Mike Crapo (R-ID) called for scrutiny of tax provisions favored by Democrats, including “examining provisions that primarily benefit a select group of the financially well-off – including tax credits for those who can afford expensive electric vehicles, costly energy efficient home upgrades, and proposals to repeal the cap or expand the highly regressive deduction for State and Local Taxes.”

### Witnesses:

- Chye-Ching Huang, Director, Tax Law Center, New York University School of Law
- Morris Pearl, Chair, Patriotic Millionaires
- William McBride, Ph.D., Vice President of Federal Tax Policy and Stephen J. Entin Fellow In Economics, Tax Foundation
- Douglas Holtz-Eakin, Ph.D., President, American Action Forum

### Testimony highlights:

- Huang’s recommendations included allowing the TCJA Section 199A pass-through deduction and doubled exclusion from estate and gift taxes to expire.
- Pearl backed “taxes on unrealized gains of the ultra-rich, like Chairman Wyden’s proposal or President Biden’s proposal.”
- McBride called for tax simplification, which he said could save corporations and individuals billions in compliance costs.
- Holtz-Eakin said tax policy should be pro-growth, and taxes on saving, investment, and innovation as low and uniform as possible, which is a recipe for economic growth and preventing tax avoidance.

While there was less emphasis on efforts to roll back the Internal Revenue Service (IRS) funding boost enacted in the Inflation Reduction Act (IRA) than at the Senate Budget Committee yesterday, Senator Bob

Menendez (D-NJ) highlighted both the fact that cutting IRS funding decreases government revenue and adds to deficits, and the significant deficit impact of the 2017 TCJA.

Senator Marsha Blackburn (R-TN) highlighted Administration claims that IRS funding wouldn't increase audits on those with income below \$400,000 per year, and ambiguity in what is meant by "total positive income" for purposes of audits. Chairman Wyden said he would press IRS for clarity on that definition, which has surfaced in other hearings.

Senator Maggie Hassan (D-NH) said much of the tax gap is attributable to corporations and wealthy individuals underreporting income. Pearl said IRS needs funds to hire experts on these issues.

Senator Mark Warner (D-VA) said he "struggled" with the concept of putting a tax in place without a realization event, which he said he can't find examples of elsewhere. However, he suggested there may be warranted examination of "the nature of our tax code that you can borrow against your assets, oftentimes liquid stock assets ... and ultimately die and they pass on those assets without any realization event, yet they have used the system to fund their lavish lifestyles."

Senator Elizabeth Warren (D-MA) pointedly criticized efforts to fix the TCJA pre-cliffs that relate to the 5-year amortization for R&D expenses rather than expensing under Section 174 and the Section 163(j) interest deduction limitation based on EBIT rather than EBITDA, both of which took effect in 2022; and 100% expensing, which is phased down in increments after 2022. She said the provisions were used as TCJA offsets and delaying their implementation, as some are seeking, masks the true cost of the 2017 law, which has been estimated to be roughly \$2 trillion. Huang said permanent fixes to these provisions would be vastly more expensive than the proposals addressing them through 2025.

"We should not be rubberstamping Trump tax cuts for giant businesses," Senator Warren said.

The staff of the Joint Committee on Taxation has prepared a document, "Present Law And Background On The Income Taxation Of High Income And High Wealth Taxpayers," in conjunction with the hearing.  
<https://www.jct.gov/publications/2023/jcx-51-23/>

Opening statements and testimony from the hearing are at:  
<https://www.finance.senate.gov/hearings/examining-how-the-tax-code-affects-high-income-individuals-and-tax-planning-strategies>