2021 Tax Policy Forecast Survey

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EXECUTIVE SUMMARY
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Miller & Chevalier Chartered and the National Foreign Trade Council's 15th Annual Tax Policy Forecast Survey was fielded after the outcome of the Senate runoff races in Georgia was known, with the goal of securing predictive analysis of the tax policy landscape based on the final makeup of the White House and Congress.

What no one could have predicted were the dramatic events that further impacted the dynamic post-election tax policy environment, including the passage of the Consolidated Appropriations Act (CAA), the attack on the U.S. Capitol, the ensuing disintegration of President Trump's presidency, and the historic impeachment trial of President Trump in the Senate. Uncertainty and divisiveness are driving much of the first months of 2021, as President Biden focuses on aggressively advancing his "first 100 days" agenda.

With the Republican and Democratic parties seemingly digging in their heels, it is not surprising that respondents told us they are feeling a lot of uncertainty at the start of this year. This, of course, makes predictions difficult.

Among the questions pending now that Democrats have taken control of the White House, the House, and the Senate:

- How will intraparty relationships deepen or divide? This is an increasingly critical area to monitor, given the slim majorities in both chambers.
- As Democrats have the smallest House majority in 20 years, how will they balance the interests of the moderate and progressive wings of the party?
- Will the Senate look to make procedural changes to the 60-vote threshold filibuster rule? This was an active topic in the last Congress and a potentially impactful one, given the current 50-50 partisan divide. Changes in the short term are unlikely, but that view may shift over time.
- What impact will new Senate Finance Committee leaders and members, as well as new House Ways and Means Committee members, have on legislative priorities? And how influential will new Senate Finance Committee member Elizabeth Warren be, particularly on hot-button topics like increased taxes on the wealthy?
- To keep reconciliation in play, can Democrats maintain consensus within the entire caucus, given the influence of moderate Senate Democrats, including Joe Manchin (WV) and Kyrsten Sinema (AZ)? Or will they need to secure Republican crossover votes from moderate targets such as Susan Collins (ME), Lisa Murkowski (AK), Mitt Romney (UT), or Ben Sasse (NE) to meet the 51-vote threshold under reconciliation?

Respondents told us that:

- Businesses are bracing for tax increases, as two-thirds of respondents anticipate new legislation to be funded by tax increases, whether solo or coupled with spending cuts.

- The corporate tax rate is the big elephant in the room, which is not surprising given President Biden's campaign proposal to raise it from 21 percent to 28 percent. Such a move would raise significant revenue and is easy to implement, both important factors as he seeks new funding sources for his policy objectives.
- Among other proposals President Biden raised on the campaign trail, respondents are watching onshoring/offshoring proposals closely, as well as proposed modifications to the global intangible low-taxed income (GILTI) regime. Prior to the Democrats gaining control of the Senate, many were expecting the Biden Administration to pursue regulatory action, including modifications to the GILTI high-tax exception. Those expectations have been supplanted now that broader legislation appears to be on the table.

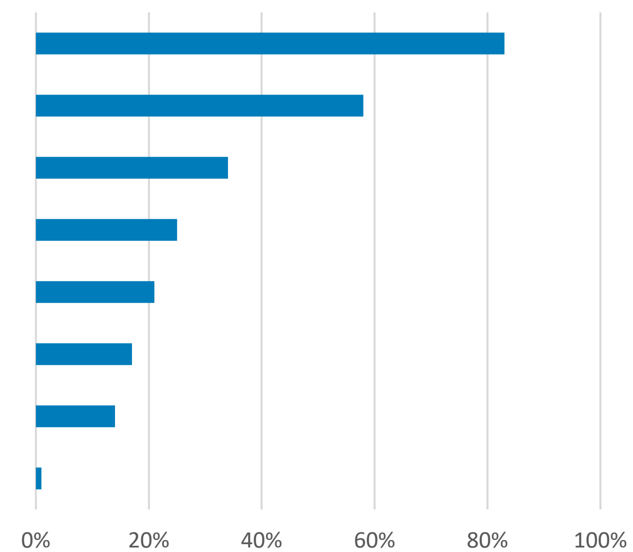
While many of President Biden's original proposals may be aspirational and will likely be tempered through the legislative process, the coming year is shaping up to be one in which there will be heavy debate and substantial uncertainty for businesses as they face the potential of significant tax increases being enacted.

2021 Tax Policy Forecast Survey Results

Respondents were asked to complete a short questionnaire designed to elicit their thoughts and perspectives on the direction of tax policy for businesses in 2021. The following results represent their collective input.[1]

Q1. What tax relief legislation do you expect to be enacted into law in 2021? (Select all that apply)

RESPONSES	%	PERCENTAGE OF TOTAL RESPONDENTS
Additional COVID-19-related relief legislation	83%	
Economic stimulus legislation (*e.g.*, monetization of general business credits)	58%	
Tax "extenders" legislation	34%	
Domestic manufacturing/supply chain incentives	25%	
Legislation to address pending changes/phaseouts of TCJA provisions	21%	
Retirement legislation	17%	
Technical corrections	14%	
Other (please specify)	1%	
Total Responses	**352**	



Because multiple answers per participant are possible, the total percentage may exceed 100%.

COVID-19 relief legislation is a stated priority of the Biden Administration – the President's American Rescue Plan is now being developed in Congress as a reconciliation bill. So, it is not surprising that respondents see additional COVID-19 relief legislation as most likely to be enacted into law this year. The second most popular choice, economic stimulus legislation, is very much tied to COVID-19 relief and is also being considered as part of this reconciliation bill.

Although there was some initial optimism that a COVID-19 relief/economic stimulus bill could be a bipartisan effort, particularly given the historical working relationship between President Biden and Senate Minority Leader Mitch McConnell (R-KY), that effort has now been abandoned in favor of a reconciliation vehicle, which Senate Democrats can pass without any Republican support.

A third of respondents believe tax "extenders" legislation has a good likelihood of passage in 2021. However, the pathway to enactment may have been complicated by the "reform" of extenders in the CAA in which many popular extender provisions, such as the CFC look-through rule and the Work Opportunity

[1] The survey methodology can be found at the end of this report.

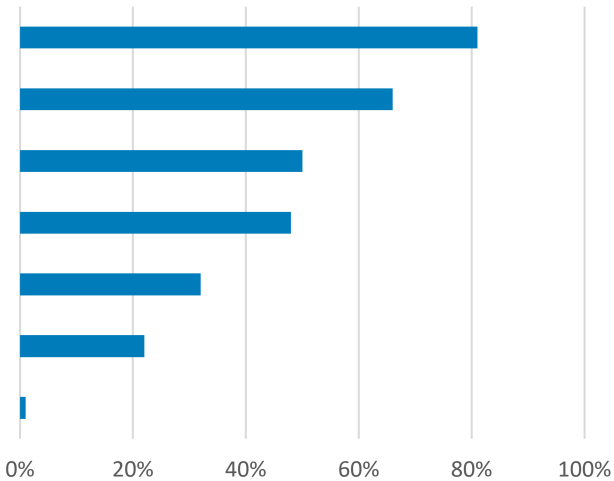
Tax Credit, were subject to longer extensions, leaving a smaller (and potentially less politically attractive) package to be considered this year.

Respondents are less confident that legislation will address modifications to various Tax Cuts and Jobs Act (TCJA) provisions, which is concerning given the pending "fiscal cliff" changes to the section 163(j) interest expense deduction limitation and the treatment of research and development expenses at the end of this year.

While only 17 percent of respondents think retirement legislation will advance in 2021, such legislation has historically had broad, bipartisan support and thus could be one of the only pieces of tax legislation to pass this year outside of the reconciliation process.

Q2. Assuming COVID-19-related relief and/or economic stimulus legislation is enacted into law in 2021, what do you expect to be included? (Select all that apply)

RESPONSES	%	PERCENTAGE OF TOTAL RESPONDENTS
Support for state and local governments	81%	
Public health initiatives	66%	
Workplace safety initiatives and incentives	50%	
Extension of the employee retention tax credit	48%	
Liability protection for businesses and other organizations	32%	
Monetization of general business credits	22%	
Other (please specify)	1%	
Total Responses	**416**	



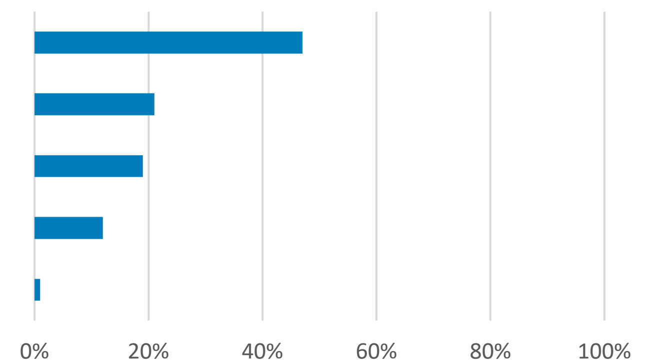
Because multiple answers per participant are possible, the total percentage may exceed 100%.

Respondents believe non-tax COVID-19 provisions will be the primary areas of focus for such legislation, including support for state and local governments and broad public health and workplace safety initiatives. With the exception perhaps of extensions of previously enacted provisions such as the employee retention tax credit, tax provisions are not expected to be a major focus of the pending COVID-19 relief/economic stimulus package. However, there is concern that tax increases, such as the proposed repeal of the section 864(f) worldwide interest expense allocation election, will be considered to help fund the legislation.

Q3. Other than COVID-19-related relief/economic stimulus legislation, how do you expect tax legislation to be funded in 2021? (Select one option)

RESPONSES	%
Tax increases	47%
No funding, tax legislation will increase the deficit	21%
A combination of tax increases and spending cuts	19%
Spending cuts	12%
Other (please specify)	1%
Total Responses	**139**

PERCENTAGE OF TOTAL RESPONDENTS



Businesses may be bracing for tax increases, as two-thirds of respondents anticipate tax increases are on the horizon, whether solo or coupled with spending cuts. This response is not surprising, given the scope of tax increases proposed by President Biden during his campaign (such as a seven-point increase in the corporate tax rate) to fund non-tax policy objectives.

There is some partisan divide reflected in the responses, with 57 percent of Republican respondents and 30 percent of Democrat responses saying legislation is likely to be funded via tax increases. Twenty-one percent of Democrats and just six percent of Republicans say spending cuts are likely. If Democrats, usually averse to spending cuts, are willing to make some concessions with respect to spending, this would be a welcome development by Republicans and the tax community, potentially taking pressure off a corporate rate increase and other business tax increases. Thus, policy objectives funded through a combination of tax increases and spending cuts may be the path forward on any bipartisan legislation enacted this year.

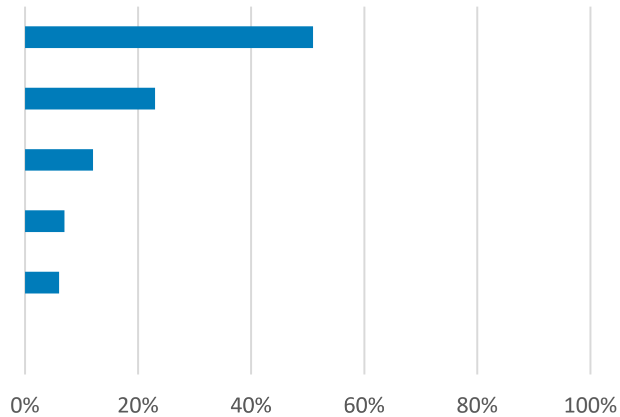
Surprisingly, 21 percent of respondents believe that tax legislation will not have a funding source and, therefore, will increase the deficit. Given the massive spending on COVID-19 relief legislation in 2020, policymakers are becoming sensitized increasingly to the current deficit situation and may be reluctant to increase the deficit further.

One significant concern regarding potential tax increases is their effective date. Newly appointed Treasury Deputy Assistant Secretary for Tax Policy Mark Mazur recently made comments suggesting that the Administration's preference is not to pursue tax increases in the short term and, as a general matter, not to pursue retroactive tax legislation. That being said, it will still be important to monitor bill introductions, press releases, and other communications from Treasury Department officials and Congressional tax writers that, in fact, suggest potential consideration of retroactive tax increases in future tax legislative packages. And it should be noted that the pending repeal of the section 864(f) worldwide interest expense allocation election would, in fact, have a retroactive effect, as that provision went into effect for taxable years beginning after December 31, 2020.

Q4. Assuming tax legislation is funded by tax increases (at least in part), which one of the following revenue raisers is Congress most likely to pursue to fund new initiatives in 2021? (Select one option)

RESPONSES	%
Increase in the corporate income tax rate	51%
Increase in individual income tax rates	23%
Increase in the capital gains tax rate	12%
Establish a corporate minimum tax on book income	7%
Double the tax rate on GILTI and impose it on a country-by-country basis	6%
Other (please specify)	0%
Total Responses	**137**

PERCENTAGE OF TOTAL RESPONDENTS



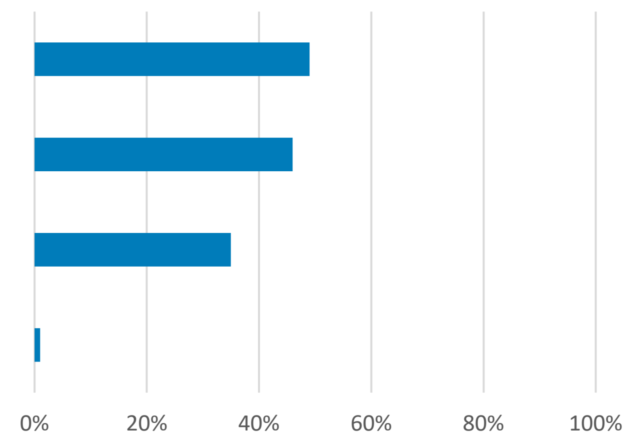
President Biden's business tax proposals include an increase in the corporate rate from 21 percent to 28 percent; a 15 percent minimum tax on global book income for companies with net income of more than $100 million; changes to the GILTI regime; a 10 percent surtax for certain offshoring activities coupled with a 10 percent tax credit for certain onshoring activities; and unspecified financial fees on certain liabilities of financial institutions with over $50 billion in assets. On an individual taxpayer level, President Biden is proposing to accelerate the increase in the top individual rate to 39.6 percent and expand the top bracket to include taxpayers making more than $400,000; cap the tax benefit of itemized deductions at 28 percent; tax capital gains/dividends at ordinary income rates for taxpayers with more than $1 million in income; apply a 12.4 percent Social Security tax to earnings above $400,000; and revert the estate tax rate and exemptions to 2009 levels.

Among respondents, the corporate rate is the big elephant in the room, which is not surprising given President Biden's proposal to significantly raise the corporate tax rate. Such a move would raise substantial revenue and is easy to implement, both important factors as he seeks new funding sources for his policy objectives.

Q5. Which pending changes/phaseouts of TCJA provisions do you expect will be addressed legislatively in 2021? (Select all that apply)

RESPONSES	%
Capitalization/amortization of R&E expenditures over five years required in lieu of expensing beginning after 2021	49%
Five-year phasedown of 100 percent bonus depreciation beginning after 2022	46%
Definitional change (EBITDA to EBIT) expanding scope of limitation on deductibility of net business interest expense beginning after 2021	35%
Other (please specify)	1%
Total Responses	**175**

PERCENTAGE OF TOTAL RESPONDENTS



Because multiple answers per participant are possible, the total percentage may exceed 100%.

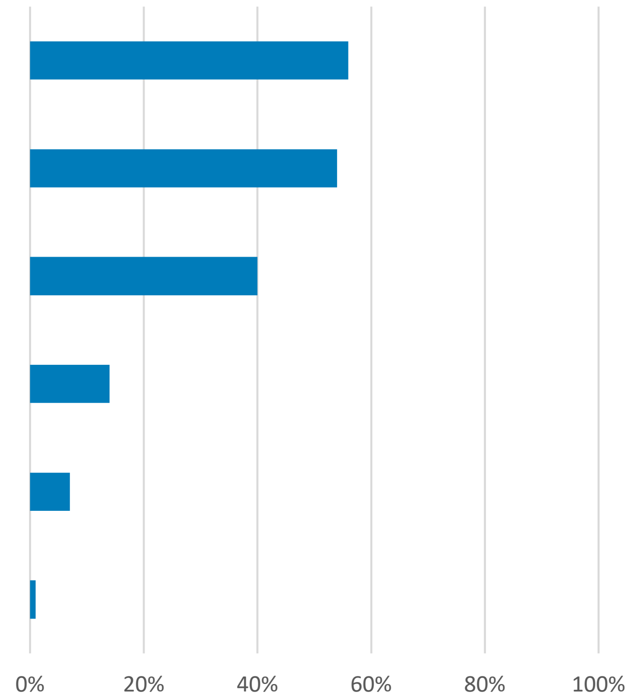
There are a number of TCJA provisions that are subject to pending changes or phaseouts. Although a significant number of these provisions (including many individual tax provisions) are not scheduled for any change until the end of 2025, a number are subject to change in the short term, including pending changes to the section 163(j) interest expense deduction limitation and the treatment of research and development expenses at the end of 2021, as well as the beginning of the phaseout of bonus depreciation for tax years beginning after 2022.

Respondents are most confident that Congress will address the repeal of the provision mandating amortization of research and development expenses, which historically enjoys bipartisan support and may also fit nicely with President Biden's emphasis promoting U.S. innovation and job growth.

Surprisingly, respondents are more confident that Congress will address the pending bonus depreciation phaseout in the coming year than they are that the pending change in the interest expense deduction limitation will be addressed – despite the latter provision being more imminent. Interestingly, although the research and development amortization provision was included in the TCJA, more Democrats (64 percent) than Republicans (35 percent) were confident that the provision would be addressed this year.

Q6. What tax policy initiatives do you anticipate the incoming Biden Treasury Department to be engaged in during 2021? (Select all that apply)

RESPONSES	%	PERCENTAGE OF TOTAL RESPONDENTS
Actively pursuing legislative enactment of proposals referenced by President-elect Biden during the presidential campaign with significant modification	56%	
Actively pursuing legislative enactment of proposals referenced by President-elect Biden during the presidential campaign without significant modification	54%	
Reinstituting the proposal of revenue provisions as part of the annual budget process	40%	
Actively reevaluating regulations and other administrative guidance issued under the Trump Administration for possible modifications	14%	
Actively pursuing regulations or other administrative guidance to address issues that it cannot advance legislatively	7%	
Other (please specify)	1%	
Total Responses	**237**	



Because multiple answers per participant are possible, the total percentage may exceed 100%.

Fifty-six percent of respondents believe the Biden Treasury Department will prioritize legislative enactment of proposals referenced by President Biden during the campaign, but with significant modifications as they work to advance them through the legislative process. This likely reflects a realization that even if Democrats use reconciliation as anticipated, they will still need to temper these proposals to secure the support of more moderate Senate Democrats who may be averse to significant tax increases. However, 54 percent of respondents think that the Biden Treasury Department can pursue these same proposals without significant modification, perhaps because of a belief that with reconciliation, the entire Democratic caucus will support the Biden proposals "as is" given the need for significant revenue to fund other Democratic policy priorities.

Since hiring Mr. Mazur, the Biden Administration has continued to staff the Treasury Department's Office of Tax Policy with a number of experienced and well-respected practitioners, including Jeffrey Van Hove (Acting Assistant Secretary for Tax Policy), Tom West (Deputy Assistant Secretary for Domestic Business Tax), Kimberly Clausing (Deputy Assistant Secretary for Tax Analysis), Rebecca Kysar (Counselor to the Assistant Secretary for Tax Policy) and Itai Grinberg (Deputy Assistant Secretary for Multilateral Tax), as well as Aruna Kalyanam (Deputy Assistant Secretary for Tax and Budget, Office of Legislative Affairs). This formidable team has a unique combination of prior government, private practice, in-house, academic and Congressional experience that will enable it to advance the Administration's tax legislative, and regulatory agenda.

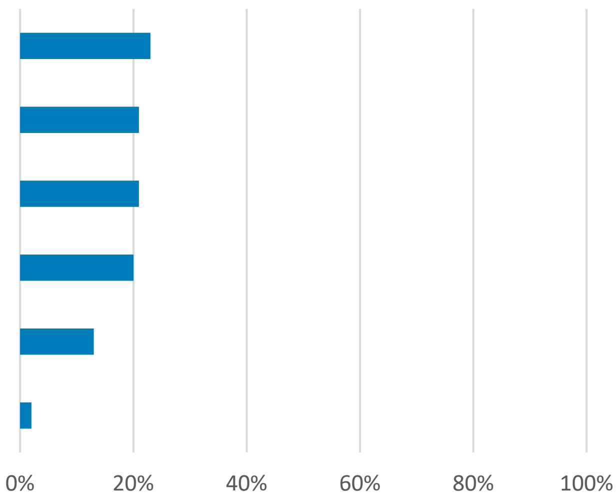
Of note, Deputy Assistant Secretary for Tax Policy Mazur, who served as Assistant Secretary for Tax Policy in the Obama Administration, recently stated his preference that the annual "Greenbook" process be reinstated. The Greenbook, or as it is officially known, the "General Explanation of the Administration's Revenue Proposals," has traditionally been released by the Treasury Department as a companion publication to the Administration's annual budget and provides a detailed explanation of the Administration's revenue proposals. The last Greenbook was published in 2016 when it appeared alongside the FY2017 budget. A return to annual publication of the Greenbook would be a welcome tax policy development, particularly in the current legislative environment, as it would provide highly anticipated details on potential revenue raisers, such as President Biden's proposed 15 percent minimum tax on book income and his proposed changes to the GILTI regime.

Although there has been significant attention paid to the potential that the Biden Administration will revisit regulations issued under the Trump Administration, respondents are less confident that this will occur in the tax arena. Just 14 percent of respondents see a reevaluation of Trump-era tax regulations as a Treasury Department focus. This is likely the result of the belief that the Biden Administration will pursue legislative changes to address its concerns rather than regulatory changes. In addition, respondents may also be of the view that the Trump-era tax regulations were generally neutral – neither pro-taxpayer nor pro-government – and, therefore, inappropriate targets for reevaluation.

Q7. The OECD's Pillar One and Pillar Two Blueprints offered significant details on the initial proposals, which presented additional issues. What do you believe poses the greatest obstacle to reaching consensus among the Inclusive Framework members? (Select one option)

RESPONSES	%
Pillar One's bifurcated approach for automated digital services (ADS) and consumer-facing business (CFB) models	23%
Lack of clarity regarding the applicability of the GILTI coexistence rule	21%
Failure to establish the parameters of the subject-to-tax rule under Pillar Two	21%
Lack of clarity regarding workable dispute resolution procedures for both Pillars	20%
Resistance to a phased implementation approach (*e.g.*, implementing Pillar One first, and then phasing in Pillar Two)	13%
Other	2%
Total Responses	**130**

PERCENTAGE OF TOTAL RESPONDENTS



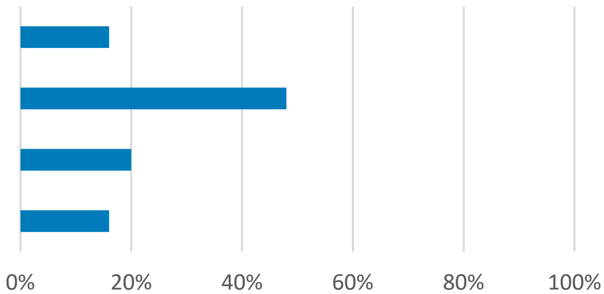
Respondents are very divided on which obstacle to reaching consensus on Pillars One and Two of the OECD's work regarding the taxation of the digital economy poses the greatest challenge. Roughly the same percentage of respondents selected the top four options, likely a division representative of the general apprehension with which many taxpayers currently are approaching the project. Many are concerned that the work will "collapse under its own weight" given the number of outstanding issues to resolve with both Pillars. It is hard to envision consensus being reached this year – absent some sort of scaling back of the project's scope and complexity – much less by the July 2021 deadline that the OECD has established. One respondent noted that "there is very little policy underpinning any of this house of cards," reflecting the common sentiment that the project has strayed from goals articulated in its early stages, which focused on taxation in the jurisdiction of value creation.

Post-survey, Georgetown University Law School Professor Itai Grinberg was named Deputy Assistant Secretary for Multilateral Tax in the Office of Tax Policy, a role in which he will be responsible for negotiating international tax reform proposals, including those under review at the OECD. Given his recent research focused on international tax system stability under Pillar One and his criticism of the European Union approach to U.S. digital company taxes, his voice is expected to impact the direction of upcoming negotiations significantly.

Q8. When do you expect the Inclusive Framework to reach consensus on both Pillars? (Select one option)

RESPONSES	%
2021	16%
2022	48%
2021	20%
Later than 2023	16%
Total Responses	**132**

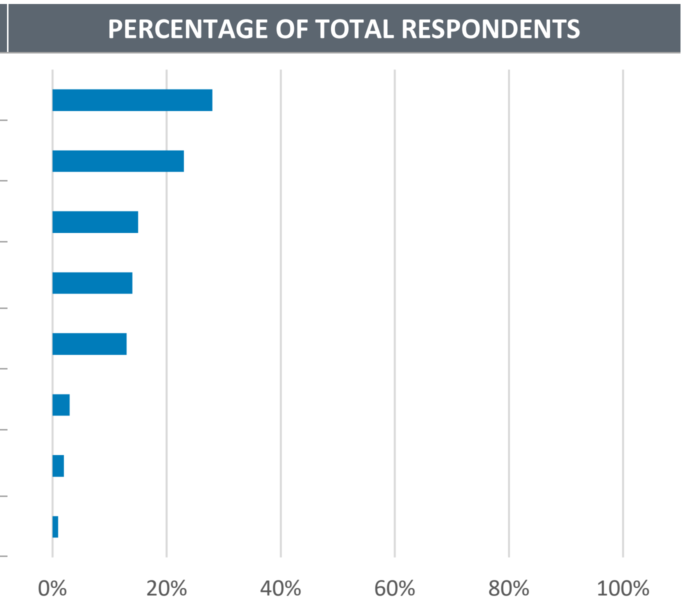
PERCENTAGE OF TOTAL RESPONDENTS



As noted above, a 2021 agreement seems unlikely at this stage. In 2020, 20 percent of respondents expected guidelines to be implemented that year, 39 percent the next year (2021), and 26 percent two years down the road (2022), representative of the belief that this work will result in some kind of new framework, but that it's still "far off." Each year, there seems to be the expectation that the prospect of consensus is at least another year away.

Q9. What single factor will have the most significant positive impact on U.S. tax policy in 2021? (Select one option)

RESPONSES	%
Biden winning the White House	28%
Democratic control of the Senate	23%
State of the U.S. economy	15%
Reduced Democratic majority in the House	14%
Ongoing COVID-19 challenges	13%
Democratic control of the House	3%
Janet Yellen replacing Steven Mnuchin as Secretary of the Treasury	2%
Other	1%
Total Responses	**138**

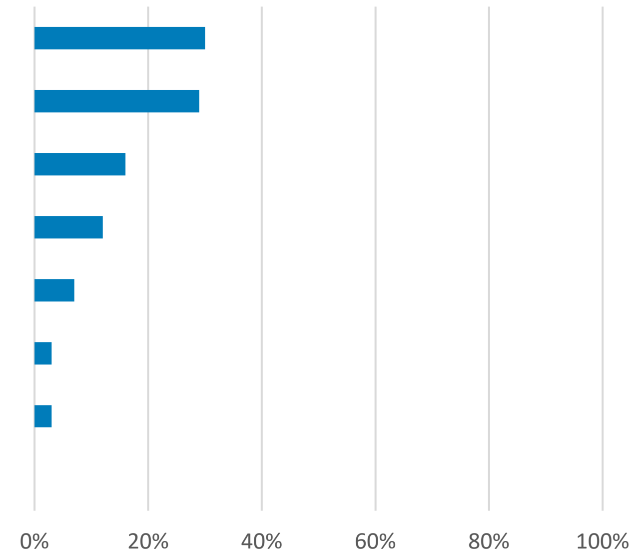


Given the Administration's focus on taxes as a top source of revenue to fund non-tax priorities and its limited discussion of tax relief, it is interesting that just over a quarter of respondents believe President Biden's election win will have the most positive impact on tax policy this year.

Not unexpectedly, a partisan divide did appear, as 47 percent of Democrats and only 14 percent of Republicans singled out President Biden winning the White House as having the most positive impact on tax policy.

Q10. What single factor will have the most significant negative impact on U.S. tax policy in 2021? (Select one option)

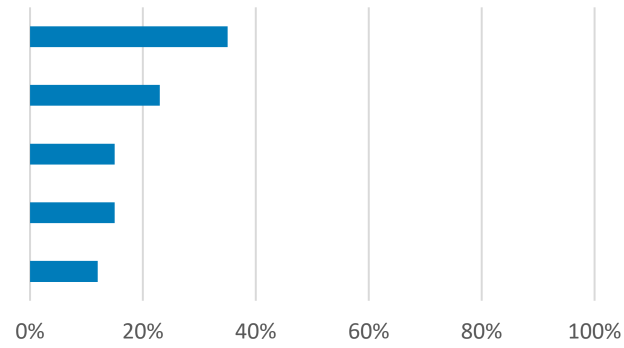
RESPONSES	%	PERCENTAGE OF TOTAL RESPONDENTS
Ongoing COVID-19 challenges	30%	
Democratic control of the Senate	29%	
Biden winning the White House	16%	
State of the U.S. economy	12%	
Reduced Democratic majority in the House	7%	
Democratic control of the House	3%	
Janet Yellen replacing Steven Mnuchin as Secretary of the Treasury	3%	
Other	0%	
Total Responses	**138**	



Respondents are split between ongoing COVID-19 challenges (30 percent) and Democratic Senate control (29 percent) as the most negative influences on tax policy this year. An emphasis on COVID-19 relief could result in fewer legislative vehicles, and potentially fewer funding sources, for tax relief legislation. Democratic control of the Senate (29 percent) combined with President Biden winning the White House (16 percent) signals concern that Congressional leadership will push through President Biden's tax increase proposals. In this regard, not surprisingly, 40 percent of respondents identifying as Republican and just six percent of those identifying as Democrat say Democratic control of the Senate will most negatively impact tax policy in 2021.

Q11. What are your predictions for the 2022 Congressional midterm elections? (Select one option)

RESPONSES	%	PERCENTAGE OF TOTAL RESPONDENTS
Democrats control both Senate and House	32%	
Too soon to tell	28%	
Democrats control Senate, Republicans control House	13%	
Republicans control Senate, Democrats control House	12%	
Republicans control both Senate and House	8%	
Total Responses	**139**	



Although the sitting President's party historically loses seats in both the Senate and House in the midterm elections, 35 percent of respondents believe that Democrats will retain control of both chambers as a result of the 2022 elections. Despite this occurrence, only 12 percent of all respondents think Republicans can win both Chambers, which may indicate a sentiment that the disintegration of the Trump presidency and the Capitol attack will have a lasting impact in the upcoming election.

Respondents are divided among partisan lines in their predictions. Most Democrats (72 percent) believe Democrats will control both the Senate and the House after the midterm elections, while Republicans anticipate a GOP Senate and Democratic House (29 percent) or Republican control of both Chambers (23 percent).

Methodology

Between January 7 and January 29, 2021, Miller & Chevalier Chartered and the National Foreign Trade Council fielded an electronic survey to leading business and tax executives, including CEOs; CFOs; and corporate tax executives, at a broad cross-section of U.S.- and foreign-based multinational companies.

Industries surveyed include technology, construction, health care, utilities, insurance, manufacturing, automotive, chemical, oil and gas, hospitality, and real estate, among others.

The survey was completed by 139 executives. Twenty-six percent self-identified as Republican, 35 percent as Democrat, 18 percent as having another political affiliation, and 21 percent declined to provide a political affiliation.

Due to rounding and questions where respondents could select more than one answer, certain final percentages may not equal 100 percent.

We appreciate and thank those who contributed their views and shared their experiences.

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