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Trump Tax Cuts Could Start With Executive Action



U.S. President Donald Trump flanked by business leaders holds a executive order establishing regulatory reform officers and task forces in US agencies in the Oval Office of the White House on February 24, 2017 in Washington, DC. Earlier in the day, Trump stated he would cut 75 percent of regulations. (Photo by Olivier Douliery – Pool/Getty Images)

So far, President Trump has moved boldly—or rashly, depending on your perspective—with many [executive actions](#), including:

- Proclamation 9570: [National Day of Patriotic Devotion](#)
- Executive Order 13765: [Minimizing the Economic Burden of the Patient Protection and Affordable Care Act Pending Repeal](#)
- A Memorandum that was a type of [Regulatory Freeze memo Pending Review](#)
- Presidential Memorandum: [Withdrawal of the United States From the Trans-Pacific Partnership Negotiations and Agreement](#)
- Presidential Memorandum: [Mexico City Policy](#), reinstating and expanding a policy President Obama had rescinded restricting the use of foreign aid money to support family planning organizations that promote abortion.

- Presidential Memorandum: a federal [Hiring Freeze](#)
- Presidential Memorandum to bring back consideration of the [Construction of the Keystone XL Pipeline](#)
- Presidential Memorandum to reconsider [Construction of the Dakota Access Pipeline](#)
- Presidential Memorandum to review [Construction of American Pipelines](#)
- Executive Order 13766 [Expediting Environmental Reviews and Approvals for High Priority Infrastructure Projects](#)
- Presidential Memorandum [Streamlining Permitting and Reducing Regulatory Burdens for Domestic Manufacturing](#)
- Proclamation 9571: [National School Choice Week, 2017](#)
- Executive Order 13767: [Border Security and Immigration Enforcement Improvements](#), the “build the wall” executive order.
- Executive Order 13768: [Enhancing Public Safety in the Interior of the United States](#)
- Executive Order: Protecting the Nation From Foreign Terrorist Entry Into The United States, his most controversial executive order. Now blocked by a federal court it is [a ban on entry from seven countries for 90 days](#) (Iran, Iraq, Libya, Somalia, Sudan, Syria and Yemen).
- National Security Presidential Memorandum 1: Rebuilding the U.S. Armed Forces
- Executive Order: [Ethics Commitments by Executive Branch Employees](#)
- National Security Presidential Memorandum 2: [Organization of the National Security Council and the Homeland Security Council](#)
- National Security Presidential Memorandum 3: [Plan to Defeat the Islamic State of Iraq and Syria](#)
- Executive Order: Reducing Regulation and Controlling Regulatory Costs

What about *tax* changes by executive action? Fundamentally, tax laws are passed by Congress, and administered by the IRS and the Treasury Department. Yet, the precise line between the administration of *existing* taxes

and passing new ones or repealing old ones can at times be blurred. As President Obama moved into the last 2 years of his 8-year term, he suggested *raising* taxes by executive action. White House Press Secretary Josh Earnest said the President was “[very interested](#)” in raising taxes through [executive action](#).

In fact, Sen. Bernie Sanders (I-VT) [called](#) upon the President to raise over \$100 billion in taxes through IRS executive action. Sen. Sanders even [dispatched a letter](#) to Mr. Obama’s Treasury Secretary identifying actions the IRS could take without asking Congress. Hillary Clinton also talked of it on the campaign trail. So, can we expect President Trump to make tax moves by executive action? Some of them, yes. And it may be easier to make moves of the *tax-cutting* variety than the kinds of *tax-increase* moves President Obama was eyeing.

Already, President Trump [signed an executive order](#) giving the Department of Health and Human Services and other executive departments and agencies discretion to roll back portions of the Affordable Care Act. The IRS started relaxing individual mandate [reporting requirements after the executive order](#). Since the IRS will process tax returns regardless of whether the return discloses coverage, this is arguably a tax cut for some people.

If they don’t report, they apparently can’t get hit with a penalty. And not getting a penalty is a kind of tax cut. There could be many other bigger moves too. In fact, although Sen. Sanders has very different views from President Trump, his [letter](#) showcases just how significant some administrative tax moves without Congress can be. Curiously, one of the items on Sen. Sanders’ hit list is to get hedge fund and private equity fund managers to pay ordinary income tax on their so-called carried interest. They have long been blessed with capital gain treatment, and it has become increasingly controversial. Even President Trump has commented about it, and it seems conceivable that he might go after it as hard as Sen. Sanders.

Tax lawyers and academics have long debated whether the carried interest provision could be fixed by executive action or needs Congressional action. Yet, many of President Trump’s tax plans clearly need Congress. His plan for individual and corporate tax rate cuts certainly does. The same with estate tax repeal. His toll charge for repatriating earnings could perhaps be handled either way, but there’s no question that Congress is likely to get a crack at all of this first. If Congress does not roll up its sleeves, though, we can probably expect President Trump to start thinking about executive action in the tax arena.

For alerts to future tax articles, email me at Wood@WoodLLP.com. This discussion is not legal advice.