Forbes

Robert W. Wood
THE TAX LAWYER

TAXES 10/28/24

Despite Mark Cuban, Kamala Harris Unrealized Gains Tax Remains In Play

Vice President Harris adopted most of President Biden's tax proposals, including taxing some unrealized capital gains. If passed, it would mean paying tax on increases in value even if you did not sell anything. It would only apply to the ultra-wealthy, but is arguably so radical in design that even modest earners worry it could open the floodgates to someday trickle down to them too. Harris billionaire supporter Mark Cuban criticized the plan and recently said Harris no longer supports it. But others say there's no evidence that she has abandoned her wealth tax, and her campaign said she still supports the wealth tax.

Cuban called the tax an economy killer long before his recent statement that the Vice President has abandoned the idea. The question is whether she has, as the Wall Street Journal notes in the Harris wealth tax vs. Mark Cuban. Some say Harris has merely gone quiet on taxing unrealized gains. She would need Democratic control of the House and the Senate to pass it.

This new tax would apply to taxpayers with wealth greater than $100 million. Although it has been called a "billionaire tax," $100 million is a tenth of a billion. Even so, few may want to defend anyone with $100 million. Some argue the tax fairly targets extremely wealthy Americans who take advantage of tax rules to pay lower rates than working people. Wealthy people can tap their resources by borrowing money rather than selling assets that trigger tax. Households worth more than $100 million would pay an annual minimum tax worth 25% of their combined income and unrealized capital gains.

Say you purchase stock for $10 a share, it doubles to $20 in the first year, but you still hold it. Even though you haven't sold it, that $10 gain would be subject to the new tax. Real estate would work the same way. You buy a house, building, or land. The increase in value over time would be taxed every year, even though you still hold it. We have never had a tax on gains that are not "realized," meaning sold. In that sense, this new tax would be groundbreaking, a point we'll come back to.

How do you go about valuing everything every year to be taxed? Public company stock would be straightforward. But most assets could be a nightmare, and who in the end gets to carry the day on value? There would be valuation disputes with competing experts and there would be required annual value statements. Capital gains have always been singled out for *lower* taxes, not higher. And except in the case of estate tax measured on death, it has been nearly sacred not to tax "earnings" you didn't receive.

Besides, what if value spikes one year, you pay tax, and then it plummets the next year? You still have the now worthless asset and can't sell it for much. Of course, the proposal is to use this wealth tax only for the truly wealthy, anyone with $100 million or more. But once we start down this path, could we someday face a tax on someone with $20 million, $10 million, even $1 million? If the $100 millionaire tax passes, there could be court challenges about the government's taxing power. The Supreme Court has not ruled on a question like this, although one recent guidepost came in a 2024 tax case, *Moore vs. USA*, in which the Supreme Court upheld a tax on undistributed foreign assets.

If the wealthy are borrowing to skirt tax, some commentators argue that we should impose a tax on loans under some circumstances—even though loans are usually not taxed. Some wealthy people avoid selling stock or other assets that would trigger tax, and borrow instead. The loan money is not taxable, and they can write off the interest too. Many ordinary people do this too, but not to the extent or with the ease that wealthy people can.

There are numerous other issues in the election. Harris has other tax plans that reprise Biden's tax goals, including raising top marginal rates on top earners from 37% to 39.6%. In 2019, she floated a 4% "income-based premium” on households making more than $100,000 to pay for Medicare for All, but this has not yet resurfaced in 2024.

Check out my website.