NAFOA Policy Assessment

Navigating the New U.S. Government

January 2017

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Unpredictable may be a fair term to describe the policy approach of an Administration led by President Donald Trump. A corporate tax plan provision favoring domestic corporations was touted by candidate Trump and willingly developed by the new Republican Congress only to be called too complicated by President-elect Trump. A call for healthcare repeal and replacement throughout the campaign by candidate Trump has made the work of Congress more difficult by public pronouncements of an immediate replacement plan calling for unrealistic costs savings while increasing coverage for all Americans.

There is even less known about the President's philosophy and positions regarding Indian Country. Even with policy uncertainty, we can make sound assumptions of the new Administration's policy approach based on the existing policy positions and based on the appointments made to key agencies and advisory positions.

In addition to analyzing the Administration's policies and appointments, we can also turn to a new but familiar Congress. Tribal governments have worked hard to cultivate relationships in Congress that can both protect and advance our interests - regardless of party affiliation. Key committee leadership assignments and relationships built over time hold the promise of a continued productive relationship with Congress.

Understanding the positions of the Administration and Congress to ensure inclusion when appropriate and protect advances when necessary is our priority. More specifically, NAFOA will be working to navigate two administrative and congressional priorities that will be taken up in the first one-hundred days of the new government - infrastructure investment and tax reform. These key priorities present both opportunities and challenges.

The assessment includes a summary of stated positions on infrastructure spending and tax reform. The positions are followed by key points for tribal government consideration. In addition, we are including our policy update on key issues that may become important as legislation moves in what promises to be a productive Congress.

Infrastructure - The Trump Administration Approach

President Trump has repeatedly called for a significant commitment to infrastructure investment during and after the campaign. Some statements place that investment well over one-trillion dollars. However, there are others who rightfully doubt the wisdom of a significant outlay of public and private spending during a period of low unemployment and federal budgetary restraint.

Given the economic and political environment, infrastructure spending and investment will likely be more measured, but still large enough to provide the targeted one percent or more of additional economic growth targeted by the President. There is an opportunity for tribal governments to participate in the new government's federal infrastructure spending program.

Like most of President Trump's policy statements, his infrastructure policy is general. However, it does contain a few notable provisions that should help tribes prepare and effectively advocate for inclusion. The President Trump plan includes:

- The plan encompasses most infrastructure development important to Indian Country including "investments in transportation, clean water, a modern and reliable electricity grid, telecommunications, security infrastructure, and other pressing infrastructure needs." It is worth noting that the plan emphasizes safe and clean water projects with a call for tripling the current funding for clean drinking and waste water infrastructure.

- The plan intends to provide maximum flexibility to the states. This shifts the project priorities and spending decisions to the state governments.

- The plan will attempt to create new jobs, accelerated economic growth, and productivity gains while remaining deficit neutral with the idea that new jobs will create new tax revenues.

- The plan intends to use American-made steel and employ American workers when building infrastructure. This likely means the use of Made-in-America and U.S. workers (not foreign) will be a pillar of the plan.

- Financing of the plan will encourage, if not rely upon, the use of public-private partnerships, financing authorities, and infrastructure tax credits. There is little mention of direct funding, but there is an expectation that direct funding will be a part of the plan through repatriated funds and other means.

- Finally, the plan will attempt to roll back regulations, cut wasteful spending, and ensure efficiency through incentive-based contracting for projects that are on time and under budget.

Infrastructure - Tribal Government Participation

The proposed infrastructure plan will rely heavily on Congress to fill in the details and find appropriate offsets or creative budget justifications. Infrastructure spending has been a policy priority for both parties in Congress making it likely that action will be taken. It is important that tribal governments are involved early in the process advocating for inclusion and direct funding. Tribal governments may want to consider the following when advocating:

- The infrastructure plan is an answer to helping those Americans that have experienced little or no job growth, the lack of job opportunities, and the lack of generational wage growth while the rest of America recovered or prospered. A broad swath of Indian Country fits into the category of those Americans that have been passed by, making inclusion a political and moral imperative.

- The plan currently has an emphasis on distributing funds to the states. This means that the Administration feels states should be making the decisions on what is important to fund. The same can be said for tribal governments. This is an opportunity for tribes to tout the immediate funding mechanisms already set up in the federal system that can directly and efficiently target transportation, housing, telecommunications, healthcare, and other infrastructure development with accountability measures already in place.

  It is important to educate Congress and the Administration that **an investment in Indian Country is an investment in rural America**. Tribes not only employ their own people which are among those Americans with the highest unemployment rates, but they employ workers from local communities that also benefit from the infrastructure created.

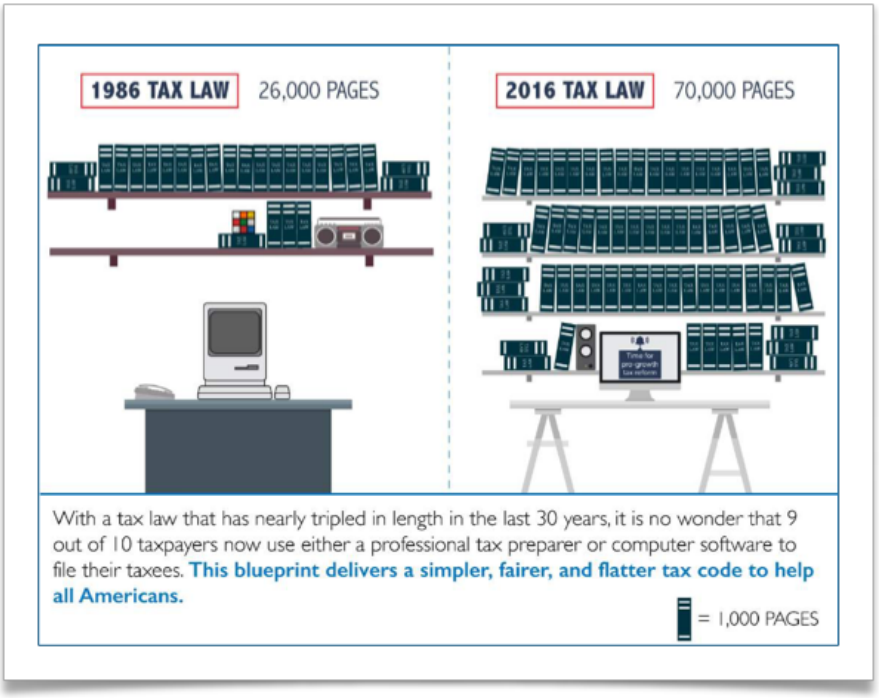
- The plan will likely include three funding approaches. First, is the use of public-private partnerships (P3's). Second, a federal tax-credit bond program. And third, tax reform, including the use of repatriating previously untaxed U.S. corporate funds. Tribes should be included in all forms of funding.

- Tax Credits - Although the experiment of raising tax credits through a private sector bond program proved popular in the past, funding through existing tax credits has presented challenges to tribal governments. Tribal governments have used tax credits for housing (Low-Income Housing Tax Credits) and community development programs (New Market tax Credits), however, the Low-Income Housing Tax Credits handed down to the tribes from the states often consider tribal needs secondary to the states or by-pass tribes altogether. In addition, the New Market Tax Credits, which may be similar to the core component of tax credit funding, are in high demand leaving tribes with no or small awards that don't come close to meeting the need or demand. Indian Country's experience with tax credits warrants a separate and direct allocation - especially considering the additional challenges associated with developing on federal trust lands and a private sector unfamiliar with serving tribal governments. This approach has already proven successful within Department of Treasury programs.

Tax Reform - The Trump Administration Approach

President Donald Trump has made tax reform a priority during his campaign and Congressman Paul Ryan lists tax reform as one of his top five priorities for the upcoming 115th Congress. Although Congressman Paul Ryan released his version of tax reform called "A Better Way" in the summer of 2016, the approach below will focus on President Trump's tax plan.

Both tax plans are generally similar in that they set out to reduce taxes across the board and make the code less complex. The plans propose to provide relief by: simplifying the tax code, lowering the corporate tax rates to spur growth, lowering the effective rates and number of tax brackets for individuals, and doing away with "special interests" by narrowing deductions.

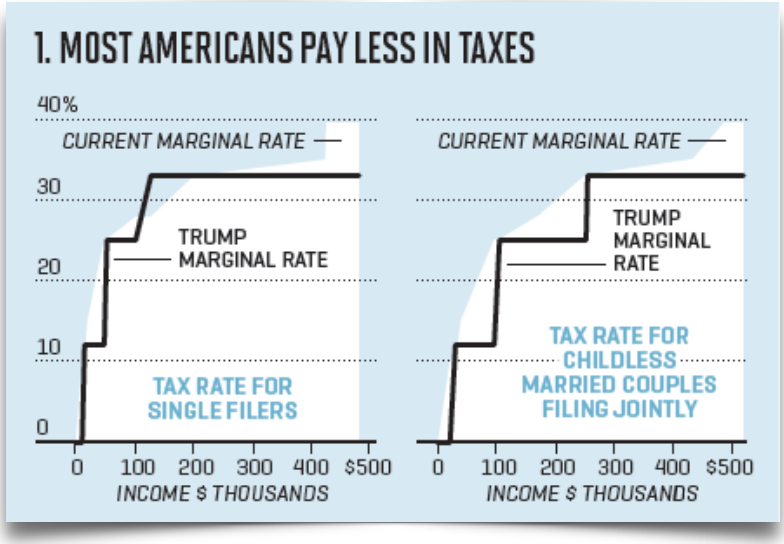


The chart above reflects Congressman Ryan's ambitious idea of a simplified tax code - going from 70,000 pages to a mere 1,000 pages.

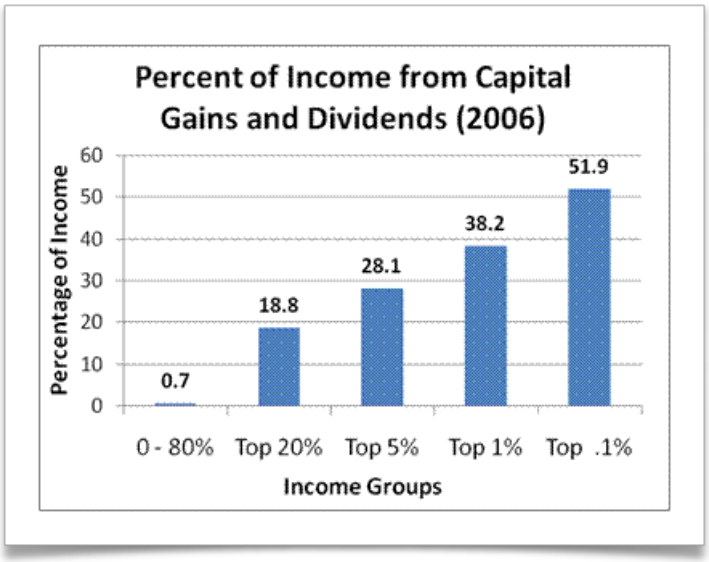
Individual Tax Reform

- **Marginal tax rates** - The President Trump proposal will reduce the current seven-tiered system to three tiers with lower income Americans paying no taxes.

The threshold at which workers begin paying income tax increases with married couples seeing a substantial reduction in marginal rates along with higher income taxpayers. The top tax rate will be reduced from a current 39% to 33%. Married and joint filers will fall into three brackets. Those making less than $75,000 will have a marginal rate of 12%. Those above $75,000 and below $225,000 will have a marginal rate of 25%. And, those making over $225,000 will fall into a marginal rate of 33%. Single filers receive half of the stated joint and married marginal rate.



•**Investment and estate tax rates** - The capital gains tax rate will remain at a maximum of 20%. This rate impacts high-income filers the most and will likely be touted as a means for the wealthy to "pay their fair share" - a stated goal of the President Trump tax plan.
Carried interest will be taxed as ordinary income in the current plan, although appointing



investment bankers to key advisory and cabinet positions makes this addition less certain.

Finally, the additional parts of the tax plan calls for a repeal of the alternative minimum tax, the estate tax, and the 3.8% investment income taxation which will help retired Americans that rely on their investments as income.

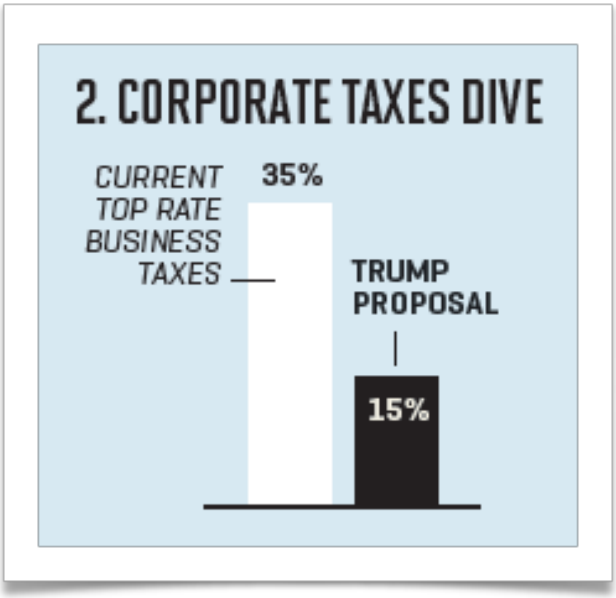
- **Notable deductions and exemptions**- Itemized deductions would be capped. The standard deduction increases to $30,000 from $12,600. Single filers will be half the married or joint rate. Personal exemptions are eliminated as is the entire category of head of household. Itemized deductions are phased out for those with over $200,000 in joint income and $100,000 in individual income.

  The President Trump tax plan calls for child and elder care deductions that provide more inclusive eligibility including an above the line deduction and higher income eligibility at $500,000 for joint filers and $250,000 for single filers. The elder care deduction is capped at $5,000 and the childcare deduction would be limited to four children who all need to be under thirteen years of age. Earned Income Tax Credits are available for low wage earners.

  The plan also provides a unique savings element for all taxpayers with the establishment of Dependent Care Savings Accounts. These savings accounts are free from taxation for amounts up to $2,000 per year and can be used for education expenses for a child turning eighteen for any unused amounts.

Corporate Tax Reform

President Trump has been consistent in his belief that the corporate tax code needs to be reformed to allow businesses to more effectively compete, reduce the burden of high tax rates, and be relieved from the bureaucracy of filing. Both the Trump plan and the Ryan plan call for substantial reductions in the corporate tax rates.



Initially, the plan called for corporate tax rates to fall from the current 35% to 15% under the President Trump plan (Congressman Ryan called for a 25% rate reduction). However, Congress has proposed sweeping reform calling for an end to corporate income taxes and replacing it with a new 20% value-added tax called the destination-based cash-flow tax (DBCFT) for corporations (25 percent for unincorporated businesses). The new tax would be border-adjustable – taxing imports and exempting exports.

Under the original plan, the the alternative minimum tax for corporations is repealed and corporations retain the research and development credit and manufacturing firms can immediately expense capital investments. Under the DBCFT, expense deductions shift to offsets for wages.

Implementing all of these would be difficult and may end with negative tax liabilities for large corporations that have significant employees and large capital outlays. Large manufacturing companies like Boeing and Ford would benefit.

In addition to the childcare provisions in the individual reforms, there is a corporate incentive as well. Companies can take childcare tax credits for on-site childcare up to $500,000 (formerly $150,000).

The President Trump plan calls for the repatriation of corporate profits held overseas with a one-time tax rate of ten percent. This repatriation support is key to the success of his infrastructure plan.

Tax Reform - Tribal Government Participation

Tribal governments may not benefit directly from the individual and corporate reforms offered in the President Trump plan. However, there will be opportunities to work with Congress to advance tribal government tax reform. Tribal government reform can be accomplished under tax reform in promoting governmental parity and within infrastructure development in promoting the need for effective long-term government capital along with credits access.

The following may be considered when advocating for tax reform.

- Lessons of past reforms - When tribal governments are not directly consulted before reforms are put in place there tends to be a great amount of resources spent trying to overturn damaging decisions that do not include or consider tribes. Urging Congress to examine tax reform impacts to tribal governments should be the highest priority. As an example, will the DBSCFT include tribal enterprises that have not been taxed in the past?

- Effective capital - Reforming tax-exempt debt is not included in the Trump plan, but it has been part of an on-going conversation in Congress. There may be an effort to repeal the use of tax-exempt debt for private activity bonds or change the program in other and more significant ways. In any case, tribal governments should be part of the conversation and look to securing parity with other governments regarding the use of long-term capital.

- Tax credits - The access of tax credits has been difficult for tribal governments. The demand for credits is high and so is the need. But, the availability of credits to tribes has been extremely poor. The simple fix is to model the tax credit programs after the Community Development Financial Institutions and provide for a separate tribal program.

  Beyond securing available tax credits, Congress should consider an additional incentive to attract public-private partnership funding to tribes. This is especially important since the President Trump tax reform proposal considers the effective repeal of the accelerated depreciation program for tribes, which will limit the incentives tribes have to attract development.

- Parity issues - There are a number of issues raised over the years regarding placing tribal governments on par with other governments. This includes the disparate treatment of tribal governments when it comes to excise taxes, investment accreditation, and the establishment of tribal charities (see policy report for a more complete list of issues).

- Tribal jurisdiction - The sustained growth and diversification of Indian Country economies depends heavily on the ability of tribal governments to fund programs and services from economic revenues. Securing the inherent authority of tribal governments to use that revenue without other governments taxing that revenue is instrumental for economic development. Any opportunity to shore up jurisdiction should be considered.

Advocacy for both tax reform and infrastructure should be considered a joint and related activity. Both are key to the early success of a new government controlled by a Republican agenda that has been anxious to reform the tax code and grow the economy.