VIRTUAL COFFEE TALK

Cracks in the Crystal Ball:
Tax Law Changes to Watch Out For

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Agenda

1 Pre-inauguration TCJA regulations

2 Expiring TCJA and COVID-related provisions

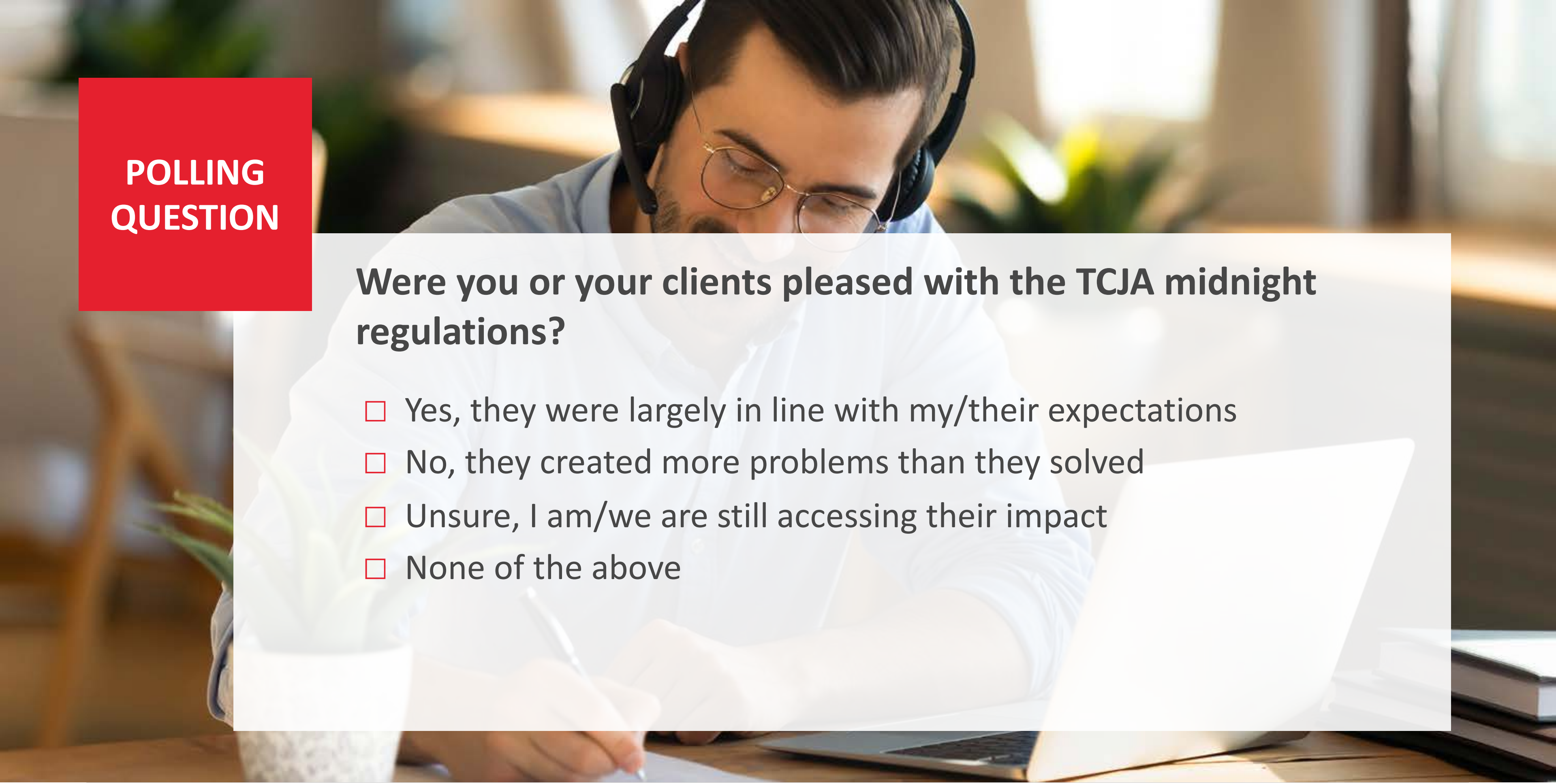
3 Potential tax law changes

4 Retroactivity of any potential tax law changes

5 New Treasury personnel, potential impact on upcoming regulations

Pre-inauguration TCJA regulations

- Nearly all regulatory projects under TCJA provisions were final and effective pre-inauguration
- Congressional Review Act
  - Could be used to overturn certain midnight tax regulations
  - Impact?
  - Likelihood?



POLLING QUESTION

Were you or your clients pleased with the TCJA midnight regulations?

- ☐ Yes, they were largely in line with my/their expectations
- ☐ No, they created more problems than they solved
- ☐ Unsure, I am/we are still accessing their impact
- ☐ None of the above

Expiring TCJA provisions

Provision	Effective
80% limitation on post-TCJA NOLs	Tax years beginning after 12/31/2020
5-year R&D amortization	Tax years beginning after 12/31/2021
Addback of depreciation and amortization for 163(j) interest expense limitation	Tax years beginning on or after 1/1/2022
Phaseout of 100% bonus depreciation	Property placed in service after 12/31/2022

TCJA "fiscal cliff"

Provision	Starting in 2026
Individual tax provisions	▪ Top individual tax rate bracket returns to 39.6% ▪ SALT limitation expires, along with the increase in the standard deduction
Estate tax exemption	▪ Reverts to previous exclusion level of $5 million (indexed for inflation) ▪ Twice that amount for married couples
Section 199A deduction	▪ 20% deduction for passthrough businesses expires, unlike permanent corporate provisions

TCJA "fiscal cliff" *(cont'd)*

Provision	Starting in 2026
Global Intangible Low-Taxed Income (GILTI) and Foreign-Derived Intangible Income (FDII) deductions	Amount of section 250 deduction is reduced: ▪ From 50% to 37.5% for GILTI ▪ From 37.5% to 21.875% for FDII
Base Erosion and Anti-Abuse Tax (BEAT)	▪ Tax rate increases to 12.5% ▪ Adjustment for R&D, low-income housing, and renewable energy tax credits ends

COVID-related tax relief and other provisions

Taxpayers have even more balls to juggle outside of the TCJA, including:

- The elective regime under section 864(f) for apportionment of worldwide interest
  - But see the recent House Ways and Means Committee proposal to repeal this election
- COVID-related tax relief provisions
  - Families First Coronavirus Response Act (FFCRA)
  - Plan terminations
  - Employee retention tax credits (ERTCs)
  - Deferred Social Security taxes

100% deduction for certain business meals

- The business expense deduction for meals provided by a restaurant is increased from 50% to 100% for 2021 and 2022
- The enhanced deduction does not apply to entertainment expenses, and business meals not "provided by" a restaurant generally remain 50% deductible
- One of the key questions prerequisite to understanding the potential benefit of the increased deduction is what constitutes a "restaurant"

POLLING QUESTION

What will the federal statutory corporate income tax rate be in 2022?

- ☐ 21% (the same)
- ☐ 25%
- ☐ 28%
- ☐ 35%
- ☐ None of the above

Who won the 2020 election—not a trick question

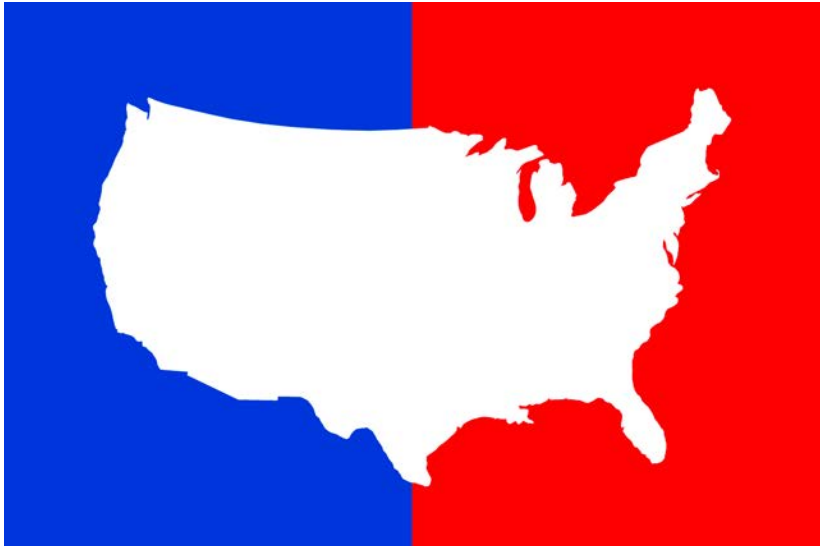
The real winners are **purple** and **red**, and not **blue**

How many tax bills will Congress consider in 2021?

- Tax is likely to be a central component of many pieces of legislation, including:
  - The current stimulus bill
  - Any infrastructure legislation
  - Democratic tax reform
- Bipartisan tax bills will likely exclude tax increases and rely solely on deficit-financed spending

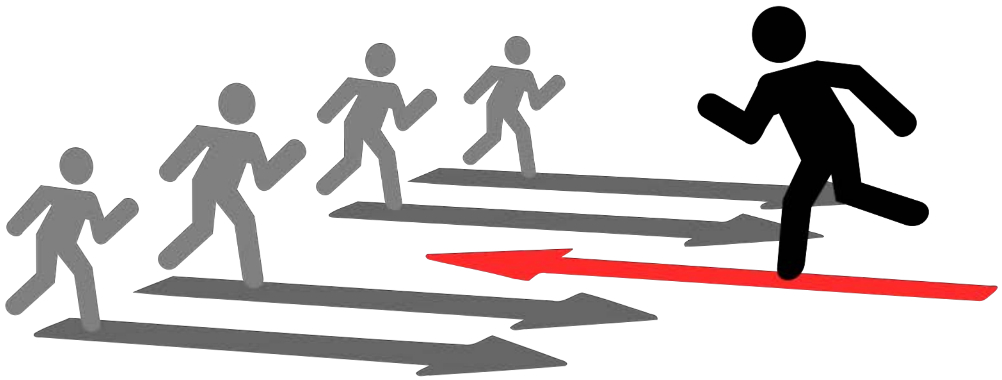
What happens if bipartisanship is not possible?

- Reconciliation
  - Is available for <u>certain</u> types of legislation
  - Allows for passage by simple majority
  - Democrats may use reconciliation not once but twice this year — once for the current fiscal year and once for the following fiscal year (which starts October 1)



Will any of the potential tax law changes be retroactive?

- Tax legislation typically has one of three effective dates:
  - the first of the year of, or following, enactment
  - the date of introduction
  - the date of enactment
- Retroactive tax increases are generally constitutional
- Nonretroactive rate changes made midyear may have the effect of being retroactive if they are subject to tax rate blending

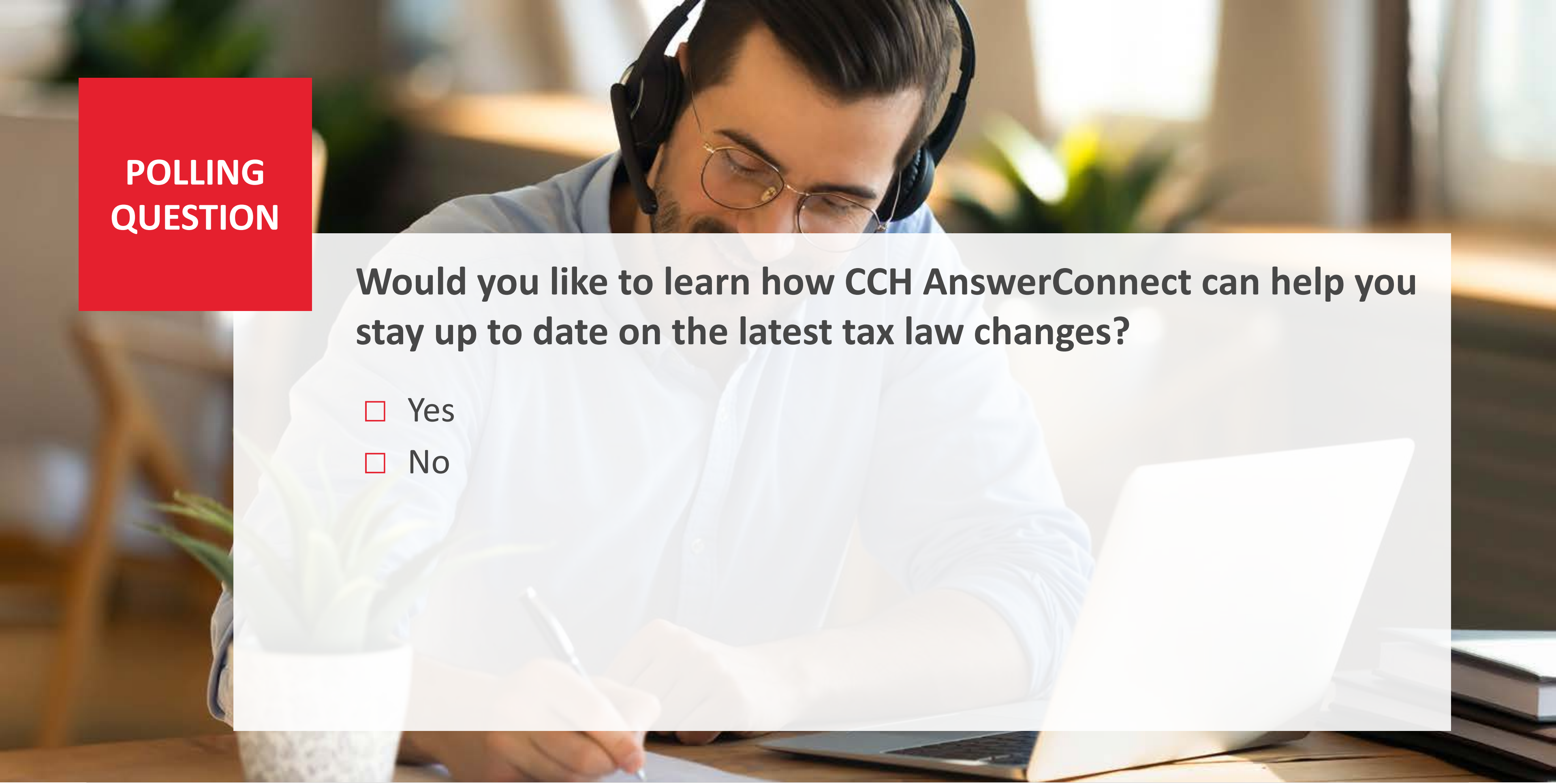


New Treasury Department personnel

- The Biden Administration has appointed a number of tax world and Obama Administration veterans, including:
  - Kimberly Clausing
  - Itai Grinberg
  - Rebecca Kysar
  - Tom West
- The recent appointees join Mark Mazur, former Assistant Secretary for Tax Policy under President Obama, who rejoined Treasury last month

Potential impact of Treasury appointees on regs

- The Biden Administration may be able to start releasing guidance sooner than other incoming Administrations due to the skill and knowledge of this crew
- Some Obama-era regulation projects that were nearly complete but shelved because of policy differences with the Trump Administration may be resumed
- The strong anti-TCJA bias shared by some of the appointees may manifest itself in other regulation projects



POLLING QUESTION

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- ☐ Yes
- ☐ No

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Cracks in the Crystal Ball: Tax Law Changes to Watch Out For

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Kevin M. Jacobs

Kevin M. Jacobs is a Managing Director with Alvarez & Marsal Taxand in Washington D.C. and the National Tax Office Practice Leader. He brings more than 15 years of experience in tax matters in both the public and the private sector.

Prior to joining A&M, Mr. Jacobs was a Senior Technician Reviewer (TCJA) with the IRS Office of Associate Chief Counsel (Corporate) for more than six years, where he advised on tax issues such as corporate re-organizations and corporation-shareholder issues, earning and profits, recovery and allocation of stock basis, liquidations, redemptions, bankruptcies, spin-offs and consolidated returns.

Mr. Jacobs was the principal Associate Chief Counsel (Corporate) attorney on several regulatory projects including the proposed section 382(h) regulations on built-in gains and losses, the global intangible low-taxed income regulations, and debt-equity regulations. He provided substantial contributions to numerous other guidance projects, such as the limitation on interest deductions regulations, and assisted in overseeing the Corporate Division's response to TCJA, including the coordination with Treasury's Offices of Tax Legislative Counsel and International Tax Counsel. Previously, Mr. Jacobs spent more than nine years at law and certified public accounting firms (Ropes & Gray LLP, Latham & Watkins LLP, Dewey Ballantine LLP and Arthur Andersen LLP).

Mr. Jacobs earned a bachelor's degree in accounting, a master's degree in accounting (with a concentration in taxation), a J.D. (magna cum laude) from the University of Florida and an LL.M. in taxation from New York University. He is admitted to practice before multiple courts, including the Supreme Court of the United States, the U.S. Tax Court and the U.S. Court of Federal Claims. He is admitted to the District of Columbia and Florida Bars and is a licensed Certified Public Accountant (CPA) in Florida and Colorado. Mr. Jacobs is a member of several organizations including the American Bar Association and the New York State Bar Association. He is also a frequent speaker on numerous corporate transaction tax matters.

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Joseph Boddicker is a Senior Associate with Alvarez & Marsal's National Tax Office in Washington, DC. He brings more than six years of experience working on tax matters in the U.S. Senate.

Before joining A&M, Mr. Boddicker served as tax and trade counsel to then-Senate Majority Whip John Thune and staff director of the Senate Finance Subcommittee on Taxation and IRS Oversight. Previously, he worked as tax and trade counsel to former Senator Dean Heller, where he acted as the Senator's chief tax advisor during committee and floor consideration of the Tax Cuts and Jobs Act, and as finance counsel to former Senator Cory Gardner.

Mr. Boddicker earned bachelor's degrees in economics and mathematics from the University of Iowa and the University of Arizona, respectively; a J.D. from American University, where he was Senior Note and Comment Editor of the American University International Law Review; and an LL.M. in taxation (with distinction) from Georgetown University Law Center. Mr. Boddicker is a member of the New York State Bar.

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