The Daily Dish

Further Reflections on the Billionaire's Tax

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President Biden proposed a so-called "billionaire's tax" as part of his President's Budget and, in the short time since the budget's release, that proposal has generated enormous attention (see, for example, the reaction of *The Wall Street Journal*). Putting aside politics, positioning prior to the election, and other strategic considerations, the billionaire's tax suffers three main flaws.

First, it is most likely unconstitutional. I'm not a lawyer, certainly not a tax attorney, and definitely not a constitutional scholar, but only those who have net worth – that is, wealth – greater than $100 million are potentially subject to the tax. That means a plain reading of the proposal indicates that the tax is based, at least in part, on wealth. The Constitution, pesky little constraint that it is, does not permit taxes on wealth. The billionaire's tax is legal overreach.

Second, it is simply not workable. The core of the idea is to have a tax on income plus total unrealized capital gains, but that turns out to be a challenge. To begin, the idea that this affects only the rich is misleading. Everybody would have to fill out the minimum tax, if only to prove they have less than $100 million.

For those subject to the tax, the reporting requirements are substantial: "Taxpayers with wealth greater than the threshold would be required to report to the IRS on an annual basis, separately by asset class, the total basis and total estimated value (as of December 31 of the taxable year) of their assets in each specified asset class, and the total amount of their liabilities. Tradable assets (for example, publicly traded stock) would be valued using end-of-year market prices. Taxpayers would not have to obtain annual, market valuations of non-tradable assets. Instead, non-tradable assets would be valued using the greater of the original or adjusted cost basis, the last valuation event from investment, borrowing, or financial statements, or other methods approved by the Secretary or her delegates.

Valuations of non- tradable assets would not be required annually and would instead increase by a conservative floating annual return (the five-year Treasury rate plus two percentage points) in between valuations. The IRS may offer avenues for taxpayers to appeal valuations, such as through appraisal."

Next, the idea is that minimum taxes would be paid on unrealized gains, but that raises the possibility of double taxation if those gains are realized in the future. To avoid this, the Treasury would have an accounting of payments by each taxpayer. In the future, if assets are sold and capital gains taxes levied, the cumulative minimum taxes would be available as a credit against those capital gains taxes. In effect, the tax liability of the future would depend on decades of previous tax returns, decades of hard-to-determine valuations for decades of different kinds of assets, and decades of intervening tax law changes. This idea presumably sprang from some egghead teaching a graduate seminar in tax policy and should have been left there.

Third, in addition to being unworkable and possibly illegal, it is terrible tax policy. The administration clings to the fiction that this proposal affects only a handful of Americans. According to *The New York Times* it would "apply only to the top one-hundredth of 1 percent of American households, and over half of the revenue would come from those worth more than $1 billion." Unfortunately, it does not matter how many people one taxes; what matters is how much economic activity is taxed, and these individuals are chosen precisely because they own a large amount of the investible capital in the economy. Taxing a substantial fraction of the investible capital does not produce tax revenue in isolation; it courses throughout the economy with implications for investment, risk-taking, human capital accumulation, and real wages.

Put differently, the tax will get shifted, at least in part, away from the owners of the specific capital to workers in general. Indeed, when AAF investigated Senators Warren and Sanders' wealth taxes it found that wealth taxes "would have a uniquely negative impact on workers' real wages – ultimately imposing an effective tax of 63 cents on workers for every dollar the government raises in revenue from the wealthy." The majority of the billionaire's tax would likely be shifted to average Americans.

Tax policy that inhibits growth is a bad idea. Tax policy that inhibits growth and is regressive is a worse idea. Tax policy that inhibits growth, is regressive, unworkable and likely unconstitutional? You get the idea.