THE BROOKINGS INSTITUTION

TAXING CAPITAL INCOME: MARK-TO-MARKET AND OTHER APPROACHES

AN URBAN-BROOKINGS TAX POLICY CENTER EVENT

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Welcome and Introduction:

MARK MAZUR
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Urban-Brookings Tax Policy Center

Keynote Presentation:

THE HONORABLE JAN SCHAKOWSKY (D-IL)
U.S. House of Representatives

Panel Discussion of Economic Implications:

WILLIAM G. GALE, Moderator
Co-Director, Urban-Brookings Tax Policy Center
Arjay and Frances Fearing Miller Chair in Federal Economic Policy
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JANE GRAVELLE
Senior Specialist in Economic Policy
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Panel Discussion of Legal and Design Implications:

STEVEN M. ROSENTHAL, Moderator
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P R O C E D I N G S

MR. MAZUR: Good morning, everybody. Good morning and welcome to today's event. My name's Mark Mazur. I'm the Robert C. Pozen director of the Urban-Brookings Tax Policy Center. And it's a real pleasure to welcome you here today to Brookings Institution for a discussion of an important tax issue: possible ways to tax capital income, including mark-to-market proposals. We have two stellar panels today to discuss the issue and a wonderful keynote speaker, who I'll introduce in a moment.

First, I'd like to cover just a couple of housekeeping items. First, Tax Policy Center is pleased to welcome you all here in person. I also want to welcome our online audience and appreciate your attention. For those who want to extend the discussion on social media the hashtag #TaxingCapital is being used up on top, and that'll help keep the conversation going effectively.

And will built in time for audience questions and answers throughout today's program. When we get to those parts of the program there'll be microphones circulating the room. Wait for a microphone, introduce yourself, ask your question. It makes it easier for people in the room to hear you, but it's essential for people online to hear you to have the microphone.

That said, let me turn to introduce our keynote speaker. We're incredibly pleased today to have Representative Jan Schakowsky here. Congresswoman Schakowsky represents the northern part of Chicago and northern suburbs. She has a longstanding interesting in fiscal policy. She served on the Bowles-Simpson Commission earlier this decade. She's very interested in economic and fiscal policies that work for all and it would help restore a vibrant middle class.

One thing I appreciate about Congresswoman Schakowsky is that she knows where she comes from, she knows what she believes, and that's what she tries to do in her job. So I'm incredibly happy that she chose to spend some time with us today and discuss some important policy issues. So join me in welcoming Congresswoman Schakowsky to the stage. (Applause)

REP SCHAKOWSKY: Thank you, Mark. I'm really pleased to be here today, happy to see people who are interested in addition to impeachment something else that affects a lot of Americans.

So this is a moment, right, this is a moment in history. I think it's a real inflection point right now. We know, of course, that income inequality is spiraling out of control, that working families are paying the price. But what's different I think right now are changing attitudes and politics around the issues of income inequality, which, of course, include tax policy.

I think this is a moment where more and more people feel free to say we should be taxing the rich. I think there was a time not too long ago where the idea of tax the rich was viewed as just this some sort of radical leftie kind of idea. But I think now the politics has really changed, opening the door for new legislative proposals, for a different tone of discussion. So, of course, without question, the tax system contributes to our growing economic inequality that is destabilizing our economy, threatening our democracy, and also mobilizing a lot of pissed off voters.

And furthermore, woeful inadequate tax revenue is leading to chronic and corrosive underfunding of vital programs and services, including all the way up to Social Security and Medicare and education and housing and infrastructure and the need for a rapid response to climate change. But I really believe that change is coming. Of course, elections really matter, but I do believe in any case that change is coming, the reforming the taxation of rich people's capital income, which is, of course, the subject of this conference, would begin to address the problems that we're facing today.

So this is the richest country in the world at the richest moment in history. And the richest 1 percent of Americans own more wealth than the bottom 90 percent. And what's more, the richest one-tenth of 1 percent, about 140,000 taxpayers, hold more wealth than the bottom 80 percent of American households. And the most startling to me, the three richest white guys, Jeff Bezos and Warren Buffett and Bill Gates, are collectively worth as much as the entire bottom half of American society. So just think about that for a moment. We are really out of sync right now.

And this grossly distorts the economy; also weighs on our democracy itself. It really allows out-weighted political strength to those who have the money.

In 2012, the richest 1 percent gave 42 percent of federal campaign donations. And during the 2014 cycle, just 32,000 donors provided nearly one-third of all the campaign donations. And in 2018, the top 100 donors gave a total of $800 million, or 14 percent, of the total donations. I mean, if you thought you were going to get away with not hearing about the politics of all this, you're wrong because it does distort and diminish our democracy when you have that kind of skewing.

This, by the way, the 2018 donations included $123 million from Sheldon Adelson and his wife, and $95 million for perhaps presidential candidate Mike Bloomberg. And those are the kinds of numbers that certainly get our phone calls returned when you're one of those big donors and that really elbow out the concerns of average voters that can't afford to pay for the attention that they deserve.

But, again, I think that that is really changing. We're seeing an electorate that is up in arms. This is moment when there is more mobilization of people than we have seen in recent history in terms of political awareness and political activism.

So, meanwhile, the world where the rich are getting extraordinarily richer, the rest of Americans live in a world that is literally crumbling. If we don't get an infrastructure bill we are in deep trouble right now. The public investment has been shrinking and we are really facing the consequences of these shortcomings. We need about, at least, $2 trillion to rebuild our failing infrastructure. We need another $2 trillion to create affordable child care and better housing. We need about a trillion dollars to make public college free, which can be done, and reduce student debt. Five hundred billion dollars would improve the Affordable Care Act. And on and on. I could go on and on. And these are needs that need to be addressed now; people are feeling it critically. And we need around $3 trillion to make an even modest down payment on very bold ideas, like the Green New Deal or Medicare for All.

So, as I said, the list goes on and on. There's about $10 trillion over 10 years that we need, not counting what's needed, as I say, for Medicare for All or for something as bold as the Green New Deal. And so I think the time is really up for the superrich. And it's really time to be talking about how we are able to tax the capital that they have.

And there's many ways to approach it, but I want to tell you that we are hearing the whining right now of the billionaire class. I just want to just give you a couple of examples.

Bloomberg has postulated that it's unconstitutional to do that. I just want to say that I think that the property tax actually is a wealth tax, except that it affects ordinary Americans. You value the property of the house and then you tax it and it's the biggest middle-class asset and I think it's a wealth tax. Zuckerberg said it hurts philanthropies and scientific research and that it gives government too much decision-making power. Imagine, government too much decision-making power.

We have Bill Gates, who mused about the impact on the incentive system for making money. But you should know that Microsoft actually started in 1975 when the top tax rate was 70 percent, so I think there's a little bit of hypocrisy there.

And I don't know who -- you probably know who Leon Cooperman is, I don't know. He's a really rich guy. (Laughter) And he actually on CNBC choked up when he was talking about the impact that a wealth tax that a tax on his -- would do to his family. So, you know, let's pass the hat for Leon Cooperman.

So there are a number of ways for achieving a fair share tax that works for everyone. And I, along with my partner, Representative Ocasio-Cortez, will be soon offering a possible approach with a revision of my Fairness in Taxation Act, FIT Act. And the new FIT will have several components, including raising the individual tax rate. We're talking about a highest tax rate of 59 percent. If you add state and local taxes, if you add Medicare taxes, it ends up with about a 70 percent tax.

But the part that's most relevant to our discussion today is our proposed reform of capital income taxation. So we begin by corrupting what is perhaps the most glaring injustice of the Tax Code: the giant tax loophole that gives preferential treatment to income from wealth over income from wages and work. By taxing capital gains and dividends at a much lower rate we send a signal to the public that says that a stock market speculator is much more important than a nurse or an electrician.

Under the Fairness in Taxation Act that is going to change. No longer will it be possible as it is now for a Wall Street billionaire to pay a lower tax rate than a median wage earner in our country. Under our legislation all the investment income of the wealthy, including long-term capital gains and qualified dividends, will be taxed at ordinary income tax rates.

But as this audience knows, reforming capital taxes isn't that simple. You can't just equalize rates and expect to raise a lot of money, the kind of money that we need. There are still too many loopholes for the rich to shield their income from fair taxation. And that's why our legislation will make other reforms that, taken together, will make it difficult for the wealthy to dodge their fair share of taxes on the money that they make from their wealth.

The legislation will tax capital gains annually, not just when they appreciated asset is sold. The conference title uses the term "mark-to-market." I actually think it's a little bit more understandable and I prefer to call it the "pay as you profit," but it's the same idea whatever you want to call it.

One estimate found that U.S. households had $3.8 trillion in unrealized gains in stocks and investment funds at the end of 2017. And that didn't include the gains that they may have had in real estate or private businesses or artwork and other non-tradable assets. The Federal Reserve found that unrealized capital gains make up most of the value of estates worth more than $100 million.

So asset appreciation can be understood really as wages from wealth. But unlike wages from work, which are taxed every paycheck all through the year, every year, assets of the wealthy can appreciate year after year, decade after decade, without a penny of taxes being paid if the wealthy play their cards right. Our Fairness in Taxation Act would fix that so that wealthy investors pay as they profit just as employees pay as their earn.

So it's important to note that our pay-as-you-profit tax would only apply to future capital gains. That would leave trillions of dollars in untaxed gains accumulated before the law went into effect. So we're going to need some help here. We will need a transition tax for those past gains without a -- and right now we don't really have the wording on that, so I would invite anybody here, you're the experts here, to help us figure that out.

As part of the reform we would close the loophole that allows wealthy families to avoid paying income tax on capital gains when they inherit assets. Any untaxed gains would be taxed at the time of inheritance as would any untaxed gains on gifts when the asset changes hands. That's another important piece of this legislation.

And all in all, the capital gains tax reform that will be in our bill could probably raise, we figure, something like $2 trillion, maybe even more. And hopefully, the scorekeepers at the Tax Policy Center will be able to give us an estimate.

I think, as you can probably see, I am not the expert on this. But you have to deal with me because we do the legislation. (Laughter) And so I'm hoping very much that we're going to get assistance from the experts that are here in the room.

It's really gratifying to see that right now so many Democratic candidates for President have embraced the concept of capital tax reform. For instance, all of the top tier candidates have endorsed the idea of equalized capital gains tax rates with ordinary income tax rates, of taxing wealth like work, and at least three are now on the mark-to-market bandwagon: Senator Warren, Mayor Pete -- he's in my neck of het woods -- and Julian Castro.

And as this event will reveal there really are many ideas for how to best tax wealth and the income from wealth. Three leading ideas I think are really on the table: annual wealth tax on great fortune, pay-as-you-profit tax on unappreciated capital gain such as I proposed, and standalone bills of all different sorts that we're looking at right now.

But I want to tell you, having conversations about this is important right now, but I think equally important to show the American people that we're really serious, we want to put legislation and language in place. Do I think that bills like this are going to pass right now? Do I think even if we pass the House of Representatives that it's going to pass in the United States Senate at this time? Unlikely. But we need to have a -- send a vision to people of what equity in taxation can actually look like. And I think that involves more than just discussing these various proposals. I think it's really important to put them down in legislation, and then we can discuss the difference, we can fight over the differences, the best way to approach these things.

So I want you to think about how we can work together. Our bill is just one example. Of course, Elizabeth Warren has the wealth tax that I think is gaining strength. And as I said to start with, I really do think this is a moment for change, that people have been suffering under these inequities in the tax system for such a long time, but now it's being talked about at meetings of groups named Indivisible, neighborhood organizations. People are rising up right now and saying we want this kind of change. We are not going to continue to see the rich get richer and all the rest of us get stuck on the bottom.

So I really invite you to be active participants, to share your ideas. My staff (inaudible) is here that works with us on this. Congresswoman Ocasio-Cortez is an active voice. Hey, when you've got over a million followers, you got a lot of power, but also very smart about how to move forward. So join us in this effort to put to paper the ideas that you have and help us perfect ours.

Thank you so much. (Applause)

MR. MAZUR: So we have time for a couple of questions, so if people please raise your hand and we'll get a microphone over to you. Way in the back.

SPEAKER: You'll have to excuse me, I'm young and uneducated. So my understanding, and I am by no means an expert in tax policy, is that the 16th Amendment of the Constitution was required to implement an income tax. How is a wealth tax or any variation of taxation on standing income, or wealth from terminology, I suppose, allowable under the Constitution by the federal government?

CONGRESSWOMAN SCHAKOWSKY: You know, that's why I raised the question of the property tax. Unlike the income tax where ordinary people see their property valued, given a number, this is wealth. It's considered wealth and it is taxed. And it is the number one asset of middle class people and so I would say if the property tax is legal, then certainly taxing capital wealth is also legal and that we should not just leave a wealth tax for middle class folks or I guess wealthy people pay property taxes, as well.

MS. RAY: Hi, thank you. My name's Debra Ray and I'm from the University of Maryland.

CONGRESSWOMAN SCHAKOWSKY: The University of?

MS. RAY: University of Maryland. I just graduated with a master's degree in applied economics.

CONGRESSWOMAN SCHAKOWSKY: Congratulations.

MS. RAY: Thank you. My question is can you talk to me more about your plans to create a progressive wealth tax? Because, you know, with fintech, you know, millennials especially are taking greater control over their retirement savings, and so I'm wondering how an increase in the capital gains tax will affect that.

CONGRESSWOMAN SCHAKOWSKY: You know, we actually have an exemption for people who have less than, what is it, 5 million? Built into the legislation we actually do set a level at which we would not have this tax. So I could look it up right now, but --

MS. RAY: Yeah.

CONGRESSWOMAN SCHAKOWSKY: -- we take that absolutely seriously and into consideration. Good question.

MS. RAY: Fantastic.

MR. BATTISTELLI: Joe Battistelli, Coalition on Human Needs. Part of this idea of reforming the Tax Code is to provide equity for society, but the other part is to generate the revenue that we need for our society.

CONGRESSWOMAN SCHAKOWSKY: Correct.

MR. BATTISTELLI: Could you elaborate on -- or would these measures, if magically tomorrow they appeared, enacted into law, would this generate the amount of new revenue that we actually also need to also, on the other half, create a more equitable and just society?

CONGRESSWOMAN SCHAKOWSKY: Yeah, I mean, I think I said those two things, that the Tax Code is unjust and that we are desperately short of the revenue that we need. Would this bill do it all? Would any piece of legislation do it all? But if we think that it would generate we think a minimum of $2 trillion, that's pretty good. That's a good start and could do a lot of really important things.

MR. BECKDERMOT: Hi, thank you very much. I am Bob Beckdermot (phonetic) and retired lawyer. Just out of curiosity, though, in the mark-to-market concept in your bill, it makes some sense to me to tax unrealized gains, but what do you do when there's a recession or a depression and those unrealized gains are lost? Does your bill propose for paying the tax back, a negative tax?

CONGRESSWOMAN SCHAKOWSKY: Would we refund the tax?

MR. BECKDERMOT: Yeah.

CONGRESSWOMAN SCHAKOWSKY: No. (Laughter)

MR. BECKDERMOT: Okay.

SPEAKER: Hi. Very interesting. Two points. You do know, of course, that there were 13 countries in the world that had a wealth tax and only 3 are left now.

CONGRESSWOMAN SCHAKOWSKY: Can you speak a little bit louder?

SPEAKER: There were 13 countries in the world that used to have a wealth tax. Only three are now left, one which being France. France have now reduced their wealth tax just to property and they did an analysis in 2016, Macron got rid of this wealth tax because it was on everything. They decided they raised 3.7 billion a year in the wealth tax, but the GDP went down by 7.5. So, in fact, what happens is, and you haven't calculated this at all, is wealth tax is one thing, but the reduction on GDP on the other side usually wipes out any benefit from the wealth tax plus costs the country more money.

You have the most entrepreneurial country in the world and you're about to destroy it. Thank you.

CONGRESSWOMAN SCHAKOWSKY: You know, as I pointed out, when we were at our highest levels of taxation we saw some of the most innovative work being done.

SPEAKER: And the tax was 28 percent in 1971, not 70.

CONGRESSWOMAN SCHAKOWSKY: No, that's not true.

SPEAKER: I've just looked it up on Google.

CONGRESSWOMAN SCHAKOWSKY: Between 19 -- so I just looked it up, too. Between 1965 and 1981, 70 percent.

SPEAKER (off mic): No, (inaudible).

CONGRESSWOMAN SCHAKOWSKY: Well, we also had at a pretty innovative time 91 percent since 1954 to 1963.

SPEAKER (off mic): All on capital gains, though. I mean, you can't (inaudible). Sorry, the capital gains is one thing, but (inaudible).

CONGRESSWOMAN SCHAKOWSKY: Yeah, that's true.

SPEAKER (off mic): Capital gains is 28 percent, income tax was 70. In England, when I lived there, we had 93 percent, 98 percent (inaudible), the capital gains tax was low. It wasn't 98 percent. It wiped out England. (inaudible) here, I did (inaudible).

CONGRESSWOMAN SCHAKOWSKY: Okay, okay.

SPEAKER: Thank you.

CONGRESSWOMAN SCHAKOWSKY: Okay.

MR. MAZUR: And one last question over on this side of the room.

SPEAKER: Thank you so much for your vision. Five years ago, after reading Thomas Piketty's book on capital I started a project called the Center on Capital and Social Equity, which is trying to help the bottom half become included in our capitalist economy. And it's been lonely, so I really appreciate what you're doing.

I've just finished reading Triumph of Justice by two of Elizabeth Warren's -- the Triumph of Injustice by two of Elizabeth Warren's advisors where they're laying out a vision for a tripartite tax on the wealthy, corporate tax, a wealth tax, and an income tax.

CONGRESSWOMAN SCHAKOWSKY: Right.

SPEAKER: But one of their objectives is Europe. And they're saying that to get the money we need for a socially fair society, Europe uses s VAT tax, a value-added tax, which is a consumption tax, which is very regressive --

CONGRESSWOMAN SCHAKOWSKY: Exactly.

SPEAKER: -- and hurts the poor. So how do you -- do you see this as a better option than a VAT tax?

CONGRESSWOMAN SCHAKOWSKY: Yes, absolutely. I think that --

SPEAKER: Sorry about the long question.

CONGRESSWOMAN SCHAKOWSKY: As you said, the main drawback of that tax is that it's regressive. And it's time in this country with the income inequality that we have that we go after that money at the top.

MR. MAZUR: Please join me in thanking Congresswoman Schakowsky.

CONGRESSWOMAN SCHAKOWSKY: Thank you. (Applause)

MR. MAZUR: And we are transitioning to our first panel.

MR. GALE: All right. While we're getting set up here why don't I get started? We are the first panel, a collection of bottom 99 percenters, to talk about taxing via mark-to-market or other approaches. I am honored to chair the panel. I knew this was going to be a good panel, but my estimation of it went up several times after we had a one-hour phone call and then a protracted email exchange after that trying to set up even what we were talking about.

So Jane Gravelle is a senior specialist in economic policy at Congressional Research Service. Karl Russo in the middle, or two over from me, is director of the National Economics and Statistics Practice at PricewaterhouseCoopers. Eric Toder on my far left is the code director at the Tax Policy Center and an institute fellow at the Urban Institute.

So let me just start the conversation off at round one, at the very beginning. And, Jane, let me ask you to just to get us all on the same page and explain what's a capital gain, how are capital gains taxed now, what are the problems with that, and then tick off the alternatives that we could consider.

MS. GRAVELLE: Okay. Well, capital gains are appreciation in assets, like the stock market is one of the most important, but also assets set in private companies and real assets, such as real estate. So they're just increases in the value of that.

If you sell them, you're subject to tax. But that tax is at a lower rate than the ordinary rate, so the top rate on capital gains is a 20 percent income tax plus a 3.8 percent net investment tax, so it's 23.8 percent whereas the top ordinary rate is 37 percent. There's a schedule of taxation and so forth.

Unrealized gains are not taxed at all. And if you hold onto them and then pass them at death, this is called a step up in basis, so you increase the basis of the asset that basically wipes out any taxation of that gain ever occurring when the heirs sell the assets. So there's a huge swath of income from capital gains that is never taxed. It's a combination of our realizations principle. It's also taxed at a lower rate. And it's also exempt when it's passed on at death.

And on top of that, any revenue realized from any capital gains increase, at least by the scorekeeping by the Joint Tax Committee, could be very small because there's an assumption that people will reduce the amount they realize if you increase the tax. So it all makes capital gains, which is probably the main income of very high-income people, such as the three people that the congresswoman mentioned, that's probably their major earnings and it's probably unrealized gains and Microsoft stock or whatever.

So those are the problems. We're missing a lot of revenue. And I actually think this is one of the few ways, the idea of mark-to-market is one of the few ways you can actually tax income of very wealthy individuals. Otherwise, you just can't get at it.

So I outline in the paper, I think it's been handed out, is sort of one method of what we could do with unrealized capital gains, which is to mark publicly traded assets to market and tax them every year. So if your stock went up, you would tax, even if you didn't sell that stock, you would tax the appreciation.

For assets that are not publicly traded and hard to value there's a very simple lookback method you could do to increase the taxation of that gain to account for the deferral of the tax over the period. And then I think at the time of the inheritance, estate tax time, you would treat the estate tax as a taxable event. Now you might have a liquidity problem in that case and you could probably allow a payment schedule with interest. I mean, there's lots of ways to deal with liquidity in estate tax.

The alternatives to trying to tax income of the wealthy, of course, one obvious alternative is to raise the corporate income tax, which is mostly helped by high-income people, pension funds, and actually foreigners. You could do a lot of little things, like eliminate the passthrough deduction for unincorporated business for high incomes. You could tax carried interest as ordinary income. You could apply the net investment income to income of active income of subchapter S. And now I understand you could also make some money from applying it to some limited partners. You could increase the estate tax, although there’s kind of limited revenue there in the estate tax.

So I think those are sort of -- I may have missed one or two there, Bill, but I think that’s most of them.

MR. GALE: All right, great. Thank you.

Eric, you and Alan Viard proposed the mark-to-market system a few years ago or mark-to-market as part of a system of reform. Tell us how would mark-to-market actually work?

MR. TODER: Okay. So we were only going to apply mark-to-market to publicly traded assets. Our feeling was it could not be done for private businesses. We did not have a good valuation, and that’s one of the big problems that we’ll talk about a little more in this conversation.

But the way it would have worked was suppose you have stocks, your broker will tell you at the beginning of the year how much it’s worth, at the end of the year how much it’s worth. We actually wanted to use an average of the month of December to avoid weird things that might happen in one day. You would calculate that difference and you would report that as ordinary income on your tax return.

We would also allow if you had a loss, to deduct that loss. Under current law you can’t deduct the loss on capital gains losses. You can only deduct them in a very limited way from other income. You could deduct them against other gains, but not other income.

And the reason we have that limitation under current law is that, as Jane pointed, the realizations of capital gains is somewhat voluntary. You don’t have to when you can pick and choose. So you don’t want to have a situation where people who have a lot of gains on some assets and losses on others, take a loss -- take their losses and take a big deduction even though they might have had net positive income. We wouldn’t have that problem under our system because capital gains would be taxable whether you realized them or not, so it was taken away so you can allow losses.

I don’t want to go into all the details; maybe we can a little bit later, but there are a whole lot of problems that this system arose. And in our paper we had various solutions for these problems, whether they be volatility or lack of liquidity and so forth, so we can go into that later.

MR. GALE: Okay. All right. So in terms of the problems, obviously one big one is how to deal with non-marketable assets, privately held companies. Let's set that aside for a second, we'll come back to that.

And, Karl, talk to us about what are the problems, what are the issues that arise in taxing market value assets?

MR. RUSSO: All right. And I should start off by saying that any views that I express are my own and not necessarily those of PricewaterhouseCoopers or any of our clients. Very similar to the disclosure I used to have to give when I was at the Committee on Taxation where I was for almost -- more than a decade when we thought a lot about these issues and helping members of Congress, like Representative Schakowsky, work on various proposals in this area.

So when you're thinking about taxing appreciation, you know, it's something that would be in income tax systems that most economists would design. Right? An income tax is going to tax you on your consumption plus your changes of wealth. And so it's an important component of that. But the question is how do you measure that? And one of the ways in which people have tried to address that is to limit the proposal to assets for which there is a clear indication of values delivered by the market.

The problem with doing that only for marketable securities is that if you exempt any class of assets from a mark-to-market regime, you create a strong incentive for people to switch their wealth holdings into those assets that are exempt from the system. And you could do that even very simply, right. You could have a corporation which you own all of the stock of and which you stick all of your marketable securities, the stock of the company that you own, you know, Karl Russo Corp. is not publicly traded. Are you going to look through it to see the value of the IBM stock and the Amazon stock that's in there in order to tax me on the gains? And, of course, if you were to try to start writing rules around those issues, you're chasing the potential compliance issues as you go.

So in the effort to do the marketable securities as a way of getting around the most fundamental issues, which is what is the base of the tax, what's the valuation issue, and it's severable from the question of the timing question, the realization principle. And if you have, as Jane was discussing, methods to try to deal with some of those other non-tradable securities where you're going to have to look back and try to impose some charge in order to get somebody in the same place that you would be in, you end up having a lot of complexity because you need a different rate of interest for every asset in order to get you in the same place that you would be if you were just taxing marketable securities on a year-by-year basis. And a lot of members have sort of shied away from those complexities because they're non-trivial to try to address.

MR. GALE: Right. Okay, so I'll throw this out to the panel. If you do mark-to-market for marketable assets, what do you do for non-marketable assets? Do you do a lookback? Do you --

MS. GRAVELLE: Well, I can say I think -- first, let me say I don't represent the views of the Congressional Research Service. I forgot to say that; I'm supposed to.

I have in my paper for your ordinary asset without any complexities, I mean, Karl has talked to us about depreciation and things like that you deal with, it's a very simple formula. All you need is the sales price, the basis, the time -- holding period, and the correct tax rate. And from that you can create -- well, to me it's a very simple formula. Perhaps to some people it looks a little complex, but you ought to be able -- rich people whom we're probably going to apply this to ought to be able to hire somebody to do that kind of simple math. They could, for example, hire me. (Laughter)

MR. GALE: And the point is that the information is very easy to get.

MS. GRAVELLE: Very simple information. This is all of the things that you already know from the tax return because you would know this when you were taxing the gain anyway. Then all you do is you set up a formula that says I'm going to increase the amount of gain I realize or decrease my basis by just enough to yield to me the same after-tax return that I would have gotten had I paid taxes all along. And it's a simple way to do it. You're going to have complications of if you have depreciation and improvements in property and things like that. I've been doing a lot of thinking since our conversation a couple of days ago about that. But I think all those problems are solvable.

But I do think you have to -- I think the lookback method is much easier than trying to apply a generic interest charge every year. Because you implicitly are charging interest at the growth rate of the asset.

MR. GALE: So you would be charging taxes as wealth accrues for marketable assets and as it's realized for non-marketable assets. But the tax when it's realized would be adjusted so that the equivalent tax on accrual would have occurred.

MS. GRAVELLE: Right. So you should get rid of the incentive there to not realize capital gains, which is a very important part because then you can talk about raising the tax rate without incurring this realizations response. And then you have the possibility of really taxing this income effectively.

MR. GALE: Right.

MR. TODER: Yeah, just a few comments about this because we thought about that a lot.

MR. GALE: Right.

MR. TODER: And it is easy to develop a formula and to develop a formula that's understandable. The question is whether the formula is right. And if the formula is wrong, what -- "right" meaning that it gives you the same result that you would if you taxed the accrued gains every year as they accrued. It will not be right if the gains accrued at a different pattern than the constant rate of return, which will be true for many entrepreneurs who will have a very big gain early on once a thing goes public. It will not be the right formula if people are in different tax brackets in different years, which could happen over a long period of time.

You have to deal with other issues, like dividends. Somebody might try to pay an extraordinary dividend as opposed to realizing a capital gain because dividends wouldn't be subject to the lookback rule. So you would have to have a special rule for that.

I guess the point is you can do it, but it wouldn't necessarily give you an accurate answer. And in all cases, I think, what troubled us about it and you can make the economist argument that it shouldn't be troubling, but people would be paying tax on an amount of gain which is much greater than the actual amount of gain they realize. And I think it's going to be very hard to explain to people that that's fair. I understand it's a repayment for the deferral benefit they got, so I'm not arguing the economics, but.

MR. GALE: All right. This question came up in the Q&A earlier, but I want to highlight it. Let's say Warren Buffett has $50 billion in stocks and let's say the tax on mark-to-market is 40 percent, just a round number instead of 37. So we get a recession, the market falls by 10 percent, Buffett's market value goes down by $5 billion. At a 40 percent rate the government owes him $2 billion in a recession.

I mean, in terms of -- you might say, well, that's stimulus, but he's not going to spend any of it. (Laughter) And it's going to the wrong people and it's the government writing a check to Warren Buffett for $2 billion while people are losing their jobs.

I know we're economists, not politicians, but we regularly veer into the optics of policies. Am I getting the optics right here or is there a way to change the optics?

MS. GRAVELLE: Well, you could decide -- unless you're going to apply the same rate to ordinary income, you don't want to allow capital losses in full against ordinary income or we only allow them partially. But if you're worried about that or how it would look you could do a carryforward, a carryback, you know. And then if Warren Buffett, most of his money is in the appreciation of assets that hasn't realized, he's not going to have enough ordinary income to absorb $2 billion. And we don't give refunds except for very rare cases to anybody.

MR. TODER: I think, Bill, we were worried about the other problem. Bill Gale got a capital gain in 2020 at the end of the year of $5,000.

MR. GALE: I like this already. (Laughter)

MR. TODER: Right. And then right after the end of the year the stock market crashed. So he's filling out his tax return and his value has gone down and we're telling him, Bill, you got pay tax on this $5,000. He's not going to be too happy.

So our solution, it's not a perfect solution, was we would have only taken 20 percent of the gains into income in every year and the other 80 percent would be carried forward. And that would do the same for losses. So we were trying to have some kind of smoothing mechanism. I think the volatility would be a very serious problem in a mark-to-market. And we have one solution, I think there might be others, but we do have to deal with that on both ends, on the gain and the loss end.

MR. GALE: Personally and professionally I admire your wisdom there. (Laughter)

Karl, would you join us in that?

MR. RUSSO: I mean, it's clear that if you're actually trying to measure income and people have losses, then they should take their losses into account. And as you said, for economists that not controversial, but we don't rule the world, right?

MR. GALE: Right.

MS. GRAVELLE: Hardly.

MR. RUSSO: I mean, as Representative Schakowsky was saying, experts can make all kinds of recommendations, but you have to deal with the politicians who've got to sell to their constituents that is it entirely appropriate to cut Warren Buffett a check for $2 billion just as revenues to the Federal Treasury are going down?

But the same argument that gets you to wanting to tax the $5 billion of gain when the market goes up 10 percent leads you to giving him a refund on the decline in value. And one of the reasons why we don't allow that now is the selectivity so that you can realize your gains and losses when you want and the rate differential. Presumably in the world that is being considered in these proposals, both of those things go away. And so you probably need to think about getting rid of the $3,000 capital loss limitation that's in present law unless you have an exemption that leaves people in the realization-based system. In which case, you need to preserve it and then you have to worry about people going in and out.

Now, Bill Gates -- or excuse me, Warren Buffett probably doesn't need to be worried about flipping in and out of a realization system at any threshold that would be considered, but that's going to be an additional issue, a concern about when you have losses in one regime or the other.

MR. GALE: Great. So we've got this very complicated system of capital taxation right now. We've got corporate, non-corporate entities. We've got tax-deferred saving vehicles versus taxable saving vehicles. We've got municipal bonds, which are federal tax free. Would mark-to-market apply to everything that's marketable, you know, retirement assets, municipal bonds, et cetera? Should it carve out the traditionally preferred parts or is the problem that wealth is a traditionally preferred part of the tax system? How would you deal with that?

MS. GRAVELLE: I would think you'd want to leave out retirement assets, like you do now. They already got a different tax regime.

And then the idea behind this system I think is to only apply it to rich people. So you would need some sort of exemption to keep -- you don't want your ordinary person having to deal with this. I thought a lot about how you'd do an exemption and I would be inclined to the model of the estate gift tax where you have an annual exclusion to keep the little, little people out -- and I'm actually one of those little people -- and then a lifetime exclusion to deal with people with modest amounts of assets that they sell.

So, you know, I think you would carve out assets of everybody but the rich and you would probably carve out the retirement assets, I imagine.

MR. GALE: You would do it based on someone's asset level or someone's capital gain?

MS. GRAVELLE: Realizations, unrealized gains.

MR. GALE: Unrealized.

MS. GRAVELLE: I'd do an exemption based on your unrealized gains.

MR. GALE: So let's say that's 5 million, like anyone with unrealized gains under 5 million in a particular year.

MS. GRAVELLE: I think that's a little high.

MR. GALE: Well, pick a number, a million. Okay.

MS. GRAVELLE: A million, maybe a million, or a million and a half. Something like the exemption we had for the estate tax.

MR. GALE: Okay.

MS. GRAVELLE: And then an annual exemption, maybe 15,000.

MR. GALE: All right. So if someone has unrealized gains in a particular year of a million dollars, then going forward the taxes on their unrealized gains above a million dollars.

MS. GRAVELLE: Right, unless you have an annual exemption, too.

MR. GALE: Right, okay.

MS. GRAVELLE: Yeah. I think that, you know, nothing is perfect. I mean, it's like Eric said, this formula's not perfect, but you can't have perfection in the Tax Code without leading to incredible complexities. So sometimes simple formulas, we adopted a lot of formulas in the tax cut JOBS Act that I think probably made a lot of sense in a lot of ways, so.

MR. RUSSO: You know, I think if you're going to have any -- if you don't have any exemptions, the ability of a mark-to-market system to greatly simplify the Tax Code is pretty significant. You can get rid of the 121 exclusions on your sale of your principal residence. You can get rid of capital loss limitations. You can get rid of like capital loss limitations. You can get rid of all of the things that police, the capital as was done in '86. But I think people don't believe that that system would hold even probably through the signing of a bill. Right?

And so the equalization of rates in '86 did last for a few years. But all of the architecture to preserve those distinctions was maintained because I think there was a recognition that it would not hold. And, in fact, it was four years later and undid all of that. Right.

I think you have that problem in spades in this arena because you're going to have what are viewed -- the same impetus that's motivating the desire to go after this type of income for high-income people is going to want to shield people who don't fit in whatever person's category is to whom it should not apply. And that's probably somebody who's just a little bit richer than I am, right, whenever you're talking to anybody about who should be out -- or who should be in. Right?

MR. GALE: Right.

MS. GRAVELLE: They should all be richer than I am.

MR. RUSSO: They should all be richer than I am.

MR. GALE: Right, right.

MR. RUSSO: And if you do that, I think you would have a lot more difficulty with respect to the administration of any of these proposals.

I do think that if you're thinking about this as a way of capturing all this income from all these high-income people, whether you even have an estate tax anymore I think is something that you could potentially have as a simplification for the proposal. Because one of the justifications for the estate tax is that it's a backstop to the income tax because there's all of a sudden tax depreciation that is held at death because you have an exemption for capital gains at death and step up and those kinds of things that hasn't been taxed all along the way.

If you have a regime like this, which is pretty broad in its application, that sort of justification goes away and there's at least some simplification still on the table from eliminating that.

MR. TODER: Yeah, I just want to make an additional comment about exemptions. If you look at this tax with no exemption, and I believe for administrative reasons you do want a modest exemption, but if you had no exemptions, this tax would be extremely progressive because of the way capital gains are distributed. And the vast majority would be paid by the highest income people.

If you want to have a small exemption, a thousand dollars, a couple of thousand dollars, I think we made an estimate that if you exempted a thousand dollars you'd take about 90 percent of the people out of the regime every year at a cost of maybe losing 3 percent of the revenue. So it's wouldn't be -- maybe you want a bigger number. I think Jane has a bigger number that we hadn't involved.

But I think if you try to get a regime where you exempt the upper middle class or you have an -- only want to apply this to people with income over a million and you still want to maintain a realizations-based tax with the upper middle class, you don't want to eliminate capital gains, it gets extremely complicated very fast. I mean, I'd like the legal panel to maybe discuss Senator Wyden's proposal because I can't really figure out how to make it work, but that's -- maybe Jane can.

So I think this is a real issue that you need to think about in all of these things. And particularly for a tax where you're treating one kind of capital gains one way for some people, a different way for other people, and maybe exempt for a third group of people. And then you kind of have to ask yourself how much is it worth it to have the talking point that no one under -- except very rich people pay this. Because anything you do, the majority will be paid by very rich people.

MR. GALE: You're not sounding like someone who made a proposal that we move in this direction a few years ago.

MR. TODER: Well, no. I mean, our proposal, admittedly, would not have only applied to very rich people.

MR. GALE: Okay.

MR. TODER: But it would have been extremely progressive, so that's not --

MR. GALE: Okay. On the theme of --

MR. TODER: We're okay with that, yeah.

MR. GALE: Okay. On the theme of complicated, let's come back to the estate tax issue that Karl mentioned. Essentially a mark-to-market system would tax accruals going forward, but it wouldn't do anything to the currently accumulated accruals. So I was thinking of the state tax and a mark-to-market system as a way of getting at the previously accrued gains that were never subject to tax. But maybe let me just ask Jan or Eric or Karl to comment on that, that it seems like if we want to go after grandfathered gains, grandfathered assets, that we would still need something like an estate tax or a wealth tax.

MS. GRAVELLE: Well, I think you'd want -- I mean, I think the easiest idea is to kind of fit it into the system we've got already, which is the estate tax. We do have to value assets that aren't sold. So this -- you'd treat death as a realization event so that people would then have to do this lookback method at that point.

Now, there you have a potentially serious liquidity problem, but we've dealt with liquidity problems in the estate tax before. If you have an adequate exemption, you're only talking about rich people. You could have, you know, one idea is to have just an extended payment period that you pay back with interest. People should prepare with their states to be able to pay taxes by getting insurance and things like that, so I don't think that's an -- that liquidity issue is really insurmountable because you do have assets, presumably have some value that's enough to pay that tax.

MR. GALE: Right.

MR. TODER: You know, I think what we had proposed for the publicly traded assets was really similar to what was enacted in TCJA in the international regime for wealth health overseas. That is a lump sum tax on the accrued gains. And you would have valuation, but you'd valuation every year anyway. That's part of the proposal. So if you can value them, then you would basically report your accrued capital gains on the effective date and then you would pay tax at a much reduced rate on those gains, and we'd let people pay them over 10 years to ease the liquidity problem.

MR. RUSSO: I mean, I think the transition issues are just a design feature. Right? You've got to decide what you're going to do in any regime that's going to mark-to-market about accrued and unrealized gains on the date or enactment. And one could go in different ways about how to implement that. I think if you were trying to think about ways of simplifying the system, you could make different choices about how you would implement a transition tax on movement to this regime.

I think you do have to have some concern about leaning on the estate tax architecture. I mean, there are valuation discounts and things which are not the most administerable and sort of if one were designing a system in the absence of some of the considerations or you would not write the rules that we have, you might think about how much of those rules you would want to bleed into this system or at least as the Joint Committee on Taxation would think about scoring these provisions would presumably assume that some of those same options that are available to reduce the value of estates would be available to reduce the value of the annual mark-to-market gain property, as well.

So I think while some of the features that Jane was talking about in terms of an annual gift type exclusions with a lifetime exemption, maybe you would import into this regime. But you want to think carefully about how much of that regime you'd want to import.

MS. GRAVELLE: Yeah, I would like to add, when you're thinking about these assets, I would consider adopting the legislation that was propose to limit minorities discounts. For this purpose and maybe for the estate tax in general because that's really -- it's a trick and the most important trick of reducing estate tax.

MR. GALE: I should know this, but I don't. Has any country or state or entity implemented mark-to-market? Like is there a system somewhere around the world that we can copy?

MR. RUSSO: I mean, there are limited examples in the U.S. federal tax system already.

MR. GALE: Right.

MR. RUSSO: Right? So there's for certain traders and the assets they -- and dealers, they have a mark-to-market regime. Some people have proposed in the past making that regime elective for any taxpayer that would want to get into the system. You could build on the system by must making that system mandatory.

Other proposals with respect to specific contracts that have been in the law for almost 40 years with respect to certain derivative contracts for which you have to post margin and, therefore, some of the valuation concerns and the liquidity concerns have been addressed. So we do it in limited ways in the U.S.

There are a few other regimes around the world that impute, I think, for various purposes those kinds of rules. I mean, one way, there are some examples, systems that deal with imputed rent is one way about taxing wealth and sort of income from assets on a mark-to-market basis, though it's not the one we usually think about in this context, but there are a few countries that do that.

MR. TODER: Yeah, I think we also have our PFIC rules. I don't know if you want to comment on that, Karl, but that is very complicated. But I think it does have a mark-to-market option that taxpayers could use.

MR. GALE: But it's applied in extremely technical, but financial situations.

MR. TODER: Well, this was with passive foreign investment companies where there's really no way to get that income without some regime like that.

And then with respect to ex-patriots, they have a mark-to-market exit tax when they give up their U.S. citizenship, and so that has --

MR. GALE: The exit tax, yes.

MR. TODER: Yeah.

MR. GALE: Interesting, okay. Good. And how much revenue are we talking about? Suppose we went to a mark-to-market tax, the ordinary income tax, and presumably we would raise the realized capital gains rate to match that.

MS. GRAVELLE: So I kind of did an estimate in my paper looking at the estimate of crude gains relative to realized gains that exist, which is about the same size, and came up with an annual revenue gain at current tax rates of $180 billion. Now, that could be off by a lot, but that's the kind of general magnitude of the revenue you'd expect from the system. If you have grandfathering it might take a while for this to occur. There would be a lag as you -- the lookback method would mean the revenue would probably rise over time, but that's kind of a steady state annual revenue.

You get more if you raised -- then you would be able to raise the capital gains tax rate without running the realizations response, so you could raise probably a lot more revenue if you raise rates. And I think I came up with about 10 or 25 billion or something if you also raised rates to ordinary levels. It's a lot of money potentially involved with this.

MR. GALE: Well, that's the same order of magnitude as the 2 percent, 3 percent wealth tax. Right? I'm not sure about the 6 percent.

MR. RUSSO: Well, I think there --

MR. TODER: Well, at 6 -- wealth tax, to be sure, is a very big exemption.

MR. GALE: Yeah, yeah. No.

MS. GRAVELLE: But this is without exemptions.

MR. TODER: (inaudible) big difference (inaudible).

MR. GALE: Sorry, yeah, I was referring to original Warren proposal.

MR. TODER: Right.

MR. RUSSO: If you're going to have an exemption for retirement assets, that's going to take a huge chunk of the money out of that proposal, I think, unless it was inured.

MS. GRAVELLE: I don't think --

MR. TODER: I think the assumption that we've all made is your would exempt retirement assets.

MS. GRAVELLE: Yeah, my estimate assumes those are --

MR. RUSSO: Yeah, yeah, assumes that.

MS. GRAVELLE: Yeah.

MR. RUSSO: You know, if you look at the holdings of corporate stock, only about a third are held by taxable people today, so somewhere between a quarter and a third; I know that there are different estimates out there on that. But I think --

MS. GRAVELLE: My estimate took account of that, too.

MR. RUSSO: Yeah, one of the reasons why you think about moving to a regime like this is because of concerns about whether you can raise revenue from other sources. So the revenue maximizing rate on ordinary income is affected by the ability to transfer ordinary income into capital gain income. And if you take into account the effect not just on the federal income tax base, but on federal payroll tax base and the state income tax bases, we're actually pretty close to the revenue maximizing rate on ordinary income today. And given what JCT and others assume about the ability to deal with realization, we're pretty close to the revenue maximizing rate on capital gains, as well, at the federal level.

And so by dealing with realization you do alter those elasticities that affect those revenue maximizing rates, and presuming that's part of what is at stake here. So people are trying to alter those parameters that derive those revenue possibilities today. Whether you'd be able to get up to those levels I think is certainly an open question.

I think in looking at the distribution of wealth, I think I would caution people about taking the estimates that Saez and Zucman have put together for both the Warren and the Sanders campaign about the holdings of wealth. If you saw some of the commentary by Larry Summers, who is no right wing nut about any of this, he said that he's been 98-1/2 percent convinced by their critics that there are severe concerns about their methodology and about how much wealth is at the top. And so the levels of thresholds and exemptions that you're talking about are going to greatly influence where you think the revenue possibilities from a proposal like this or from the wealth tax as to which it will be compared really lie.

MR. GALE: Before we go to that comparison, let me just ask you if you have seen or thought about or have any sense about what the macro effects would be of going to -- adding mark-to-market to the tax system.

MS. GRAVELLE: I would say they're probably pretty small. I mean, you'd increase the return to people. You decrease the return to savings. But I really think there's just powerful evidence that the savings response is very modest.

Now, you might reduce savings because you're taking money away from people who are savers. But, of course, at the same time that you may be reducing private savings, you'd be increasing national -- the government savings, so that would be kind of a wash. So I really don't think there'd be any important -- we just wrote a paper that perhaps some of you all saw about the effects of the Tax Cuts and Jobs Act on the economy the first year, and it was just very hard to find any evidence that it had much effect on real activity, whether wages or output or even investment. So I just think the notion that there's a big behavioral response to taxing the wealthy, I just don't think the evidence is there, but I haven't thought that in a long time.

MR. RUSSO: I mean, I think you do want to think about a mark-to-market regime and estate tax and capital gains taxation as all sort of the same thing with slightly different language. They're all taxes on capital. And so if you were going to change the rate of tax on capital, and presumably these are -- increase both the statutory rates, but the real rates that apply to that kind of income, you would expect there to be some effects on capital supply. And whether that has an effect on investment is going to depend on a lot of channels through which that might operate, but there are two effects.

I mean, the one effect to which Jane alluded is that there's an income effect. I mean, if you're going to tell me that you're going to take $2 trillion out of the economy and nobody's going to do anything, I think you're ignoring the fact that you made somebody $2 trillion poorer. And whether you have any sympathy for them or not is a separate matter about whether or not that affects their consumption, their investment, their savings opportunities, their asset holdings. So do they purchase different amounts of assets that may be in or out, and so does that change the government's borrowing rates? For example, if Treasuries are a significant part of that, depending on the form of the capital tax that matters a lot. Given relatively low rates of return on Treasuries right now, it matters less in a mark-to-market regime than it does in a wealth tax regime.

But I think in addition to those income effects, you're going get concern about the price effects, that there are going to be changes in the price of capital, the return to savings. And I imagine that not only will folks on this panel disagree about how sensitive that investment is to those changes in the savings rates, I imagine that those who are estimating these proposals on the Hill will also have varied views about that. And they would presumably be reflected in a macro statement by the Joint Committee. A bill of -- the one that we're talking about here would a significant size that I would imagine there would be a request for such an analysis.

MR. GALE: It's worth it.

MR. TODER: Just a couple of comments in the context of the global economy in which we find ourselves. All these taxes, whether they be wealth taxes or accrued capital gains, are taxes on American residents and they fall on American savers the same, whether their saving is overseas or at home. So as a first approximation they're not driving capital out of the United States. They are reducing wealth of high-income individuals, which I think even if there's no elasticity, there's going to be some reduction in saving because much of that is saved.

And if that money is used to finance new spending programs, it may lead to a net reduction in national saving. That could effect investment through several channels. I mean, saving for investment could come in from overseas. It could be coming in through an increase or an increase in returns for people who are not subject to these taxes. So there are various channels through which the reduction in capital could be mitigated.

So I don't have a notion of the magnitude. I have an idea of the direction. There probably would be some reduction in investment.

MR. GALE: All right. So I don't want to take us too far afield from mark-to-market, but I do want to frame mark-to-market in a the broader context of taxing the rich. Right? So let's accept for discussion purposes the idea that we want to increase taxes on the well-to-do, whether it's high-income or high-wealth households. How does mark-to-market in your mind compare to the other major options?

MS. GRAVELLE: Well, I would say with respect to the one that occurs immediately, the wealth tax, it seems to me this is an easier system. It's embedded in our system we already have. It's easy to develop some simplified formulas for dealing with untraded assets. In a wealth tax you would have to do valuations. And it just seems to me that would not occur -- there would be no more valuations under the system of taxing capital gains. But with a wealth tax you would have to have annual -- I mean, otherwise, a wealth tax is a very good way of getting at wealthy people, obviously. But I think there are administrative problems that create a difference.

I mean, the simplest way to tax the wealthy and to gain revenue for other purposes is probably to increase the corporate income tax, which is implicitly taxing the gains to holdings of corporate stock or to eliminate the passthrough deduction for high-income. And there are a lot of little things you could do that would be simpler.

So it all depends on how you're trading off getting at your target with some administrative costs versus keeping things as simple as possible. We've always got that. Often it seems that simplicity loses when we're doing tax reform, but I think that's one of the trade-offs that we have in here.

MR. GALE: Before you guys address this question I want to follow-up on this. Firstly, it's always the case that simplicity loses, not often. (Laughter)

MS. GRAVELLE: That's really true.

MR. GALE: And you said --

MR. TODER: But in part because people don't like it, right?

MR. GALE: When we talk about mark-to-market we say, well, we would do it for marketable assets and we would have some lookback procedure for non-marketable assets. But then when you talked about the wealth tax, you said, well, we'd have to tax all wealth and we can't tax wealth that's not in market. So why couldn't you have a wealth tax that applied to marketable assets and a lookback wealth tax that calculated the wealth tax that people would have paid that applies when they sell the assets?

MS. GRAVELLE: When they sell. Yeah, I guess you could do that. You know, I guess that would just -- I haven't thought about that, so --

MR. GALE: It might be greater than 100 percent, but.

MS. GRAVELLE: -- I have to run that through my computer.

MR. GALE: Yeah.

MS. GRAVELLE: But I think that's an interesting idea. I will give it some thought. That seems to have some possibilities.

MR. TODER: I just had one other concern that I want to raise about our current system. You know, when we did our proposal, we were talking about reducing the corporate tax rate very significantly and then applying this mark-to-market regime for shares. And we weren't applying the mark-to-market regime to privately held or non-tradable companies. In order to make that work, we had to have a rule that said you could not be a corporation if you were not publicly traded. You could not be taxed as a corporation. You'd have to be subject to a full integration regime. And I think we might have to think about that in this system.

We have a 21 percent top corporate rate, which maybe is justified in terms of global competition, but makes absolutely no sense for small, privately held companies or for private equity. And I think that's really a big hold in the system because that's where a lot of the wealth is accrued.

MR. RUSSO: I mean, on simplicity I'll say, you know, we had this huge increase in the standard deduction, which was greatly simplifying for a lot of people, particularly when it was combined with the limitation on state and local tax deductions. And you can see that that was not hugely popular by a lot of the people who benefited, in quotes, from that simplification.

And if you think about a tax on high-income individuals, actually if you made the SALT limitation permanent, that would raise I think even more as a percentage of the revenue from high-income folks than a tax on mark-to-market gains would be because I think those deductions under present law are more highly concentrated at the top even than capital income is. If you look at the tables that the Joint Committee put out in their pamphlet on the hearing that was held in the House on that proposal, I think you can see that.

So there are some other things that could be done I think if you were concerned about high income. Now, the question is in this discussion we're not thinking about high income in a way that includes most of the people in this room, and so that would be a difference from some of those other proposals that are out there.

I think if you're looking at the wealth components, one additional feature to think about those is even if you believe that the constitutional questions are easily resolved, I don't believe that they are quickly resolved, that you at least have to work through the court system. And if you're talking about in the near term, that's going to delay the income to the U.S. Treasury by at least as long as it takes to litigate those questions.

And so if you're thinking about using the funding from a proposal like this to start benefits that begin immediately, you might want to have a revenue source that also begins immediately. And I think you would be in a little bit better position building on something like mark-to-market gains in the current income tax system than from some of the novel proposals that are out there today.

MR. GALE: That's really interesting. We will leave the constitutionality of the wealth tax to the legal panel.

MR. RUSSO: I don't mean to opine on that all just other than to say the timing issue I think is (inaudible).

MR. GALE: Right, right. So we had a quid pro quo when we set up this session, which was no opening statements, but I would ask people at the end if they wanted to add additional comments or is there anything that -- you know, we want no comment left unsaid. So what are your perspectives or additional points, anything we missed?

MS. GRAVELLE: Well, I would, if I were thinking about trying to tax high-income people, I would start with the simplest proposals that are already embedded in the tax system. I think I mentioned some of them: taxing carried interest, taxing the net investment income tax on unincorporated business, eliminating the passthrough deduction for high-income people, raising the corporate rate. Those are the easy things to do.

But I do think a mark-to-market system is feasible. It's feasible to do probably quickly. I don't think it'll have the problems Karl raised. And I think if you want to tax the income of really, really wealthy people, their income is almost all accrued capital gains.

So one thing that we have not talked about in this panel and that, you know, we'll leave to another time is the effect on charitable deductions. You need to think about that always anytime you're changing taxes.

But I do think this -- I think it's possible to do this. I really do think it's possible to design a system that will be workable for taxing unrealized capital gains. So that's my big point.

MR. RUSSO: Yeah, on charities one of the proposals that's always been out there is to -- on gifts of appreciated property to charitable organizations, only limiting the deduction to basis rather than to the fair market value. I suppose the folks at the Tax Policy Center and The Brookings Institution may have thoughts on whether they think that's a fantastic idea for taxing high-income people, but it is -- certainly I think that is a realization. It may be another smaller component of this.

In thinking about things that we haven't really talked about too much to this point, we alluded to some of the discussions we had privately in advance of this session on what happens to depreciation. I think those issues are actually really important. If you're going to mark all assets, that means you're going to mark assets that include things like capital assets used in a trader business. And I think if you were to include all of them, you can probably repeal all of the depreciation rules that are in existence because depreciation is about measuring the change in market value of assets. If you actually could measure that you wouldn't need any of those systems.

However, if you do that, you're probably undoing any congressional incentive to accelerate depreciation to encourage investment in those assets. So whether that's accelerated depreciation under makers or whether it's full expensing that we have on a temporary basis or other accelerated cost recovery for research and experimentation expenditures, all of those things are implicated I think in a world in which you had a truly universal mark-to-market system. And I think those issues are not trivial to address and to think about. And so for those who are trying to work about a policy that you would implement that would cover these things, I think they deserve a good deal of attention and to consider the trade-offs in those other non-revenue policies with respect to investment.

MR. TODER: Okay, I just have two points and they're very general. One is we've considered a lot of options. There are a lot of options we haven't considered very carefully. Every option you can think of has its strengths and weaknesses. Everything leads to some avoidance, but in different ways and on different margins. And my view is, given that situation, we probably should do a little bit of everything rather than trying to say one particular method is the best.

And the other point I would make is that high-income people are very resourceful. They're very well advised. They will find ways to avoid anything that we do. It doesn't mean that we shouldn't do these things, but it does mean we shouldn't overemphasize or overthink what we can pay for with these things, that this may not be enough.

MR. GALE: That's very interesting. All right, thank you. Let's turn to questions. We have a mic. This gentleman all the way up in the front.

MR. CLEMENTE: Hi, Frank Clemente, American for Tax Fairness. Just back on the transition question, the transition rule question. I think someone said, well, you can take care of it with an estate tax, strengthening the estate tax, hopefully. Others said, well, maybe do the transition tax. It seems to me the transition tax should get the money right up front, well, or perhaps a 5- or 10-year slide as Eric was proposing.

You know, we had the 15 percent rate on corporate repatriation, so let's say we did a transition rule, what would your ideal transition rule be? What would the rate be at and the period of time? Would it be like the current capital gains rate with the net involved, 23.8 percent over 5 or 10 years or what?

Folks who I've talked to said, well, you'll never get a transition tax like this. It's just -- it's too unprecedented. If they could do it on the corporate side, why can't we do it on the individual side?

MS. GRAVELLE: Well, I would say for the lookback method you just go all the way back to whenever you acquired the asset. And for mark-to-market, you know, I think Eric's idea of taxing it over a period of time -- although I would extend it over a period of time and I probably wouldn't have a lower rate. I'd probably have the same rate that you have with ordinary capital gains.

But there's a lot of different ways that you can do it. You know, I think the repatriation tax is one model, but I think a lot of different ways to do it. You just have to decide what you want to do about it.

MR. RUSSO: I think if you did have something the one thing you'd have is you'd have a eight-year payment rule. That way all the money ends up in the window for the budget scorekeeping purposes.

MS. GRAVELLE: Yes, having the --

MR. RUSSO: It would not be 10 years.

MR. GALE: Right, right. Good.

MR. TODER: You know, I think, also, you have to consider there are two transitions involved. There's a transition for people owning stocks who are coming into the system. There's also, ongoing, going to be transitions for people, entrepreneurs who start companies and want to go public and then after they go public, will move into the mark-to-market system. So you want to make sure that the transition tax that's imposed on them when they do that is not so onerous that they will be discouraged from doing that. So that's another problem you have to consider.

MR. GALE: All right, great. Right here.

MR. CLEMENS: Ben Clemens, U.S. Treasury. Not all publicly traded assets have all that much liquidity. A blue chip stock may trade, you know, 10 times a second, but an option on a blue chip stock, you know, to buy in February of 2021 at $112.14, that may trade once. So that valuation, you know, sort of the immediate answer would be mark-to-theory. Right? There's a Black Sholes model we can mark that. Does that sort of thing sound reasonable to you for infrequently traded assets? Are there alternatives? Would that generalize to other sorts of infrequently traded assets or hard-to-value assets?

MR. RUSSO: So I think with respect to derivatives, most of those are short duration. And so some folks who've thought about this in the past have said if you get the valuation wrong the first time you mark, the thing's going to expire the second time you mark, and so it'll be self-correcting. And so if you really do have an asset like that that is of short duration, the problem is much less important than if it is a marketable security that doesn't -- for whom those characteristics are not true.

I think for the universe of things that you're talking about, they probably more look like the short duration derivatives than other kinds of issues. And so I don't know how much of a concern that would be relative to all of the other valuation concerns that you also have in the system to begin with.

MR. CLEMENS (off mic): But even in the short term, at some point we have to --

MR. GALE: Mic, use it, please. Please use the mic.

MR. RUSSO: Yeah, you still have to come up with the number and that's true for any assets subject to the regime. And if you have a mark-to-model regime rather than a mark-to-market regime, but at some point there is a realization event for which the true value is known, and as long as that's short in time, it is not as terribly an administrative issue I think compared to other administrative issues that you have in the regime to begin with.

MR. GALE: Thanks. Josh, halfway back.

MR. DIEHL: Thank you. My name is Albert Diehl. I'm president of Diehl Global Associates. The focus on the panel has been how to raise more money to pay for government expenditures. We start today with raising $4-1/2 trillion and spending 5-1/2. So the only estimate of what might occur is, Jane, you said 980 billion. We need at least another trillion to get to a balanced budget. And has the Congressional Budget Office or the Joint Taxation Committee looked at the impact of the proposals that are on both sides of the aisle, presidential candidates, healthcare for all, free tuition? How much do you need to raise in order to make it make financial sense?

MS. GRAVELLE: Well, I could just say that I think there's a limit to how much you can raise from high-income people, you know. So if you all want really broad, massive changes I doubt there's a way you can avoid going beyond that group of wealthy people. I don't have the numbers in my head, but we do have limits on how much -- because the people we're talking about is a small part. A large part of wealth, but a small part of the population.

MR. GALE: And let me just add to that. One of the interesting things about this discussion in the broader public dimension is that we're actually talking about tax increases. And we're actually doing it during an election, which is doubly astonishing. And it's triply astonishing given that there's easy out that the liberal senators can take, which is to say we believe in modern monetary theory. (Laughter) And so we're not --

MS. GRAVELLE: I wrote a paper on that.

MR. GALE: We're not going to worry about paying for this. So to me it's remarkable that for all those reasons that this is actually on the table right now. We're talking about all these very big options, wealth tax, mark-to-market, whatever, to finance either new government spending or the existing federal debt. So there are numbers about how much we need to raise, but, I don't know, I can talk to you later about it, but it's a lot of money.

Josh.

SPEAKER: Thank you. Can the panel address the issue of whether if the U.S. takes moves like this, but other advanced economies don't, how they would anticipate this to affect capital flows, investment, and I guess the relative attractiveness of investing in the U.S. versus somewhere else over time?

MS. GRAVELLE: Well, since it's a tax on the savings side, you know, as Eric said earlier, it doesn't matter where you make your investments when you pay this tax. It's actually for international capital flow issues or location it's better to have a tax on the savings side.

Now, I'm not a believer that capital flows that easily across countries anyway, so I don't really worry about any of this. I've spent a lot more time worrying about our growing and horrific debt. But I don't think that is an issue.

I think we might have to worry about rich people trying to leave the country to avoid the tax. And so I think we would need some sort of exit tax to make sure that we tax the wealth. And we would have to -- probably might strengthen some of our inversion, our rules on corporate inversion. So we already pretty much enacted at least a temporary powerful preventive provision in the Tax Cuts and Jobs Act, but we might want to think about tightening that up. But these are all things we can do something about.

MR. GALE: Yes, sir.

MR. POZER: Thanks. I guess I get two questions. Carl Pozer (phonetic). I just want to ask a measurement question. So don't we need to be really clear when we're taxing the gain of whether it's nominal dollars or real dollars? And this goes to a problem in the current system.

In other words, well, right now we're in a period of low inflation, but we don't necessarily -- we won't always be. And even now if your inflation's higher than your gain, you'd be paying taxes on a loss.

MR. GALE: All right, so the first question is should we index?

MR. POZER: Yeah.

MR. GALE: Yeah, okay.

MR. POZER: Yeah. Well, that's my question.

MR. GALE: Right. What do you think?

MS. GRAVELLE: Well, I think indexing would be nice, but I think we ought to think about indexing everything and trying to get everything right, and right now we don't index. As long as we don't index interest, then we have a problem with indexing capital gains -- deductions for interest. So I think you'd have to -- if you want to think about indexing, I think you have to think much broader than capital gains.

It is complicated. If you kept a lower rate for capital gains I think the case for doing indexing is less. So it just depends, again, on how you want to trade off dealing with that indexing issue versus more simple things, like accelerated appreciation and limits on interest deductions and things like that.

MR. RUSSO: Yeah, I mean, the Treasury, one study in 1984 looked at some of these issues and, I mean, they've not gotten any less thorny in the intervening years. But if you do think about trying to take into account the effects of real versus nominal income across the tax system, there are a lot of places where you need to look.

Now, if you're talking about, you know, this is just income, we're putting in the rate bracket structure, and the rate brackets are indexed for inflation, you know, you're getting something on that dimension that is arguably not there in the current taxation of gains in the same kind of way. But that's, you know, certainly not sufficient to address the main issue if you were going to do it. And, yeah, you'd want to do it on the interest, both deduction and on the income side. And if you start going down that road, it's tractable, but it is -- that's a significant amount of work that would need to be done in order to get that even close to right.

And if you do throw up your hands and say we'll keep a lower rate as a partial justification for not dealing with the inflation mixing (phonetic), then all of the simplification we thought were by limiting the loss offset rules and things like that come back in. And you just have to ask, well, would you rather have those issues or the issues of dealing with indexing?

MR. GALE: All right, one last question. Way in the back.

MR. RABINOWITZ: Thank you. Dave Rabinowitz (phonetic). It was mentioned earlier that during the 1950s the maximum tax rate was over 90 percent. And at that time there were more than 20 tax brackets. I'm wondering why -- and that's also how we financed the last major infrastructure project, the federal highway system, interstate. But I'm wondering why we couldn't simply just consider capital gains and dividends as ordinary income, increase the number of brackets and increase the tax rates to accomplish everything you're talking about.

MR. TODER: Well, just as a factual matter, in the 1950s when the top rate was 90 percent, the top capital gains rate was only 25 percent. So there was a big incentive then, a big escape hole for people in terms of converting income to capital gains. So the system was not quite as tight or as harsh on the rich in the 1950s as it's somehow made out to be.

MR. GALE: And how much you can raise rates and get revenue out of that depends critically on what the base is and how broad the base is. So the old philosophy used to be broaden the base and lower the rates to get you a flatter, more efficient tax system. The new thinking is sort of still to broaden the base, but once you've done that you've reduced the elasticity, the ability of people to avoid the tax. If you literally taxed everything, you couldn't avoid the tax. So the argument is do that first and then raise the rate to collect revenue from high-income households. And that's sort of, in my view, a kind of big sea change in the way economists are talking about tax policy.

So it's a great question. It's a great question to end the session on. And let me thank all my panelists for excellent discussion. And we'll have the legal panel start. (Applause)

Thank you. And we'll have the other panel come up right now.

MR. ROSENTHAL: The moment you've been waiting for, now come the lawyers. You should congratulate yourself for having managed to stay attentive for a conference on an accounting method, that's really quite a feat. Mark-to Market, treating assets as if they'd been sold and recognizing corresponding gains or losses, or pay-as-you-profit, as the congresswoman told us, which may be a little catchier.

We are lucky today in terms of lawyers, to have with us Lily Batchelder to my immediate left. Lily is a tax professor at NYU and one of the leading tax scholars whose work is almost always timely in setting the agenda. She just this last month published a paper *Taxing the Rich, Issues and Options*, with her colleague David Kamin at NYU.

To her left two of the country's leading tax practitioners. Virtually every list of top tax practitioners would include Lucy Farr, a Partner at Davis Polk, and Mike Schler, a long-time Partner, now of counsel, at Cravath, Swaine & Moore.

And so our plan this morning is to share a lawyer's perspective of the issues you've heard from economists. We'll try to be grounded as practically as we can. We tend to veer off into interpretations of words, but you'll forgive us for that. It turns out that's a lot of what implementing tax law constitutes.

So we've divided our presentation in roughly two segments. Lily will start with a question, why should we pursue a mark-to-market method of tax accounting, a pay-as-you profit approach to capital assets and other assets. And then we'll turn to our practitioners to address, well what has been our experience with mark-to-market methods of accounting. And what are the challenges of trying to extend those practices much more broadly as being discussed now. And then we'll have some questions.

But with that, I've encouraged, by the way, the panelist to interrupt and inject. They will not be rude if they do so. We all have spoken a lot, and it's a lot easier to engage in discussion, we'll see whether that works.

But with that, Lily, if you could start us off, why should we be pursuing a mark-to-market method of tax accounting, what's the goal here?

MS. BATCHELDER: Thanks, Steve. And thank you so much to TPC for inviting me. So I thought I'd sort of step back for a minute and talk about what is the rationale, why are people talking about this idea in the first place.

And it's certainly an idea that's coming up now as strategy for taxing the wealthy. So I'm mostly going to talk about it in the form of a proposal to, you know, limit it to the top 1 percent or the top 0.1 percent, but not applying mark-to-market or what I'll sometimes call an accrual tax to everybody.

So the rationale starts when we have a lot of serious problems with taxing the wealthy. And to understand why, it's important to understand that the wealthy earn their income in very different ways from most of us. So outside the top, most people get the vast majority of their income from wages and salaries. If you look at the bottom 80 percent by income, sorry, the bottom 95 percent by income, they get 80 percent of their income from wages and salaries. But if you look at the very top, they start to get most of their income from capital gains. So if you look at the tippy top people earning over 53 million, which is one in 100,000 people, they only get 10 percent of their income from wages and salary, and 84 percent from capital gains, dividends, and private business income.

So because they earn their income in such different ways, this means that they have access to very different tax planning strategies than most of us do. And there are two big tax planning strategies that are relevant to the discussion today.

So the first is that the wealthy tend to characterize a lot of what is effectively their labor income as capital gains. And there's a great paper by Smith, Zidar and Zwick that estimates that about three-quarters of business profits received by the wealthy are actually attributable to their labor. So there's lots of re-characterizing labor income as often passed through business income.

MR. SCHLER: Is that beyond carried interest? What is that, entrepreneurs building a business? What's going on here?

MS. BATCHELDER: Absolutely. So carried interest is kind of the poster child of this, but it's really a tiny fleck on the elephant of how people are able to re-characterize their labor income. So this would just be people who are, a majority are sole owners of a business and put in relatively little capital, and work on that business and end up earning huge returns. And if you've put in lots of labor and little or no capital, that means most of your return is labor income.

MS. FARR: But if it's a pass-through entity, won't it generally be subject to ordinary income taxation currently --

MS. BATCHELDER: Yes. So --

MR. SCHLER: That's current income though, when you sell out its capital gain.

MS. FARR: Yeah, true.

MR. SCHLER: All the good will you've built up with your labor becomes capital gains when you sell.

MS. BATCHELDER: Yeah. And that's I think how this paper starts to get to three-quarters of that is, well their three-quarters is including the pass-through business.

MR. ROSENTHAL: By the way, I think the world's changed a lot. I think it's shifting more and more towards private equity models and the ability to use pass-throughs and other business enterprises to capture accretions of wealth. And so this could yet be a problem that's gotten worse in, say, the last 40, 50 years, and major tax reform.

MS. FARR: I guess we're really talking about good will or kind of an intangible I guess of the business, not sort of realized profits of the business.

MR. ROSENTHAL: Of the business, right.

MS. BATCHELDER: So the issue with all of this income being characterized as business income is that then a portion of it, going to Lucy's point, can then be characterized as capital gains. And that if you take advantage of some other loopholes, can mean you can lower your top rate on what would have been potentially labor income from 40.8 percent all the way down to either 23.8 percent or 20 percent. So this is obviously a huge incentive to try to figure out ways to re-characterize your income as labor income that is also eligible for capital gains rates.

So the other thing that the wealthy have access to that most other people don't is the ability to defer realizing income in the form of capital gains. So when you get paid your salary or your wages, you don't get to say "Oh, I'd like to have that reported 10 years from now." But with capital gains you can hold on to the asset and delay realizing it.

And to give you a sense of the scale, nearly 40 percent of the wealth of the top 1 percent is in accrued and unrealized capital gains. So this doesn't even show up in the data that the IRS has on how much income from capital gains wealthy people have because it's not realized. So they actually have a lot more income than we typically see in estimates, although I should say TPC does take this into account in some ways.

And there are a couple other recent papers that estimate that the wealthiest individuals realize about half of their accrued capital income, but half they do not. So at the extreme, if you defer realizing long enough, your tax rate begins to approach zero if you take into account the time value of money. And then if you hold until death, your tax rate on capital gains does actually become zero because there's this provision called stepped up basis that forgives the capital gains tax on all accrued gains when you die.

And that's also true as charitable contributions were mentioned. When you donate appreciated property to charity, typically the accrued capital gains tax is forgiven as well.

So the problem with this is these tax disparities between strategies that are available to the wealthy and to everybody else magnify economic disparities. They also mean the tax system is really complex and there's traps for the unwary, even if you're among those wealth people. If you don't take advantages of those strategies you're worse off. They also distort the economy so that deferral incentives and stepped up basis creates something called lock in, where you have an incentive to hold on to underperforming assets just for tax reasons because if you hold on to them you get to defer paying the capital gain. And so this leads to capital being misallocated throughout the economy just because of the tax system.

MR. ROSENTHAL: And so the way we've addressed lock in effect in large measure, is to lower the tax rate on capital gains to induce the sale of assets, mobility of assets that curtail lock in. But you've got a non-carrot approach then. There are alternative to carrots, we can use sticks.

MS. BATCHELDER: Yeah.

MR. ROSENTHAL: Okay.

MS. BATCHELDER: Yeah. So the dynamic that Steve's talking about is why the earlier panel talked about how the revenue maximizing capital gains rate right now, JTC, CBO, and Treasury estimate is sort of in the range of maybe 28 to 30 percent. And that's very different from ordinary income because the thought is that if you raise it above that, people will start deferring their realizations so much longer that you'll start losing revenue. So this is why, in part, why we have much lower rates on capital gains than on ordinary income.

So this leaves policymakers kind of with a dilemma where unless they at least partially address the second problem, these deferral incentives, they can't fully address the first problem of much lower capital gains rates than rates on wages and salary and other ordinary income.

And it also means there will be limits on how much revenue you can raise from the wealthy, because once you start raising that capital gains rate too high, if you don't change the deferral incentives you'll start to lose revenue.

So the clearest way to deal with this dilemma if you're a policymaker that wants to raise more revenue from the wealthy is through something like accrual taxation. There are other options, but that's, you know, one of the big rationales for this being on the table.

MR. ROSENTHAL: Accrual meaning pay-as-you-profit, as you accrue the profit you start writing checks to the government every year.

MS. BATCHELDER: Yeah. So I've been using accrual tax more than mark-to-market because to me --

MS. FARR: Mark-to-market, as a tax lawyer, is accrual.

MS. BATCHELDER: Well to me mark-to-market is all assets every year, you pay tax on the appreciation. Whereas I haven't really seen a proposal that would apply that to all assets. For illiquid or non-publicly traded assets, usually an accrual tax would still wait until realization, but then would tax it as if you had been taxing all along, or try to. So in that sense I feel like mark-to-market can kind of give a false impression that every asset in the economy is going to be taxed on its appreciation at the end of every year. But we often use those terms interchangeably.

So let me talk briefly about some of the pros or advantages of an accrual tax system. And then Lucy and Mike I think will talk about a lot of the challenges involved, and I have some thoughts on that too.

So one of the advantages is you can raise a lot of revenue exclusively from very wealthy people through an accrual tax. So one alternative that might have come to mind is to deal with this dilemma I talked about, is you could repeal just stepped up basis. And then you could raise --

MR. SCHLER: That is the forgiveness at death of your inherent gain. And when you say repeal stepped up basis, would you, I think Jane referred to gains at death or something. Is that what you're talking about then?

MS. BATCHELDER: Yeah.

MR. SCHLER: Or just a carry-over basis so your inheritor carries over the low basis?

MS. FARR: And that I think has been viewed as problematic because then you have, you know, generations where you might have to establish a basis when you ultimately did this both of the practice.

MR. ROSENTHAL: So we don't have the information, and we also may not collect the tax from any generation. So.

MS. BATCHELDER: So people have proposed both, I'd say, but more politically prominent proposal now is realization at death. So President Obama proposed that with some substantial exemptions. A number of Democratic presidential candidates have proposed it.

MR. ROSENTHAL: And President Trump, as a candidate, proposed something like that, although it's unclear exactly what he's proposing with the $10 million exemption. But he seemed to be going down that path also.

MS. BATCHELDER: If we go back long enough he also proposed a wealth tax. So if you did repeal stepped up basis and treat death as a realization event, you could raise on the order of $300 billion over 10 years, if there were some exemptions, that's exemptions of the Obama proposal, and if you raised the capital gains rate to 28 percent.

MR. ROSENTHAL: And like the transition issues very important? Would you collect tax on all earlier gain, or just gain accruing after some date, which would be administratively troublesome?

MS. BATCHELDER: I believe the Obama proposal it would wait until someone passes, but then it would be all in the accrued gain would be taxed.

MR. SCHLER: And if you repeal the estate tax and trigger gain on death, what are you going to do about gifts?

MS. BATCHELDER: So this would also tax gifts as a realization event. So currently gifts, you got a carry-over basis. I don't actually think you should repeal the estate tax but we could get into that later.

So again, you could raise a fair amount of revenue if you repealed stepped up basis, and you could raise the capital gains rate. I have not seen any estimates from the official estimators about how much the revenue maximizing capital gains rate would increase, but there were some indication to TPC it might go up to 50 percent, which would be a pretty huge increase in the revenue maximizing capital gains rate.

MR. ROSENTHAL: So if we had gains at death, people would be less willing or less likely to just hang on to their assets to the end, literally. They would in fact start selling assets earlier and potentially, I guess this goes to the elasticity of responses, but you could then raise more money from them with higher capital gains rates.

MS. BATCHELDER: Exactly. But the revenue maximizing capital gains rate would not be as high if you repealed stepped up basis as it would be if you moved to an accrual tax. Because there's really two incentives to lock in to underperforming assets. One is stepped up basis, and the other is just the realization rule of before you die you've got a big incentive to hold on to an asset for 30 years or longer to defer paying the tax. And only an accrual tax would deal with that. So if one thought repealing stepped up basis, raising the capital gains rate was not raising enough revenue from the wealthy, then you really need to start looking at an accrual tax if you want to get that revenue back surmising capital gains rate higher and raise more revenue.

So in terms of how much revenue you can raise, there is a lot of uncertainty. As far as I know there's been no true revenue estimate yet of an accrual tax. In my paper with my colleague, David Kamin, we did what's called sort of a mechanical estimate. So we estimated how much you would raise if you applied an accrual tax, so that's both mark-to-market for publicly traded assets and tax at realization with a look back charge for non-publicly traded assets. If you applied that to the top 1 percent, we estimated you would raise on the order of 2.1 trillion over 10 years if there was a 15 percent avoidance rate. But I should caution that that doesn't include any other behavioral effects. So that could reduce the estimate.

On the other hand, that just assumes a top rate of about 40 percent, and you could make that rate a lot higher once you have an accrual tax. And it also doesn't assume any transition role, like a toll charge, which could also raise a substantial amount of revenue.

MR. ROSENTHAL: The top 1 percent. So you're addressing the inequality that the congresswoman highlighted because the other 99 percent would not be chipping into your system.

MS. BATCHELDER: Exactly. Yes. And I think, Jane, your estimates might be for everybody. They seemed like they're a similar order of magnitude but, yeah. But again, I should emphasize that, you know, once TPC, let alone JTC, and Treasure, get into estimating this, they're going to be looking at behavioral responses, they'll be looking at interactions with other provisions. So this is sort of attempt to give an order of magnitude rather than anything precise. And this is a really huge modeling challenge going forward.

So a couple other advantages I will mention really quickly. First, you could substantially increase the revenue maximizing rate for capital gains, as I mentioned. Which means you could then tax capital gains at the ordinary income rates. And a lot of the tax avoidance strategies that I teach my law students are about how can you characterize income as capital gains, how can you defer realizing gains. And so a lot of those tax planning opportunities, which are also inefficient and distortionary, could be really reduced. It would substantially reduce the incentive to defer selling property. If really well designed it could almost eliminate this for the wealthy. But a lot of the devil is in the details. And I should note that compared to a wealth tax and compared to stepped up basis, a wealth tax would not do this. It wouldn't affect either way deferral incentives. Repealing stepped up basis would reduce deferral incentives but not by nearly as much as this.

And then a final couple advantages before we get to the challenges. This could not be avoided through multi-national shifting profits to tax season. So that's a perennial issue with taxing capital income. Well are those companies going to invert, are they going to shift their profits to tax havens and reduce their taxation that way? And here because the stock price, whether it's a U.S. or foreign company, should imbed those profits in tax havens, you're effectively taxing them, whereas a bunch of other options you deal with a lot of inefficiency on that margin. And then the last thing is --

MS. FARR: It does kind of seem a little bit, but these corporations are held by U.S. persons, right?

MS. BATCHELDER: Yes.

MS. FARR: You could have them be held by, you know, globally, and therefore that difference would be less than it was.

MS. BATCHELDER: Yeah. So this is a tax increase just on U.S. people, on U.S. citizens. Whereas if for example we increased the corporate tax rate in the U.S. a lot of that burden would fall on foreign investors in U.S. companies. The downside is that some of the burden would fall on people not in the top 1 percent. Not a huge portion, but some, whereas --

MS. FARR: One hold through mutual funds.

MS. BATCHELDER: Exactly. Whereas this proposal at least has a theme currently advanced that is restricted to the top 1 percent or less, and would not do so.

And then the last thing I'll mention is we do have precedence for this in the U.S. So we have a bunch of rules that have been mentioned earlier about straddles, about P6. We also tax most debt, effectively on an accrual basis. I mean we can get into the details of what is the best true. But there is something called the original issue discount rules that basically say if you issue a bond and, say, well you pay me $100 and I'm going to give you back 95 10 years from now, we don't let you do that, we basically impute interest to you and that's basically like an accrual tax. And so that instrument --

MS. FARR: Although as we were talking about earlier, that's generally speaking a known amount of income.

MS. BATCHELDER: Yes.

MS. FARR: You know, you buy the bond at, you know, 95 percent of the principal amount, you know you're going to get that five over time.

MS. BATCHELDER: Yeah.

MS. FARR: And so it's not the other challenge that we're dealing with here, which is, you know, assets that are going to vary in value more significantly.

MS. BATCHELDER: Yeah.

MS. FARR: And I would say, and maybe Mike has experienced those too, that people hate the OID Rules for that reason, because it's viewed as, you know, phantom income, and there's a lot of time spent making sure that they don't apply, you know, and sort of getting to the numbers that get you out of them.

MR. ROSENTHAL: Just like they hate the PFIC rules.

MS. BATCHELDER: That is my question on maybe both of those would be well of course people who have to pay tax under the OID Rules or the PFIC rules hate them. We all hate paying taxes. But would you think the tax system would be better off if we abolished the OID Rules, or what kind of distortions would result?

MS. FARR: No, not that we're doing that, just that, you know, it does influence behavior a lot, I think, is the point.

MS. BATCHELDER: But even that, do you think it would distort behavior more if we got rid of them?

MS. FARR: Probably not. Yeah. It's hard to say. It's just a lot of time is spent by, and maybe we don't care about this, but by taxpayers, by their, you know, accountants and lawyers, you know, thinking about things like that.

MR. SCHLER: You know, we have those rules for decades now, and I think they were first promulgated because zero coupon bonds were being issued to allow investors to defer tax, presumably even, you know, stepped up at death if, you know, in some circumstances.

MS. FARR: They're disconnected, and the company that was issuing the bond, you could take a --

MR. ROSENTHAL: Yeah, there were a lot of tax shelters before the OID Rules, that's why the OID Rules were big revenue raisers I think at the time.

So one last thing for you, Lily, before we go to the next segment. Is there any serious question about the constitutionality of an accrual basis tax system? We have a whole bunch of rules in place now. Does anybody believe those are unconstitutional?

MS. BATCHELDER: I would say there is no serious constitutional question. So an accrual tax is distinct from a wealth tax because the income tax is clearly constitutional, we have the 16th Amendment. The issue with the wealth tax is we still have this provision that says if something is a direct tax it has to be apportioned among the states. And so if a wealth tax was a direct tax, which is a very open question, then you would have to make sure that it is per capita the same amount in each state. So you'd effectively have a much higher wealth tax rate in, say, West Virginia, than you would in New York, which doesn't seem great. So that is not an issue with an income tax.

There are some people that raise whether mark-to-market or an accrual tax would be unconstitutional, usually referencing this case from 1920. But that case has been, so in that case they did find that --

MR. ROSENTHAL: *Eisner v. Macomber* if you're teaching the class.

MS. BATCHELDER: was related to realization was unconstitutional, but it's been really limited to its facts. We've for decades had provisions in the tax code that have been challenged in lower courts that are mark-to-market, and all of those challenges have been rejected. So I don't think this is a serious issue.

MR. ROSENTHAL: Okay. So let's shift now to our practitioners. And maybe, Lucy, you could start us off like what has been our experience with mark-to-market and accrual regimes. As Lily just highlighted, we've had those in place. And what are the challenges that we might face adopting a broader accrual method or mark-to-market method of tax accounting?

MR. FARR: So, yeah, I'll start off describing in a little more detail, and some of the earlier panelists have alluded to it. Really kind of three mark-to-market regimes that are currently in the tax code. And we'll see kind of to what degree they're instructive here.

One is the mark-to-market tax that applies to securities dealers. It also applies electively to securities traders and to commodities dealers or traders. But obviously people who elect into it are a little bit in a different, you know, paradigm because they chose it.

MR. ROSENTHAL: Elected by the taxpayer, not by the government.

MS. FARR: Yeah, that's true. And I think it gives us really a limited amount of information for two reasons. One, you know, securities dealers, you know, they hold huge quantities of securities and derivatives, and these are subject to mark-to-market taxation. But there are also mark-to-market for financial accounting purposes. So really the tax is following, you know, the book, and that usually is something that taxpayers don't mind as much.

Secondly, securities dealers are often, they're not usually speculating, they're often hedging their positions, and so they're holding, you know, securities or entering into derivative transactions with their customers, and then they're hedging that, you know, as much as they can. And so the mark-to-market system, you know, it isn't measuring kind of ups and downs in the way it would for, you know, somebody just investing or speculating in property, it really kind of more measures their economic, you know, that profit that they lock in by hedging themselves in a more effective way.

MR. ROSENTHAL: So dealers have balanced positions, and as a consequence when you're marking-to-market both sides of their positions, you eliminate a whole bunch of tax-induced volatility.

And by the way, in the 90s when we were drafting the mark-to-market rules for securities dealers, one of the drivers for the rules was actually the securities industry who liked having mark-to-market rules come closer to their economic income, and later traders of commodities and securities, many, want to elect in order to match, and even match their book income and even out their economic income to the tax income rate.

MS. FARR: That's right. It's really not something that they find objectionable, for the most part, has been my experience. And it also takes them out of a lot of rules that I'm sure we'll touch on that are, you know, punitive toward taxpayers that are doing certain things like hedging themselves, you know, straddle rules can be punitive and if you're on a mark-to-market basis you're kind of out of all those rules and you're just, you know, measuring what, you know, for dealers I think effectively captures their true economic income. Nonetheless, there has been litigation on valuations, so it hasn't been completely without friction. But it's easier to apply it to securities dealers because they are valuing for book purposes, so there is something you can look to, you know, and a lot of these securities they hold are in fact, you know, traded on exchanges. So it's a, you know, a narrower group for whom it fits better than perhaps, you know, other taxpayers.

Section 1256, which is the rule that requires a mark-to-market for certain types of assets. So futures contracts, other types of exchange listed derivatives. And that's a rule that is applicable to any taxpayer other than certain, you know, parties doing hedges. So it's broad in that sense, but it's very narrow in the sense that it only applies to this limited category of positions. And as somebody mentioned earlier, those are derivatives for which, you know, they're on an exchange so there's valuation, you know, kind of a clear valuation.

Also, they are, you think if you enter into a futures contract you have to post margin to secure your obligations. And on a daily basis the exchange will, you know, mark your position to market and you either have to provide more collateral, more margin, or you get some back. So the liquidity issues also are not, you know, the same as they might be for other positions.

Mike is telling me we're spending too much time on this and that we should talk about the new proposal, so maybe we'll get into that. I think the big picture is that, you know, they're sort of interesting and worth looking at, but they really I don't think tell us how a system like this would operate in practice when it's a much broader category of taxpayers and also a broader category of assets.

So I think we'll delve into the recent Wyden Proposal. And I'll kind of start it off, but I think Mike will, you know, jump in at any point.

MR. ROSENTHAL: What happens when you go broader, Wyden is broader, right?

MS. FARR: Okay. Yeah. So Wyden is broader and narrower. So Wyden is broad in the sense that his proposal would apply to kind of all assets basically, although we'll talk about it. There's mark-to-market and then there's look back, so it applies differently to different types of assets.

But it is narrower in that it applies only to specific taxpayers, what it calls applicable taxpayers. And we'll talk about tradeable and non-tradeable assets. I know Mike will get into that. But just to pause on who it applies to, because I think that's an important, you know, design point.

MR. SCHLER: Let me just say one thing. The Wyden Proposal, which is on his website, is a very comprehensive proposal, it's like 40 single-spaced pages without a lot of white space like some of these other proposals are. And it just sort of, when you read it you see all the issues. It raises something like between 50 and 100 different issues they want comments on. You sort of get a sense of the complexity of this. We'll be talking about two or three or four, but there's literally dozens and dozens of issues that come up in trying to come up with a system. And I think as Steve says, the devil's in the details. And to come up with a comprehensive system is not going to be simple.

MS. FARR: Right, exactly. It's the most detailed proposal, I think I remember having seen.

MR. ROSENTHAL: And the effect to taxpayers, Lucy, this is beyond securities dealers and sophisticated derivatives traders, say.

MS. FARR: Correct.

MR. ROSENTHAL: So this needs to be dummied down. Even for rich guys potentially.

MS. FARR: Yeah. And just a note how it carves people out. There's basically an income and an asset test. And if you are, you know, $1 million of income, $10 million of assets, and it says that would be indexed to inflation. And if you meet either of those standards for three years, then you become subject to this rule. You can get out of it by having three years where you don't meet either of these tests. So potentially somebody can shift back and forth between, you know, if they're on the edge, being subject to the rule and not subject to the rule. Which understandable why it's done that way, but that creates a fair amount of complexity when you think about, you know, applying a look back rule to that and the draft notes this point is how you'd have to think about, you know, somebody who held some sort of property, real estate or something for, you know, 30 years and there were, you know, X number of years in which they were subject to the rule, you know, other years when they weren't, and how you'd calculate that.

MR. SCHLER: Just to add to that my view of complexity, we're talking about going from one set of rules for taxing gains and assets, to three sets of rules. The current rules for whoever's exempt because they don't have much income or it's an exempt asset. That's rule one. Rule two is for the mark-to-market assets, the publicly traded assets. And rule three is all the stuff that's not exempt but it's not publicly traded. And so this is a wait and see, and then you pay a tax with this interest charge. You'd have to have three separate sets of rules imposed on large numbers of people out of the blue is really going to be a very --

MS. FARR: You're not going to get any simplicity benefit probably because for the people who aren't in the rule you have to keep probably all the straddle --

MR. SCHLER: Right.

MS. FARR: -- rules, sale rules, other kind of -- complaining rules.

MR. SCHLER: Yeah, you're throwing all that on top of the existing rules because you need the existing rules for the exempt assets. And then you have the tax lawyers like us who are trying to get between the rules and go from one rule to the other and back and forth. It's really going to be a challenge for the government to deal with all that. It kind of reminds me of in TCJA they sort of did the same thing, both with, you know, the lower pass through rate for people, which is a whole new concept, and then the GILTI rules and beat for controlled foreign corporations. I mean an entirely new concepts that they just imposed on top of everything else, without taking anything away, and just added it all. And for those statutes, there are hundreds and hundreds of pages of regulations that have come out so far. And they're just beginning, it'll be years and years before, and an enormous amount of tax planning under those rules because of the uncertainties.

MS. FARR: Mike has written hundreds --

MR. SCHLER: Yeah, but the bar point and other comments is thousands of pages. But it'll be years and years before people know the answers to a lot of questions, and a lot of the tax planning issues have been resolved. And that's just, you know, especially things like GILTI and BEAT affect a relatively few number of people, the U.S. multinational corporations. We're talking about two whole new sets of rules and, you know, same people are effected by publicly traded and non-publicly traded assets, who are imposing all that on top of the existing system. I just hope the system can bear it.

MS. BATCHELDER: So I'd like to just add one softening to this. So David Bradford was a very beloved economist, and he always distinguished between three kinds of complexity. So there was rule complexity, compliance complexity, and transactional complexity.

And rule complexity was like one you have a general anti-abuse rule and nobody knows what it means. Compliance complexity is how many forms are you filling out, how many calculations are you making, maybe like how many regulations are there? Transactional complexity he always said was the worst. And that was when you were distorting economic behavior for tax reasons. And so I think I would agree that this would increase compliance complexity for people in the top 1 percent, you know, maybe particularly for the financial institutions that they use who are going to have to report to them how they should be reporting their income. There would be a lot more rules.

But I think if it was well done it could really reduce transactional complexities because right now a lot of, you know, what Lucy and Mike have been very adept at doing, and what I try to train my students to do if they're going into private practice, is to take advantage of these deferral incentives and to take advantage of the differential between the capital gains and ordinary rates.

And so if you did this well, and that's an "if" it could really reduce that kind of complexity, which is actually the worst thing for the economy. And so you'd be, in exchange, having more compliance complexity for relatively wealthy taxpayers and then, you know, query how much they individually would be experiencing this complexity. So if they had all publicly traded assets I think they'd probably get an information return at the end of the year from their financial institution saying this is how much income you have to report. Which wouldn't be all that different from getting a 1099 for their interest income this year. So it might be that a lot of the burden of that compliance complexity goes on to the big corporations like it does with the GILTI or the other provisions.

MR. SCHLER: Well by compliance complexity, you mean by taking actions that you wouldn't otherwise take. But what would you say then about, you know, private companies, that nobody wants to go public anymore because people would rather be under the rule for non-traded assets than traded assets. Do you think there would be a big enough address?

MS. BATCHELDER: I really don't want to. So we already have big incentives to stay private with the pass through rules, with a lot of other rules. But even so, I think that also depends on how accurate the look back charge is. And if it is -- I think if you skipped the whole look back charge, if you just applied mark-to-market to publicly traded firms and nothing, the pure realization to privately held and illiquid assets, you have a big incentive. But if you have a look back charge it may be that in some circumstances you want to be public and some circumstances you want to be private. It's true that it was would --

MR. SCHLER: At least it would even it out and the different --

MS. FARR: I think there would still be a big difference I think.

MR. SCHLER: It doesn't even it up. Paying cash tax now is not the same thing as paying cash tax when you sell.

MS. FARR: I agree with Mike.

MR. SCHLER: No matter what the interest charge is.

MS. FARR: And when you later on, you know, if you have very volatile assets, and some of these points have been touched on, and you think about, you know, going up and then going way down --

MR. SCHLER: Are you going to get a refund. You've never converted a traditional IRA to a ROTH. And let me tell you, writing the check hurts but you think about all the taxes you save later. I'm not sure it's that dispositive, at least to the extent that you have both regimes, as Lily suggests, you do level to some extent the playing field. I'm not saying it's ever going to be perfectly level. There's lots of discontinuities.

MR. ROSENTHAL: Now the ROTH IRA that's different. There you're getting a clear long-term benefit. You pay some tax up front, but you're getting a long-term benefit.

MR. SCHLER: Right.

MR. ROSENTHAL: Here there's no long-term benefit to being under mark-to-market.

MS. BATCHELDER: Well that depends on the interest rate.

MR. ROSENTHAL: Yeah, but assuming you get it accurate. Assuming it's an accurate rate so as an economic matter it's probably the same. But the idea of paying tax now and then paying tax now if the stock goes up and maybe you're not getting a refund if the stock goes down. That's not the same thing as waiting until the end and paying with an interest charge.

MS. BATCHELDER: You just said if it's accurate then there would be no --

MS. FARR: It's not accurate. Even with kind of an appropriately sized charge --

MR. SCHLER: I'm saying mark-to-market isn't accurate because it's up and down while for the non-public stuff you wait until the end and you see what your net gain is.

MS. BATCHELDER: It's also smooth over time under mark-to-market, like the last panelist discussed.

MR. SCHLER: Assuming you're getting a refund when your stock goes down. And yet unlimited carry back --

MR. ROSENTHAL: By the way, do we know, Mike, yet, whether Senator Wyden would allow losses to be deductible, carried back, refunded, any idea on that? Are they ordinary versus as capital?

MS. BATCHELDER: This is a question.

MR. SCHLER: He raised it as questions. But for that to work, I mean whether or not you allow losses against compensation, that's one question. But even aside from that, if my stock goes up today and I pay a big tax on this unrealized gain, and then it stays the same for 10 years, and then it goes down. Are you going to give me a 10 year carry back for my loss or do I have to wait until I have some more gains?

MR. ROSENTHAL: No, you might get a carry back.

MR. SCHLER: Okay. With interest? You don't know.

MR. ROSENTHAL: I draw the line somewhere.

MR. SCHLER: Okay. So that's why you're sort of better off under the private rule, you don't have all these problems.

MR. ROSENTHAL: Maybe.

MS. FARR: There's a precedent in the rule that applies to futures contracts, there is a broader look back, it's like three years as opposed to, you know, not having a look back at all for individuals, so there's some precedent for that. But I agree that politically, you know, it's the Warren Buffett rating, a billion dollar tag, it's going to be hard to --

MR. ROSENTHAL: Let's talk about traded assets for a moment. That should be our simplest case, right? So a traded asset, that means traded on some public exchange, presumably, although that could yet be open for question. But because they are traded, we are pretty confident of their value. And because they're traded if you're short of the money to pay the tax, you presumably could sell all or some of your asset to raise the money to pay your tax. What design issues come up with just the traded assets? Where does that start, Lucy? Like what is traded, by the way?

MS. FARR: Yeah, I think that --

MR. ROSENTHAL: I'm asking you.

MS. FARR: And I have my answer I'll send you later. That's a very complicated question because, you know, there's the New York Stock Exchange, but then there are, you know, a lot of different, you know, markets that aren't kind of as obvious as that. They're over-the-counter markets, you know, debt, for example, doesn't generally trade on exchanges, but there is a, you know, kind of significant price discovery because dealers provide quotations for, you know, many categories are pretty liquid.

MR. ROSENTHAL: My baseball card collection, I think Mike suggested Beckett's runs a pricing list for that.

MR. SCHLER: Yeah, the IRS has struggled with that with debt because there are different rules for publicly traded debt where there's a market and where there's not a market, that's right in the code. And they had some rules that didn't really work very well. And now they've put out some new rules that basically say everything is traded if you can find somebody who will give you a quote.

MS. BATCHELDER: Even an indicative quote.

MR. ROSENTHAL: An indicative quote, right, right, it's really broad to say that those rules made more sense than the rules for non-traded debt. You know, then you get into things like I said, suppose the dealers would put out price lists for baseball cards. Does that mean they're traded for marking your baseball collection to market?

MS. BATCHELDER: E-bay.

MR. ROSENTHAL: E-bay, if you can find people selling the same thing you have, who knows. But there's going to be all sorts of issues about that once you get it off the exchanges.

MS. FARR: And are you going to include foreign exchanges where there may be a little bit less sort of oversight to things? It's not an easy, you know, point to get at, and I think somebody else had mentioned earlier that the ability to value something may not necessarily mean it's actually liquid as that. I mean just because somebody is offering a quote, doesn't mean you can sell your entire position with that, you know, that value. You also sort of think to the point of, you know, you mark something at the end of the year and you're going to have to write a check, you know, by April, you're going to see a lot of odd effects of, you know, significant sales on January 2nd in order to make sure somebody has the cash to pay that tax.

MR. ROSENTHAL: You'll probably wait until the day before you file your return.

MS. FARR: You'd be risking something though, right, if you have to do that because, you know, if you hold crypto currency or something that may be worth a quarter of the value by the time you get it also.

MR. ROSENTHAL: And what are the basic questions remaining on a mark-to-market or I guess this would not be accrual, but that's for non-traded assets. Is that straightforward? At least that, I guess what kind of issues do you have if you're marking a traded asset? We've got liquidity, we've got not valuation, what other things, Mike? I guess you earlier raised --

MR. SCHLER: The losses.

MR. ROSENTHAL: The losses.

MR. SCHLER: I think those are the main issues for traded assets. The harder issues come up with non-traded assets.

MR. ROSENTHAL: Okay, why don't we start there? You want to give us a couple of those issues on what would be the best way to tackle those? Lucy, what do you think?

MS. FARR: Well let's see. Loss, I think is going to be another issue for a look back regime, right? Because if you're kind of trying to say this type of income should be viewed more like wage income, and, you know, you imagine somebody that has gain positions and loss positions that for whatever reason are not traded, you kind of I think would want to make it as parallel as possible so that they sort of get the inverse of whatever the sur tax would be. But again you have the political aspect of it so that may be less appealing. So I don't know.

MR. ROSENTHAL: The political aspect being what, having the government write checks for losses?

MS. FARR: Effectively write a check, yeah.

MR. SCHLER: Well you know, but when you say writing the checks for losses, that can mean two different things. One is like the refundable income tax where you have nothing but losses, are you going to get a check back? I don't think people are suggesting that. Maybe they are, but we've never had that in this review of the income tax, except for low income people.

MS. BATCHELDER: Because those are a carry back.

MR. SCHLER: Yeah, there's carry backs, you can question how far back you go, and can you offset current other ordinary income. But I don't think anybody would suggest if the stock market goes down when everybody has all these losses, the government pays out all this money to people who have never paid any tax in the first place.

But, you know, other things with non-traded assets, talking about political stuff. If you buy an asset in Year 1 for a hundred dollars and then in Year 20 or 30 you sell it for a thousand dollars, and let's say interest rates go up a little bit. I mean a good part of your gain is going to be -- think about it. Your total tax is going to be an awfully big percentage of your total gain when you take all the interest charge over a long period of time. People may say, you know, it's not going to look good even though it all makes sense economically because it's no different than if you paid tax under mark-to-market. But when you try explaining to somebody whose maybe built a business and is now retiring and is selling off their business, thinking they're making a lot of money, that it's all going to taxes because it's collected all this interest charge over 20 or 30 years of their career. It's not going to go over very well.

MR. ROSENTHAL: They could always fix that. Maybe they remember they started the company in Year 12, not Year 1, they get a better result, right? How do we keep track of that actually?

MR. SCHLER: Well you have to have, you know, the holding period. Now you only have to know if the holding period is more than a year. Under this system you gotta know the holding period forever.

MS. FARR: And with pass throughs it could potentially be more complicated too, right? Like if you put in more money into, you know, partnership that's your business or your interest in it, you know, increases or decreases over time, you have to think about those design points.

MR. SCHLER: And the other thing, if you make a gift there's going to be this, mark-to-market stuff, that's easy but the non-traded stuff is you make a gift there's going to be an accumulation of tax you owe when you die, all the non-traded stuff is going to be, you have to have it be a deemed sale at that point so there's going to be this gigantic, not just valuation, but it's like an estate tax where you have to figure out how long you held all your assets and compute the interest charge, and there's going to be a big tax at that point.

MR. ROSENTHAL: And speaking of gifts, the earlier panel, somebody observed about charitable contributions. Which way does this cut, having a new regime for assets that are held long periods of time without sales? Is that going to encourage or discourage charitable contributions, and maybe even gifts to your children or relatives?

MR. SCHLER: Yeah, you know we were talking about that before. For gifts to your kids I think, well for traded stuff, gifts to your kids it doesn't matter. For non-traded stuff --

MS. FARR: You would have marked it already.

MR. SCHLER: Yeah, you've marked it already. But for non-traded stuff, to give something to your kids you have to pay that tax. You may not want to do that anymore. I mean gifts to charities I think are different because I think it will both discourage and encourage gifts to charity, for people in different situations. And if you're on the fence about making a gift of some appreciated asset to charity, there's less reason to do it because the tax benefits are less became now you don't pay tax on the appreciation and you still get the full tax deduction. Under this new system whether it's traded or non-traded, either you've already paid the tax on the appreciation or you will at the time you make the gift. And so the after tax benefit is a lot less because you get the benefit of the deduction but you don't get the benefit of the exempt income.

MS. FARR: I mean unless you designed a rule where, like today's rule, if you donated something to charity and it was a non-traded asset, if you, you know --

MR. SCHLER: You need a special rule, yeah.

MS. FARR: -- paying that sur tax.

MR. SCHLER: Yeah, but the other factor is that if you know you want, if you have some assets you know you want to give it to charity, you're better off giving it sooner rather than later because you avoid all the future either mark-to-market tax or deferred tax, you know, there's no tax in the hands of the charity. So you'd rather give it now rather than later. Which also means, I think, that there'll be a lot more focus on donor advice funds because you still keep control over the asset and can practice. And so you give it now and you decide later what charity you want to give it to, but in the meantime you've avoided all the mark-to-market or deferred tax that you'd have to pay as the asset went up in value.

So in that sense there may be an incentive to accelerate donations. You're going to help the charities because of donor advice funds, but maybe the reason to accelerate donations. But then once you have the appreciated asset and you're not sure you want to give it, then it may discourage you.

MS. BATCHELDER: Be interesting to know, I'm sure somebody has studied it, whether gifts of property to charities, you know, the percentage of them are traded, you know, tradable assets versus other kinds of assets. I assume it's probably a large percentage traded assets because those are the ones, you know, that get the benefit of the higher deduction.

MR. ROSENTHAL: Well returning back to our evolving economy, we've seen over the last several decades the advance of intangible assets, intellectual property, it turns out to be really important in the global economy. How about accrual or mark-to-market of intangible assets. Do those pose special problems? Because those are now a very big part of our economy.

MR. SCHLER: Yeah, we talk about that too. You know, if I'm an inventor and I patent something, and then I sell the patent in 20 years, I assume I'm going to be subject to all these rules and pay this big interest charge or just run my own little business. I start a hardware store and I sell out. I assume when I sell that I'll be subject to this big interest charge ago, just as if I had mark-to-market. So it's a lot of things people may not be thinking of as being potentially subject to mark-to-market.

I mean the Wyden Proposal seems to cover everything.

MS. BATCHELDER: Every asset other than some personal residents up to --

MR. SCHLER: Farms. It's sort of, yes, it's sort of funny, it's personal, sorry, qualified retirement assets. Not non-qualified retirement assets, those seem to be covered, including deferred executive comp seems to be covered. Family farms are exempt, but no other small businesses, there's no logic to that. And then personal residences, yeah.

MR. ROSENTHAL: Although retirement funds, they're exempt from taxation in any event, so to mark them or to require accrual is really not that relevant is it? What's the --

MR. SCHLER: One would be your interest in the fund.

MR. ROSENTHAL: Okay.

MR. SCHLER: Just like if you have an interest in a business or interest in a sole proprietorship, they could in theory tax the value of your interest in the trust, but I think, correctly, they don't.

MR. ROSENTHAL: Up to some point.

MR. SCHLER: Up to some point.

MS. BATCHELDER: Retirement assets are just totally excluded from his proposal?

MR. SCHLER: Right.

MS. BATCHELDER: For farms and primary residences there's the two million and five million exclusion from counting it towards whether you're in the regime in the first place? But then once you're above that, if you have more than three million in retirement assets, the portion above it would, the portion above the $5 million farm would then be subject to the regime. But not the first five million. And then there's the exclusion of a million of income or 10 million in assets. So it's really affecting pretty timely share of taxpayers.

MS. FARR: Yeah, that's only for putting you in the regime, right? Once you're in it then you don't get a $10 million threshold. You know, in other words, if you have 10 million of assets for three years and you're in it --

MS. BATCHELDER: I think that's ambiguous. So he talks about whether there should be a transition or a phase in. And personally, I would really advocate a phase in. It's really bad to have GLIF effects. So just to clarify for folks. He says, in general, putting aside all these special things for farms and retirement assets, if you have more than a million dollars in realized income or all income other than unrealized gains, or 10 million in assets, then at some point you start becoming subject to the regime. And you could say at that point all of your assets are subject to the regime, or you could say at that point some portion of your assets, maybe the portion above that 10 million, is subject to the regime. And he asks questions whether there should be that phase in.

MR. SCHLER: Now one other thing with this, with the non-traded assets where you don't pay tax until you've disposed of them. One benefit people think they have with that is, well, okay, I don't pay tax every year, maybe we'll just forget to pay the tax when it comes time and I'll put it into a corporation and it'll be there forever and, you know, apparently transfers, at least under the Wyden Proposal, transfers into corporations are tax free because you get stock back. But, you know, people may just forget. I mean it's just like people forget to do all sorts of things now. In PFIC they forget to pay the interest charge, I mean, you know, that's what people do. And the question is how does the IRS really enforce that, you know? They have all these non-traded assets and, you know, people make gifts and things and they put them into corporations and they stay there forever. And what's going to happen, the other side, but just one other issue we should just mention, is using corporations as a tax shelter.

If you just don't want to pay tax on something, suppose you put it into a corporation. That's tax paid, and the corporation sells the asset, they pay corporate level. Or the corporation holds the asset or sells it, they pay corporate level tax. But nothing has happened at the individual level. And so in order to be able to avoid tax that way you're putting stuff into corporations or partnerships. I mean the Wyden Proposal has a very elaborate set of rules to deal with that, but they ask questions about is that going to work and what else might they have to do.

MR. ROSENTHAL: All right, well let's finish up. Last remarks from any of our panelists, any last word, Mike?

MR. SCHLER: It will be complex and, I'm not against it necessarily, but it's going to be complex and a boon for tax lawyers like us for many years to come.

MS. FARR: I'll just say I agree with Mike.

MR. ROSENTHAL: Lily?

MS. BATCHELDER: So I guess two things. I think it's important to sort of keep a dual focus on how much it would be a boon to tax lawyers, and how that would compare to how it would improve the efficiency of the economy and the fairness of allocating tax burdens between the wealthy and less wealthy people.

And at some point if it, you know, does enough on improving economic efficiency in taxing the wealthy at rates that at least some people think are more fair, that could be worse, you know. Lucy and Mike and the others getting more fees to deal with the transition to the new regime.

And the other thing I would say is just to applaud Senator Wyden and Representative Schakowsky, that I think a lot of the issues this panel is raising are really important and they're really important for drafting. And probably my biggest concern about this proposal is that there is adequate time to draft it. So having worked for several years on The Hill, I had no idea prior to getting there how long it took to draft an effective bill on a technical issue. And so I'm really glad that this is something that they're digging into. I know Representative Schakowsky mentioned they're working on legislative language. And a lot of the things that are being raised here are things that are going to have to be worked out in drafting a law, also in regulations. But the more time there is, the more time there are for panels like this, the more time there is to respond to questions like Senator Wyden has raised, the better chance there is of drafting a bill that ends up passing.

MR. ROSENTHAL: I think that's a good observation to end. I worked for the Joint Committee on Taxation in the early 90s. We devoted three years to drafting the mark-to-market rules for securities dealers. Those rules were part of two vetoed tax bills, for different reasons, until the mark-to-market for securities dealers was enacted in 1993. But the advantage of veto tax bills was the House would pass a version of 475, and then industry representatives would come in and tell us where we had gone wrong. And we'd hear from lawyers in practice. The Senate passed a version, the Conference Committee passed a version. We had nine iterations, which is really unusual for legislation, you know, of actually passed legislation with input. It was incredibly complicated. And so at some level we're highlighting a lot of the kinks in the current proposals and pending drafts. And that's because the kinks exist now, the question is could the kinks eventually be ironed out in a way to accomplish everything that the members and we tax policy people might like to see.

MR. SCHLER: We didn't have that three-year period with TCJA, which led to a lot of the problems. And so you just get this law that nobody really, nobody outside of you people in the government have ever seen before. And, not unexpectedly, it just had gaps and things that didn't work, and really forced the Treasury Department to put out, you know, all these regulations. Some of them pro taxpayer compared to the statutes and some of them anti-taxpayer compared to the statute. Because the statutes either just didn't work and it gave really unfair results to taxpayers, or giant loopholes that taxpayers could take advantage of. And so there's a lot of question whether a lot of those regulations are valid because they're just not the same as a statute, going in both directions. And, you know, that's not a good way to run a tax system. So it's much better if people have time to look at it in advance and figure out, in both directions, whether the statute makes sense.

MS. BATCHELDER: I would add to that I'm not a huge fan of the TCJA, but there are a lot of provisions there that built on legislative language that was put out starting in 2011. So even in that case when it was taking that long to draft and going through different iterations, there were a lot of problems. And I think the provisions that had not seen the light of day before the TCJA was voted on or had only been out for a couple of months, were the most problematic ones. But I think that does just highlight it is really good to have a long timeline that you're working on these proposals.

MR. ROSENTHAL: All right. We have a few minutes for questions. Yes, at the very far back.

MS. HERSHELS: Mindy Hershels. Question for Lucy and for Mike. So I hear all your concerns and I agree with all of them, but my question for you is, given the concerns that Lily is responding to or raising, do you think is there a better option, or would you dismiss Lily's concerns that she's responded to?

MR. SCHLER: I think they are all very legitimate concerns and I don't know if there's a better option. Maybe a wealth tax, but I think there's constitutional problems with that.

MS. FARR: Yeah, I tend to agree. There are legitimate concerns. I don't know if this is the right answer. It's at least, you know, at a proposal we're thinking about, but I don't know that I have a view that it is the right way to go.

MR. ROSENTHAL: Yes?

MR. DAVIS: Allen Davis. Two questions that I think are related, maybe not. The first is I'm having a hard time hearing any argument for why a wealth tax, if you put aside the Supreme Court, which I would like to do for many reasons. If you put aside the Supreme Court issue, is there any real case to be made why the wealth tax would not be a better way to address the wealth problem?

And the related question is, I'm curious if you have an opinion about this, if you take a typical billionaire, say who's running for president and has $50 billion. And you assume that he's going to earn $10 billion over the course, sorry, $5 billion over the course of the year. So at the beginning of the year he has 50 billion, before taxes at the end of the year he has $55 billion. In your opinion at the end of the year, after taxes, should that person have $52 billion, $50 billion or $45 billion?

MS. BATCHELDER: I'll maybe start with the first question. I think I lost the chain on the second one. So I think there are real arguments each way for a wealth tax versus an accrual tax if you set aside the constitutional argument. And I think the constitutional argument, I still think the better argument is that a wealth tax is constitutional, there's just more risk there. So I think if someone were to, if Congress were to enact to wealth tax they'd be well advised to have a backstop in that that was maybe something like an accrual tax in case the court ruled it unconstitutional.

But a couple arguments maybe in favor of an accrual tax relative to a wealth tax would be that a wealth tax would not tax rents as directly as an accrual tax would. So typically economists talk about normal returns to assets in rents or super normal returns. And some think it is more efficient to tax rents than to tax normal returns. I have my questions about that, but that is one argument that's put forth.

Another issue with the wealth tax is generally one would think you'd then have to value all wealth each year, including privately held and non-publicly traded assets. Whereas under the accrual tax we're discussing anything that wasn't publicly traded you would wait until there was an actual valuation point. You could imagine a wealth tax that had a look back charge or something, and so it could do the same thing. I haven't heard of a proposal like that, but that is another --

MR. ROSENTHAL: You misspoke Gale's earlier assertion there.

MR. SCHLER: Bill Gale made that suggestion in the last panel. The problem with that is sort of the same problem I raised when you finally sell a private asset you've held your whole life, most of your gain is going to be eaten up and you'll be surprised. I mean if you have a deferred wealth tax and then I think when you die, this deferred wealth tax maybe it seems like, you know, oh maybe it's just two cents, or maybe now it's five cents on the dollar. But that adds up over time, and by the time you die you may find you don't have much left if there's a deferred wealth tax on your non-traded assets. I mean it may not in the end be different economically than if you paid the tax every year, but it's certainly going to seem a lot different when you die. It's going to seem like an estate tax at a very high rate.

MR. STELLY: I'm sorry, Gene Stelly, Tax Policy Center. And it has to do with the double taxation of income, and whether one thinks about integration when one does this. So effectively if you pay a corporate tax, unless you have some sort of integration, so you pay the corporate tax and then you pay the tax on the accrued gains. The accrued gains might be due to nothing more than retained earnings. In fact many years ago, long before we had the current wealth bubble, I did some estimate, crudely, that I could include almost all the gains in the economy whether in inflation or retained earnings, for the most part. That dodges interest and everything's done with that.

So maybe you could do some integration for an individual up front, but now how about the person who is the corporation and has some great invention so the corporation shoots up in value. So he's now selling the future earnings that are going to be subject to tax. I don't know that one could think of it an integration system to avoid the double tax there, or do we not worry about the double tax if we're going to be taxing retained earnings of the corporation now or in the future and then we're going to tax on an accrual basis as well.

MR. ROSENTHAL: Double tax of corporate earnings. Or double tax of investment return, once on the income tax, once on the wealth tax.

MR. STELLY: That's correct.

MS. BATCHELDER: So I think in Eric and Allan Yard's paper they did propose integration as part of moving mark-to-market. And if you were to apply accrual tax to everybody I think that would make a lot of sense because you'd be taxing potentially all corporate income on a mark-to-market basis at ordinary rates. And a lot of the rationale for the corporate income tax is sort of as a withholding mechanism because we don't do that.

Given that the proposals on the table seem to restrict the accrual tax to very wealthy people, I'd be more nervous about that, and I think it creates a dilemma of, you know, do you do what is, you know, maybe better tax policy with respect to those very wealthy people and them owning corporations, or respect everybody else owning corporations. My guess is it probably as a practical matter wouldn't do corporation integration in that situation. But that would be a question that's part of, you know, a major design question.

MR. ROSENTHAL: The other problem with integration, obviously, is what do you do with the foreigners and the tax exempt shareholders? You can't give up all that income, I mean.

Erica. Wait. Erica, and then an Eric.

FEMALE SPEAKER: Question for Lily. I'm curious, we've been talking about a look back tax or, you know, accrual as sort of a back stop because of all the valuation problems for mark-to-market. But what if you flipped the paradigm. If we just said the tax on the wealthy is going to be the look back tax, which avoids a lot of the boundary issues, what's publicly traded, what's not. Would that achieve the objectives you described if you just had the look back tax?

MS. BATCHELDER: I know I think that's certainly an option worth considering. I guess a couple challenges to it, or ways people might respond not to do it, are first that one issue is you may still have lock in to the extent people think the regime's going to be repealed. And so if you do mark-to-market for publicly traded assets at least you're sort of eliminating it with respect to publicly traded assets. And this might be what Mike is going to. If people really think that's a big risk then having sort of the dual approach for publicly traded and non-publicly traded could create an incentive to invest in non-publicly traded if you think in five or 10 years the whole thing's going to be repealed.

And, oh, what was my second thought. I'm forgetting my second thought, but I'll come back to it.

MR. SCHLER: It will certainly delay the receipt of the cash by the government.

MS. FARR. Yes. Also then puts a lot of pressure then on the rate or the amount being rated. Because it's kind of a blunt instrument, right, I mean you know you're going to apply some sort of interest rate, maybe blended interest rate reflecting interest rates over time, but your appreciation may have been, you know, early on or later, a little bit rough.

MS. BATCHELDER: Yeah. I mean the other thing we sort of mentioned in a footnote of our paper, is doing that would be a little bit akin to having capital gains rates rise with the holding period. Which would be less distortionary economically because it would be accounting for the time value of money. So that could be, you know, another variation on all of this that would move in the direction of accrual taxation without going fully there.

MR. SCHLER: One other thing I forgot to mention before is, you know, one other effect of mark-to-market for public stock is that it means the government has a really big interest in the stock market going up because they get a lot of money. And they don't have an interest in the stock market going down. I mean what is that going to do to pushing the Feds to lower interest rates and have the stock market go up? I mean --

MR. ROSENTHAL: There's a lot of government that has incentive to --

MR. SCHLER: Well we finally have a Chinese Trade Agreement at hand. I think that's boosted the stock market at least eight times in the last four months.

MR. ROSENTHAL: Eric.

MALE SPEAKER: Okay. So this is a question from somebody, an old guy that's been around for a while. I think for years people have talked about the exemption, the step up in basis as the worst feature of the tax code, and tried to get carry over basis, and it was repealed before it even took effect. So I think people think, wow, if you could get gains at death in the code that would be like an extraordinary reform considering the history of where we've been.

So I guess my question is, with low interest rates how much worse is it to have gains at death, and am I just assuming that's so much, is it really so much simpler than the other option, and how do you guys weigh the gains at death versus mark-to-market.

MR. SCHLER: Death and gifts.

MALE SPEAKER: And gifts, yeah, sure.

MS. BATCHELDER: I mean I am very pro taxing gains at death and gains at gifts as realization events with some, you know, modest exemptions. So I think that would be a great step, and I think it would also be a great step to then raise capital gains rates, and I'm really curious whether there will be more information on how that changes the revenue maximizing capital gains rates and how much you can raise.

But there are limits to how much you can raise from that. And so I think a lot of the question is, you know, given our fiscal challenges, given some of the investments in low income families that are being discussed, what is the revenue target? And at some point that may not be enough, and then to me an accrual tax and a lot of other options that we aren't discussing today are really worth considering. But, yeah, I think that's a great first step and would certainly not say anything negative about it.

MS. FARR: Same as the estate tax then?

MS. BATCHELDER: No, I wouldn't. So I feel the rationale of the estate tax is maybe three fold. So only the first part, I think, is as a back stop for the income tax because we don't tax gains at death and so. And if you look at very large estates, a huge portion of the value of the estate is unrealized capital gains, way over 40 percent. So I think that's one rationale.

But another rationale is we don't tax the receipt of the large inheritances as income. So if, you know, you inherit $10 million, you don't pay any income tax personally, whereas if you work for $10 million and you actually, you know, report it as salary income, you're going to be paying a lot of tax.

And then I think the last one gets into political power and, you know, concentrated aristocracies over time. But I think repealing stepped up basis only gets at the first. And we still need a wealth transfer tax to deal with the fact that we don't tax inherited income as income, and that there may be, you know, unique problems for society of having generation after generation inherit economic power and political power that doesn't come from their own efforts.

MR. SCHLER: So we would have both an estate tax and a real death tax?

MS. BATCHELDER: A mark of death.

MALE SPEAKER: Well I was just going to follow up on Eric's point here because listening to everything and the difficulties of having either accrual tax or a wealth tax. I mean I, being like Eric, around for a while, it seems to me that if you had a step up, if you eliminated step up in basis on the estate tax, you brought the exemptions back to where they were roughly of 5.5 million per person, then you would be able to increase the capital gains rate without having much of a realization problem to say I'm just, say 29.6 percent, which is the rate, the pass through rate. So if you did those two things plus other things like, you know, the performance fees of hedge funds. I mean wouldn't raise quite as much revenue, but it would raise considerable revenue if you combined step up in basis with a lower exemption. And then you increase the capital gains rate and you went after these other things. Isn't that a much more realistic tax reform proposal that would move you a lot toward the right answer? I mean just think, in the last act bill we couldn't even get the hedge fund taxed at ordinary rates so here we're talking about these huge things. So that's my three-part proposal.

MR. SCHLER: This actually sounds like mainly an assignment for Eric to figure out much exemption we get --

MALE SPEAKER: The question is how much revenue. I think you'd get, if you brought the exemptions back down and you brought the capital gains rate, 29.6, and I'm sure you could think of a house full of cats and dogs that are worthwhile doing. You'd raise some real revenue and you could actually get it through Congress and you wouldn't have to, you know, give all these tax lawyers, you know, like the gift that keeps giving for the next 20 years.

MR. SCHLER: You do carry over basis on death but not trigger the gain on death, is that the idea?

MALE SPEAKER: Oh, no, at death you would pay, you would have no carry over basis.

MR. SCHLER: A death tax?

MALE SPEAKER: Yes.

MR. SCHLER: Oh, so you trigger the gain?

MALE SPEAKER: Yeah, correct. In other words we're going to have one valuation at death, that's it.

MR. SCHLER: No, the estate tax based on value of your assets or triggering gains, or both?

MALE SPEAKER: If you have an estate tax based on value with a lower exemption, and you trigger the gain on death.

MS. FARR: So somebody who has mainly assets that are at a huge gain, then it's in fact like a higher estate tax, right?

MR. ROSENTHAL: That's certainly a viable thought. One last question. All the way in the back there.

MR. MCFARKER: Roy McFarker. Just to return to the fantasy world for a second. If the concern on the non-traded asset side is that you're going to be faced with an enormous bill at the moment of realization with the look back with the interest, why wouldn't you ask people to pay an estimated tax each year based on that? And if they don't have liquidity then they should borrow it because they'd be paying with the interest at the end anyway. So to take away the sting of the final realization.

MS. BATCHELDER: Yeah, I think that's another option really worth considering. A lot of this comes down to politics, so with the exemptions that are being discussed, this regime would potentially apply to only very wealthy people who generally get a lot more ability to borrow than most of us. But liquidity is always, you know, a great talking point. And so I think you could imagine paying estimated taxes, you could imagine then saying well if you don't have enough liquid assets you can defer with interest. You could imagine seeing people can opt in to mark-to-market if they want to with respect to their non-publicly traded assets. And I think a lot of those are things that as the lawmakers start drafting this, are worth considering and worth putting out in the public to get their reaction in terms of how viable it is.

MR. SCHLER: That would also raise questions if you pay your estimated tax then you claim the asset went down in value, are you going to allow a refund to the estimated tax? Because you paid it.

MS. FARR: You are creating the liquidity and the valuation issues that are kind of the reason that you, you know, wouldn't apply a mark-to-market regime to trade in non-traded --

MR. SCHLER: Yeah, you might as well just --

MR. ROSENTHAL: I think it's a great idea. I have not read it before but there's another people thinking about this problem sitting in this audience that maybe they'll think about that further.

I think -- are we out of time now? Okay. So that's it. Thank you. We solved all the problems.

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