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A Guide to the Guide to the Republican *Better Way* Plan

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INTRODUCTION

A GUIDE TO THE GUIDE TO THE REPUBLICAN *BETTER WAY* PLAN

Alex Raskolnikov[†]

This special Issue of the Columbia Journal of Tax Law is bound to have both an immediate impact and a lasting significance. The immediate impact is assured because the sole focus of this Issue is the tax plan proposed by the Congressional Republicans as part of their broad reform agenda called *A Better Way: Our Vision For A Confident America*.¹ As this Issue goes to print, the Better Way Plan (or the Plan for short) is being debated in the White House, on Capitol Hill, in the press, in academic circles, think tanks, the U.S. Chamber of Commerce, and all major law and accounting firms, as well as in many other places. For anyone thinking through the implications of the Plan, this Issue is a must read.

At the same time, the contributions in this Issue will provide a lasting benefit to the tax policy community. Even though the intellectual foundations of the tax system proposed in the Plan were laid decades ago, the core ideas underlying the Plan have never been considered, tested, and scrutinized nearly as rigorously and comprehensively as they are now. Simply put, the level of intellectual capital that is being invested in analyzing the Plan is extraordinary. This Issue combines some of the best applied work on the subject to date. So it will benefit academics, policymakers, and practitioners thinking about the tax systems similar to the one proposed in the Plan for decades to come.

This Issue is a guide to the Plan based on what we know so far, and this Introduction is a guide to the Issue.

Readers familiar with the basics of the Plan and interested in a comprehensive list of questions, concerns, and uncertainties it raises should start with Michael Graetz's *The Known Unknowns of the Business Tax Reforms Proposed in the House Republican Blueprint*. The list of unknowns is long and daunting. Some will not be resolved until after the Plan is put in place, for better or worse. Others will need

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¹ The entire agenda is available at: <http://abetterway.speaker.gov>.

to be addressed in the legislative drafting process. Even for those, it is far from clear how to answer many critical questions. Why should we expect anything different from an attempt to enact a system that does not exist—and has never existed—anywhere in the world?

Readers who would like to get a firmer grasp of the Plan, its intellectual history, its ideal version, and the deviations from that ideal reflected in the actual proposal cannot do better than reading David Weisbach's contribution: *A Guide to the GOP Tax Plan—The Way to a Better Way*. As the title suggests, Professor Weisbach offers solutions to some of the problems created by the Plan. He also highlights the areas where finding solutions will be difficult and time consuming. And he points out several unnecessary, complicating, and intellectually incoherent features in the Plan's current version. One hopes that Professor Weisbach's cogent critique would convince policymakers to abandon these features.

Reuven Avi-Yonah and Kimberly Clausing also investigate the challenges that the Plan's enactment will present, but they focus on the international issues. They argue, convincingly, that the Plan will violate the U.S. obligations under the rules of the World Trade Organization. Professor Graetz expresses a similar view, and Professor Weisbach acknowledges the issue. But if you want to read the relevant clauses and parse them as a WTO lawyer might, you should go to Avi-Yonah's and Clausing's piece. The other international issue that these authors consider is whether the Plan would violate U.S. income tax treaties, and what are the likely consequences if it does.

What if you think that numbers speak louder than words? Then the contribution by the Tax Policy Center experts is for you. Len Burman, Jim Nunns, Ben Page, Jeff Rohaly, and Joe Rosenberg present their estimates of the revenue and distributional effects of the Plan in *An Analysis of the House GOP Tax Plan*. Their analysis includes dynamic scoring estimates generated in collaboration with the Penn Wharton Budget Model. These are not the only estimates available now, and there is little doubt that new estimates will appear in the future. It is worth noting, however, as Martin Sullivan has done in the pages of Tax Notes, that if the past experience is any guide, the official dynamic revenue estimate that may be eventually produced by

the Joint Committee on Taxation is likely to be fairly close to the one offered by the Tax Policy Center.²

Last, but certainly not least, David Miller offers a perspective of a sophisticated tax lawyer. His contribution gives the reader—especially a legislative drafter—a glimpse of what to expect once the tax bar engages with the new rules. The picture is far from rosy. Moreover, the tax planning possibilities that Miller identifies are, no doubt, just a tip of the iceberg. Nor is there any doubt that tax planning around the Plan’s new rules is already underway, even though these rules are only hypothetical at this point. This brings us full circle to Professor Graetz’s main takeaway: enacting a tax system that is literally unprecedented is fraught with risks.

The Plan offers a dramatic reform and raises many difficult questions. This special Issue of the *Columbia Journal of Tax Law* will serve as an invaluable educational tool for those studying the Plan or working to improve it. It will also serve as a guide for those brave enough for forge ahead.

² Martin A. Sullivan, *New TPC Models Challenge the Tax Foundation*, 153 TAX NOTES 7, 10-11 (2016). The Committee for a Responsible Federal Budget shares Sullivan’s view. See Committee for a Responsible Federal Budget, *How Much Does the House GOP Tax Plan Cost?* (Mar. 8, 2017), <http://www.crfb.org/blogs/how-much-does-house-gop-tax-plan-cost> [perma.cc/NW7L-3LY3].