



Tax

Tax News & Views

September 5, 2014

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Big plans – but little time – as Congress returns from August recess

The end of the August congressional recess could launch a flurry of activity on Capitol Hill related to inversion transactions, the extension of expired tax incentives, the estate tax, retirement security, and Internet access taxes. But a highly compressed schedule for the upcoming work period makes it unlikely that House and Senate lawmakers will have time to do the heavy lifting needed to get any significant tax legislation through both chambers and to the president's desk before they adjourn for one final round of campaigning in advance of the November 4 midterm elections.

Both chambers convene on September 8. The House is currently set to be in session for just 12 days (September 8-11, September 16-19, and September 29-October 2.) Senate Majority Leader Harry Reid, D-Nev., has indicated that he hopes that the Senate will wrap up its pre-election work by September 23 and that he may keep the chamber in session on weekends to adhere to that timeline. If the Senate does indeed adjourn by September 23, it is likely the House will follow suit and cancel legislative business the following week.

Inversions

Several prominent Democratic lawmakers intend to resume the debate over corporate inversions and are queuing up proposals aimed at limiting inversion transactions by tightening the so-called earnings-stripping rules. Although some details of these proposals emerged during the recess, it should be noted that nothing has been finalized and elements of the proposals could change by the time they are unveiled. Deloitte Tax LLP will report on any proposals as they are released.

Rep. Levin – House Ways and Means Committee ranking Democrat Sander Levin of Michigan announced on August 1 that he is developing a legislative proposal tentatively titled the Stop Corporate Earnings Stripping Act of 2014. A preliminary draft of the proposal was released last month. According to draft explanatory materials that have been circulated, the proposal is intended to reduce the U.S. tax benefits available to a U.S.-based multinational whose ultimate parent shifts from being a U.S. corporation to a foreign corporation pursuant to an international acquisition (an “expatriated” U.S.-based multinational). However, as contemplated in the preliminary draft, the proposed rules would apply to both expatriated U.S.-based multinationals and historical non-U.S.-based multinationals with U.S. operations. The draft proposes changes to both the subpart F regime and to the earnings-stripping rules of section 163(j). (Additional details on the preliminary draft are available in an International Tax Alert from Deloitte Tax LLP.)

URL: <http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-unitedstates-040814.pdf?id=us:em:na:tnv:eng:tax:090514>

The Stop Corporate Earnings Stripping Act is intended to complement the broad anti-inversion legislation that Levin introduced in May. That earlier proposal, the Stop Corporate Inversions Act of 2014, would retroactively tighten the rules under section 7874 to treat a foreign corporation as a domestic corporation for tax purposes if it meets the standards prescribed under a continuing ownership test *or* a management and control test. Levin's brother, Sen. Carl Levin, D-Mich.,

introduced substantially similar legislation in the Senate. (For details, see Tax News & Views, Vol. 15, No. 20, May 23, 2014.)

URL: http://newsletters.usdbriefs.com/2014/Tax/TNV/140523_2.html

Sen. Schumer – Senate Finance Committee member Charles Schumer, D-N.Y., on August 14 announced plans to unveil his own proposal to limit earnings stripping. Although Schumer has not yet released the text or a detailed description of his proposal, he stated in a news release that the proposal is intended to “serve as a deterrent for those considering an inversion” and “ensure the earliest inverters do not have a competitive advantage over their U.S. counterparts, applying to their future related-party transactions.”

URL: http://newsletters.usdbriefs.com/2014/Tax/TNV/140905_1suppA.pdf

According to Schumer’s release, the legislation will include provisions to: (1) “repeal the debt-to-equity safe harbor so that limitations on the interest expense deduction will apply to all inverters, regardless of their financial leverage”; (2) “reduce the permitted net interest expense to no more than 25 percent (down from 50 percent) of the subsidiary’s adjusted taxable income”; (3) “repeal the interest expense deduction carryforward and excess limitation carryforward so that inverters cannot take advantage of the deduction in future years”; and (4) “require the U.S. subsidiary to obtain IRS preapproval annually on the terms of their related-party transactions for 10 years immediately following an inversion.”

Sen. Wyden – For his part, Senate Finance Committee Chairman Ron Wyden, D-Ore., has stated that he hopes to unveil an anti-inversion proposal in September that will address section 7874 issues and include an earnings-stripping component, which he characterized in an August 14 news release as “a key piece of any sound solution.” Wyden said his staff has been working with staff members for Finance Committee ranking Republican Orrin Hatch of Utah to “put a bipartisan, committee lens to the issue,” though there are no indications at this time that the two lawmakers and their staffs are close to an agreement.

URL: <http://www.finance.senate.gov/newsroom/chairman/release?id=4ed00da0-0be6-4f3d-8619-76bf2981d126>

Among congressional Republicans, Hatch has perhaps been the most outspoken critic of Democratic proposals to curb inversions, which he has described as “punitive, retroactive policies designed to force companies to remain domiciled in the United States.” Although he has maintained that the best way to address the inversion issue would be through comprehensive tax reform, Hatch has indicated in recent weeks that he would be open to a short-term legislative fix under certain conditions. In an August 7 op-ed published in *The Washington Post*, Hatch argued that an interim proposal to address inversions should: (1) serve as a “bridge” to reforming the tax code; (2) move the U.S. “toward a territorial tax system, whereby businesses would be taxed only on what they earn within the United States and should not enhance the bias in favor of foreign takeovers”; and (3) be revenue neutral. Hatch also stated that anti-inversion legislation should *not* take effect retroactively, arguing that a retroactive effective date would “further complicate the goal of comprehensive tax reform and impose additional burdens on U.S. businesses.”

URL: http://www.hatch.senate.gov/public/_cache/files/df74d248-3709-4690-b8e6-4820a9ccc4e6/7.17.2014%20Letter%20to%20Secretary%20Lew.pdf

URL: http://www.washingtonpost.com/opinions/how-to-deal-with-corporate-inversions--without-the-politics/2014/08/07/f552b5cc-1da5-11e4-82f9-2cd6fa8da5c4_story.html?hpid=z3

Hatch’s stance on retroactivity could present an obstacle in his negotiations with Wyden, who has consistently stated that changes to the section 7874 rules should take effect “for all inversions taking place from May 8, 2014, on” (the date Wyden publicly announced his intention to pursue anti-inversion legislation).

No mark-ups scheduled yet – Wyden has so far given no indication that the Finance Committee will mark up inversion legislation in September.

Across the Capitol, no action on inversion legislation is expected in the House Ways and Means Committee. Chairman Dave Camp, R-Mich., has made few public comments on Rep. Levin’s Stop Corporate Inversions Act; however, a July 21 blog post on the Ways and Means Committee Web site argues that “having the highest corporate tax rate in the industrialized world is why we keep seeing companies move overseas” and that “[w]e need to fix a broken tax code that makes American workers and businesses uncompetitive.” The blog post also notes that an Obama administration budget proposal to tighten the section 7874 rules “creates a perverse incentive [for companies] to not just move on paper, but to actually move the headquarters and jobs overseas.”

URL: <http://waysandmeans.house.gov/news/documentsingle.aspx?DocumentID=388591>

Tax extenders

In other developments, House Majority Leader Kevin McCarthy, R-Calif., indicated in a September 4 memorandum to his Republican colleagues that he intends to bring an omnibus jobs bill to the floor in September that, among other things, will combine several discrete measures that have already been approved in the House that would permanently extend enhanced versions of certain expired business tax provisions. According to the memorandum, the omnibus package will include permanent extensions of:

URL: http://newsletters.usdbriefs.com/2014/Tax/TNV/140905_1suppB.pdf

- The research credit (H.R. 4438 – for details, see Tax News & Views, Vol. 15, No. 18, May 9, 2014);
URL: http://newsletters.usdbriefs.com/2014/Tax/TNV/140509_1.html
- Bonus depreciation and the election to accelerate alternative minimum tax credits in lieu of additional first-year bonus depreciation (H.R. 4718 – for details, see Tax News & Views, Vol. 15, No. 26, July 11, 2014);
URL: http://newsletters.usdbriefs.com/2014/Tax/TNV/140711_2.html
- The reduction in the recognition period for S corporation built-in gains tax and the basis adjustment to stock of S corporations making charitable contributions of property (H.R. 4453 – for details, see Tax News & Views, Vol. 15, No. 23, June 13, 2014); and
URL: http://newsletters.usdbriefs.com/2014/Tax/TNV/140613_1.html
- Increased section 179 expensing limits (H.R. 4457 – for details, see Tax News & Views, Vol. 15, No. 23, June 13, 2014).
URL: http://newsletters.usdbriefs.com/2014/Tax/TNV/140613_1.html

No mention of active financing exception, CFC lookthrough – McCarthy's memorandum does not mention plans to hold votes on measures that would permanently extend the subpart F exception for active financing income (H.R. 4429) or the lookthrough for payments between related controlled foreign corporations (CFCs) under the foreign personal holding company rules (H.R. 4464). Both of these bills cleared the Ways and Means Committee in April but have not yet been brought to the House floor.

Additional Ways & Means extenders mark-ups possible – Ways and Means Chairman Camp hinted to reporters shortly before the recess that his panel could mark up additional permanent extenders bills in the coming work period. (No mark-up hearings had been scheduled at press time.)

Senate extenders action unlikely – The Senate has not acted on any of the House-approved extenders bills and is not expected to take up the omnibus jobs package once it is sent over from the House.

Nor is the Senate likely to move the extenders legislation approved by its Finance Committee in April that would retroactively extend for two years most – but not all – of the 55 tax extenders provisions that expired at the end of 2013. (For details on the Finance Committee bill, see Tax News & Views, Vol. 15, No. 15, April 4, 2014.) Although the bill cleared the Finance Committee with bipartisan support, Senate leaders have been unable to bring it to the floor due to a partisan dispute over amendments and the stalemate is unlikely to be resolved in the September work period.

URL: http://newsletters.usdbriefs.com/2014/Tax/TNV/140404_1.html

In remarks at a clean energy conference on September 4, Majority Leader Reid indicated that the Senate would take up expired incentives for alternative energy (and, presumably, the rest of the Finance Committee-approved extenders package) "before the end of the year."

Estate tax

Ways and Means Chairman Camp also indicated before the recess that the House could vote in September on legislation to repeal the estate tax, although he noted that no final decisions had been made. An estate tax repeal bill (H.R. 2429) introduced by Ways and Means Committee member Kevin Brady, R-Texas, has been cosponsored by more than half of all House members and a recent letter to GOP leaders signed by 30 House members calls for a vote on the measure "at the earliest possible opportunity." Estate tax repeal was not mentioned in the legislative agenda outlined in Majority Leader McCarthy's September 4 memorandum.

If estate tax repeal legislation does clear the House in this work period, it is unlikely to be taken up in the Democratic-controlled Senate.

Retirement security

Senate taxwriters intend to examine pension rules and retirement savings incentives in the context of tax reform. In a September 2 statement marking the fortieth anniversary of the signing of the Employment Retirement Income Security Act, Finance Committee Chairman Wyden indicated that his panel will hold a hearing later this month that will focus on retirement security and “examine additional steps to help American workers save.” Further details on the planned hearing were not available at press time.

The comprehensive tax reform legislation Wyden introduced in 2011 with Indiana Republican Sen. Dan Coats calls for consolidating existing retirement savings vehicles into two new accounts – the Retirement Savings Account and the American Dream Account. (For additional details on Wyden’s tax reform plan, see *Tax News & Views*, Vol. 12, No. 16, April 8, 2011.)

URL: http://newsletters.usdbriefs.com/2011/Tax/TNV/110408_6.html

Internet tax moratorium

Senate Majority Leader Reid told reporters on July 31 that lawmakers in his chamber would take up a short-term extension of the Internet Tax Freedom Act (ITFA) during their first two weeks back from the summer recess. The ITFA, which is set to expire November 1, imposes a moratorium on state and local Internet access taxes but provides protections for Internet access taxes that were levied in certain states before October 1998 and grandfathered into the moratorium.

Finance Committee Chairman Wyden urged his colleagues to take up a temporary ITFA extension during a July 31 floor statement. Although he has drafted legislation that would make the moratorium permanent, Wyden indicated that a permanent extension is “not a political reality” and that another temporary extension could serve as a “bridge” to a permanent fix. (The House passed legislation on July 15 that would permanently extend the moratorium on taxes on electronic commerce but allow the grandfathering provisions to expire. For details, see *Tax News & Views*, Vol. 15, No. 27, July 18, 2014. The House-approved measure is expected to be included in the omnibus jobs package that Majority Leader McCarthy intends to bring to the floor this month.)

URL: <http://www.finance.senate.gov/newsroom/chairman/release/?id=86bf938b-5c36-49ec-a0b7-cda199a63b30>

URL: http://newsletters.usdbriefs.com/2014/Tax/TNV/140718_4.html

Wyden also noted in his floor statement that he hopes to keep the debate over the ITFA separate from discussions related to the Marketplace Fairness Act – legislation he opposes – which would make it easier for a state to capture sales and use tax revenue from transactions involving online and other “remote” vendors that do not have an in-state physical presence. Finance Committee member Mike Enzi, R-Wyo., and Senate Majority Whip Richard Durbin, D-Ill., among others, recently introduced legislation that would couple a 10-year extension (through November 1, 2024) of the ITFA with provisions from the Marketplace Fairness Act. But Wyden argued that the Senate “can move [a] short-term extension [of the ITFA]...while we work out the issues raised by those who believe that allowing localities to collect taxes across the country is more important than a ban on discriminatory taxation.”

Lew to speak on business tax reform

Away from Capitol Hill, Treasury Secretary Jacob Lew is scheduled to speak on issues in business tax reform at a September 8 event sponsored by the Tax Policy Center. According to details provided on the Tax Policy Center’s Web site, Lew’s remarks will focus on “the importance of business tax reform to level the playing field and make the United States a more attractive place to invest.” The administration has indicated Secretary Lew will use the speech to discuss the issue of inversions but denied that he would outline specific regulatory steps the administration will undertake to prevent inversions or to reduce the tax benefits available to companies that engage in such transactions.

Look for coverage of this speech and other tax policy developments in next week’s *Tax News & Views*.

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