Deloitte.

Tax

Tax News & Views

June 12, 2015

In this issue:

McConnell rules out comprehensive reform this year as lawmakers float international-only proposals

Echoing the sentiments of other congressional Republican leaders, Senate Majority Leader Mitch McConnell, R-Ky., said June 7 that comprehensive tax reform will not happen this year, but he did not explicitly rule out attempts to enact piecemeal tax reform, such as plans for international-only reform that are beginning to be floated by taxwriters in both chambers.

In a wide-ranging interview with *Morning Consult* that covered more than taxes, McConnell said comprehensive reform would not happen anytime soon because of the Obama administration's stance on individual tax rates.

"The president is not interested in revenue neutrality, and he's not interested in treating all taxpayers the same, so I don't think we'll get there on comprehensive [reform]," he said.

McConnell's comments align him with Senate Finance Committee Chairman Orrin Hatch, R-Utah, and House Ways and Means Chairman Paul Ryan, R-Wis., in declaring that comprehensive reform will have to wait until 2017. The taxwriting committee leaders have been looking at ways to overhaul discrete parts of the tax code, such as a business-only reform plan. Ryan has said that such a plan could be a "down payment" on comprehensive reform; but small-business groups, whose members typically are taxed on the individual side of the code and would not receive the benefit of lower rates in business-only reform, have balked at the idea. (For prior coverage, see *Tax News & Views*, Vol. 16, No. 13, Apr. 17, 2015.)
URL: http://newsletters.usdbriefs.com/2015/Tax/TNV/150417_3.html

Copyright © 2015 Deloitte Development LLC
All rights reserved.
Member of Deloitte Touche Tohmatsu Limited

International only?

But Hill leadership and the White House have been eyeing international tax reform – possibly as a long-term revenue source for the Highway Trust Fund. (For prior coverage, see *Tax News & Views*, Vol. 16, No. 18, May 22, 2015). And in recent days, details of potential international-only proposals have emerged from both sides of the Capitol.
URL: http://newsletters.usdbriefs.com/2015/Tax/TNV/150522_2.html

Finance Committee: Senate Finance Committee member Rob Portman, R-Ohio, who co-chairs the committee's international tax reform working group with Sen. Charles Schumer, D-N.Y., told reporters June 10 that the group would include adoption of a US patent or innovation box and a "hybrid territorial" system for taxing foreign-source income of US multinationals in its recommendations to the committee.

Both senators have previously voiced support for a US innovation box, which, in general terms, would provide a reduced tax rate for income from patents and certain other intellectual property. (Portman did not discuss his proposed innovation box in detail.) Schumer has suggested in the past that a patent box might be the best way to counter concerns that actions taken by other countries under the OECD's Base Erosion and Profit Shifting (BEPS) project would force US multinationals to move operations or research and development activities overseas. (For prior coverage, see *Tax News & Views*, Vol. 16, No. 11, Mar. 20, 2015; also see additional discussion of BEPS issues below.)
URL: http://newsletters.usdbriefs.com/2015/Tax/TNV/150320_1.html

According to Portman, the group will also recommend a deemed repatriation tax (where taxpayers would be required to pay a tax, albeit at a lower rate than current law, on overseas earnings), but he declined to give specifics on details or rates. Recent White House budget plans, as well as last year's tax reform discussion draft from then-Ways and Means Chairman Dave Camp, R-Mich., have called for revenue from repatriation to fund infrastructure spending, such as highways.

Portman also indicated this week that the international group's recommendations will not take the form of draft legislation, but will instead be presented as options for lawmakers to consider.

According to Finance Committee Chairman Hatch, the working groups are now expected to submit their recommendations to committee leadership by June 26. (The original May 31 deadline was extended at the request of working group leaders. For prior coverage, see *Tax News & Views*, Vol. 16, No. 20, June 5, 2015.) Hatch also indicated this week that working group leaders will decide on their own whether they wish to release their recommendations to the public. (He had previously stated that he was considering keeping the working groups' recommendations secret. For prior coverage, see *Tax News & Views*, Vol. 16, No. 16, May 8, 2015.)
URL: http://newsletters.usdbriefs.com/2015/Tax/TNV/150605_1.html
URL: http://newsletters.usdbriefs.com/2015/Tax/TNV/150508_2.html

Ways and Means: In the House, Ways and Means Committee member Charles Boustany, R-La., is working on a proposal of his own that would include an innovation box along with other international tax reforms. Like Portman and Schumer, Boustany has provided few specifics on

Copyright © 2015 Deloitte Development LLC
All rights reserved.
Member of Deloitte Touche Tohmatsu Limited

how an innovation box would operate. In remarks at a tax conference on June 10, Boustany argued that an innovation box would make US businesses more competitive globally; but he also acknowledged that a broadly defined innovation box would be expensive and could complicate efforts to enact other tax reform priorities.

“The question is, you can make it as broad as you want, but it’s costly. …[H]ow do you deal with that?” he said.

Boustany has indicated that he has been working with the staff of the Joint Committee on Taxation (JCT), the Ways and Means Committee, and the Treasury Department in developing his plan. (The JCT staff has not yet released a revenue score for any innovation box proposal.)

BEPS: Hatch, Ryan assert congressional prerogatives

In other developments, as the OECD prepared to convene its annual international tax conference in Washington, Finance Committee Chairman Hatch and Ways and Means Committee Chairman Ryan sent a letter to Treasury Secretary Jack Lew June 9 reminding him to keep Congress informed on the details of the OECD’s BEPS project to ensure that the United States gets a good outcome from the process. (The G20 and the OECD launched the BEPS project in 2012 to address the issue of so-called “double nontaxation.” An action plan released to the public in July 2013 described work to be done to counter BEPS in 15 specific respects. Details on the status of and issues related to various components of the BEPS project are available from Deloitte Tax LLP’s International Tax group.)
URL: http://waysandmeansforms.house.gov/uploadedfiles/hatch_ryan_call_on_treasury_to_engage_congress_on_oecd_international_tax_project.pdf
URL: http://www2.deloitte.com/us/en/pages/tax/articles/base-erosion-and-profit-shifting-beps.html?id=us:em:na:tnv:eng:tax:061215

Hatch and Ryan emphasize in their letter that no matter what Treasury agrees to in the BEPS discussion, taxwriting authority remains with Congress and US tax reform efforts will not be hamstrung by the OECD.

“US tax policy will not be constrained by any concessions to other nations in the BEPS project to which Congress has not agreed,” the letter says.

While the letter praises some of Treasury’s efforts in the BEPS process, it calls into question some of the negotiations surrounding the issue of country-by-country information reporting. Hatch and Ryan say they are troubled by the ability of foreign governments to get companies’ “master files” – which they contend will contain sensitive and nonpublic information – with little assurance of confidentiality or the express need for the information. The committee chairs also question the ability of Treasury and the IRS to implement country-by-country reporting and some other transfer-pricing-related actions from the BEPS project.

“We believe the authority to request, collect, and share this information with foreign governments is questionable. In addition, the benefits to the US government from agreeing to these new reporting requirements are unclear, particularly since the IRS already has access to much of this information to administer US tax laws,” they write.

Copyright © 2015 Deloitte Development LLC
All rights reserved.
Member of Deloitte Touche Tohmatsu Limited

Hatch and Ryan also request that Treasury and the IRS supply the committees with the legal basis for the IRS collecting the information and agreeing to allow foreign governments to directly collect such information from US multinationals.

"In the event we do not receive such information, Congress will consider whether to take action to prevent the collection of the [country-by-country] and master file information," they warn.

They also express concerns about other parts of the BEPS project and suggest that Treasury should refuse to join the final reports if they are antithetical to US interests.

"We want to remind the Treasury Department that it has the ability to refrain from signing on to the BEPS final reports, and we expect you to do just that if doing so protects the interests of the United States and of US persons," they say.

— Jon Almeras
Tax Policy Group
Deloitte Tax LLP

House taxwriters to examine long-term highway funding

House Ways and Means Committee Chairman Paul Ryan, R-Wis., and Senate Finance Committee Chairman Orrin Hatch, R-Utah, announced June 10 that their committees will hold separate hearings to examine options for a long-term revenue source for the Highway Trust Fund. The Ways and Means hearing is scheduled for June 17 at 10:00 a.m. The Finance hearing is set for June 18 at 10:00 a.m.

The latest extension of the trust fund's spending authority – a two-month patch approved in the House and Senate before Congress adjourned for the Memorial Day recess – is set to expire on July 31. (The two-month extension was approved without offsets because the trust fund was projected to have enough revenue to remain solvent until sometime in July.) Although there is broad agreement that a six-year highway bill would be optimal for planning and certainty, a long-term fix would require additional trust fund receipts beyond those projected under current law. (A recent letter from the Congressional Budget Office to Ways and Means ranking Democrat Sander Levin of Michigan indicated that lawmakers would need to find an additional $85-90 billion to pay for a six-year bill.). However, lawmakers have been unable to agree on acceptable sources of funding. Some advocates of a long-term highway bill contend that an increase in the gas tax would provide the most predictable – and directly relevant – revenue stream, but leaders in both the House and Senate have so far rejected that idea.
URL: http://www.cbo.gov/sites/default/files/114th-congress-2015-2016/reports/SanderLevinHTFLetter.pdf

One proposal that may generate discussion at the both hearings involves using revenues from international business tax reform to pay for a large transit bill. In the past, both Ways and Means Chairman Ryan and Finance Chairman Hatch have explicitly rejected calls to pay for highway spending through a *stand-alone* tax on repatriated foreign earnings. More recently, however, Ryan has shown interest in the idea of linking deemed repatriation to other international reforms as part of a long-term highway bill this year. Hatch, for his part, has not

Copyright © 2015 Deloitte Development LLC
All rights reserved.
Member of Deloitte Touche Tohmatsu Limited

explicitly endorsed that possibility but has not dismissed it. (See separate coverage in this edition for additional discussion of international tax reform issues.)

Witnesses at the Finance Committee hearing will include former Transportation Secretary Ray LaHood, Joseph Kile of the Congressional Budget Office, and Stephen Moore of The Heritage Foundation. A witness list for the Ways and Means Committee hearing was not available at press time.

— Michael DeHoff
Tax Policy Group
Deloitte Tax LLP

House approves permanent Internet access tax moratorium

The House of Representatives on June 9 approved by voice vote legislation that would permanently extend the current-law moratorium on state and local Internet access taxes and multiple and discriminatory taxes on electronic commerce. The Permanent Internet Tax Freedom Act (H.R. 235) also would allow for the expiration of protections for certain Internet access taxes that were levied before October 1998 and grandfathered into the moratorium. The grandfathering protections currently apply to taxes imposed by South Dakota, North Dakota, Wisconsin, New Mexico, Hawaii, Texas, and Ohio.

The House approved identical legislation last year.

Senate prospects unclear

A Senate companion bill, the Internet Tax Freedom Forever Act (S. 431), was introduced in that chamber by Finance Committee member John Thune, R-S.D., and ranking Democrat Ron Wyden of Oregon in February. Finance Chairman Orrin Hatch, R-Utah, has so far not announced plans for a mark-up, however.

Wyden introduced legislation to permanently extend the Internet tax moratorium last year when he chaired the Finance Committee. But he never held a committee mark-up and the bill's progress was stymied by lawmakers who sought to link action on Internet access taxes with provisions from the Marketplace Fairness Act of 2014 (MFA) that were intended to make it easier for a state to capture sales and use tax revenue from transactions involving on-line and other "remote" vendors that do not have an in-state physical presence. Finance Committee member Mike Enzi, R-Wyo., for example, introduced competing legislation last year that would have coupled a 10-year extension of the Internet tax moratorium and the grandfather rules with the MFA's remote sales tax provisions. (For prior coverage, see *Tax News & Views*, Vol. 15, No. 34, Nov. 14, 2014.) Although the Internet access tax moratorium generally has broad support in Congress, remote sales tax collection has been a more divisive issue. Rather than creating splits along purely partisan lines, however, on-line sales tax collection generally pits lawmakers from states that impose sales and use taxes against those from states that do not.
URL: http://newsletters.usdbriefs.com/2014/Tax/TNV/141114_1.html

Copyright © 2015 Deloitte Development LLC
All rights reserved.
Member of Deloitte Touche Tohmatsu Limited

Efforts to link the two issues appear likely again this year. Enzi introduced a remote sales tax bill – the Marketplace Fairness Act of 2015 (S. 698) – in March. In the wake of the House's passage of the permanent Internet access tax moratorium, Sen. Heidi Heitkamp, D-N.D., a co-sponsor of Enzi's MFA legislation, issued a statement urging lawmakers to "pass both of these needed bills together to help level the playing field and give small businesses, as well as individuals and families, fixes they deserve." (A similar situation could emerge in the House, although Speaker John Boehner, R-Ohio, blocked attempts by lawmakers in that chamber last year to link the two tax issues.)

Current Internet access tax moratorium set to expire

The Internet access tax moratorium and related grandfathering provisions have been in effect since 1998 and have been extended temporarily a number of times since then – most recently as part of the government funding package approved last December in the closing days of the 113th Congress. They are scheduled to expire on October 1.

— Michael DeHoff
Tax Policy Group
Deloitte Tax LLP

House OKs two Senate-approved trade bills, but modifies tax provisions; larger trade package in limbo

The House of Representatives this week passed two Senate-approved bills related to trade facilitation and enforcement and trade preferences that include assorted taxpayer compliance provisions as well as changes in the timing of estimated corporate tax payments and tweaks to Customs user fees. The House, however, jettisoned the Senate's tax compliance provisions in favor of its own set of compliance offsets.

The chamber also voted to defeat the trade adjustment assistance title – and related tax provisions – in a larger trade package that includes Trade Promotion Authority that cleared the Senate last month.

Trade facilitation and enforcement

House-passed legislation to extend certain trade facilitation and trade enforcement activities (H.R. 644, approved June 12) includes a provision that would increase the dollar-threshold for the penalty for failure to file tax returns within 60 days of their due date. The penalty under current law is the lesser of $135 (indexed for inflation) or the amount required to be shown on the return; the penalty under the House-passed bill would be the lesser of $205 (indexed) or the amount required to be shown on the return. The Joint Committee on Taxation (JCT) estimated the provision would increase federal revenues by $202 million over 10 years.
URL: https://www.jct.gov/publications.html?func=startdown&id=4789

The House bill, however, does not include a provision in the version approved by the Senate last month that would deny new passports to – or revoke existing passports held by – certain

Copyright © 2015 Deloitte Development LLC
All rights reserved.
Member of Deloitte Touche Tohmatsu Limited

delinquent taxpayers. (The JCT estimated the Senate provision would result in a 10-year revenue gain of $398 million.)
URL: https://www.jct.gov/publications.html?func=startdown&id=4783

Trade preferences

The House-passed version of legislation that would extend certain trade preferences (H.R. 1295, approved on June 11) includes a provision that would require taxpayers to submit a payee statement in order to claim the American Opportunity Tax Credit, the Hope Scholarship Credit, the Lifetime Learning Credit, and the deduction for tuition expenses (JCT estimated 10-year revenue gain: $576 million). A special rule would waive the penalty that applies to an educational institution that fails to file information returns with accurate taxpayer identification numbers (TINs) of students attending the educational institution if the institution certifies, under penalty of perjury, that it properly requested TINs from students as required under Treasury regulations.
URL: https://www.jct.gov/publications.html?func=startdown&id=4788

The House bill also would increase penalties under the current-law tiered penalty structure that applies to taxpayers who fail to file correct information returns (e.g., IRS Form 1099) with the IRS as well as the separate, but parallel, penalties that apply to taxpayers who fail to provide a payee with a correct copy of the information return filed with the IRS. The penalty tiers are based on the duration of the delinquency, the size of the taxpayer, and the taxpayer's intent (JCT estimated 10-year revenue gain: $136 million).
URL: https://www.jct.gov/publications.html?func=startdown&id=4788

The House compliance provisions replace a provision from the Senate-passed bill that calls for requiring banks to send a Form 1099 to all interest recipients, including those with interest income below the current safe-harbor amount of $10 per year, which the JCT estimated would increase federal revenues by $90 million over 10 years. (They also replace certain cost savings from Medicare spending cuts that were included in the Senate bill but dropped from the House version.)
URL: https://www.jct.gov/publications.html?func=startdown&id=4782

The House bill retains a Senate-approved provision that would change the timing of estimated tax payments for large corporations (increasing them by 5.25 percent in the third quarter of 2020, with offsetting deceases in the following quarter so that the provision is revenue neutral over 10 years).

Trade adjustment assistance, promotion authority, tax provisions in limbo

Most of the attention in this week's trade debate, however, was focused on a larger bill (H.R. 1314) that would extend trade adjustment assistance and provide for trade promotion authority. (The measure cleared the Senate on May 22.) The House elected to hold separate votes on the two elements of the bill on June 12, and the results effectively leave the measure in limbo.

The trade adjustment assistance package, which includes tax provisions that would renew the Health Coverage Tax Credit, deny the refundable portion of the child tax credit for taxpayers

Copyright © 2015 Deloitte Development LLC
All rights reserved.
Member of Deloitte Touche Tohmatsu Limited

who elect to exclude foreign income from tax, adjust the timing of estimated tax payments for large corporations, and extend certain Customs user fee increases, was overwhelmingly defeated by a vote of 126-302.

Democrats, who generally support trade adjustment assistance, voted against this title in hopes that its defeat would make it difficult to pass the second title, related to trade promotion authority. But even though the trade adjustment assistance package was defeated, the House narrowly approved trade promotion authority by a vote of 219-211.

Next steps

The House-approved versions of H.R. 644 and H.R. 1295 head back to the Senate for reconsideration. It was unclear at press time what actions the Senate will take to resolve differences over taxpayer compliance provisions.

H.R. 1314 faces an uncertain future. Under the terms for debate on the combined bill, H.R. 1314 was not considered to have passed the House unless each title was separately approved. However, following the votes, Speaker John Boehner, R-Ohio, moved to reconsider the vote on the trade adjustment assistance package and related tax provisions. As a result, the House could vote on that piece again as soon as the week of June 15.

It is unclear whether Democrats, having failed to leverage the defeat of trade adjustment assistance (which they generally support) into a defeat of trade promotion authority (which they generally oppose) will switch their votes once trade adjustment assistance is brought back to the House floor. Supporters of the combined package, including President Obama, are hoping House Democrats change their position on adjustment assistance to prevent the possibility of Congress finding a way to leave it behind while enacting trade promotion authority.

— Michael DeHoff
Tax Policy Group
Deloitte Tax LLP

Have a question?
If you have needs specifically related to this newsletter's content, send us an email at clientsandmarketsdeloittetax@deloitte.com to have a Deloitte Tax professional contact you.

About Deloitte
Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee, and its network of member firms, each of which is a legally separate and independent entity. Please see www.deloitte.com/about for a detailed description of the legal structure of Deloitte Touche Tohmatsu Limited and its member firms. Please see www.deloitte.com/about for a detailed description of the legal structure of Deloitte LLP and its subsidiaries. Certain services may not be available to attest clients under the rules and regulations of public accounting.

Disclaimer
This publication contains general information only, and none of Deloitte Touche Tohmatsu Limited, its member firms, or its and their affiliates are, by means of this publication, rendering accounting, business, financial, investment, legal, tax, or other professional advice or services. This publication is not a substitute for such professional advice or services, nor should it be used as a basis for any decision or action that may affect your finances or your business. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser. None of Deloitte Touche Tohmatsu Limited, its member firms, or its and their respective affiliates shall be responsible for any loss whatsoever sustained by any person who relies on this publication.

Copyright © 2015 Deloitte Development LLC
All rights reserved.
Member of Deloitte Touche Tohmatsu Limited