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In this issue:

New Highway Trust Fund revenue estimate presents possible speed bump for international tax reform

A recent estimate by the US Department of Transportation (DOT) predicting the Highway Trust Fund will remain solvent until next summer may complicate congressional efforts this fall to leverage international tax reform to help finance a multi-year highway spending bill.
URL: https://www.transportation.gov/highway-trust-fund-ticker

Conflicting assumptions

In late July, before departing Capitol Hill for its annual summer recess, Congress passed and President Obama signed into law the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 – legislation that narrowly averted a lapse in federal highway funding on August 1 by extending the Highway Trust Fund's spending authority for about three months, through October 29, 2015, and paying for the extension with a mix of tax compliance offsets and other provisions. (For prior coverage, see *Tax News & Views*, Vol. 16, No. 27, July 31, 2015.)
URL: http://newsletters.usdbriefs.com/2015/Tax/TNV/150731_2.html

Original projection – Trust fund remains solvent through December: Although that legislation – which passed after a lengthy public disagreement between House and Senate Republicans over strategy – extended highway spending authority until late October, it actually transferred enough money, about $8 billion, from the government's general fund to keep the Highway Trust Fund solvent for a longer period. At the time, based on a broadly similar bill that passed the House earlier in July, observers believed the three-month patch included enough budget offsets to keep the trust fund afloat until sometime in December of this year. (For coverage of the earlier House bill, see *Tax News & Views*, Vol. 16, No. 24, July 17, 2015.)
URL: http://newsletters.usdbriefs.com/2015/Tax/TNV/150717_1.html

This timing was seen as conducive to the ongoing efforts by House Ways and Means Committee Chairman Paul Ryan, R-Wis., to package together a set of international tax reforms – likely to include a transition toward a territorial system for the taxation of US firms' foreign-source earnings, a so-called "innovation box" offering a lower tax rate on certain income from patents and other intellectual property, a mandatory or "deemed" repatriation levy on previously untaxed foreign-source income, and as-yet unspecified measures to protect the US tax base. (Ryan and others in Congress and at the White House have eyed the one-time revenue from deemed repatriation as a possible bipartisan offset for a long-term transportation bill.)

New DOT estimate – Trust fund stays afloat into 2016: The new revenue projection for the Highway Trust Fund, which was posted to the DOT's Web site late last month but first received press coverage on September 8, notes that the Surface Transportation and Veterans Health Care Choice Improvement Act will keep the fund solvent through June of 2016 – a considerably longer period than previously envisioned.

Why the discrepancy?: The discrepancy between the two projections appears to be due to the fact that although the trust fund's balance is projected to temporarily dip late this year below $4 billion (the level at which the DOT may begin implementing cash management practices that can result in delayed payments to states and which historically has driven Congress to act), the marked slowdown in highway spending that typically occurs during the winter months, coupled with steady gas tax receipts, will prevent the trust fund from consistently falling below that level until later in 2016 and will help keep it from running dry until as late as July of next year.

Highway spending authority still expires October 29

The new DOT estimate does *not* relieve lawmakers from having to extend highway spending authority beyond its scheduled expiration after October 29. But it does imply that such authority could be extended several months into 2016 without having to offset its cost – a path of least resistance that Congress may find attractive as it faces numerous difficult policy and political choices in the coming months.

Potential impact on international tax reform

Chairman Ryan has been clear that he intends to focus his efforts this fall on advancing an international tax reform package as a solution to the twin dilemmas of an outdated international tax system and a chronically cash-strapped Highway Trust Fund. But without a hard-and-fast December deadline to compel congressional action on highways, Ryan and other proponents of the strategy may face additional challenges making their case and may in fact be forced to try to complete action on such a broader package by the end of October, when the current highway spending authorization expires.

Lawmakers who oppose Ryan's approach – possibly including Senate Majority Leader Mitch McConnell, R-Ky., who has been openly skeptical that bipartisan agreement on international tax reform could be reached this year and has been working to pass long-term highway legislation using predominantly nontax budget offsets – may cite the recent DOT estimate as a reason to put off consideration of highway funding legislation until next year by arguing there would be no dire consequences associated with delaying action until then, and that finding consensus on international tax reform in the middle of an election year would be even more difficult than it would be this fall.

In remarks to *Politico* on September 10, Ryan acknowledged that the path forward in Congress for a combined highway/international tax reform package currently is "unclear."

"We're getting comments – we put our innovation box bill out there, and we're getting a lot of good feedback from people on that. And we're trying to see if we can put together a package of reforms to keep jobs here, get some economic growth, and see if we can be a part of the solution to the Highway Trust Fund," he said.

But Ryan argued that, even if the Highway Trust Fund will not be exhausted in December, it will again be below the $4 billion "cushion" and running on fumes by the spring of 2016 – therefore making the issue no less urgent than it was before.

"[E]xhaustion [of the trust fund] is not what we plan on. We're planning on the slowdown," Ryan said, adding that "[t]he deadline for us is October 29."

Boustany planning changes to innovation box

In other developments this week, House Ways and Means Committee member Charles Boustany, R-La., told reporters September 10 that he is in the process of making changes to the draft innovation box proposal that he released in July with fellow House taxwriter Richard Neal, D-Mass. The revisions will incorporate comments from stakeholders that Boustany and Neal received over the August recess. Boustany did not provide specifics on the planned revisions and did not indicate when an updated proposal would be unveiled, however.

The Boustany-Neal draft proposal, as released, generally would provide corporations an effective tax rate of roughly 10 percent on certain income generated from patents and a broad range of other intellectual property. (For a detailed discussion, see *Tax News & Views*, Vol. 16, No. 27, July 31, 2015.)
URL: http://newsletters.usdbriefs.com/2015/Tax/TNV/150731_1.html

Although a formal revenue score has not yet been released, Boustany also told reporters that the Joint Committee on Taxation staff has estimated that the current version of the innovation box proposal would reduce federal receipts by $280 billion over 10 years. That estimate would be subject to change as the proposal is revised. It also could change when the proposal is paired with other elements of an international tax reform package.

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