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In this issue:

International tax reform-highway package hits pothole

Prospects for action this month on international tax reform legislation that includes revenue to help pay for a long-term reauthorization of the cash-strapped Highway Trust Fund appear to have dimmed, an aide to House Ways and Means Committee Chairman Paul Ryan, R-Wis., said October 2. (The aide's comments were first reported in *Politico*.)

Ryan has been developing a plan that would overhaul US international tax rules – including an innovation box that would provide corporations a preferential tax rate for certain intellectual property – and use certain one-time revenues from deemed repatriation to pay for highway spending. He has been working with Senate Finance Committee members Charles Schumer, D-N.Y., and Rob Portman, R-Ohio, in an effort to craft his proposal in a way that could win support on the other side of the Capitol. Portman and Schumer co-chaired the Finance Committee's working group on international tax reform, which released a report in July that endorses, in general terms, an innovation box as part of a broad plan that would shift toward a territorial system for taxing the foreign-source income of US multinationals. The report, which does not include legislative language, also gives a nod toward investing in highways with revenue raised through the deemed repatriation of previously untaxed foreign income of US firms. (For prior coverage, see *Tax News & Views*, Vol. 16, No. 23, July 10, 2015.)
URL: http://www.finance.senate.gov/download/?id=E1FA3F08-B00C-4AA8-BFC9-7901BD68A30D
URL: http://newsletters.usdbriefs.com/2015/Tax/TNV/150710_1.html

The sticking point: Highway funding levels

But talks between Ryvan and Schumer apparently broke down this week after they were unable to agree on the level of highway funding to be included in the package. Most multi-year highway reauthorization plans advanced or supported by Republicans have not called for spending above what is projected in the Congressional Budget Office's current-law baseline (current spending adjusted for inflation in later years). Democrats generally would prefer levels similar to those included in President Obama's recent budget proposals, which endorse using revenue from international tax reform to pay for infrastructure spending at levels considerably above the baseline. These differences could have a profound impact on the required deemed repatriation rate that would be needed to finance each vision.

Schumer had stated in a recent interview that he would reject a deal with Ryan that was not "really robust on the highway side."

With the most recent extension of spending authority for the Highway Trust Fund set to expire on October 29, Ryan had hoped to finalize an agreement with Schumer and Portman this month. But in light of the stalemate with Schumer, Ryan's aide explained that the Ways and Means chairman "has encouraged [House Transportation and Infrastructure Committee] Chairman [Bill] Shuster to move forward with a highway bill that does not assume a contribution from international tax reform."

The aide also noted, however, that Ryan and Schumer "will continue their discussions on a parallel track with the hope of reaching agreement on an international tax reform and long-term transportation package." (A Schumer aide offered a similar assessment to *Politico*.)

Broader Senate support still uncertain

Even before talks between Ryan and Schumer stalled this week, it remained unclear whether a House-developed plan to tackle international tax reform and infrastructure spending simultaneously could gain wide support in the Senate, particularly among Republican leaders.

Finance Committee Chairman Orrin Hatch, R-Utah, has suggested that trying to complete an international tax reform-highway spending package in October was too ambitious a goal. Hatch recently told Bloomberg BNA that "Paul, Chuck, and Sen. Portman are trying very hard to come up with [a deal]. But that's a pretty complex thing. I don't know if you can do it in this time frame. Frankly, I don't want to do a bad deal."

Hatch told reporters on September 30 that if Schumer and Portman do not reach a deal with Ryan, he would support the Senate-approved Developing a Reliable and Innovative Vision for the Economy (DRIVE) Act, which would extend highway programs for six years, while financing about three years of the shortfall between trust fund spending and dedicated revenues – or roughly $50 billion – with taxpayer compliance provisions and an assortment of budget offsets ranging from selling oil in the Strategic Petroleum Reserve to reducing the dividend rate paid by the Federal Reserve on stock held by certain member banks. (For details on the Senate plan, see *Tax News & Views*, Vol. 16, No. 25, July 24, 2015.)
URL: http://newsletters.usdbriefs.com/2015/Tax/TNV/150724_1.html

For his part, Senate Majority Leader Mitch McConnell, R-Ky., would prefer to get highway funding off the congressional calendar at least until after the November 2016 elections and has stated in the past that he believes international tax reform and infrastructure spending bills should move on separate tracks.

McCarthy on board

Despite the rocky path forward, support for a combined international tax reform-highway package remains strong in the House, even with the coming change in leadership. House Majority Leader Kevin McCarthy, R-Calif., the presumed front-runner in the race to succeed current Speaker John Boehner, R-Ohio, when Boehner leaves Congress at the end of this month, recently identified Ryan's plan as one of his top legislative priorities. (See related coverage in this issue for additional details on the upcoming House leadership election.)

In a September 29 interview on *Mornings With Maria* on the Fox Business Channel, McCarthy characterized Ryan's plan as an "opportunity...to get territorial tax reform, for repatriation, to stop the inversions that are happening in America today."

— Michael DeHoff
Tax Policy Group
Deloitte Tax LLP

Congress OKs stop-gap government funding measure, averts shutdown threat

After a summer buildup of fears that the federal government could be forced to shut down if lawmakers did not reach a funding agreement by the start of FY 2016 on October 1, Congress this week approved and sent to President Obama a continuing resolution (CR) that will keep the government running through December 11. The short-term bill (H.R. 712), which in the end passed both chambers with minimal drama on September 30 and was signed by the president, maintains current funding levels while Congress negotiates further on longer-term spending thresholds. While averting a crisis this week, however, the deal is largely viewed as pushing the threat of a potential government shutdown into mid-December.

In recent months, the shutdown threat was fueled by numerous factors. At the macro level, congressional Democrats and the president have advocated for higher caps on nondefense discretionary spending, while Republicans have sought to maintain the caps on domestic spending mandated by the Budget Control Act of 2011, also known as sequestration (though some in the GOP have also pushed for higher spending for defense programs). Adding to the brinksmanship was the demand by a bloc of conservative Republicans to eliminate federal funding for Planned Parenthood and their threat to force a vote on removing Speaker John Boehner, R-Ohio, from his leadership position if he advanced a spending bill that did not include a rider defunding the organization. Late last week, as these tensions mounted, Boehner abruptly announced his resignation, effective October 30, clearing the path for passing the "clean" CR (that is, without the Planned Parenthood rider) with minimal Republican support. (For prior coverage, see *Tax News & Views*, Vol. 16, No. 32, Sep. 25, 2015.)
URL: http://newsletters.usdbriefs.com/2015/Tax/TNV/150925_1.html

The CR was approved in the Senate by a vote of 78-20 and cleared the House shortly thereafter by a vote of 277-151. The vote count in the House was telling: just 91 Republicans voted in favor of the funding bill, while 151 voted against it. (All of the 186 House Democrats who voted were in the 'aye' column.)

More fiscal fights ahead

The somewhat tortured path to passing the CR points to a similarly precarious position for the incoming House Republican leadership team, which is likely to be headed by current Majority Leader Kevin McCarthy, R-Calif. (The House Republican Conference will hold leadership elections on October 8. See related coverage in this issue for details.) Between now and December 11, GOP leaders will have to attempt negotiations on a budget agreement for the remainder of the fiscal year, but it is not clear that the political dynamics will be any different in two-and-a half months.

Adding to the already fraught fiscal debate ahead this fall is the necessity to address the federal debt limit. The statutory debt limit was technically reached on March 16, and since that time the Treasury Department has been utilizing so-called "extraordinary measures" to finance government operations. But in an October 1 letter to Speaker Boehner, Treasury Secretary Jack Lew stated that "Treasury is likely to exhaust its extraordinary measures on or about Thursday, November 5." In remarks at an event sponsored by the Financial Services Roundtable on October 2, Lew urged Congress to act on the debt ceiling before the deadline.
URL: http://www.treasury.gov/connect/blog/Pages/Treasury-Sends-October-Debt-Limit-Letter-to-Congress.aspx

Some of these potential fiscal difficulties could be minimized if congressional leaders and the president are able to negotiate a longer-term budget agreement before Boehner leaves Congress. Boehner and Senate Majority Leader Mitch McConnell, R-Ky., reportedly have made initial overtures to the administration on a two-year budget deal; however, it is currently unclear how much progress, if any, they have been able to make or whether the outgoing speaker can generate support for any such agreement among his soon-to-be former colleagues.

Internet tax moratorium, FAA excise taxes extended

In addition to keeping the federal government open, the just-passed CR includes an extension of the Internet Tax Freedom Act (ITFA), which was set to expire on September 30 and will now remain in effect through December 11. The ITFA, first passed in 1998, generally prohibits state and local taxes on Internet access service. (A handful of states are permitted to impose such a tax under a grandfathering provision.)

The House and Senate also approved and sent to the president this week a six-month extension of authorization and funding for the Federal Aviation Administration (FAA), which also was set to expire on September 30. The bill (H.R. 3614) extends through March 2016 the agency's authority to draw from the Airport and Airway Trust Fund and spend money on the Airport Improvement Program. It allows the FAA to continue collecting the passenger, cargo, and fuel excise taxes that provide the bulk of the revenue for the trust fund. Congress' transportation committees hope to use the extension period to finalize a longer-term authorization bill.

— Storme Sixeas
Tax Policy Group
Deloitte Tax LLP

House taxwriters advance repeal of medical device, 'Cadillac' taxes under budget fast-track process

As part of a broader effort designed to dismantle one of President Obama's signature legislative achievements, the House Ways and Means Committee on September 29 approved a bill pursuant to the so-called "budget reconciliation" process that would repeal several provisions – including two controversial excise taxes – enacted in the Patient Protection and Affordable Care Act of 2010 (PPACA).

Details

The two taxes that would be repealed by the legislation include the:

- 2.3 percent excise tax imposed on the sale of certain medical devices, which became effective for sales of such devices after December 31, 2012, and the
- 40 percent excise tax imposed on certain high cost employer-sponsored health coverage (known as the "Cadillac" tax), which is scheduled to take effect in 2018, as well as the current requirement that employers annually report the cost of each employee's employer-sponsored health coverage on their Form W-2.

The bill – which the Ways and Means Committee approved on a straight party-line vote with no support from Democrats – also would repeal the 2010 health care law's insurance coverage requirements under the individual and employer mandates.

Technical descriptions of the current-law excise taxes and other provisions targeted by the legislation are available in a background document prepared by the nonpartisan Joint Committee on Taxation (JCT).
URL: https://www.jct.gov/publications.html?func=startdown&id=4835

The medical device and Cadillac taxes have come under fire from both Republicans and Democrats alike in both chambers; however, Democrats generally have conditioned their support for repealing the provisions upon identifying offsetting revenue. (In the Senate, for example, Finance Committee members Charles Schumer, D-N.Y., and Bernie Sanders, I-Vt., recently introduced legislation that would repeal the Cadillac tax and replace the resulting revenue loss with unspecified offsets.) Finding offsets, however, poses a steep challenge given estimates from the JCT that repealing the Medical device and Cadillac taxes would reduce federal revenues by $23.9 billion and $91.1 billion, respectively, over the next 10 years.
URL: https://www.jct.gov/publications.html?func=startdown&id=4838

The Ways and Means bill, it should be noted, is offset by the provisions that would repeal the individual and employer mandates. As a result, the JCT estimates that, on net, the legislation would increase federal receipts by $44.2 billion over 10 years. Committee Democrats objected to those provisions, however, arguing that they would, in essence, gut the existing law.

On a fast-track to nowhere?

Ways and Means Republicans moved the legislation pursuant to the budget reconciliation instructions that were included in the fiscal year 2016 budget resolution adopted by Congress earlier this year. Specifically, the budget resolution requires three House panels (the Ways and Means Committee, the Energy and Commerce Committee, and the Committee on Education and the Workforce) and two Senate committees (the Finance Committee and the Health, Education, Labor, and Pensions Committee) – all of which have jurisdiction over the policies included in the PPACA – to report legislation that on net reduces the deficit by $1 billion over 10 years. (For prior coverage, see *Tax News & Views*, Vol. 16, No. 16, May 8, 2015.)
URL: http://newsletters.usdbriefs.com/2015/Tax/TNV/150508_1.html

Although the reconciliation process applies in both the House and the Senate, it is of particular importance in the Senate as it allows for passage of certain legislation in that chamber by a simple majority vote, as opposed to the 60 votes normally required to clear procedural hurdles – a useful tool for Senate Republicans, who currently hold 54 seats.

The Ways and Means-approved legislation now travels to the House Budget Committee where it will be packaged together with other reconciliation bills reported this week by the Energy and Commerce Committee and the Education and the Workforce Committee. At press time, consideration of the combined package by the full House had not been scheduled.

In a statement released after the mark-up, Ways and Means Committee Chairman Paul Ryan, R-Wis., alluded to bypassing a Democrat-led filibuster in the Senate.

“This bill is a big step toward dismantling Obamacare. Through reconciliation, we have the opportunity to get a repeal bill not only through the House – but actually to the president’s desk,” Ryan noted. (The House has approved several bills in recent years that would repeal the PPACA in its entirety or in discrete pieces, but those measures never advanced in the Senate. Then-Majority Leader Harry Reid, D-Nev., never brought those bills to the Senate floor when Democrats controlled the chamber, and Democrats were able to use procedural means to block those bills once Republicans gained the majority in the 114th Congress.)

If the eventual House reconciliation package clears the Senate and heads to the White House, it is certain to be vetoed by President Obama, however – a point noted by Ways and Means ranking Democrat Sander Levin of Michigan at the committee mark-up.

“Today’s mark-up is not a serious exercise in legislating. Everyone knows the president won’t sign this reconciliation bill,” Levin said.

Oversight Subcommittee to examine higher education costs and tax policy

In other developments, Ways and Means Oversight Subcommittee Chairman Peter Roskam, R-Ill., announced this week that his panel will hold a hearing on October 7 to explore the link between rising higher education costs and tax policy. According to published reports, the hearing will examine the tax-exempt status of colleges and universities, their endowment practices, and issues related to executive compensation.

A witness list for the hearing was not available at press time.

— Alex Brosseau
Tax Policy Group
Deloitte Tax LLP

House leadership elections set for October 8

The House Republican Conference this week scheduled a leadership election for October 8 to nominate a candidate to succeed Rep. John Boehner, R-Ohio, as speaker. Boehner announced last week that he intends to step down as speaker and resign his seat in Congress at the end of this month.

Because the speaker is chosen by the entire House – Republicans and Democrats alike – whoever the Republican Conference selects as its nominee would then have to secure an absolute majority of the chamber's 435 members to be officially elected to the post.

Current House Majority Leader Kevin McCarthy of California is generally regarded as the front-runner in the race to succeed Boehner. If Republicans tap McCarthy as their nominee at the October 8 meeting, they will also elect a new majority leader – and fill an additional vacancy if McCarthy's replacement is chosen from within the existing leadership roster. (Candidates for a leadership post other than speaker are selected based on a majority vote of the Republican Conference.)

— Michael DeHoff
Tax Policy Group
Deloitte Tax LLP

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