In this issue:

Brady talks tax reform as lawmakers return for lame duck

As lawmakers returned to Capitol Hill for a post-election lame duck session, House Ways and Means Committee Chairman Kevin Brady, R-Texas, this week laid out his vision of the path forward for tax reform in 2017 under a unified Republican government; but his comments – plus those of an economic advisor to President-elect Donald Trump – point to some potential differences between House Republicans and the incoming Trump administration that may need to be ironed out in the coming weeks and months.

(For a detailed look at President-elect Trump's tax proposals and those of congressional Republicans, plus a discussion of the likelihood of action on tax reform next year, see *Tax policy decisions ahead: Impact of the 2016 elections* from Deloitte Tax LLP.)
URL: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-trump-tax-policy-decisions-ahead.pdf

Building on the blueprint

Brady stated at an event sponsored by Bloomberg-BNA on November 15 that the House intends to move legislation in 2017 that is based on the GOP tax reform "blueprint" that he and Speaker Paul Ryan, R-Wis., released on June 24.

The blueprint, which Ways and Means Committee staff have been turning into legislative language, generally calls for cutting tax rates for corporations, passthrough businesses, and individuals; adopting a territorial system for taxing foreign-source income of US multinationals; and moving the US toward a border-adjustable cash flow tax system

without adopting an explicit consumption levy such as a national sales tax or value-added tax. (For prior coverage, see *Tax News & Views*, Vol. 17, No. 23, June 24, 2016.) The blueprint envisions tax reform that is revenue neutral when measured under a "dynamic" scoring model that takes into account certain macroeconomic feedback effects of the plan on the economy and in turn on federal revenue levels.
URL: http://newsletters.usdbriefs.com/2016/Tax/TNV/160624_1.html

Brady said that legislative language around the blueprint's international provisions – including the proposed border-adjustable cash flow tax – may be released as a discussion draft, although he did not indicate when that might happen.

Timing for a Ways and Means Committee mark-up and House floor action on the larger package likewise remains uncertain and will "be determined by discussions we are having with the Trump team," he said.

Deemed repatriation: Offsetting lower rates or infrastructure spending?

The blueprint's international component includes a one-time deemed repatriation of deferred active foreign-source income of US multinationals with differential rates for cash (8.75 percent) and noncash assets (3.5 percent), which could be paid ratably over eight years at the taxpayer's election. (The proposal is substantially similar to one included in the tax reform legislation that then-Ways and Means Committee Chairman Dave Camp, R-Mich., introduced in 2014.)

Brady indicated that the one-time revenue generated from deemed repatriation should be used to offset the cost of reducing the corporate tax rate to 20 percent and the passthrough business rate to 25 percent, and to "redesign the [tax] code so we can create more Main Street jobs."

That stance marks a departure from proposals put forward in recent years by Republicans and Democrats alike who have sought to pair revenue from deemed repatriation with new spending on infrastructure. Such a proposal was included in President Obama's business tax reform blueprint (released in 2012 and updated earlier this year), as well as in Dave Camp's 2014 comprehensive tax reform legislation. In the summer of 2015, Paul Ryan, who at the time was chairman of the House Ways and Means Committee, attempted to negotiate a deemed-repatriation-for-highway-spending agreement with Senate Finance Committee member Charles Schumer, D-N.Y., although those efforts ultimately collapsed, largely due to partisan disagreements over how much money to funnel into the spending component.

Brady's position also potentially puts him at odds with the White House when the Trump administration takes office in 2017. President-elect Trump's tax reform plan currently calls for a one-time deemed repatriation of accumulated deferred foreign income at a 10 percent tax rate, as well as an investment of up to $1 trillion in infrastructure, although it does not explicitly link the two proposals.

However, the Heritage Foundation's Stephen Moore, who serves as an economic advisor to the Trump campaign, reportedly suggested at a November 15 meeting with House Republicans that they should consider such an approach as "a potential way" to gain Democratic support for tax reform.

Brady acknowledged at the Bloomberg-BNA event that "when done right, infrastructure spending can generate economic growth," but he otherwise offered no specific comment on Moore's proposal.

"I have not seen the details of the package being developed by the Trump administration – I think it's under construction as we speak right now and so we'll have that discussion," he said.

Moore, for his part, told reporters November 15 that the idea of plowing revenue from deemed repatriation into new spending on infrastructure is "something that's been considered" by the Trump team but is not a formal policy position.

One bill or two?

Potential procedural differences between House Republicans and the Trump team also emerged over the course of the week. The House GOP blueprint envisions a comprehensive rewrite of the tax code – that is, individual and business tax reform would be tackled simultaneously.

But in remarks during a panel discussion at a November 16 tax policy forum sponsored by *Politico*, Moore stated that lawmakers should consider tackling tax reform in two stages, addressing the business tax rules immediately as an "anti-recession insurance policy" and saving individual tax reform for later. Moore argued that a business-only bill could get through Congress quickly and would be likely to gain some Democratic support – especially if it included an infrastructure spending component. He also contended that individual reform could be "incredibly thorny" and could take up to two years to accomplish.

Panelist Cathy Koch, a former advisor on tax and economic policy to outgoing Senate Minority Leader Harry Reid, D-Nev., cautioned that pursuing corporate tax reform without addressing the individual side of the tax code would risk alienating voters.

"It's politically very dangerous to do corporate reform and leave the voters who got you there standing by. It has always been a problem for both parties," she said.

As of press time, Brady had not commented publicly on Moore's suggestion.

Is reconciliation an option?

House Speaker Ryan indicated in the run-up to the election that in the case of a Republican administration, he would look to use the budget reconciliation process to move targeted tax changes – a tactic that would allow Republicans in the 115th Congress to pass certain legislation in the Senate with only 51 votes and without having to worry about winning Democratic cooperation. (Republicans currently are set to control 51 seats in the incoming 115th Congress and their margin increases to 52 seats if Republican John Kennedy defeats Democrat Foster Campbell in the December 10 runoff election for the Louisiana Senate seat being vacated by Republican David Vitter. But they would still be well short of the 60-vote margin needed to avoid a Democratic filibuster of tax reform and other controversial legislation next year.)

Budget reconciliation is the same process that Democrats invoked in 2010 – when they lacked a filibuster-proof Senate majority – to pass the Patient Protection and Affordable Care Act (PPACA) and that Republicans used in 2001 and 2003 to pass the Bush-era tax cuts. (Republicans are also considering using reconciliation to repeal the PPACA next year.)

Moore stated at the *Politico* forum that, in his view, "it's really important for Donald Trump to [move tax reform] in a bipartisan way." Looking back on the Obama administration's experience with passing the PPACA under reconciliation, Moore observed that "doing everything with just one-party support was a big, big mistake – it doesn't have any durability."

Ways and Means Chairman Brady, speaking at a separate tax policy event in Washington the same day, indicated that he would prefer to take a bipartisan approach to tax reform but that he is ready to invoke the reconciliation process if he cannot win cooperation from Democrats.

But Brady offered a more fulsome embrace of bipartisanship in remarks at a Tax Foundation event on November 17.

"We are going to ask for and seek [Democratic] input, and listen to these ideas as they go forward. Because at the end of the day, I think tax reform is more durable and long-lasting and pro-growth if we can find common ground between Republicans and Democrats," Brady said.

Senate Finance Committee ranking Democrat Ron Wyden of Oregon, who spoke at the same event, likewise endorsed a bipartisan approach to tax reform.

"Bipartisanship is not about taking each other's bad ideas, it's about taking good ideas. You have to recognize the deep sense of awareness in this country of how unfair the American tax code is to the typical person," he said.

— Michael DeHoff
Tax Policy Group
Deloitte Tax LLP

House GOP to pursue short-term spending agreement; prospects dim for lame duck extenders package

House Republicans will pursue a short-term spending bill to fund the government at current levels through the end of March 2017, Speaker Paul Ryan, R-Wis., announced November 17. Ryan's announcement came following a closed-door meeting between congressional Republicans and Vice President-elect Mike Pence.

The current funding agreement is scheduled to expire on December 9.

Ryan had previously said he would discuss with President-elect Donald Trump's transition team whether they preferred for Congress to clear the decks on a fiscal year 2017 spending bill during the post-election lame duck session or instead opt for a continuing resolution that would delay negotiations on a larger spending agreement until after the Trump administration takes office.

Delaying action on a larger spending bill until March would give the Trump administration an opportunity to put its imprint on the budget for the remainder of fiscal year 2017 and avert a lame duck fight over spending levels between congressional Republicans and the outgoing Obama administration.

House Appropriations Committee Chairman Hal Rogers, R-Ky., said his staff would begin working on the bill immediately. But not all Republicans were enthusiastic about the idea – particularly in the Senate, where some lawmakers noted that negotiating a budget at the beginning of the new administration will slow down the process of confirming Trump's cabinet picks and other appointees.

"It will be a very busy first six months and if you have to stop and finish last year's business in the middle of that, it's challenging," said Senate Finance Committee Republican John Thune of South Dakota.

Senate Majority Leader Mitch McConnell, R-Ky., was noncommittal on the issue in comments to reporters, but Majority Whip John Cornyn, R-Texas, appeared to suggest to reporters that the Senate may follow the House's lead.

"It's still being discussed, but it's sounding like it's more likely to be a short-term [continuing resolution]," Cornyn said.

Impact on extenders

Government funding legislation is generally regarded as the one "must pass" item of the lame duck session, and the decision to pursue a short-term bill – coupled with the GOP's reluctance to engage in negotiations with the Obama administration – suggests that lawmakers could keep the legislative calendar brief and close out the 114th Congress early next month. Such a timetable would further diminish the already shrinking prospects for year-end action on tax extenders legislation.

Congressional Democrats and some Republicans – mostly in the Senate – have been pushing for the renewal of several alternative energy provisions set to expire at the end of this year – including the investment tax credits under section 48 for combined heat and power property, fuel cell property, small wind property, and geothermal property. They contend that these provisions were supposed to be included in last year's extenders agreement – the Protecting Americans Against Tax Hikes (PATH) Act – but were inadvertently left out because of a drafting error.

But House Ways and Means Committee Chairman Kevin Brady, R-Texas, has consistently stated that the PATH Act, which made many expiring provisions permanent and renewed others for two years or longer, was intended to be the last large catch-all extenders package to move through Congress and that any provisions not included in that legislation were left out deliberately and would need to be taken up individually in freestanding bills or as part of a comprehensive tax reform effort in 2017.

Brady reiterated to reporters on November 15 that he is not interested in "revisiting the [extenders] circus" during the lame duck session. Senate Finance Committee Chairman Orrin Hatch, R-Utah, indicated the next day that Republican leaders on his side of the Capitol were likewise disinclined to take up an extenders package.

"I don't think [Majority Leader McConnell] is very excited about having tax extenders, and I'm not either," he said.

A list of the temporary tax provisions scheduled to expire between 2016 and 2021 is available from Deloitte Tax LLP.
URL: http://newsletters.usdbriefs.com/2016/Tax/TNV/161118_2suppA.pdf

Other legislative items

Depending on how long the lame duck session is expected to last, lawmakers conceivably could take action on noncontroversial tax legislation in the remaining days of the 114th Congress. House Ways and Means Committee Chief Tax Counsel Barbara Angus and Senate Finance Committee Majority Chief Tax Council Mark Prater suggested at a tax policy forum sponsored by Bloomberg-BNA on November 15 that action on technical corrections legislation was possible.

Prater also noted that the Senate could vote on two pension-related bills approved by the Finance Committee in September – one aimed at expanding access to retirement account savings and simplifying plan administration for small businesses and multiemployer plans, and the other aimed at protecting the funding of health and pension benefits for retirees covered by plans sponsored by the United Mine Workers of America. (For prior coverage, see *Tax News & Views*, Vol. 17, No. 30, Sep. 23, 2016.)
URL: http://newsletters.usdbriefs.com/2016/Tax/TNV/160923_3.html

In addition, Prater said that work on Finance Committee Chairman Hatch's discussion draft of a corporate integration proposal is nearly complete and that the draft could be released during the lame duck session. The draft is expected to propose lowering the corporate tax rate by combining a dividends paid deduction with a withholding tax on dividend and interest payments. Hatch has argued that his incremental proposal would offer a meaningful improvement to the tax code and would be compatible with potential broader reform further down the road.

The decision on whether or not to make the draft public once it has been finalized will be up to Hatch, Prater said.

Leadership elections

In other lame duck developments, House Republicans on November 15 nominated Paul Ryan to remain as speaker by unanimous voice vote, but he will not officially clinch the top spot until he is confirmed by a vote of the entire House in January. (The speaker is formally elected by the full House of Representatives. After winning nomination by the majority party, the candidate must then win a majority of the full House – 218 votes – to take the gavel.)

Senate leadership elections also took place this week, with Mitch McConnell retaining his position as majority leader. As expected, Democrats chose Sen. Charles Schumer of New York to take over as minority leader in the 115th Congress to replace retiring Sen. Harry Reid of Nevada.

House Democrats postponed their leadership elections until November 30, after lawmakers return from their week-long Thanksgiving recess; but most expect House Minority Leader Nancy Pelosi, D-Calif., to survive a challenge from Rep. Tim Ryan, D-Ohio. (Ryan officially announced his plan to run for House Democratic leader on November 17.)

— Jacob Puhl
Tax Policy Group
Deloitte Tax LLP