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Trump's tax agenda reflected in Treasury, HHS cabinet picks

Two major components of President-elect Donald Trump's policy agenda – reforming the tax code and repealing the Patient Protection and Affordable Care Act (PPACA) – began to take shape this week as he announced that he would nominate Steve Mnuchin to become his Treasury Secretary and House Ways and Means Committee Republican Tom Price of Georgia to head the Department of Health and Human Services.

Both nominations will be subject to confirmation by the Senate next year.

Mnuchin: Tax reform the 'number one priority'

Mnuchin, whose nomination was announced November 30, has had a long career in the financial sector but most recently was the finance chair of Trump's presidential campaign. He reportedly has played a role in shaping Trump's tax reform platform, encouraging him to raise his proposed top individual income tax rate to 33 percent (from the 25 percent top rate Trump had originally proposed in 2015).

In an interview with CNBC shortly after his nomination was announced, Mnuchin called tax reform his "number one priority," adding that it is "something that happens absolutely within the first 90 days of this presidency."

Corporate reform: Promoting what he called the "the largest tax change since Reagan," Mnuchin emphasized the importance of corporate rate cuts to promote growth. Trump's current plan would reduce the corporate rate to 15 percent (from 35 percent), which Mnuchin and other advisors to Trump say will encourage US multinationals to repatriate accumulated offshore earnings and bring jobs back from overseas.

When pressed on whether he thought the corporate rate could actually be brought as low as 15 percent, Mnuchin stated that the cost of the rate cuts would be offset by the resulting economic growth.

"By cutting corporate taxes, we'll create huge economic growth and we'll have huge personal income, so the revenues will be offset on the other side," he explained.

Individual reform: Sticking with the populist tone of Trump's campaign, Mnuchin told CNBC that the president-elect's tax reform plan for individuals was geared to the middle class. He also argued that there was "no absolute tax cut" for the upper class, because any tax rate reduction would be matched with reductions in credits and deductions those taxpayers generally take. (For its part, the nonpartisan Tax Policy Center recently estimated that under Trump's plan, the lowest-income households would see an average tax cut of $110 per year, for a 0.8 percent increase in after-tax income, and middle-income taxpayers would receive an average tax cut of $1,010, amounting to a 1.8 percent increase in after-tax income. Taxpayers in the top 1 percent, on the other hand, would receive an estimated average tax cut of nearly $214,690, for a 13.5 percent increase in after-tax income, the Tax Policy Center said.)
URL: http://www.taxpolicycenter.org/sites/default/files/alfresco/publication-pdfs/2000924-an-analysis-of-donald-trumps-revised-tax-plan.pdf

Mnuchin also dismissed claims by some groups that Trump's proposals to eliminate personal exemptions and head-of-household filing status could result in a tax increase for some single-parent households.

"We don't believe in that analysis. When we work with Congress and go through this it will be very clear that this is a middle-income tax cut," Mnuchin said.

Dynamic scoring: Mnuchin told CNBC that Trump's administration would rely on dynamic scoring to measure the revenue impact of its tax reform proposals. (Dynamic scoring takes into account certain macroeconomic feedback effects of the plan on the economy and in turn on federal revenue levels.)

"[Y]ou have to have dynamic scoring – it would make no sense otherwise – and we're going to work with Congress, and I think they understand that," he said.

The House adopted rules in 2015 that require the Joint Committee on Taxation staff and the Congressional Budget Office to use dynamic scoring for major fiscal legislation. (For prior coverage, see *Tax News & Views*, Vol. 16, No. 1, Jan. 9, 2015.)
URL: http://newsletters.usdbriefs.com/2015/Tax/TNV/150109_1.html

The Tax Policy Center estimates that based on the details currently available, Trump's tax plan, when scored dynamically, would reduce federal receipts by between $5.97 trillion and $6.03 trillion over 10 years. (The Center analyzed the plan using two dynamic models). The Tax Foundation, another nonpartisan think tank, estimates the 10-year revenue loss under Trump's plan would range from $2.64 trillion to $3.93 trillion when macroeconomic feedback is factored in. (The variation is based on differing assumptions about how Trump's proposal to tax business passthrough income would operate.)
URL: http://taxfoundation.org/article/details-and-analysis-donald-trump-tax-reform-plan-september-2016

Once the Trump administration releases its tax reform plan as a detailed legislative proposal, the Joint Committee on Taxation staff will develop an official revenue estimate.

A mixed reception from lawmakers: On Capitol Hill, House Ways and Means Committee Chairman Kevin Brady, R-Texas, praised Mnuchin's private-sector experience and stated that he is looking forward to working with him.

"With a long history in the private sector, he understands what policies work for businesses – small and large – to create jobs, increase families' paychecks, and grow our economy," Brady said.

Senate Finance Committee ranking Democrat Ron Wyden of Oregon offered a more guarded assessment.

“The Treasury secretary has the power to help reconnect working Americans with this country’s economic engine, whether it’s through tax reforms that fight unfairness, rules that rein in Wall Street abuses, or infrastructure and trade policies that create jobs in the US. Any Treasury nominee will find partners among Democrats eager to pursue those policies. I hope to learn much more about Mr. Mnuchin’s views as his nomination gets a full and thorough review from the Finance Committee in the coming weeks,” Wyden said in a news release.

Brady looks ahead: Ways and Means Chairman Brady, who will be one of the prime movers of tax reform on Capitol Hill in 2017, offered additional thoughts this week on how congressional Republicans would work with the Trump administration – and with congressional Democrats – next year.

Speaking at the Heritage Foundation on December 1, Brady stated that any differences between President-elect Trump’s tax reform proposals and those in the House GOP tax reform blueprint (released this past June) will be the subject of discussions between the White House and Congress and are “more than manageable.” Some of the more notable disparities center on where to set the corporate tax rate – Trump proposes a 15 percent rate while the blueprint calls for a rate of 20 percent – and how to deploy revenue from deemed repatriation – Trump’s economic team backs using it to invest in infrastructure, while Brady would prefer to plow that revenue into offsetting the cost of a corporate rate reduction. (For a more detailed comparison of the Trump plan and the House GOP blueprint, see *Tax policy decisions ahead: Implications of the 2016 elections* from Deloitte Tax LLP.)
URL: http://newsletters.usdbriefs.com/2016/Tax/TNV/161202_2suppA.pdf

Brady also stated that Republicans would “offer a wide-open opportunity for…Democrats to bring their best ideas forward and engage on tax reform,” although he acknowledged that the GOP remains willing to move tax reform under reconciliation protections if a bipartisan agreement proves to be elusive. (Reconciliation would allow Republicans, who will lack a filibuster-proof majority of 60 votes in the Senate in the 115th Congress, to move certain legislation through that chamber with only 51 votes and without having to worry about winning Democratic cooperation. This is the same process that Democrats invoked in 2010 – when they lacked a 60-vote Senate majority – to pass the Patient Protection and Affordable Care Act and that Republicans used in 2001 and 2003 to pass the Bush-era tax cuts.)

Price: Affordable Care Act critic

If Trump’s selection of Mnuchin to serve as Treasury secretary was intended to send a message that he is serious about tax reform, his decision to pick House GOP taxwriter Tom Price to head the Department of Health and Human Services can be seen as a clear signal that he intends to fulfill his promise to dismantle the Patient Protection and Affordable Care Act.

Price, who was an orthopedic surgeon before being elected to Congress in 2004, has been an outspoken critic of the PPACA and was one of the chief architects of the health care reform blueprint that House Republicans released on June 22 as part of their “Better Way” policy agenda. The blueprint generally proposes to repeal President Obama’s health care legislation and its related taxes on businesses and individuals, including the individual and employer mandates, the 0.9 percent Medicare Hospital Insurance Tax and the 3.8 percent net investment income tax imposed on certain upper-income taxpayers, the so-called “Cadillac” excise tax on certain high-cost employer-provided insurance plans, the 2.3 percent excise tax on medical device manufacturers and importers, the excise tax on drug manufacturers and importers, and the increased floor (10 percent of adjusted gross income) for claiming the medical expense deduction.
URL: http://abetterway.speaker.gov/_assets/pdf/ABetterWay-HealthCare-PolicyPaper.pdf

To replace the PPACA, the blueprint calls for a series of reforms intended to reduce the cost of coverage and allow individuals to carry coverage with them while they move from job to job, while also preserving the current system of employer-provided health insurance. On the tax side, these proposed reforms include credits to encourage individuals to purchase health insurance, a cap on the exclusion for employer-provided health care, and expanded access to tax-preferred health savings accounts.

The blueprint in a number of ways reflects elements of the Empowering Patients First Act (H.R. 2300), a PPACA replacement bill that Price introduced in 2015.

Republican congressional leaders have indicated that they could move PPACA repeal legislation under reconciliation early next year.

— Jacob Puhl
Tax Policy Group
Deloitte Tax LLP

Prospects for lame-duck extenders action remain poor, GOP leaders say

With the House and Senate set to close out the 114th Congress as early as December 9, some prominent Capitol Hill Republicans indicated this week that leaders do not appear inclined to address a few dozen expiring tax provisions as part of a year-end continuing resolution to fund government operations.

Senate Finance Committee Chairman Orrin Hatch, R-Utah, told reporters November 29 that, in his view, GOP leaders "want to start anew and see what they can do after the start of the year." Hatch also noted that the final decision on whether to pursue an extenders bill in the Senate rests with Majority Leader Mitch McConnell of Kentucky.

Across the Capitol, House Majority Leader Kevin McCarthy, R-Calif., likewise offered a poor prognosis for action on extenders.

"I don't see anything happening to them," he told reporters.

Senate Dems pursue alternative energy provisions

For his part, Senate Minority Whip Richard Durbin, D-Ill., indicated that Democrats in his chamber would continue to push 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 – which they contend were inadvertently left out of last year's extenders agreement because of a drafting error.

"We're trying to get that…energy package included in the [continuing resolution] – I think it's the only path to doing anything before the end of the year. I was told yesterday that Sen. McConnell approached Speaker Ryan, [although] whether he's doing anything, I don't know," Durbin told reporters.

House Republican leaders – most notably, Ways and Means Committee Chairman Kevin Brady, R-Texas – have consistently stated that last year's Protecting Americans Against Tax Hikes 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.

A four-month funding resolution?

Congress is set to move a continuing resolution – the one "must pass" bill of the lame duck session – to prevent the government from shutting down after the current funding agreement expires on December 9. House Republican leaders indicated earlier this month that the measure likely would extend government funding at its current levels through March of 2017 in an effort to avert a lame duck fight over spending levels with the outgoing Obama administration and give the incoming Trump administration an opportunity to put its imprint on the budget for the remainder of fiscal year 2017. (For prior coverage, see *Tax News & Views*, Vol. 17, No. 33, Nov. 18, 2016.)
URL: http://newsletters.usdbriefs.com/2016/Tax/TNV/161118_2.html

Congressional Republicans this week indicated that they now intend to pursue a four-month resolution (running through April). The move apparently is intended to address concerns among certain GOP lawmakers in the Senate that negotiating a fiscal year 2017 budget at the beginning of Donald Trump's presidency would slow down the process of confirming his cabinet picks and other appointees.

According to press reports, language of the funding measure could be released on December 5.

— Michael DeHoff
Tax Policy Group
Deloitte Tax LLP

Levin to relinquish Democratic top spot on Ways and Means; Neal tapped as successor

Rep. Sander Levin of Michigan announced November 29 that he will not seek another term as the Democratic leader on the House Ways and Means Committee, although he intends to remain on the taxwriting panel and focus on his legislative priorities of tax reform, health care, and trade. The House Democratic Steering Committee has tapped taxwriter Richard Neal of Massachusetts as Levin's successor, according to a December 2 report in *Politico*.

'All hands on deck'

In a letter to his Democratic colleagues, Levin argued that the 2016 election results created an "all hands on deck moment" that would require the caucus to be "united in their efforts to stop President Trump and Speaker Ryan as they seek to take this country in a very different direction and turn back the clock on the progress we have made and hope to continue making." To that end, he said, "it is imperative that we support younger members as they seek to fully assume the mantle of leadership in the four years ahead, as we also continue to tap the experience of those who have led so many of these battles."

The (brief) race to replace

Levin's announcement prompted Neal and Ways and Means Democrat Xavier Becerra of California to announce their candidacy for the leadership post. But California Gov. Jerry Brown (D) upended that burgeoning contest when he announced on December 1 that he was nominating Becerra to serve as California's attorney general. (Becerra will replace current California Attorney General Kamala Harris, who was elected on November 8 to fill the Senate seat being vacated by Democratic Sen. Barbara Boxer, who did not seek re-election this year.)

According to the *Politico* report, the Democratic Steering Committee also nominated Ways and Means Democrat John Lewis of Georgia, who has seniority over Neal on the panel, to serve as ranking member; but Lewis withdrew his nomination and endorsed Neal.

Neal's nomination is subject to confirmation by a majority of the House Democratic caucus.

Membership vacancies

In addition to the upcoming change in Democratic leadership on the Ways and Means Committee, several revisions to the panel's membership roster in the incoming 115th Congress are also in the works.

On the Republican side, confirmed vacancies include the committee slots currently held by Charles Boustany of Louisiana (who mounted an unsuccessful Senate bid), Todd Young of Indiana (who was elected to the Senate), and Bob Dold of Illinois (who lost his re-election bid).

An additional GOP vacancy will be created if Tom Price of Georgia is confirmed by the Senate to serve as secretary of Health and Human Services in the incoming Trump administration. (President-elect Trump nominated Price to the cabinet post on November 29. See separate coverage in this issue for details.)

Democrats who will not be returning to the panel next year – besides Becerra – include Charles Rangel of New York and Jim McDermott of Washington, both of whom are retiring at the end of the 114th Congress.

Just how – or whether – these vacancies will be filled will be determined in the coming days as House leaders set party ratios for committees in the chamber.

Pelosi holds on to House Dem leadership post

In House organizational developments, meanwhile, the chamber's Democratic caucus voted 134-63 on November 30 to retain Rep. Nancy Pelosi of California as minority leader in the 115th Congress. Pelosi beat back a challenge from Rep. Tim Ryan of Ohio.

— Michael DeHoff
Tax Policy Group
Deloitte Tax LLP

IRS extends deadline for providing Affordable Care Act information reporting statements to individuals

The Internal Revenue Service on November 18 issued Notice 2016-70 which extends the due date – from January 31, 2017, until March 2, 2017 – for insurers, self-insuring employers, and certain other providers of minimum essential health insurance coverage under Internal Revenue Code section 6055 and for applicable large employers under section 6056 to furnish the Form 1095-B and 1095-C to individuals for the 2016 tax year. (Sections 6055 and 6056 were added to the code as part of the Patient Protection and Affordable Care Act of 2010.)
URL: https://www.irs.gov/pub/irs-drop/n-16-70.pdf

The deadline for filing this form with the IRS will still be March 31, 2017, for those filing electronically, and February 28, 2017, for non-electronic filers. The IRS indicated in the notice that it recognizes how challenging it remains for employers to gather the data required to complete the Forms 1095-C.

The reason for furnishing the Form 1095-C to individuals is so they can provide the information required by the IRS to establish compliance with the Affordable Care Act's Individual Shared Responsibility rules, or to support their claims for a premium tax credit if they purchased coverage through a public health insurance exchange. The same form is filed with the IRS so the agency can determine what, if any, tax assessment applies to each month of the year. The granting of an extension by the IRS is perhaps an indication that employers may be having difficulty capturing, analyzing, and performing the calculations necessary to also determine their exposure for the Employer Shared Responsibility Payment for any of the prior 12 months.

Despite 2016 being the second year in which reporting was required, several challenges may remain for employers to be in compliance. Many employers have expressed concern over obtaining accurate data to ensure proper code reporting in the amount of time provided by the original IRS deadline.

Employers should try to meet the original January 31, 2017, deadline as employees will be requesting the forms in order to prepare their own tax returns, and the employers need the information to calculate their 2016 Employer Shared Responsibility Payment. Deferring the preparation of the forms just means another month of not knowing what liabilities may exist. If employers have been struggling to gather and analyze the relevant data on a monthly basis during 2016, it may be time for them to address the processes they have in place. After all, employers need to understand their 2016 liability long before they have to distribute the 2016 forms but should also start 2017 tracking of their coverage threshold on a month-by-month basis.

— Jerry Karlin
Global Employer Services
Deloitte Tax LLP