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Brady doubles down on border-adjustment tax; White House promises tax reform 'outline'

House Ways and Means Committee Chairman Kevin Brady, R-Texas, this week reiterated his position that a destination-based cash flow tax (DBCFT) is a "critical component" of the House Republican tax reform blueprint and that "it is staying" in the tax reform legislation that GOP leaders expect to move through the chamber this year.

Meanwhile, the Trump administration announced plans to release a comprehensive tax reform "outline" in the near future but offered few details on what it would include.

Border-adjustment tax

The DBCFT provides for "border adjustments" through an as-yet unspecified mechanism that would serve to eliminate US tax on products, services, and intangibles exported abroad (regardless of their production location) and impose US tax on products, services, and intangibles imported into the US (also regardless of production location). The proposal has been unofficially estimated to raise $1.2 trillion in revenue over 10 years to help offset the cost of lower tax rates on business income.

Brady contended in an interview on Bloomberg Television February 6 that the DBCFT would make American businesses more competitive globally by "eliminat[ing]" tax advantages of foreign products in the US; moreover, he said, the border-adjustment tax would largely put a stop to corporate inversion transactions by "eliminat[ing] any tax incentives to move US jobs, research, or headquarters overseas."

Transition relief, yes; Carve-outs, no: The proposal has won support from export-heavy sectors as well as from businesses who think the change is a reasonable price to pay to facilitate rate-reducing tax reform; but it has come under increasing scrutiny from retailers, oil refiners, and other industry sectors that are import-dependent.

Brady said that as House taxwriters fine-tune the proposal, they have been have been listening to concerns from stakeholders in the business community and would attempt to ease the transition from the current set of rules to a new one.

"We don't expect businesses to change their business model overnight, which is why we've invited them to engage in the design of this provision, its mechanics, …and the transition [rules] because we know doing that will allay a number of those concerns," he said.

But Brady cautioned that while some design changes are possible, the fundamental contours of the proposal would remain unaltered.

"If any industry is asking Congress to keep in place the tax advantage of foreign products over made-in-America products, that is not going to work. And if they're going to ask to keep in place incentives to move jobs overseas, that won't succeed, either," he said.

Brady stated that he is "not anticipating any exceptions or carve-outs" for specific industries, but added that "the more I listen to the valid concerns [of business stakeholders]…the more positive I am that we can design this in a positive, pro-growth way."

Pushback from lawmakers: Brady acknowledged that some lawmakers – particularly in the Senate – have not yet embraced the notion of a border-adjustment tax. Senate Finance Committee Chairman Orrin Hatch, R-Utah, for example, recently stated that "at least a handful of senators" have expressed reservations about the proposal and that he has questions of his own regarding who would ultimately bear the tax, whether it would be consistent with US trade obligations, and whether adjustments would be necessary to avoid undue burden on particular industries. Senate taxwriter – and Majority Whip – John Cornyn, R-Texas, recently told reporters that he has asked Hatch to convene a Finance Committee hearing on the proposal. (For prior coverage, see *Tax News & Views*, Vol. 18, No. 5, Feb. 3, 2017.)
URL: http://newsletters.usdbriefs.com/2017/Tax/TNV/170203_1.html

But Brady noted that the DBCFT is a relatively new concept for lawmakers and suggested that many of their concerns can be addressed as they become more familiar with the proposal.

"As we go through discussions and they learn our competitors are already doing this, that America is an outlier and, frankly, getting beaten because of it, we see support for this growing."

WTO compliance: Since the release of the GOP's tax reform blueprint, a question that has arisen among some commentators is whether the DBCFT would be considered an impermissible export subsidy under World Trade Organization rules.

Brady, who has likened that DBCFT to the value-added taxes imposed by most major US trading partners, has sought to tamp down those concerns in recent weeks. In remarks at an international tax forum at Georgetown University February 3, Brady dismissed talk of a possible trade war over a border-adjustable tax as "silly."

"What are they going to say? 'Stop copying us'?" he asked.

Ways and Means Tax Policy Subcommittee Chairman Peter Roskam, R-Ill., echoed that sentiment in response to a question he received following a speech at the Heritage Foundation on February 6.

Framing the question as "a threshold fairness issue," Roskam stated that "[w]e are moving toward the consumption tax; we are mirroring essentially what the rest of the world is doing; and we are essentially saying we are asserting a right to be treated in the same fashion as the rest of the world is. And we think that we have that right and we think when it all comes down to it, we will be exonerated on that."

Buchanan stresses rate parity for passthroughs, C-corps: Turning to other elements of the GOP blueprint, Ways and Means Committee member Vern Buchanan, R-Fla., this week stressed the need for tax reform to help small businesses organized as passthroughs in addition to traditional C corporations.

The blueprint calls for a tax rate of 20 percent for corporations and 25 percent for passthroughs. (The differential is likely intended to address the fact that passthrough income is taxed only once while corporate income is taxed twice – once at the entity level and then again when it is distributed to shareholders.) But in a speech at the Bipartisan Policy Center on February 8, Buchanan argued that the 20 percent rate should apply to all businesses regardless of their form.

Buchanan noted that many small business owners are taxed on income earned even if they reinvest that money in the business, leading to distortions between corporations and passthroughs.

"We shouldn't have Exxon paying less in taxes than a small business person," he said.

When asked if the reduced rates for passthroughs would or should extend to larger businesses like private equity funds or real estate investment trusts, Buchanan said the Ways and Means Committee has not yet reached consensus on that issue.

Buchanan also expressed reservations about a proposal in the blueprint to repeal the deduction for net interest expenses. While acknowledging that the provision was likely needed to pay for a proposal to allow full expensing of business purchases, he argued that many small businesses need to borrow money to grow and suggested that he would be open to making the interest and expensing provisions more flexible.

Buchanan reiterated he is confident that tax reform would pass "in one form or another." He also expressed his preference for a bipartisan bill – an approach that he contended would lead to lasting reform while legislation moved under budget reconciliation protection, which can be passed in the Senate with only 51 votes rather than the 60-vote majority normally required under regular order, might more closely resemble the Bush tax cuts by being temporary. (That is a possible, but not certain, outcome of a tax reform plan considered under the rules of budget reconciliation.)

Timeline unclear: Exactly when a completed tax reform bill will be unveiled, moved through the Ways and Means Committee, and brought to the House floor remains unclear. During the congressional Republican planning retreat in Philadelphia last month, House Speaker Paul Ryan, R-Wis., laid out a 200-day plan for top-priority initiatives, culminating with passage of tax reform legislation before Congress breaks for its annual August recess. (For prior coverage, see *Tax News & Views*, Vol. 18, No. 4, Jan. 27, 2017.)
URL: http://newsletters.usdbriefs.com/2017/Tax/TNV/170127_1.html

Ways and Means Chairman Brady stated in his Bloomberg Television interview this week that the House is "pointed toward tax reform in 2017" and that draft legislation could be released "in the first half of this year."

During a question-and-answer session following his remarks at the Heritage Foundation, Tax Policy Subcommittee Chairman Roskam did not address the timing issue directly, stating only that taxwriters are still in the process of thinking through specific issues as they work to turn the blueprint into legislative language.

For his part, Rep. Buchanan called an August delivery "optimistic" based on where things currently stand and said that moving tax reform legislation becomes more difficult the longer it sits waiting.

White House tax reform 'outline'

Also this week, White House Press Secretary Sean Spicer told reporters at a February 9 press briefing that the Trump administration plans within "the next few weeks" to release "the outline of a comprehensive tax plan" that would be fleshed out in conjunction with Congress.

Spicer's announcement follows published reports from earlier in the day stating that President Trump told a group of airline executives during a White House meeting that the administration would be unveiling "something over the next two or three weeks that will be phenomenal in terms of tax."

Spicer would not comment on the whether the outline would hew more closely to the House GOP tax reform blueprint or to the tax proposals that then-candidate Donald Trump laid out while on the campaign trail, nor did he comment on the level of detail expected to be included in the document. He did, however, emphasize that the outline would be aimed at providing tax relief for the middle class as well as creating "a tax climate that not only keeps jobs here but [also] incentivizes companies to want to come here, to grow here, to create jobs here, [and] to bring their profits back here." (For details on Trump's campaign platform and how it compares to the House GOP blueprint, see *Tax policy decisions ahead: Impact of the 2016 elections* from Deloitte Tax LLP.)
URL: https://www2.deloitte.com/us/en/pages/tax/articles/tax-policy-impact-of-the-2016-elections.html?id=us:2em:3na:tnv:awa:tax:021017

Spicer also suggested that tax reform could move through Congress under fast-track reconciliation protections that are expected to be included in a budget resolution for fiscal year 2018.

— Michael DeHoff and Jacob Puhl
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Chu joins Ways and Means Committee

The House Democratic Steering and Policy Committee this week selected Rep. Judy Chu of California to serve on the Ways and Means Committee. She replaces former Democratic taxwriter Xavier Becerra of California, who resigned from Congress last month to become that state's attorney general.

Chu, who was first elected to Congress in 2009, is the ranking member on the House Small Business Subcommittee on Economic Growth, Tax, and Capital Access. Before coming to Congress, she served on California's elected tax board, the State Board of Equalization.

Price confirmation creates new GOP vacancy

Chu's appointment completes the Democratic roster on the taxwriting panel. Republicans, however, face a vacancy on their side of the aisle now that the Senate has confirmed taxwriter Tom Price of Georgia to head up the Department of Health and Human Services in the Trump administration. (See related coverage in this issue.)

— Michael DeHoff
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Cabinet confirmation update: Price nomination clears Senate

The Senate on February 10 confirmed Georgia Republican Rep. Tom Price as President Trump's new secretary for Health and Human Services. The vote tally – 52-47 – broke strictly along party lines.

As head of the Health and Human Services Department, Price will be responsible for implementing legislation to repeal and replace the Patient Protection and Affordable Care Act that is expected to move through Congress and be enacted into law this year.

Price, who was an orthopedic surgeon before his election to Congress, sat on the House Ways and Means Committee and until recently was chairman of the House Budget Committee. (For additional details on his background, see *Tax News & Views*, Vol. 17, No. 34, Dec. 2, 2016.)
URL: http://newsletters.usdbriefs.com/2016/Tax/TNV/161202_1.html

Mnuchin up next: The Senate is currently debating Steven Mnuchin's nomination to serve as Treasury secretary. His final confirmation vote is expected to take place on February 13.

— Michael DeHoff
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For the one-thousandth time…

This week marks a milestone for Deloitte Tax LLP and the Tax Policy Group as we publish the one-thousandth issue of *Tax News & Views*.

Issue number 1, which dates back to the spring of 2000, looked dueling tax and spending blueprints being put forward by a Democratic president and a Republican-controlled Congress, the government's response to a World Trade Organization (WTO) ruling that certain US international tax provisions violated global trading rules, and a $1.3 trillion tax cut plan that was being proposed by then-presidential candidate George W. Bush. So it somehow seems fitting that issue number 1,000 finds us the in the midst of a partisan debate over a massive Republican tax plan that could potentially include a provision that some observers suggest might not pass muster with the WTO.
URL: http://newsletters.usdbriefs.com/2017/Tax/TNV/170210_4suppA.pdf

Since that first issue, we've seen the Bush tax cuts enacted (in 2001), enhanced (2003), and temporarily extended (2010), with some parts ultimately made permanent and others allowed to expire (2013). We've also seen a restructuring of the domestic and international business tax rules that included, among other things, a repatriation holiday and a new deduction for domestic manufacturing expenses (2004); the enactment of pension reform (2006) and health care reform (2010); as well as assorted efforts in the legislative and executive branches to advance a comprehensive tax code overhaul (think working groups, deficit reduction panels, supercommittees, blueprints, options papers, frameworks, and discussion drafts).

As we've followed the ebb and flow of tax policy legislation, *Tax News & Views* has morphed from a seat-of-the-pants Word document that was e-mailed – or in some cases even faxed – to fewer than 300 subscribers, to a more sophisticated web-based platform that now reaches an audience of nearly 33,000.

The support and feedback we have received from our readers over the years has kept this publication thriving. It is our privilege to be your source for news of tax developments on Capitol Hill and we look forward to keeping you on top of the ongoing tax policy debate in Washington for the next thousand issues.

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