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Concerns about border-adjustment tax mounting among congressional Republicans

Several Republican lawmakers on both sides of the Capitol this week weighed in with reservations about the border-adjustment tax proposed in the House GOP tax reform blueprint even as Ways and Means Committee Chairman Kevin Brady, R-Texas, and Speaker Paul Ryan, R-Wis., continued their full-throttle efforts to build support for the proposal.

The proposal – also referred to as a destination based cash flow tax – 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 more than $1 trillion in revenue over 10 years to help offset the cost of lower statutory tax rates on business income. It 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.

House: Renacci requests a hearing

In the House, this week marked the first time that any Republican members of the Ways and Means Committee have taken issue in public with elements of the proposal.

Most notably, Rep. Jim Renacci, R-Ohio, called for a committee hearing specifically on the border-adjustment tax, saying he has concerns that the provision will pick winners and losers and could fail to comply with US trade agreement commitments, and that he has questions about who will ultimately pay for it.

“I think having hearings would help answer some of those questions,” Renacci said February 15. “I keep asking [for a hearing] and I know other members are asking as well.”

Brady has said there will be hearings on “key aspects of tax reform” but has not scheduled anything for the committee yet.

Buchanan, Kelly, Meehan seek carve-outs: While none of the Ways and Means Republicans have stated outright opposition to the proposal, several – including Rep. Vern Buchanan of Florida and Reps. Mike Kelly and Pat Meehan of Pennsylvania – have begun to indicate they have concerns or are hoping for industry-specific exceptions.

“If it hurts American consumers, it doesn’t make sense for me,” Kelly told Bloomberg BNA this week, adding that he would not make a decision on whether to support the provision until he sees final legislative language.

But Brady thus far has taken a dim view of industry carve-outs and told Bloomberg Television in a recent interview that “[i]f 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.” (For prior coverage, see *Tax News & Views*, Vol. 18, No. 6, Feb. 10, 2017.)
URL: http://newsletters.usdbriefs.com/2017/Tax/TNV/170210_1.html

Competing jurisdiction?: While the Ways and Means Committee typically claims sole authority over most federal tax matters, the chairman of the House Financial Services Committee’s Monetary Policy and Trade Subcommittee, Rep. Andy Barr, R-Ky., this week said he intends to assert his subcommittee’s jurisdiction on the border-adjustment provision because of its potential impact on the value of the dollar. (Proponents of the border-adjustment tax argue that it ultimately would result in a stronger dollar and lower the cost of imported goods sold to US consumers.)

“On the tax policy piece of that, clearly that’s not within our jurisdiction, that’s a Ways and Means issue,” Barr said. “But on the theory behind a VAT or a border adjustment tax and the balancing that would occur, that is clearly a question that’s squarely within the jurisdiction of our subcommittee to investigate.”

Senate: Skeptics remain following Ryan’s pitch

Across the Rotunda, reactions to House Speaker Paul Ryan’s efforts to make the case for the border-adjustment tax during a closed-door Senate GOP lunch meeting February 14 suggested that a number of Republicans in that chamber have not yet embraced the proposal.

Talking to reporters after the lunch, Senate Majority Whip – and Finance Committee member – John Cornyn, R-Texas, referred to the border-adjustment tax as “a high-risk gamble” but stopped short of rejecting it outright, declaring himself “still a question mark.” Cornyn, who recently called for Finance Committee hearings on the proposal, added that he could not tell “whether any minds have been changed” as a result of Ryan’s presentation.

Sen. Roy Blunt, R-Mo., the vice chairman of the Senate Republican Conference, likewise declared that he is “not there yet as a supporter.”

Taxwriter John Thune, R-S.D., stated that he is “keeping an open mind,” although he expressed reservations about Ryan’s argument that a border-adjustment tax would benefit consumers through a stronger dollar.

Finance Committee member Rob Portman, R-Ohio, praised Ryan’s “unique ability to combine the details with the big picture” but did not overtly declare himself a supporter of the proposal.

Finance Committee Republican Tim Scott of South Carolina told reporters before the meeting that the border-adjustment tax would be "very difficult to get…through the Senate." In an apparent nod to what some – including President Trump – regard as the complexity of the proposal, Scott commented that "the longer it takes to explain [the tax], the harder it is to implement." He also stated that the proposed 20 percent tax on imports under the proposal "means those who bear the burden the most are the consumers in the country."

Cotton in the 'no' camp: Arkansas Republican Tom Cotton offered a more detailed critique of the proposal in a February 15 speech on the Senate floor in which he contended that "[a] tax on imports is a tax on things working folk buy every single day…T-shirts, jeans, shoes, baby clothes, toys, groceries. I've heard from thousands of Arkansans who are already struggling just to get by. Why would we make the stuff they get at Walmart more expensive?"

He also dismissed arguments that a border-adjusted tax would strengthen the dollar as "a theory wrapped in speculation inside a guess."

"Nobody knows for sure what will happen – no one can know for sure because currency markets fluctuate daily based on millions of decisions and events," Cotton said. "So I'm more than a little concerned that these predictions won't pan out. …But if that happens, it won't be economists, intellectuals, and politicians in Washington and New York left holding the bag – working Americans will get stiffed again."

Hatch still has questions: For his part, Finance Committee Chairman Orrin Hatch, R-Utah, who earlier this month said that his panel would advance tax reform legislation on a parallel legislative track rather than begin with a House-passed bill, reiterated in an interview on Bloomberg Television February 13 that he has "some real questions" about the border-adjustment tax, chiefly, "whether we can do this properly without increasing taxes, increasing expenses, [or] increasing costs on American citizens…."

Details on how the blueprint proposal would operate are scant – Ways and Means Committee staff are still in the process of turning the blueprint into legislative language – and Hatch suggested that his issues might be addressed once House Republicans provide specifics.

"[M]aybe they'll put it in such good language that it will be something we can all support," he said.

When asked if the proposal would be considered dead on arrival in the Senate, Hatch stated that the Senate would "look at anything the House sends over."

"We'll have our own viewpoint as to what should be done and we might want to amend it. But that's just the way it works [in] a bicameral legislature," Hatch said.

Hatch has not yet indicated how the Finance Committee will approach a tax code overhaul, nor has he scheduled any hearings on the border-adjustment tax proposal or other tax reform issues. He told reporters on February 16 a border-adjustment hearing likely would be deferred until House taxwriters release legislative language.

"When they firm up their proposal, we'll have to hold hearings on it, but they haven't firmed it up yet. They're talking specifically about it, but I don't think they have it in writing yet. If they do, I haven't seen it," Hatch said.

White House position unclear

Just where President Trump stands on the issue of a border-adjustment tax remains a matter of discussion in Washington tax circles. In a January interview in *The Wall Street Journal*, Trump indicated that the House proposal was "too complicated" and could lead to the US getting "adjusted into a bad deal"; but just days later he told another news outlet that the tax was still under discussion and had not been ruled out as an option for tax reform. (For prior coverage, see *Tax News & Views*, Vol. 18, No. 3, Jan. 20, 2017.)
URL: http://newsletters.usdbriefs.com/2017/Tax/TNV/170120_1.html

The president's position could become clearer when the administration releases its promised tax reform outline in the next few weeks. In comments to reporters ahead of a February 15 "listening session" on tax issues with several retail industry leaders, Trump stated that his plan would "lower the rates very, very substantially for virtually everybody in every category, including personal and business," but he did not tip his hand on the issue of border adjustments.

Brady, Ryan stay the course

Ways and Means Committee Chairman Kevin Brady, meanwhile, continued to make the argument that a border-adjustment tax would incentivize US-based production and jobs and make US companies more competitive globally.

Speaking at the American Council for Capital Formation on February 14, Brady was adamant that “[w]e’re not going to continue a tax code that favors foreign products over American-made products, nor will we continue a tax code that actively encourages American companies to move overseas.”

“Border adjustability, while it is new to the US, is old throughout the world. Everybody uses it. And I have not yet heard a compelling argument why our tax code should favor foreign products over US products,” he said.

Brady noted that the Ways and Means Committee staff has worked with stakeholders in all areas of the blueprint – including the border-adjustment tax – and that he has “not yet heard a valid complaint that can’t be resolved in a very positive way through the design and transition of these provisions.”

In a February 15 interview on CNBC, Brady reiterated his position that the border-adjustment tax is an essential element of the blueprint and will remain part of the House tax reform package.

House Speaker Ryan on February 16 characterized the current discussions around the border-adjustment proposal as part of the process of moving complex legislation like tax reform.

“We’re going to get tax reform done,” he told reporters, “and there’s going to be a whole bunch of drama you’re going to enjoy covering between now and then.”

— Michael DeHoff and Storme Sixeas
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House Republicans release paper describing elements of PPACA repeal-and-replace plan

House Republican leadership released a “policy brief“ February 16 outlining elements of a possible repeal-and-replacement package for the Patient Protection and Affordable Care Act of 2010 (PPACA). The release came the same day that newly confirmed Health and Human Services Secretary Tom Price reportedly told House Republicans during a meeting of the GOP conference that President Trump wants them to develop legislation that would repeal and replace the PPACA simultaneously.
URL: http://newsletters.usdbriefs.com/2017/Tax/TNV/170217_2suppA.pdf

Starting point for discussion

The paper is short on details: most notably, it does not address the potential fiscal impact of repealing the current health care regime and does not discuss tax offsets for an eventual replacement plan. It has been described by observers on Capitol Hill as a starting point for discussion rather than a prescriptive policy statement, and draws in part on the health care reform blueprint that House Republicans released last June as part of their “Better Way” agenda.
URL: http://abetterway.speaker.gov/_assets/pdf/ABetterWay-HealthCare-PolicyPaper.pdf

On the tax side, the paper cites as the chief objectives of a repeal-and-replace bill increasing the use of tax-preferred health savings accounts (HSAs) and providing a monthly tax credit to make insurance coverage more affordable for individuals without access to employer-provided or government-sponsored plans.

Nontax priorities include financially shoring up the Medicaid program and providing “innovation grants” that would give individual states the freedom to make improvements to their specific health care markets (for example, by establishing high-risk pools, reducing out-of-pocket costs, or promoting access to health care services).

Individual tax credits

The paper discusses replacing the PPACA's current system of subsidies for individuals who cannot afford health insurance coverage with a Universal Health Care Tax Credit (UHCTC), to be housed in a new section 36C of the Internal Revenue Code, which individuals could use (subject to certain limitations) to purchase any eligible state-approved plan sold in the individual's insurance market, including catastrophic insurance and unsubsidized COBRA coverage.

The credit would be available to US citizens or "qualified aliens" who do not receive health insurance through an employer or a government program. Consistent with the GOP-favored concept of a health care "backpack," the credit would be portable and follow the taxpayer from job to job. The credit amount would be determined based on an individual's age (rather than income) with older individuals receiving higher credits. (The paper notes that basing the credit on age would simplify the verification process and reflect the fact that health insurance costs increase as individuals grow older.)

The credit would be refundable, with excess credit amounts deposited into a health savings account. It also would be advanceable to assist individuals who "need help paying their monthly premiums."

The paper does not discuss the specific amount of the credit, nor does it explain how the credit would be paid or administered.

HSAs

The paper discusses a number of options for expanding access to and increasing the flexibility of HSAs – tax-preferred savings accounts which, when used in conjunction with a high-deductible health insurance plan, allow individuals to pay for qualifying out-of-pocket health care expenses "using tax-free dollars." These include:

- Increasing the maximum HSA contribution limit;
- Allowing both spouses to make catch-up contributions to the same HSA; and
- Providing an administrative fix to allow taxpayers to treat certain expenses incurred after a taxpayer purchases an eligible high-deductible insurance plan, but before the taxpayer establishes an HSA, to be treated as eligible expenses under the HSA.

These and similar Republican-sponsored proposals were approved in the House during the 114th Congress but were not taken up in the Senate.

Repealing PPACA taxes

The paper specifically calls for the immediate repeal of the individual and employer mandates as well as the following taxes enacted under the PPACA:

- The health insurance provider tax;
- The so-called "medicine cabinet tax" (a provision that disallows the purchase of over-the-counter drugs as eligible expenses for purposes of rules governing HSAs and flexible spending accounts);
- The tax on manufacturers and importers of prescription drugs;
- The tax on medical devices; and
- The increased expense threshold for deducting medical expenses.

The paper does not explicitly call for repeal of the so-called "Cadillac" tax on certain high-cost employer-sponsored health plans, nor does it specifically mention the additional 0.9 percent Medicare Hospital Insurance tax and the 3.8 percent net investment income tax currently imposed on joint filers with adjusted gross income (AGI) over $250,000 and individuals with AGI over $200,000.

Possible cap on employer-provided health care exclusion?

The paper does *not* identify possible tax provisions to offset the cost of the new health care credits or recoup foregone revenue from repealing PPACA-related taxes. Republican Rep. Bill Flores of Texas, however, told reporters, that a cap on the exclusion for employer-provided health insurance was discussed during the February 16 Republican Conference meeting as one possible item on a "menu of pay-fors."

Ways and Means Committee Chairman Kevin Brady, R-Texas, subsequently told Bloomberg BNA that "no decision" on offsets has been made and that lawmakers are "looking at a whole range of options."

Next steps

The fiscal year 2017 budget resolution that Congress approved last month paves the way for PPACA repeal by including so-called "reconciliation" instructions which direct relevant committees – i.e., the Finance and Health, Education, Labor and Pensions committees in the Senate and the Ways and Means and Energy and Commerce committees in the House – to each report legislation that reduces the deficit by $1 billion over the next decade. (As a parliamentary matter, a budget resolution cannot stipulate specific policies to be reported, although as a political matter it is understood that the forthcoming bills will deal with dismantling the PPACA.)

As long as legislation moved under the reconciliation process complies with certain strict procedural and budgetary rules (including a prohibition against bills that would increase the deficit beyond the 10-year budget window), it can be passed through both chambers with simple majority votes – a potentially powerful tool for Republicans who control 52 seats in the Senate, where 60 votes is normally required to advance legislation under regular order.

Several press outlets have reported that the House Ways and Means and Energy and Commerce committees could consider their PPACA repeal-and-replacement legislation during the last week in February, after lawmakers return from their week-long President's Day recess. At press time, no mark-ups have been officially scheduled in either committee.

Leaders of Senate committees with jurisdiction have not yet mentioned timelines for marking up their respective bills.

— Jacob Puhl
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Cabinet confirmation update: Senate confirms Mnuchin, Mulvaney

The Senate this week voted to confirm Steven Mnuchin to serve as President Trump's Treasury secretary and South Carolina Republican Rep. Mick Mulvaney to head the White House Office of Management and Budget (OMB).

Mnuchin

Mnuchin's confirmation cleared the Senate February 13 on a largely party-line vote of 53-47. (Democrat Joe Manchin of West Virginia joined Republicans in voting for confirmation.)

As Treasury secretary, Mnuchin is expected to play a key role in developing the administration's tax policy positions and advancing tax reform. House Ways and Means Committee Chairman Kevin Brady, R-Texas, stated in remarks at the American Council for Capital Formation on February 14 that Mnuchin's confirmation "begins to round out the Trump economic team in a major way. …As the secretary fills out his tax team there will be a daily, coordinated, intensive effort to move tax reform in 2017."

Mnuchin has had a long career in the financial sector but most recently was the finance chair of Trump's presidential campaign. He reportedly played a role in shaping then-candidate Trump's tax reform platform. (For prior coverage, see *Tax News & Views*, Vol. 17, No. 34, Dec. 2, 2016.)
URL: http://newsletters.usdbriefs.com/2016/Tax/TNV/161202_1.html

During his confirmation hearing before the Senate Finance Committee last month, Mnuchin hewed largely to the GOP position that simplifying the tax code by lowering rates and culling deductions for businesses and individuals would create economic growth that would benefit taxpayers at all income levels. On international reform, he noted that lowering the corporate rate would make US businesses more competitive on the global playing field and would have "a huge impact on stopping inversions." But he also veered from the GOP playbook when he suggested that beefing up

the Internal Revenue Service budget for staffing and information technology could enhance the agency's revenue collection efforts and address the so-called "tax gap," that is, the difference between the amount of taxes owed to the government and the amount actually collected. (For prior coverage, see *Tax News & Views*, Vol. 18, No. 3, Jan. 20, 2017.)
URL: http://newsletters.usdbriefs.com/2017/Tax/TNV/170120_1.html

Mulvaney

Mulvaney, who as OMB director will be instrumental in developing the Trump administration's annual budget proposals, was confirmed February 16 by a vote of 51-49. (Republican Sen. John McCain of Arizona broke ranks and joined the chamber's 48 Democrats in casting a "no" vote.)

At his confirmation hearing before the Senate Budget Committee last month, Mulvaney defended the use of "dynamic scoring," which takes into account certain macroeconomic feedback effects of tax and spending legislation on the economy and in turn on federal revenue levels. The use of dynamic scoring is expected to be an issue in the tax reform debate this year as House Republicans have stated that the tax reform legislation they expect to move through Congress in the coming months will be revenue neutral when scored on a dynamic basis.

— Michael DeHoff
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Bishop joins Ways and Means Committee

The House Republican Conference on February 16 officially ratified the nomination of Michigan Rep. Mike Bishop to serve on the Ways and Means Committee.

Bishop was first elected to Congress in 2014 and is a member of the House Republican Steering Committee. On the Ways and Means panel, he replaces former Rep. Tom Price of Georgia, who recently was confirmed as President Trump's secretary of Health and Human Services.

Updated Ways and Means, Finance rosters available

Bishop's appointment fills the last in a string of vacancies on the House and Senate taxwriting committees that arose following the 2016 elections and the conclusion of the 114th Congress. A list of all the current members of the House Ways and Means Committee and the Senate Finance Committee is available from Deloitte Tax LLP.
URL: http://newsletters.usdbriefs.com/2017/Tax/TNV/170217_4suppA.pdf

— Michael DeHoff
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