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Potholes develop as Ryan takes tax reform sales pitch on the road

With the House out of session this week, Speaker Paul Ryan, R-Wis., hit the road to sell his vision of tax reform to several audiences in central Ohio; but comments from President Trump in a recently published interview suggest that when it comes to overhauling the tax code, House Republicans and the administration may still be far apart on certain key issues.

In sync with the administration?

Accompanied by senior Ways and Means Committee Republican Pat Tiberi and National Republican Congressional Committee Chairman Steve Stivers, both of Ohio, Ryan on May 10 visited two businesses and participated in a roundtable discussion with local business and community leaders about the Republicans' push for comprehensive tax legislation this year.

"In every generation you have an opportunity," said Ryan. "The last time we did this was the year I got my driver's license: 1986. We have not done this in a long, long time and it's high time in coming."

A day earlier, in an appearance on *Fox & Friends*, Ryan again expressed confidence that Republicans would be successful at passing tax reform in 2017 and minimized any differences in view between the House GOP's tax reform blueprint (released last June) and the tax reform "principles" that the Trump administration released on April 26. (For

prior coverage of the administration's announcement, see *Tax News & Views*, Vol. 18, No. 14, Apr. 26, 2017 and *Tax News & Views*, Vol. 18, No. 15, Apr. 28, 2017.)
URL: http://newsletters.usdbriefs.com/2017/Tax/TNV/170426_1.html
URL: http://newsletters.usdbriefs.com/2017/Tax/TNV/170428_1.html

"We are very much [on the same page]," he said. "Absolutely, we totally agree on this."

Deduction for corporate interest expense

But a significant potential fault line between House Republicans and the administration appears to have developed around the tax treatment of corporate interest expense. Under the blueprint, interest expense would be deductible against interest income, but no current deduction would be allowed for net interest expense. Net interest expense could be carried forward indefinitely and deducted against net interest income in future years. (The provision is included in the blueprint as a tradeoff for a proposal that would allow 100 percent expensing in year one for all assets, tangible and intangible, other than land.)

The one-page fact sheet outlining the administration's tax reform principles is silent on the interest expense deduction. But in an interview in *The Economist* published on May 11, Trump and Treasury Secretary Steven Mnuchin indicated that the administration currently leans toward retaining the current-law deduction rather than scrapping it.

"[W]e're contemplating keeping it. That's our preference. But we'll look at everything," Mnuchin said.

Trump backed up Mnuchin's assertion, saying "I think we're contemplating is the word. And it hasn't been determined yet, but we're contemplating."

Border-adjustment tax

The events of the week also suggest that House Republicans and the administration have not yet reached consensus on the tax treatment of imports and exports.

The House Republican blueprint includes a proposal for a destination-based cash flow tax that provides for "border adjustments" through a not-yet-specified mechanism that would serve to eliminate US tax on products, services, and intangibles exported abroad (regardless of their production location) and impose a 20 percent US tax on products, services, and intangibles imported into the US (also regardless of production location). It is estimated to raise over $1 trillion to help offset the cost of the blueprint's proposed corporate rate cut.

President Trump has yet to take a firm position on the proposal. In the past, he has criticized the border-adjustment tax as "too complicated," and at other times he has expressed interest in the notion of an as-yet undefined "reciprocal tax" on imports. The administration's tax reform plan is silent on the issue and Treasury Secretary Mnuchin has commented that although the White House likes "some parts" of the proposal in the blueprint, overall "we don't think it works in its current form."

Hatch cites White House opposition: A May 9 meeting between Mnuchin, White House National Economic Council Director Gary Cohn, and Senate Finance Committee Republicans to discuss the path forward for tax reform did little to clarify the administration's position.

In comments to reporters after the meeting, Finance Committee Chairman Orrin Hatch, R-Utah, indicated that the White House now opposes the border-adjustment proposal.

"They're against that," Hatch said, adding that he believes it would be "hard to pass" in the Senate.

White House pushes back: But the administration subsequently pushed pack on the assertion they had declared the proposal dead. In an e-mail to Tax Analysts, a White House aide affirmed "our position on the [border-adjustment tax] has not changed. . . . We have concerns with the proposal which is why we didn't include it in our plan, but we are open to reviewing it if the House revises it."

'Not really what I'm considering': In his comments to *The Economist*, however, Trump appeared to distance himself from the proposal. When asked if he is considering adopting a border-adjustment tax, Trump replied: "We are dealing with Congress, because it's not really what I'm considering."

Trump once again floated the idea of a reciprocal tax, but did not elaborate on how such a plan would work.

Infrastructure

The role of infrastructure spending in an eventual tax reform plan could prove to be another point of contention. Neither the House GOP blueprint nor the Trump tax reform principles include proposals to use any one-time revenue from business tax reform to finance new infrastructure spending. Reports had circulated ahead of the release of the White House plan that President Trump might include such a proposal as a way to win support from congressional Democrats, who so far have been unenthusiastic about Republican tax reform efforts; but in an interview conducted shortly after the principles were unveiled, Treasury Secretary Mnuchin reiterated that the administration was no longer considering an infrastructure package in the context of tax reform.

In his interview with *The Economist*, however, Trump acknowledged that he may need a "little bit" of Democratic support to advance his tax reform agenda and that infrastructure could be on the table after all.

"We may align [tax reform] with infrastructure, which [Democrats] like. They like it as much as the Republicans like it. We need infrastructure in our country," he said.

Revenue neutrality

The administration and House Republicans also remain divided over whether or not tax reform should be revenue neutral.

The House GOP blueprint calls for tax reform that is revenue neutral under "dynamic scoring" rules, which take into account certain macroeconomic feedback effects of tax and spending legislation, an approach that generally would require inclusion of significant revenue offsets to pay for tax cuts for businesses and individuals.

The administration's tax reform principles specify few revenue raisers, however, and Treasury Secretary Mnuchin has repeatedly said in recent weeks that the plan would be paid for mainly by the economic growth it would generate. Vice President Mike Pence also has acknowledged that tax reform may lead to deficit increases in the short term.

Trump told *The Economist* that a tax reform plan that increases the deficit would be "OK, because it won't increase it for long." He also defended the concept of deficit-increasing tax reform as "priming the pump" of the US economy, adding that "if you don't do that, you're never going to bring your taxes down."

For his part, Finance Committee Chairman Hatch signaled this week that tax reform will have to include some revenue offsets, telling reporters "[w]e'll have to raise revenue, there is no question about that." But that does not necessarily mean that Hatch is committed to revenue-neutral tax reform. He recently told Bloomberg Television that he is "not so sure that it's absolutely critical that [tax reform] be revenue neutral" and that he "would be more concerned about how we can get the economy to move forward and grow than whether or not we meet the formal test of budget neutrality." (For prior coverage, see *Tax News & Views*, Vol. 18, No. 16, May 5, 2017.)
URL: http://newsletters.usdbriefs.com/2017/Tax/TNV/170505_3.html

Ways and Means hearing to address tax reform and the economy

In other developments this week, the House Ways and Means Committee announced that it will hold a hearing at 10:00 a.m. on May 18 to discuss "how tax reform will grow our economy and create jobs across America."

Ways and Means Chairman Kevin Brady, R-Texas, said in a May 11 news release that witnesses will discuss "specific policy proposals that deliver the most economic growth and how our ideas will directly help hardworking taxpayers and the businesses that create jobs across America."

A witness list was not available as of press time.

This is the first in what Ways and Means Committee leaders have said will be a series of hearings on specific issues in tax reform. Although a list of hearing topics has not been released, the panel is expected to hold a hearing on the proposed border-adjustment tax in the House GOP tax reform blueprint.

Kautter nominated for Treasury tax policy post

On the administrative front, following a month of rumors, President Trump this week officially nominated Dave Kautter to serve as assistant Treasury Secretary for tax policy. Kautter currently heads the Washington National Tax practice for RSM US LLP. He has previously served as the managing director of the Kogod Tax Center and executive-in-residence at the Kogod School of Business at American University and as a partner at Ernst and Young.

The nomination is subject to Senate confirmation. If confirmed, Kautter will replace Acting Assistant Secretary Thomas West.

Permanently filling this role could facilitate tax reform going forward, as Treasury's Office of Tax Policy will be key in developing proposals and implementing any tax reform legislation that is enacted into law.

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Senate to chart its own course on PPACA repeal-and-replacement legislation

Work on legislation to repeal and replace the Patient Protection and Affordable Care Act (PPACA) officially got under way in the Senate this week, and while many questions around substance and process remain unanswered, indications are that Republican leaders are intent on developing their own proposal rather than simply modifying the repeal-and-replacement bill recently approved in the House.

The American Health Care Act of 2017 (AHCA, H.R. 1628), which cleared the House on May 4, would repeal major pieces of the PPACA – including most of its tax provisions – and replace it with a system aimed at facilitating the purchase of health insurance on the individual market through refundable tax credits and liberalized rules for tax-favored health savings accounts. The measure was approved by only a two-vote margin after House GOP leaders worked over the course of several weeks to accommodate slew of objections from conservative Republicans – namely members of the Freedom Caucus – who contended that the AHCA left in place too many elements of the law they wanted to dismantle, and moderates, who were concerned about the impact of the new bill on older and less affluent individuals. (For prior coverage, see *Tax News & Views*, Vol. 18, No. 16, May 5, 2017.)
URL: http://newsletters.usdbriefs.com/2017/Tax/TNV/170505_1.html

As the AHCA worked its way through the House, it began to attract a number of Republican critics in the Senate, where a similar conservative-versus-moderate dynamic is playing out and the margin for error for passing a bill along party lines is only two votes. (Senate Democrats, like their House counterparts, are expected to oppose the legislation and Republicans only hold 52 seats in the chamber.) The dissatisfaction with the House-passed bill has prompted Senate Republican leaders to indicate they will scrap that measure and draft an entirely new one in its place.

Finance Committee member Charles Grassley, R-Iowa, told reporters this week that GOP leaders "specifically decided to write a Senate bill, so we don't have to worry about the House bill at all until we get to conference."

Revenue concerns

Although work on the Senate bill is still in the very early stages, Finance Committee Chairman Orrin Hatch, R-Utah, questioned whether lawmakers will be able to repeal a broad swath of the PPACA's revenue raisers and still adhere to rules providing that legislation moved under budget reconciliation protections cannot increase the deficit outside of the 10-year budget window.

The House-passed bill would repeal most of the PPACA tax provisions – in some cases retroactive to the beginning of this year – as well as the individual and employer mandates. (An overview of the tax provisions in the House bill is

available from Deloitte Tax LLP.) But a number of Senate lawmakers are envisioning a replacement health care system that covers a greater number of low-income individuals, the elderly, and people with pre-existing health conditions than what has been proposed in the House. Hatch told Tax Analysts on May 9 that he was "not so sure where [the Senate drafters] would get the money" to pay for those benefits without retaining some of the PPACA offsets.
URL: http://newsletters.usdbriefs.com/2017/Tax/TNV/170512_2suppA.pdf

Senate Republican taxwriter Bill Cassidy of Louisiana, who drafted his own PPACA replacement plan with Maine Republican Sen. Susan Collins earlier this year, likewise told reporters May 9 that "if you eliminate pay-fors, you eliminate your ability to fulfill President Trump's pledge, his contract with the voter: keep coverage, caring for those with pre-existing conditions without mandate, and lowering your premiums."

Drafting by working group; no committee vetting

Hatch also told reporters this week that the Senate legislation, which is being drafted by a working group of 14 Republicans, is unlikely to be vetted through the committee process – "at least from what I know about it," he added.

In addition to Hatch, taxwriters in the working group include Sens. Mike Enzi of Wyoming (who also chairs the Senate Budget Committee), John Cornyn of Texas, John Thune of South Dakota, Rob Portman of Ohio, and Pat Toomey of Pennsylvania.

Rounding out the working group roster are Majority Leader Mitch McConnell of Kentucky and Sens. Lamar Alexander of Tennessee (who chairs the Senate Health, Education, Labor, and Pensions Committee), Cory Gardner of Colorado, John Barrasso of Wyoming, Mike Lee of Utah, Ted Cruz of Texas, Tom Cotton of Arkansas, and Shelley Moore Capito of West Virginia.

Timeline unclear

Just how long the drafting process will take is unclear. In a May 9 interview on *Fox and Friends*, House Speaker Paul Ryan, R-Wis., said that "the legislation should not take that long. Hopefully it takes a month or two to get it through the Senate."

Senate Majority Leader McConnell, however, predicted on May 8 that the "process will not be simple, quick, or easy."

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