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Ambitious timeline emerging for action on tax reform, health care legislation

White House officials have announced that the Trump administration will send Congress a detailed plan to overhaul the federal tax code after lawmakers return from the August recess. Meanwhile, the Senate's top Republican has indicated that the chamber hopes to vote on legislation to repeal and replace the Patient Protection and Affordable Care Act (PPACA) by the end of this month – potentially paving the way for negotiations with the House and action on a final bill in July. But even though the hoped-for timeline for both bills appears clear cut, details on the substance of the White House tax reform plan and the Senate health care bill remain elusive.

Tax reform

White House National Economic Council Director Gary Cohn – one of President Trump's key point persons on tax reform, along with Treasury Secretary Steven Mnuchin – stated in a June 2 interview with Fox Business News that the administration will deliver "a very detailed, drafted tax plan" to Congress after Labor Day with the expectation of passage by the end of this year.

Cohn and Mnuchin have been meeting regularly with House and Senate Republican leaders with the goal of negotiating an agreement on a single tax reform plan that can clear both chambers in Congress. Those talks – which Cohn said "are into the nitty gritty details…right now" are expected to continue through August. Comments from lawmakers over the past week, however, suggest that negotiators have yet to reach consensus on some key issues.

Border-adjustment tax: The Trump administration has thrown cold water on a proposal in the House GOP tax reform blueprint, which was released last June, that would impose a border-adjustment tax of 20 percent on all products and services imported into the US (regardless of where they are produced) and eliminate US tax on products, services, and intangibles exported abroad (also regardless of their production location).

In the past, Mnuchin has stated that the proposal "does not work in its current form" although the administration likes "some parts" of it. At a recent House Ways and Means Committee hearing, Mnuchin reiterated that he has "concerns" with the proposal and is "working very closely" with committee Chairman Kevin Brady, R-Texas, to address them – although he added that developing a fix would be the responsibility of House taxwriters and not the administration. (For prior coverage, see *Tax News & Views*, Vol. 18, No. 19, May 26, 2017.)
URL: http://newsletters.usdbriefs.com/2017/Tax/TNV/170526_2.html

The proposal also has divided congressional Republicans – critics argue, among other things, that it could hike prices for consumers and run afoul of World Trade Organization rules – and has become the focus of an intensive lobbying battle within the business community, with retailers, oil refiners, and other import-dependent industry sectors on one side and export-heavy businesses on the other.

Ways and Means Chairman Brady continued to stick by his proposal as he addressed reporters ahead of a June 6 meeting to discuss tax reform with Mnuchin, Cohn, and congressional Republican leaders.

"I'm convinced that working with others – the White House and Senate – that we can design and transition it in a way that addresses the concerns that have been raised," he said.

For his part, Senate Finance Committee Chairman Orrin Hatch, R-Utah, took a wait-and-see position on the issue in prepared remarks at a June 7 conference in Washington sponsored by Bloomberg BNA. He argued that a border-adjustment tax should be up for discussion as lawmakers weigh options for offsetting the cost of a lower corporate rate – it has been unofficially estimated to raise more than $1 trillion over a decade – although he also acknowledged that the proposal "will have a difficult time becoming law." Ultimately, he said, he would need to "see the specifics of the proposal and find out if it works like its proponents say it will" and he would not "publicly rule anything out" in the interim.

"Thus far, all we have is the blueprint, which isn't enough," he added.

Hatch also expressed an interest in exploring a value-added tax (VAT), but noted that he is "not sure what President Trump will say about that."

Kevin Brady, however, flatly rejected the idea of a VAT in lieu of border adjustability in comments to reporters on June 8. When asked if he was willing to consider a VAT as a component of tax reform, Brady replied: "I'm not."

Corporate integration: Although the Senate taxwriters have not yet put forward a tax reform proposal of their own – either as draft legislation or a detailed outline – Finance Committee Republican Chief Tax Counsel Mark Prater on June 6 told the audience at the Organization for Economic Cooperation and Development's annual international tax conference that the panel is still considering a corporate integration plan that would lower the effective tax rate for corporations by combining a dividends paid deduction and a withholding tax on corporate dividend and interest payments.

The issue of corporate integration has been under study at the staff and member levels among Finance Committee Republicans in recent years. Finance Chairman Hatch publicly touted the potential benefits of corporate integration during much of 2016 and held two committee hearings on the issue. (For coverage of the hearings, see *Tax News & Views*, Vol. 17, No. 19, May 20, 2016, and *Tax News & Views*, Vol. 17, No. 20, May 27, 2016.)
URL: http://newsletters.usdbriefs.com/2016/Tax/TNV/160520_1.html
URL: http://newsletters.usdbriefs.com/2016/Tax/TNV/160527_1.html

Hatch indicated several times last year that the committee was preparing a discussion draft of the proposal, although a draft has never been released; Prater, however, stated that "we continue to work on [a corporate integration proposal] and we see that as a valuable tool."

Hatch has argued in the past that in addition to lowering the effective corporate tax rate, an integration plan would reduce the pressure on US multinationals to invert while eliminating so-called “lock out” issues that keep foreign-source income trapped offshore, and promote tax parity between debt and equity financing. Critics contend, among other things, that pushing taxes down to the shareholder level could upend current-law incentives to invest in tax-preferred retirement accounts.

Corporate integration has not gained traction in the House Ways and Means Committee and to this point does not appear to have generated interest among members of the administration’s tax reform team.

Revenue neutrality: The principals in the tax reform negotiations do not yet appear to agree on whether a reform plan must 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 – a position that Senate Majority Leader Mitch McConnell, R-Ky., has consistently endorsed.

Sen. Hatch remarked at the June 7 Bloomberg BNA conference that “[p]eople have differing definitions as to what constitutes revenue neutrality,” and explained that he does not “believe an up-front commitment to revenue neutrality should be necessary in order to move forward on tax reform.”

“Personally, I don’t see a problem with a tax reform proposal that loses revenue in the short term if we can show that it will help put our economy on a better growth path. But…we’ll need to see where the votes are,” he said.

The Trump administration, meanwhile, has continued to send mixed signals on the issue. President Trump, for example, recently suggested in an interview with *The Economist* that he could accept a tax reform plan that adds to the deficit in the short term because the plan would pay for itself through increased economic growth. (For prior coverage, see *Tax News & Views*, Vol. 18, No. 17, May 12, 2017.)
URL: http://newsletters.usdbriefs.com/2017/Tax/TNV/170512_1.html

Treasury Secretary Mnuchin, however, told Fox Business News in a June 1 interview that the administration wants to enact paid-for tax reform rather than unoffset tax cuts, adding that Office of Management and Budget Director Mick Mulvaney is “on board” with that approach.

But White House Legislative Director Marc Short told reporters on June 5 that the administration’s “greater priority is to provide growth. We want to get [tax reform] to be revenue-neutral, but I know the president’s been very clear in saying we need to get a tax cut to get this economy growing.”

The issue of revenue neutrality is critical since congressional Republicans intend to move tax reform under budget reconciliation rules, which allow legislation that meets certain strict budgetary and procedural requirements to be approved in both chambers with a simple majority vote, thus obviating the need to garner Democratic support. (Republicans control only 52 seats in the Senate and would need to win over 8 Democrats to clinch the 60 votes normally required to overcome procedural hurdles that arise when legislation moves through that chamber under regular order.)

Among the budgetary rules governing the reconciliation process – often collectively referred to as “Byrd Rules,” named after the late Sen. Robert Byrd, D-W.Va. – is a prohibition against legislation that would increase the deficit in any year beyond the budget window (unless offset by other budgetary changes within the same legislative title). For a reconciliation bill to be Byrd-rule compliant, it would have to either include revenue offsets to ensure it does not increase the deficit beyond the 10-year budget window or be drafted to sunset in a way that would prevent any net out-year revenue loss, as was the case with the reconciliation tax cuts enacted in 2001 and 2003.

But a recent analysis from the nonpartisan Joint Committee on Taxation (JCT) staff illustrated just how difficult it would be for Republicans to move an unpaid-for, temporary reduction in the corporate tax rate. According to the JCT report, reducing the corporate tax rate from 35 percent to 20 percent (the level specified in the House GOP tax reform blueprint) for just three years would reduce federal revenues by about $490 billion over the 10-year budget window and produce a “nonnegligible” revenue loss in the years beyond the budget window. (For prior coverage, see *Tax News & Views*, Vol. 18, No. 15, Apr. 28, 2017.)
URL: http://newsletters.usdbriefs.com/2017/Tax/TNV/170428_1suppA.pdf
URL: http://newsletters.usdbriefs.com/2017/Tax/TNV/170428_1.html

Health care

On the health care front, Senate Minority Leader McConnell told reporters after a June 6 Republican Conference lunch that Senate Republicans are "closer" to reaching an agreement on a PPACA repeal-and-replacement package that will be brought up "in the near future." Although McConnell did not indicate when the plan would be made public, comments from Senate GOP leaders suggest that he wants to hold a floor vote before lawmakers adjourn for their week-long Independence Day recess. (The Senate's last scheduled working day ahead of the recess is June 30.)

No legislative language yet: Senate Republicans have opted to develop their own version of a health care bill rather than amend the House-approved American Health Care Act of 2017 (AHCA), which narrowly cleared that chamber early last month. The legislation is being drafted by a working group of 14 Republican senators and is not expected to be vetted in committee, although leadership has been meeting regularly with rank-and-file party members to discuss the process. But those meetings have focused on conceptual issues and no legislative drafts have been circulated to date. Finance Committee member John Cornyn, R-Texas, characterized the health care presentation at the June 6 conference lunch as "more of a discussion of principles" and "a process" for consensus-building.

Lawmakers who have spoken to reporters about the discussions have focused largely on nontax issues such as how the upper chamber should address the House bill's proposed rollback of Medicaid expansion (20 Republican senators represent states that opted to expand Medicaid pursuant to the PPACA) as well as House provisions that would allow states to opt out of the PPACA's essential benefits coverage requirements (including those related to coverage for individuals with pre-existing conditions). On the tax side, Finance Committee Republican John Thune of South Dakota – who is a member of the health care working group – told reporters June 6 that he is awaiting a revenue score from the Congressional Budget Office (CBO) on a provision he is drafting that would modify the refundable premium assistance credit in the House bill to make it more effective for older and less affluent individuals who would be relying on the credit to purchase health insurance.

There have been no specific comments from lawmakers regarding how the Senate bill would address repeal of the tax provisions enacted under the PPACA, such as the 3.8 percent net investment income tax and the additional 0.9 percent Medicare payroll tax on high-income households, plus new industry levies targeted at medical device makers, health insurers, and manufacturers of branded drugs.

The House-approved bill would repeal most of these retroactive to the beginning of 2017; however, repeal of the additional Medicare payroll tax would not become effective until 2023. The House measure would retain the PPACA's "Cadillac" tax on certain high-cost employer-sponsored health plans, but would delay its implementation until 2026.

In recent days, some senators have acknowledged that relaxing the House bill's proposed cuts to Medicaid and eliminating or paring back that measure's opt-outs for essential benefits coverage will require them to retain some PPACA taxes or at least postpone the effective dates of their repeal to offset the increased costs.

Taxwriter John Thune, for example, cautioned this week that even though he wants "to get rid of all the [PPACA] taxes," the Senate will "have to be realistic in terms of what we can get done and how we can maintain stability in the marketplace for the foreseeable future and until some of the longer-term reforms that we intend to make have had a chance to be put in place." Finance Committee Republican Tim Scott of South Carolina likewise stated that "[y]ou have to remain open to what it takes to get to 51 votes, and that also requires us to be open to how you pay for it."

A path to 51?: Because the Senate bill will be moving under budget reconciliation protections, it can be approved by a simple majority vote rather than the 60 votes normally required to advance legislation in that chamber under regular order.

But cobbling together even a simple majority may be problematic. The AHCA squeaked through the House by only a four-vote margin after GOP leaders worked over the course of several weeks to accommodate slew of objections from conservative Republicans, who contended that the measure 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. Senate Republican leaders face a similar conservative-versus-moderate dynamic as they attempt to move their own legislation – and their 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.)

McConnell commented shortly before the Memorial Day recess about magnitude of the challenge ahead, but he reportedly told his colleagues at the June 6 conference lunch that it was up to the Senate "to lead" and that "failure is not an option."

Some Republican skeptics appeared this week to be inching toward a "yes" vote. South Carolina Sen. Lindsey Graham told reporters after the conference meeting that leaders offered "promising proposals" during their health care presentation – although he cautioned that he doesn't "know what it looks like legislatively" – and Louisiana Sen. Bill Cassidy commented that he was "very encouraged" by what he heard. On the other hand, Kentucky Sen. Rand Paul commented that he would not support legislation that retains key provisions of the PPACA.

Next steps: Senate leaders reportedly plan to pave the way for an end-of-month floor vote on their bill by submitting the framework of a proposal to the CBO for a revenue score within the next few days. CBO's estimate will be a key factor in determining whether the legislation complies with budget reconciliation rules which, among other things, prohibit legislation that would increase the deficit in any year beyond the 10-year budget window and block provisions that are deemed to have no effect on the federal budget, or whose effect is "merely incidental" to the underlying policy.

Assuming the Senate is able to approve a bill by June 30, House and Senate negotiators would have the bulk of July to resolve differences in their respective proposals and potentially send an approved bill to the White House before they adjourn for the August recess. But that timeline may not be realistic if the Senate produces legislation that doesn't pass muster with House conservatives – for example, by retaining too many PPACA taxes or not sufficiently reducing the size of the Medicaid program. Those sorts of disagreements could lead to protracted negotiations, or, in a worst-case scenario for Republicans, a stalemate that forces them to abandon the bill.

At least one potential hurdle in the legislative process was removed this week when the Senate Budget Committee announced that the House-passed American Health Care Act complies with the Senate's reconciliation rules – at least with respect to its overall budgetary effects – and can be officially transmitted to the Senate. An unfavorable determination by the Senate parliamentarian – the arbiter in parliamentary matters related to budget reconciliation – likely would have required the House to modify its bill and vote on it again – a difficult proposition given the razor-thin margin of passage when it was finally brought to the floor.

The parliamentarian still must determine if there are any provisions in the AHCA that do not have a budget effect and therefore could be subject to a point of order in the Senate, however. A point of order can be waived in the Senate with a three-fifths majority (that is, generally 60 votes); but because Democrats are not currently expected to lend substantial support to Republican-led efforts to repeal and replace the PPACA, an adverse finding – especially on a politically sensitive provision – could complicate efforts to move a bill through the chamber.

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Trump unveils plan to privatize air traffic control

President Trump on June 5 made an ambitious bid to revive a failed 2016 proposal to privatize the nation's air traffic control system – a move that, if successful, would shift some of the power for funding the Federal Aviation Administration (FAA) away from congressional taxwriters.

The announcement comes as Congress faces a September 30 deadline for reauthorizing the FAA.

Shades of Shuster

The president did not unveil a formal proposal, but in a statement of principles kicking off a week focused on infrastructure modernization, he lauded the Aviation Innovation, Reform and Reauthorization (AIRR) Act, which was introduced in February of last year by House Transportation and Infrastructure Committee Chairman Bill Shuster, R-Pa. That bill included provisions that would turn over management of the nation's air traffic control system to a yet-to-

be-created nongovernmental agency and pay for air traffic control operations through user fees rather than airline ticket taxes.
URL: https://www.whitehouse.gov/the-press-office/2017/06/05/president-donald-j-trumps-principles-reforming-us-air-traffic-control

This week's statement from the White House says it is "paramount" that the proposed new entity be fully financially self-sufficient through the use of fees that cover its operational costs and recapitalization of the air traffic control system.

"Taxes currently covering these costs should be sunset except for some existing aviation taxes necessary to fund the Airport Improvement Program, with the rest of [the Federal Aviation Administration] funded by general fund revenues," the administration stated.

Tepid reception – then and now: It is not entirely clear what impact a shift to user fees would have on the jurisdiction of congressional taxwriters over FAA funding in the future, which made for a lukewarm reception by members of the Senate Finance and House Ways and Means committees when Shuster introduced his bill last year. Appropriators signaled their own opposition to the plan, under which the new entity would be self-funded and not subject to the congressional spending process. The proposal also divided aviation experts and consequently never made it out of committee.

The president's announcement has likewise generated a less-than-enthusiastic response from the two top congressional taxwriters. Ways and Means Committee Chairman Kevin Brady, R-Texas, stated only that it is "a serious proposal" that "deserves serious consideration."

Senate Finance Committee Chairman Orrin Hatch, R-Utah, commented on June 8 that he was "worried about" the proposal.

"There are all kinds of small airports all over the country that I'm not sure the private sector can handle," he said.

Infrastructure investment

Trump followed up his call to privatize air traffic control operations with a June 7 speech in Cincinnati, Ohio, in which he announced a plan reiterating his commitment to investing in US infrastructure. While his speech – and the plan document – offered few details, they generally called for $1 trillion in new investments for various modes of transit, with "at least $200 billion" coming from the federal government. (The remaining $800 billion presumably would come from private companies and investors.)
URL: https://www.whitehouse.gov/the-press-office/2017/06/07/president-donald-j-trump-works-rebuild-american-infrastructure

No discussion of tax incentives: Although Trump called for legislation that "leverages public-private partnerships, and private investments through tax incentives, to spur $1 trillion in infrastructure investment over 10 years" during the 2016 presidential campaign, he did not discuss tax incentives in his June 7 speech or in the fact sheet describing his plan. Instead, Trump spoke on the need to work with various levels of government to prioritize projects.

"We will work directly with state and local governments to give them the freedom and flexibility they need to revitalize our nation's infrastructure," he said.

Neal pushes for infrastructure spending paired with repatriation

In other developments, House Ways and Means Committee ranking Democrat Richard Neal of Massachusetts on June 7 called for increased infrastructure spending that would be offset by a one-time tax on foreign-source income of US multinationals.

"We could use the money [from a repatriation tax] for a jobs program called infrastructure," Neal said at a conference sponsored by Bloomberg BNA.

The pairing of a repatriation tax and infrastructure enjoyed some bipartisan momentum in the past. In 2015, Democratic Sen. Charles Schumer of New York, who was then a member of the Finance Committee and now serves as Senate minority leader, worked with Republican Senate taxwriter Rob Portman of Ohio and then-House Ways and Means Committee Chairman (now Speaker) Paul Ryan, R-Wis., on a proposal to link deemed repatriation of untaxed offshore income with infrastructure spending, although that deal subsequently fell apart because of disagreements over the level of highway funding to be included in the package.

House Republicans now generally want to keep infrastructure spending and tax reform separate, however. The House GOP tax reform blueprint released in June of 2016 proposes a tax of 8.75 percent on offshore cash and cash equivalents and 3.5 percent on other assets, but would use the revenue to offset the cost of tax reform.

For his part, Trump called for a one-time repatriation tax at an unspecified rate in the tax reform principles he released in April, although that proposed levy was not specifically paired with infrastructure spending. (His 2016 campaign proposal called for a one-time repatriation tax of 10 percent on all offshore assets and was not linked to infrastructure.)

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