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Ways and Means subcommittee to put extenders under the microscope post-tax reform

The House Ways and Means Tax Policy Subcommittee announced this week that it will hold a hearing to evaluate the policy merits of the temporary provisions currently in the tax code with an eye toward determining which should be made permanent and which should be allowed to expire. The hearing is set for March 14 at 10:00 a.m.

Ways and Means Republicans have indicated in recent weeks that the temporary provisions – known informally as tax extenders – are on borrowed time following the enactment of major changes to the tax code (P.L. 115-97) at the end of 2017. In a news release, subcommittee Chairman Vern Buchanan, R-Fla., called the upcoming hearing “an opportunity to continue to improve our newly reformed tax code by thoroughly examining the policy underlying temporary provisions. …The committee will hear from stakeholders about the role that each of these provisions may play as part of the new tax code.”

For his part, Ways and Means Committee Chairman Kevin Brady, R-Texas, added that taxwriters “want to know which provisions are redundant or unnecessary after tax reform, which amplify the growth and competitiveness delivered by our new tax code, and what other provisions stakeholders are willing to give up to preserve a particular provision of interest. Temporary measures that do not satisfy this test after a thorough review should be eliminated so we can further prioritize permanence in policies that will benefit our economy for the long term.”

The hearing will take place just weeks after Congress voted to renew dozens of expired 2016 extenders provisions through the end of 2017 and to provide longer-term extensions for certain “orphaned” commercial and residential energy investment tax credits as part of the recent two-year budget agreement that set top-level spending numbers for the remainder of fiscal year 2018 and all of fiscal year 2019. (For details on the Bipartisan Budget Act of 2018, see *Tax News & Views*, Vol. 19, No. 6, Feb. 9, 2018.)
URL: http://newsletters.usdbriefs.com/2018/Tax/TNV/180209_1.html

But Brady explained after the budget bill was enacted that those extenders provisions were intended to tie up loose ends from the old tax code and that lawmakers will be more reluctant to approve temporary provisions going forward.

“2017 was pre-tax reform. 2018 is post-tax reform, so there’ll be a much tougher test,” he said.

Seeking permanence for temporary tax reform provisions

The 2017 tax reform legislation itself contains some 20 provisions – chiefly those benefiting individuals, passthroughs, and estates – that are scheduled to expire at the end of 2025. Lawmakers opted to make those provisions temporary so that the legislation wouldn’t run afoul of Byrd Rule restrictions in the Senate that provide that legislation moving under budget reconciliation protections cannot increase the federal deficit outside of the 10-year budget window.

But Brady made clear in comments at a tax conference sponsored by the International Fiscal Association (IFA) in Houston February 23 that House taxwriters intend for those provisions to become permanent.

“In order to stuff 10 pounds of pro-growth tax reform into a five-pound bag, we had to make adjustments and timetables. I do fully expect those business provisions and the family provisions to be made permanent. I still think to get the maximum growth, making those permanent in a real timely way helps us long-term,” he said.

A list of all the tax provisions that are scheduled to expire through 2027 – including those enacted in the 2017 tax legislation – is available from the Joint Committee on Taxation staff.
URL: https://www.jct.gov/publications.html?func=startdown&id=5057

‘Fine-tuning’ international provisions

In addition to seeking permanence for the temporary provisions in the new tax law, House taxwriters also intend to do some “fine-tuning” to other provisions in the legislation – particularly those affecting multinational businesses. Brady told the IFA that the need for legislative fixes is a product of the speed with which the House and Senate rolled out and approved their respective tax reform proposals, agreed on a conference report, and whisked it off to the White House for President Trump’s signature.

“We threw an awful lot of new policy at this economy, especially on the international side. I fully expect that to be the area where we do most of the fine-tuning. If you think about it, doing a 10-day conference committee to resolve differences in our entire tax code between two bodies is an awfully ambitious schedule,” he said.

Brady did not discuss specific revisions to the international provisions or a timetable for possible hearings or other legislative action, however.

In recent weeks Brady has said that the Ways and Means Committee intends to “develop a punch list of provisions [in the tax reform bill] that need to be addressed” and has urged the business community to help taxwriters identify provisions that are ripe for technical corrections.

Treasury takes the tuning fork to carried interest

But not all the fine-tuning of the 2017 tax law will be done on Capitol Hill. The Treasury Department and IRS this week took aim at some perceived ambiguity in the new carried interest provisions when they announced in Notice 2018-18 that they will issue regulations that will provide that carried interests held by an S corporation must be held for at least three years to qualify for more favorable long-term capital gains rates.
URL: https://www.irs.gov/pub/irs-drop/n-18-18.pdf

The new law expands the holding period requirement to three years (from one year) for gains on qualified carried interests to be taxed as long-term capital gains; but the longer holding period does not apply to carried interests held by a corporation, and recent articles in the tax press have suggested that some taxpayers were planning to use S corporations to avoid the three-year holding period. The forthcoming regulations are intended to shut down those types of arrangements. According to the notice the regulations will be effective for taxable years beginning after December 31, 2017.

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Key vacancy at Treasury raises questions about pace of tax reform guidance

The Treasury Department and Internal Revenue Service are looking down a long list of new guidance projects related to implementing the 2017 tax reform legislation (P.L. 115-97). Last month, 18 new projects were added to the annual Treasury-IRS priority guidance list and this week came the announcement of forthcoming regulations to address an issue around the new law's carried interest provisions (see separate coverage in this issue for details). But the government's ability to roll out all of that guidance in a timely manner became a focus of discussion this week when Dana Trier, the Treasury Department's deputy assistant secretary of tax policy, abruptly resigned February 23.
URL: https://www.irs.gov/pub/irs-utl/2017-2018_pgp_2nd_quarter_update.pdf

Trier, one of the administration's key tax policy players, had been in his role since last summer but recently had become renowned on the tax speaking circuit for his colorful – and occasionally critical – remarks about components of the Republicans' signature legislative achievement.

"Between [my] public comments and the constant friction with the bureaucratic elements of the government, I really just think…it was time to go," he told the *Wall Street Journal* on February 23.

In an interview with Tax Analysts published on February 27, Trier indicated that despite his being "pretty analytical, pretty substantive," his personality wasn't a good fit for the department. "In some contexts my candor and sense of humor are good things, but in this job those qualities hurt my ability do the job, and that is the bottom line," he said.

Several people involved in the development of last December's legislation described Trier as integral to its implementation, but the two top congressional taxwriters have publicly expressed confidence that the move won't have a noticeable effect on the regulatory process.

Senate Finance Committee Chairman Orrin Hatch, R-Utah, said at a US Chamber of Commerce event on February 27 that he is "not really" concerned that Trier's departure will cause a slowdown.

House Ways and Means Committee Chairman Kevin Brady, R-Texas, offered a similar assessment in comments to reporters the same day.

"What I know is Treasury has been moving at full speed since before we sent the president the bill, the final bill in law, to begin implementing the regulations, so I don't see any change in that pace or in the discussions we're having with them," Brady said.

Trier himself said in various interviews this week that the Treasury leadership and staff is familiar with his thinking on the complex implementation issues they face and that he believes "they can do it," although he acknowledged the difficulties of the task ahead.

Trier said that the regulations related to the international tax changes will be especially challenging and called the work required to implement the deemed repatriation provision for previously untaxed overseas earnings "the closest thing to hell that the reg writers have ever faced."

Hatch open to IRS budget bump for tax reform implementation

Implementing the new law also could present budgetary challenges for the Internal Revenue Service, and the Trump administration has officially requested an additional $397 billion in funding for the agency as part of the two-year spending agreement (covering the remainder of fiscal year 2018 and all of fiscal year 2019) currently being hammered out in Congress. Acting IRS Commissioner David Kautter (who is also assistant Treasury secretary for tax policy) said at a Senate Finance Committee hearing last month that the Service would dedicate the bulk of the additional funds to enhancing technology and cybersecurity.

Congressional Republicans in recent years have been reluctant to endorse budget increases for the Service, but in a brief question-and-answer session following a speech at the American Enterprise Institute on March 1, Finance Committee Chairman Hatch indicated he is open to boosting IRS funding after years of decline.

“We have not been very good to the IRS,” Hatch said. “That’s something I’m certainly looking at. …I want to help them down there.”

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