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Trump, Brady hint at second round of tax cuts

President Trump and House Ways and Means Committee Chairman Kevin Brady, R-Texas, this week dangled the prospect of further tax legislation later in the year. But it is not clear what proposals might be included beyond extending the temporary individual tax cuts in the tax reform legislation (P.L. 115-97) enacted last December, and expectations are exceedingly low for a measure clearing Congress in 2018.

Speaking on Fox Business News March 13, Brady touted last year's tax reform bill and the positive economic data so far this year, saying, "[w]e're really encouraged. Mainstream optimism is at record levels, our economy is really gaining momentum and booming in a big way. But look, we think even more can be done."

"While the tax cuts for families were long-term, they're not yet permanent," Brady continued. (The provisions in the tax reform law benefiting individuals, estates, and passthrough entities are generally scheduled to expire at the end of 2025.) "So we're going to address issues like that, and we're in discussions with the White House, with the president, about this issue and also House Republicans are continuing to work."

At a business roundtable the same day in Missouri, President Trump told attendees that he and Brady – along with "Congress" and "the Senate" – are working on "phase two" of tax cuts.

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"…[I]n addition to [the] middle class, it will help companies, and it's going to be something I think very special," said the president.

Trump did not provide any details of what tax policy changes might be included this next phase, but Larry Kudlow, the incoming White House economic advisor (replacing Gary Cohn, who recently announced his resignation) said in a CNBC interview March 13 that he agrees the individual tax cuts should be made permanent. Kudlow commented that his own additional recommendations would include a focus on making permanent business expensing provisions and addressing the capital gains rate – "possibly lowering the rate, but possibly indexing them for inflation." (The 20 percent top rate for long-term capital gains was not changed in the recent bill.)

Action this year?

Ways and Means Chairman Brady said he and other taxwriters are currently focused on collecting feedback from business owners and other stakeholders and anticipate releasing a second tax package after that process is complete.

"The answer is this year," he said. "We haven't set a timetable yet, but we are exploring what good new ideas can be brought forward."

In contrast with the forecasts from Trump and Brady, House Speaker Paul Ryan, R-Wis., last week said he does not expect any big changes to the tax code this year and doesn't even anticipate that Congress will consider potential technical corrections to the recent bill before November's election.

With Democrats expected to oppose any enhancements to last year's tax bill, Republicans likely would need to once again invoke the budget reconciliation process if they hope to enact another round of tax cuts. (Reconciliation would allow for passage by a simple majority in the Senate rather than the 60-vote supermajority typically required to overcome procedural hurdles in that chamber.) But Republicans have made it clear they don't plan to write reconciliation instructions for fiscal year 2019, which would preclude a reconciliation bill before the next session of Congress. Adding uncertainty is the potential for Democrats to retake the majority in at least one chamber of Congress this November, which would essentially shut down any Republican plans to use the reconciliation process next year.

Larry Kudlow, responding to a question on CNBC about whether any Republican bill this year would simply be for "messaging" ahead of the November election said, "I understand politics in an election year, but these will be serious proposals. …Whether they can get them through or not remains to be seen. These will be serious proposals."

No set timetable for tax reform 'bluebook,' Barthold says

In other developments, Joint Committee on Taxation (JCT) Chief of Staff Tom Barthold, said March 9 that the JCT does not have a timetable for its release of the "bluebook" describing the 2017 tax law but hopes to have it out "well before the end of this [congressional] session."

The bluebook is a publication by JCT – in consultation with staff at the Senate Finance Committee and the House Ways and Means Committee – that describes the tax legislation enacted during each Congress, often including the reasons for the changes.

Barthold, who was speaking at a tax conference sponsored by the Federal Bar Association in Washington, said the 2018 book also will include a list of technical corrections needed and an explanation of any "garbled" language in the new law.

It has long been expected that the bluebook for the 2017 tax bill will come out later in 2018, given the significance and scope of the changes included in that legislation. Barthold has often noted that the bluebook describing the Tax Reform Act of 1986 (passed in October of that year) was not released until May 15, 1987.

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House taxwriters weigh need for extenders post tax reform

The annual exercise of evaluating expiring or expired short-term tax incentives – commonly referred to as "extenders" – has long been held as inefficient, but now many policymakers are wondering if keeping these temporary provisions in the tax code is even necessary in the wake of the tax reform legislation (P.L. 115-97) enacted late last year. That was the overarching debate during a March 14 Ways and Means Tax Policy Subcommittee hearing.

Although much of the discussion focused on extenders generally, lawmakers and witnesses also addressed the policy merits of roughly two dozen expired extenders provisions that were renewed retroactively through the end of last year as part of the Bipartisan Budget Act of 2018 (P.L. 115-123) which was enacted February 9. (A report on those provisions is available from the Joint Committee on Taxation staff.)
URL: https://www.jct.gov/publications.html?func=startdown&id=5062

The big picture

Subcommittee Chairman Vern Buchanan, R-Fla., laid out the parameters of the debate in his opening remarks. "For each provision, we will ask: what role does this provision play in the new tax code? If it is no longer needed because of the reforms that have been enacted, the provision should be eliminated. If the provision continues to play an important role and enhances the new pro-growth tax reform, we should consider making it permanent."

Ways and Means Chairman Kevin Brady, R-Texas, also made a brief opening statement, in which he suggested a similar examination process and expressed hope the group could find some provisions to sacrifice so that the favored ones could be made permanent.

Several Democrats on the subcommittee – including ranking member Lloyd Doggett of Texas – chided Republicans for not addressing extenders as part of the tax reform process and instead forcing Congress to deal with what he deemed "the leftovers and the left-outs." And subcommittee member Suzan DelBene, D-Wash., argued the new law actually increased uncertainty for taxpayers by creating new extenders – notably, a host of provisions affecting individuals, estates, and passthrough entities that expire at the end of 2025 – which she said resulted in the opposite of real tax reform.

A panel of witnesses representing think tanks from across the political spectrum all seemed to agree that the temporary nature of extenders distorts the costs of legislation and primarily benefits specific industries. They were mostly agnostic on the merits of the specific expired provisions that were under discussion but they broadly agreed that the revenue loss from any provisions that are made permanent or renewed temporarily needed to be fully offset. However, one witness, David Burton, a senior fellow of economic policy at the Heritage Foundation, argued extenders and targeted incentives generally should be done away with as they violate the concept of horizontal equity – that is, the idea that similarly situated taxpayers earning the same amount of money should receive similar tax treatment.

In response to a question from subcommittee member Earl Blumenauer, D-Ore., about how best to engage the public in scrutinizing tax extenders, Maya MacGuineas of the Committee for a Responsible Federal Budget suggested adopting an approach recommended by the Simpson-Bowles deficit reduction commission in 2010, which would entail removing all extenders as well as permanent tax expenditures from the code to allow tax rates to be reduced to their lowest possible levels, and then "buying back" those provisions that are deemed to be worth the cost of a higher tax rate. MacGuineas argued that Congress's practice of not insisting on offsets for extenders makes it easier to clutter up the code with temporary provisions.

"If you just put everything on the national credit card, it seems to be free," she said.

Getting down to cases

Witnesses on the remaining three panels – drawn largely from the alternative energy sector but also representing other industries such as small railroads and real estate – advocated for long-term, if not permanent, extensions of specific expired provisions. Buchanan asked each panel the same question: whether these types of breaks are still necessary given the substantially lower tax rates and more generous expensing provisions now available to businesses under the new tax law. He acknowledged that reform didn't correct all issues in the code but made serious progress.

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"The bill is not perfect; there's more work to be done," he said.

A common theme in the witness testimony was the need for clarity, certainty, and permanence. Extenders in general make business planning decisions difficult, requiring forecasts without the certainty of knowing whether or not a tax incentive will exist in the future, many witnesses said.

Alternative fuel and energy incentives: A frequent reason cited for renewing certain now-expired provisions despite tax reform was competition. For example, Andrew West, founder and chief executive officer of American Natural Gas, who advocated for a five-year extension of the alternative fuels and fuel mixtures credits under sections 6426 and 6427, argued that developers of natural gas-powered vehicles need incentives on par with those available for hydrogen- and electric-powered vehicles in order to grow the industry. These incentives, he told Buchanan, can help fledgling industries that are building out innovative technologies. He also argued that a long-term extension of the credits would allow his industry to develop to a point at which it would no longer need government subsidies.

Likewise, Lisa Jacobson of the Business Council for Sustainable Energy, noted that the Protecting Americans from Tax Hikes Act of 2015 and this year's Bipartisan Budget Act provided long-term extensions (through 2021) of investment and production tax credits for electricity produced from certain renewable energy sources but not for electricity produced from other renewables. She argued that alternative energy power plants can take anywhere from three to seven years to construct and that taxpayers in her industry won't necessarily benefit from a short-term extension of credits.

Subcommittee member Jim Renacci, R-Ohio, commented on this disparity and said that the government should not be picking winners and losers among competing technologies. He told Jacobson that all of these provisions should be simplified and phased out, but in a way that harmonizes with the business cycle of specific industries. (Renacci raised the point again to the panel of think tank witnesses, asking how Congress can "bring this plane down slowly." In her response, Ryan Alexander of Taxpayers for Common Sense argued that given the substantial rate reduction and expensing provisions that were just enacted, now would be a good time to look at "transitioning out of" extenders as well as tax expenditures in the code, as businesses would be less likely to feel the pain.)

For his part, subcommittee member Tom Rice, R-S.C., was skeptical of the need to extend alternative energy credits and fuel efficiency credits, which he said were enacted in 2005 when the cost of oil was substantially higher and lawmakers believed we had discovered all the oil sites in the world.

Energy conservation incentives: Rick Lazio of Alliantgroup (also a former GOP House member from New York), Daniel Bresette of the Alliance to Save Energy, and Henry Chamberlain of the Building Owners and Managers Association International, argued for extending the deduction for energy-efficient commercial buildings under section 179D.

Lazio noted that the deduction encourages construction of new energy-efficient public buildings – and retrofitting existing buildings and public housing projects to maximize energy efficiency – and thus helps reduce the operating costs of government for taxpayers. Chamberlain contended that the deduction helps building owners who otherwise may not have capital for new construction or retrofitting projects and encourages private sector solutions to promote energy efficiency.

The provision appears to have some bipartisan support among House taxwriters. Subcommittee member Dave Reichert, R-Wash., has introduced legislation (H.R. 3507) that would make the deduction permanent and Democratic member Earl Blumenauer cited the 179D deduction during the hearing as an example of "a credit we shouldn't punish."

Motorsport racetrack depreciation: Ways and Means Committee member Tom Reed, R-N.Y., who is not a member of the tax policy panel, appeared at the hearing to support an extension of the seven-year recovery period for motorsports entertainment complexes, citing the economic benefits the racing industry provides to an area of western New York that otherwise wouldn't see that level of commercial activity. That provision did not generate further discussion among witnesses or subcommittee members, however.

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Next steps

Buchanan told reporters March 14 that House lawmakers will be able to weigh in on specific extenders provisions at a yet-to-be-scheduled "member day" hearing.

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Congressional select committee on multiemployer pension plans holds organizational meeting

The Joint Select Committee on the Solvency of Multiemployer Pension Plans held an organizational meeting March 14 to adopt committee rules and make opening statements.
URL: https://www.finance.senate.gov/imo/media/doc/12345.000.pdf

The bicameral, bipartisan committee, which was authorized under the recently enacted Bipartisan Budget Act of 2018 (P.L. 115-123, is charged with studying the funding challenges facing multiemployer plans, reviewing potential solutions, and developing legislative recommendations that could be considered by the House and the Senate. Its 16 members – 8 from the House and 8 from the Senate, equally divided between Democrats and Republicans – were appointed by the leadership in their respective chambers.

The committee is instructed to report a bill by the last week of November. A proposal that receives support from at least five members of each party will be guaranteed an expedited vote on the Senate floor with no amendments.

The committee is co-chaired by Senate Finance Committee Chairman Orrin Hatch, R-Utah, and Finance Committee member Sherrod Brown, D-Ohio. Other senators on the panel include Finance Committee members Mike Crapo, R-Idaho, and Rob Portman, R-Ohio, as well as Lamar Alexander R-Tenn., Joe Manchin, D-W.Va., Heidi Heitkamp, D-N.D., and Tina Smith, D-Minn.

Panel members from the House include Ways and Means Committee ranking member Richard Neal, D-Mass., Ways and Means Tax Policy Subcommittee Chairman Vern Buchanan, R-Fla., and taxwriter David Schweikert, R-Ariz., along with Reps. Bobby Scott, D-Va., Virginia Foxx, R-N.C., Phil Roe, R-Tenn., Donald Norcross, D-N.J., and Debbie Dingell, D-Mich.

The committee is required to hold at least five public hearings and has the option of holding field hearings outside of Washington.

In his opening statement at the organizational meeting, Hatch remarked that legislation to address solvency for multiemployer pension plans "requires a clear understanding of the issues these plans confront. ...We need to understand the magnitude of the financial shortfall among plans considered critical and declining, determine the likelihood of other plans falling into this status, and meaningfully evaluate the various proposals that have been offered to address this situation."

Hatch also commented on the challenges inherent in developing a bipartisan proposal.

"There are no magic bullets, and any solutions we come up with are bound to make at least some people unhappy," he said.

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