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CBO report paints bleak fiscal picture following 2017 tax cuts and 2018 spending pact

The nonpartisan Congressional Budget Office (CBO) on April 9 released its annual assessment of the federal budget and economy for the next decade. Although the report predicts a near-term uptick in the economy resulting from the enactment of last year's tax cut legislation (P.L. 115-97, referred to here as the 2017 Act) as well as other factors, the agency sees bigger deficits and more muted economic growth over the longer run, relative to its prior projections in June 2017.

Deficits, public debt on the rise

Unlike its other budget estimates from recent years which predicted deficits would remain relatively stable over the near term before staging an inexorable ascent later in the decade due to the demographic pressures of an aging population and the resultant increased spending on programs such as Medicare and Social Security, this week's CBO report (the *Budget and Economic Outlook: 2018 to 2028*) paints a picture of more rapidly accumulating budget deficits thanks to the enactment of the 2017 Act (which the Joint Committee on Taxation initially estimated would reduce revenues by $1.456 trillion over the 10-year period ending with fiscal year 2027) and the Bipartisan Budget Act of

2018 (which allowed for roughly $300 billion in additional appropriations spending over the next two years). These two new laws, along with the still present demographic pressures, will lead to cumulative deficits of more than $12.4 trillion over fiscal years 2019 through 2028, as compared to the $10.1 trillion total estimated to accrue between fiscal years 2018 through 2027 in last year's report.
URL: https://www.cbo.gov/system/files/115th-congress-2017-2018/reports/53651-outlook.pdf

The latest CBO report shows deficits will hover between 4.0 and 5.4 percent of the economy between 2018 and 2028. In dollar terms, federal spending will outstrip revenues by more than $1 trillion in fiscal 2020 – a level last seen in 2012 in the wake of the financial crisis – and will rise to more than $1.5 trillion by fiscal 2028.

Over the course of the next decade, CBO projects revenues will average 17.5 percent of gross domestic product (GDP) – a level in line with the 17.4 percent of GDP average over the past 50 years, but a notable decline from the 18.2 percent 10-year average projected in June of 2017. Meanwhile, federal spending is expected to average 22.4 percent of GDP, which is consistent with the agency's projected average over the previous 10-year budget window – a function of the offsetting impacts of the Bipartisan Budget Act's appropriations increases, increased debt service costs due to bigger deficits and higher projected interest rates, and lower spending on health care subsidies due to the 2017 Act's repeal of the so-called "individual mandate" enacted in the Patient Protection and Affordable Care Act of 2010.

By the end of the 10-year budget window (*i.e.*, fiscal 2028), CBO projects the federal debt held by the public – that is, debt not held in intragovernmental accounts such as the Social Security and Medicare trust funds – will total 96.2 percent of the economy, a level not reached since the height of US involvement in World War II.

'Current law' versus 'current policy': Pursuant to the Congressional Budget and Impoundment Control Act of 1974 – the law that established the CBO – the agency is required to make its projections on the basis of "current law," or laws as they are currently in effect. Inherent in CBO's projections, therefore, is an assumption that all expired and expiring tax provisions – including, most notably, nearly all of the individual tax changes in the 2017 Act as well as the new passthrough deduction in tax code section 199A which are scheduled to lapse after 2025 – will not be renewed, and revenues will be higher as a result.

By contrast, a "current policy" revenue baseline would assume that those lapsing tax provisions will instead remain in effect.

According to an analysis of "policy alternatives" included in its report, CBO notes that the 10-year revenue baseline would be reduced by a further $650 billion if the expiring individual changes in the 2017 Act were made permanent. Extending 100 percent bonus depreciation beyond 2022 (that is, prior to its scheduled phase-out) would reduce revenues by an additional $122 billion. Repealing certain Affordable Care Act taxes that Congress has acted to postpone in the past (*i.e.*, the health insurer fee, the medical device excise tax, and the so-called "Cadillac" tax on high-cost employer-provided health care plans) would reduce revenues by an additional $324 billion and making permanent the expired tax extenders last renewed for tax year 2017 as part of the Bipartisan Budget Act of 2018 would slash receipts by an additional $85 billion, according to CBO. (All figures exclude additional debt service costs.)

Even more impactful from a budget perspective is a policy alternative related to discretionary spending. Specifically, CBO notes that if annual appropriations (that is, non-entitlement spending) are inflation-adjusted after fiscal 2018 rather than allowed to fall to sequester levels in fiscal 2020 as scheduled under current law (and adjusted for inflation from that point), deficits would be almost $1.7 trillion higher over the next decade (again, excluding additional debt service costs.)

The combination of these current policy adjustments would push cumulative deficits higher than $15 trillion over the next decade, as compared to roughly $12.4 trillion under "current law" assumptions, which few analysts expect Congress to abide by.

Tax reform to boost the economy – for a while

The CBO predicts that the 2017 Act will boost average annual real GDP by 0.7 percent over the 2018 to 2028 period – a net positive effect from the confluence of offsetting factors such as reduced corporate taxes (corporate tax revenue is projected to fall by $54 billion in 2018 alone, relative to last year), stronger corporate investment, heighted incentives to work and invest due to lower individual tax rates, reduced real estate investment due to the law's changes to the federal deductions for mortgage interest and state and local taxes, the temporary nature of the bulk of the changes on the individual side of the tax code, and higher projected interest rates (a result of the Federal Reserve's anticipated response to faster inflation as well as the Treasury's possible need to offer higher rates on its bonds to attract investors).

This latter dynamic can lead to a "crowding out" of investment over time, CBO says, as more and more dollars are directed to financing the government's deficits rather than invested in private capital – a factor reflected in the agency's estimation that the law's contribution to increased real GDP will peak at 1.0 percent in 2022 and steadily decline thereafter (while averaging 0.7 percent over the next 11 years, as discussed above). In fact, CBO projects overall average economic growth will actually be slightly *lower* over the 2021 to 2027 period than it projected in June of 2017 (1.7 percent versus 1.9 percent).

2017 Act's cost marked up, relative to December JCT estimate

Another significant finding in the report relates to the 2017 Act's projected budgetary impact. As already noted, when the JCT scored the legislation late last year, it predicted the bill would lead to revenue losses of $1.456 trillion over the 10-year period spanning 2018 to 2027, excluding debt service costs and the positive budgetary effects of macroeconomic feedback (or so-called "dynamic" scoring).

The current CBO report, however, pegs the comparable cost at $1.843 trillion from 2018 to 2028 – a roughly $400 billion increase over the prior JCT estimate.

CBO largely attributes the change to "information about the implementation of the tax act learned in recent months" as well as the fact that the earlier estimate was keyed off of an economic baseline produced in January 2017. Measuring the bill's budget effects against the new, stronger economic baseline raises its apparent cost because, generally speaking, in the law's absence more income would be subject to tax at higher rates.

"We have a different economic forecast – stronger economic growth," CBO Director Keith Hall commented to reporters on April 10.

Those dynamics seemed to be of little consolation to Sen. Bob Corker, R-Tenn., however, who remarked at an April 11 Senate Budget Committee hearing that he may live to regret voting in favor of the tax bill. Corker originally opposed the legislation but famously switched his position late last year after reaching a level of comfort that the bill – which he called "far from perfect" – would on the whole be a net positive due its changes on the business side of the code.

"If it ends up costing what has been laid out [by the CBO], it could well be one of the worst votes I've made," Corker told the Budget Committee. "This Congress and this administration likely will go down as one of the most fiscally irresponsible administrations and Congresses we've had."

CBO cautions that its projections with respect to the 2017 Act involve inherent uncertainties related to how the law will be implemented through Treasury regulations, and how state, local, and foreign governments will respond to provisions such as new limits on the federal deduction for state and local income and property taxes and profit shifting by multinational businesses.

House votes down balanced budget amendment

In a related development, the House on April 12 failed to garner the two-thirds supermajority needed to secure passage of a proposed Constitutional amendment that would require balanced federal budgets, subject to waivers in times of war or when three-fifths of both chambers of Congress consent to a specific excess of spending over revenues.
URL: https://www.gpo.gov/fdsys/pkg/BILLS-115hjres2ih/pdf/BILLS-115hjres2ih.pdf

The amendment, voted down 233-184, was never expected to receive the requisite Democratic support that would allow it to pass. Democrats are generally staunch opponents of such measures, arguing they could force deep spending cuts, especially in times of recession. (Even if such a measure were to pass Congress, it would have to be ratified by three-fourths of the state legislatures before it could take effect.)

Some House members, including Freedom Caucus Chairman Mark Meadows, R-N.C., saw the measure as tone-deaf in the wake of the CBO's dire budget outlook and Republicans' recent support for major discretionary spending increases and deficit-increasing tax cuts.

Meadows commented earlier this week that "[t]here is no one on Capitol Hill, and certainly no one on Main Street, that will take this vote seriously." He nonetheless voted in favor of the amendment when it came to the floor.

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Ryan won't seek re-election to Congress

House Speaker Paul Ryan, R-Wis., dropped a political bombshell on his Capitol Hill colleagues April 11, announcing that he will retire from Congress when the current legislative session officially ends in early 2019. He cited his family in Wisconsin and desire to be more than just a "weekend" father and husband as his motivation for ending his career as a lawmaker.

Ryan, who has served 10 terms in the House, came to Congress as an aide and rose to become a vice presidential candidate, running alongside Mitt Romney in 2012. He has been speaker since late 2015.

A tax and budget wonk

After chairing the House Budget Committee from 2011 to 2014 and negotiating the Bipartisan Budget Act of 2013 with then-Senate Budget Committee Chairman Patty Murray, D-Wash., Ryan took the gavel of the House Ways and Means Committee at the beginning of 2015. In a retirement announcement he wrote this week for his home state's *Milwaukee Journal Sentinel*, Ryan characterized the role of top taxwriter as his "dream job" – as he often has before – and lamented that he got to hold it for only 10 months before his Republican colleagues elevated him to the leadership in the wake of then-Speaker John Boehner's surprise resignation.

"I never sought the title of speaker…but I do not regret accepting the demands of the job," Ryan said this week. "It is the highest honor of my time in public service."

One of Ryan's longtime professional goals was a Republican-led overhaul of the US tax code, and with the passage of last December's significant tax cut reconciliation bill, he has left his mark on the system. However, entitlement reform – the other piece of the "grand bargain" he hoped to shepherd through Congress – will have to be tackled without him if Republicans choose to pursue it.

An early exit?

Ryan said he intends to remain speaker through the end of this congressional session, but some political observers speculate he will step down sooner, giving the Republicans new leadership ahead of what will be a challenging midterm election cycle.

House Majority Leader Kevin McCarthy of California is Ryan's most obvious successor, but he was unable to garner enough support within the Republican conference for the role in 2015, so other candidates may emerge. House Majority Whip Steve Scalise of Louisiana said recently that he would pursue the position only if McCarthy doesn't have enough support.

Including Ryan, 40 House Republicans have announced they will retire from the chamber this year.

Key staff departure

The day following his own retirement news, Ryan, along with Ways and Means Committee Chairman Kevin Brady, R-Texas, announced that Dave Stewart, the Ways and Means staff director and a former economic advisor to Boehner and to the Romney-Ryan campaign, is also leaving Capitol Hill. The committee has not yet named a successor.

— Storme Sixeas
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Ways and Means advances IRS modernization bills

The House Ways and Means Committee on April 11 unanimously approved 12 bipartisan bills calling for changes to the Internal Revenue Service's organizational structure, enhancements to its information technology and cybersecurity operations, revisions to its enforcement policies, and improvements in customer service, all in an effort to make the agency more efficient and taxpayer-friendly.

It is our goal to build a 'taxpayer first' IRS that works for taxpayers, not against them," Ways and Means Committee Chairman Kevin Brady, R-Texas, said in his opening statement.

The overall tone of the mark-up was collaborative, although Democratic taxwriter Earl Blumenauer of Oregon voiced concerns over Republican-driven funding cuts at the IRS in recent years and their effects on its efficiency, and some other Democrats lamented that GOP leaders were not as open to minority input in drafting the tax cut legislation that moved through Congress at the end of 2017.

Brady, for his part, emphasized comity, telling the panel that "[t]his collection of targeted, bipartisan solutions will help address problems that many Americans struggle with. By passing these bills, we can take meaningful action to improve the lives of all taxpayers."

The Ways and Means package, if enacted into law, would mark the first significant overhaul of IRS operations since the enactment of the IRS Restructuring and Reform Act of 1998. Legislative language, Joint Committee on Taxation descriptions, and revenue estimates for the proposals are available on the Ways and Means Committee website.
URL: https://waysandmeans.house.gov/event/ways-and-means-to-hold-markup-2/

Taxpayer First Act

The Taxpayer First Act (H.R. 5444), introduced by Ways and Means Oversight Subcommittee Chairman Lynn Jenkins, R-Kan., and subcommittee ranking member John Lewis, D-Ga., lays out a path forward for reorganizing the IRS and makes taxpayer-friendly changes in the areas of enforcement, appeals, and customer service.

Organizational issues: The legislation does not propose specific changes to the IRS's organizational architecture. Rather, it would require the Service to submit to Congress by September 30, 2020, a comprehensive written plan to revamp the agency's structure in a way that emphasizes taxpayer service, streamlines operations (including the elimination of duplicative services and responsibilities), and positions the agency to address cybersecurity issues and other operational threats.

The legislation does, however, include targeted organizational proposals that would:

- Make changes to the Office of the National Taxpayer Advocate (NTA) and its interactions with IRS leadership. For example, it would give more heft to Taxpayer Advocate Directives (which the NTA issues to identify systemic problems at the IRS and mandate changes to tax administration or other processes) by requiring IRS leadership to respond to those directives, clarifying the time period for issuing a response, and requiring the NTA to inform Congress of any directives not honored by the IRS.
- Eliminate the IRS Oversight Board, a nine-member body that was created in the 1998 restructuring legislation to oversee the Service's administration of federal tax laws, but which has been ineffective in the last few years due to lack of a quorum.
- Change the title of "Commissioner of the Internal Revenue Service" to "Administrator of the Internal Revenue Service" to emphasize the IRS leader's role as administering the Internal Revenue Code. ("Deputy Commissioner" titles likewise would be redesignated as "Deputy Administrator.")

Enforcement: The legislation would also limit the IRS's authority to seize property of taxpayers who are suspected of "structuring" financial transactions to avoid Bank Secrecy Act, which requires information reporting on cash transactions over $10,000. Although the Bank Secrecy Act provision was intended to target cash-based criminal activity, several House taxwriters have argued in recent years that some taxpayers – particularly small businesses – who have legitimate reasons for engaging in frequent cash transactions may unwittingly appear to be structuring their transactions and could become subject to asset forfeiture without ever committing a crime.

Under the bill, the Service would be required to show probable cause that the funds in a suspected structuring transaction are derived from an illegal source or connected with other criminal activity. If a court determines that the government should return funds and interest to an individual whose funds were seized based on a structuring allegation, the interest payment would be exempt from tax.

Other enforcement-related provisions in the legislation would:

- Clarify the standard of review by the Tax Court for equitable relief from understatement or underpayment of taxes on a jointly filed return;
- Clarify the IRS's authority to issue a "John Doe" summons by providing that the summons must be narrowly tailored to seek only information that pertains to the failure or potential failure of an individual or group to comply with federal tax law;
- Exempt delinquent taxpayers from the IRS's private debt collection program if their income falls below 250 percent of the federal poverty level;
- Revise the rules regarding notice of third-party contacts to ensure that taxpayers are aware that the IRS will contact third parties – including friends, neighbors, and clients – closer to the time that those contacts are made;
- Require that a designated summons be reviewed and approved (in writing) by the highest-level IRS employee in the relevant operating division and the relevant division counsel in the Office of Chief Counsel; and
- Prohibit individuals outside of the IRS from examining a taxpayer's returns and return information other than for the sole purpose of serving as an expert witness.

Appeals process: The legislation would strengthen taxpayer rights during the appeals process by codifying the IRS Independent Office of Appeals, providing additional congressional oversight over decisions to withhold certain taxpayers from the administrative review process, and requiring the IRS to provide taxpayers with their case files before the start of any dispute resolution process (rather than requiring taxpayers to obtain this information through a Freedom of Information Act request).

Customer service: Under the legislation, the IRS would be required to develop and submit to Congress a comprehensive customer service strategy that lays out how the agency intends to provide assistance for taxpayers (including customer service training for IRS employees), incorporates best practices from the private sector, and establishes benchmarks for measuring success in its implementation.

The bill also would assist lower-income taxpayers by codifying and making permanent the current-law Free File Program and providing a low-income exception for payments otherwise required in connection with the submission of an offer-in-compromise.

Tax Court: The legislation would make Tax Court judges subject to the same grounds for disqualification as judges of other federal courts. It also would change certain titles and terminology currently used within the Tax Court to make them consistent with their usage elsewhere in the federal court system and repeal deadwood provisions related to the Board of Tax Appeals (the predecessor of the Tax Court).

21st Century IRS Act

The 21st Century IRS Act (H.R. 5445), sponsored by Ways and Means members Mike Bishop, R-Mich., and Suzan DelBene, D-Wash., seeks to modernize the Service's information technology systems – an issue that has taken on increased urgency as the agency prepares to implement the massive tax cut legislation enacted at the end of 2017 – as well as hold the IRS accountable for the taxpayer dollars it spends on designing and maintaining those systems. It also aims to expand the use of electronic systems for interactions between taxpayers and the Service.

In addition, the legislation includes a number of provisions aimed at enhancing the IRS's cybersecurity infrastructure, preventing identity theft, and providing assistance to taxpayers who have been victims of identity theft.

Systems modernization: Proposals to overhaul the Service's information technology infrastructure would address:

- **Information technology management:** The legislation would codify the position of the IRS's chief information officer, establish clear roles and responsibilities for that position, and require the IRS to develop and implement an information technology strategic plan that aligns with the agency's overall goals. It also would require the Service to have a third party independently verify and validate its plans for completing the Customer Account Data Engine 2 and Enterprise Case Management systems within a year of enactment.
- **Online accounts and portals:** The IRS would be required to develop robust, secure online accounts for taxpayers and their preparers by 2023. The increased availability of online taxpayer support would be in addition to the traditional telephone and in-person support services the agency currently provides. The IRS also would be required to develop a process for the secure acceptance of tax forms and supporting documentation in an electronic format.
- **Internet platform for Form 1099 filings:** The legislation would require the IRS to develop an internet portal to facilitate electronic filing of Forms 1099. The portal would be modeled after a system that the Social Security Administration uses to facilitate filings of Forms W-2.
- **Consent-based income verification:** The legislation would authorize the IRS to develop an automated system for submitting forms under its Income Verification Express Service program and to charge a separate user fee over a two-year period to fund the development of the new system.
- **Redisclosure of consent-based disclosures of return information:** The legislation would limit tax return information redisclosures by a taxpayer's designee to only those redisclosures to which a taxpayer has expressly consented.

Expanded use of electronic systems: The legislation includes a number of provisions to increase electronic filing of tax returns, promote the use of electronic signatures for authorization of certain taxpayer disclosure authorizations, and allow payment of taxes by credit and debit cards.

- **Electronic return filing:** The legislation would require a taxpayer that files 10 or more returns with the IRS to file them electronically. (Under current law, the electronic filing requirement applies to taxpayers that file more than 250 returns). This provision would be phased in and includes an exception for tax preparers in geographic areas with limited or no internet access.
- **Standards for electronic signatures:** The IRS would be required to develop standards and other guidelines that would allow for the use of electronic signatures to request taxpayer return information for purposes of disclosures to a practitioner or to execute a power of attorney.
- **Credit and debit card payments:** The legislation would allow the IRS to directly accept credit and debit card payments for tax debts (instead of working with a third-party processor) but would require taxpayers to pay the fees charged by the card issuer.

Cybersecurity and identity protection: On the cybersecurity front, the bill includes proposals to:

- Codify recent IRS efforts to foster a public-private partnership to combat identity theft tax refund fraud;
- Modify the charter of the Electronic Tax Administration Advisory Committee (which was created as part of the 1998 IRS restructuring law to advise the IRS on improving electronic tax administration) to reflect committee's new focus on identity theft tax refund fraud;
- Direct the IRS to participate in an identity theft tax refund fraud information sharing and analysis center with state and private sector partners; and
- Prohibit the IRS from providing taxpayer information to contractors or agents of a federal, state, or local agency unless the contractor has safeguards in place to protect the confidentiality of return information and agrees to conduct on-site compliance reviews every three years.

Additional reform measures

In addition to these two broad proposals, House taxwriters also approved a series of targeted reform measures that would:

- Require all tax-exempt organizations that are required to file a Form 990 with the IRS to submit their returns electronically and make them available to the public in a machine-readable format. (Mandatory electronic filing currently applies only to tax-exempt organizations that have assets greater than $10 million and those that file more than 250 returns with the IRS.) A transition rule would allow the IRS to delay implementation of this requirement by up to two years for certain smaller organizations. (H.R. 5443, sponsored by Ways and Means member Mike Kelly, R-Pa., and Rep. Stephanie Murphy, D-Fla.)

- Require the IRS to establish a program that would allow any taxpayer to request an Identity Protection Personal Identification Number (IP PIN), a six-digit number issued by Treasury that is included with a tax return for authentication purposes. Currently, a taxpayer can be assigned an IP PIN only if the IRS determines that the taxpayer is at risk of having his or her identity stolen. (H.R. 5437, sponsored by Ways and Means members Erik Paulsen, R-Minn., and Suzan DelBene, D-Wash.)
- Establish a single point of contact within the IRS for any taxpayer who is a victim of identity theft. (H.R. 5439, sponsored by Ways and Means members Jim Renacci, R-Ohio, and John Lewis, D-Ga.)
- Amend the Tariff Act of 1930 to require US Customs and Border Protection to develop a system to ensure that personally identifiable information (such as Social Security Numbers and passport numbers) that is routinely captured on international shipping manifests when an individual moves overseas is not disclosed to the public. (H.R. 4403, sponsored by Rep. Jeff Denham, R-Calif., and Ways and Means member Bill Pascrell, D-N.J.)
- Require the Social Security Administration to issue a new Social Security Number to an infant or child under the age of 14 if the child's parent or guardian can show that the originally issued Social Security card was stolen while in the mail. (H.R. 1512, sponsored by Ways and Means members Kenny Marchant, R-Texas, Bill Doggett, D-Texas, Jason Smith, R-Mo., and Earl Blumenauer, D-Ore.)
- Require the Social Security Administration to develop a user-funded system to match the name, Social Security Number, and date of birth of an individual submitted by a permitted user (generally a financial institution or service provider) against the Social Security Administration's records. (H.R. 5192, sponsored by Ways and Means members Carlos Curbelo, R-Fla., and Kenny Marchant, R-Texas, along with Reps. Kyrsten Sinema, D-Ariz., and Randy Hultgren, R-Ill.)
- Restrict the IRS's ability to immediately sell "perishable" goods it acquires in certain civil asset forfeitures by specifically limiting the definition of "perishable" to property that is liable to perish. Under current law this definition also applies to property that is likely to lose value rapidly and property that cannot be kept without great expense to the IRS. (H.R. 5446, sponsored by Rep. Drew Ferguson, R-Ga., and Ways and Means member Joseph Crowley, D-N.Y.)
- Make the Volunteer Income Tax Assistance (VITA) Program permanent. (H.R. 2901, sponsored by Ways and Means members Carlos Curbelo, R-Fla., and Danny Davis, D-Ill.)
- Allow IRS employees to provide information to taxpayers about the availability of and eligibility requirements for low-income taxpayer clinics. (H.R. 5438, sponsored by Ways and Means members George Holding, R-N.C., and John Lewis, D-Ga.)
- Require the IRS to provide advance notice when it plans to close a walk-in Taxpayer Assistance Center. (H.R. 5440, sponsored by Reps. Karen Handel, R-Ga., and Tom O'Halleran, D-Ariz.)

House floor votes ahead

The Ways and Means Committee-approved bills are expected to receive votes on the House floor the week of April 16, coinciding with this year's income tax filing deadline of April 17. It was unclear at press time whether Republican leaders plan to move all 12 bills separately or combine them into one or more larger packages. Also unclear is whether any of the measures will be open to amendment.

Senate GOP leaders have not indicated when or if they intend to take up the House measures or pursue a separate IRS reform package of their own.

Kautter weighs in

When asked about the Ways and Means-passed IRS reform package at a Senate Finance Committee hearing April 12, IRS Acting Commissioner David Kautter characterized it as "by and large a constructive piece of legislation" but added that he would propose changes to: (1) require electronic filing for all business and information tax returns, (2) require the IRS to establish online taxpayer accounts, and (3) codify the IRS's mission, with a focus on taxpayer service.

Kautter said he believes the IRS generally has the tools it needs to enforce tax law and assist taxpayers – which he emphasized should not be viewed as mutually exclusive – but he also advocated for increased funding, with oversight.

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Treasury and OMB reach accord on tax regulatory review

The Department of Treasury and the Office of Management and Budget (OMB) released a joint agreement on April 12 that grants OMB broader authority in reviewing tax regulations and ends a turf war that the two agencies had been conducting in recent months.

The Memorandum of Agreement (MOA), replaces a similar memorandum from 1983 (and a 1993 letter from the Treasury General Counsel reaffirming the 1983 memorandum) which had largely exempted Treasury regulations from the OMB review process under the Office of Information and Regulatory Affairs (OIRA). The change was precipitated by the Trump administration's release last year of Executive Order 13789, which asked Treasury and OMB to seek out tax regulations that impose "an undue financial burden on [US] taxpayers, …add undue complexity to federal tax laws, or…exceed the statutory authority of the Internal Revenue Service." (For prior coverage, see *Tax News & Views*, Vol. 18, No. 15, Apr. 28, 2017.)
URL: http://newsletters.usdbriefs.com/2018/Tax/TNV/180413_4_suppA.pdf
URL: http://newsletters.usdbriefs.com/2017/Tax/TNV/170428_2.html

The MOA takes effect immediately, meaning that many – though not all – of the yet-to-be-released regulations implementing provisions of the tax reconciliation legislation (P.L. 115-97) enacted late last year will go through OIRA as well as Treasury. Under this review standard, a cost-benefit analysis of the regulation must be completed as well as a period set aside for stakeholders to comment on proposed rules. To make sure this additional review does not create a delay in getting out anticipated guidance related to the 2017 tax act, the MOA outlines a 45-day target for OIRA review, with a shorter period for regulatory actions deemed by Treasury to be particularly urgent.

Treasury Secretary Steven Mnuchin said in a statement released April 12 that the "updated review framework will increase scrutiny of regulations most likely to impose new costs, while preserving Treasury's ability to ensure taxpayers receive timely, clear rules and guidance on how to comply with our tax code."

The MOA makes clear that Treasury regulations will remain subject to heightened OIRA review procedures outlined by President Bill Clinton in Executive Order 12866 if they (1) will interfere with those promulgated by another agency, (2) raise a novel legal or policy issue, or (3) have an annual nonrevenue effect on the economy of $100 million or more, measured against a no-action baseline. According to the MOA, regulations that fall into these categories cannot be published in the Federal Register until OMB has either waived or concluded its review. Additionally, Treasury will now be required to advise OMB of planned regulations on a quarterly basis.

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