In this issue:

Sticker price of permanent TCJA individual, passthrough provisions jumps to $920 billion, JCT says ......................... 1
Senate tees up floor votes on treaty protocols ............................................................................................................ 3
House taxwriters OK multiemployer pension plan relief .......................................................................................... 3
Deloitte Tax looks at just-released PFIC guidance ................................................................................................. 5
Taxwriters back US trade rep’s investigation into French digital services tax.......................................................... 5
IRS reform bill becomes law....................................................................................................................................... 7

Sticker price of permanent TCJA individual, passthrough provisions jumps to $920 billion, JCT says

The nonpartisan Joint Committee on Taxation (JCT) this week pegged the net cost of making permanent those provisions in the 2017 tax cut legislation (known informally as the Tax Cuts and Jobs Act, or TCJA, P.L. 115-97) that are set to lapse after 2025 at almost $920 billion – a nearly $300 billion increase over comparable estimates from last year, explainable mainly by the shifting 10-year budget window.

The latest numbers were released by JCT as part of a July 8 analysis of the revenue provisions included in President Donald Trump’s fiscal year 2020 budget blueprint. Trump’s budget – released in March – proposed, among other things, to permanently extend the TCJA’s changes affecting individuals, estates, and passthrough businesses. (For previous coverage, see Tax News & Views, Vol. 20, No. 10, March 15, 2019.)

URL: https://www.jct.gov/publications.html?func=startdown&id=5208
URL: http://newsletters.usdbriefs.com/2019/Tax/TNV/190315_1.html
Estimates for permanent extensions of some of the TCJA’s more notable provisions are highlighted below. All amounts are expressed as 10-year revenue estimates of permanent policy beyond the otherwise scheduled expiration after 2025.

- Rate structure with lower individual tax rates: Reduces revenue by $747 billion;
- Increased standard deduction and repeal of personal exemption: Increases revenue on net by $276 billion;
- Changes to itemized deductions, including SALT, mortgage interest, etc.: Increases revenue on net by $428 billion;
- 20 percent deduction for qualified business income of passthrough entities: Reduces revenue by $251 billion;
- Limit on deduction for active passthrough losses: Increases revenue by $82 billion;
- Doubled estate tax exemption: Reduces revenue by $44 billion; and
- Increased alternative minimum tax exemption and phase-out threshold: Reduces revenue by $396 billion.

‘Window shift’

The steep increase in the cost of permanency compared to last year stems almost entirely from the fact that the decade-long budget window against which the cost of congressional tax and spending proposals are measured has moved forward by one year. The JCT’s latest analysis covers fiscal years 2019 through 2029, whereas the comparable estimates from 2018 – analyzing nearly identical revenue provisions that were included in the Protecting Family and Small Business Tax Cuts Act of 2018 (H.R. 6760) – covered fiscal years 2019 through 2028. (H.R. 6760 passed the House of Representatives in September of 2018 – while the chamber was still under Republican control – but was never taken up in the Senate due to the certainty of a Democratic filibuster.)

URL: https://www.jct.gov/publications.html?func=startdown&id=5136

The additional $285 billion in revenue losses for 2029 reflected in this week’s estimate were considered “outside the window” when the JCT prepared its estimate for H.R. 6760.

Another log on the ‘fiscal crisis’ fire

Although this increase could be described as more technical than substantive in nature, it nonetheless is indicative of the increasing sticker price lawmakers will confront as the expiration dates for these and other TCJA provisions draws closer and the debate over permanency ramps up in earnest – and as congressional budget estimators increasingly warn about the dire fiscal outlook, even under assumptions that current tax cuts and spending increases are allowed to lapse as scheduled under present law.

Long-term deficit pressures: For example, on June 25 the nonpartisan Congressional Budget Office (CBO) warned in its 2019 Long-Term Budget Outlook that the publicly held debt – that is, debt not held in intragovernmental accounts such as the Social Security and Medicare trust funds – which is already at historically high levels, could reach an unprecedented 144 percent of the economy by 2049. (For previous coverage, see Tax News & Views, Vol. 20, No. 22, June 28, 2019.)


If current tax cuts are continued – and the automatic cuts to annual appropriations spending known as the “sequester” are blunted, as they have been every year since 2013 – the public debt would be more than twice the size of the economy by 2049, CBO cautioned.

Either scenario could lay the groundwork for a “fiscal crisis,” according to CBO, if investors were to lose confidence in the government’s fiscal position and demand higher interest rates to compensate for the perceived risk of investing in US government debt.

Short-term spending caps, debt ceiling pressures: The JCT release also comes as congressional leaders and the White House face more immediate pressures to strike a deal to raise the statutory caps on annual appropriations for fiscal year 2020, which begins on October 1, and to increase or further suspend the federal debt ceiling. The most recent suspension of the debt limit lapsed on March 2 and since then the Treasury Department has relied on a series of so-called “extraordinary measures” that have enabled it to borrow additional funds without breaching the ceiling. But according to projections released this week by the Bipartisan Policy Center, a Washington-based think tank, Congress may need to act as soon as the first half of September to avoid the risk of default.

For his part, Treasury Secretary Steven Mnuchin confirmed the sense of urgency in a July 12 letter to Republican and Democratic congressional leaders. Citing updated Treasury Department projections, Mnuchin noted that “there is a scenario in which we could run out of cash in early September” and he formally requested that lawmakers vote on a debt ceiling hike before they leave for the August recess.

URL: http://newsletters.usdbriefs.com/2019/Tax/TNV/190712_1_suppA.pdf

— Alex Brosseau
Tax Policy Group
Deloitte Tax LLP

Senate tees up floor votes on treaty protocols

Senate Majority Leader Mitch McConnell, R-Ky., this week filed cloture on long-delayed protocols to US tax treaties with Japan, Luxembourg, Spain, and Switzerland – a move that tees up likely debate and votes by the full Senate the week of July 15.

The four protocols were passed by the Senate Foreign Relations Committee on June 25.

Foreign Relations Committee Chairman Jim Risch, R-Idaho, confirmed the timing of the floor votes to reporters on July 11, the day McConnell filed cloture.

“I love tax treaties,” Risch said. “We’re going to vote next week.”

Until 2011, the Senate typically ratified treaties by unanimous consent after the Foreign Relations Committee reported them out; but Sen. Rand Paul, R-Ky., has blocked that expedited process more recently because he believes the information-sharing sections of the treaties violate privacy rights of US citizens. This has delayed action on ratification as Senate leaders have chosen not to spend the floor time necessary for the standard debate process – until now. Paul offered amendments to the treaties to address his concerns during last month’s Foreign Relations Committee mark-up, but the amendments were not accepted.

US businesses are eager for approval of the treaties and protocols – some of which were negotiated and signed as far back as 2009 – because they provide certainty and help protect against double taxation.

There are still three pending bilateral tax treaties – with Chile, Poland, and Hungary – and a multilateral protocol that the Foreign Relations Committee did not take up during the June 25 session. In the case of the treaties with Chile, Poland, and Hungary, the Treasury Department is seeking to clarify how provisions in those agreements interact with the base erosion and anti-abuse tax (BEAT) enacted in the 2017 tax legislation known informally as the Tax Cuts and Jobs Act (P.L. 115-97).

— Storme Sixeas
Tax Policy Group
Deloitte Tax LLP

House taxwriters OK multiemployer pension plan relief

The House Ways and Means Committee on July 10 approved legislation sponsored by Chairman Richard Neal, D-Mass., intended to shore up financially struggling multiemployer pension plans.

The Rehabilitation for Multiemployer Pensions Act of 2019 (H.R. 397) cleared the committee on a party-line vote of 25-17. At a high level, the measure would provide loan funding to troubled multiemployer pension plans through the Pension Rehabilitation Administration (PRA) – a new agency that would be created under the legislation and housed within the Treasury Department. The PRA would be authorized to issue bonds that would finance loans to multiemployer pension plans that are in “critical and declining” status, plans that have suspended benefits, and some plans that recently became insolvent and are currently receiving financial assistance from the Pension Benefit

— Storme Sixeas
Tax Policy Group
Deloitte Tax LLP
Guaranty Corporation. The PRA would be headed by a director, who would have a term of five years and be appointed by the president. (A detailed description of the proposal is available from the Joint Committee on Taxation staff.)

URL: https://waysandmeans.house.gov/sites/democrats.waysandmeans.house.gov/files/documents/AINS%20TO%20HR%2020397_0.pdf

URL: https://www.jct.gov/publications.html?func=startdown&id=5210

It is currently unclear when the measure will be taken up on the House floor.

**Partisan split over causes of plan underfunding**

Neal noted in his opening statement at the mark-up that some 10 million workers participate in union-managed multiemployer plans and roughly 1.3 million of those workers are in plans that are "quickly running out of money" – a situation he attributed largely to "deregulation in the 1980s, as well as large-scale economic downturns in 2001 and 2008 [which] led to waves of industry-wide employer insolvencies...."

"The idea of a loan program is a common-sense solution," Neal said. "It’s the private sector coming together with the public sector to address this crisis.”

For their part, Republican taxwriters agreed with Neal that the problem of underfunded and insolvent plans is critical, but they argued that this proposal, although well intentioned, would do little to solve it. Ways and Means ranking member Kevin Brady, R-Texas, contended in his opening statement that the primary source of the underfunding problem is "financial mismanagement" on the part of plan trustees. Providing loans to these plans "doesn’t make [them] more stable, doesn’t end underfunding, or make them more solvent over time,” he said.

**SECURE Act still stuck in the Senate**

H.R. 397 is the second significant retirement-focused bill to come out of the Ways and Means Committee this year. The first – the Setting Every Community Up for Retirement Enhancement (SECURE) Act (H.R. 1994) was approved by House taxwriters by voice vote in April and cleared the House by a margin of 417-3 on May 23, but has yet to be taken up in the Senate.


The SECURE Act generally would make it easier for smaller businesses to offer tax-qualified retirement savings plans to their employees, encourage individuals to participate in retirement plans, and promote savings for certain nonretirement expenses. A notable revenue raiser would in certain cases accelerate distributions of retirement account assets after an account holder's death.

The bill as approved also would repeal a change to the "kiddie tax" enacted in the 2017 tax cut law known informally as the Tax Cuts and Jobs Act (TCJA, P.L. 15-97) that requires unearned income of children to be taxed at the rate for estates and trusts rather than their parents' top marginal rates as was the case under prior law. (The SECURE Act would reinstate the prior-law kiddie tax rules.) Lawmakers added the kiddie tax provision to the measure in the wake of news reports this spring revealing that the TCJA change, which was intended to discourage wealthy individuals from making tax-motivated transfers of income-generating investments to their minor children, inadvertently ensnared unearned income received by children in less affluent families – for example, survivors' benefits paid to children of deceased active-duty military service members and first responders – leaving those families facing significantly higher tax rates on that income than they would have before the TCJA was enacted. (For additional details on the provisions in the bill, see *Tax News & Views*, Vol. 20, No. 18, May 24, 2019.)

URL: http://newsletters.usdbriefs.com/2019/Tax/TNV/190524_1.html

Senate leaders had hoped to bring up the SECURE Act and approve it under expedited unanimous consent rules before the Memorial Day recess. But that plan was scuttled after various GOP senators raised objections to specific retirement security provisions such as alternative rules for calculating funding obligations for pension plans sponsored by financially struggling community newspapers. Texas Republican Sen. Ted Cruz also threatened to block a unanimous consent request because the House bill did not include a provision treating home schooling and private elementary and secondary school costs as qualified expenses for tax-preferred section 529 education savings accounts. (Such a provision was part of the SECURE Act when it cleared the Ways and Means Committee, but House Democratic leaders removed it from the bill shortly before the vote on final passage.)
More than six weeks after the measure was sent over to the Senate, it remains unclear whether GOP leaders in that chamber will be able to resolve these concerns and move the bill under unanimous consent or if they will instead have to go through the more time-consuming process of bringing it to the floor for debate. Senate floor time is especially tight right now given that Majority Leader Mitch McConnell, R-Ky., is focused chiefly on confirming President Trump’s nominees for administrative and judicial posts.

— Michael DeHoff
Tax Policy Group
Deloitte Tax LLP

Deloitte Tax looks at just-released PFIC guidance

The Treasury Department and the Internal Revenue Service on July 10 released prospectively applicable proposed regulations under sections 1291, 1297, and 1298 of the Internal Revenue Code.


The regulations provide guidance with respect to a number of issues that are not specifically addressed in the current regulations and address some of the complexities that arise in the determination of the ownership of a passive foreign investment company (PFIC) and in the application of the Income Test and Asset Test in cases in which the lookthrough rule of section 1297(c) applies to a Tested Foreign Corporation.

The proposed regulations also withdrew certain proposed regulations published in 2015 with respect to the insurance exception at section 1297(b)(2)(B) and propose new regulations with respect to the insurance exception, which was modified by the 2017 tax legislation known informally as the Tax Cuts and Jobs Act (P.L. 115-97).

Deloitte Tax alert available

Details on the proposed regulations are available in this alert from Deloitte Tax LLP.


— Michael DeHoff
Tax Policy Group
Deloitte Tax LLP

Taxwriters back US trade rep’s investigation into French digital services tax

Taxwriting leaders from both parties this week roundly criticized France’s final move towards a retroactive digital services tax (DST) and applauded the Trump administration’s announcement that it will investigate whether the tax will particularly harm large US technology companies.

On the eve of the French Senate’s passage of a 3 percent tax July 10, US Trade Representative Robert Lighthizer opened what is known as “301 investigation” (named after section 301 of the US Trade Act of 1974, which provides the authority) to look at potentially harmful trade practices. Senate Finance Committee Chairman Charles Grassley, R-Iowa, and ranking Democrat Ron Wyden of Oregon quickly endorsed this course of action.

“The digital services tax that France and other European countries are pursuing is clearly protectionist and unfairly targets American companies in a way that will cost US jobs and harm American workers,” Grassley and Wyden declared in a joint statement following USTR’s announcement.

Rep. Kevin Brady, R-Texas, the top Republican at the House Ways and Means Committee, also backed USTR’s actions this week and weighed in on the French vote, calling DSTs “unilateral tax policies that amount to naked revenue grabs.”
USTR announced it will hold an August 19 hearing on the 301 case, and interested parties may submit comments by August 12. The investigation process could eventually result in the imposition of tariffs on French products or other retaliatory measures.

URL: https://ustr.gov/sites/default/files/enforcement/301Investigations/Initiation_of_Section_301_Investigation.pdf

Treasury weighing its own response

Grassley and Wyden late last month also urged the Treasury Department to consider “all available tools under US law” to address the pending law in France. (For prior coverage, see Tax News & Views, Vol. 20, No. 22, June 28, 2019.)


In a July 11 reply, Treasury assured the Finance leaders that it shares their concerns and is considering additional responses to France, including the use of Internal Revenue Code section 891, which would allow the US to impose higher taxes on French citizens and corporations – a measure that Grassley and Wyden specifically referred to in their June letter.

URL: https://www.finance.senate.gov/imo/media/doc/7.11.19-%20Chairman%20Grassley%20-%20DST.pdf

“Options under review include consideration of the Internal Revenue Code authorities noted in your letter among other broader strategies,” wrote Deputy Assistant Secretary of Treasury for Legislative Affairs Kimberly Pinter.

Will OECD consensus project make a difference?

Working through the Organization for Economic Cooperation and Development (OECD), 127 countries – including the US and France – have begun a multilateral effort to review international taxing rights, including potential ways in which to allow countries to collect more tax revenue from companies with limited, if any, physical presence in a country but a strong online presence or customer base. The group hopes to reach a consensus by the end of next year. (For prior coverage, see Tax News & Views, Vol. 20, No. 14, Apr. 12, 2019.)

URL: http://newsletters.usdbriefs.com/2019/Tax/TNV/190412_5.html

French Finance Minister Bruno Le Maire said July 11 that the new DST is “temporary” and will be withdrawn if the OECD “adopts a credible solution.” However, businesses and US lawmakers are concerned that once such a tax goes into effect, the revenue it provides will be difficult for a country to give up. The French DST, once enacted, will be retroactive to January 1, 2019.

“I deeply believe that allies can and must settle their differences with means other than threats,” La Maire told the French Senate July 11 ahead of the final vote on the tax, responding to news of the US investigation. “France is a sovereign state that makes its own fiscal decisions and will continue to do so.”

Et tu, UK?

While a number of countries have contemplated unilateral DSTs or similar tax policies in the past year or so, most have shifted their focus to the OECD process and put unilateral measures on hold while they work towards a goal of global consensus by the end of 2020. However, on the heels of France’s Senate vote this week, the United Kingdom released a refined version of the 2 percent DST it initially floated last year, seeking to prevent double taxation of technology companies but still proposing an effective date of April 2020. Like France, the UK said this tax would be rescinded when and if an OECD agreement comes to fruition.

Sen. Wyden told Politico that it would be “quite an understatement” to say he was dubious about the OECD’s ability to reach consensus by next year and about the likelihood that the UK and France will repeal their taxes.

“The history of these things is it just doesn’t produce the result that...they keep heralding. What it would do is it would really hurt American companies,” Wyden said.

Wyden also commented that a decision by the UK government to pursue its proposed DST would jeopardize a post-Brexit trade deal with the United States.

“I met with the UK officials earlier, and said, ‘You expect a trade agreement with the United States and the UK,” Wyden told reporters July 11. “It will not happen with your digital services tax. Period. Full stop.”
IRS reform bill becomes law

President Trump on July 1 signed into law a bipartisan bill that lays out a path forward for reorganizing the IRS and modernizing its technology and cybersecurity infrastructure; makes taxpayer-friendly changes in the areas of enforcement, appeals, and customer service; and provides protections for taxpayers who are victims of tax-related identity theft.

The Taxpayer First Act of 2019 (P.L. 116-25), which cleared the House and the Senate by voice vote last month, also includes revenue-raising provisions that increase the penalty for failure to file a tax return and require taxpayers that file 10 or more returns with the IRS to file them electronically.

URL: https://www.congress.gov/116/bills/hr3151/BILLS-116hr3151enr.pdf

The bulk of the provisions in the Taxpayer First Act became effective upon enactment. According to estimates from the Joint Committee on Taxation staff, the measure will increase federal receipts by some $36 million (net) over 10 years. (For additional details on the new law, see Tax News & Views, Vol. 20, No. 20, June 14, 2019.)

URL: https://www.jct.gov/publications.html?func=startdown&id=5191
URL: http://newsletters.usdbriefs.com/2019/Tax/TNV/190614_2.html

— Michael DeHoff
Tax Policy Group
Deloitte Tax LLP