Prospects for year-end tax bill still murky as spending talks continue

The fate of a year-end tax bill – in which a wide swath of tax policies could be in play – remained up in the air this week as congressional appropriations leaders continued seeking bipartisan, bicameral agreement on spending measures for the remainder of fiscal year 2020, legislation which many observers view as the last, best hope to carry a tax bill to the president’s desk this year.

Spending negotiations: Good news, bad news

Over the weekend of November 23, congressional leaders struck an agreement on how to subdivide the top-line appropriations level for fiscal year 2020 – which was set earlier this year as part of the Bipartisan Budget Act (BBA) of 2019 – among the 12 appropriations subcommittees in each chamber charged with drafting detailed annual spending measures. That marked a significant breakthrough for Democrats and Republicans who for months had been at loggerheads over relative funding levels for dozens of federal departments, particularly Defense, Homeland Security, Labor, and Health and Human Services, and their underlying agencies.

But since that time, lawmakers have made little apparent progress moving any of the 12 measures that would provide funding at the programmatic level for the remainder of fiscal 2020. (Since the October 1 start of the fiscal year, the
The government has been running on two consecutive stopgap spending bills, or “continuing resolutions,” that carried over funding at fiscal 2019 levels and thus do not provide any of the funding bump allowed by the BBA of 2019.

The main sticking point between Democrats and Republicans continues to be how to address President Trump’s stated desired to build a wall along the southern US border – the same dispute that led to a record 35-day partial government shutdown that straddled the end of calendar year 2018 and the start of calendar year 2019.

With the current continuing resolution set to expire on December 20, Senate Appropriations Committee Chairman Richard Shelby, R-Ga., struck a downbeat tone this week as to the current state of spending talks.

“We’ve been fighting this battle for months and months and months,” Shelby said on December 3. “And unless there’s a breakthrough soon, we’re facing another [continuing resolution].”

**Tax talks inextricably linked**

Resorting to another stopgap measure to keep the government’s doors open would be a bad omen for the prospects of tax legislation moving this year as it may not provide the critical mass, from a legislative perspective, to carry unrelated legislation to the president’s desk.

The odds for a tax package could improve slightly, however, if lawmakers are able to agree on a handful of full-year spending measures – sometimes called a “minibus” – while providing additional stopgap funding for the more contentious bills.

But Shelby did not sound overly optimistic about that prospect, either, noting December 3 that the grouping of bills is a moot point if lawmakers cannot come together on the underlying text of the measures.

“We’ve talked about all kind of scenarios – an omnibus, kind of a middle-sized bus, a minibus, different things,” Shelby said. “But gosh, we’re a long way from that.”

While negotiations around tax legislation could be deferred to next year, the environment for legislating is unlikely to be any more conducive then with caucuses and primaries for the 2020 presidential election set to begin in early February.

It also appears increasingly likely that the Senate will conduct a trial to consider certain to-be-determined articles of impeachment against President Trump that the House appears poised to pass late this year or early in 2020, further limiting options for legislative action until the impeachment process concludes.

**A long tax wish list**

Against that backdrop, some of the major tax priorities that various lawmakers and outside stakeholders hope will be addressed this year include:

- The future of temporary tax “extender” provisions that expired in 2017 and 2018 and those that are set to expire at the end of this year;
- “Green energy” tax incentives, such as an expansion of the electric vehicle tax credit and other provisions included in the green energy discussion draft proposal recently released by House Ways and Means Committee Democrats;
- Expansions of certain refundable credits such as the earned income tax credit and the child tax credit;
- Further suspensions of certain taxes enacted as part of the Patient Protection and Affordable Care Act which are slated to come into force next year;
- Technical corrections to (and fixes to address certain unintended consequences of) the 2017 tax cut legislation informally known as the Tax Cuts and Jobs Act (TCJA, P.L. 115-97);

URL: http://newsletters.usdbriefs.com/2019/Tax/TNV/191122_2.html?elqTrackId=0f63ad4581fa4ef1b2ef811482cd023&elq=4cf01bc2346846e9b4e4ee4be1a8e776&elqaid=65851&elqat=1&elqCampaignId=12545
• A provision to suspend or increase the TCJA's $10,000 limitation on the deduction for state and local taxes (see separate coverage in this issue for additional discussion);
• New reporting requirements for Qualified Opportunity Zone Funds; and
• Senate action on the SECURE Act (H.R. 1994) – a House-passed retirement security measure that also would address unintended consequences of a change to the so-called "kiddie tax" that was included in the TCJA.

To date, progress on these agenda items has been stymied by things such as disagreements over whether the budgetary cost of the tax extenders should be offset; a separate debate among Democrats as to whether they should work with Republicans to fix technical issues in the GOP-drafted Tax Cuts and Jobs Act and if so, at what price; and efforts by a few disparate Senate Republicans to block expedited passage of the SECURE Act because they want to strike certain provisions from the House-passed bill, such as pension funding relief for certain financially struggling community newspapers, or add others in, such as one that would expand the section 529 rules for tax-preferred education savings accounts to include expenses for home schooling and another that would make a technical correction to fix the so-called "retail glitch" in the Tax Cuts and Jobs Act by clarifying the cost recovery period for qualified improvement property. (For a review of these issues, see Tax News & Views, Vol. 20, No. 29, Sep. 13, 2019.)

URL: http://newsletters.usdbriefs.com/2019/Tax/TNV/190913_1.html

Although the leaders of the House and Senate taxwriting committees continue to talk behind the scenes, there was little indication this week that a deal was any closer.

"It’s different this year from other years,” Senate Finance Committee Chairman Charles Grassley, R-Iowa, said December 4. In comments to Tax Notes on December 5, Grassley, echoing recent comments from Ways and Means Committee ranking Republican Kevin Brady of Texas, attributed the impasse on an extender package to “too much demand on the part of House Democrats” for big-ticket items such as expanding the refundability of the child tax credit and earned income tax credit in exchange for making other tax law changes sought by Republicans. Neal, for his part, told Tax Notes that the two parties have similar views on many issues related to extenders, but that Ways and Means Democrats are holding their ground on the two family tax credits.

"I conversed with Chuck Grassley. He knows where I am on a couple of key issues we'd like to see exercised," Neal said.

But as Democratic and Republican negotiators continue to swap demands, some worry that a tax title comprised of all, or even a significant portion of, the policies on the congressional wish list could become so bloated that it either falls under its own budgetary (or political) weight or must be stripped down to a handful of lowest-common-denominator provisions that can maintain bipartisan support.

"...[I]t’s a complicated lift to do basic stuff right now, let alone add a bunch of new provisions," said Senate Republican Whip and Finance Committee member John Thune of South Dakota.

Still, at least one taxwriter expressed measured optimism on December 4 that a tax deal could come together this year, even if just a narrow package giving life to certain tax extenders.

"I think we have a reasonable chance to get some form of an extender bill done," Senate Finance Committee member Ben Cardin, D-Md., said.

— Alex Brosseau
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Deloitte Tax looks at new BEAT, foreign tax credit regs

The Treasury Department and Internal Revenue Service on December 2 released final regulations implementing the base erosion and anti-abuse tax (BEAT) which was enacted as part of the 2017 tax code overhaul, as well as new proposed regulations regarding certain large corporate taxpayers with respect to certain payments made to foreign related parties.
Also released on December 2 were final regulations relating to the determination of the foreign tax credit and new proposed regulations providing guidance on the allocation and apportionment of deductions and creditable foreign taxes, the definition of financial services income, foreign tax redeterminations, availability of foreign tax credits under the transition tax, and the application of the foreign tax credit limitation to consolidated groups.

Find out more

Summaries from Deloitte Tax LLP’s International Tax practice look at key provisions in the BEAT guidance and the foreign tax credit guidance.

— Michael DeHoff
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US backs retaliation against French digital services tax, cites concerns over OECD global tax proposals

An already challenging undertaking at the Organisation for Economic Co-operation and Development (OECD) to revise international tax rules faced two potential new complications this week as the US escalated a dispute with France over that nation’s new tax on high-tech companies and, separately, communicated to the OECD “serious concerns” about some of their proposed global rule changes.

Who taxed my cheese?

The office of the US Trade Representative (USTR) on December 2 released a report on its investigation of France’s digital services tax (DST) and concluded that the DST “discriminates against US companies, is inconsistent with prevailing principles of international tax policy, and is unusually burdensome for affected US companies.” To counter the tax, USTR proposed imposing tariffs of up to 100 percent on a variety of French imports – such as champagne and cheese – with an approximate trade value of $2.4 billion.

"USTR’s decision today sends a clear signal that the United States will take action against digital tax regimes that discriminate or otherwise impose undue burdens on US companies,” Ambassador Robert Lighthizer of USTR said in a statement, adding that his office is also considering similar investigations into the DSTs recently implemented by Austria, Italy, and Turkey. (A number of other countries, including Canada and the United Kingdom, also have proposed DSTs that have prompted criticism from the US, but those levies have not yet become law so they are not the potential subject of investigations at this time.)

US officials, including congressional tax leaders, have throughout this year urged various countries to hold off on their DST proposals while more than 130 countries work towards a broader consensus on the allocation of global taxing rights through the OECD project. Treasury Secretary Steven Mnuchin, Senate Finance Committee Chairman Charles Grassley, R-Iowa, and others have argued that unilateral measures such as DSTs are counterproductive to the multilateral effort, even on an interim basis. In August, President Trump and French President Emmanuel Macron agreed to work towards a compromise on the DST, but no progress had been announced before the release of this week’s USTR report.

Grassley and Sen. Ron Wyden of Oregon, the senior Democrat on the Finance Committee, issued a joint statement December 2 applauding USTR’s findings on the French DST.
“Taking premature action that will adversely and disproportionately affect another OECD member state is contrary to the organization’s goals and shouldn’t stand. We welcome this step from USTR on behalf of US companies being unfairly targeted and harmed by the French tax. We encourage other member states considering similar actions to work within the OECD framework toward a comprehensive solution,” the statement said.

For its part, France’s government decried both USTR’s conclusion of discrimination and the proposed US tariffs, and French Finance Minister Bruno Le Maire vowed that the EU will retaliate if the duties go into effect after USTR’s comment period, which ends January 6, 2020.

“We are ready to withdraw the French national tax as soon as there is a solution [to the dispute], and there is a solution at the OECD level,” La Maire told reporters this week at the NATO conference in London.

**Mnuchin: ‘Serious concerns’ about OECD international tax framework**

In a separate but related development, Secretary Mnuchin on December 3 sent a letter to OECD Secretary General Angel Gurria that injected a new note of uncertainty into the OECD project to develop a new international tax framework. Mnuchin said the US believes broad agreement on the framework is “very important” in order to avoid a proliferation of unilateral measures such as DSTs, but he also noted “serious concerns regarding potential mandatory departures from arm’s-length transfer pricing and taxable nexus standards” – both of which are key elements to the so-called Pillar One proposal currently under consideration. (Pillar One of the project addresses the allocation of taxing rights to jurisdictions, while Pillar Two seeks to design a global anti-base erosion mechanism. For details on the OECD’s proposed “unified approach” to Pillar One, see [Tax News & Views, Vol. 20, No. 32, Oct. 11, 2019.](http://newsletters.usdbriefs.com/2019/Tax/TNV/191206_3_suppA.pdf)

Mnuchin went on to suggest the possibility of “making Pillar One a safe harbor regime,” which prompted a letter from Gurria on December 4 telling Mnuchin that this new idea could push back the finish line towards which the participating countries are racing.

“Throughout the extensive consultation process...we had so far not come across the notion that Pillar 1 could be a safe-harbour regime,” Gurria stated. “We raise this concern, as it may impact the ability of the 135 countries that are now participating in this process, to move forward within the tight deadlines we established collectively in the Inclusive Forum.”

Gurria also told Mnuchin that “[t]o a large degree, it was the US tax reform that set the framework conditions within which we have advanced. It was also your personal involvement as well as that of your delegates that steered the international community away from seeking a narrow digital solution and introduced innovative proposals into the discussions. And it was also your personal interventions at G20 meetings that moved the discussions to a broader scope using a more formulaic approach and a new nexus concept that moved us beyond the tax rules as they currently stand.”

Making clear the urgency as the OECD hopes to reach agreement on the core design elements in the first half of 2020, Gurria closed his letter by inviting Mnuchin to Paris for a meeting, which would also include France’s Le Maire, “at your earliest convenience, ideally before Christmas.”

— Storme Sixeas  
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**Ways and Means Dems eye mark-up, floor vote for SALT deduction cap rollback**

Some prominent Democrats on the House Ways and Means Committee said this week that the panel will mark up legislation the week of December 9 aimed at temporarily easing the impact of the current-law cap on the deduction for state and local taxes (SALT) and indicated that the measure could reach the House floor before the end of the year.
The date of the committee mark-up had not been announced as of press time.

The $10,000 limitation on the SALT deduction, which applies to individual taxpayers and married couples alike and is not indexed for inflation, was enacted in the 2017 tax code overhaul known informally as the Tax Cuts and Jobs Act (TCJA, P.L. 115-97). The SALT deduction, which before the enactment of the TCJA was unlimited, tends to be used more heavily in higher-taxed “blue” states disproportionately represented by Democrats, such as New Jersey, New York, Connecticut, and California; however, House members in both parties who represent jurisdictions with expensive housing markets and steep property and income taxes have decried the cap as unfair to their constituents in the middle class. For the past several months, Ways and Means Select Revenue Measures Subcommittee Chairman Mike Thompson, D-Calif., has led an informal working group to develop a proposal that would modify the provision to address the concerns of those lawmakers.

Details still unclear

But with committee action potentially now just days away, details around exactly how Ways and Means Democrats intend to address the cap remain unclear. The proposal is not expected to be unveiled until shortly before the mark-up and Democratic taxwriters have so far offered some conflicting accounts of its contents.

Ways and Means member Bill Pascrell, D-N.J., told reporters December 4 that the measure would suspend the cap for three years. But committee Chairman Richard Neal, D-Mass., said that it might instead raise the cap to an as-yet undetermined level – possibly $15,000 or $20,000 – for three years.

Pascrell also indicated that the proposal would eliminate the marriage penalty in the current-law cap – although he provided no further details – and said it would be paid for by increasing the top income tax rate for individuals to its pre-TCJA level 39.6 percent. (The TCJA reduced the top individual income tax rate to 37 percent, although that rate cut, along with many of the other TCJA provisions affecting individuals and passthrough entities – including the SALT limitation – is scheduled to expire in 2026.)

A House vote this year?

Chairman Neal told reporters that he would like for a committee-approved bill to be brought up for a vote on the House floor this year, although he acknowledged there’s “a whole lot of background noise here on other issues” that could consume much of the available floor time in the chamber between now and the end of the legislative session, which is currently set for December 20. (That target adjournment date would leave lawmakers with just 10 legislative days to wrap up work for the year.)

Among the more pressing issues facing House lawmakers are a vote on legislation to fund the federal government for fiscal year 2020 – which began on October 1 – before the current spending authorization expires on December 20 (see separate coverage in this issue), a possible vote on ratification of the US-Mexico-Canada Free Trade Agreement, and, potentially, a vote the week of December 16 on articles of impeachment against President Trump.

Senate support unlikely

The eventual Ways and Means proposal is likely to clear the House since Democrats control the chamber by a comfortable margin and few lawmakers in that party, if any, would be expected to break ranks and vote against it. But any plan to suspend or claw back the cap is likely to encounter resistance in the Republican-controlled Senate. Generally, Senate Republicans – like their House counterparts – have argued that the SALT deduction disproportionately benefits wealthier taxpayers and have resisted calls to suspend or otherwise modify the limitation put in place under the TCJA; indeed, a report from the Joint Committee on Taxation staff on the distributional effects of various provisions in the TCJA suggests that it may be difficult for Democrats to reconcile their characterization of the SALT limitation as a tax hike on the middle class with the reality of the profile of taxpayers that would benefit from suspending or relaxing the provision.

URL: https://www.jct.gov/publications.html?func=startdown&id=5093

The Democrats’ likely offset for the proposal – increasing the top income tax rate for individuals – can also be expected to be dismissed out of hand by the GOP.
The Senate in October rejected – almost entirely along party lines – a Democratic resolution that would have weakened the deduction cap by invalidating final regulations from the Treasury Department that clamped down on efforts by certain states to allow their residents to work around the limitation. (For prior coverage, see Tax News & Views, Vol. 20, No. 34, Oct. 25, 2019.)

URL: http://newsletters.usdbriefs.com/2019/Tax/TNV/191025_1.html

If the proposed limitation on the deduction cap ultimately fails in the Senate as expected, Democrats in both chambers likely will use the issue as a political talking point as they head into the 2020 election season.

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