Mnuchin to discuss White House FY 2021 budget blueprint with House taxwriters at March 3 hearing

The House Ways and Means Committee announced this week that Treasury Secretary Steven Mnuchin will appear at a hearing set for March 3 to discuss the Trump administration’s proposed budget blueprint for fiscal year 2021.

The president’s $4.8 trillion budget package, which he sent to Congress on February 10, envisions declining budget deficits – and eventual balance by 2035, five years beyond the 10-year budget window – even as it assumes a $1.4 trillion extension of certain individual tax provisions, such as the individual tax rates and the child tax credits, enacted in the 2017 tax code overhaul (known informally as the Tax Cuts and Jobs Act or TCJA, P.L. 115-97) that are scheduled to sunset after 2025.

The budget includes a handful of discrete tax provisions that would:
• Repeal the credit for four-wheeled electric vehicles, accelerated depreciation for renewable energy property, the energy investment credit, the credit for residential energy-efficient property, and the income exclusion for utility conservation subsidies;
• Expand access to tax-preferred health savings accounts and medical savings accounts for certain Medicare enrollees and for certain Medicare-eligible individuals who are still working;
• Provide tax credits to individuals or businesses making donations to certain state-authorized nonprofit organizations that grant so-called “Education Freedom Scholarships” to cover expenses of elementary and secondary students who wish to attend private and parochial schools;
• Increase base funding for the Internal Revenue Service by $500 million, provide a separate “program integrity cap adjustment” that would boost tax enforcement funding by an additional $400 million for fiscal year 2021, and tighten compliance rules by, among other things, giving the Treasury Secretary explicit authority to regulate paid tax return preparers, expanding the Service’s authority to address correctable errors on tax returns, and requiring taxpayers claiming the earned income tax credit and child tax credit to provide a Social Security number that is valid for work.

URL: https://newsletters.usdbriefs.com/2020/Tax/TNV/200214_1.html

Another TCJA debate ahead?

The ostensible purpose of the Ways and Means Committee hearing is to address the specific tax proposals in the president’s budget blueprint; but if Secretary Mnuchin’s appearance before the Senate Finance Committee at that panel’s budget hearing on February 12 provides any kind of template, a significant chunk of the discussion may focus on the economic impact of the Tax Cut and Jobs Act and the Treasury regulations implementing its major provisions.

At the Finance Committee hearing, Republicans agreed with Mnuchin that the TCJA’s tax relief (coupled with regulatory reform and changes to trade policy) is paying off through lower unemployment rates and increased take-home pay for workers, and that permanently extending the TCJA’s temporary tax cuts for individuals, estates, and passthrough entities would further boost consumer confidence, fuel continued economic growth, and reduce the federal deficit over the long term.

But Finance Committee Democrats – notably, ranking member Ron Wyden of Oregon – challenged those assessments and pressed Mnuchin to explain the apparent discrepancy between the administration’s economic outlook and the far less optimistic 10-year projections from the Congressional Budget Office (CBO) indicating that deficits are expected to reach $1 trillion in 2020 and will climb even higher without action from Congress. They also argued that the Treasury Department took an overly expansive approach to drafting regulations implementing the TCJA’s corporate tax provisions that, in essence, gave large multinational taxpayers additional tax relief beyond what is provided in the statute. But Chairman Charles Grassley, R-Iowa, dismissed that claim as “unfounded,” noting that Treasury drafted the TCJA regulations following “the same process set out in the Administrative Procedures Act that has occurred after enactment of other tax legislation, like the Affordable Care Act.” (For prior coverage, see Tax News & Views, Vol. 21, No. 6, Feb. 14, 2020.)
URL: https://www.cbo.gov/publication/56073#_idTextAnchor003
URL: https://newsletters.usdbriefs.com/2020/Tax/TNV/200214_2.html

Ways and Means Committee members already waded into that debate during a February 11 hearing to examine what Democrats dubbed “the disappearing corporate income tax,” although the witness panel at that event was drawn from academia and Washington-based think tanks and did not include Mnuchin or other administration officials.

Democrats in that hearing pointed to the TCJA – including its cut in the corporate tax rate from 35 percent to 21 percent – as a reason for the worsening deficit situation, while many of the Republicans pinned the blame on federal spending – particularly mandatory spending. Moreover, Chairman Richard Neal, D-Mass., contended that “Treasury gave away the store by issuing [TCJA] regulations that give even more tax breaks to corporations,” while ranking member Kevin Brady, R-Texas, countered that “[c]orporate taxes aren’t disappearing, they are growing....” (For prior coverage, see Tax News & Views, Vol. 21, No. 6, Feb. 14, 2020.)

GAO: Treasury’s TCJA rules overlook ‘distributional effects’
In a related development that could provide fodder for Ways and Means Democrats at the upcoming budget hearing, the Government Accountability Office (GAO) published a report on February 25 that concluded, among other things, that Treasury “omit[ted] key considerations of distributional effects” – for example, effects on tax revenue collection – in its economic analyses of the TCJA-related regulations it has promulgated since the law was enacted. URL: https://www.gao.gov/assets/710/704836.pdf

The GAO prepared the report at the request of the Finance Committee’s Ron Wyden.

"While we found that...Treasury’s analyses did recognize some costs and benefits related to factors such as administrability, compliance costs, and economic distortions, Treasury’s analyses did not generally assess the distributional effects, including effects on tax revenue collection, the regulations had as a result of changes in tax liability,” the report states.

GAO specifically discussed Treasury’s decisions to (1) exclude real estate and insurance brokers from the definition of “brokerage services” which is otherwise considered a “specified service trade or business” ineligible for the 20 percent deduction under section 199A, and (2) allow investors to hold tax-favored investments in Qualified Opportunity Funds until as late as December 31, 2047, noting they may have had the effect of reducing federal revenues relative to other regulatory approaches.

In these examples, the GAO observed, "Treasury’s decisions would significantly affect tax liability for certain taxpayers, which were not reflected in Treasury’s analyses of the regulations."

Wyden’s response: Wyden seized on the GAO report in a statement released February 25. "GAO confirms my warnings came true. In jamming through their tax bill, Republicans failed to include crucial details and drafted a sloppy law," Wyden said. "...The result is billions in additional handouts to the wealthy and corporations and an even greater revenue loss than the original $1.5 trillion price tag."

Wyden and fellow Senate Democratic taxwriter Sherrod Brown of Ohio hit on this same theme February 12 when they introduced legislation taking aim at the elective “high tax exclusion” included within proposed regulations Treasury issued last June further implementing the TCJA’s Global Intangible Low-Taxed Income (GILTI) regime. URL: https://www.finance.senate.gov/imo/media/doc/Blocking%20New%20Corporate%20Tax%20Giveaways%20Act%20of%202020%20Bili%20Text.pdf

GAO recommendations: Along with other discrete recommendations related to enhancing IRS collaboration in the guidance-development process and converting certain tax return data into a more usable format for enforcement purposes, the GAO suggests that the Treasury assistant secretary for tax policy (currently David Kautter) update internal guidance to ensure that the department’s regulatory impact analyses include an assessment of distributional effects when such regulations influence tax collections.

— Alex Brosseau and Michael DeHoff
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G-20 leaders express support for OECD project, but hurdles remain

Finance officials from some of the world’s largest economies last weekend endorsed a broad architecture that has been proposed for revised international tax rules that reflect the growing digital economy; meanwhile, France kept the door open to discussion of a controversial US proposal, even as Japan warned that it could weaken the effect of the global effort.

The G-20 summit of finance ministers February 22-23 in Riyadh, Saudi Arabia, brought together many of the key players in the ongoing efforts by the Organisation for Economic Co-operation and Development (OECD) to address taxation of the digitalized economy. In their communiqué at the end of the weekend, the group endorsed the approach laid out in January to reallocate taxing rights among jurisdictions (the so-called Pillar One of the OECD project) and emphasized the importance of “agreeing on the key policy features of a global and consensus-based solution by July
2020” – the next milestone in an ambitious plan that calls for a final report by the end of this year. The statement also welcomed the progress made on Pillar Two, a global minimum tax. (For prior coverage, see Tax News & Views, Vol. 21, No. 4, Jan. 31, 2020.)

**URL:** [https://g20.org/en/g20/Documents/Communique%CC%81%20Final%2022-23%20February%202020.pdf](https://g20.org/en/g20/Documents/Communique%CC%81%20Final%2022-23%20February%202020.pdf)

**URL:** [https://newsletters.usdbriefs.com/2020/Tax/TNV/200131_1.html](https://newsletters.usdbriefs.com/2020/Tax/TNV/200131_1.html)

### DSTs remain on the table in some countries

At the same time the talks among 130-plus countries have been taking place at the OECD, several countries have rolled out digital services taxes (DSTs) – or have proposed such taxes – to collect revenue from large Internet companies that have become political targets for not paying what is described as their “fair share.” In the highest-profile case so far, France’s implementation last autumn of a 3 percent DST on certain gross profits led to a US threat of retaliatory tariffs. Treasury Secretary Steven Mnuchin and French Finance Minister Bruno Le Maire negotiated a temporary truce last month, with France agreeing to hold off on collecting estimated taxes until the end of the year as the work at the OECD continues. However, several other countries have implemented their own DSTs, and more are being planned, including one in the UK set to take effect in April.

For now, many have thrown their support behind the OECD process and the hope for global consensus, but participants recognize that reaching meaningful agreement this year is a big challenge, and DSTs are seen as a fallback measure – even with the US threat of escalating tariffs in retaliation. For example, the EU failed to get the unanimity needed in 2018 for a bloc-wide DST directive, leaving countries to work individually, but the effort could be restarted.

"Let’s say we are reasonably confident the international process will deliver,” Benjamin Angel, a director in the European Commission’s tax department, told Politico recently. But "if the OECD process fails and it proves to be impossible to reach an agreement at [the] international level, the Commission will table an initiative for EU action.”

Nearly everyone involved in the global talks acknowledges the high stakes, with failure at the OECD likely to result in a patchwork of DSTs and other tax measures aimed at technology companies that have large customer or user bases where they may not have a physical presence.

"We feel the pressure,” Pascal Saint-Amans, the OECD’s tax policy director, told Politico ahead of the G-20 summit. "Our job is about ensuring that...we don’t have a trade war.”

**‘Safe harbor’**

While the details of exactly how taxing rights should be reallocated and the future role of the arm’s length standard are providing plenty of work for the tax officials dug in at the OECD, a surprise proposal Mnuchin made in December that Pillar One be treated as a “safe harbor” has also been looming over the process. (For prior coverage, see Tax News & Views, Vol. 20, No. 39, Dec. 6, 2019.) The stakeholders in January agreed to defer any decision about the suggestion to a later stage. While most have interpreted the phrase “safe harbor” to mean the regime would be optional for companies, Treasury officials have pushed back on that interpretation – although without providing much clarity. (For prior coverage, see Tax News & Views, Vol. 20, No. 3, Jan. 24, 2020.)


**URL:** [https://newsletters.usdbriefs.com/2020/Tax/TNV/200124_1.html](https://newsletters.usdbriefs.com/2020/Tax/TNV/200124_1.html)

In Riyadh, Mnuchin took the opportunity to provide his own description.

"What a safe harbor is – and there’s lots of safe harbors that exist – you pay the safe harbor as opposed to paying something else, and you get tax certainty,” Mnuchin said at the summit. “People may pay a little bit more in a safe harbor knowing they have tax certainty.”

France’s Le Maire, who has questioned the safe harbor concept, told reporters at the meeting that he is "not in a position to [say] what it really means,” but signaled that he is keeping an open mind while the process moves forward.

"We are in the process of technically assessing what it really means and what might be the consequences of such a solution,” he said. "It is fair and useful to give all the attention to this US proposal.”
Le Maire also indicated that France would be open to a “phased” or “step-by-step” approach to new tax rules in order to get agreement at the OECD.

In contrast, Japanese Finance Minister Taro Aso was more critical of the US’s position at the latest meeting.

“I told my counterparts that Japan is very concerned about the ‘safe harbor’ proposal,” Aso told reporters at the G-20. “It would extremely diminish the regulatory effect of what we’re trying to do. That is a view expressed by various countries.”

A hard road ahead?

Mnuchin told his G-20 colleagues that “there’s a tremendous desire” to reach a consensus solution, but he also warned of hurdles in the path of such a challenge.

“One of the things we’re balancing is sticking with the fundamental issue of taxing based upon where companies are,” he said. “The more we change that to broaden this, the more we run into other issues.”

In line with comments previously made by top tax aides on Capitol Hill, Mnuchin also acknowledged that signing on to OECD-led rules changes is not necessarily in the hands of the Treasury Department or administrative branch.

“Let me emphasize: in the US, depending upon what the solutions are, these may require congressional approval,” he said.

— Storme Sixeas
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Deloitte Tax looks at new guidance on expenses for business meals, entertainment

The IRS recently released proposed regulations providing guidance regarding amendments to section 274 made by the 2017 tax legislation commonly known as the Tax Cuts and Jobs Act (TCJA, P.L. 115-97). The proposed regulations update existing regulations under section 274 governing the tax treatment of expenses for business meals and entertainment.


This summary from Deloitte Tax LLP provides an overview of the proposed regulations and discusses potential implications.


— Michael DeHoff
Tax Policy Group
Deloitte Tax LLP

House OKs new tax on nicotine used in vaping

The House of Representatives on February 28 approved legislation aimed at curbing nicotine use among youth that includes a provision that would impose a new excise tax on nicotine used in vaping.

The Protecting American Lungs And Reversing The Youth Tobacco Epidemic Act of 2020 (H.R. 2339) cleared the chamber by a vote of 213-195.

‘Taxable nicotine’

Smoking-related excise taxes currently apply only to various types of traditional tobacco products as well as cigarette papers and tubes. H.R. 2339 would harmonize the tax treatment of e-cigarettes and traditional cigarettes by expanding those levies to include “taxable nicotine” – defined as any nicotine which has been extracted, concentrated, or synthesized. That definition would exclude nicotine that will be used in a product which has been approved by the Food and Drug Administration for sale as a nicotine replacement therapy (although it would be up to manufacturers and importers to provide proof of that intended use to the Treasury Department). Other tobacco products that are currently subject to tax would not be treated as containing taxable nicotine solely because the nicotine naturally occurring in the tobacco from which those products are manufactured has been concentrated during the ordinary course of manufacturing.

The amount of tax would be the greater of:

- The dollar amount specified for small cigarettes in section 5701(b)(1) or
- $50.33 per 1,810 milligrams of nicotine (and a proportionate tax on any fractional part thereof).

The bill provides that taxable nicotine also would be subject to the same general provisions that currently apply to tobacco products – for example, packaging requirements; provisions relating to the purchase, receipt, possession, or sale; and provisions relating to civil and criminal penalties.

The proposed tax would take effect for products manufactured and imported in calendar quarters beginning more than 90 days after the date of enactment.

This provision originally cleared the House Ways and Means Committee as a freestanding measure (H.R. 4742, sponsored by taxwriter Tom Suozzi, D-N.Y., and Rep. Peter King, R-N.Y.) at a mark-up last October. (For prior coverage, see Tax News & Views, Vol. 20, No. 34, Oct. 25, 2019.)


Safe harbor for high-deductible health plans

The House-passed measure also would expand the flexibility of various tax-preferred health care savings vehicles that are linked to high-deductible insurance plans by providing a safe harbor for plans that do not include a deductible for certain inhalers to treat chronic lung conditions. (Specifically, the bill provides that a plan would not lose its status as a qualified high-deductible insurance plan solely because it does not include a deductible for inhalers.)

The provision would be effective for months beginning after the date of enactment.

Like the nicotine tax, it was approved by the Ways and Means Committee last October as freestanding legislation (H.R. 4716, sponsored by taxwriter Terri Sewell, D-Ala., and Rep. T. J. Cox, D-Calif.).

Net revenue raiser

The Joint Committee on Taxation staff estimates that H.R. 2339 would increase federal receipts by more than $4.8 billion (net) between 2020 and 2030.

URL: https://www.jct.gov/publications.html?func=startdown&id=5248

The new tax on nicotine would raise $7.9 billion over the 10-year budget window, according to the JCT; however, the safe harbor for high-deductible health plans would reduce receipts by nearly $1.6 billion, and the indirect tax effects of changes to various Food and Drug Administration rules would reduce receipts by another $1.5 billion.

Next steps uncertain

It is currently unclear whether the bill will be taken up in the Senate.

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Erin Collins appointed as National Taxpayer Advocate

The Treasury Department and Internal Revenue Service announced February 27 that Erin M. Collins has been appointed to serve as the National Taxpayer Advocate. Collins replaces Nina Olson, who retired from the position in July of last year. (Bridget Roberts has filled the position on an interim basis since Olson’s retirement.)


Collins has an extensive background in public accounting and also has over a decade of experience as an attorney in the IRS chief counsel’s office.

The National Taxpayer Advocate is charged with helping to improve the focus of the IRS to emphasize helping taxpayers comply with their legal responsibilities.

— Michael DeHoff
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