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House Democrats release massive infrastructure package with significant tax title

House Democrats this week unveiled a more than $1.5 trillion infrastructure bill that would touch a broad array of programs and projects, and would also make a number of changes to the tax code; but even though the measure is likely to eventually pass the House on a largely partisan basis, Republican opposition to many of its provisions – particularly those aimed at addressing climate change through reduced carbon emissions – means its main significance will likely be as a Democratic marker in future negotiations and on the campaign trail in the upcoming congressional elections.

High-level overview

The Moving Forward Act (H.R. 2: text, section-by-section summary) runs about 2,300 pages and was released on June 22 by House Transportation and Infrastructure Committee Chairman Peter DeFazio, D-Ore., Ways and Means Committee Chairman Richard Neal, D-Mass., and the Democratic leaders of several other committees with jurisdiction over programs and policies included in the sweeping legislation.
URL: https://transportation.house.gov/download/bill-text-moving-forward-act
URL: https://transportation.house.gov/download/sec-by-sec-moving-forward-act

The package is centered around a nearly $500 billion, five-year reauthorization of highway and mass transit spending that the Transportation and Infrastructure Committee reported on June 18. But it also goes much further by calling for large outlays related to upgrading schools and child care facilities, expanding the nation's stock of affordable housing, delivering broadband Internet access to underserved communities, upgrading drinking water and wastewater infrastructure, modernizing the electric grid to accommodate more renewable energy sources, investing in health care- and postal service-related upgrades, and tripling current levels of Amtrak funding to accommodate upgrades and expansions of passenger rail service.

Tax changes

The legislation proposes a number of tax changes aimed at spurring private investment in infrastructure, housing, and low-income neighborhoods, as well as encouraging renewable energy and energy efficiency.

Tax credit infrastructure bonds brought back, other bond changes: Similar to the Build America Bonds program that was enacted as part of the 2009 American Recovery and Reinvestment Act, H.R. 2 would reinstitute so-called tax credit bonds that would deliver tax credits to issuers of qualified infrastructure bonds equal to a certain percentage of the bonds' interest, starting at a rate of 42 percent through 2024 and declining to 30 percent in 2027 and beyond.

The legislation would also bring back the tax-exempt status of interest on advance refunding bonds – repealed as part of the 2017 Tax Cuts and Jobs Act (P.L. 115-97, or TCJA) – on such bonds issued more than 30 days after enactment of the bill, increase the annual state volume cap on private activity bonds, and make a number of other changes to expand the scope of bond programs, including reinstituting Qualified Zone Academy Bonds (also repealed as part of the TCJA) and adding a new tax preference or Qualified School Infrastructure Bonds.

New markets tax credit increased, made permanent: The bill would make permanent the New markets tax credit – which is otherwise scheduled to expire after 2020 – while increasing the allocation amounts in 2019 and years thereafter.

Rehabilitation tax credit increased: H.R. 2 would boost the historic rehabilitation credit percentage under tax code section 47 from 20 percent to 30 percent through 2024 and then phase-down the credit percentage until it returns to 20 percent in 2027. The bill would also make other related changes to the rehabilitation credit including increasing the credit percentage for certain small projects, extending the period to complete rehabilitation, and reducing the basis threshold needed to qualify for the credit from 100 percent to 50 percent of adjusted basis.

Disaster and resiliency: The bill would repeal the temporary limitation on casualty loss deductions enacted as part of the TCJA – which generally restricted such deductions to instances of natural disaster, and only when the property is situated in a federally declared disaster area. As a result, the measure would reinstate the prior-law itemized deduction for casualty losses in excess of 10 percent adjusted gross income. The change would be retroactive to casualty losses incurred after 2017.

Low-income housing tax credit changes: H.R. 2 would make several changes to the low-income housing tax credit under section 42, including establishing a permanent 4 percent minimum credit rate for housing projects utilizing tax-exempt bonds, increasing the maximum state low-income housing tax credit allocation amounts, and extending the minimum expenditure requirement period from 24 months to 36 months for projects receiving a credit allocation after 2016 and before 2022.

'Green' energy provisions: The bill includes a long list of provisions aimed at encouraging renewable energy and energy efficiency, several of which – such as an expanded credit for buyers of electric vehicles – have historically faced opposition from many congressional Republicans. The energy tax title of the legislation is modeled on the Growing Renewable Energy and Efficiency Now Act of 2020, or the GREEN Act, which Ways and Means Committee Democrats released as a discussion draft last November. (For prior coverage, see *Tax News & Views*, Vol. 20, No. 38, Nov. 22, 2019.)
URL: http://newsletters.usdbriefs.com/2019/Tax/TNV/191122_2.html

Among the more notable energy incentives included in H.R. 2 are:

- Extension of the production tax credit (PTC) under section 45 for electricity produced from certain renewable resources, in most cases for facilities for which construction begins before 2026. The wind energy PTC would be preserved at current phase-out levels in 2019 and 2020 – that is, a reduction of 60 percent and 40 percent, respectively – and then extended subject to a 40 percent reduction through 2025.
- Extension of the investment tax credit (ITC) under section 48 for qualified energy property, in most cases at the full 30 percent rate for property for which construction begins before 2026. The solar ITC would phase down to 10 percent (the rate in place under current law) by 2028 and remain at that level thereafter. The measure also would make the ITC available to additional classes of property including energy storage technology and waste energy recovery property.
- Extension (and, in some cases, modification) of the tax credits for carbon dioxide sequestration (section 45Q), offshore wind (section 48(a)(5)), biodiesel and renewable diesel (sections 40A, 6426, and 6427), alternative fuels and alternative fuel mixtures (sections 6426 and 6427), second-generation biofuels (section 40), and advanced energy projects (section 48C).
- Extension (and, in some cases, modification) of tax incentives for nonbusiness energy property (section 25C), residential energy-efficient property (section 25D), energy-efficient commercial buildings (section 179D), and energy-efficient new homes (section 45L);
- Modification of the credit under section 30D for qualified plug-in electric drive motor vehicles such that, in general, the credit begins phasing out at 600,000 vehicle sales per manufacturer (rather than 200,000 as under current law) and creation of a new credit for buyers of used electric vehicles (capped at the lesser of $2,500 or 30 percent of the sales price) through 2025.
- Extension (and, in some cases, modification) of the tax credits for alternative fuel vehicle refueling property (section 30C), qualified fuel cell motor vehicles (section 30B), and two- and three-wheeled plug-in electric vehicles.

House Ways and Means Select Revenue Measures Subcommittee Chairman Mike Thompson, D-Calif., introduced a substantially similar version of H.R. 2's green energy provisions as freestanding legislation on June 24 (text, section-by-section summary, topline summary).
URL: https://mikethompson.house.gov/sites/mikethompson.house.gov/files/GREEN-Act.pdf
URL: https://mikethompson.house.gov/sites/mikethompson.house.gov/files/2020-06-25-GREEN-Act%20Section-by-Section-FINAL.pdf
URL: https://mikethompson.house.gov/sites/mikethompson.house.gov/files/2020-06-25-GREEN-Act-Topline-Summary-FINAL.pdf

Largely unpaid-for

The legislation does not call for an increase in the politically sensitive gasoline tax or, for that matter, any of the other taxes that are dedicated to the Highway Trust Fund, such as those imposed on diesel fuel and kerosene, certain highway tires, and certain heavy trucks and trailers sold at retail. Instead, it would extend those taxes at their current levels for an additional five years (through September 30, 2027) and rely on a $145 billion transfer from the government's general fund to keep the trust fund solvent.

Moreover, aside from the bond provisions, which would be expected to generate some revenue, H.R. 2 does not include significant tax or spending offsets that would cover the anticipated reduction in federal receipts resulting from its massive package of tax incentives and other spending. Without pay-fors, the lawmakers would need to rely on a large transfer from the general fund, which would result in a substantial impact on the federal deficit. As of press time, a revenue estimate for H.R. 2 was not available from the Joint Committee on Taxation staff or the Congressional Budget Office.

Next steps

House Majority Leader Steny Hoyer, D-Md., has suggested the Moving Forward Act could be taken up by the full House as early as the week of June 29.

But not unlike The Heroes Act – that is, the sweeping so-called "phase four" coronavirus relief measure passed by House Democrats last month – it appears as though the infrastructure package unveiled this week will face staunch opposition from Republicans, and as a result will function mainly as a Democratic marker in ongoing negotiations and a marker for Democrat priorities in the 2020 election campaign.

“We were not given the opportunity to address any of our priorities in this legislation,” said Rep. Sam Graves of Missouri, the ranking Republican on the Transportation and Infrastructure Committee, on June 22. “[It] will leave rural American even further behind, and numerous new green mandates and extreme progressive goals are woven throughout.”

Across the Capitol, Sen. John Barrasso, R-Wyo., the chairman of the Senate Environment and Public Works Committee, called the House Democrats’ bill a “road to nowhere” and suggested that House Democrats neglected Republican input and wrote a “partisan bill.”

For his part, Senate Majority Leader Mitch McConnell, R-Ky., has hinted that he is disinclined to move infrastructure legislation as part of the next potential coronavirus bill. Meanwhile, senators are working to move their own highway bill – a five-year, $287 billion reauthorization of highway and mass transit programs called America’s Transportation Infrastructure Act (ATIA) – that was reported by the Environment and Public Works Committee on a unanimous basis during July of 2019; but due to its own perennial shortfall in gas tax receipts, the Senate measure could require roughly $90 billion in additional deficit financing or budget offsets to be identified by the Finance Committee to cover its proposed general fund transfer to the Highway Trust Fund. (Although the shortfall does not have to be offset, lawmakers have attempted to do so as part of recent highway bills).

Absent lawmaker action to reauthorize the Highway Trust Fund, federal highway and transit spending will lapse on October 1, 2020. The taxes that provide the trust fund’s dedicated revenue stream are scheduled to expire on September 30, 2022.

— Alex Brosseau
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President mulls additional stimulus payments in next coronavirus response bill

With the details around the content and size of the next legislative package addressing the economic disruptions caused by the coronavirus pandemic still in flux and bicameral negotiations not expected to begin in earnest until lawmakers return from their Independence Day recess later next month, President Trump indicated this week that he is open to the idea of providing an additional round of economic stimulus payments to individuals.

The president stated in a June 22 interview with Scripps television that “we will be doing another stimulus package” and that “[i]t will be very generous.” He responded affirmatively when asked whether it would include direct payments to individuals but did not elaborate on how large those payments might be or who would be eligible to receive them.

Treasury Secretary Steven Mnuchin raised the idea with Senate Republicans during their weekly lunch on June 23. Finance Committee member Bill Cassidy, R-La., told reporters afterward that Mnuchin “said that when he went around the country, people came up and thanked him for it. It seemed to have made a difference to them.”

White House National Economic Council Director Larry Kudlow told Fox Business on June 23 that additional stimulus payments are “on the table” but added that “[p]robably, we would want to target those to those folks who lost their jobs and are most in need. …[T]hat’s the speculation on my part, but I think this is – that’s where it’s going.”

Congress approved “recovery rebates” of $1,200 for single individuals, $2,400 for married individuals filing jointly (subject to income-based phase-outs and other eligibility rules), and $500 for each qualifying child in the Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136), which was signed into law on March 27. House Democrats proposed a new round of recovery rebates in The Heroes Act (H.R. 6800), which cleared the chamber on May 15 almost entirely along party lines. The rebate amounts and income phase-out thresholds for unmarried taxpayers and joint filers in the new House-passed bill are identical to those in the CARES Act, but the House proposal would bump up the payments for dependents to $1,200 and expand the roster of eligible dependents to include adult dependents and dependents up to age 24 who are full-time students as well as certain non-citizens. The maximum available benefit would be $6,000 per household.

Senate Republicans so far do not appear to have reached consensus on the issue. South Dakota Republican Sen. Mike Rounds commented to reporters June 23 that many individuals who received payments under the CARES Act "have been saving money and putting it into their savings accounts" rather than plowing it back into the economy. "For me, let's get people back to work. I think that's a better way," he said.

Sen. Mitt Romney, R-Utah, rejected additional stimulus payments, saying he would prefer "to extend unemployment insurance, but to do that in a more limited way, and a more targeted way."

But North Carolina Republican Sen. Thom Tillis told reporters that he could support a scaled-back version of the CARES Act program if the payments were directed to "the people who are hurting the most," and Sen. Kevin Cramer, R-N.D., commented that a "[d]irect check, or direct infusion of discretionary money – whether for rent or something more discretionary – would in fact have a stimulating effect, and it could be very helpful to people getting through a rough patch."

'Phase 4' contours still unclear

Even as administration officials and lawmakers weighed in on economic stimulus payments, Congress as a whole made little apparent progress this week in determining the scope and contours of a potential "phase 4" coronavirus relief bill. Treasury Secretary Mnuchin told reporters after the Senate GOP lunch that "we are beginning to discuss the different aspects of what another bill would look like."

"We want to make sure whatever we do going forward is much more targeted to the businesses that are most impacted," he added.

Those comments largely echo the sentiments of Senate Majority Leader Mitch McConnell, R-Ky., who has maintained over the last several weeks that action on another coronavirus response package should be delayed until policymakers can gauge the economic impact of the recovery bills that have been enacted to date and that new legislation should be more narrowly tailored than previous efforts.

Content: On the issue of content, McConnell continues insist on the inclusion of liability protections for health care workers, business owners, and employees, and has stated that he will not accept Democratic proposals to extend the CARES Act's enhanced unemployment insurance benefits without significant changes; but he has largely remained silent on the specific tax provisions he would – or would not – accept in the next round of legislation.

Among rank-and-file lawmakers, tax discussions generally have focused on some bipartisan proposals related to expanding the employee retention tax credit, as well as proposals – mainly from Republicans – to allow businesses to monetize certain unused tax credits and to provide some type of "back to work bonus" potentially working in lieu of, or in concert with, enhanced federal unemployment benefits.

For their part, House Appropriations Committee Chair Nita Lowey, D-N.Y., and Ways and Means Committee Chair Richard Neal, D-Mass., introduced legislation on June 25 aimed at making child care more affordable for middle- and lower-income individuals and providing targeted relief to child care providers. The Child Care for Economic Recovery Act (text, section-by-section summary, fact sheet), which House Democrats hope to fold into the next stimulus bill, would, among other things, enhance the child and dependent care tax credit and expand the dependent care flexible spending account rules. It also would expand the employee retention tax credit to encourage employers of household domestic workers to continue to pay those employees as well as create a new refundable tax credit for certain dependent care benefits paid by employers and a separate credit – also refundable – to cover mortgage, rent, or utilities expenses incurred by certain child care providers that have been forced to close or have suffered revenue losses because of the pandemic.
URL: https://waysandmeans.house.gov/sites/democrats.waysandmeans.house.gov/files/documents/CC.008_xml_xml.pdf
URL: https://waysandmeans.house.gov/sites/democrats.waysandmeans.house.gov/files/documents/CCERA%20Section%20by%20Section.pdf
URL: https://waysandmeans.house.gov/sites/democrats.waysandmeans.house.gov/files/documents/CCERA%20fact%20sheet_0.pdf

Timing: Most observers continue to believe that a confluence of factors – especially, Congress's usual departure from Washington for its August recess and the scheduled expiration at the end of July of the CARES Act's extra $600-per-week unemployment insurance benefit funded by the federal government – will force action on some sort of coronavirus-related legislation during July, though the cramped schedule and the large number of complex areas of disagreement all pose challenges for lawmakers working towards a deal.

Moreover, because the White House is said to favor waiting until after July 4 to begin negotiations with Democrats, the window for talks will be narrow. Part of the White House's calculation on timing may relate to the expected July 2 release of the June unemployment report from the Labor Department's Bureau of Labor Statistics. The results of that report, in tandem with the May unemployment numbers – which showed stronger-than-expected headline numbers on job gains and the unemployment rate – will undoubtedly influence the debate among policymakers.

Another filing deadline extension?

In other developments, Treasury Secretary Mnuchin said at a June 23 forum sponsored by Bloomberg that he is "thinking about" an additional delay in tax filing deadlines, although he cautioned that "as of now, we're not intending on doing that."

Earlier this year, in response to disruptions caused by the coronavirus pandemic, the IRS issued guidance (Notice 2020-23) which provided that taxpayers would have until July 15, 2020, to file and pay taxes that were originally due on or after April 1 and before July 15.

Mnuchin stated at the Bloomberg Forum that he would "look carefully [at the issue] as we approach the July date."

In a June 22 statement on its website discussing its operations during the pandemic, the IRS notes that it "continues to process electronic tax returns, issue direct deposit refunds, and accept electronic payments" but is "experiencing delays in processing paper tax returns due to limited staffing."
URL: https://www.irs.gov/newsroom/irs-operations-during-covid-19-mission-critical-functions-continue

IRS Commissioner Charles Rettig is scheduled to discuss the 2020 tax filing season and the Service's COVID-19 recovery efforts at a Senate Finance Committee hearing scheduled for June 30. Rettig will be the sole witness.

Coronavirus guidance update

Developments on the guidance front this week include updates to the IRS's FAQ page on the CARES's Act's Employee Retention Tax Credit, additional details from the Small Business Administration on loan forgiveness under the Paycheck Protection Program, relief for defined contribution plan participants and IRA owners who took required minimum distributions from their retirement accounts in 2020, and a filing and payment deadline extension for certain individuals who owe excise taxes on sport fishing and archery equipment.

Employee Retention Tax Credit: The IRS on June 19 revised a number of its FAQs on the Employee Retention Tax Credit. The updates clarify prior responses and provide new examples that address issues related to:
URL: https://www.irs.gov/newsroom/faqs-employee-retention-credit-under-the-cares-act

- Which "orders from an appropriate governmental authority" may be taken into account for purposes of the credit (FAQ 28);
  URL: https://www.irs.gov/newsroom/covid-19-related-employee-retention-credits-determining-what-types-of-governmental-orders-may-be-taken-into-account-for-purposes-of-the-employee-retention-credit-faqs
- Whether an essential business is considered to have a full or partial suspension of operations if a governmental order requires non-essential businesses to suspend operations but allows essential businesses to continue operations (FAQ 30);
  URL: https://www.irs.gov/newsroom/covid-19-related-employee-retention-credits-determining-when-an-employers-trade-or-business-operations-are-considered-to-be-fully-or-partially-suspended-due-to-a-governmental-order-faqs
- Whether an employer is considered to have a suspension of operations if a governmental order requires an employer to close its workplace but the employer is able to continue operations comparable to its operations prior to the closure by requiring employees to telework (FAQ 33);
  URL: https://www.irs.gov/newsroom/covid-19-related-employee-retention-credits-determining-when-an-employers-trade-or-business-operations-are-considered-to-be-fully-or-partially-suspended-due-to-a-governmental-order-faqs
- Whether an employer considered to have a suspension of operations if a governmental order requires an employer to close its workplace for certain purposes, but the workplace remains operational for limited purposes (FAQ 34);

URL: https://www.irs.gov/newsroom/covid-19-related-employee-retention-credits-determining-when-an-employers-trade-or-business-operations-are-considered-to-be-fully-or-partially-suspended-due-to-a-governmental-order-faqs

- Whether an employer's operations are considered to be partially suspended for purposes of the credit if the employer is required to reduce its operating hours by a governmental order (FAQ 35);
  URL: https://www.irs.gov/newsroom/covid-19-related-employee-retention-credits-determining-when-an-employers-trade-or-business-operations-are-considered-to-be-fully-or-partially-suspended-due-to-a-governmental-order-faqs
- How a tax-exempt employer determines whether it has experienced a significant decline in gross receipts (FAQ 46);
  URL: https://www.irs.gov/newsroom/covid-19-related-employee-retention-credits-determining-when-an-employer-is-considered-to-have-a-significant-decline-in-gross-receipts-and-maximum-amount-of-an-eligible-employers-employee-retention#max_amount
- Whether an eligible employer may claim the credit on an amount paid to an employee if that amount is exempt from Social Security and Medicare taxes (FAQ 58);
  URL: https://www.irs.gov/newsroom/covid-19-related-employee-retention-credits-determining-qualified-wages-faqs
- Whether a payroll reporting agent may sign and submit Form 7200 on behalf of a client (FAQ 88);
  URL: https://www.irs.gov/node/78111#third-party-payers
- Whether third-party payers may rely on client-employer information regarding the credit (FAQ 90); and
  URL: https://www.irs.gov/node/78111#third-party-payers
- Whether client-employers are responsible for avoiding a "double benefit" with respect to the Employee Retention Tax Credit and the credit for providing paid family and medical leave under section 45S (FAQ 92).
  URL: https://www.irs.gov/node/78111#third-party-payers

Paycheck Protection Program: An interim final rule released by the Small Business Administration on June 22 provides guidance on how self-employed individuals and owner-employees of C corporations should calculate compensation to reflect the changes to the loan forgiveness rules enacted June 5 in the Paycheck Protection Program Flexibility Act (P.L. 116-142).
URL: https://www.sba.gov/sites/default/files/2020-06/PPP--IFR--Revisions-to-Loan-Forgiveness-Interim-Final-Rule-and-SBA-Loan-Review-Procedures-Interim-Final-Rule-508.pdf
URL: https://www.congress.gov/bill/116th-congress/house-bill/7010/text/enr?q=%7B%22search%22%3A%5B%22paycheck+protection+program+flexibility+Act%22%5D%7D&r=1

Required minimum distributions from qualified retirement plans: Notice 2020-51, released by the IRS on June 23, permits anyone who has already taken a required minimum distribution (RMD) in 2020 from a defined contribution plan or IRA to roll those funds back into the account without penalty and extends the 60-day period for rolling over any RMDs already taken this year to August 31, 2020.
URL: https://www.irs.gov/pub/irs-drop/n-20-51.pdf

The guidance addresses a provision in CARES Act that suspended the minimum distribution requirement for all distributions due in calendar year 2020. (This includes anyone who had reached age 70-1/2 in 2019 and would have had to take the first RMD by April 1, 2020.)

The notice also answers questions about the CARES Act's temporary suspension of RMDs and provides two sample amendments that employers may adopt to give plan participants and beneficiaries whose RMDs are waived a choice as to whether or not to receive the waived RMD.

Excise taxes on sport fishing and archery equipment: Notice 2020-48, which the Service issued on June 22, gives taxpayers affected by pandemic-related business disruptions an extra three months to file returns and pay excise taxes on sport fishing and archery equipment that are owed for the second quarter of 2020. Under the notice, the deadline for filing Forms 720 and paying the related second-quarter excise taxes is extended to October 31, 2020 (from July 31).
URL: https://www.irs.gov/pub/irs-drop/n-20-48.pdf

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Trading partners to proceed with digital tax discussions – with or without the US

While US officials have stayed fairly quiet after sending a surprise June 12 letter calling for the suspension of international talks on the tax treatment of the digitalized economy, the response from key negotiating partners makes clear other countries will continue work towards consensus and will move forward on US-opposed digital services taxes (DSTs) if necessary. It also appears that Treasury is still participating in the discussions at the Organisation for Economic Co-operation and Development (OECD), even if it doesn't intend to sign off on a multilateral agreement in the near term.

After Treasury Secretary Steven Mnuchin declared in a letter to his French, Italian, Spanish and British counterparts that talks on new tax rules looking beyond permanent establishment (the so-called Pillar One of the two-pillar project) were at an "impasse" and called for a pause while nations respond to the health and economic impacts of the coronavirus pandemic, the implications were unclear for the other 130-plus jurisdictions that have been involved in the OECD negotiations over the past year and a half. However, in a letter of response to Mnuchin delivered June 16 (but made public only this week), the four European finance ministers made clear that they are still focused on the stated timeline of delivering a solution this year – and reminded Mnuchin that the US has repeatedly endorsed this commitment.
URL: https://newsletters.usdbriefs.com/2020/Tax/TNV/200619_1_suppA.pdf
URL: https://newsletters.usdbriefs.com/2020/Tax/TNV/200626_3_suppA.pdf

Bruno Le Maire of France, Roberto Gualtieri of Italy, María Jesús Montero Cuadrado of Spain, and Rishi Sunak of the United Kingdom said in their letter that postponing work on Pillar One would "constitute a collective failure" – especially since they expect the world's digital giants to emerge from the global pandemic and economic crisis "more powerful and more profitable." The ministers noted that "the positions and proposals of [the US] have always been respected and taken into account despite various countries' concerns and interests" and that the current approach being fleshed out strongly reflects US input.

In several public appearances and interviews this week, Pascal Saint-Amans, the OECD's tax policy director, acknowledged that the combination of the US's position – that is, its insistence on a "safe harbor" for Pillar One that other countries do not support – the economic upheaval caused by the global pandemic, and the upcoming US election poses challenges to the project; but he said the US is still participating in discussions. Saint-Amans said he remains hopeful that the participants will be able to present a report to G-20 finance ministers in October that could be the basis for a global agreement late this year or in 2021, "whether it's a Trump administration or a Biden administration."

"Things are in flux," he said, speaking during an online event hosted June 24 by Bloomberg Tax. "But what is for sure is that we are working."

The response from Europe's ministers also commented on the safe harbor proposal first raised in December and reiterated in the most recent Mnuchin letter, saying that the negotiating countries have dedicated time to exploring what such a solution might look like, despite the fact that the approach "has not been fully explained by the US."

In an online interview with the Atlantic Council June 23, one of Europe's most senior leaders also weighed in on the US call for a suspension of the OECD talks. Margrethe Vestager, a European Commission executive vice president, reiterated that the EU is prepared to develop its own solution to ensure tech companies "pay their taxes" if there is no worldwide agreement.

"We would really, really prefer a global consensus on the issue of digital taxation," Vestager said.

Inching closer to a trade war

Saint-Amans said the Pillar One discussions on how to treat profits earned by certain businesses in jurisdictions where they do not necessarily have a physical presence are "quite advanced" and that there is "absolutely" the risk of a global trade war if there is not an agreement by the end of 2020.

A number of countries have implemented or proposed unilateral DSTs that threaten to impact large tech companies beginning next year, although these jurisdictions have generally said they will rescind the taxes if a global agreement is reached. In response to the proliferation of DSTs, the office of the US Trade Representative (USTR) recently opened investigations into the adopted or proposed taxes of nine countries – including those of Italy, Spain, and the UK – plus the EU. (USTR ruled last year that France's DST is discriminatory to US companies and threatened significant tariffs. The US and France agreed earlier this year to stand down from imposing tariffs and collecting the DST, respectively, while working towards an OECD agreement by year-end.)

In their letter to Mnuchin, the European finance ministers advocate "a phased approach [to Pillar One], initially focused on automated digital services" – and, by implication, holding off on a new tax treatment for profits from consumer-facing businesses, which are also under discussion. They note that such an approach would "make a political agreement within reach this year" and "pave the way for possible transitional solutions to be discussed…notably with respect to existing or upcoming national digital service taxes."

However, the US position throughout the OECD process has been to oppose new tax rules targeting only digital companies, arguing the businesses that would be impacted are largely US-based and that any new rules should apply more broadly.

Spillover effects

Saint-Amans noted this week that discussions on Pillar Two – a global minimum tax – are more advanced than those around Pillar One and that it is possible a consensus could be agreed to this year. (Mnuchin made a similar point in his June 12 letter.) However, Saint-Amans also commented that "the main enemy of Pillar Two is Pillar One," as there are countries that oppose decoupling the two negotiations.

— Storme Sixeas
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New regs address section 199A, elimination of qualified transportation fringe benefits deduction

The Treasury Department and Internal Revenue Service issued guidance this week addressing provisions in the 2017 tax code overhaul known informally as the Tax Cuts and Jobs Act (TCJA, P.L. 115-97) that created a 20 percent deduction for qualified business income of passthrough entities under section 199A and eliminated the deduction for qualified transportation fringe (QTF) benefits and commuting expenses under section 274.

Passthrough deduction

Final regulations under section 199A, which were released June 24, address dividends paid by real estate investment trusts and regulated investment companies, previously suspended losses, split-interest trusts, charitable remainder trusts, and special rules for trusts and estates. The final regulations are effective for taxable years beginning after August 24, 2020. However, taxpayers may choose to apply the rules for taxable years beginning on or before that date as long as the taxpayers consistently apply the rules for each such year.
URL: https://www.federalregister.gov/documents/2020/06/25/2020-11832/qualified-business-income-deduction

Qualified transportation fringe benefits

Proposed regulations under section 274, which were issued on June 19, describe and clarify provisions in the TCJA that disallowed deductions for:
URL: https://www.federalregister.gov/documents/2020/06/23/2020-13506/qualified-transportation-fringe-transportation-and-commuting-expenses-under-section-274

- Expenses associated with providing any QTF to employees (section 274(a)(4)) and
- Expenses incurred for providing transportation (or any payment or reimbursement) related to commuting between the employee's residence and place of employment, other than as necessary for ensuring the employee's safety (section 274(l)).

The proposed regulations also address the applicability of certain exceptions under section 274(e) to QTF expenses.

An alert on the proposed regulations is available from Deloitte Tax LLP.
URL: https://newsletters.usdbriefs.com/2020/Tax/TNV/200626_4_suppA.pdf

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