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Senate likely to accept House-passed extenders bill, Wyden says

Senate Finance Committee Chairman Ron Wyden, R-Ore., told reporters December 4 that the Senate likely would accept the one-year tax extenders package that cleared the House of Representatives a day earlier, although a procedural path for moving the measure through the upper chamber has yet to be made clear.

The House-approved bill, the Tax Increase Prevention Act of 2014 (H.R. 5771), would retroactively extend through 2014 most – but not all – of the temporary tax deductions, credits, and incentives that expired at the end of last year including, among other provisions, the research credit, bonus depreciation, increased section 179 expensing, the subpart F exception for active financing income, and lookthrough treatment for payments between related controlled foreign corporations under the foreign personal holding company rules. (For additional details, see *Tax News & Views*, Vol. 15, No. 37, Dec. 3, 2014.)
URL: http://newsletters.usdbriefs.com/2014/Tax/TNV/141203_1.html

The Joint Committee on Taxation (JCT) staff has estimated that the extenders package, which does not include offsets, would reduce federal revenues by roughly $42 billion over 10 years.

No path for two-year deal

Wyden had hoped to negotiate a two-year extenders package similar to the one approved in the Senate Finance Committee in April (S. 2260). But House Republicans had set their sights on a one-year renewal after President Obama last week threatened to veto an emerging deal between Ways and Means Committee Chairman Dave Camp, R-Mich., and Senate Majority Leader Harry Reid, D-Nev., that reportedly called for permanently extending several expired provisions such as the research credit and the increased expensing limits under section 179, extending most other expired provisions for two years, and phasing out the section 45 production tax credit for wind and other forms of alternative energy.

The strong bipartisan support for the one-year extenders bill in the House – 176 Democrats and 202 Republicans voted to approve the measure – appears to have diminished any momentum for a longer-term deal in the Senate.

“It’s hard to see a way in which you get a procedural alternative,” Wyden said.

Timing for Senate vote unclear

Wyden did not indicate when the measure might come up for a vote on the Senate floor. The Senate adjourned for the week on December 4 after spending the day voting on federal judicial and executive branch nominations. It will be back in session on December 8. Although Majority Leader Reid raised the possibility on December 4 that the Senate might not consider the bill before the end of the year, most observers expect it to be cleared by the Senate sometime next week.

Internal Revenue Service Commissioner John Koskinen said December 4 that if the House-passed bill is approved in the Senate without changes and sent to the president by December 12 it would likely not result in a disruption to the 2015 tax filing season.

Obama on board?

President Obama, meanwhile, told the audience at an event sponsored by the Business Roundtable December 3 that he was “open to short-term extensions of many of those [expired] provisions to make sure that all of you are able to engage in basic tax planning at least for the next couple of years, and are not having to scramble during tax time, figuring out what exactly the rules are.”

The president also noted that the administration would “like to see if some of those tax extender provisions, including things that I strongly support like research and development, are incorporated into a broader, comprehensive tax reform package”; but he cautioned that comprehensive tax reform would have to include “some provisions that benefit working families.” (See separate coverage in this issue for additional comments from the president on prospects for tax reform in 2015.)

The president reportedly issued his veto threat against the emerging Reid-Camp extenders deal because it proposed to permanently extend a number of corporate tax provisions but did not include extensions of two current-law provisions that expand certain refundable benefits under the earned income tax credit and the child tax credit. Those expanded benefits are currently set to expire in 2017.

ABLE Act along for the ride

The House-passed extenders bill includes provisions from the Achieving a Better Life Experience (ABLE) Act of 2014 (H.R. 647), a popular bipartisan measure the chamber also approved December 3 that would create tax-preferred savings accounts allowing certain individuals with disabilities and their caregivers to pay for certain qualified disability expenses. (The ABLE Act was approved in the House by a vote of 404-17 and was subsequently merged into the extenders legislation.)

Qualified ABLE accounts: The ABLE Act would allow individuals to establish and contribute to "qualified ABLE accounts" – to benefit eligible individuals who are blind or have a disability – in a "qualified ABLE program" which would be set up by individual states. Qualified ABLE accounts and qualified ABLE programs would be treated for income tax purposes in a similar manner as accounts in a qualified tuition program under section 529.

Contributions to an ABLE account would not be deductible but earnings would accumulate on a tax-deferred basis. Beneficiaries would be limited to one account, and total annual contributions to any one account could be made up to the gift tax exclusion amount (currently $14,000 and adjusted annually for inflation). Funds in the account could be used to pay for "qualified disability expenses" for education (including higher education), a primary residence, transportation, obtaining and maintaining employment, health and wellness, assistive technology, and other personal support expenses. Distributions from an account would not be includable in the gross income of a beneficiary to the extent that the distribution does not exceed the beneficiary's qualified disability expenses for the taxable year. Distributions and account balances would also be disregarded in some situations for determinations under federal means-tested assistance programs.

Offsets: The JCT staff has estimated that qualified ABLE programs would reduce federal revenues by roughly $2 billion over 10 years. When the ABLE Act cleared the Ways and Means Committee in late July, it contained no offsets; but committee Chairman Dave Camp promised that he would find bipartisan pay-fors. (For prior coverage, see *Tax News & Views*, Vol. 15, No. 29, Aug. 1, 2014.)
URL: https://www.jct.gov/publications.html?func=startdown&id=4676
URL: http://newsletters.usdbriefs.com/2014/Tax/TNV/140801_3.html

Under the House-approved bill, those revenue losses would be recouped through a combination of assorted tax offsets and spending reductions. Among the tax-related offsets are three provisions that are identical or similar to offsets included in the Senate Finance Committee's extenders package. These provisions would:

- Increase from 15 percent to 30 percent the levy against payments to a Medicare provider to collect unpaid taxes. (The Finance Committee extenders package called for increasing the levy to 100 percent.) The JCT estimates that the House-approved provision would increase federal revenues by $241 million over 10 years.
- Index for inflation civil penalties for certain failure-to-file requirements under the Internal Revenue Code (estimated 10-year revenue gain: $115 million).
- Exclude from additional withholding tax on personal holding company income certain dividends received from foreign subsidiaries (estimated 10-year revenue gain: $14 million).

The legislation also includes an offset that would raise the Inland Waterways Trust Fund excise tax on fuel powering commercial cargo vessels from 20 cents to 29 cents per gallon for an estimated 10-year revenue gain of $260 million. (A similar provision was included in an Obama administration budget package.) Another offset would allow the IRS to certify professional employee organizations (PEOs), thus allowing the PEOs to be solely responsible for withholding and remitting their customers' employment taxes (estimated 10-year revenue gain: $8 million).

A description of provisions in the ABLE Act is available from the House Ways and Means Committee staff.
URL: http://rules.house.gov/sites/republicans.rules.house.gov/files/113-2/PDF/113-HR647-SxS.pdf

— Jon Almeras & Michael DeHoff
Tax Policy Group
Deloitte Tax LLP

Obama sees 'deal to be done' on corporate tax reform next year

President Obama said December 3 that "there is definitely a deal to be done" between the administration and Congress to overhaul the corporate tax rules in 2015.

Speaking in Washington at an event sponsored by the Business Roundtable, Obama noted that the corporate tax reform "framework" he released in 2012 and the budget proposals he has sent to Congress during his presidency have called for closing "loopholes," lowering tax rates, and enacting a one-time repatriation plan for U.S. multinationals that could pay for infrastructure improvements.

Common ground?

According to the president, those principles align with many of the ideas put forward in the tax reform discussion draft that House Ways and Means Committee Chairman Dave Camp, R-Mich., released earlier this year.

"There are some differences, but overall, conceptually, he also believes [in] lower[ing] rates, clos[ing] loopholes, [and] a minimum tax globally that ensures that folks aren't gaming the system but also allows you to be competitive with folks based in other countries that are operating on a territorial basis," Obama said.

Potential hurdles

The president identified two problems standing in the way of revenue-neutral corporate tax reform. The first is the fact that significantly lowering the corporate tax rate will require reducing or eliminating "some deductions that people are very comfortable with." Until the business community is willing to endure some short-term pain "for the sake of a simpler, more streamlined, more sensible tax system," the president said, "the likelihood of us being able to get something done is low."

The second problem, in the president's view, is the fact that congressional Republicans generally have called for undertaking individual tax reform simultaneously with corporate reform "in part because they're concerned about passthrough corporations not being able to benefit the way larger corporations do."

Obama argued that the administration is "actually committed to providing simpler and lower tax rates for small businesses as well," but is unwilling to accept a large comprehensive tax deal that either "blows up the deficit" or shifts tax burdens "from businesses to middle-class and working families." Starting with corporate reform now – a process he characterized as involving "fewer moving parts" – could potentially pave the way for individual tax reform in the future, the president said. But he acknowledged that Republicans may not hold that view "and that could end up being a hang-up."

Obama also noted that there were several tax provisions the administration would focus on once the discussion turns to individual tax reform, including the earned income tax credit, the child tax credit, and the above-the-line deduction for qualified tuition and related expenses.

GOP leaders weigh in

Leading Republican lawmakers this week also offered their thoughts on the prospects for a deal with the administration on tax reform in the next Congress.

Ryan: Incoming House Ways and Means Committee Chairman Paul Ryan, R-Wis., told the audience at the *Wall Street Journal* CEO Council annual meeting December 2 that tax reform is "either going to happen in 2015 or in 2017" after a new president is sworn into the White House. Though Ryan said he would prefer a comprehensive rewrite of the tax code, he did not dismiss the possibility of moving business-only tax reform first.

"If we can get half way towards comprehensive tax reform, as a step in the right direction, I think that's great," he said.

Ryan expressed a similar sentiment in a December 3 interview in *Politico*, in which he spoke of business-only reform as a possible "phase one" of a tax code overhaul.

"The question is, is there a way to get what we would think of as phase one of tax reform done? I don't know if there is a way, but [we] need to explore if there is," he said.

Ryan also did not rule out the possibility of using certain one-time revenue generated from the transition to business tax reform to finance highway spending, as Obama has advocated.

"That's something we're going to have explore further – I'm not prejudging," he told *Politico*.

Hatch: Incoming Senate Finance Committee Chairman Orrin Hatch, R-Utah, told the audience at an event sponsored by the American Council for Capital Formation December 3 that comprehensive tax reform is "the only approach that makes sense" and that business-only reform is "politically expedient" but "not the right answer."

McConnell: Incoming Senate Majority Leader Mitch McConnell, R-Ky., told the audience at the *Wall Street Journal* CEO Council meeting December 2 that convincing congressional Republicans to pursue business-only tax reform would be "tricky, if not impossible." He cited the disparate treatment of corporations and passthrough entities under a corporate-only overhaul as a chief source of concern.

He also rejected the Obama administration's call for revenue-raising individual tax reform as a "$1 trillion ransom."

McConnell met privately with President Obama on December 4 but officials had not released any details of the conversation as of press time.

— Victoria Glover
Tax Policy Group
Deloitte Tax LLP

JCT ups revenue estimate of House Dems' anti-inversion bill by $14 billion

House Ways and Means Committee Democrats on December 3 released an updated revenue score from the Joint Committee on Taxation (JCT) staff indicating that the anti-inversion bill they introduced earlier this year would increase federal receipts by $33.57 billion through 2024 – up $14 billion from the JCT's original estimate in May.

House Democratic proposal

The Stop Corporate Inversions Act of 2014 (H.R. 4679), which Ways and Means ranking member Sander Levin, D-Mich., introduced on May 20, provides that an inverted foreign corporation would be treated as a domestic corporation for U.S. tax purposes if it meets either an ownership test or a management and control test. The proposal would be effective for transactions completed after May 8, 2014. (For prior coverage, see *Tax News & Views*, Vol. 15, No. 20, May 23, 2014.)
URL: http://newsletters.usdbriefs.com/2014/Tax/TNV/140523_2.html

At the time, the JCT staff estimated that the bill would raise $19.46 billion over 10 years. (For prior coverage, see *Tax News & Views*, Vol. 15, No. 21, May 30, 2014.)
URL: http://newsletters.usdbriefs.com/2014/Tax/TNV/140530_2.html

Treasury notice

For its part, the Treasury Department on September 22 released Notice 2014-52 announcing plans to address inversion transactions through forthcoming regulations. (For prior coverage, see *Tax News & Views*, Vol. 15, No. 33, Sep. 23, 2014; for a detailed analysis of the Treasury notice, see this International Tax Alert from Deloitte Tax LLP.)
URL: http://newsletters.usdbriefs.com/2014/Tax/TNV/140923_1.html
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-unitedstates-230914.pdf?id=us:em:na:tnv:eng:tax:120514

In light of the Treasury Department's action, House Democrats asked the JCT staff for an updated revenue estimate of their proposal.

JCT explains revised score

In a memorandum dated December 2, JCT Chief of Staff Thomas Barthold explained that the revised estimate for H.R. 4679 takes into account the Treasury notice and also "reflects increased inversion activity that has occurred over the past year or has been announced." The original estimate used a December 2013 baseline that did not reflect the inversion activity in 2014, Barthold said.
URL: http://newsletters.usdbriefs.com/2014/Tax/TNV/141205_3suppA.pdf

Barthold also noted that in arriving at the new score the JCT included several revenue effects, such as “reduced earnings stripping of the U.S. corporation in an inverted corporate structure, increased Sub F passive income included in U.S. taxable income, and reduced capital gains to shareholders.”

The estimate does not assume that the legislation would eliminate inversions by U.S. companies, Barthold stated.

No revised estimate for Senate companion bill

The JCT staff did not provide an updated revenue estimate for a similar Senate anti-inversion measure (S. 2360), also introduced May 20, that was sponsored by Rep. Levin’s brother, Permanent Subcommittee on Investigations Chairman Carl Levin, D-Mich. Sen. Levin’s bill would be effective for only two years to give Congress time to address inversions through tax reform. The JCT staff originally scored that measure as increasing federal revenues by $791 million over 10 years.

Further legislative action unlikely

Rep. Levin’s bill was not taken up in the House this year – the Senate companion measure likewise saw no action on the other side of the Capitol – and it currently appears unlikely that anti-inversion legislation will move next year in the Republican-controlled 114th Congress. House and Senate Republicans have shown little appetite for addressing inversions outside of a tax code overhaul that lowers corporate tax rates and moves toward a territorial system for taxing income of U.S. multinationals; moreover, they have not embraced the idea of making changes in this area with a retroactive effective date.

— Jon Almeras
Tax Policy Group
Deloitte Tax LLP