Federal tax legislation—what to expect for remainder of 2016?

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The number of days Congress plans to be in session between now and the end of the year may be fewer than you would think. The House and Senate are scheduled to take several short recesses in late spring and early summer, and then to take a longer recess from mid-July until early September. That's fairly typical in any given year. However, because of the upcoming elections, members of Congress also are scheduled to be back in their home states and districts for almost all of October through mid-November.

As a result, the House is planning to be in session for only 62 days between now and the elections and then to return after the elections for only 16 days in a "lame duck" session. The Senate is expected to be in slightly longer.

Notwithstanding the short legislative calendar, there is still a possibility that tax legislation could be enacted this year. In fact, there is a lot of activity in the Senate right now regarding the possible addition to the Federal Aviation Administration (FAA) authorization bill of tax provisions that have nothing to do with aviation—such as extensions of some tax incentives that expire this year. **There could be a Senate FAA bill containing a package of tax provisions unrelated to aviation very soon.** So, there could be important tax legislation to monitor in the coming days, weeks, and months.

The short legislative calendar also makes the prospects of enacting significant tax legislation (like tax reform) this year extremely unlikely, while the politics associated with an election year make those prospects even more remote. Nonetheless, it is expected that discussions of tax reform and efforts to gather stakeholder feedback will continue—even if legislative action is not taken on specific proposals.

Will the FAA bill be a significant tax bill?

Over the course of the week, discussions in the Senate of adding unrelated tax provisions to the FAA bill have "taken off." Here's the basic story.

- When 2016 began, certain taxes and tax rates dedicated to the airport and airways trust fund were scheduled to expire March 31, 2016.
- In early March 2016, the House passed a bill that would have extended the FAA trust fund taxes for a full year, through March 31, 2017. Ostensibly, one reason for extending the trust fund taxes beyond the end of 2016 was to avoid sending the Senate another tax bill later in the year—one that the Senate could amend with other, unrelated tax provisions.

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- The Senate, however, wanted to preserve that possibility. It amended the House bill to extend the trust fund taxes only for a few months (until July 15, 2016). Shortening the extension period provided that there would be at least one more "must pass" tax bill in 2016. This was particularly important to Senators who would like to extend some of the renewable energy tax incentives beyond the end-of-2016 expiration date that was provided in last year's "PATH Act" (Protecting Americans from Tax Hikes Act of 2015).
- With the then-March 31 expiration date of FAA programs and taxes fast approaching, the House accepted the Senate version of the FAA bill, and the president signed that legislation into law on March 30, 2016. As a result, the trust fund taxes are now set to expire again on July 15, 2016, requiring Congress to act on legislation to extend the trust fund taxes by mid-summer.

Even though the July 15 "deadline" is still a couple months away, the Senate has quickly turned its attention to the FAA bill. Negotiations are actively underway over what non-aviation provisions might be included in a tax title to that bill. Some Senators clearly are interested in extending certain expiring tax incentives relating to renewable energy. However, that opens the discussion of extending other provisions that were only extended through 2016. It also opens the possibility that technical corrections to previously enacted tax legislation might be included (such as corrections to the "FIRPTA" provisions in the PATH Act or to the partnership audit changes that were enacted in November 2015). And, efforts might be made to add other "miscellaneous" provisions as well. Furthermore, query whether revenue offsets might be included. The time for reaching agreement on all of this might be short, and there could be a possible tax title to the Senate FAA bill very soon.

This is not to suggest that the addition (or ultimate passage) of unrelated tax provisions to the FAA legislation, or ultimate passage, is a sure thing. The sheer political weight of the many amendments sought might be too much, not to mention the issue of the revenue cost and whether it would be offset. Moreover, there is resistance to any unrelated tax amendments on the other side of the Hill. So far, House Republicans have indicated a preference for a "clean" aviation bill. Further, some of the provisions the Senate may add could be controversial in the House. Thus, it's not a given that what "boards" a Senate vehicle will safely land on the president's desk and become law.

It is even possible that if the House and Senate cannot agree on what tax provisions to include in an FAA bill, they might opt for a "clean" extension of the trust fund taxes for just a few months beyond the current July 15 date, leaving the lame duck Congress to address the taxes again. Thus, it will be important to stay tuned to further developments to see what ultimately flies.

Moving discussions of tax reform forward

At the beginning of 2016, House Ways and Means Committee Chairman Kevin Brady (R-TX) indicated that the Ways and Means Committee would focus on international tax reform in 2016 and might even vote on an international tax reform bill this year.

Similarly, Senate Finance Committee Chairman Orrin Hatch (R-UT) had indicated that he might release a tax reform proposal early in the year involving integration of the corporate and individual income tax (likely through a dividends paid deduction mechanism). According to Chairman Hatch, such a proposal could significantly reduce effective corporate rates, while preventing inversions and foreign take-overs

and making the United States a more attractive place to do business.

Currently, both Chairmen Brady and Hatch appear to remain committed to pursuing their respective approaches to tax reform and to continue to view tax reform as a priority. Nonetheless, the timelines and details have become more murky.

House: On the House side:

- It is not clear when Chairman Brady (or the Chairman of the Tax Policy Subcommittee, Charles Boustany (R-LA)) would release an international tax reform draft. There is speculation that a draft may be released at some time before the Republican convention in July; however, given the short legislative calendar, the number of legislative days left by the time that draft is released could be waning.
- It also is not clear to what extent Chairman Brady's efforts to release an international tax reform bill in the short-term might be complicated by a larger House Republican effort to present an "agenda to the country" based on input from various task forces, including one on tax reform. Although the tax reform task force is chaired by Chairman Brady, it includes Republicans who are not on the Ways and Means Committee and is addressing a variety of tax reform options, including proposals like a flat tax. That task force is still in the process of evaluating various options; it is not clear when it will release its findings.

Indeed, the prospects of the Ways and Means Committee voting on an international tax reform bill this year appear to be very slim at this point. Instead, the House task force's current tax reform efforts appear to be largely focusing on advancing the discussion of tax reform, getting additional feedback from taxpayers, and showing what a Republican-controlled Congress could accomplish in the future.

Senate: On the Senate side, it likewise is less clear when Senator Hatch might release his integration proposal. Further, it is not clear whether the proposal, when released, would be in the form of statutory language, a technical discussion, or otherwise. Moreover, a corporate integration proposal could raise a host of issues—including, for example, how to offset the revenue loss and how to treat tax-exempt and foreign shareholders. Building support for such a proposal could be a multi-year effort. Nonetheless, it appears that Senator Hatch wants to move that effort forward and to get feedback from the business community as soon as possible regarding the technical details of an integration proposal.

Administration: Meanwhile, President Obama has continued to call for business tax reform. Early in the year, he released a budget proposal that called (again) for reducing the corporate rate and making structural reforms to the business tax rules. More recently, the administration released an updated version of a 2012 White House and Treasury report on *The President's Framework for Business Tax Reform*. The updated framework [PDF 630 KB]—released in conjunction with regulations addressing "inversions" and "earnings stripping"—includes updated data supporting the need for reform, as well as a high-level summary of the president's business tax reform proposals.

Many of the proposals referenced in the updated framework reflect policy objectives that are similar to those advocated by many congressional Republicans (such as increasing global competitiveness of U.S. corporations, reducing incentives to shift production overseas, strengthening innovation, and encouraging domestic investment). Nonetheless, the updated framework also highlights concerns with innovation box proposals and espouses other policy objectives that might not be embraced by congressional Republicans. For example, the administration restates its position that business tax reform must be "revenue neutral in the long run,"

while adding that reform also include “paying for those provisions that have already been enacted.” This suggests that the administration’s position is that business tax reform would have to raise enough money not only to cover the costs of reducing the corporate rate, but also to cover the costs of the extensions of business tax provisions in last year’s PATH Act that were not offset.

Concluding thoughts

Even though there is common ground between the administration and congressional Republicans on some key aspects of tax reform, critical differences still remain. And, with the short legislative calendar this year and election year politics in play, the prospects of the White House and the Congress reaching agreement on the significant issues associated with tax reform this year are low. Thus, while both the administration and Congress can be expected to continue to advance their visions as to what tax reform should be during the remainder of the year, actual legislation action on tax reform this year remains unlikely.

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