



TaxNewsFlash

United States

No. 2017-003
January 3, 2017

Legislative update: 115th Congress convenes; tax agenda items

Today, the 115th Congress convened. The new House consists of 241 Republicans and 194 Democrats. Rep. Ryan (R-WI) has been re-elected Speaker of the House. Kevin Brady (R-TX) will continue to be Chairman of the House Ways and Means Committee.

The new Senate consists of 52 Republicans, 46 Democrats, and two Independents who caucus with the Democrats (Bernie Sanders (VT) and Angus King (ME)). Thus, there effectively is a 52-48 split between Republicans and Democrats. Senator McConnell (R-KY) remains the Senate Majority Leader, while Senator Schumer (D-NY) is the new Senate Minority Leader (replacing Senator Reid, who retired at the end of the last Congress). Mike Pence will be the president of the Senate, and will have the ability to break a tie vote, once he is sworn in as vice president on January 20. Senator Hatch (R-UT) will remain the Chairman of the Senate Finance Committee. Further, Senators Cassidy (R-LA) and McCaskill (D-MO) have joined the Finance Committee (replacing retired Senator Coates (R-IN) and Senator Schumer, respectively).

President Obama remains president until president-elect Trump is sworn in on January 20. At some time on or after that date, a new Treasury secretary also is expected to take office. Trump has nominated Steven Mnuchin to be Treasury secretary; the Senate would need to confirm that nomination by a simple majority vote. Other political appointees in Obama's Treasury Department (such as the Assistant Secretary for Tax Policy) also can be expected to tender their resignations prior to Trump taking office, with new appointees filling their roles after Trump's Treasury secretary is confirmed.

Legislative agenda

The new Congress and president-elect Trump have an ambitious legislative agenda. On the tax front, three issues in particular bear watching:

- Legislation relevant to recently issued regulations and to regulatory rulemaking in general
- Repeal of tax provisions that were enacted as part of healthcare reform legislation during the Obama Administration (“Obamacare” also known as the Affordable Care Act)
- Tax reform legislation

Legislation relating to regulations

Congress might act quickly on legislation addressing perceived abuses of regulatory authority by the Executive Branch. Although these bills likely would apply to rulemaking in general and would not be limited to tax-related regulations, if enacted, the bills could have an impact on some existing tax regulations as well as future tax rulemaking.

For example, Republicans in both the House and the Senate may try to nullify under the Congressional Review Act (“CRA”) some regulations that were issued near the end of the Obama Administration. In this regard, a Senate Republican “whip notice” suggests that Congress is expected to look at rules that have been finalized since June 13, 2016, to determine which regulations to consider invalidating. Although it is not clear whether Congress ultimately would try to invalidate any tax regulations, it is worth noting that a number of tax regulations have been finalized since that date (including the section 385 regulations). Under the CRA, Senators may not filibuster a CRA resolution to nullify regulations; thus, a CRA resolution may be sent to the president with a simple majority vote in the Senate.

In addition to possible action under the CRA, the House is scheduled to consider bills providing for reforms to regulatory rulemaking more generally. It is possible that the House may consider legislation to overturn the so-called “Chevron doctrine” of judicial deference to agency interpretations of statutory and regulatory provisions. In the previous Congress, the House passed legislation addressing the “Chevron doctrine;” however, the Senate did not vote on the House measure. Read a discussion of last year’s House bill and an observation about its relevance to tax rulemaking, see prior TNF coverage.

Possible healthcare legislation

Congressional Republicans have indicated that repealing healthcare legislation enacted in the Obama Administration is a top priority. To this end, the Senate is expected to begin debate soon on a budget resolution to allow “Obamacare” to be repealed on a fast track basis with only a simple majority vote (rather than 60 votes being required to avoid a filibuster). If adopted, such resolution would include instructions to the House and Senate tax-writing committees (as well as other committees) to report legislation by January 27, 2017, that would meet certain

revenue targets while reserving funds to accommodate “repeal and replace” legislation.

From a tax perspective, keep in mind that a number of tax provisions were included in the Obama Administration’s healthcare legislation. Thus, it will be important to watch the legislation that implements the repeal of such legislation to see which of these provisions might also be repealed.

Tax provisions included in the healthcare legislation include:

- Additional health insurance (HI) tax on high-income taxpayers
- Net investment income tax
- Codification of the economic substance doctrine
- Medical device excise tax
- Modification of itemized deduction for medical expenses, increasing the threshold from 7.5% to 10%
- Premium assistance tax credits for individuals
- Small business healthcare tax credit
- Taxes on individual and employer mandate “violators”
- Tax on indoor tanning services
- “Cadillac tax” on high-cost employer-sponsored health plans
- Branded prescription drug fee under section 9008 of Affordable Care Act (ACA)
- Added requirements and excise taxes for tax-exempt hospitals
- Annual fee on health insurance providers under section 9010 of the ACA
- Limited deduction for compensation paid by health insurance providers (section 162(m)(6))
- Modification of tax treatment of Blue Cross / Blue Shield organizations
- Various information reporting requirements

Possible tax reform legislation

Tax reform is also a key legislative priority of both congressional Republicans and president-elect Trump. Although details are still evolving, it is expected that the House Ways and Means Committee may begin action on a tax reform bill early in the year, using a fleshed-out version of the House Republican “blueprint” as the starting point. Senate action on a tax reform package likely would follow House action, with a conference likely needed to reconcile differences between the House and Senate bills.

Successful completion of this process is not certain and could take considerable time. KPMG previously provided numerous reports on possible tax reform. Read more information on both the timing and possible substance of tax reform on KPMG’s dedicated outlook for tax reform [webpage](#).

Read also a [December 2016 FAQ report](#) [PDF 1.5 MB] on the outlook for possible tax reform.

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