KPMG

TaxNewsFlash

United States

No. 2017-362
September 5, 2017

Congress returns to busy agenda

Congress returns to Washington this week and will immediately be forced to confront a number of issues, including two looming deadlines:

- Action must be taken to increase the debt limit soon (perhaps before the end of September) to avoid a government default.

- Government funding expires at the end of September (i.e., the end of the 2017 fiscal year).

Also, Congress is likely to consider hurricane relief legislation for those areas affected by Hurricane Harvey. Historically, such legislation has often included significant targeted tax provisions.

Further, legislative action is needed to reauthorize the Federal Aviation Administration (FAA) and the National Flood Insurance Program (NFIP), and to fund the Children’s Health Insurance Program (CHIP) before September 30.

Meanwhile, Republicans are also expected to continue their efforts to enact tax reform legislation. Additionally, it is possible—although very unclear—that Congress could return to its effort to address health care (and related tax issues) this fall.

Here are just a few things to watch this fall on the tax front.

Major tax legislation

Republicans remain intensely interested in enacting major tax legislation soon. Indeed, many Republicans view passing such legislation prior to the next elections (in November 2018) as a political imperative.

It is possible, and perhaps likely, that tax legislation would proceed under budget reconciliation. That would require passage of a new budget resolution for federal fiscal year 2018, which could prove difficult because it would have implications for broader spending issues.[1] Thus, it will be important to monitor congressional efforts with respect to a budget. While using budget reconciliation for tax legislation would allow Republicans to pass a bill in the Senate with only Republican support, it could limit how long provisions that reduce tax revenues under budget rules could be in effect and could otherwise affect the substance of tax reform legislation.

On July 27, shortly before leaving for the August "work period" (i.e., recess), the so-called "Big Six" released a one-page joint statement on Republican tax reform efforts. The "Big Six" are:

- House Speaker Paul Ryan (R-WI)
- House Ways and Means Committee Chair Kevin Brady (R-TX)
- Senate Majority Leader Mitch McConnell (R-KY)
- Senate Finance Committee Chair Orrin Hatch (R-UT)
- National Economic Council Chair Gary Cohn
- Treasury Secretary Steve Mnuchin.

As previously reported—read ***TaxNewsFlash***—the joint statement highlighted broad areas of consensus among the Big Six, but did not include technical details or potential revenue offsets. Further, although the statement indicated that "priority is being placed on permanence," it did not squarely rule out the possibility that some proposals might be temporary in nature. The statement also expressed the expectation that legislation would move through the tax-writing committees this fall, under regular order, and then to the House and Senate floors.

In terms of what to expect in the immediate future, the tax negotiators could release more details of their tax plan later this fall. It does not appear, however, that they have yet reached agreement even among themselves on many important details of a tax reform plan. Thus, exactly when new details might be released and whether the Big Six will defer to the tax writing committees to reveal further details remain open questions.

For tax reform efforts to proceed, the House and Senate tax-writing committees inevitably must release more detailed descriptions of tax reform proposals and then perhaps meet to "mark up" major tax legislation at some point this year. The committee staffs continue to work on details of various options for tax reform.

It is important to bear in mind that:

[1] Efforts to possibly use the fiscal year 2017 budget for tax reform appear to have been impeded by a recent ruling by the Senate parliamentarian regarding the expiration of that budget.

- Turning broad principles for tax reform into actual legislation could be very difficult for a variety of reasons and could take some time.

- Even if the House and Senate tax-writing committees succeed in reporting out tax reform bills this year, the House and the Senate may find it difficult to act on such legislation before the end of 2017, given other pressing items on the legislative agenda.

- Even if the House and Senate are able to pass tax reform legislation in 2017, for tax reform to become law, each chamber ultimately would have to pass **identical** legislation. Thus, the House and Senate would need to reconcile any differences between their approaches to tax reform and possibly pass a compromise bill again through both chambers—this also could be difficult and time-consuming.

- The Republican majority in the Senate is thin, so reaching agreement on a tax reform plan that can obtain a majority in both houses may well prove difficult, as it was in the case of the health care legislation. To the extent tax reform legislation includes some provisions that have an adverse effect on some taxpayers, obtaining sufficient majority support could be challenging.

- Other issues—including addressing hurricane relief, the debt limit, government funding, approving a budget, and (potentially) health care—could run the clock down, affect big picture politics, and further complicate efforts to enact tax reform soon.

Thus, while it is quite likely that there will be significant developments with respect to major tax legislation when Congress returns, the substance, size, and timing of such legislation continue to be quite uncertain. Likewise, it is not clear whether any such legislation would be temporary or permanent (or some combination of the two), whether it would be more in the nature of "reform" or "cuts" (or perhaps a combination), and whether it ultimately would make it to the "finish line" of the legislative process and become law.

Read more about the possible process associated with tax reform, why enacting tax reform is difficult and takes time, and what the budget process involves in a set of "frequently asked questions" reported in ***TaxNewsFlash.***

Healthcare (and related taxes)

Legislative efforts to address healthcare might—or might not—resume after the recess. The Senate's recent failure to pass healthcare legislation has not quieted discussion of healthcare issues in Congress, the administration, the healthcare markets, or among the public.[2]

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[2] The Senate parliamentarian recently ruled that the fiscal year 2017 budget (which was being used for healthcare legislation) expires at the end of this month. Thus, if Congress continues to seek to use the

If Congress does continue efforts to address healthcare, the fate of tax provisions in the Affordable Care Act (ACA) could be brought to the forefront again—including whether to repeal the net investment income tax, the medical device excise tax, and other ACA taxes and fees. If healthcare is not revisited or if these issues are not dealt with in healthcare legislation, Congress will need to decide whether to address them in the context of other tax legislation (such as tax reform), or whether to leave current law as is.

Read a KPMG report: ***Taxes and Healthcare Reform: Now What?*** [PDF 93 KB]

Aviation-related taxes

The taxes that are dedicated to the airport and airway trust fund (as well as the authorization of FAA programs) are scheduled to expire on September 30, 2017. Thus, unless legislative action is taken, the following taxes will expire as of that date:

- The imposition of tax at an increased rate on certain removals, entries, and sales of aviation gasoline and kerosene used in noncommercial aviation

- The tax on amounts paid for taxable transportation of persons by air

- The tax on amounts paid for taxable transportation of property by air

- The exemption for aircraft in fractional ownership aircraft programs

Keep in mind that the Trump Administration has proposed legislative changes to the current regime of ticket taxes and aviation passenger as part of a new funding model. Read ***TaxNewsFlash*** on the administration's proposal. However, the legislative prospects of such changes are not clear.

Expired provisions and medical device excise tax moratorium

A number of tax incentives expired at the end of last year (i.e., 2016). Read a list of these incentives and their scheduled expiration dates in a KPMG report: ***Tax incentives scheduled to expire at end of 2016*** [PDF 1 MB]

In addition, the current moratorium on the medical device excise tax expires at the end of 2017. Thus, absent legislative action, this tax would start to apply (again) with respect to sales of taxable medical devices made after December 31, 2017. Further, without intervention by Congress, the annual health insurer fee that was suspended for 2017 would resume effect, requiring health insurers to pay the fee on their proportionate share of business in 2018.

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fiscal year 2017 budget to pass healthcare legislation in the Senate with only Republican votes, Senate action likely would need to take place by September 30.

It is possible, although far from certain, that Congress might take up tax legislation before the end of the year (possibly very late in the year) to address some or all of these time sensitive provisions. For example, if Congress has made significant progress on tax reform by the end of the year but determines that enactment in 2017 still remains unlikely, it might decide to move legislation late in the year to extend some expired provisions (potentially retroactively) and/or to extend the moratorium on the medical device excise tax. Nonetheless, congressional leaders also may prefer to address these kinds of issues in the context of continued efforts to achieve 2018 tax reform or healthcare reform (in part to maintain momentum for those initiatives). Thus, the prospects of such a bill are very uncertain.

Tax technical corrections

In 2016 (in the previous Congress), legislation was introduced in the House and Senate that contained technical corrections to various recent tax laws. Read about that legislation in ***TaxNewsFlash***. No legislative action has yet been taken with respect to that legislation, and similar legislation has not yet been reintroduced in this Congress.

Technical corrections might be included in tax reform legislation. However, given the pressure for technical corrections with respect to some relatively new laws (such as the partnership audit rules, which generally will apply for returns filed for partnership tax years beginning after 2017), it is possible that technical corrections might be attached to another legislative vehicle if an appropriate vehicle emerges that is moving more quickly than tax reform. For example, if tax-related hurricane relief legislation or legislation regarding the medical device excise tax moratorium moves more quickly than tax reform, technical corrections potentially might be attached.

IRS and Treasury matters

Regulatory reforms. September 18, 2017, is the date by which Treasury's final report under Executive Order 13789 is due. That executive order directed the Treasury to examine recent tax regulations to determine whether any of the regulatory projects: (1) imposed an undue financial burden on U.S. taxpayers; (2) added undue complexity to the federal tax laws; or (3) exceeded the statutory authority of the IRS.

Earlier this summer, the IRS released Notice 2017-38, which identified eight regulations for burden reduction and indicated that Treasury will propose reforms—ranging from streamlining "problematic rule provisions" to full repeal of the regulations—in the final report submitted to the president. Read more about Notice 2017-38 in ***TaxNewsFlash***.

IRS Commissioner. IRS Commissioner John Koskinen's five-year term at the helm of the IRS ends November 12, 2017. It is not yet known who the next commissioner will be.

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