TaxNewsFlash

United States

No. 2017-511
November 15, 2017

Initial impressions: Senate Finance Chairman’s modified mark

The U.S. Senate Finance Committee this week began its markup of tax reform legislation. Late last night, Chairman Hatch unveiled a revised version of his proposed tax reform legislation (a “Chairman’s modified mark”) that reflects substantial changes to the initial Chairman's mark.

KPMG observation

Like the original mark, the modified mark is a detailed description of the proposed legislation, but does not include bill text. Legislative text is not expected until the Senate Finance Committee markup process is over; by tradition, the Senate Finance Committee does “conceptual markups” from detailed summary documents and not from legislative text. This differs from the House Ways and Means Committee process.

Some of the changes incorporated into this modified mark, including “sunsetting” certain provisions, appear designed to bring the legislation into compliance with revenue requirements for reconciliation bills.

Documents

- Read text of the **Chairman’s modified mark** [PDF 633 KB], officially known as the “Chairman’s Modification to the Chairman’s mark of the ‘Tax Cuts and Jobs Act.’”
- Read a **revenue table** [PDF 51 KB] prepared by the Joint Committee on Taxation (JCT) regarding the modified mark.
- Read a **correction to the Chairman’s modified mark** (the correction reflects changes made to correct a misprint for certain calculations in the tax brackets, with the correct numbers highlighted)

Highlights of changes

Sunsetting

Changes to the initial mark proposed in the modified mark include sunsetting various changes to the individual income tax structure after 2025 (including individual rate reductions and the 17.4% deduction for passthrough income). The proposed 20% corporate rate, however, would remain permanent.

Modifications to mark provisions

The modified mark also would modify a number of proposals in the initial mark, including the breakpoints and rates in the proposed individual income tax rate structure. Some of the other proposed modifications relate to the passthroughs rate, net operating loss deductions, expensing, recovery period for real property, and multinational taxation (such as the deductions for global intangible low-taxed income and for foreign-derived intangible income). Some of these other modifications, however, would be contingent on certain overall federal revenue targets being met.

Deletion of provisions

In addition, the modified mark removes proposals in the initial mark that relate to:

- Nonqualified deferred compensation
- Determination of worker classification
- Application of 10% early withdrawal tax to governmental section 457(b) plans
- Elimination of catch-up contributions for high-wage employees

New proposals

Significantly, the modified mark includes an amendment to the Affordable Care Act that would reduce to zero the penalty for individuals who do not have health insurance (the "individual mandate"); this amendment would increase revenue by $318 billion, which could be used to reduce the cost of the legislation. The modified mark also adds a host of other proposals that were not in the initial mark. These include, for example, proposals that would:

- Require specified research or experimental expenditures to be capitalized and amortized over a five-year period (or 15 years in the case of certain expenditures attributable to research conducted outside the United States)
- Allow nonresident alien individuals to be potential current beneficiaries of electing small business trusts ("ESBTs") and change the rules for charitable contributions of ESBTs (relevant to S corporations)
- Modify certain low income housing tax credit rules
- Provide an exception to the private foundation excess business holding rules for philanthropic business holdings
- Repeal the rule permitting recharacterization of IRA contributions

- Change the treatment of qualified equity grants
- Change certain tax rules applicable to certain alcoholic beverages

Budget reconciliation

Budget reconciliation is a process by which spending and revenue legislation (including tax measures) can avoid a potential Senate filibuster and be passed by a simple majority vote in the Senate. To retain the protection from a Senate filibuster that the reconciliation rules provide, provisions in the tax legislation being considered under the budget resolution must meet a number of complex requirements. Any senator could raise a point of order against any provision that does not meet these requirements.

The ability to use these rules was "unlocked" when the House and Senate agreed to a budget resolution for FY 2018. The budget resolution permits the tax bill produced pursuant to its instructions to increase the deficit by a maximum of $1.5 trillion over the 10-year budget window. Chairman Hatch's mark as originally draft was estimated by the JCT to decrease revenues by approximately $1.496 trillion over the 10-year period (not taking into account possible macroeconomic effects). The modified mark is estimated by the JCT to decrease revenues by approximately $1.41 trillion over the 10-year period.

One of the requirements governing the consideration of reconciliation legislation is intended to prevent an increase in the long-term deficit of the United States. Thus, even though a tax bill considered pursuant to the FY18 budget resolution can provide a net tax cut of up to $1.5 trillion **within** the 10-year window, no title of the mark can result in a net tax cut in any year **beyond** the 10-year budget window unless offset by an equivalent reduction in spending.

The JCT revenue table does not show the estimated revenue effects of the mark in years outside this budget window. However, it appears the changes that sunset individual and passthrough tax reductions, together with the elimination of the ACA penalty, might help fulfill the reconciliation-imposed rules regarding long-term deficits.

What's next

In addition to this Chairman's modified mark, other amendments are likely to be considered and may be approved by the Finance Committee as the markup continues this week. For more information about what's next, the legislative process, Chairman Hatch's initial mark (including preliminary observations and technical analysis), read **Senate tax reform bill—Initial observations on Chairman Hatch's mark** [PDF 1.1 MB].

After the conclusion of the markup, KPMG will issue a report with its preliminary observations and analysis of the bill that is approved by the Finance Committee.

Direct comments, including requests for subscriptions, to Washington National Tax. For more information, contact KPMG's Federal Tax Legislative and Regulatory Services Group at + 1 202.533.4366, 1801 K Street NW, Washington, DC 20006-1301.