

Tax Policy Update

June 12, 2018

QUOTE OF THE WEEK



Photo: CBS News

“Your tax lady. She really hates the U.S.”

- President Donald Trump [said](#) to EU Commissioner Jean-Claude Juncker at the G7 summit, referring to EU Competition Commissioner Margrethe Vestager.

President Trump did not have a great time at the G7 summit, as allies gathered to work their way through a host of thorny issues such as trade, Iran, climate change, and the future of NATO. Trump’s comment about the EU “tax lady” is likely a response to Vestager’s targeting of U.S. multinationals for their alleged tax violations. Back in 2016, the EU imposed a €13 billion fine on Apple for receiving illegal state aid from Ireland.

LEGISLATIVE LANDSCAPE

GILTI Until Proven Innocent. Rep. Peter DeFazio (D-OR) introduced the [Per-Country Minimum Act](#) (H.R. 6015), a bill that would require companies subject to the Global Intangible Low Tax Income (GILTI) provision to calculate their tax liability on a per-country basis. Under the 2017 GOP tax law, the minimum tax is calculated based on the average of profits made across countries — this approach, according to DeFazio, will only continue to encourage profit shifting and the outsourcing of jobs. DeFazio’s bill would also end the ability for companies to take a 10-percent deduction for their tangible assets before calculating their foreign minimum tax.

Press “1” for Technical Assistance. If only it were that easy to get some technical corrections to the 2017 tax law. It’s becoming increasingly unlikely that a technical corrections bill will see the light of day before the November elections. House Ways and Means Chairman Kevin Brady

(R-TX) has already said that the corrections would not be hitching a ride with the FAA reauthorization bill. Last week, Rep. Peter Roskam (R-IL) told an audience that there was no bipartisan support to move the ball forward in the near term. Ways and Means Ranking Member Richard Neal (D-MA) would like to hold hearings on any proposed fixes and other changes to the tax law before giving his support. Although lawmakers are sitting still on technical corrections, committee staff remains fully engaged in talks. There's reportedly a list of corrections being circulated among the staffers.

Two potential corrections have been in the news recently. First, business groups have been pushing for a fix to the so-called "retail glitch" that extends the depreciation period for remodeling and other improvement costs over a 39-year window. Second, the 2017 tax law inadvertently eliminates the ability of sexual harassment victims to deduct their legal expenses. Since committee staffers have acknowledged these two mistakes, they will likely fix the provisions in any forthcoming technical corrections package.

Brady to Decouple HSAs from Tax Reform 2.0. House Ways and Means Chairman Kevin Brady announced plans to expand health savings accounts (HSAs) via a standalone bill, apart from the Tax Reform 2.0 effort.

The new HSA legislation will build off on changes passed by the House last year, allowing HSA funds to be used to purchase over-the-counter medicine. The package may include policies to expand Consumer Directed Health Plans and raise contribution limits.

Brady's decision to move the HSA bill separately may signal a more bipartisan approach. Though, during last week's health subcommittee hearings, several Democrats expressed skepticism that expanding HSAs would help drive down healthcare costs for consumers.

First Minibus Moves Out of House. On June 8, the House passed, 235-179, its first "minibus" spending bill for fiscal year 2019. The package covers appropriations for Energy-Water, Legislative Branch, and Milcon-VA — the least controversial spending measures in the annual 12-bill lineup.

The House Appropriations Committee will soon release text to the FY 2019 Labor-HHS-Education spending bill, usually the largest and toughest appropriations bill to pass.

Meanwhile, the Senate Appropriations Committee is moving right along with three markups this week: (1) Interior-EPA; (2) Legislative Branch; and (3) Commerce-Science-Justice. To date, the full committee has approved the following FY 2019 spending bills: (1) Milcon-VA; (2) Transportation-HUD; (3) Agriculture; and (4) Energy-Water. The full Senate has yet to take up any of these bills. Last week, Senate Majority Leader Mitch McConnell (R-KY) canceled three

weeks of August recess to get lawmakers to stay behind in Washington and finish work on the FY 2019 appropriations process. Such a move also forces Democrats who are up for re-election this year to choose between campaigning and legislating.

REGULATORY WORLD

IRS to Issue Major Tax Regulations Between September and December. Ken Wood, deputy associate chief counsel (International) at the IRS, said at a conference last week that the agency is planning to release a slew of regulations between September and December that will address “all major portions” of the 2017 tax law.

Wood was optimistic about the timeline given that the IRS staff has been working overtime on the proposed guidances and rulemakings since the enactment of tax reform last December. The forthcoming package of guidances and rules is expected to cover provisions related to GILTI, BEAT, FDII, and repatriation, among others.

Pass-Through Guidance May Be Available Sooner Than Expected. Acting IRS Commissioner David Kautter recently indicated that pass-through deduction regulations may be released in June. Industry has been waiting for clarification on who qualifies for the 20 percent deduction and what will be considered deductible business income.

Kautter also noted that the IRS is focused on aggregation rules, anti-abuse rules, general rules, and the definition of specified services. Based on the updated timeline discussed by Kautter, all guidance related to the new pass-through deduction may be available by the end of year, a welcome surprise for businesses.

Here We Go Again. Despite the failure of the GOP’s last Obamacare-repeal effort and its resulting dip for the party in the polls, the Trump administration is at it again. The White House recently refused to defend the Affordable Care Act’s (ACA) protections for people with preexisting conditions on the grounds that the requirements are unconstitutional.

The administration filed suit in a federal district court in Fort Worth, Texas. The White House’s brief attacks the link between the individual mandate and the ACA’s protections for pre-existing conditions. The brief argues that since the GOP’s tax law eliminates the individual mandate, any requirements stemming from the mandate that guarantee coverage to individuals with pre-existing conditions should also be struck down.

America’s Health Insurance Plans (AHIP), as well as other industry groups have criticized the administration’s position, noting that the elimination of the individual mandate penalty shouldn’t result in Americans losing consumer protections.

Other groups have warned that removing these provisions will result in further uncertainty in the individual market, higher rates for older and sicker consumers, and a patchwork of confusing state requirements.

With midterms looming and healthcare already expected to be a major issue, the administration's decision has GOP lawmakers worried. This time, several GOP lawmakers have refused to defend the White House's actions, recognizing that it could spell defeat in November.

Private Colleges Catch a Break. In [Notice 2018-55](#), the IRS provided private colleges and universities subject to the GOP tax law's 1.4 percent endowment tax with much-needed relief. According to the notice, when colleges sell property, they will only have to apply the tax to gains in value since the end of 2017. The higher basis will result in less gain being subject to the endowment tax.

The notice indicated that the IRS is working on additional regulations to clarify the application of the endowment tax and has asked the public to submit comments by Sept. 6. The new endowment tax regulations is expected to have limited application, since the IRS estimates that fewer than 40 institutions are impacted by the rules.

INTERN-VENTION

It's summertime and that means McGuireWoods has welcomed a new crop of interns. Below are their contributions to this week's *Tax Policy Update*. Many thanks to **Megan Plombon** and **Derek Wu** for the assist.

SEC Jackson Talks Stock Buybacks. *(By Megan Plombon)* – On June 11, the Center for American Progress (CAP) held a discussion panel to examine how corporations have been using the tax savings generated by the 2017 tax law for stock buybacks. According to Neera Tanden, president of CAP, there has been \$400 billion in buybacks so far this year.

SEC Commissioner Robert Jackson, Jr. was on hand to share his views on buybacks, which he considers to be a pressing issue. Since it has been over a decade since the SEC has reviewed or updated rules related to buybacks, Jackson proposed a two-step plan to address the issue:

1. Update rules to limit executives to use buybacks to cash out.
 - Implement rules to ensure that executives have skin in the game for long-term success; to keep them from cashing out stock-based compensation; and to create incentives for the company's long-term sustainable value through its shares.

- Require investors to hold shares over the long term. Index funds create a trend of passive investing, which results in a lack of accountability. It is up to investors to have the interest of the workers and the community in mind.
2. Give company boards and councils the responsibility to examine the link between pay and performance.
- The company compensation committee should review the degree to which the buyback is used in a way to turn long-term incentives into cash. Committees should have the authority to decide whether to cash out or not, keeping in mind the long-term sustainable value for stable jobs.

Jackson believes that investors deserve to know when executives are claiming to create value with a buyback, when in reality they are cashing out for personal gain. He also supports the idea of requiring board members to sign their names onto a buyback announcement, as it would encourage transparency and accountability.

Private Tax Collectors Continue to Target Insolvent Taxpayers. *(By Derek Wu)* – Due to the IRS’s arrangements with private tax collectors, low-income taxpayers must pay down outstanding tax debt, despite being unable to cover their own basic cost of living. National Taxpayer Advocate Nina Olson released a [blog post](#) highlighting data which reveals that about 40 percent of taxpayers who entered installment agreements from April 2017 to March 2018 made payments to private collectors, despite earning less than their allowable living expenses.

Olson’s concerns led her to issue a Taxpayer Advocate Directive on April 23, ordering the IRS not to turn the debt of any taxpayer whose income was less than 250 percent of the federal poverty level over to private collectors.

The agency has until June 25 to either agree to or appeal her directive. It is unclear how the IRS will respond. The issue of private debt collectors continues to be controversial, with several lawmakers on both sides of the aisle disapproving of the agency’s aggressive tactics.

ABA Asks for Changes to IRS Reform Bill. *(By Derek Wu)* – The American Bar Association (ABA) has released its recommended changes to the House bill ([H.R. 5444](#)) aimed at overhauling operations at the IRS. While the ABA agrees with most of the proposed changes outlined in the pending legislation, the group does have some concerns.

First, the ABA notes that the bill’s language on giving taxpayers a legal right to appeal tax controversies to an independent office is overly vague and could be interpreted by the IRS to limit the ability of taxpayers to obtain appeals consideration.

The ABA also recommends that the bill's provision requiring that the Taxpayer Advocate Service to coordinate with the Treasury Inspector General for Tax Administration be modified, so that the two agencies would simply be required to engage in "consultation" over a given issue.

Finally, the ABA is concerned that the bill's intention to change the IRS commissioner's title to "administrator" would create confusion amongst taxpayers while triggering the need for burdensome revisions to existing statutes, regulations, and official documents.

LINE ITEMS

1. Drew Maloney, the Treasury Department's assistant secretary for legislative affairs, is expected to step down this week and will reportedly be joining the American Investment Council as president and CEO.
2. The White House delayed the release of its proposal to update the Renewable Fuel Standard due to Sens. Grassley (R-IA) and Ernst's (R-IA) opposition to a provision that would provide credits for ethanol exports.

COMMANDER-IN-TWEET



Donald J. Trump 
@realDonaldTrump

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Stock Market up almost 40% since the Election, with 7 Trillion Dollars of U.S. value built throughout the economy. Lowest unemployment rate in many decades, with Black & Hispanic unemployment lowest in History, and Female unemployment lowest in 21 years. Highest confidence ever!

2:52 PM - 11 Jun 2018

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IN THE QUEUE

Congressional Activity

Tuesday, 6/12

Senate Finance Committee

Hearing on the nominations of Jeffrey Kessler to be an assistant Commerce secretary; Elizabeth Ann Copeland to be a judge of the United States Tax Court; Patrick J. Urda to be a judge of the United States Tax Court; Amy Karpel to be a member of the United States International Trade Commission; and Randolph J. Stayin to be a member of the United States International Trade Commission.

Senate Banking Committee

Committee vote on the nominations of Richard Clarida to be a member and vice chairman of the Federal Reserve Board of Governors; and Michelle Bowman to be a member of the Federal Reserve Board of Governors.

Senate HELP Committee

Hearing to examine the cost of prescription drugs, focusing on examining the President's blueprint 'American Patients First' to lower drug prices.

Wednesday, 6/13

House Appropriations Committee

Markup of the FY 2019 Financial Services spending bill.

House Financial Services Committee

[Subcommittee hearing](#) on “Ensuring Effectiveness, Fairness, and Transparency in Securities Law Enforcement,” including H.R. 2128 (115), the “Due Process Restoration Act of 2017” and H.R. 5037 (115), the “Securities Fraud Act of 2018.”

Joint Select Committee on Solvency of MEPS

Hearing to examine employer perspectives on multiemployer pension plans.

House Financial Services Committee

Hearing on “Financial Industry Regulation: the Office of the Comptroller of the Currency.”

Thursday, 6/14

Senate Banking Committee

Hearing with Comptroller of the Currency Joseph Otting to receive an update on the OCC.

Agency Activity

Thursday, 6/14

SEC

Meeting of the Investor Advisory Committee. See agenda [here](#).

Other Activity

Tuesday, 6/12

Heritage Foundation

Discussion on “Blockchain: What It Is and How It Will Change Lives.”

Wednesday, 6/13

House Financial Services Committee

Subcommittee hearing on “Improving Transparency and Accountability at the Bureau of Consumer Financial Protection.”

Thursday, 6/14

The Washington Post

A conversation with former NEC Director Gary Cohn to reflect on his 15 months in the administration.

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