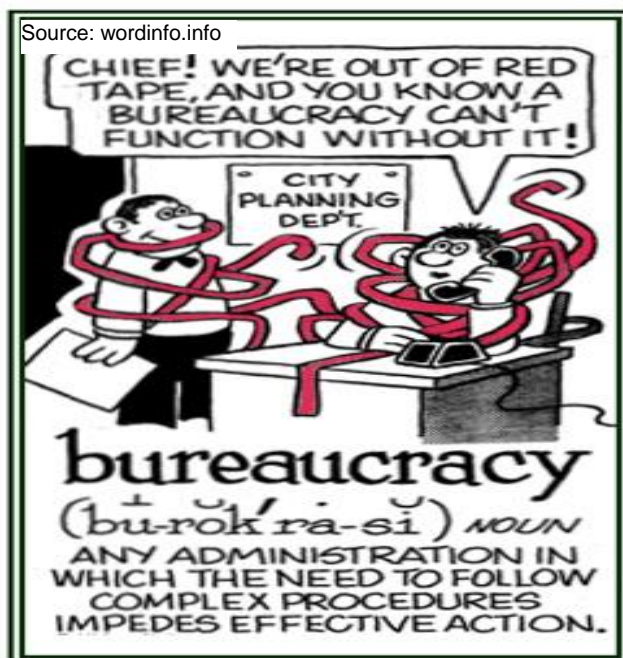


Tax Policy Update

July 17, 2018

WORD OF THE WEEK: Bureaucracy



The OMB and Treasury issued a memorandum of agreement (MOA) in April that established a new interagency process for reviewing certain tax regulations, namely those stemming from the 2017 GOP tax law. And things are working as expected...

At a press briefing last week, the OMB said that it has not received any tax regulations from Treasury for review. It didn't take long for a Treasury spokesperson to clap back, noting that actually four regulations have been submitted to the OMB's Office of Information and Regulatory Affairs (OIRA). According to the Treasury, the regulations address the following:

- Expensing of qualified property purchases under Sec. 168(k)
- Guidance on overseas profits tax under Sec. 965
- Tax return preparer penalty under Sec. 6695(g)
- Types of accounting under Sec. 451

OMB later clarified that the Treasury did send some rules over for economic analysis only, but no regulations have been submitted for a formal review under the procedures outlined in the MOA. Based on the interagency bickering from last week, the OMB and Treasury appear to be confused as to who is ultimately responsible for determining whether a tax regulation is "significant."

To be fair, any new process is expected to run into some glitches at the outset. But the back-and-forth between the OMB and Treasury seems to validate earlier concerns that the new review process will only drag out the timeline for guidances. It also doesn't inspire confidence when the OMB acknowledges that the office is still trying to hire a team of tax experts to conduct the regulatory reviews.

One of Treasury's forthcoming guidance that will have to undergo the OMB review process is the 20-percent pass-through deduction — specifically taxpayers need clarity on who can claim the deduction. The guidance, originally expected to come in June, has been delayed until the end of July.

LEGISLATIVE LANDSCAPE

Yes, It's Another Blurb About Tax Cuts 2.0. The “listening sessions” for Tax Cuts 2.0 have begun. Ways and Means Republicans gathered last week to discuss which tax provisions should go into the forthcoming legislative package. Ways and Means Chairman Kevin Brady is pushing hard to release a proposal by July 26 before the House leaves for the August recess — an ambitious timeline given that no major decisions were made at the July 11 meeting.

The tax-writing panel is reportedly considering a provision that would index capital gains to inflation. Additionally, Rep. Carlos Curbelo (R-FL) told reporters that Tax Cuts 2.0 would not address international items like the global intangible low-tax income (GILTI) or the base erosion anti-abuse tax (BEAT). These two international provisions might be addressed in the technical corrections bill that Chairman Brady is planning to introduce after the midterm elections. GOP tax writers are waiting to see what the Treasury will do first via guidances and whether the regulatory fixes will be sufficient.

It's a Party in the HSA. On July 11, the House Ways and Means Committee approved a series of bills to beef up Health Savings Accounts (HSAs). Here are the fun ones:

- H.R. 6306 – a bill that would increase the contribution limit for HSAs.
- H.R. 6199 – a bill that would include certain over-the-counter medications and medical products as qualified medical expenses.
- H.R. 6312 – a bill that would allow certain sports and fitness expenses to be considered as qualified medical expenses. This would cover things like gym memberships and certain sport safety equipment. Interestingly, the bill contains an exclusion for golf, hunting, sailing, and horseback riding, which “shall not be treated as a physical exercise or physical activating.”

A full list of the HSA bills is available [here](#).

The committee also approved a measure ([H.R. 4616](#)) that would place a temporary moratorium on the *Affordable Care Act's* employer mandate and would delay the so-called Cadillac Tax through Dec. 31, 2022.

In total, the committee approved 11 bills, which would cost the federal government \$92 billion over 10 years according to the Joint Committee on Taxation. Chairman Brady (R-TX) is hoping the House will take up the bills before the August recess. Prospects of passage in the Senate are dim.

Hensarling's Capital Formation Bill is Here. That was fast — last week the *Tax Policy Update* reported that House Financial Services Chairman Jeb Hensarling (R-TX) would be putting together a legislative package as a follow-up to the [Economic Growth, Regulatory Relief, and Consumer Protection Act](#) (S. 2155), the bipartisan regulatory relief bill for small financial institutions enacted in May 2018.

The short wait is over: The House is set to take up the [JOBS and Investor Confidence Act](#) (S. 488) this week. Hensarling's legislation is a compilation of 32 standalone bills with strong bipartisan support. There are measures aimed at improving access to capital; providing relief from Dodd-Frank's requirements for living wills and stress tests; and simplifying certain disclosure requirements, among other things. A quick summary of all 32 measures in S. 488 is available [here](#).

REGULATORY WORLD

The Facts on FATCA. The Internal Revenue Service (IRS) remains unprepared to enforce compliance with the *Foreign Account Tax Compliance Act* (FATCA), according to a [July 5 report](#) by the Treasury Inspector General for Tax Administration (TIGTA). TIGTA found that the IRS has failed to carry out a large part of the FATCA Compliance Roadmap, which outlines a series of actions for compliance, despite spending nearly \$380 million on the effort.

According to the report, the IRS has struggled to enforce FATCA requirements due to the failure of foreign financial institutions (FFI) to include Taxpayer Identification Numbers (TIN) in their financial account reports for U.S. taxpayers with foreign financial assets. Among its recommendations, TIGTA advises that the IRS establish follow-up procedures and initiate action on error notices with the FFIs.

A Case of Invertigo. Last week, the IRS and Treasury published [final regulations](#) to address corporate inversions and certain post-inversion tax avoidance transactions. The final regulations follow the proposed regulations that were published in April 2016 — some of which had been finalized in Jan 2017. The remaining proposed regulations were finalized on July 12, with modifications.

The final regulations clarify the passive assets rule for determining ownership percentage, modify the serial acquisition rule, and address the interaction with the recent amendment to section 958(b)(4), the downward attribution rule. Despite the recent overhaul of the international tax system, the IRS and Treasury stated in the preamble that the tax law “reduced, but did not completely eliminate, the tax-motivated incentives to invert.”

INTERN-VENTION

Many thanks to McGuireWoods Consulting’s summer intern Derek Wu for his contribution below.

The Taxpayer Assistant is In. (By Derek Wu) – For taxpayers across the country, IRS Taxpayer Assistance Centers (TACs) are the primary, if not singular, resource through which they may receive in-person, face-to-face assistance from the tax collection agency. As of June 2018, the IRS operates 362 TACs within the 50 states, the District of Columbia, and Puerto Rico.

On July 11th, National Taxpayer Advocate Nina Olsen released a blog post commending the agency for implementing various taxpayer-friendly improvements to TAC operating procedures, while also highlighting several key issues that may continue to inhibit the quality of or access to services.

While Olsen praised the IRS for modifying its appointment procedures to allow individuals to make same-day appointments, she remains concerned that local field offices have failed to relay this message to taxpayers within their jurisdictions. Olsen pointed out that the signage at certain centers does not clearly indicate that walk-ins are welcome. She recommends altering the language to state, “appointments recommended but walk-ins are welcome.”

Olsen also expressed her support for the agency’s use of the Field Assistance Scheduling Tool (FAST), which allows taxpayers to search for and schedule a TAC appointment without calling the IRS. She suggested that the IRS continue implementing this option, in addition to updating TAC appointment information, so that individuals may receive clear messaging and efficient service in their quest for taxpayer assistance.

LINE ITEMS

1. The Senate Finance Committee will hold a markup for the nomination of Charles Rettig to be the IRS commissioner on Thursday, July 19 at 10 a.m.
2. The House will take up its second “minibus” spending package ([H.R. 6147](#)) for fiscal year 2019 the week of July 16. The package contains the Financial Services spending bill and the Interior-EPA spending bill. The spending package would, among other things, provide \$11.6 billion for the IRS.
3. The IRS published [Revenue Procedure 2018-38](#), modifying the donor-disclosure rule so that nonprofit, tax exempt organizations other than 501(c)(3)s are not required to report the names and addresses of their contributors on the Schedule B of their Forms 990 or 990-EZ. This allows social welfare organizations (NRA, AFP), certain unions, and business leagues from providing such information.
4. White House Legislative Director Marc Short is stepping down July 20. Shahira Knight, the deputy director of the National Economic Council, will succeed Short.
5. The Senate voted, 88-11, on a nonbinding motion in support of the Corker-Toomey measure that would give Congress a role in approving or disapproving Section 232 tariffs.
6. President Trump nominated Brett Kavanaugh to the Supreme Court. Kavanaugh is currently a judge for the U.S. Court of Appeals for the District of Columbia. In October 2016, he wrote a majority opinion that deemed the single directorship structure of the CFPB to be unconstitutional.
7. The Trump Administration announced its intention to impose a 10-percent tariff on \$200 billion worth of Chinese goods, saying that China has done little to end its unfair trade practices. Congressional Republicans immediately criticized the proposal. Both Speaker Ryan and Ways and Means Chairman Kevin Brady urged the administration to negotiate with Chinese President Xi rather than impose more tariffs.
8. The Office of Management and Budget received the EPA’s rewrite of the Clean Power Plan, kicking off the interagency review process. The EPA’s rewrite of the rule would narrow the scope of the regulation, giving states more say in identifying ways to reduce carbon dioxide emissions.

COMMANDER-IN-TWEET



Donald J. Trump 
@realDonaldTrump

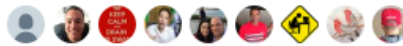
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Received many calls from leaders of NATO countries thanking me for helping to bring them together and to get them focused on financial obligations, both present & future. We had a truly great Summit that was inaccurately covered by much of the media. NATO is now strong & rich!

10:23 PM - 15 Jul 2018

20,370 Retweets 93,158 Likes



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IN THE QUEUE

Congressional Activity

Tuesday, 7/17

House Financial Services Committee

Subcommittee hearing on “Examining Capital Regimes for Financial Institutions.”

Senate Banking Committee

Hearing to examine the Semiannual Monetary Policy Report to the Congress with Federal Reserve Chair Jerome Powell testifying.

Wednesday, 7/18

Senate Finance Committee

Hearing to examine trade and commerce at U.S. ports of entry.

House Ways and Means Committee

Subcommittee hearing on the “Effects of Tariffs on U.S. Agriculture and Rural Communities.”

House Financial Services Committee

Committee hearing on monetary policy and the state of the economy with Federal Reserve Chair Jerome Powell.

House Financial Services Committee

Subcommittee hearing on “The Future of Money: Digital Currency.”

Thursday, 7/19

Senate Banking Committee

Hearing for the nominations of Kathy Kraninger to be CFPB director and Kimberly Reed to be president of the Export-Import Bank.

House Permanent Select Committee on Intelligence

Hearing on “China’s Threat to American Government and Private Sector Research and Innovation Leadership.”

Agency Activity

Monday, 7/16

SEC

Meeting of the Fixed Income Market Structure Advisory Committee. See the full agenda [here](#).

Tuesday, 7/17

Financial Stability Oversight Council

Executive meeting to discuss an application to the council from a bank holding company or its successor under section 117 of the *Dodd-Frank Wall Street Reform and Consumer Protection Act*, an update on the annual reevaluation of the designation of a nonbank financial company, and an update on Federal Reserve stress tests.

Wednesday, 7/18

SEC

Open meeting to discuss: Securities Act Rule 701; Securities Act Form S-8; Rule 3-10 and 3-16 of Regulation S-X; NMS Stock Alternative Trading Systems.

Other Activity

Tuesday, 7/17

2018 Politico Pro Summit

The summit brings together Pro subscribers, expert reporters and key decision-makers from the executive branch, federal agencies and Congress—the people who are shaping the policy landscape—for a full day of incisive conversations.

Bipartisan Policy Center

Discussion on whether there is a bipartisan path forward on immigration. Webcast will be available [here](#).

Thursday, 7/19

National Economists Club

Conversation with Alan Viard on “Wayfair v. South Dakota.”

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