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INSIGHT

Tax Policy on the Horizon: Potential Tax Policy Issues in the 117th Congress

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What tax policy issues will be at the forefront early in the 117th Congress depends, in part, on what actions are or are not taken late in the 116th Congress. Policy issues being discussed towards the end of 2020 that could carry forward into 2021 include additional tax policy measures addressing the COVID-19 pandemic and the extension of tax provisions expiring at the end of 2020. This Insight highlights some of the tax policy issues that may arise in the first session of the 117th Congress (in 2021) and perhaps beyond.

Tax Policy Relief Related to COVID-19

The 116th Congress has already passed legislation providing tax relief in response to the ongoing COVID-19 pandemic and related economic recession. Congress is currently debating whether additional federal financial support is needed, and what form that support should take. Much of the existing support has expired or is scheduled to expire at the end of 2020. For example, the 2020 recovery rebates were direct payments to individuals nominally structured as credits against 2020 income taxes (the credits were issued to many taxpayers in 2020, using 2019 or 2018 income tax information). Businesses experiencing net operating losses (NOLs) in 2020 can carry those losses back for up to five years. Employers and self-employed individuals were allowed to defer a portion of the employer share of certain payroll taxes due in 2020. Those deferred payroll taxes will be due in 2021 and 2022. Debates early in the 117th Congress may evaluate potential further extensions of COVID-19 tax relief measures, or new fiscal policy or economic support legislation.

Expired and Expiring Tax Provisions

Tax policy debates in the 117th Congress might also address the further extension of expired or expiring tax provisions. The Joint Committee on Taxation (JCT) lists 33 temporary tax provisions scheduled to expire at the end of 2020. If these are not extended before December 31, 2020, reinstatement or a retroactive extension may be considered during 2021 or later. Another six temporary tax provisions are scheduled to expire at the end of 2021. Several other temporary tax provisions expire at the end of 2022 or 2023. Expiring tax provisions span a range of policy areas, affecting individuals, businesses, and the energy sector. In addition to the calendar year-end expirations, the Highway Trust Fund excise taxes and the Leaking Underground Storage Tank Trust Fund financing rate are scheduled to expire at the end of FY2022 (September 30, 2022). The Airport and Airway Trust Fund and heavy highway vehicle excise taxes are scheduled to expire at the end of FY2023 (September 30, 2023).

Temporary or Phased-In Provisions in the 2017 Tax Revision

Many of the tax policy changes that were part of the 2017 tax revision (commonly referred to as the Tax Cuts and Jobs Act (TCJA), P.L. 115-97) were temporary, scheduled to expire December 31, 2025, and may be part of tax policy debates in the next Congress. Additionally, several changes to the TCJA's international tax provisions are set to take effect after 2025.

TCJA also included several changes to the tax code that were not effective immediately, or that phased in or out over time. TCJA provisions scheduled to take effect or phase out in 2022 and 2023 include:

- Starting in 2022, taxpayers will be required to capitalize certain research and development (R&D) costs and amortize them over 5 years (15 years for foreign research); currently these costs are expensed.
- The TCJA imposed a 30% interest deduction cap, with interest deductions limited to 30% of earnings before interest, taxes, depreciation, amortization, and depletion (EBITDA). Effective in 2022, the income measure used for the interest deduction cap becomes income before interest and taxes (EBIT), which defines a narrower measure of income, thus imposing a further limit on interest deductions. The Coronavirus Aid, Relief, and Economic Security (CARES) Act increased the limit on interest deductions from 30% to 50% for 2019 and 2020, and allows firms to use 2019 incomes for the 2020 limitation.
- Through 2022, businesses are allowed to deduct 100% of the cost of eligible property as bonus depreciation. Beginning in 2023, the bonus depreciation amount is reduced to 80%. It is scheduled to be reduced by 20 percentage points each year until fully phased out in 2027.

Other Potential Tax Policy Issues

Disasters, including hurricanes, floods, and wildfires, have affected individuals and businesses across a number of states and regions in 2020. In the past, Congress has provided disaster tax relief, in addition to the relief that is automatically triggered by a disaster declaration, either in response to specific disaster events or for disasters occurring during certain time periods. Disaster tax relief for all 2020 disasters or specific disasters having occurred in 2020 may be considered.

Another issue that has not been fully addressed are legislative fixes or clarifications following the TCJA. While several "technical corrections" to P.L. 115-97 have been included in recent legislation, a number of technical fixes have yet to be addressed.

Tax policy issues in the upcoming Congress may also depend on the outcome of the November 2020 elections. If House and Senate control is unchanged by the election, a continuation of interest from the 116th Congress may occur. In the 116th Congress, the House Committee on Ways and Means reported the Economic Mobility Act (H.R. 3300), which proposed expanded refundable tax credits for low- and moderate-income workers and families with children. Both the Heroes Act (H.R. 6800), as adopted by the House on May 15, 2020, and the revised Heroes Act (H.R. 8406), as passed in the House on October 1, 2020, contain similar proposals. If political control of the House or Senate is changed by the election, however, there could be a shift in tax policy priorities.

High budget deficits and a growing national debt may be a factor in tax policy debates in the upcoming Congress. Longer-term, additional revenues, reduced government spending, or some combination of the two will likely be needed to restore fiscal sustainability.

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