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Bipartisan tax package remains stuck in the Senate

Contrary to the hopes of many in the tax community—and despite extensive lobbying efforts—the recently concluded two-week congressional recess does not appear to have broken the weeks-long stalemate in the Senate over a $78 billion bipartisan package of business- and family-focused tax relief provisions. The top Republican taxwriter in the Senate has remained staunchly opposed to the current language and to the compromises that have been offered thus far, and Senate Majority Leader Charles Schumer, D-N.Y., indicated this week that he is not inclined to force a vote on the proposal if there aren't sufficient vocal supporters

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within the GOP to ensure its passage. There is no official deadline for action on the legislation, but with the end of the tax filing season fast approaching, many supporters fear that the last best opportunity for passage is slipping away.

The Tax Relief for American Families and Workers Act (H.R. 7024), which Senate Finance Committee Chairman Ron Wyden, D-Ore., negotiated over the course of several months with House Ways and Means Committee Chairman Jason Smith, R-Mo., would, among other things, temporarily and retroactively reverse (through 2025) certain business-unfriendly tax provisions related to the treatment of research expenditures, bonus depreciation, and the deduction for business interest expenses that were included in the Tax Cuts and Jobs Act of 2017 (TCJA, P.L. 115-97) but did not take effect until several years after that measure was enacted. It also would enhance the child tax credit and expand the low-income housing tax credit, and would be paid for through new strictures on the pandemic-era employee retention tax credit (ERTC) program.
URL: https://www.congress.gov/bill/118th-congress/house-bill/7024/text
URL: https://www.congress.gov/115/plaws/publ97/PLAW-115publ97.pdf

The measure cleared the House by a vote of 357-70 on January 31 but has since been stuck in the Senate, where a contingent of Republicans, led by Finance Committee ranking member Mike Crapo, R-Idaho, have demanded changes, including, most notably, elimination of a lookback rule in the child tax credit provision that would allow taxpayers to qualify for the expanded credit (for tax years 2024 and 2025) based on their prior-year income—something critics of the provision believe would disconnect the credit from work. Some Republicans also reportedly would prefer to delay action on the legislation until 2025 in the belief that they would be able to strike a better deal if the GOP wins control of the Senate in this November's elections and Crapo takes the gavel at the Finance Committee.

Ahead of the recent congressional break, Schumer put the House-passed legislation on the Senate calendar, which would allow him to bypass Finance Committee action and bring it directly to the Senate floor. This led some supporters to think that he might consider forcing a vote with or without the certainty of knowing that there were sufficient Republicans supporters to overcome the 60-vote procedural hurdle needed to proceed to final passage. Such a move would force GOP senators to decide between bucking their top taxwriter or voting down legislation containing provisions many of them strongly support. Some supporters also have calculated that members might not want to go on record as opposing the business community's top priorities and measures aimed at shrinking child poverty.

"Let's have a vote. Let's see where people are. I think it would pass easily," Sen. Michael Bennet, D-Colo., told *Politico* this week.

In an April 5 letter to his Senate colleagues outlining the upcoming legislative agenda, however, Schumer made only a brief reference to the tax bill in a paragraph mentioning a dozen or so measures that could be addressed "in the weeks and months ahead"—and that mention only came after he offered more detailed discussions of several other near-term priorities.
URL:
https://www.democrats.senate.gov/imo/media/doc/majority_leader_schumer_dear_colleague_on_senates_busy_agenda1.pdf

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Schumer's remarks to reporters at an April 9 news conference indicated that he is not inclined to force a tax vote that could fail.

"Look, I'm all for the package," he said. "If there are enough votes to move it forward in the right way, yeah, we'll try to get it on the floor. But right now, we don't think—they're trying to get enough votes. The sponsors are trying to see if there are enough votes."

As of press time, Schumer has not added consideration of the proposal to the floor schedule for the week of April 15. And as a practical matter, even if Schumer *were* inclined to bring the bill to the Senate floor, his opportunities to do so by the close of the tax filing season—or even by the end of this month—are at best, extremely limited. The Senate is already looking at a packed calendar the week of April 15 as leaders plan to hold a vote on reauthorizing the Foreign Intelligence Surveillance Act, process a House-passed resolution to impeach Homeland Secretary Alejandro Mayorkas, and consider judicial nominations. Moreover, the Senate as well as the House are scheduled to be in recess the week of April 22 and will not be back in session until the week of April 29.

What's the problem(s)?

Since the measure cleared the House, Ways and Means Chairman Smith has spent considerable time advocating for the bill to his fellow Republicans across the Capitol, as have a handful of GOP senators at odds with Crapo, including Finance Committee members Todd Young of Indiana and Steve Daines of Montana. But even as Republicans may support many or all of the bill's provisions, most do not yet appear willing to second-guess the man who could be the next chair of the Finance Committee, and he clearly is not on board.

Crapo told NBC News April 9 that he still has problems with "a number" of provisions, including not just the lookback policy for the child tax credit but also what he described as "a multiplicity of issues" related to the individual-focused tax provisions.

"And until we get at least engagement on the issues, then I can't make any kind of predictions," he said.

In what could be a new wrinkle, Crapo also indicated to NBC News that he is now dissatisfied with the sole revenue offset included in the House-passed bill—that is, new proposed restrictions intended to reduce perceived fraud in the employment retention tax credit program.

Finance Committee Republican Sen. Thom Tillis of North Carolina has been a vocal critic of that provision since the bill was rolled out, calling the pay-for "phony" because the ERTC was not offset when it was originally enacted in the Coronavirus Aid, Relief, and Economic Security Act (CARES) Act (P.L. 116-136) in 2020. Tillis also has said that offsetting extensions of current law—something Republicans have long argued against—would set a risky precedent for Congress as it prepares to face the multibillion-dollar fiscal cliff of expiring TCJA provisions next year.
URL: https://www.congress.gov/116/plaws/publ136/PLAW-116publ136.pdf

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During a March 12 hearing with Treasury Secretary Janet Yellen, Finance Committee Chairman Ron Wyden cautioned that inaction on the proposed ERTC restrictions—the bill would accelerate the deadline for filing new claims, impose new reporting requirements and restrictions on promoters of the credit, and extend the statute of limitations for the IRS to assess penalties on improper claims—likely would mean a revenue loss for the federal government, given that the credit program is currently "riddled with fraud." (For prior coverage, see *Tax News & Views*, Vol. 25, No. 13, Mar. 22, 2024.)
URL: https://dhub.deloitte.com/Newsletters/Tax/2024/TNV/240322_1.html

Proposals that *aren't* the solution

Last month, in a bid to address Crapo's stated concerns with the measure and secure Republican support, Wyden offered to remove the lookback provision in the enhanced child tax credit and instead make the credit's refundability provisions more generous, but Crapo rejected that proposal.

"In the most recent exchange, I gave them what [has been] individual Republican senators' top ask, which was to get rid of the lookback. I was given, by them, something that wouldn't have gotten a single Democratic vote in the Senate. Not one," Wyden told NBC News this week. "So there you have it. We're continuing to try to find common ground."

Crapo also nixed a suggestion from a fellow Republican to attach unrelated legislation that might attract GOP votes. Sen. Josh Hawley, R-Mo., this week proposed adding the reauthorization of the Radiation Exposure Compensation Act (RECA, S. 3853) to the tax bill, arguing that since RECA passed the Senate by a vote of 69-30 in March, its addition could be helpful. RECA would expand the expiring compensation fund for victims of past government uranium mining and atomic bomb testing.
URL: https://www.congress.gov/bill/118th-congress/senate-bill/3853

"[The] tax bill looks like, to me, it's in very serious trouble," Hawley told reporters April 9. "It's on life support. So I think if they put those things together, that might unlock support. I know it will get my vote."

Crapo rejected the idea, though, saying that adding RECA "does not fix the underlying bill."

"I will support [the tax bill] when we fix the provisions in the bill," he said.

"I think Crapo wants to make it better," Sen. Lindsey Graham, R-S.C., told *The Washington Post* this week. "I like to help people raising children with the child tax credit, and there's a bunch of other business things in there that I hear a lot about from my constituents. But with work requirements, there's some things that Crapo wants to do, and I sort of trust his judgment."

Finance Committee member Mike Rounds, R-S.D., similarly told the *Post*, "I have spoken with our ranking member, Mike Crapo, and I don't think it's ready for prime time yet. I think they're still negotiating. But I'll take my cue right now based on what his analysis is."

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If the Senate were to approve an amended version of the bill, that revised legislation would have to go back to the House for a second vote. Although the original bill passed overwhelmingly in the lower chamber the first time, the outcome of a subsequent vote would depend on just how significant any of those changes are and the extent to which they affect the overall balance of business- and family-focused provisions.

— Storme Sixeas
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Proposed regulations address corporate stock buyback excise tax

The Treasury Department and the Internal Revenue Service issued a set of proposed regulations (REG-115710-22 and REG-118499-23) on April 9 relating to the 1 percent excise tax on stock repurchases by certain publicly traded corporations. REG-115710-22 provides guidance regarding the application of the excise tax on repurchases of corporate stock made after December 31, 2022, and REG-118499-23 outlines the reporting and payment of the excise tax.
URL: https://www.taxnotes.com/research/federal/proposed-regulations/proposed-regs-issued-corporate-stock-buyback-excise-tax/7jds7
URL: https://www.taxnotes.com/research/federal/proposed-regulations/proposed-regs-outline-reporting-payment-stock-buyback-excise-tax/7jds8

Overview

The excise tax is imposed under Internal Revenue Code section 4501, which was enacted as part of the Inflation Reduction Act of 2022 (P.L. 117-169). The government released Notice 2023-2 in December 2022 to provide taxpayers with interim guidance on the rules and procedures of the excise tax until the publication of the proposed regulations.
URL: https://www.taxnotes.com/research/federal/usc26/4501
URL: https://www.taxnotes.com/research/federal/legislative-documents/public-laws-and-legislative-history/inflation-reduction-act-of-2022-%28p.l.-117-169%29/7dybc
URL: https://www.taxnotes.com/research/federal/irs-guidance/notices/interim-guidance-issued-for-stock-buyback-tax/7fhtn

In general, the proposed regulations follow the interim guidance set forth in the notice. Perhaps the most significant change from the notice is with respect to foreign publicly traded corporations, whereby the excise tax generally applies if a US subsidiary repurchases the foreign corporation's stock. The notice contained a *per se* funding rule, which generally assumed that certain intercompany transfers of funds by US subsidiaries within two years of a repurchase of foreign corporation stock were for purposes of avoiding the excise tax, in which case the US subsidiary was treated as repurchasing such stock. The proposed regulations would replace this *per se* funding rule with a principal purpose test relating to avoiding the excise tax and a rebuttable presumption of avoidance that applies in certain circumstances.

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Consistent with the notice, the proposed regulations provide that the excise tax must be reported on Form 720, *Quarterly Federal Excise Tax Return*, with Form 7208, *Excise Tax on Repurchase of Corporate Stock*, attached. The preamble to the proposed regulations notes that the final version of Form 7208 will be released prior to the first due date on which the excise tax must be reported and paid.
URL: https://www.irs.gov/pub/irs-pdf/f720.pdf
URL: https://www.irs.gov/pub/irs-dft/f7208--dft.pdf

In addition, consistent with the notice, the proposed regulations would require the excise tax to be reported only annually on Form 720 for the first full calendar quarter after the taxable year of the corporation, with payment due on the same date as the Form 720 filing. However, for taxable years ending prior to the publication of final regulations, the excise tax would be reported on the Form 720 that is due for the first full quarter after the date the final regulations are published, with payment due on the same date as the Form 720 filing.

The preamble to the proposed regulations contains examples relating to reporting the excise tax. In one example, if a corporation had a taxable year ending December 31, 2023, and if the final regulations were published on September 16, 2024, the corporation would report the excise tax for the 2023 taxable year on the Form 720 that is due on January 31, 2025 (the due date of the Form 720 for the first full calendar quarter beginning after September 16, 2024, which ends on December 31, 2024). In a second example, if a corporation had a taxable year ending December 31, 2024, and if the final regulations were published on September 16, 2024, the corporation would report the excise tax for the 2024 taxable year on April 30, 2025 (the due date of the Form 720 for the first full calendar quarter beginning after December 31, 2024, which ends on March 31, 2025).

More details to come

Look for a more detailed analysis of the proposed regulations in a forthcoming tax alert from Deloitte Tax LLP.

— Michael DeHoff
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Ways and Means Republicans, Democrats divided over TCJA's future

In a debate that is only expected to grow in intensity as the 2024 congressional and presidential elections draw closer, Republicans on the House Ways and Means Committee this week argued that the Tax Cuts and Jobs Act of 2017 (TCJA, P.L. 115-97) has been a boon to the US economy and that a host of soon-to-expire provisions in that legislation should be extended for the long term or even made permanent, while the panel's Democrats contended the TCJA's benefits are skewed primarily to large corporations and wealthy individuals and that the bulk of its temporary provisions should be allowed to lapse.
URL: https://www.congress.gov/115/plaws/publ97/PLAW-115publ97.pdf

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The debate arose during an April 11 hearing convened by Ways and Means Chairman Jason Smith, R-Mo., to discuss what he called "the success of the 2017 tax relief to help hardworking Americans." Invited witnesses included a former GOP senator, business owners, and economists.

Republicans tout economic strength through lower rates

The Tax Cuts and Jobs Act, the Trump administration's legacy tax package, includes an extensive set of tax relief provisions for corporations, passthrough entities, individuals, and estates. The corporate provisions—including, most notably, a reduction in the corporate tax rate to 21 percent—were enacted on a permanent basis; however, for revenue reasons, provisions on the individual side of the code—such as reduced income tax rates, a 20 percent deduction for certain passthrough income, and increased estate tax exemption amounts—were made temporary and are scheduled to expire at the end of 2025.

In his opening statement, Ways and Means Chairman Smith credited the TCJA with "creating the best economy in our lifetime"—a sentiment echoed by Republicans on the panel throughout the hearing.

"In the first two years after passage of that tax relief, real wages grew nearly 5 percent—the fastest growth in nearly 20 years. Real median household income increased by $5,000, a bigger gain than the prior eight years combined. The officially reported poverty rate dropped to its lowest level in history, and Black and Hispanic unemployment reached historic lows," he said.

But Smith also cautioned that allowing the TCJA's temporary tax cuts to expire as scheduled would result in significant tax increases on workers and families, farmers, and small businesses.

"If the 2017 tax cuts expire, the average family of four earning $75,000 will see their taxes increase by $1,500 a year, starting in 2026. A family of five with two earners making around $100,000 would see a tax increase of nearly $7,500 a year. President Biden and many other Democrats have called for repeal of the Trump tax cuts. Republicans won't let that happen because middle-income earners will be hit hardest by the coming tax hikes," he told the panel.

199A deduction: Several Republican taxwriters, along with the GOP's invited witnesses, discussed the potential economic consequences of a lapse in certain key TCJA provisions.

In an exchange with GOP taxwriter Vern Buchanan of Florida, for example, witness Michael Ervin, founder of the Coal River Coffee Company in St. Albans, W. Va., commented that losing the 20 percent deduction for passthrough income under section 199A would eliminate available capital he otherwise would use to reinvest in his business or invest in various community-based activities such as scholarship funds for disadvantaged students.

Responding to a subsequent question from Rep. Carol Miller, R-W.Va., Ervin explained that the deduction "created an environment for entrepreneurship" in an otherwise economically distressed community. Allowing the deduction to expire would "kill that environment" and reduce the incentive for individuals to take risks and

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start businesses that can grow the local economy, he said. Without the deduction, his business and many other small businesses in West Virginia could be forced to close, he added.

Ervin also commented in his opening statement at the hearing that the section 199A deduction gives small businesses such as his a measure of parity with corporate competitors who are benefiting from a permanent tax rate of 21 percent under the TCJA. He urged Congress to make the deduction permanent, as proposed by GOP taxwriter Lloyd Smucker, R-Pa., in the Main Street Tax Certainty Act (H.R. 4721).
URL: https://www.congress.gov/bill/118th-congress/house-bill/4721/text

Estate taxes, basis step-up: Several Republicans on the panel—including Chairman Smith—also contended that expiration of the TCJA's increased estate tax exemption amounts would make it more difficult for farmers and small business owners to bequeath their business assets to their heirs at death.

Addressing a related issue, GOP taxwriter Adrian Smith of Nebraska, assailed a Biden administration proposal that would repeal the current-law step-up in basis for inherited assets.

In an exchange with Smith, witness Austin Ramirez, CEO of Husco International Inc., in Waukesha, Wis., commented that family-owned businesses take long investment horizons and make direct investments in their communities. The combined effect of increased estate taxes plus the loss of stepped-up basis would "make it more difficult for families to maintain [their businesses] and pass [ownership] from one generation to the next," he said

Another witness—former Sen. Phil Gramm, R-Texas—told Smith that the idea of eliminating the basis step-up and hitting estates of business owners with a 40 percent estate tax at death is "just not American."

"The person who is paying that tax created [the business] and they created jobs, growth, and opportunity in the process," he said.

Corporate tax rate: Although the current-law corporate tax rate of 21 percent is not among the TCJA provisions that are scheduled to expire next year (as already noted, it was enacted on a permanent basis), some Republicans on the panel took aim at proposals by the Biden administration to increase the rate to 28 percent.

Former Sen. Gramm commented in an exchange with GOP taxwriter Mike Kelly of Pennsylvania that the idea of generating tax revenue from corporations by increasing their tax rate is fundamentally flawed.

According to Gramm, if large corporations aren't paying tax, it's because they're taking advantage of deductions that Congress gave them, and if lawmakers feel corporations are not paying sufficient tax, they should repeal the deductions they no longer want those taxpayers to have. Raising tax rates would be the wrong approach, he added.

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Individual tax rates: GOP taxwriter Dave Schweikert of Arizona asked witnesses about the impact of the pending expiration of the TCJA's rate cuts for individuals.

Paul Winfree of the Economic Policy Innovation Center commented that the TCJA represented an important first step toward tax code simplification and base-broadening since it lowered individual income tax rates across the board and increased the standard deduction, thus reducing the number of taxpayers seeking to reduce their tax bills by taking advantage of various itemized deductions in the tax code.

"If we allow those tax cuts to go away, there will be political repercussions," he said.

Democrats question TCJA's economic benefits

Democratic taxwriters, for their part, questioned the relatively sunny assertions by Republicans about the TCJA's impact on the broader economy and contended that the benefits of the 2017 law accrued chiefly to a small segment of the tax base.

Ways and Means Committee ranking member Richard Neal, D-Mass., contended in his opening statement that Democrats knew as the TCJA was moving through Congress that "it would disproportionately benefit the wealthy and the well connected."

"We knew that it wouldn't pay for itself. We knew that big corporations, not their workers, would feel the most benefit. Six years since the [TCJA] was signed into law, we've been proven right on every count. It didn't pay for itself, it didn't increase revenue, and it didn't increase wages," he said.

Distributional impact: Neal also contended that when Republicans discuss the TCJA, they typically "distort" the law's distributional impact across income groups.

In an exchange with Neal, labor economist Kathryn Ann Edwards—the Democrats' sole invited witness at the hearing—disputed the GOP claims about which segments of the tax base reaped the greatest benefits from the 2017 law. According to her research, Edwards said, the top 1 percent of taxpayers received an average tax cut of $61,000 for an increase in post-tax income of 3 percent; the middle 20 percent received an average tax reduction of $910 (a 1.3 percent increase in post-tax income); and the bottom 20 percent received an average tax cut of $70 (a 0.4 percent increase in post-tax income).

Rep. Lloyd Doggett, D-Texas, asked Edwards about GOP assertions that tax cuts for corporations ultimately would "trickle down" to benefit taxpayers at the lower end of the income spectrum.

Edwards replied that the "best evidence" available in academic studies suggests that the majority of pay increases that came in the wake of the TCJA's corporate rate cuts "were concentrated among managers and executives."

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Edwards also questioned the validity of the "trickle down" theory in an exchange with Rep. Mike Thompson, D-Calif., about the impact of expanding the child tax credit—a key priority for congressional Democrats.

"If you want to help children and low-income families, you should direct the policy right to them and not [through] an intermediary such as an employer or a corporation," she said.

Impact on the economy: Ranking member Neal questioned the GOP's characterization of economic growth following the TCJA's enactment, noting that the taxpayers who received the largest tax cuts under the law were not individuals who typically would spend the extra cash.

Edwards stated in response to a question from Neal that a design flaw in many tax cuts is that they provide the greatest benefits to upper-income individuals who are more likely to save their windfall, rather than spend it. To grow the economy, she said, tax cuts need to be directed to the individuals who are most likely to spend the extra cash immediately—a view that she said was borne out in the wake of the 2008 recession and again during the 2020 COVID pandemic when Congress sent out stimulus checks, structured as one-time tax rebates, to individuals in the lower rate brackets.

"That's the way to increase aggregate demand," she said.

Edwards also noted that the TCJA enjoyed a certain timing advantage since it was enacted as the economy was in the midst of recovering from the 2008 recession and was already growing at a healthy clip by 2017. The fact that the measure became law during a period of sustained economic growth does not mean that it sparked that growth, she told the panel.

Both sides spar over Pillar Two global corporate minimum tax

Moving beyond the scope of the TCJA, taxwriters and witnesses on both sides of the aisle also weighed in during the hearing on efforts by the Biden administration to align the US tax code with the 15 percent global corporate minimum tax under Pillar Two of the multinational tax pact currently being advanced through the OECD.

Texas Democratic Rep. Lloyd Doggett, for example, commented that the TCJA encourages offshore investment since multinational corporations are taxed at a significantly lower rate on their overseas profits compared to income earned domestically.

Witness Kathryn Edwards agreed, telling Doggett that "a global minimum income tax that stops the race to the bottom is the right way to deal with our future."

For his part, witness Phil Gramm derided the Pillar Two minimum tax proposal in an exchange with Pennsylvania Republican Mike Kelly, stating that the Biden administration's decision to negotiate the international agreement without consulting Congress was "the greatest abuse of the Constitution of the United States in my lifetime" and something that "every member of Congress ought to be against."

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Stricter FATCA enforcement, increased IRS resources are key to addressing offshore tax evasion, Whitehouse says

Senate Budget Committee Chairman Sheldon Whitehouse, D-R.I., identified lax enforcement of the Foreign Account Tax Compliance Act (FATCA)—a 2010 law that generally requires foreign financial institutions to report to the Internal Revenue Service information about accounts held by US persons—as a key contributor to offshore tax evasion.

Whitehouse: Enforcement lapses linked to IRS budget cuts

In his opening statement at an April 11 Budget Committee hearing on offshore tax evasion by large corporations and wealthy individuals, Whitehouse, who also sits on the taxwriting Senate Finance Committee, commented that lax enforcement of FATCA stems in part from decades of cuts to the IRS's operating budget under Republican-controlled Congresses.

"[FATCA] made foreign banks report offshore accounts held by Americans to the IRS," Whitehouse said. "But Republicans hamstrung the IRS, and in 2018 the Treasury Inspector General for Tax Administration found that 'the IRS had taken virtually no compliance actions to meaningfully enforce FATCA.'"

"Most Americans had their incomes reported to the IRS by their employer; the super-rich with offshore accounts were on the honor system," Whitehouse continued. "Guess how that worked out."

Whitehouse went on to argue that FATCA enforcement—and other efforts to close the "tax gap," which is the difference between taxes owed and taxes paid and collected on a timely basis—would be bolstered by congressional efforts to preserve and expand the additional resources given to the IRS as part of the Democrat-drafted Inflation Reduction Act of 2022 (P.L. 117-169). That law provided roughly $80 billion in mandatory funding to the IRS over the next decade—with more than half dedicated to tax enforcement—to complement the agency's annual discretionary appropriations. But more than $20 billion of that mandatory allocation has since been rescinded as part of bipartisan spending deals including, most recently, the Further Consolidated Appropriations Act, 2024, which was signed into law last month. (For prior coverage, see *Tax News & Views*, Vol. 25, No. 13, March 22, 2024.)
URL: https://www.congress.gov/117/plaws/publ169/PLAW-117publ169.pdf
URL: https://dhub.deloitte.com/Newsletters/Tax/2024/TNV/240322_2.html

"[W]e must preserve and extend the enforcement funding enacted by the Inflation Reduction Act," Whitehouse argued. "We're already seeing the enforcement results: since last fall, the IRS has recovered nearly $500 million from millionaires who didn't even bother to file tax returns."

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Grassley argues for ‘targeted’ approaches, touts his whistleblower law

The Budget Committee’s ranking Republican, Sen. Charles Grassley of Iowa, who, like Whitehouse, also sits on the Finance Committee, agreed that the annual tax gap—which approached $700 billion in 2021 alone, according to recent IRS estimates—needs to be narrowed, calling it the “great white whale of deficit reduction.”
URL: https://www.irs.gov/newsroom/irs-updates-tax-gap-projections-for-2020-2021-projected-annual-gap-rises-to-688-billion

But Grassley also argued that Congress should show restraint in the laws that it devises to combat tax evasion.

“Whether it’s increased financial reporting or stepped-up enforcement efforts, anti-evasion measures must be balanced against taxpayer rights and the costs such measures impose on innocent taxpayers,” Grassley said.

He specifically called out the FATCA law, suggesting that its costs have outweighed its benefits.

“. . . [T]he IRS hasn’t been able to quantify any revenue raised under the law,” Grassley argued. “That’s despite spending $574 million on implementation and enforcement campaigns.”

“Due to the law, many Americans living overseas have seen their bank accounts closed or have been unable to open an account,” he continued. “For many foreign financial institutions, the business of Americans living abroad simply isn’t worth the additional burdens and cost of complying with the law.”

Grassley went on to suggest that the IRS’s Whistleblower Office, which was established in 2006 pursuant to legislation he championed, is a better and less invasive way of rooting out tax evasion and fraud.

“Whether it’s offshore banking schemes, a tangled web of shell companies, or illicit transactions by shady multinational companies, a single whistleblower can bring the whole house of cards crashing down,” he said. “And at less cost and with fewer burdens on taxpayers.”

Witnesses discuss transfer pricing and the ‘check-the-box’ election

The topics of aggressive transfer pricing and the possible repeal of Treasury’s so-called “check-the-box” election—which, generally speaking, allows certain eligible foreign entities to elect to be “disregarded” for US tax purposes—also came up for discussion by a pair of witnesses called to testify by the panel’s Democrats.

Stephen Curtis, a longtime transfer pricing practitioner and founder of Cross Border Analytics, Inc., argued that hundreds of billions of dollars in US tax revenue is going uncollected due to the IRS’s insufficient enforcement of the “arms-length” standard—the hallmark of transfer price accounting which requires intercompany transactions to be valued as if they were conducted with a third party.

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"[A] US multinational company with most of its people and fixed assets in the US seeking to reduce its taxes will often move its more fungible assets . . . offshore . . . ," Curtis noted in his written testimony.
URL: https://www.budget.senate.gov/imo/media/doc/mr_stephen_lcurtistestimonysenatebudgetcommittee.pdf

"These fungible assets, risks, and rights are often both very valuable and very difficult to value, presenting large profit shifting opportunities for taxpayers and complex and difficult enforcement issues for the IRS," he wrote.

For her part, Zorka Milin, policy director for the Financial Accountability and Corporate Transparency Coalition, argued in favor of enhanced transfer pricing enforcement, including by requiring country-by-country reporting of assets, employees, and income to the IRS, as well as requiring public disclosure of that information. (Currently, parent entities of certain large US multinational enterprises are required to file country-by-country reports with the IRS, but those forms are not made available to investors and other stakeholders).

"Investor scrutiny would help to deter some of the most aggressive and illegal transfer pricing practices," Milin said in her written testimony.
URL: https://www.budget.senate.gov/imo/media/doc/mszorkamilintestimonysenatebudgetcommittee.pdf

Milin also argued that the Treasury rules around check-the-box elections should be repealed, a policy that has been proposed by a number of Democrats including Budget Committee Chairman Whitehouse and House Ways and Means Committee member Lloyd Doggett, D-Texas, in their Stop Tax Haven Abuse Act (S. 725) which was last introduced in March of 2021.
URL: https://www.congress.gov/117/bills/s725/BILLS-117s725is.pdf

"By pulling off the magic trick of so-called 'hybrid' entities, corporations can tell foreign countries that profits of certain offshore subsidiaries are earned in a tax haven, while at the same time telling the United States that these tax-haven subsidiaries don't exist," Milan said.

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Advance Pricing Agreement annual report shows record number of APAs executed in 2023

A recently released report from the Internal Revenue Service covering the activities of the Advance Pricing and Mutual Agreement (APMA) Program during calendar year 2023 notes, among other things, that the IRS executed a record number of advance pricing agreements (APAs) last year and received a substantial number of APA requests.
URL: https://www.irs.gov/pub/irs-drop/a-24-16.pdf

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The Secretary of the Treasury is required under section 521(b) of the Ticket to Work and Work Incentives Improvement Act of 1999 (P.L. 106-170), to report annually to the public on APAs and the APMA Program.
URL: https://www.congress.gov/106/plaws/publ70/PLAW-106publ70.pdf

Transfer pricing enforcement is expected to continue to increase throughout the world as countries adopt OECD's Pillar One and Pillar Two guidance and continue to utilize country-by-country reporting data. In addition, the IRS received a large increase in its enforcement budget from the Inflation Reduction Act (P.L. 117-169), which has already resulted in the IRS issuing compliance alerts to US subsidiaries of foreign multinationals. Consequently, the certainty provided by APAs will continue to play an important role in transfer pricing risk management.
URL: https://www.congress.gov/117/plaws/publ169/PLAW-117publ169.pdf
URL: https://www.irs.gov/newsroom/irs-ramps-up-new-initiatives-using-inflation-reduction-act-funding-to-ensure-complex-partnerships-large-corporations-pay-taxes-owed-continues-to-close-millionaire-tax-debt-cases

Find out more

A new alert from Deloitte Tax LLP covers highlights of the 2023 APA annual report.
URL: https://dhub.deloitte.com/Newsletters/Tax/2024/TNV/2404125_5_suppA.pdf

— Michael DeHoff
Tax Policy Group
Deloitte Tax LLP

Finance Committee to discuss IRS budget, 2023 tax year filing season at upcoming hearing

The Senate Finance Committee announced this week that it will hold a hearing on April 16 at 10:30 a.m. to discuss the Biden administration's FY 2025 budget request for the Internal Revenue Service and the 2024 tax filing season with IRS Commissioner Daniel Werfel.

Werfel will be the sole invited witness at the hearing.

— Michael DeHoff
Tax Policy Group
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