10 September 2018

Tax Reform 2.0 Bills Released

House Ways and Means Committee Chairman Kevin Brady (R-TX) today (September 10, 2018) released the legislative text of the three bills that comprise the Tax Reform 2.0 package to: (1) make permanent individual and small business tax cuts under the Tax Cuts and Jobs Act that expire at the end of 2025; (2) promote savings for families and retirement; and (3) promote innovation.

A Committee markup, where the bills will be open for amendment, could occur as soon as later this week. "Last year we said goodbye to America's old, broken tax code … Now it's the time to ensure we never let our tax code become so outdated again. We look forward to bringing these bills to the Committee soon," Chairman Brady said. Speaker Paul Ryan (R-WI) has said the House will vote on the package "at the end of the month."

TCJA PERMANENCY

The "Protecting Family and Small Business Tax Cuts of 2018" (H.R. 6760), sponsored by Chairman Brady and all Republicans on the Committee, plus some additional members, would make permanent TCJA provisions that include:

- the 10%, 12%, 22%, 24%, 32%, 35%, and 37% income tax rate brackets;
- the 20% deduction for the qualified business income of pass-through entities;
- the $10,000 annual limit on the amount of state and local taxes (SALT) an individual can deduct;
- the increased standard deduction ($12,000/individuals, $24,000/married filing jointly);
- the increase in, and other modifications to, the Child Tax Credit;
- the increased percentage limit for charitable contributions of cash to public charities;
- the ability to make rollovers from Section 529 plans to ABLE programs, for individuals with disabilities;
- the reduction in the threshold for the medical expense deduction;
- the treatment of student loans discharged on account of death or disability;
- the repeal of the overall limitation on itemized deductions;
- the modification of the deduction for personal casualty losses;
- the doubled exemption from the estate tax; and
- the increased Alternative Minimum Tax (AMT) exemption amount.

FAMILY SAVINGS

House Ways and Means Republican members, led by Chairman Brady and Rep. Mike Kelly (R-PA), sponsor the "Family Savings Act of 2018" (H.R. 6757), which includes many provisions of Rep. Kelly's "Retirement Enhancement and Savings Act" (RESA). The new bill drops several major provisions of the earlier bill and includes several new provisions.

Key provisions from the earlier Kelly bill that are retained in H.R. 6757 include changes to expand retirement coverage among small businesses through the creation of Open Multiple Employer Plans, or

MEPs. The bill would ease portability of lifetime income investments in plans, repeal the maximum age for contributing to a traditional IRA, and block loans from qualified employer-provided plans through credit cards. The bill also retains a provision that provides relief to frozen defined benefit plans. Further, the bill includes a new provision that would exempt from required minimum distribution rules individuals whose aggregated account balances total less than $50,000.

Among provisions of the earlier bill that are not included in the bill slated to be marked up by the Ways and Means Committee is the limit on "inherited IRAs" that was previously included as a revenue offset. H.R. 6757 does not include an alternative offset. Other omissions include two provisions that are strongly supported by the insurance industry. One would require benefit statements to include a lifetime income disclosure that would convert a participant's current account balance into a monthly annuity at retirement age. Another would provide relief from fiduciary liability for employers in the selection of an annuity provider, creating a safe harbor based on the annuity provider's status under state insurance laws.

The new bill also does not include two provisions that were aimed at promoting auto-enrollment in employer plans. One would remove the current 10% cap on contributions in auto-escalation arrangements. The second provided for an increase in the "start-up" tax credit for small businesses that create a plan and grant an additional credit if a plan adopts auto-enrollment.

As had been previously signaled, the bill introduced today includes new "family-friendly" savings provisions. Universal Savings Accounts would allow annual cash contributions up to the lesser of $2,500, indexed for inflation, or the gross income of the individual. The accounts would generally be exempt from taxation. Distributions could be taken at any time for any purpose. Section 529 plans would be expanded to cover apprenticeships, homeschooling expenses, and student loan repayments. Finally, the bill would allow penalty-free, but not tax-free, withdrawals from qualified retirement plans for expenses related to the birth or adoption of a child in the first year after the birth or adoption. The bill caps the amount that can be withdrawn penalty-free at $7,500.

INNOVATION

Main provisions of the "American Innovation Act of 2018" (H.R. 6756) are:

- Expanded deduction for start-up and organizational costs – The bill would increase the section 195 deduction for certain start-up costs from $5,000 to $20,000. The deduction is phased out for costs that exceed $120,000 (up from $50,000). Excess costs would continue to be amortized ratably over 180 months. The bill would also clarify the definition of start-up and organizational expenses and the application of the provision to pass through entities.
- Preservation of Operating Losses and Tax Credits of Start-up Companies – The bill would provide an exception to current rules that limit the use of net operating losses (section 382) and certain tax credits (section 383) when there is an ownership change to avoid the loss of tax benefits when a start-up business engages in additional rounds of financing. For start-up businesses, any losses or tax credits that occurred in the 3-year period prior to the ownership change would not be subject to the section 382 and 383 limitations, allowing the business to utilize the net operating losses and tax credits available in year prior to the financing and change in ownership. In order to qualify, the trade or business must continue in business for at least 2 years following the change. The provision would apply to an active trade or business that begins after September 10, 2018.

There are no indications that the measures will be taken up prior to the midterm elections in the Senate, where passage will require 60 votes because Republicans will not have use of the budget reconciliation process afforded to the TCJA last year. Retirement provisions are seen as having the best prospects of being enacted, given bipartisan interest in the subject, but only in a lame-duck session.

The bills are attached.