

Forbes

Congress and Taxes -- Extenders, Inversions and Reform

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I haven't written much about Congress and taxes because - well there hasn't been a whole lot happening. However, with the days of summer ending, perhaps it is a good time to look at what are the possibilities in tax before the end of the year.

Extenders

Addressing tax extenders (the roughly 60 tax provisions - individual, business and energy - that have expired) is the closest to a sure thing that is going to happen in taxes right now. I don't expect Congress to take extenders up in the few weeks they will be in session in September (and then breaking early to go back for the elections) - but the smart money is strongly expecting tax extenders to be addressed in the lame duck session (regardless of the election results).

While there is still a fair amount of uncertainty, the general talk on Capitol Hill is that the deal on tax extenders will be to take the Senate Finance Committee bill on extenders for two years (going back to January 1, 2014) with possibly an agreement to take a few of the House proposals to make some extenders permanent (R&D probably being one of them and 179d and charitable IRA rollover are other candidates for permanency). Look then for the administration to put forward its own suggestions for permanency - including some refundable credit provisions. The deal on extenders would all be concluded in a lame duck session.

Of interest to a number of business owners (and their CPAs) - the Senate proposal on extenders would keep in place 50% bonus depreciation as well as 179d expensing for small businesses (\$500,000) and the \$2 million phase out. These are quite popular with the House as well.

As a reminder, important changes from the current law in extenders - the Senate proposal includes an

expansion of eligibility/utilization of R&D (with the AMT turnoff – championed by Senators Roberts (R-KS) and Grassley (R-IA) and a big plus for small businesses); the creation of a refundable R&D Tax Credit for start-ups (thanks to the efforts of Senators Coons (D-DE) and Schumer (D-NY)); and, an expansion of 179D (energy efficient buildings) to allow charities and Indian tribes to allocate the tax benefits to the designer (Senator Cardin (D-MD) and also Senator Portman (R-OH). These changes – if agreed to by the House would start January 1, 2014 (as would all the extenders as they are backdated to ensure no break in the law). One wild card – among many – would be if the Senate would also agree to the expansion of the R&D Tax Credit put forward by Congressman Brady (R-TX) and agreed to by the House – increasing the Alternative Simplified Credit from 14% to 20% (the proposal has broad support, and together with the Senate improvements to the R&D Tax Credit as well as the administration’s earlier fix on the ASC – this would go a long way to making the U.S. R&D Tax Credit competitive with the R&D Tax Credit of other OECD countries).

Inversions

So while extenders seems to be on a good path – inversions (at least for the end of the year) seems more on a path of “jaw jaw” and little “do do.” Expect inversions to be talked about in the Senate in the run up to the election – with Vegas setting the over/under of 83 for the number of times “Burger King” appears in the Congressional Record for one day (followed closely by plays on the word “whopper”). The administration may seek a regulatory change to deal with inversions but the general feeling is that may only be able to partly solve the problem. There is bipartisan interest in dealing with inversions but most likely that will have to wait till the new Congress (and as part of a bigger piece of legislation).

Tax Reform

Tax Reform – nothing this year but there is a growing view that there might be some type of tax reform in the next year. Tax reform (or at least parts of it) is one of the few things that the administration may be able to find some agreement with Congress (especially if the Republicans control both the House and the Senate). The thinking is that rather than seeing sweeping tax reform (ala the proposal of Chairman Camp) that any tax reform may be more small ball – ex. on international tax (and deal with inversions); education (where Chairman Wyden (D-OR) has already shown able leadership, especially with his selection of thoughtful and handsome witnesses – at least according to my mother); or limited corporate tax reform. I’ve found that being pessimistic about tax reform happening has been a winning bet for several years running – but I do think that rather than a 0-5% chance of reform happening, especially with the inversion issue – perhaps more like a 15% chance of some kind of tax reform in the next session.



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SOURCE: <http://www.forbes.com/sites/deanzerbe/2014/09/05/congress-and-taxes-extendere-inversions-and-reform/>