



Forbes

The Election's Over: What Next on Taxes?

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We will still be counting votes in Alaska for a while (with the successors of the great sled dogs Balto and Togo carrying in the votes from the North Slope) and we will have a runoff Senate election in Louisiana in December, but Congress is already talking about taxes and tax policy.

Tax Extenders - This Year

What's going to happen? First, let's talk tax extenders. I've discussed tax extenders in detail in a recent column - but here's the latest thinking. The strong consensus from both sides of the aisle and the House and the Senate (with some grind among some House Republicans) is that they should take the Senate-passed extenders bill as the starting point and pass something in lame duck. House Republicans want to make some of the provisions permanent - especially the Research and Development (R&D) Tax Credit.

If the deal is limited to that, you are pushing against an open door and it should happen. The question is whether either side tries to go a bridge too far - example, the White House seeking to add permanency on refundable provisions such as the child credit or Republicans expanding their list of permanent provisions.

The other concern is that as Members of Congress return to D.C. for the lame duck session, there are commonly fevored ideas of what the hill should be doing - and sometimes extenders are envisioned as a lever to accomplish 'great things.' What I've found in my years on the Finance Committee and going through the tax extenders exercise several times, is that while tax extenders are popular enough to move on a bipartisan basis on their own, they aren't a powerful enough engine to move any other piece of legislation forward (i.e. "let's add x provision to tax extenders and then the other side will have to vote for it" has not been a winning strategy).

The other strong push to do tax extenders in lame duck is that Republicans - with a good election result and control of both houses - don't want to start the first day in a new Congress eating leftovers ("new food, new

food” as we would say growing up). There is understandably a push to clear the decks in lame duck and start with a clean slate for an ambitious agenda.

Tax Reform - 2015, 2016?

As the election results have come in, the bells have rung for tax reform. Hmm. Tax reform has become an undefined good – just as elected officials are for mom and apple pie they are now for tax reform. The trouble is tax reform is something that sounds great in concept and then consensus falls apart when you get into details (“I thought you weren’t going to raise taxes on you or me, but just that fellow behind the tree.”)

Listen carefully when some folks, especially in the Obama administration talk about “corporate tax reform” and others (usually Republicans and some Democrats) talk about “business tax reform.” What’s the difference? Corporate tax reform could just help the big boys (overwhelmingly organized as C Corps), whereas business tax reform aims to help all businesses, small and large, with small and medium companies overwhelmingly organized as pass-thru entities – S Corps; LLCs; partnerships, etc.

I find it head-scratching that some in the administration (and Congress for that matter) are keen on making the tax world better for the Fortune 500 and are unconcerned about the host of small and medium businesses and their heavy tax burden. For most elected officials, as they recognize that corporate reform will translate into an increase in taxes on small and medium businesses (as you eliminate or reduce various credits, deductions and incentives for all businesses to offset lowering the tax rate just for corporations) they will see that just doing corporate tax reform is not a winning reelection strategy.

Setting aside the “same bed, dreaming different dreams” problem of tax reform, I remain concerned about the fundamental issue of the administration’s commitment and leadership on the issue of tax reform. If tax reform is going to happen the administration needs to make it the highest of priorities and it needs to lead with its own detailed proposals, giving Members of Congress a high confidence that they are taking tough votes for something that is actually going to get passed. Senators and Congressman are not going to be embracing the idea of taking votes that make folks unhappy without a high likelihood that it’s going to result in significant improvements in the tax code. A fear of all spinach and no dessert is not going to encourage tax reform.

I make this point about the need for leadership in tax reform not just as it relates to this administration, but any administration. Tax reform is difficult and while you’ve got capable leadership in the Congress, with new Chairman Hatch and Ranking Member Wyden (who is viewed as thoughtful and someone that Republicans can work with) as well as a new Chairman of the Ways and Means Committee (either Congressman Ryan (R-WI) or Brady (R-TX) – both highly regarded), tax reform presents tough votes and tough issues. At the end of the day, to accomplish serious tax reform you need Presidential leadership and it has to be a top priority.

The other issue is timing. The administration has to lead and get its own detailed proposals out NOW (proposals that have both feet on the ground and show a seriousness of purpose to a deal – not policy papers designed to inspire the party faithful). The administration is already showing a worrisome drift post-election of playing the “after you” dance with the Congress. Congress – soon-to-be-former Chairman Camp as well as Senators Wyden and Hatch have put forward proposals (especially Camp’s magnum opus). The administration needs to put its cards down. The window for reform closes I would say by spring 2016. If there aren’t serious negotiations being done by then – yikes – reform will get caught up in Presidential politics and the pull of both

sides thinking they can get a better deal if they just wait till after the elections. This tight timeframe all speaks to moving forward with detailed reform proposals immediately from the administration.

It is possible that instead of wide reform, the Congress looks to more manageable pieces – for example focusing on just international tax reform; tax reform to encourage manufacturing; IRS reform and taxpayer rights (badly needed and with good proposals out there by Senators Grassley (R-IA) and Cornyn (R-TX)); and perhaps some other smaller pieces (encouraging and strengthening cooperatives would seem to be an easy one).

To be candid, I'm looking closely at the administration's early steps – both words and deeds on sweeping tax reform – before I'm willing to buy balloons for the victory parade.

Affordable Care Act

The administration has talked about a willingness to look at some changes to the ACA as long as they don't "undermine the structure of the law." That leaves the door pretty open in regards to taxes – since there is quite a bit that would be hard to argue is key to the law (especially when the administration itself has delayed key tax provisions).

I would expect the medical device tax to be first in the line to meet the ax-man. However, there are a host of tax provisions in the ACA that deserve a hard look and will/should be reexamined by Congress (as well as the 30 hour rule).

At the end of the day, tax extenders is close to a sure thing; big tax reform – doubtful for now; small ball tax reform – good chance; and tinkering with the ACA – good chance. Overall, the outlook for tax policy is a dog's breakfast – good news for Balto and Togo – hard sledding for everyone else.



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