No surprises at Senate Budget Committee hearing on tax code and corporate offshoring

Democrats and Republicans on the Senate Budget Committee stuck to largely familiar policy positions on issues such as the Tax Cuts and Jobs Act (TCJA, P.L. 115-97) and the Pillar Two global corporate minimum tax during a January 17 hearing on how the current tax rules affect the level of offshore activity among large multinational corporations.
URL: https://www.congress.gov/115/plaws/publ97/PLAW-115publ97.pdf

Tax Cuts and Jobs Act

Budget Committee Chairman Sheldon Whitehouse, D-R.I., who also sits on the Senate Finance Committee, contended in his opening statement that while the Trump administration and congressional Republicans claimed that the reduced corporate tax rate and other provisions in the Tax Cuts and Jobs Act—such as the global intangible low-taxed income (GILTI) rules, the foreign-derived intangible income (FDII) rules, and the base erosion and anti-abuse tax (BEAT) regime—would encourage US-based multinationals to bring money and jobs back to the US, the practical effect of the law has been to create new incentives for offshoring, including in low-tax jurisdictions.

"The [TCJA] supercharged the offshoring incentive, claiming to set guardrails that many pointed out were doomed from the start," Whitehouse said. "[W]ith the offshore tax breaks baked into law, . . . US multinationals reported nearly 60 percent of their foreign profits in 15 tax havens in 2020, dwarfing what they reported in countries where they did real business," he added.

Whitehouse touted his No Tax Breaks for Outsourcing Act, a proposal he introduced last year with Democratic House taxwriter Lloyd Doggett of Texas that would, among other things, tighten certain GILTI and FDII rules and treat foreign corporations that are managed and controlled in the US as domestic corporations for tax purposes.
URL:
https://www.whitehouse.senate.gov/imo/media/doc/No%20Tax%20Breaks%20for%20Outsourcing%20Act%20118th2.pdf

For his part, Budget Committee ranking member Charles Grassley, R-Iowa, who was in the hospital and did not attend the hearing, defended the TCJA in a prepared opening statement that was read into the record by committee member Ron Johnson, R-Wis.

Grassley contended that the TCJA modernized US international tax rules and aligned US corporate tax rates with those of our major trading partners. Moreover, he noted, the law "reversed a decades-long trend of a shrinking corporate tax base," adding that its enactment has had a chilling effect on corporate "inversion" transactions (in which a US entity merges with or is acquired by a foreign entity).

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According to Grassley, the Biden administration's plans to undo major TCJA provisions and increase taxes on large US corporations, along with its support for a global corporate minimum tax, would mean a return "to an international tax system that puts US companies at a disadvantage in overseas markets while also surrendering our sovereignty and tax base to foreign nations."

Others on the panel addressed the impact of the TCJA more broadly. Budget Committee member Tim Kaine, D-Va., contended that benefits of the 2017 law accrued primarily to corporate shareholders while the major bills enacted in the Biden administration—notably, the Infrastructure Investments and Jobs Act (P.L. 117-58) and the Inflation Reduction Act (P.L. 117-169)—are having a greater economic impact through direct investments in infrastructure and domestic manufacturing.
URL: https://www.congress.gov/117/plaws/publ58/PLAW-117publ58.pdf
URL: https://www.congress.gov/117/plaws/publ169/PLAW-117publ169.pdf

Budget Committee member Chris Van Hollen, D-Md., asked the witnesses who appeared at the hearing if the TCJA bore out claims by the Trump administration and congressional Republicans that the tax cuts would "pay for themselves" through increased economic growth.

Four of the witnesses—Kimberly Clausing (a former Treasury Department official in the Biden administration and now with the UCLA School of Law), Roy Houseman (of United Steelworkers), John Arensmeyer (of the Small Business Majority), and James R. Hines, Jr. (of the University of Michigan School of Law), agreed that the 2017 tax cuts did not generate sufficient economic growth to be revenue neutral. One witness—Mindy Herzfeld of the University of Florida Levin College of Law—stated that she was not qualified to offer an opinion. (Clausing, Houseman, and Arensmeyer were invited by the panel's Democrats. Hines and Herzfeld were invited by the panel's Republicans.)

Pillar Two

Chairman Whitehouse endorsed the Pillar Two 15 percent global corporate minimum tax being advanced through the OECD, arguing, among other things, that current US tax rules place large multinational corporations at a competitive advantage over domestic entities since multinationals have the flexibility to locate factories and jobs in low-tax jurisdictions.

Kimberly Clausing commented in an exchange with Whitehouse that Pillar Two addresses issues of corporate competition on two fronts: first, it sets a minimum tax rate of 15 percent globally, thus putting US multinationals on a level playing field with foreign competitors; second, it alleviates potential tax disparities between US multinationals and domestic corporations and makes the US a more attractive place to invest.

Upcoming fiscal cliff

Budget Committee member Ron Wyden, D-Ore., who also chairs the Senate Finance Committee, asked Clausing to identify the key priorities Congress should pursue as the nation approaches 2025, when a host of temporary tax provisions—including many of the TCJA's tax breaks for individuals and passthrough entities—are scheduled to expire. (See separate coverage in this issue for details on the recently released report from

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the Joint Committee on Taxation staff listing all the tax code provisions that are due to lapse between 2024 and 2034.)
URL: https://www.jct.gov/publications/2024/jcx-1-24/

Clausing replied that Congress should focus on making the tax code more progressive—for example, by enhancing the child tax credit and earned income tax credit as well as enacting provisions to ensure top-tier taxpayers are paying an appropriate level of tax on all of their income. She also recommended that the US work with its global partners to address international tax competition as well as climate change.

Clausing also agreed with Wyden on the merits of his proposal to impose an annual mark-to-market regime on high-wealth taxpayers to curb the so-called "buy, borrow, die" strategy employed by some ultrawealthy taxpayers to avoid taxes on appreciating assets. ("Buy, borrow, die" was the centerpiece of a Finance Committee hearing last November that examined how the tax code allows the most affluent individuals to minimize their tax bills. For prior coverage, see *Tax News & Views*, Vol. 24, No. 38, Nov. 10, 2023. For details on the mark-to-market proposal Wyden released shortly after that hearing, see *Tax News & Views*, Vol. 24, No. 40, Dec. 1, 2023.)
URL: https://dhub.deloitte.com/Newsletters/Tax/2023/TNV/231110_2.html
URL: https://dhub.deloitte.com/Newsletters/Tax/2023/TNV/231201_5.html

Tax, spending, and federal deficits

Budget Committee member Mike Braun, R-Ind., asked the witnesses to opine on whether changes to tax policy or spending policy would have a greater impact on bringing the deficit under control.

Clausing, Houseman, and Arensmeyer all agreed that tax policy plays a significant role in deficit reduction, although they noted that spending issues cannot be ignored. Hines and Herzfeld placed greater weight on the role of spending policy in addressing the deficit.

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