

Tax Bill's Critics May Be Drowned Out By Frenzied Momentum

By Vidya Kauri

Law360, New York (November 15, 2017, 9:58 PM EST) -- The Republicans' rapid-fire changes to their own tax proposals combined with their need for a legislative win is raising concerns that tax cuts largely benefiting corporations may be irresponsibly ushered in, despite analyses showing minimal sustained economic growth and an exploding national debt.

Since the House Ways and Means Committee unveiled the nearly 430-page Tax Cuts and Jobs Act two weeks ago, the proposed legislation has seen multiple markups and amendments in committee sessions on a near daily basis — a game that has primarily been a numbers-crunching exercise to help the Republicans avoid a Democratic filibuster and pass the bill with a simple majority in the Senate.

The Senate Finance Committee released its 250-page markup of the House bill last week and, to meet budgetary rules, it followed up with 100 pages of significant amendments late Tuesday night to sunset most of the individual tax benefits in 2026 and include a permanent repeal of the Affordable Care Act's mandate for individuals to pay a penalty if they don't buy health insurance.

The Joint Committee on Taxation, Congress' official nonpartisan estimator of tax bills, has been pumping out revenue and distributional estimates of the amendments as they are released, and the Ways and Means Committee submitted a 994-page report on the bill to the Rules Committee on Tuesday recommending the bill's changes.

"It's very hard to carve out the time to read all this stuff thoroughly as it comes out," Keith Martin, a transactional lawyer focusing on tax and project finance at Norton Rose Fulbright, said. "We digest these things as quickly as possible but there are so many email conversations and phone calls among different industry groups about things they spot that don't work. It's hard to fix things as this process is moving along at breakneck speed."

Amid all the heady changes, tax practitioners, economists and taxpayers have been trying to keep pace with not just the sheer volume of documentation flying around, but also the complexity of the changes being introduced. The international tax provisions are particularly involved, with intricate rules designed to prevent erosion of the tax base if a plan to shift to a territorial system, under which income earned abroad by U.S. parent corporations would not be taxed within the U.S., is given the green light.

As taxpayers grapple with the ramifications of the various proposals, multiple think tanks have produced reports of how the majority of tax cuts would accrue to corporations and the top 1 percent at the

expense of those less wealthy, while at the same time flaring the deficit and producing minimal economic growth in the long term.

While the JCT estimates that the Senate version of TCJA will increase deficits by \$1.415 trillion over 10 years, the Committee for a Responsible Federal Budget said that this number would be closer to \$1.8 trillion after factoring in the cost of increased spending on the interest on debt. The debt could then reach 97 percent of GDP by 2027 and eclipse the size of the economy by the following year, the Washington-based nonpartisan think tank said.

According to Marc Goldwein, CRFB's senior vice president and senior policy director, the Senate bill contains budget "gimmicks and games" to make the bill appear about "\$500 billion cheaper than what it really is."

"More debt just means more and more dollars that Americans are going to have to pay to finance government debt rather than financing new investment," Goldwein said. "Over time, that means less investment, less capital and less economic growth, and less of that growth being enjoyed by Americans as opposed to foreign owners of our assets."

Mark Zandi, chief economist at Moody's Analytics, pointed out that the many individual tax benefits expiring in 2026 means that it would be up to a future Congress and president to take the political risk of not extending those benefits and essentially allowing a tax hike to materialize.

"[The Republicans] can argue that by the end of the forecast horizon, they're not adding to the deficit and debt in any meaningful way ... but the reality is that, 10 years from now, if you start telling people that they're going to have a tax increase, that [future] Congress and president are going to have a hard time passing legislation to keep the tax rates where they are," Zandi said. "The reality is they're still likely adding to future budget deficits and debt."

A recent analysis from Moody's shows that while economic growth would be relatively strong initially if the tax cuts pass, stronger inflation and higher interest rates will soon follow with the economy already operating at nearly full employment.

"The economic benefit of the lower tax rates on business investment is washed out by the higher interest rates, and the economy ends up no bigger than it would have been without the tax cuts," the report said, predicting that the tax plan would only increase economic growth from 2 percent to 2.3 percent, in contrast to the greater than 3 percent growth touted by the White House.

It is difficult to predict how Republicans will vote on the tax plans introduced by their leaders in the House and Senate, but the portending passage of the TCJA would be their first major legislative win since President Donald Trump took office and a victory that could potentially help them increase their numbers in next year's midterm elections.

Since Congress members react to input from their constituents, who are scrambling to understand the implications of the proposals, the sheer momentum of the tax plans hurtling through the two chambers means that they may fall in line with partisan goals to pass the bill before the New Year, according to Martin.

"If it slows down, then it's possible to see [the Republican] coalition fracturing," he said.

A legislative win on tax cuts is far from guaranteed for the Republicans even if the odds appear to be shifting in their favor. There are a number of fiscally conservative Republicans who draw a line in the sand over how much to add to the deficit. There are also Republicans who are opposed to adding health care policy to the tax bill by repealing the ACA's individual mandate and not fixing the insurance markets first. In addition, Republicans in high-tax states are under pressure from their constituents to reject a proposal to eliminate the federal deduction for state and local taxes.

Alexander Reid, a tax attorney at Morgan Lewis & Bockius LLP, said that there is a wide schism between moderate and conservative Republicans along philosophical lines that will be hard to compromise on.

"Moderate Republicans don't mind the idea of subsidized insurance and larger risk pools, but conservatives don't like the idea of the government being in the insurance business at all," Reid said. "They just don't view that as an appropriate role of government. ... So, it's hard to compromise with a philosophical objection because the only solution is to concede to that libertarian vision where the government does not provide insurance."

John Gimigliano, principal-in-charge of federal tax legislative services at KPMG LLP, said that more changes can be expected to the Senate's tax plan this week during the Finance Committee's markup sessions.

"That could shortcut the standard conference process and save valuable time towards passage, but it's a complex Rubik's cube of policy choices they are working with here," he said. "At some point, this momentum could mean that taxpayers who are opposed to certain proposals will need to make a strategic decision — mainly whether they should oppose the bill or instead work with Congress to make it better."

Additional changes are bound to add to taxpayers' confusion as they try to understand the implications of the bill for themselves, and it is difficult to see how taxpayers or lawmakers can really wrap their heads around all the developments, Zandi said.

"I don't know how they can truly understand what the economic consequences are, let alone what the tax consequences are because it is a very, very complex legislative change that I don't think any of us can get a true understanding of in the time that is being allowed to understand it," he said. "It doesn't do a thing for the economy and we are significantly adding to our deficit and debt. ... This is bad legislation being made in a bad way. I don't think it ends well."

--Editing by Pamela Wilkinson and Mark Lebetkin.