March 28, 2013

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Instant Messaging: “Vote-A-Rama” Provides Rare Insight into Tax Reform

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By a vote of 50-49, the Senate passed its FY14 budget resolution (S. Con. Res. 8) at 5:00 a.m. last Saturday – the first time the Senate has passed a budget resolution in four years. The budget resolution is significant in many respects, particularly because of the unique “vote-a-rama” process that allows Senators to raise priority issues and gauge the level of support among their colleagues for legislative priorities and bills, including tax reform.

This alert provides an overview of the budget resolution, a summary of its significant amendments, key takeaways from vote-a-rama, and next steps.

Congressional Consideration of Budget Resolution

The budget resolution sets an annual framework for legislation that has a budgetary impact – including tax legislation – by establishing spending and revenue levels. While the budget resolution is not law, it establishes priorities and direction for the year. Senators use the vote-a-rama amendment process to test support for a variety of policy proposals and for messaging purposes.

On March 14, the House Budget Committee approved its budget resolution (H. Con. Res. 25) by a party line vote of 22 to 17. One week later, the House passed its budget resolution by a vote of 221-207. The House proposal aims to balance the budget and reduce the deficit by $4.6 trillion over ten years through reduced government spending and proposes to simplify the tax code without calling for new revenue.

The Senate Budget Committee approved its budget resolution by a party line vote of 12-10 on March 15. Following 50 hours of debate over three days, the Senate held a vote-a-rama session on the budget resolution, with the Senate calling up and voting on numerous amendments in rapid succession.

In contrast to the House budget resolution, the Senate budget resolution would reduce the deficit by $1.85 trillion over the next ten years through an even split of revenue increases and spending reductions. The revenue would come from eliminating unspecified tax deductions commonly used by large corporations and high-income earners. Notably, Senate Finance Committee Chairman Max Baucus (D-MT) and Senators Mark Begich (D-AK), Kay Hagan (D-NC), and Mark Pryor (D-AR) voted against the resolution.

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Vote-A-Rama Amendments

At the end of the Senate's vote-a-rama session, the Senate voted to adopt only a fraction of the 569 filed amendments, and it unanimously agreed to adopt an additional 30. The following adopted amendments on taxes and tax reform are worth noting:

- Repeal of Medical Device Excise Tax (Senator Hatch, SA 297): The Senate voted in favor of repealing the 2.3 percent medical device excise tax ("MDET") by an overwhelming margin of 79-20. The MDET was one of several funding sources for health care reform under the Patient Protection and Affordable Care Act ("PPACA"), and has already generated close to $400 million in revenue since January 2013.

  Because the budget resolution is not law, it does not repeal the MDET. However, given such strong Senate support, passage of the amendment increases the odds that legislation to repeal the tax will be introduced. Bills repealing the MDET have already been introduced in House and Senate, and the House approved a bill repealing the MDET during the last Congress.

- Marketplace Fairness Act (Senators Enzi and Durbin, SA 578; SA 656): By a vote of 75-24, Senators agreed to allow states to collect state and local use taxes owed on remote sales under state law. The amendments are proxies for the Marketplace Fairness Act ("MFA"), which would permit states to collect sales taxes on online purchases made by their residents from websites based in other states.

  The Senate spent almost an entire hour for debate on the MFA, in contrast to the two minute intervals reserved for debating the majority of the budget resolution amendments. Notably, Senate Finance Committee Chairman Max Baucus raised concerns about the complexity underlying the collection of taxes and urged his colleagues to vote against the amendment. Passage of the amendment does not enact the MFA, but it does provide significant momentum going forward.

- Dynamic Scoring (Senator Portman, SA 154): In a narrow 51-48 vote, the Senate approved including dynamic scoring in revenue estimates. Dynamic scoring refers to estimates taking into account the macroeconomic effects of tax changes (such as the effect of a tax policy on GDP). Although Republicans have typically pushed to utilize dynamic scoring to calculate revenue estimates for lowering tax rates, Senator Portman's amendment received limited Democratic support from Senators Mark Begich, Kay Hagan, Heidi Heitkamp (D-ND), Tim Kaine (D-VA), Joe Manchin (D-WV), and Claire McCaskill (D-MO).

- Repeal of Estate Tax (Senator Warner, SA 693): In an overwhelming 80-19 vote, the Senate agreed to adopt an amendment to reduce or repeal the estate tax so long as the deficit resulting from its repeal is offset. The estate tax is estimated to raise several hundred billion dollars in federal revenue over the next decade, so finding an acceptable offset could prove difficult.

- Offshore Tax Haven Abuse (Senator Levin, SA 430): By unanimous consent, the Senate adopted an amendment to promote measures to end offshore tax abuses used by large corporations. This amendment is significant because it builds a record of support for eliminating offshore tax expenditures and loopholes. It also provides momentum for bills such as Senator Levin's Cut Unjustified Tax Loopholes Act (S. 268).

- Full-Time Employees (Senator Collins, SA 144): By voice vote, the Senate agreed to restore a "sensible definition" of full-time employee for purposes of PPACA. Much uncertainty currently

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exists regarding the definition of "full-time employee," especially with regard to temporary, seasonal, and variable-hour employees.

- Tax Reform Transition (Senator Enzi, SA 489): The Senate unanimously approved phasing in any changes to the individual or corporate tax systems resulting from tax reform, including any changes to individual or corporate income tax exclusions, exemptions, deductions, or credits.

In addition, several other amendments debated during vote-a-rama provide a window into the current views of the Senate. Two amendments relating to carbon taxes (Senator Blunt, SA 261 and Senator Whitehouse, SA 646) failed, and several climate change amendments were filed but not debated. Various amendments seemingly unrelated to the budget – including ones on immigration and gun control – were also considered.

Takeaways

There are several significant takeaways from the debate on the Senate budget resolution:

There is pent up demand to discuss issues on the Senate floor. The sheer number of amendments, the broad array of issues that these amendments covered, and the willingness to debate these topics until the early morning hours on Saturday show that members were eager to seize the opportunity to discuss their most important issues on the floor. The inability to have amendments considered on the floor during regular order has been an ongoing source of frustration.

Some proposals received surprising levels of support, but there is no clear path forward. One purpose for raising and voting on issues during the budget debate is to test the level of support in the chamber for a particular proposal. For instance, the amendment to repeal the MDET easily passed by a vote of 79-20, exceeding most expectations. Similarly, the degree of support for allowing states to collect sales tax from online sellers was larger than expected at 75-24. These votes pose a dilemma for supporters: the time may be right to move legislation on these issues, yet there is no clear vehicle that members can use to capitalize on this momentum. The House has made it clear in recent months that it does not intend to send any revenue measures to the Senate in order to prevent the Senate from using the bill to move Senate priorities. Additionally, members will need to address the difficult issue of how to offset the cost of the MDET repeal and other proposals that are projected to increase the federal deficit.

Interest in tax reform is alive and well. Both Chairman Baucus and Ranking Member Hatch opposed reconciliation instructions requiring the Senate Finance Committee to raise $975 billion in revenues by October 1 apart from comprehensive tax reform. The Senators took this position to protect the viability of tax reform, reasoning that if the Committee uses $975 billion to increase revenues, there will be little on the table to pay for reduced marginal tax rates. Additionally, there were several amendments to close offshore loopholes, and Senator Enzi offered an amendment allowing for sufficient tax reform transition rules.

Domestic tax expenditures were largely absent. Although a substantial amount of time was dedicated to the discussion of offshore tax loopholes, there was relatively little discussion about domestic tax expenditures. Senate leadership may assume that the repeal of some tax expenditures is embedded in the resolution's instruction to the Senate Finance Committee to raise $975 billion in revenue. However, the lack of specific proposals on domestic "loopholes" may also be a signal that it will be difficult for members to take a position on any particular tax expenditure, which could make revenue neutral tax reform difficult to achieve.

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Next Steps: Does Messaging Translate into Policy?

The next steps on the budget resolution are unclear. In order for the budget resolution to be enforceable, it must be passed in identical form by the House and the Senate. It is possible that the House and Senate may convene a conference committee; however, it is unclear whether such a committee would be able to negotiate a compromise measure given the dramatic differences between the Senate version and the House version.

Another factor is the President's role in the budget process. Typically, the Administration begins the budget process by releasing its budget proposal in early February. However, this year, the Administration is not expected to release its proposal until the week of April 8, well after the Senate and House completed floor consideration of their respective budget resolutions. As a result, the White House's request runs the risk of losing some of its impact now that the House and Senate have acted. However, at the very least the Administration's budget request will set a marker for President Obama's priorities during his second term.

The Senate budget resolution's impact on tax reform is equally unclear. Its emphasis on raising revenues to reduce the deficit leaves less revenue to pay for comprehensive tax reform with lower tax rates. However, with or without tax reform, Congress clearly is looking for ways to raise revenue, which means tax deductions, credits, and benefits will continue to be under fire on both sides of the Hill.

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