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ACLI Update
Tax Reform 2.0

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In late July, U.S. House Committee on Ways and Means Republican leadership released a Framework on Tax Reform 2.0 (Framework) to extend permanently the tax cuts for middle-class families and small businesses. The two-page document sets forth three areas that the next iteration of tax reform will cover. In addition to extending individual and small business provisions of the Tax Cuts and Jobs Act of 2017, Tax Reform 2.0 will focus on individual savings initiatives and business innovation.

According to the document, Ways & Means leaders will encourage individual retirement savings by introducing proposals that will help local businesses provide retirement plans for their workers and help workers participate in those plans. Proposals will also encourage family savings by creation of Universal Savings Accounts, expand Internal Revenue Code Section 529 education savings accounts, and allow families to access retirement accounts penalty-free for expenses associated with the birth or adoption of new children. Proposals will also encourage innovation by helping new businesses write off more of their start-up costs.

Although the description of new incentives to promote retirement savings in the Framework is vague, it may include provisions from the Retirement Enhancement and Savings Act (RESA), a bipartisan Senate bill. RESA includes several provisions to improve and enhance the current employer-provided retirement system. These include:

1. a provision to help workers understand the value of their retirement benefits by providing an illustration of how their account balance translates into monthly lifetime income in retirement;

2. a provision clarifying the current Employee Retirement Income Security Act of 1974 (ERISA) safe harbor to assist employers adding an annuity option to their retirement plan offerings; and

3. a provision to expand retirement plan access through multiple-employer plans ("Open MEPs") by permitting employers without retirement plans the ability to join together to achieve economies of scale in plan administration.

The ACLI (American Council of Life Insurers)/life insurance industry has expressed support for RESA. House Ways & Means Chairman Kevin Brady has expressed his support for including some of the provisions in RESA in Tax Reform 2.0. One such provision may be introduction of the "Open MEP" described above. At the time of this article, it is unclear the extent to which other provisions from RESA may be included in the next iteration of tax reform proposals introduced by Ways & Means Republicans.

As described, the proposals in Tax Reform 2.0 to encourage family savings appear to be focused on short-term savings, with the proposal to expand current education savings accounts having perhaps the longest term. Universal Savings Accounts are described as "fully flexible," which may not bode well for long-term financial security planning. Moreover, the proposal to allow families to access retirement accounts penalty-free for expenses associated with the birth or adoption of new children could significantly erode existing retirement savings. Detailed legislation is expected to be introduced in late summer or early fall, so by this article's publication date, more details may be known about the types of retirement incentives being proposed as well as how those may be impacted by shorter-term savings incentives, which could allow for early withdrawals from retirement accounts.

INDEXING CAPITAL GAINS TO INFLATION

In Washington the adage "everything old is new again" is a fact of life, and it holds true for one of the Trump Administration's tax policy ideas: to allow individual taxpayers to account for inflation in computing the amount of their capital gains tax liability. For over a year, senior Administration officials have advocated for indexing capital gains to inflation, with some proponents of the idea arguing that the U.S. Department of the Treasury has authority to effect such a change in computation of capital gains taxes without legislation. This idea was considered by the George H. W. Bush Administration in 1992. At that time, Treasury concluded it did not have the authority to issue guidance that would allow taxpayers to index their capital gains taxes to inflation in the absence of legislation. The legal basis for such a move could be stronger now, with several intervening court cases that could buttress the argument for the Administration to take action.

However, it remains unclear at the present time whether the current Administration will conclude that legislation is required for such a change in the computation of capital gains taxes. Treasury Secretary Steven Mnuchin indicated this summer that Treasury is studying the issue and will consider what the department can do unilaterally if legislative efforts are unsuccessful. In late July, Rep. Devin Nunes (R-Calif.), a senior House Ways & Means member, introduced a bill that would adjust the basis of certain capital assets to account for inflation for non-corporate taxpayers. The bill defines assets that may be indexed as indexed assets (generally, stocks traded on exchanges), and tangible property that is a capital asset or property which is used in a trade or business [IRC section 1231(b) property]. If the taxpayer holds an asset for more than three years, then the basis in such asset is increased by reference to an inflationary index based on the gross domestic product. Assets held in Real Estate Investment Trusts and Registered Investment Companies may be indexed to the extent shareholders are non-C corporations.

Chairman Brady has not indicated that this issue is a priority for the Committee, or whether he will include such a proposal in Tax Reform 2.0. The likelihood of a legislative pathway for the idea depends on Senate support and whether Republicans maintain control of both chambers after the 2018 mid-term elections.

ACLI and its member companies are assessing the implications of Mr. Nunes' bill to life insurance industry companies and products. Modifications may be warranted to include inflation indexation for assets held by corporate taxpayers. Moreover, the bill could put long-term financial security and guaranteed lifetime income at a significant competitive disadvantage as compared to products offered by other industries if it is not modified to address inflationary impacts on annuity contracts and other retirement savings products life insurers offer. ACLI plans to work with Mr. Nunes, and other legislators, as well as Treasury to maintain parity of treatment for products across industry lines as these proposals are being considered so that life insurers and their policyholders are not inadvertently penalized. ■

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