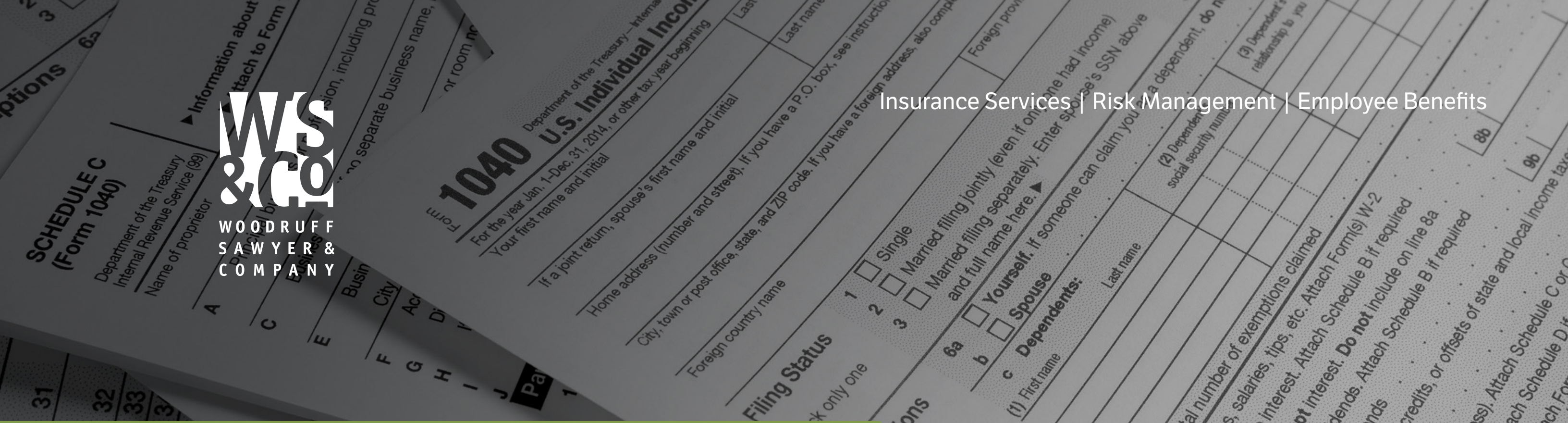

November 27, 2017

House Republicans Pass the Tax Cuts and Jobs Act

On November 16, 2017, the US House of Representatives passed the first attempt at broad, sweeping changes to the US tax code in a generation. 227 House Republicans voted yes to pass the Tax Cuts and Jobs Act.[1] (All House Democrats along with 13 Republicans cast a "no" vote on the 400+ page bill.)

The Legislative Process

The bill now heads to the Senate, which has already released its own version of the tax reform proposal which differs significantly from the House bill in 8 key areas (that are mostly unrelated to employee benefits and therefore will not be the focus of this Alert). As we saw with the ACA repeal/reform proposals, the Senate will need a simple majority of 51 Senators (or 50 plus Vice President Pence's tie-breaking vote) in order to pass their tax reform reconciliation bill. The Senate plans to vote on the bill when they return from the Thanksgiving holiday break.

Because the Senate's bill differs significantly from the House's bill, if the Senate passes its own version of the tax bill, one of the three next-step scenarios will take place:

1. The House could agree to all the changes made by the Senate,
2. The two chambers of Congress could trade amendments back and forth until one chamber simply agrees to the other's amendments without further changes, or
3. The tax bill could undergo the negotiation and compromise process through Conference meetings led by key representatives from the House and Senate.

Due to the time pressure and desire by the Administration to have a tax reform bill before the end of the year, the second scenario of trading amendments back and forth is very unlikely to happen, so it would most likely be the first or third scenario that could get a bill to the President's desk to be signed into law before the end of 2017.

Provisions of the Tax Cuts Act That Impact Employee Benefits

Congress' strategy to pass the tax reform bill as a reconciliation bill has pros and cons. One key advantage is that Congress only needs a simple majority (>50%) to pass reconciliation bills (instead of a 60% super majority vote). Whereas, one key disadvantage is that the bill has to be balanced and not add too greatly to the federal deficit. In order to raise revenue to offset the tax cuts, both versions of the bill from the House and Senate eliminate key tax deductions and/or exemptions.

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[1] *https://www.gpo.gov/fdsys/pkg/BILLS-115hr1rh/pdf/BILLS-115hr1rh.pdf*

We will address only the items of the House's tax bill that have an immediate impact on employer-sponsored benefits for employees. The following benefits will be eliminated immediately or via sunset under the House bill:

- Sunset of exclusion for **dependent care assistance programs** (DCAP FSAs) in 2023
- Elimination of the $13,570/year exclusion for **adoption assistance programs**
- Elimination of the $5,250/year exclusion for **qualified education assistance programs**
- Elimination of exclusion for **qualified moving expense reimbursements**
- Elimination of exclusion for **employee achievement awards**
- Reduction of the exclusion for **employer-provided housing** to $50,000

Note that the most recent version of the Senate's tax proposal would not eliminate the first three benefits programs listed above.

Employer Takeaways

For many employers who have already completed strategic planning and/or the open enrollment process for their employee benefits plans, the ship has already sailed. Even for employers who have not closed the open enrollment window, we recommend staying the course and moving forward as planned in accordance with the current tax code and regulations as they are.

If the Senate is successful in passing its version of the tax bill, the chances of being able to negotiate a compromise bill that can be sent to the President to sign and adopt into law are good. We will monitor the actions on the Hill closely and will keep you posted as major developments unfold.
