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SEPTEMBER 22, 2014

LAME DUCK PREVIEW

With the November elections looming, the House and Senate completed their work last week before departing Washington to campaign, leaving any remaining legislative work for the post-election lame duck session.

The brief work period that followed the annual "August recess" did see passage of a Fiscal Year 2015 (FY15) Continuing Resolution (CR), funding the Federal Government through December 11, 2014 at existing levels. The CR – H. Res. 124 – includes funding for a U.S. response to the Ebola outbreak in Africa, authorizes support for Syrian rebels in fighting the Islamic State of Iraq and the Levant (ISIL), and provides funding to counter regional aggression toward Ukraine. The CR also extends the authorization for the Export-Import Bank of the United States through June 30, 2015, and extends the Internet Tax Freedom Act through December 11, 2014.

Last week the Senate also approved a block of nominations, including ambassadors to Ireland and South Korea, and senior posts at the Departments of Defense, Energy, Homeland Security, State, and Treasury, and the U.S. Trade Representative.

While the fate of some measures in the lame duck will be determined by the election outcomes – primarily based on whether the Republicans gain the majority in the Senate – there are various items which are likely to top the agenda, including:

Fiscal Year 2015 Appropriations: As indicated above, Congress has approved a short-term CR running through December 11, 2014. When Congress returns in November they will need to again address the FY15 funding of federal activities and will likely either pass another short-term CR running through February or March 2015, pass a long-term CR for the remainder of the fiscal year, or pass an Omnibus appropriations bill with new spending levels for FY15. The outcome of the Senate majority will likely play a role in determining which of these scenarios comes to fruition.

Permanent Internet Tax Freedom Act: In July, the House approved legislation to make permanent the ban on state and local taxation of internet access and on multiple or discriminatory taxes on electronic commerce. In the Senate, a companion bill has been introduced by Finance Committee Chairman Ron Wyden (D-OR), although that measure has not yet been approved by the committee. With the current ban having been set to expire on November 1st, Congress last week approved a temporary extension of the ban attached to the FY15 CR. During the lame duck session, there could be a push by advocates of internet sales tax collections to combine the Internet Tax Freedom Act (ITFA) with the Marketplace Fairness Act (MFA), which deals with collecting and remitting sales taxes for online purchases. The likely vehicle for this effort will be **S. 2609**, which combines a 10 year extension of the access tax ban with the MFA. However, Chairman Wyden strongly opposes MFA. Some observers see a possible compromise built largely on a higher tax collection threshold for small businesses.

Expiring Provisions Improvement Reform and Efficiency (EXPIRE) Act: The Senate Finance Committee approved a **two year tax extenders package** on April 3rd, which would extend certain expired and expiring tax provisions through December 31, 2015. After failing to move in the full Senate because of a disagreement over amendments, Senate Majority Leader Harry Reid (D-NV) has long said that if the EXPIRE Act is taken up this year it will be during the lame duck. The House has taken a different approach, voting to permanently extend a handful of credits as part of "tax reform lite" and preferring to let the rest expire. Earlier this month, Chairman Wyden and House Ways and Means Chairman Dave Camp (R-MI) indicated that they are in discussion about how to address tax extenders, with a one-year extension being the likely compromise.

Tax Inversion: Prior to last week's passage of the CR, some had though that the short-term funding measure could be used as a vehicle for legislation to rein in the practice of corporations moving their headquarters outside the U.S. in order to reduce their tax burden. Several appropriations bills in the House have already had amendments attached that are intended to address the issue, and this issue could still be included in whatever route the lame duck session takes on FY15 spending – another CR or an Omnibus appropriations bill. The House amendments have been supported by both Republicans and Democrats, and President Obama has also weighed in against the practice. Meanwhile, Senate Finance Committee Chairman Wyden and Ranking Member Orrin Hatch (R-UT) are said to be working on legislation to address the issue, most likely by limiting the tax deductions available to companies that shift their headquarters outside the U.S. while still primarily operating here. Chairman Wyden has indicated that he could use the tax extenders package discussed above as a vehicle for addressing tax inversion, and Senator Chuck Schumer (D-NY) recently unveiled a proposal to diminish the appeal of tax inversion by reducing the amount of deductible interest for inverted companies from 50 percent to 25 percent. His proposal would capture all inversions dating back to 1994. Last week Senators Dick Durbin (D-IL) and Sherrod Brown (D-OH) introduced legislation – the Pay What You Owe Before You Go Act – requiring companies that intend to move their tax address offshore to pay any taxes owed before doing so. The measure would apply to any transactions occurring after September 18, 2014. Treasury Secretary Jack Lew has said that, while Congress will still need to act, his department is working on an administrative action to limit the economic benefits of inversion.

Terrorism Risk Insurance Act (TRIA) Reauthorization: The Senate, in July, passed **S. 2244**, the Terrorism Risk Insurance Program Reauthorization Act. The measure was approved with overwhelming bipartisan support in a vote of 93-4. The House Financial Services Committee approved its version of the bill, **H.R. 4871**, the TRIA Reform Act, in July and it has been placed on the House calendar. The House bill differentiates between the type of attack – conventional terrorist attacks vs. nuclear, biological, chemical or radiological attacks – and the trigger for tapping the program. In the House bill the trigger for tapping the program following conventional attacks would increase $100 million per year up to $500 million, while the trigger following a nuclear, biological, chemical or radiological attack would remain at the current level of $100 million. The Senate bill, however, makes no change to the trigger regardless of the type of attack.

Satellite Television Extension and Localism Act (STELA) Reauthorization: This law expires on December 31, 2014, so reauthorization is a top priority, and could serve as a vehicle for other video related provisions. A reauthorization bill, **H.R. 4572**, also containing certain video reforms, was approved by the House in July, while the **Senate Judiciary Committee** approved a reauthorization bill in June. Last week, the Senate Commerce Committee marked up its version of the reauthorization, **S. 2799**, the Satellite Television Access and Viewer Rights Act (STAVRA), which also contains some reforms to the video marketplace, meaning that all committees of jurisdiction have acted and the reauthorization is poised for action in the lame duck.

National Defense Authorization Act (NDAA): Considered "must-pass" legislation, Congress has not failed to approve an annual defense bill for more than half a century, so there is every expectation that they will do so again this year. The **Senate Armed Services Committee** has approved its bill and it awaits approval by the full Senate, while the **House approved its bill** in May. The House and Senate Armed Services Committee are already pre-conferencing their respective bills to prepare for action in the lame duck.

Cyber legislation: In June, the **Senate Homeland Security and Governmental Affairs Committee approved two cybersecurity measures**, the National Cybersecurity Communications Integration Center Act and the Federal Information Security Modernization Act. While the bills are bipartisan, introduced by HSGAC Chairman Tom Carper (D-DE) and Ranking Member Tom Coburn (R-OK), final passage is uncertain and could wait until next year. In July, the Senate Intelligence Committee approved **S. 2588**, the Cybersecurity Information Sharing Act, a bipartisan bill proposed by committee Chairwoman Dianne Feinstein (D-CA) and Ranking Member Saxby Chambliss (R-GA). Introduced by Rep. Jim Sensenbrenner (R-WI), the USA Freedom Act (**H.R. 3361**), amending the Foreign Intelligence Service Act of 1978, was approved in the House in May. A companion bill, **S. 2685**, was introduced by Senator Patrick Leahy (D-VT) and placed on the Senate calendar in July. Despite this legislative activity on cyber, it is possible that this issue will not be addressed during the lame duck, barring some triggering event.

Russian Sanctions & Support for Ukraine: Last week, the Senate Foreign Relations Committee unanimously **approved** the Ukraine Freedom Support Act, which imposes broad sanctions on Russia's defense, energy, and financial sectors, as well as increasing military and non-military assistance for Ukraine. The bill would provide Ukraine with energy, defense sector, and civil society assistance; establish Ukraine, Moldova, and Georgia as major non-NATO allies; and expand broadcasting programs to counter Russian propaganda in countries of the former Soviet Union. The bill did not pass out of committee in time to be approved by the Senate before they left to campaign, but it is likely to be on the agenda in the lame duck.

Sustainable Growth Rate: Congress is reportedly hoping to pass a permanent solution to the Medicare physician payment formula, also known as the "SGR" or "Doc Fix." Looking to vehicles such as tax extenders or an omnibus spending bill, policymakers still must determine how to pay for reforming the SGR. While stakeholders and experts remain skeptical that such an effort would be successful, lawmakers are pulling out all the stops to engage industry to support a potential SGR fix done this year. The current temporary extension of the SGR patch continues through March 2015.

Passenger Rail Reauthorization: Although a long-shot for approval in the lame duck, there was a surprise move by the House Transportation and Infrastructure Committee which approved **H.R. 5449**, the Passenger Rail Reform and Investment Act, a bill to reauthorize funding for Amtrak and the nation's passenger rail network last week before departing for the campaign season. Committee Chairman Bill Shuster (R-PA), who has been applauded for the bipartisan manner in which the bill moved through the committee, has indicated that his legislation is likely a place holder for action in the next congress, particularly since the Senate Commerce Committee has yet to produce a reauthorization measure for the nation's passenger rail system. With that said, this legislation bears watching.

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