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Top 10 Topics for Directors in 2019: Tax Cuts and Jobs Act

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By: Zachary M. Rudisill

Perennial issues, such as transportation, retirement savings and healthcare, will likely make an appearance, and legislation improving the tax reform bill could be on the table, depending on the outcome of the Treasury regulations.

The tax-writing Senate Finance and House Ways and Means Committees will have a different look to them in the 116th Congress as both will have new chairmen. Rep. Richard Neal (D-MA) will take the gavel of the Ways and Means Committee. Rep. Neal will approach the Committee with an eye towards building a legacy of legislative wins, along with a more robust approach to oversight. The Ways and Means Committee will likely begin the year by focusing on three key areas with potential tax implications: (1) infrastructure, (2) pensions and retirement security, and (3) strengthening of the Affordable Care Act. These efforts will be supplemented by oversight designed to set the stage for future legislation, including hearings on the TCJA.

On the Finance Committee, Sen. Chuck Grassley (R-IA) will re-take the gavel after the retirement of prior Chairman Orrin Hatch (R-UT). This will be Sen. Grassley's second tour of duty as Chairman, having previously served as either Ranking Member or Chairman of the Committee from 2001 through 2010.

In his prior stint as Chairman, Sen. Grassley focused on the prevention of tax avoidance and job creation. Examples can be seen in the Section 199 domestic production activities deduction and anti-inversion provisions included in the American Jobs Creation Act of 2004. Thus, aside from potentially working with the House on retirement, transportation and TCJA corrections, it would not be surprising to see Finance's oversight arm become more active once again.

From an administration perspective, the first half of next year will be focused on finalizing regulations implementing the TCJA. While the Treasury Department hopes to finalize the deemed repatriation, full expensing and 199A pass-through deduction regulations by the end of 2018, regulations implementing the global intangible low-tax income (GILTI), base erosion and anti-abuse tax (BEAT) and foreign derived intangible income (FDII) provisions will not be finalized until 2019. Much of Congress's focus from a TCJA corrections perspective will likely be based on what the final regulations, especially in the international tax space, look like. President Trump has also made a 10 percent "middle-class" tax cut a priority for the start of the 116th Congress.

Boards will want to be particularly watchful of the finalization of tax reform regulations. While the regulatory process is not glamorous, and will not see many headlines, it could have a dramatic effect on corporate effective tax rates in 2019 and the years ahead. Also, depending on whether the regulations come out "good" or "bad" from Congress's perspective, the regulatory outcome could drive much of Congress's TCJA corrections agenda.

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