



Tax Bill with Benefit Changes Getting Closer

Issue Date: December 2017

Background

In a vote taken early Saturday morning, the Senate passed its version of tax legislation. This increases the chances of the final bill being signed by the president and becoming law before the new year. However, it's not over yet.

Both the House and the Senate have passed different tax bills. These differences must be resolved in a Conference Committee, which will begin its work this week. Once the Conference Committee completes its work, each chamber must again separately approve the legislation. If approved, the final legislation goes to the president for his signature, and Senate Majority Leader Mitch McConnell has said this will happen before Christmas.

The timing could get complicated in light of the special election in Alabama for Jeff Sessions' former Senate seat. Experts seem to think that the winner in that election will be sworn in by December 22 at the latest, and that increases the uncertainty in the Senate around votes for a final bill.

Effects of the Bill on Employee Benefits

Some of the provisions included in the current versions of the legislation will have a direct effect on employee benefits. These include:

Individual Mandate Penalty Eliminated

Under the Senate version of the bill, the so-called individual mandate is effectively repealed. (Technically it stays on the books, but the penalty goes to zero.) Senator Collins (R-Maine) ultimately supported this provision in exchange for a commitment to vote on bipartisan legislation intended to provide support to the individual market.

Employer Mandate and Reporting Remain

Importantly, the employer mandate and employer reporting (and all the associated penalties) remain on the books. It's critical that employers understand that the pay or play penalties remain in effect and that employer reporting is still required.

Cadillac Tax Remains

The Cadillac tax on high-cost plans is not eliminated in the legislation. Some believe that tax could be eliminated in 2018.

Other Benefit Issues to Watch

- Employer-sponsored tuition assistance – Favorable tax treatment is eliminated in the House bill only.
- Qualified mass transit – The business deduction for qualified mass transit plans is eliminated in both the House and the Senate bills.
- Dependent Care FSAs – Favorable tax treatment for dependent care FSAs is eliminated in the House bill but not in the Senate bill. Healthcare FSAs are not affected.

Summary

Although there is a lot to monitor in the coming days and weeks, nothing has changed yet. We recommend that no action be taken until the final legislation is enacted and signed.

Please be aware that this does not represent legal or tax advice and is only Frenkel's interpretation of the laws, regulations and statutes. It is highly recommended that you seek the advice of your legal and tax professional as to the applicability of this information to your particular situation.