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Post-Election Perspectives on Tax Reform and Executive Compensation

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Although just two weeks have passed since the presidential election, the potential impact of the change in administration is already beginning to take shape. In this client alert for Pearl Meyer's Inner Circle, we examine some of the potential legislative changes being discussed, and how they may impact the executive compensation landscape.

As of this writing, the President-elect and the majority Republican House and Senate are suggesting that in the first 100 days of governing, there is likely to be a proposed tax reform bill that extends the provisions of the Tax Cuts and Jobs Act (TCJA), which is currently set to expire at the end of 2025. Other key economic and business-related initiatives highlighted during the campaign season are likely to be brought forward.

However, even with the single-party sweep, many of the anticipated tax-related proposals are expected to face material hurdles along the way. The initiatives come with significant costs, and given rising deficit and debt levels, there is likely to be debate within the Republican party over what to include and exclude in any proposed legislation. With these caveats, we provide a summary of anticipated key initiatives—based on campaign statements and ongoing public discussions as the transition takes shape—that might affect executive compensation in some way.

Tax Reform

Extending the TCJA

The following key TCJA provisions (originally enacted in 2017) are set to expire at the end of 2025. It is widely anticipated that legislation will be put forward to eliminate the expiration for most of these reductions:

- Reduced individual tax rates (from a maximum of 39.6% to 37%); this would mean that instead of reverting to the higher tax rate, the reduction to 37% would continue
- Individual tax simplification provisions, including
  - Increased standard deduction
  - Limited state and local tax (SALT) deductions
  - Reduced limits on mortgage interest deductions
  - Eliminated deductions for unreimbursed employee expenses, tax preparation fees, and other miscellaneous deductions
  - Increased thresholds for individual alternative minimum tax (AMT)
- Estate tax relief including increased estate tax exemption from $5.6 million to $11.2 million for joint filers
- Pass-through business changes which allow for a 20% deduction for pass-through business income

Given the sweep, it is widely expected that there will be an effort to make the TCJA provisions permanent, excluding the limits on SALT deductions. Many expect this could be in the form of a massive tax bill proposed through the budget reconciliation process in the first 100 days of governing. While a simple majority vote in the Senate of 51 is required to pass legislation through budget reconciliation, the process comes with stringent requirements. For example, budget reconciliation proposals can only be used for changes in the statutory debt limit, revenues, and direct spending, and the legislation must not increase the deficit in years outside the 10-year budget window.

Meanwhile, the Congressional Budget Office (CBO) has projected that extending the TCJA provisions would cost $4 trillion (not inclusive of interest costs), so legislators may have to outline revenues that offset at least a portion of the costs. This unknown will substantially influence any legislation proposed and what line items might be crossed out.

Corporate Tax Rate Reductions

The original TCJA reduced the top federal corporate tax rate from 35% to 21%, but that reduced rate is not scheduled to sunset at the end of 2025.

During campaign discussions, President-elect Trump proposed further lowering the corporate tax rate to 15% for corporations that make their products in America. According to the Committee for a Responsible Budget, one possible approach might see the reduced rate decreasing revenue by about $200 billion through Fiscal Year (FY) 2035. If those calculations hold, the anticipated costs could be a major hurdle for legislators trying to pass the measure through the budget reconciliation process.

Other Individual Income Tax Proposals

The president-elect has also indicated that he would like to lift the current limit on SALT deductions, which is generally limited to $10,000 in the aggregate. Other proposals affecting individual pocketbooks include exempting tips, Social Security, and overtime pay from income tax, and creating an itemized deduction for auto loan interest. The estimated price tag for these proposals is suggested to be about $3.6 trillion through FY 2035.

Changes that May Impact Executive Compensation

The Securities and Exchange Commission (SEC)

It's reported that the transition team is currently vetting candidates to replace Biden-appointee Gary Gensler. Since directors of the SEC—including those involved in issuing regulations for executive compensation—are filled by the chair, it is reasonable to expect a turnover in these director positions, along with their senior staff members. It is expected that these replacements will be inclined to unwind recent rulemaking, particularly with respect to climate disclosure.

The SEC's Oversight of Proxy Advisors

The SEC commissioners elected in the first Trump administration proposed and finalized a rule that would have required more oversight of proxy advisors. The requirement included rules related to conflicts disclosure, company access to free reports simultaneous with investors, and a process for companies to respond to the reports.

In 2021, under the Biden-elected commission, the SEC suspended enforcement of the final rule but ultimately allowed a narrow portion of the proposed rule to move forward (disclosure about conflicts). With the expected reversion of the SEC to Trump-elected commissioners, it is likely that the original, more onerous oversight rules will be revisited, which could result in compensation committees having access to early reports and potentially having a more powerful voice in responding to reports.

Overturning the Chevron Doctrine

Regardless of the election's outcome, the Supreme Court's decision earlier this year essentially nullified the Chevron doctrine, which had given deference to agency rulemaking. With this action and based on other signals, we anticipate fewer and less detailed agency-issued regulations around executive pay.

Federal Trade Commission (FTC) Lawsuits to Reinstate a Federal Non-Compete Ban

The federal non-compete saga continues to linger with the filing of cases initiated by the FTC in the 5th and 11th circuit court of appeals seeking to reinstate the federal ban. However, with the new administration likely replacing Chair Lina Khan, the FTC's overall interest in enforcing the ban could wane, resulting in the status quo of current and projected state law restrictions.

Summary

Looking to 2025, tax legislation is likely to be proposed through the budget reconciliation process, which requires only a simple majority in the Senate for passage. However, the significant costs associated with many of the tax proposals will influence the makeup of any final bill presented and enacted.

Other major shifts will likely flow from the anticipated changes in elected positions and reduced government involvement in rulemaking. Those shifts, coupled with the overturning of the Chevron doctrine, could change the landscape for certain executive compensation trends and norms in the future.

About the Authors

Deb advises on executive compensation from a legal and regulatory perspective, including securities disclosure, tax and governance matters, contract negotiation, and reasonableness opinion letters.

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About Pearl Meyer