

ObamaCare

Another Front In The Health Care Fight

Brian Wingfield, 07.21.09, 7:00 PM ET
WASHINGTON -

A proposed surtax on the wealthy is grabbing the headlines, but it's not the only tax provision in the House of Representatives' health care bill souring business groups on the proposal.

As written, the legislation would delay until 2020 the ability of U.S. based-companies with operations abroad to take greater advantage of foreign tax credits. The bill's supporters argue that the move would raise an additional \$26.1 billion in revenue during the next decade. Detractors, such as the U.S. Chamber of Commerce, call the delay anti-competitive.

The tax benefit in question arises from the way in which U.S. multi-nationals are allowed to allocate interest expenses against their U.S. and foreign income. Ideally, companies want to align as much of their expenses as possible to domestic sources. That gives them a lower U.S. tax liability and allows them to claim more foreign tax credits. (The U.S. has one of the highest corporate tax rates in the world.)

"It reduces the incidence of double-taxation for non-U.S. earnings," says Tim Tuerff, who heads the international tax group of Deloitte's Washington National Tax office.

In fact, U.S. multinationals were supposed to get this tax benefit this year, as directed by a 2004 law. But last year, Congress delayed it until 2011. Now lawmakers want to put it on hold again. Caroline Harris, senior tax counsel at the U.S. Chamber, says the postponements are troublesome for businesses because they planned on being able to take advantage of the tax benefit.

Another proposal in the House's health care bill would limit, in some cases, tax benefits enjoyed by foreign firms doing business in the U.S. Opponents say it would raise taxes on U.S. subsidiaries of international firms if there is no tax treaty between the U.S. and the country where the parent company is located.

The National Association of Manufacturers (NAM) and the Organization for International Investment--the industry group for foreign multi-nationals, like Lufthansa and GlaxoSmithKline, that do business in the U.S. call it a "discriminatory" tax that could discourage foreign direct investment.

Nancy McLernon, OFII's president and chief executive, says lawmakers are trying to prevent companies from "treaty shopping" to avoid paying U.S. taxes, and she adds that the provision is not as damaging as a similar measure that was ultimately cut from the 2007 farm bill.

Still, she says, the proposal violates international tax agreements, could harm some international investors, and might discourage foreign investment in the United States. Moreover, industry groups argue that the measure could provoke retaliatory action.

"It would be quite troublesome for the U.S. tax treaty system to be seen as in jeopardy," McLernon says.

Will either of these tax proposals become law? Hard to say. Congress has shown a willingness to delay the interest allocation rules, but twice in the last two years the Senate has voted down the limits on treaty benefits. In addition, opposition to the House bill is growing, largely due to the proposed surtax on wealthy individuals.