Thomson Reuters Market Insights
A Podcast for tax, legal and compliance professionals around the globe.

Episode Title: What's next for U.S. tax policy in the wake of the recent election, the pandemic, and beyond?

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Nadya Britton: This is Nadya Britton, Enterprise Content Manager for Tax and Accounting at Thomson Reuters and joining me today to talk about "tax policies and what's next?" is Melissa Oaks. Senior manager with Thomson Reuters, where she leads current awareness for tax and accounting business. Prior to this role, Melissa was a proposition manager or one source. Indirect tax and managing editor of the state and local tax for checkpoint catalyst before joining us a Thompson in 2013. Melissa practice law in New York. She's a graduate of Cornell University and Columbia Law School. And earned an LLM in taxation from NYU School of Law. You can follow her in Twitter @MelissaAOaks –O-A-K-S welcome Melissa.

Melissa Oaks: Hi thanks for having me.

Nadya: Um let's just jump right in um. I know this conversation is primarily about 2021 as you know, we're close to the end of the year, but I think it's important that we take a pause and look back right for a minute or look at where we are currently as it relates to tax policies. Specifically, the next COVID relief package. Do you think there's still an opportunity for it to pass this year?

Melissa: So, I think that a large COVID relief package is unlikely to pass before year end at this point. But limited relief is still possible, the next thing or really the last thing on the agenda for Congress in 2020, is to pass a bill funding the government by December 11th if they don't pass an appropriations bill or a continuing resolution which is temporary funding measure, we could have a government shutdown after December 11th and that's something that you know, neither party wants right now. And so, we're kind of looking at that appropriations negotiation. As a potential leverage point for emergency COVID relief. You know, there are a lot of growing concerns around? What happens after December 31st. You know a lot of the relief programs we have right now are scheduled to expire at your end including. Payroll tax credits for emergency paid leave, extended unemployment benefits the employee retention credit. The IRS also recently confirmed that PPP or paycheck protection program loan recipients won't be able to deduct their expenses paid with their PPP loan proceeds to the extent of loan will be forgiven. Now this is something that the AICPA is calling for Congress to address as soon as possible and then there is bipartisan support for a small fix like that. So we could see some narrow provisions in that appropriations bill around deductibility and PPP and maybe extending some of this emergency leave but you know, passing something larger like the Heroes Act is, seems pretty much off the table at this point.

Nadya: So last lightly so the measures that they might address and hopefully they will address will mitigate some of that. Other potential impact, right? That coming out from the other the previous packages that would offer it well. That's great. Thank you for that. Next it won't flow into so obviously you know. In addition to all the changes. We went through there just. You know political changes that is on the horizon. And so, you know the house in 2021, will remain Democratic, however, we're still waiting to find out about the Senate right. I think what's left it's Georgia's run off in January. So can, we talk about you know you, you hinted at the heroes and the Heels Act, and just how that plays out right depending on who controls the Senate next year.

Melissa: Sure, so the 2 parties have put forth have each put forth their own proposals. So, House Democrats passed the Heroes Act back in May and Senate Republicans put forth where they're calling the Heels Act. It's really a series of several bills. They put that forth in July but haven't actually passed any component of that yet. And then since then, House Democrats have put forward some smaller bills to try to you know meet the Senate Republicans halfway to their bill. Now these 2 policies have you know there they diverge in the size and scope. But there are some areas where there are similarities. One thing to note is that even though the heroes. The House passed the Heroes Act earlier this year. Once Congress adjourns in the new Congress is sworn in in January. That essentially goes away and they have to reintroduce and re pass any bill at that point. There are some areas of agreement between the parties. They both want to address the paycheck protection program, either extending that program into next year or at the very least, making the forgiveness process. A little bit easier for companies next year, especially for those that have the smaller dollar smaller dollar loans right there. Also, there is some agreement around extending the employee retention credit and providing additional payroll tax credits for various things either for rent and mortgage payments or for expenses like building up your PPE for your employees and things like that. One big area that's going to impact state taxation is state and local government funding and this is an area that there's been a lot of disagreement between the parties state and local funding was large portion or a large component of the Heroes Act and that is not something that has had as much support among the Republican caucus, but you know at this point states are really facing a budget crisis going into next year. And if they don't get that funding that's going to have knock on effects for state tax policy and then the other thing to keep in mind as we move into next year is that these policies were put forward. You know 6 or 7 months ago at this point, and then they're getting a little bit stale so, and even among Republicans Mitch McConnell is called for more targeted relief than what they had put forward in the Heels Act. You know Democrats have also put forth more limited relief than what was in the Heroes Act and some of the Heroes Act provisions are going to be less practicable overtime because some of the things were for example, the Karas Act provided new provisions for net operating losses, um, allowed a 5 year carryback of not net operating losses as a way to get some immediate cash flow relief to companies and be Heroes Act would limit that a little bit essentially not allow you to take losses generated now and carry them back to before the tax cuts and JOBS Act reduced tax rates. But at this point, a lot of companies have already you know filed for the refund claims are starting to file amended returns to take advantage of those cares act relief provisions and when you know if you're going to roll that back that is going to cause a lot of just compliance issues right? How do you exactly so? You know as we move into next year. I think there's still the same level of commitment to relief. But what that release looks like may change just because you know the facts on the ground are changing.

Nadya: Right, which makes a lot of sense, right? That I mean it was great we were in absolute crisis mode when the first one was passed, and so now we're a little distant from crisis, though you know still a lot of recovery that needs to happen, especially on the state. You said mentioned local government right. So, it makes sense that the next packages are look through and viewed through that lens. Thank you for that. My next question is specifically around our newly elected President Joe Biden and so I know we spent a bit of time talking about you know send it in the house. But how does his presidency impact changes to tax policies and I mean, we can look at you know the first 6 to 8 months. Let's say right, yeah, if there's any change so.

Melissa: Yeah, so they Biden Harris have said that their first economic priority is going to be COVID relief so you know that's going to be the first thing on their agenda and as you mentioned this all comes down to the Senate runoffs in Georgia. If the Democrats gain control of the Senate. A COVIDvid relief bill potentially could advance much quicker and then that would give them you know more floor time to kind of move on to other priorities of the administration. But if the Senate remains in GOP control it's not clear at this point at least what kind of covered relief will advance and how long that process is going to take so that's one factor in the mix. Assuming we can move on to other tax policies beyond just that immediate covered relief question. The button team has proposed a number of things from raising the corporate rate from 21%. Up to 28%, having penalties for on for offshoring and incentives for onshoring establishing a minimum corporate tax based on your book income but you know the way that this is going to roll out first of all is going to be very dependent on the Senate as I mentioned if this then it remains in GOP control. It's not clear that any of these things will advance right. But even if it's a Democratic Senate. It's still going to be a very uphill battle. the Democrats have a broad caucus. They would have a very slim majority really just 50 votes, plus the vice president at the tiebreaker and in order to pass bills with only 51 votes in the Senate. There are 2 routes that they can do that. Either they would need to end the filibuster. The filibuster right now means that you need 60 votes in the Senate to advance legislation and that's something that is only contained within the Senate rules. It's not a loss so the Senate can choose to get rid of that, if they want to. There isn't clear support for that among all of the Democrats and write that in the Senate. So, we don't know if that's going to happen. The other route for tax policy is the reconciliation process and now this is something it's called budget reconciliation and they're allowed to use this process once per fiscal year. And this is actually how the tax cuts and JOBS Act was passed without any Democratic support back in 2017. The issue with that is that you can't, there are limitations on the reconciliation process called the Byrd Rule, which means that there are certain things that you can't include in a reconciliation bill and you know what we're seeing with the item policies is that rather than having you know, one big text bill like the TCJA where you know the meat of it is tax policy and they really want to use their tax policy proposals to raise revenue for their other policy priorities around healthcare or childcare climate change and so there are some aspects of the reconciliation process that make it more difficult to advance things that are not strictly budget related.

Nadya: Right 'cause it's a layered.

Melissa: Right yeah, OK so you know they're going to have to be creative. But I think we will also see a different way of engaging. A different method of engagement from the administration you know, both Biden Harris had been in the Senate. They also you know have a long history in the government in general and so I think we'll have both COVID relief and other policies going forward just a different type of engagement in the negotiations with Congress then we've seen from the current administration.

Nadya: Interesting and so you think that, obviously, that positions them or better positions than for, well let’s say a win or being able to move things right again. They understand that kind of negotiation because they've lived on it, and they know their peers and colleagues to a certain extent, so that's definitely a plus.

Melissa: Absolutely and I mean, whether it's a win. I think is going to depend on your perspective. But yeah, I think that you know they're coming with a lot of institutional congressional knowledge and it looks like they're staffing up their team with folks who also have that deep level of institutional knowledge and you know, one thing we've seen with the COVID relief negotiations is that there is sometimes disagreement between different folks in the administration whether it's from you know the president. His economic advisers. the Treasury Secretary and that just obviously complicates negotiations that there isn't a single point of view.

Nadya: Right yeah, right OK. Thank you and you know you mentioned the TCJA. I've been most curious as to what do you think will happen with that?

Melissa: You know the question of whether the Biden administration will be able to rollback any of that through legislation is you know, so dependent on descendant. But there's a lot, that can be done just administratively right now, we're still getting a ton of regulations interpreting the TCJA provisions you know we had at least it doesn't final regulations this year and a number of proposed regulations as well. That will need to be finalized in coming years. We had on the business interest limitations under 163. J the final regulations that came out about that this year were over 800 pages long. So you know, even though Congress is not doing anything in that respect you know, there's a ton of regulatory activity and I think that we should expect that to continue. You know going forward, particularly when we're thinking about the interactions between the TCJA in the cares act exactly there's still a lot of guidance to come out about that. A lot of what we've seen is more in the way of FAQ’s or revenue rulings or sorry revenue procedures. And you know, those things need to be formalized a little bit more into, you know proposed and then final regulations, ideally that would be helpful for tax papers taxpayers.

Nadya: Right. So, it almost makes sense. This is you're asking your opinion that they should kind of continue to let it play out because again there's so many regulations and regulatory stuff that still hasn't even been fully flushed out so it's an attempt to walk it back. Without that could probably be not the best.

Melissa: Right, yeah, and I think you know, we've tax professionals dealt with so much change over the past 2 years that you know, I think any kind of clarity and stability would be welcome. You know the button agenda does include rolling back a lot of these TCJA provisions. But most of that would have to go through Congress. So you know, there's not a lot they can do sort of large scale at the administrative level, but there are a lot of there's still a lot of guidance to come out and I think you know, obviously the composition of the Treasury Department is going to impact that although you know, most of the staff at the IRS like these are non-political folks exactly are just interested in efficient administration and clarity of the rules and you know those folks don't change from administration to administration or at least their you know their commitment to efficient administration of the tax laws doesn't change from administration to administration.

Nadya: Sure, sure OK and you know the next question as you've said the concerns right around the state and local government, right? So if we can spend some time talking about that and you know because again, they potentially have some serious uphill battles right, so can spend a little time talking about you know, what's next for them? What happens one way or the other and what some of the things they might do to mitigate.

Melissa: Teah, so you know as I mentioned the states are really facing this budget crunch they had or have seen a dramatic increase in expenditures as a result of COVID and also a drop in tax revenues just as you know incomes go down that decreases income tax revenues. You don't have restaurants or bars open people out shopping your sales taxes are going down your alcohol taxes, etc. And so you know states are really going to be in a difficult position as they move into next year in their legislative sessions states really can't deficit spend there a lot of these are required to balance their budget every year, which means that if they don't get federal relief you are going to need to further cut expenses and or raise revenue which means raising taxes. And in some cases, those tax increases can be automatic so for unemployment insurance for example, some states have built in unemployment tax rate increases if the Unemployment Insurance Trust Fund Falls below a certain level because they have to maintain those funds at a certain level and so in those cases, you would need state Legislature to step in to prevent the tax increase as opposed to you know, inactive in the first place. And the other issue for companies at the state level to think about is how coronavirus impacted or impacts your nexus landscape so we have a lot of folks who are working from home for the first time, maybe working in a different state where their office was located previously, sales people that are not traveling into states for example, and you know does that create a tax obligation in theater locality or you didn't have to pay taxes there before or didn't have to collect sales taxes, there before now states had put forth a number of waivers for this year or just temporary relief. I'm saying, You know, we understand that it's discovered time we're not going to. But this may penalize you in the future, but in some cases, those expire at the year end. So companies have to be you know really on top of what is their next picture going to look like on January first 'cause they may not have these COVID protections and states that are facing budget issues you may need to be more aggressive in audits then they previously would have been. What's interesting is that even though you know, we had all of these state elections, there almost a dozen governors up for election over 6000 legislative seats. There wasn't really much change in party control of any of the state legislatures everything it has sort of stayed pretty flat the GOP did pick up a trifecta in Montana, meaning the control the governorship in both houses of the state Legislature and also in New Hampshire. So we'll see how that impacts taxation in those states, they have mentioned that they're looking at lowering some tax rates in both of those states now that there is a GOP trifecta and Democrats also picked up a super majority in the New York State Legislature and so that's expected to have some impact on New York State tax policy as well going forward. And the one of the big questions for states to deal with next year 's are thinking about balancing their budgets is you know? How do they conform to the cares act if at all? A lot of states really just follow the federal rules, they incorporate it and say you know the starting point for calculating your state, taxable income is your federal taxable income and you will follow all of this federal Internal Revenue Code except for provisions AB&C. When states were making the decision to conform or not conform to TCJA for example, a few years ago, they were in a much different budgetary position. A lot of states had recovered from the 2009 recession. They had built up these rainy-day funds, the economy was booming and so they were able to pass on this tax savings through their state tax laws as well. You know now states are in a different position with a lot of exactly and you know, especially things that are meant to be you know, that immediate cash flow relief in the cares act states just aren't going to have the ability potentially to also provide that relief of the state level and then you get lots of complexity for companies if a state conforms to the TCJA, but then doesn't conform to how the cares act amends the TCJA so, yeah, we have our work cut out next year.

Nadya: Sounds like tax professionals there might, not be you know any rest period, so to speak exactly wow, OK and thank you for that in depth look at the state again. I know it's been top of mind quite a bit for all of us. I think all professionals across the board not just for tax professionals right even down to the individual in terms of how our states welfare and what that means for us as individuals, so thank you for spending time in going through that. As we look to wrap up, my last question is if you look into your crystal ball your tax crystal ball is there any dramatic or drastic changes to the 2021 tax season and probably every tax professional is probably closing their errors right now. But like no. I don't want to hear this and they're better not, but I must ask the question you know.

Melissa: Well, I've tried to get out of the prediction game because as soon as I predict something the opposite happens 30 seconds later, bye, Yeah, but I you know, I think one of the hardest things for companies next year is going to be the lack of authoritative guidance so, I mentioned earlier that a lot of the guidance. We've had especially around the cares act relief has been in FA cues that are just posted on the IRS website. You know forms instructions even proposed regulations. And you know, these things are not binding guidance in the way that a statute or final regulations are and in some cases, you know the FAQ's may conflict with what the statute says either plainly conflict or you just aren't sure that it's really you know based on that statutory language and so companies have to figure out not just what are the rules but do we agree with those rules. You know what positions? Do you take on your return in that case you know? When do you take a return position that's contrary to the guidance? You know how confident are you in your position, and you know what level of disclosure do you need in those cases an kind of figuring out what your comfort level is going to be you know it's not going to be just a straightforward you know, do this, or do that you're going to have to work with your senior leadership to figure out you know what is going to be the best situation for our company moving forward for the next you know 5 years, potentially it's not just a one year thing where there's going to be a clear answer.

Nadya: Right wow that's pretty significant as it seems like much will be left up to the individual interpretation right. Anne how that plays out and little bit of crossing ones fingers. In some cases, right? so very interesting any other final thoughts that you want to share or leave with our listeners as we look ahead?

Melissa: I would say just to you know rely on your network. You know, as we're talking about how you mentioned this comes down to the individual taxpayer and you have to figure it out for yourself, but as true as that is on it on in terms of what you're putting on your tax return. You know, we are all in this together on everyone is trying to figure this out and so you know, I would say obviously you know make sure you have your excellent research tools that you can rely on you know, and also be building your virtual networks. You know with other tax professionals with people who are working at companies like yours because you know, we're figuring this all out together and I think that that can be a really great resource and even just for the moral support through what is going to be a very challenging tax season. You know, we aren't able to all meet in person and you know have these conferences that we usually enjoy but I would say you know try to maintain those connections virtually because it's going to be really important for next year and just getting through whatever happened.

Nadya: Wise words. Thank you. Thank you so much for the time. Melissa and thank you for enlightening and highlighting and giving us a little look ahead, so thank you so much for the time.

Melissa: Thanks for having me.

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