Wyden Accuses Republicans of Dodging Score on U.S. Tax Reform

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Finance Committee ranking minority member Ron Wyden, D-Ore., is accusing U.S. Senate Republicans of trying to pass tax reform legislation without addressing the measure’s budget effects.

“Tomorrow, Senate Republicans are going to start, apparently, discussion of a budget that eliminates the requirement that the reported tax bill be scored at all,” Wyden said October 3 at a Senate Finance Committee hearing. “It’s almost like this administration [was] comatose for Reagan trickle-down economics. . . . I would just like to put to rest this growth fairy theory with respect to tax cuts.”

Finance Committee member Patrick J. Toomey, R-Pa., challenged Wyden’s assertion, arguing that subsequent tax reform would be scored, and that score would be on a static basis against a current-law baseline for legislation that would not increase the deficit over the budget window by more than $1.5 trillion. Any amount over that would lose reconciliation protection, Toomey said during a committee hearing on international tax reform. He also contended that Wyden’s attempt to couch the debate in terms of whether tax cuts can pay for themselves was a “gross simplification” because what is being contemplated is reform that would be offset mostly by base-broadeners.

“We’re hoping to have significant rate reductions, a significant move toward expensing [capital expenditures], a significant simplification which helps clients, and of course, a move toward a territorial system,” Toomey said. Senate Finance Committee Chair Orrin G. Hatch, R-Utah, and Toomey both took exception during the hearing to early criticism of the framework as premature. “Until we have defined those things, I don’t know how anyone could suggest that we could know in advance that we wouldn’t have enough growth to pay for the small fraction of this reform that is scored statically,” Toomey said.

Wyden’s allegations stem from section 4111, “Repeal of Certain Limitations,” in the concurrent budget resolution, which would repeal existing points of order under sections 3205 and 3206 of the concurrent resolution on the budget for fiscal 2016. Section 3205 from the 2016 resolution states that the Senate will not vote on passage of a matter that requires an estimate under section 402 of the Congressional Budget Act of 1974 (2 U.S.C. 653), unless the estimate was previously made publicly available on the website of the Congressional Budget Office. A supermajority is required to waive the requirement.

A Senate GOP budget aide argued that Wyden’s interpretation ignored an important factor: the Congressional Budget Act of 1974 requires CBO scores for reported legislation. The fiscal 2016 budget requirement Wyden referred to is being repealed as it is unnecessary and has never been used, the aide added.

A tax lobbyist similarly dismantled Toomey’s claims, arguing that the resolution specifically calls for any major
legislation to be scored dynamically, and that score would be the one used to calculate the legislation’s effect.

While none of the four witnesses for the hearing addressed Wyden’s allegations, at least one had a similarly dim view of the economic prospects of reform measures that aren’t revenue neutral.

Stephen E. Shay of Harvard Law School said it “would be foolhardy to adopt . . . revenue-losing tax reform, particularly one that benefits those with high incomes, in the unsupported hope, based on tooth fairy economics, that short-term growth will help outweigh longer-term effects on interest rates and inflation.”

But Finance Committee member Rob Portman, R-Ohio, argued that an out-of-date tax code, particularly on the business side, creates an “enormous opportunity” to spur economic growth with reform. If growth were to increase 0.4 percent over projections, that would account for the $1.5 trillion in revenue.

“It’s not that tax cuts pay for themselves. It’s that the right kind of tax relief — and more importantly, reform — will lead to better economic growth and we should take that into account,” Portman said.

**Absolutely Essential, Absolutely Critical**

Much of the international tax reform hearing was spent discussing the merits of territorial taxation and a minimum tax.

Released September 27, the [Republican Unified Framework](https://example.com) contemplates both a move to territoriality and a minimum tax to prevent base erosion, though details are sparse. It also proposes lowering the corporate tax rate to 20 percent.

The [Urban-Brookings Tax Policy Center](https://example.com) entered the fray two days later with a [harsh critique](https://example.com) of the GOP plan, estimating that it would reduce revenue by $2.4 trillion over a decade, with the top 1 percent of taxpayers receiving 50 percent of the benefits.

In advocating for territorial reform, Portman pointed to a study conducted by EY that said if the U.S. had instituted a 20 percent tax rate, it would have kept 4,700 companies under U.S. ownership between 2004 and 2016. And the advantages didn’t end there, he said.

“Laura Tyson, the former chair for the Council of Economic Advisers for President Clinton, just came out with her study. If you went to this kind of policy, 20 percent rate with territorial, it would result in $144 billion ongoing coming back in repatriations. . . . She’s a Democrat. She just looks at this [current system] and says this just makes no sense,” Portman said.

If the U.S. were to move to a territorial system, Kimberly Clausing of Reed College said, it is “absolutely essential” that the minimum tax be instituted on a per-country basis, rather than applied globally.

“If you have a global minimum tax, you could use taxes in Germany to offset Bermuda income. And then you
would have an incentive to move income to both Germany and Bermuda,” Clausing said. She added that lowering tax rates would not be sufficient to prevent base erosion since 80 percent of profit-shifting is destined for seven havens with tax rates of 2 or 3 percent. Further base erosion measures could include off-the-shelf proposals, including imposing an exit tax, raising the threshold to invert, setting earnings stripping limits, and addressing check-the-box rules, she said. Clausing acknowledged these steps are Band-Aids, but are better than nothing.

Shay agreed with Clausing on the per-country requirement, because foreign taxes of controlled foreign corporations is currently 12 percent, so a minimum tax that did not contemplate such a provision “would be relatively toothless.” He also advocated a relatively high minimum tax rate — at least 60 percent, and preferably, 80 percent — when compared to whatever the U.S. statutory rate ends up as. Foreign tax credits should be prorated under such a system so that the credits are not greater than the ratio between the minimum tax and the statutory rate, he said. Such a measure would be “absolutely critical” to prevent foreign taxes from eroding the minimum tax, Shay added.

Finance Committee member Bill Cassidy, R-La., told reporters that he is undecided on the impact of a global minimum tax and doesn’t know whether multinational corporations would push back against it.

Another witness during the hearing, Itai Grinberg of Georgetown University Law Center, argued that reliance on subpart F as the main anti-base-erosion measure is the source of U.S. problems in an increasingly mobile corporate world.

"Countries around the world are shifting to greater source-based taxation and that is irreversible," Grinberg said. “If we continue to insist on the idea of worldwide residence country taxation with a foreign tax credit for U.S. multinationals . . . we will simply make our companies uncompetitive outliers subject to further foreign revenue grabs.”

Anticipating criticism that attempts to level the playing field might discourage foreign direct investment, Grinberg cited statistics showing that 97 percent of inbound investment was acquisition of U.S. businesses, rather than new investment. Such acquisitions do not necessarily create jobs when done primarily for tax reasons, he said.

Bret Wells of the University of Houston Law Center agreed that if the U.S. were to move to a territorial regime, the fisc would not find its salvation in stronger subpart F provisions. And a minimum tax would not address the advantages of foreign-based multinationals with profit-shifting strategies, he argued. Rather, Wells favored source-based taxation and base-erosion measures that would apply equally to U.S.-based and foreign-based multinationals.

“Our main base protection measure since 1962 is subpart F, that only applies to resident companies,” Wells said. “When I was vice president of tax [at BJ Services Co.], half of my peer group engaged in a corporate inversion transaction. Our executive officers were compensated based upon the relative performance versus our peer group. So I spent quite a lot of time trying to understand what were the relative tax advantages that
It should be clear to everyone here that a corporate inversion is a U.S. company saying, ‘I just want to be treated as a foreign-based multinational.”

Stephen Cooper contributed to this story.