

[Headlines - Trier's exit from Treasury could stymie candid public dialogue](#)

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Body

In addition to losing a brilliant tax mind and the experience needed to lead the guidance rollout of an enormously complicated new tax law, the sudden departure of Dana Trier from the Treasury Department could put a damper on tax officials' ability to candidly speak in public with the tax community when assessing possible regulatory solutions.

Trier, who was appointed Treasury deputy assistant secretary for tax policy in July 2017, is as well-known for his legal skills as he is for being opinionated, outspoken and highly quotable. His candor and deftness when discussing the most technical aspects of tax law - qualities that were deeply admired and appreciated by both the tax bar and tax press - ultimately proved to be too controversial, as Trier was forced to resign Feb. 23 following critical remarks he made about provisions in the Tax Cuts and Jobs Act.

During a Feb. 9 American Bar Association Tax Section meeting in San Diego, California, Trier addressed the challenges Treasury faces in developing guidance on the TCJA. During a discussion over the complex rules for deciding whether business income qualifies for the new [Internal Revenue Code section 199A](#) deduction for income from pass-through entities, Trier said that tax practitioners are "trained assassins" who look for planning opportunities when changes are made to tax law. He also called the TCJA a "tax feast" for lawyers.

When asked about the carried interest provisions under new [IRC section 1061](#), Trier said those particular provisions weren't a "paragon of sophistication."

Trier - who, true to his nature, openly discussed the reasons for his resignation with several news outlets - said his remarks upset Treasury Secretary Steven Mnuchin. Trier said he and his direct boss, David Kautter, assistant secretary for tax policy, met and agreed he should resign. Trier has taken full responsibility for the controversy his comments caused, saying he should've been more mindful that he was speaking as a Treasury official.

A department spokesperson didn't respond to a question on Treasury's plans for filling Trier's position.

-Demoralizing' departure -

The news of Trier's abrupt exit stunned many in the tax community. His appointment in July as deputy assistant secretary for tax policy had been met with widespread enthusiasm, as Trier is highly regarded for his work in private

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practice, academia and government - he helped implement the 1986 tax reform during his time at Treasury in 1988 and 1989. Trier was heavily involved in the development of the TCJA and was spearheading the implementation by Treasury and the Internal Revenue Service of the new rules.

For tax professionals, the timing of his departure couldn't come at a worse time, as they were relying on Trier's institutional knowledge and vast experience in issuing much-needed guidance.

Gregory F. Jenner, who served as Treasury acting assistant secretary for tax policy in 2004 and as deputy assistant secretary for tax policy from 2002 to 2004, told MLex® US Tax Watch that Trier's departure was "demoralizing." "The role he was going to play in the implementation process was a crucial one," said Jenner, who now heads up the Washington, DC, office of Stoel Rives.

"Given his incredible experience and knowledge of the tax code and tax system, I think everyone in the tax policy world was absolutely thrilled when Dana was named to his Treasury post," Jenner said. "We were probably even more thrilled after the tax bill passed and were comforted to know he would be leading the guidance process. Correspondingly, to hear that Dana has left is just as troubling."

At this point, it's unclear what impact Trier's exit will have on the timing and substance of TCJA guidance. His absence may be felt most acutely in the short term, given his role as the architect of the implementation process.

"Any time Treasury or the IRS loses someone with that knowledge, it certainly doesn't help with getting guidance out the door," said Joshua D. Odintz, the managing partner of Baker McKenzie's Washington, DC, tax department. "Dana's already spent a lot of time thinking through the issues and scoping out problems that could be addressed through guidance."

Nevertheless, the guidance team is likely well-equipped to pick up the slack, said Odintz, who previously held high-level positions with Treasury and the Senate Finance Committee. "There are many talented people at Treasury and the IRS," he said. "And the other people who were in the drafting sessions with Dana can pick up on that institutional knowledge and help move guidance along."

Harry L. Gutman, a former chief of staff for the Joint Committee on Taxation and former Treasury deputy tax legislative counsel, said Trier's departure may have a bigger impact on guidance needed for the domestic provisions of the TCJA, and less so on the international provisions - considered by many as presenting the most difficult and complicated areas for issuing guidance.

Traditionally, Gutman said the deputy assistant secretary for tax policy role oversees the operation of domestic tax issues, while the deputy assistant secretary for international tax affairs role (currently held by Chip Harter) has oversight of international tax issues.

"If Chip has primary responsibility for guidance on the international pieces of the TCJA, then Dana's departure probably won't put a big block in that part of the process," said Gutman, who is now of counsel at Ivins, Phillips & Barker. "But surely with respect to business tax in general, and to the extent Dana as a seasoned tax practitioner can identify other issues, it's going to be a huge loss."

Jenner agreed that Dana's input on the domestic provisions would have been invaluable. "One of the things I think is being overlooked is how pervasive the 199A deduction will be," he said. "It is a poorly conceived and drafted provision that will affect virtually every business that is not publicly traded. It would have been good to have Dana involved."

- A chilling effect? -

While Trier's departure will no doubt create a big void at Treasury, the circumstances surrounding his resignation may have a longer-lasting effect on how Treasury interacts with the tax community in public settings.

Tax conference audiences appreciated Trier's speaking engagements because he had no hesitation in addressing shortcomings in tax laws and regulations and sharing his thoughts on possible solutions. Gutman said that while

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Trier's colorful tone departed from the more subdued approach taken by most senior Treasury officials, the ability of officials to communicate the government's thinking on difficult issues has always been a critical factor in promoting an open debate on tax policy.

"For a piece of legislation like the TCJA, it's extremely useful for folks in the guidance process to convey how they're identifying problematic issues and what options they're considering to deal with them," he said.

Trier may have breached etiquette by not taking a more circumspect approach, but the penalty he suffered greatly exceeded his crime, said Gutman. "What he said was true, and sometimes there are consequences to telling the truth," he said. "That said, I think this was an overreaction on the Treasury secretary's part. The people Dana was talking to were tax professionals at an ABA luncheon. He wasn't telling them anything they didn't know - but hearing it from someone who was involved in the [TCJA] drafting process and really has his finger on what he perceives to be deficiencies adds another layer of insight and comfort."

Trier's resignation could put a damper on that public dialogue. "I think some Treasury people will be loath now to even introduce that kind of discussion in any kind of public forum," said Gutman.

Excising the public from the debate over how best to address tax law deficiencies could have far-reaching consequences. If Treasury officials are reluctant to share their thinking at public events, tax professionals may have no choice but to seek a private audience with Treasury. Such a scenario conjures up images of a government making tax law in secret - an outcome that benefits no one in the tax rulemaking process.

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