

**ABA Section of Taxation
2016 May Meeting
May 12, 2017**

Foreign Activities of U.S. Taxpayers
Impact of Tax Reform on U.S.
Multinationals

Panel I

- Moderator
 - Marc Gerson, Member, Miller & Chevalier Chartered
- Panelists
 - Ryan Abraham, Senior Tax Counsel, Business and International (Minority Staff), Senate Committee on Finance
 - Kara Getz, Chief Counsel (Minority Staff), House Committee on Ways and Means
 - Mark Prater, Deputy Staff Director/Chief Tax Counsel (Majority Staff), Senate Committee on Finance

Panel II

- Moderator
 - Marc Gerson, Member, Miller & Chevalier Chartered
- Panelists
 - Arlene Fitzpatrick, Principal, Ernst & Young LLP
 - Viva Hammer, Legislation Counsel, Joint Committee on Taxation
 - Janice Mays, Managing Director, PwC

Post-Election Review

- First time Republicans control the White House, Senate, and House since 2006
- Senate
 - 2016: 54 Republicans/46 Democrats (including two Independents)
 - 2017: 52 Republicans/48 Democrats (including two Independents)
 - No 60-vote “supermajority” needed to defeat a filibuster although reconciliation vehicles are available
 - 2018 mid-term election preview
 - Eight Republicans up for reelection; 25 Democrats (including two Independents) up for reelection

Post-Election Review

- House

- 2016: 247 Republicans/188 Democrats

- 2017: 237 Republicans/193 Democrats/5 vacancies

- Vacancies: Rep. Xavier Becerra (D-CA) (Calif. AG), Rep. Mick Mulvaney (R-SC) (OMB Director), Rep. Mike Pompeo (R-KS) (CIA Director), Rep. Tom Price (R-GA) (Sec. HHS), Rep. Ryan Zinke (R-MT) (Sec. Interior)

Senate Committee on Finance

- Senator Orrin Hatch (R-UT) remains Chairman
- Senator Ron Wyden (D-OR) remains Ranking Member
- Departed members
 - Senator Dan Coats (R-IN) (retired)
 - Senator Charles Schumer (D-NY) (Senate Minority Leader)
- New members
 - Senator Bill Cassidy (R-LA)
 - Senator Claire McCaskill (D-MO)
- 2018 mid-term election preview
 - 11 members of the Committee (2 Republicans, 9 Democrats) are up for reelection

House Committee on Ways and Means

- Rep. Kevin Brady (R-TX) remains Chairman
- Rep. Richie Neal (D-MA) replaces Rep. Sander Levin (D-MI) as ranking member
- Departed members
 - Rep. Xavier Becerra (D-CA) (California Attorney General)
 - Rep. Charles Boustany (R-LA) (unsuccessful Senate run)
 - Rep. Bob Dold (R-IL) (lost reelection)
 - Rep. Jim McDermott (D-WA) (retired)
 - Rep. Tom Price (R-GA) (Secretary HHS)
 - Rep. Charles Rangel (D-NY) (retired)
 - Rep. Todd Young (R-IN) (won Senate seat)

House Committee on Ways and Means

- New members
 - Republicans: Reps. Mike Bishop (R-MI), Carlos Curbelo (R-FL), David Schweikert (R-AZ), Jackie Walorski (R-IN)
 - Democrats: Reps. Judy Chu (D-CA), Suzan DelBene (D-WA), Brian Higgins (D-NY), Terri Sewell (D-AL)
- Announced retirements (end of 2018)
 - Rep. Lynn Jenkins (R-KS)
 - Rep. Sam Johnson (R-TX)
 - Rep. Kristi Noem (R-SD) (running for Governor)
 - Rep. Jim Renacci (R-OH) (running for Governor)

The Trump Administration

- Treasury Department
 - Steve Mnuchin, Secretary of the Treasury
 - Vacant, Assistant Secretary (Tax Policy)
 - *Politico* reports that David Kautter of American University will be named for the position
- National Economic Council
 - Gary Cohn, Director
 - Shahira Knight, Special Assistant to the President for Tax and Retirement Policy
- Internal Revenue Service
 - John Koskinen, Commissioner (term ends November 12, 2017)

Business Tax Reform Proposals

- House Republican Tax Reform Task Force “Blueprint” (June 2016)
- Senate Tax Proposals
- The Trump Administration

House Republican Blueprint: Major Business Components

- 20% top corporate rate
- 25% top pass-through rate
- Repeal of corporate AMT
- Full expensing
- Repeal of business deductions and credits (other than R&D)
- Repeal of net business interest expense deduction (undetermined special rule for financial services companies)
- Territorial system (dividends from foreign subsidiaries exempt from U.S. tax)
- Deemed repatriation of foreign earnings (8.75% cash/3.5% non-cash investments)
- Repeal of subpart F (other than foreign personal holding company rules)
- New border adjustment mechanism to exempt exports and tax imports

Senate Tax Proposals

- Senate Finance Committee Chairman Hatch (R-UT) has been working on a corporate integration discussion draft although release date is uncertain
 - Proposal to eliminate double taxation of corporate earnings through a dividends paid deduction at the corporate level
 - Treatment of tax-exempt and foreign shareholders (i.e., potential corporate-level withholding tax on dividends)?
- Potential that prior proposals (2012 Enzi international reform bill, 2014 Camp tax reform bill) are considered

President Trump: Business Campaign Tax Proposals

- 15% top corporate rate
- 15% top pass-through rate (may only apply to retained earnings)
- Repeal of corporate AMT
- Optional full expensing election but loss of interest expense deduction for manufacturing companies
- Repeal deferral
- Retain worldwide system
- 10% tax on deemed repatriation of previously untaxed foreign earnings

Pending Administration Tax Reform Proposal

- Administration is not bound by any timing, format, level of detail, revenue neutrality, scoring conventions, etc.
- Administration could put forward a “wish list” of tax relief measures and leave the determination of revenue offsets to Congress

Design Elements for Corporate Tax Reform

- Lower corporate rate
- Transition tax relating to accumulated offshore earnings
- Limits on interest expense deduction and other anti-base erosion measures
- Dividend received deduction for foreign dividends
- Investment incentives

Tax Planning in a Tax Reform Environment

- Current uncertainties must be considered and evaluated in thinking through planning alternatives
- Uncertainty as to scope
 - Ultimate legislation may represent a fundamental shift from a corporate income tax to a cash flow tax, as proposed by the Blueprint, or may be more incremental in nature
 - International tax reform may be fundamental (border adjustment mechanism) or incremental (territoriality)
 - Some corporate tax expenditures may be retained, limiting the rate reduction that can be achieved
 - Application of new system to categories of entities or transactions (*e.g.*, financial services) is uncertain

Tax Planning In A Tax Reform Environment

- Uncertainty as to timing
 - Timing of release of legislation is uncertain but it is likely to include proposed effective dates, measurement dates, etc. that will impact planning opportunities
 - Dates are necessary to derive a revenue estimate for the legislation
 - Regardless of future date of enactment, relevant dates included in initial -released legislation likely to remain to prevent “gaming” (and revenue loss)
 - Some planning opportunities may lapse as a result of the release of the initial legislation
- Uncertainty as to transition
 - Treatment of basic tax attributes from current system, including basis, inventory accounts, NOLs, AMT credits, OFLs and ODLs, foreign tax credits, must be determined
 - Any final legislation will include transition rules; targeted exemptions are not expected

Tax Planning In A Tax Reform Environment

- Direction of tax reform is toward lower rates of tax on income and limitations on deductions and credits
 - General tax planning principles (defer income, accelerate deductions, accelerate use of tax attributes) therefore become even more important in a tax reform environment
 - Value of current attributes – such as basis, NOLs, AMT credits, ODLs, and foreign tax credits – may be reduced, phased out, or eliminated in transition to a new system
 - Possible tax reform is one of several factors to consider but it should not be the only factor
 - Potential impact of proposed effective dates, measurement dates, etc., in initial-released legislation should be considered

General Domestic Tax Planning

- Defer income, accelerate use of deductions, credits, and attributes
- Defer capital expenditures in light of potential enactment of full expensing
 - Treatment of basis in existing business assets?
- Rethink financing structures in light of potential repeal of business interest expense deduction
 - Strategies depend on transition rules considered (*e.g.*, deduction for interest with respect to pre-existing “grandfathered” debt vs. phase out of deduction over period of years)

General International Planning

- Preparing for a territorial system
 - Treatment of attributes (foreign tax credit carryforwards, OFLs, ODLs)
 - Supply chain planning
- Preparing for border adjustment mechanism or some alternative?
 - Review supply chains and pricing models
- Repatriation
 - Mandatory repatriation almost certain to move forward in some form
 - Repatriation planning depends on mechanics of approach
 - Rate(s) of tax on deferred foreign earnings
 - Measurement of deferred foreign earnings and treatment of deficits
 - Treatment of foreign taxes
 - Basic planning
 - Accelerate investment in foreign business assets
 - Accelerate use of foreign tax credits
 - Defer repatriation of low-taxed deferred foreign earnings

Transition Tax Relating to Accumulated Offshore Earnings

House Blueprint	2014 Camp Proposal	Enzi 2011	Trump Campaign
<ul style="list-style-type: none"> • 8.75% on accumulated foreign earnings held in cash or cash equivalents • 3.5% on all other accumulated earnings • Tax liability payable over an eight-year period 	<ul style="list-style-type: none"> • 8.75% on accumulated foreign earnings held in cash or cash equivalents • 3.5% on all other accumulated earnings • Tax liability payable over an eight-year period • Eligible for offset from current or carryforward foreign tax credits • Overall foreign loss recapture inapplicable 	<ul style="list-style-type: none"> • 10.5% elective tax on pre-effective date foreign earnings, which can be spread over a period of up to eight years (with interest) • Does not apply to 10/50 companies • Pre-effective date foreign earnings that are not covered by such election are subject to full US tax reduced by any available foreign tax credits (FTCs) when distributed or deemed included under subpart F rules 	<ul style="list-style-type: none"> • 10% tax on the deemed repatriation of previously untaxed foreign earnings