Proposed U.S. Corporate Tax Reform

by Rob Bossart

With President-elect Donald Trump's inauguration on January 20, 2017, the Republican Party will control the White House, the U.S. House of Representatives ("the House"), and the U.S. Senate (the Senate). Since both Democrats and Republicans have discussed the possibility of potential corporate tax reform in 2017, even with some differing ideas, it is likely that some corporate tax reforms will become enacted next year.

All United States tax legislation must start in the House, and Speaker Paul Ryan has pursued trying to put together a group of reform ideas over the past year. Likewise, President-elect Trump has already published some of his own ideas on the subject. Therefore, what follows is an overview of key competing ideas, where details will be subject of both Congressional and President-elect Transition Team discussions over the next two months and 2017. Some areas discussed include:

Top Corporate Tax Rate: The top corporate tax rate currently is 35%, the highest in the world. The House favors a top rate of 20%, while the Trump plan calls for a top rate of 15%. In addition, the Trump plan would apply this top corporate tax rate to both large and small businesses that want to retain their profits inside the business. For example, businesses that are Limited Liability Companies ["LLCs"] currently are not taxed on their profits at the entity level. Rather, the profits are passed on to their members [shareholders]. If those members are individuals, then the profits are taxed at the individual member's tax rate, which could be as high as 39.6% under current U.S. individual tax rates. Thus, the Trump plan would reduce taxes for all small businesses, whether incorporated or not, as well members of any size LLC to 15%. Both the House and in-coming White House believe that reducing the top corporate tax rate will make the United States more competitive with both emerging markets and competitors in countries like Japan and China.

Capital Investment: Both the House and in-coming White House favor some form of immediate deductibility of capital expenditures. The House prefers allowing businesses to immediately and fully write off capital investments. The Trump plan favors allowing firms engaged in manufacturing in the United States to elect to expense capital investment if the election simultaneously causes the loss of the deductibility of interest expense. Then if an election is not revoked within 3 years, it becomes irrevocable.

Non-U.S. Income: The House wants to shift to a "territorial" system of international taxation, whereby U.S. companies would not be taxed on income earned overseas. Their plan would tax companies based on the location where goods are sold. However, the question for the House plan then becomes what happens to the billions/trillions of funds already overseas that have not yet been repatriated? Here, the Trump plan has an answer. The Trump plan provides for a "deemed repatriation" of corporate profits held offshore at a **one-time** tax rate of 10%. However, the question for the Trump plan then becomes what happens going forward?

Clearly, there will be much to discuss and many details to work out. However, it is also clearly possible that 2017 will be a year of significant corporate tax reform in United States. One question is whether that tax reform will become effective in 2017 or 2018? I look forward to keeping CTA Members informed so that we can convert any problems potentially raised into opportunities for our clients.