

International Tax Proposals

114th Congress

President Obama's FY 2016 Budget

Robert A. Ladislaw, Esq.
Solomon Blum Heymann LLP

Proposed Legislation Is Relevant

- ❖ Common Ground between Republicans and Democrats
- ❖ Some proposals come up repeatedly in session after session
- ❖ Clients will ask about proposals that might impact them
- ❖ Congress needs to find revenue
- ❖ Possibility that one party would control Congress and the Presidency



Sources of Proposals

- ❖ President Obama's FY 2016 Budget Proposal with Treasury Explanation
- ❖ Legislation formally introduced in House or Senate
- ❖ Legislative proposals not formally introduced
- ❖ Sen. Hatch Report: *Comprehensive Tax Reform for 2015 and Beyond*

International Tax Reform

Overview of Common Elements of D and R Proposals

- ❖ Repatriation



- ❖ Territorial taxation for U.S. based multi-nationals and other businesses
- ❖ Subpart F – permanent active financing exemptions
- ❖ Subpart F – permanent look-through exemptions
- ❖ Carried interest

Area of Potential Agreement

Repatriation to Pay for Highway Trust Fund Bill

- ❖ “Repatriation” - a one-time lower tax on earnings of foreign subsidiaries accumulated offshore
- ❖ Also called a “tax holiday”
- ❖ Highway Trust Fund must be renewed by May 31
- ❖ Bipartisan support for using repatriation to pay for the Highway Trust Fund
- ❖ Optional vs. Mandatory



Area of Potential Agreement

Repatriation to Pay for Highway Trust Fund Bill (continued)

- ❖ Obama - Mandatory repatriation with 14% tax
- ❖ Sen. Paul [R], Sen. Boxer [D] - Optional repatriation with 6.5% tax
- ❖ Rep. Delaney [D] - Mandatory Repatriation with 8.75% tax
- ❖ Sen. McCain [R] and Rep. Franks [R] – Optional repatriation with 8.75% tax, use of tax receipts not specified
- ❖ Other D and R politicians support use of repatriation to pay for a Highway Trust Fund bill

Common Tax Reform Elements

Repatriation with Territorial Taxation

- ❖ Obama - mandatory repatriation with conversion to an expensive form of quasi-territorial taxation
- ❖ Rep. Nunes – proposes 5% tax on mandatory repatriation with conversion to territorial system for all businesses
- ❖ Hatch Report – supports a territorial tax system for businesses
- ❖ House FY2016 Budget Resolution calls for “transition away from a worldwide tax system to a more competitive international tax system.”

Common Tax Reform Elements

Subpart F

- ❖ Permanent Active Financing Exemption and Permanent Look-Through Exemption
- ❖ Both included in Obama FY 2016 Budget
- ❖ Active Financing Exemption - H.R. 961 has bipartisan sponsorship
- ❖ Look-through Exemption – H.R. 1430 has bipartisan sponsorship

Obama FY 2016 Budget Proposal

Details

- ❖ 14% tax on mandatory repatriation of earnings
- ❖ 19% per-country minimum tax, with credit for 85% of local effective tax rate
- ❖ Minimum tax would also apply to income of branches
- ❖ Repeal CFC rules for investment in U.S. property
- ❖ Keep Subpart F anti-deferral regime with modifications

Obama Proposal

Details (continued)

- ❖ Subpart F – new category for “digital income”
- ❖ Subpart F – permanent exception for active financing income **
- ❖ Subpart F – permanent look-through exception **
- ❖ No capital gains on sale of CFC to the extent earnings previously taxed
- ❖ Transfer pricing for intangibles
- ❖ “Stateless Income” - restrict use of hybrid and reverse hybrid arrangements

Obama Proposal

Details (continued)

- ❖ Carried interests – treat as ordinary income which could change source to U.S.
- ❖ Interest expense – limitation based on the “financial reporting group”
- ❖ Expand inversion rules
- ❖ Sale of a partnership interest would be ECI, subject to 10% withholding
- ❖ Tax credit for “insourcing” a U.S. trade or business
- ❖ Denial of deductions for “outsourcing” an existing U.S. trade or business

Obama Proposal

Details (continued)

- ❖ Exempt foreign pension plans from FIRPTA
- ❖ Expatriation – exempt certain individuals who were born dual citizens and left U.S. prior to reaching age 18 ½
- ❖ Other – insurance companies, oil and gas companies, foreign tax credits

Rep. Nunes (R) Proposal

Details

- ❖ Moves to territorial tax system for all business income (not just corporations)
- ❖ Mandatory repatriation - 5% tax
- ❖ Maximum 25% rate on business income for all entities
- ❖ Businesses would not be taxed on financial receipts (dividends and interest)
- ❖ Repeals corporate AMT

Rep. Nunes (R) Proposal

Details (continued)

- ❖ Business interest expense disallowed
- ❖ Immediate write-off for capital expenditures
- ❖ Individuals – net interest income taxed as qualified dividends
- ❖ Tax Foundation estimates revenue neutral based on dynamic scoring

Other Republican Proposals

- ❖ Estate tax repeal with step up in basis at death retained – H.R. 1105 passed House
- ❖ Residence based taxation for U.S. citizens – Hatch Report
- ❖ FATCA repeal and repeal of reporting requirements for Passive Foreign Investment Companies and foreign trusts – S. 663 from Sen. Paul
- ❖ Flat Tax with Estate and Gift Tax Repeal – H.R. 1040
- ❖ Child tax credit not refundable for individual taxpayers electing foreign earned income exclusion – H.R. 1892

Other Democratic Proposals

- ❖ Stop Tax Havens Abuse Act would strengthen FATCA, add international reporting requirements – H.R. 297 with 41 D co-sponsors and S. 174
- ❖ Offshoring Prevention Act – H.R. 305 and S. 162
- ❖ Free trade with Cuba Act would terminate the denial of the foreign tax credit for taxes paid to Cuba – H.R. 403
- ❖ Stop Corporate Inversions Act of 2015 – H.R. 415
- ❖ Corporate Tax Dodging Prevention Act of 2015 – H.R. 1790 and S. 922
- ❖ Excise tax on securities transactions – H.R. 1200