International Tax Proposals

114th Congress
President Obama's FY 2016 Budget

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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



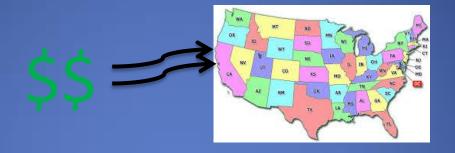
Sources of Proposals

- ❖ 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 quasiterritorial 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 <u>all</u> 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