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From the Editor:

Camp Plan Sketches Out Broad Corporate Tax Reform

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Although there has been a lot of talk about tax reform and even some plans put forward over the last year, the corporate tax reform draft offered by House Ways and Means Chair Dave Camp is probably the first serious shot in the war to overhaul at least part of the federal tax system. Camp's discussion draft proposes lowering the corporate rate to 25 percent and moving U.S. international tax rules toward a territorial system. Importantly, Camp's plan calls for the reform to be revenue neutral and acknowledges the need to cut corporate tax expenditures to achieve this goal.

The Camp proposal is not complete, and some details are missing. Those details, including how to pay for the proposal, will cause the business community to be much less supportive of the plan, despite the rate cut and territorial system, according to Martin Sullivan. Ending the lockout effect, which keeps U.S. multinationals' cash in foreign jurisdictions, is the most important part of the Camp plan, Sullivan writes. Sullivan discusses the five revenue-raising components of Camp's draft, including the 95 percent deduction limitation, the treatment of branches, taxes on accumulated earnings, limits on domestic interest deductions, and limitations on benefits for low-tax foreign income. He predicts that lobbyists will target the 95 percent limit and the treatment of branches in particular as the Camp plan is discussed over the next year. (For Sullivan's analysis, see p. 655.)

The Camp plan is important. After months and months of talking about corporate tax reform, the Obama administration has produced nothing tangible. Treasury's rumored white papers and reports are nowhere to be seen. It is looking less likely that the president will be the driving force behind any tax reform effort, even if he survives the 2012 election. But Camp is likely to be Ways and Means chair for now. And if the Republicans retake the Senate and the White House next year (or even just the Senate), Camp's proposal is likely to be the basis for tax reform in 2013. While Sen. Ron Wyden and Rep. Paul Ryan might have grander plans, and supercommittees and task forces might toy with impossible-to-implement reform proposals, Camp's more limited vision will probably be the starting point for corporate tax reform.

Commentary

The taxation of employer-provided cellphones has long been criticized as overly cumbersome and unnecessary. In the past, the IRS required extensive documentation showing how cellphone usage was divided between personal and business purposes. However, recent guidance reversed this position, and the IRS now allows employers to provide cellphones and similar equipment to employees on a nontaxable basis. Adam Cohen and Joanna Myers analyze the impact of the guidance and pose questions regarding the taxability of the devices (p. 717). The guidance exempting employer-provided cellphones from tax was welcome, but the IRS will face questions about what types of devices qualify for nontaxable treatment, according to Cohen and Myers. They also write that businesses that reimburse an employee for a cellphone must still consider whether the reimbursements are taxable and what documentation requirements must be satisfied.

Warren Buffett's op-ed earlier this year and President Obama's adoption of the so-called Buffett rule have not really softened Republican opposition to tax increases on high-income earners. The Buffett rule has, however, become something of a rallying cry for those who advocate for more progressivity in the tax code. Even adoption of the Buffett rule would not go far enough to restore progressivity, according to Samuel Thompson (p. 705). In his special report, Thompson calls for adoption of new 40, 45, and 50 percent rate brackets, ordinary income treatment for dividends received by high-income taxpayers, and reinstatement of the 20 percent maximum rate for capital gains. Adoption of these proposals would help turn the tide in the class war being waged against low- and middle-income taxpayers, Thompson concludes.

Mychel Russell-Ward agrees with Thompson that more must be done to make the income tax progressive. She discusses how the Buffett rule could be implemented using the AMT and a heavier estate tax burden (p. 744). Russell-Ward also proposes using a sliding scale of tax credits when calculating AMT liability. If the estate tax were returned to 2009 levels and the AMT affected the correct population of taxpayers, the code would come close to conforming to Obama's Buffett rule, she concludes.

The compromise between congressional Republicans and Obama at the end of 2010 set the estate tax exemption at $5 million. This will result in far fewer estates being subject to the tax. When an estate is taxable, however, executors have a strong incentive to minimize the value of an asset whose value is uncertain, according to Jay Soled and Richard Schmalbeck (p. 733). They argue that the tax rule for assigning basis to assets inherited from a decedent is conceptually defective and costly from a revenue perspective. Because fewer estates are now subject to the tax, many assets within estates are receiving higher bases, which costs the government an estimated $8 billion annually, Soled and Schmalbeck write. They conclude that a broad-based estate tax provides an ancillary income tax benefit by curtailing abuse of the valuation provisions of section 1014.

The forgiveness of a subsidiary's debt is a common occurrence. If this cancellation of indebtedness is a contribution to capital, there is no COD income. Recent IRS field service advice treating a capital contribution of debt by a foreign parent as a constructive payment resulting in withholding is inconsistent with the provisions of section 108(e), according to Robert Liquerman and Alexandra Yeadon (p. 725). They discuss three field service advice memoranda issued in the late 1990s, along with other IRS guidance, showing how this inconsistency occurs.

At the recent ABA Section of Taxation meeting in Denver, OPR Director Karen Hawkins discussed how she had asked Appeals to refer cases to her office involving taxpayers who escaped a section 6662 penalty because of reliance on a tax adviser. Hawkins argued that in the wake of *Canal*, OPR had a duty to investigate whether the tax advisers who provided the discredited advice performed their due diligence. Kip Dellinger writes that *Canal* may have been wrongly decided and has caused much dismay in the practitioner community (p. 747). Return preparers outside the Big Four frequently write advice on a transaction and then help with its implementation, and OPR and the IRS should recognize that and not tailor their methods and enforcement to only large-firm practitioners, Dellinger writes. He laments that the IRS often assumes that documentary standards at all levels of tax practice are formal and that all taxpayers can afford to pay hundreds of thousands of dollars for tax advice. He concludes that the IRS needs to remember that the overwhelming majority of tax professionals are a productive and positive force for effective tax administration.

When a contingent fee employment lawsuit settles and the recovery is solely wages, questions can arise about how to treat the payment of legal fees. Robert Wood writes that the Supreme Court's decision in *Banks* resolved a split among the circuits on this issue and held that legal fees constitute income to the client (p. 751). The decision caused a great deal of consternation, but was probably correctly decided, according to Wood. However, there are many exceptions to this treatment, and how they should be addressed is not clear, Wood writes. He concludes that the tax problems can be daunting because withholding on legal fees paid to counsel is impracticable.

Herman Cain's 999 plan purports to simplify the tax code and make it easier for millions of taxpayers to comply with their obligations. In reality, it would function as a reverse Robin Hood plan, robbing from the poor to cut taxes for the rich, according to Stewart Karlinsky (p. 721). He supports a much easier to implement method for simplification: prepopulated returns, which have been successfully used in California. He argues that the program could be put in place without congressional approval and with comparatively low costs. Karlinsky acknowledges that limited IRS resources and conservative opposition to making paying taxes painless would be difficult problems to overcome.

In Of Corporate Interest, Robert Willens discusses how a recent IRS ruling found that cash may no longer be a nonidentical asset when testing whether investment company transfer prohibitions apply (p. 755). Charles Rettig breaks down a typical IRS information document request for an undisclosed foreign account in the latest Tax Controversy column (p. 759). He encourages taxpayers not to wait to receive an IDR before gathering the necessary documentation and considering how to respond. ■

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