

### Give Me a Break: Tax Reform And Your Next President

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Well, debate season has begun. The countdown has started. Last week's first presidential debate had quite a bit of tax talk. Tax reform got a lot of play, with GOP candidate Mitt Romney saying his cap on deductions would not affect middle-income taxpayers and that his proposals would be revenue neutral.

President Obama also promised to protect those taxpayers, saying his administration has reduced their taxes by about \$3,600. He mostly stuck to the familiar, though, saying his reform would focus on reducing oil and gas preferences and corporate giveaways. (For coverage, see p. 135.)

But much went unsaid by both candidates. Romney has yet to offer firm details of any plan for reform, but the corporate framework Obama introduced isn't meaty, either. And Obama's lackluster performance served only to strengthen claims that a lack of presidential leadership is hamstringing reform.

For instance, where was the president on Romney's controversial "47 percent" comments? The debate was a prime opportunity for him to throw Romney's words back at him. Perhaps he knows what Joseph Thorndike does: that Romney could spin his gaffe into an argument of shared responsibility. On p. 132, Thorndike writes that paying into the federal income tax system "plays a symbolic role in American society" — one that makes the tax's function as a revenue raiser possible. The idea that more people should pay into the system is not new, according to Thorndike. He writes that the idea of a shared burden is critical to taxpayer morale and the health of our tax system.

Perhaps all the talk of tax reform can be summed up best by Romney: "You don't just pick the winners and losers — you pick the losers."

Martin Sullivan might agree. His review of the 112th Congress shows that while lawmakers huff and puff about the need for tax reform, the overwhelming majority of the 700-plus bills they introduced would benefit only a narrow class of taxpayers (p. 119). His analysis suggests that even if Congress were to find a consensus and achieve reform, it would be incapable of leaving well

enough alone. Inevitably, lawmakers would return to tinkering with the code and reintroducing loopholes and carveouts.

#### Derivatives

Lee Sheppard has your cheat sheet on men's fall fashion and accounting methods for derivatives. She finds that, yes, fellas, you need to get on board with carrying a bag and that marking to market is the only answer for accounting for contingent payment swaps. Her analysis considers the history of notional principal contracts and asks what a functional definition of derivatives would look like. Turn to p. 121 for other tips on fashion and swaps.

#### Healthcare

Now that the Supreme Court has upheld Obamacare, the tax community is clamoring for guidance on how to apply aspects of the law. On p. 127, Shamik Trivedi focuses on the lack of guidance on the section 1411 net investment income tax. Practitioners say the uncertainty is unacceptable, given that the provision becomes effective January 1. Taxpayers and their advisers have no direction, and wild rumors have surfaced regarding what the tax will affect. Treasury officials have reassured the community that guidance will be out as soon as possible, but that still leaves everyone wondering if it will be soon enough.

#### Commentary

Speaking of Romney, on p. 205, Mitchell Oler and W. Eugene Seago analyze the candidate's theoretical effective tax rate on private equity gains from sales of corporate stock. They conclude that Romney pays no tax on gains when the actual and expected selling prices are the same and that he pays a substantial tax on windfall gains, but receives a substantial tax subsidy on losses.

On p. 173, John Mikesell examines VATs and retail sales taxes. He finds they are economically equivalent but differ in their administration, which changes how they function. Those differences create confusion and misconceptions in policy discussions and for lawmakers, the public, and sometimes even tax policy analysts. Mikesell attempts to bridge the misinformation gap by examining the critical administrative difference between the taxes and analyzes how that difference changes their administrative and compliance performance. He also uses a common metric for evaluating how coverage and rates have changed over time, as well as relative transparency and pricing effects. He

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clarifies elements in the case for and against VATs, and identifies lessons from VATs that can be applied to retail sales taxation.

The repair regulations are a hot topic lately. Although still in temporary form, they are expected to be finalized soon. In the first article on them this week, Lynn Afeman, James Atkinson, Carol Conjura, and Eric Lucas address whether companies may deduct or must capitalize costs related to the purchase, repair and maintenance, and disposition of tangible property. They find that implementation of the regulations has raised questions for taxpayers, and they answer some of those frequently asked questions (p. 193).

In the second article on the regs (p. 207), Donald Williamson makes the case for small businesses. He argues that the regs must include safe harbors for small businesses. Otherwise, those businesses will be unable — maybe even unwilling — to comply

with the new rules. He argues that safe harbors can be carved out of the regulations without sacrificing federal policy goals.

In TAM 201235011, the IRS eliminated the unearned premium reserve — and hence, accelerated the taxable income — of a nonlife insurer. Haskell Garfinkel and Mark Smith examine other taxpayers that could be affected by the IRS's analysis, finding that insurers that issue contracts for amounts that significantly exceed the amounts for which the contract risks may be reinsured are at greatest risk (p. 199).

In Woodcraft, Robert Wood offers the first of a two-part series on midco transactions. On p. 211, he argues that paying a combination of corporate- and shareholder-level taxes on the proceeds of a business sale is undesirable. For that reason, intermediary transactions are of interest. Wood looks at those transactions and considers the IRS's varied transferee liability assertions against participants. ■

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