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Tax reform off to a slow start

The Tax Council Policy Institute held a symposium in February titled “Tax Policy in Transition: Diverging Views in a Converging World.” The panelists discussed the full spectrum of ideas for reforming business taxes, including the destination-based cash flow tax advocated by House Ways and Means Chair Kevin Brady (R-Tex.) and the corporate integration regime supported by Senate Finance Committee Chair Orrin Hatch (R-Utah). They also discussed the process of getting tax reform done in today’s political environment.

Rep. Brady was the keynote speaker. Unfortunately, he made it clear that no legislation had been drafted as of that time, and none was expected before the summer.

Separately, JPMorgan CEO Jamie Dimon was quoted as doubting that tax reform could be completed this year, especially if Obamacare reform takes priority. On the other hand, Treasury Secretary Steve Mnuchin has promised tax reform by August.

That would track the timeline of ERTA in 1981—Congress seems to like getting tax legislation buttoned up by the August recess.

Although a few stand-alone bills have been filed to repeal the federal estate tax, such as H.R. 631, the “Death Tax Repeal Act of 2017,” few observers expect any movement on that score without comprehensive tax reform.

Estate tax filings grow

In February the IRS reported that there were 11,309 estate tax returns filed for those who died in 2013, compared to 9,447 returns filed for those who died in 2011, an increase of nearly 20%.

The largest asset class for these estates was publicly traded stocks and bonds, at \$45 billion. Some \$14.4 billion of assets was closely held stock, and \$5.4 billion was in tax-sheltered retirement plans. Interestingly, \$5.3 billion was in farm assets. The federal estate tax has long been argued to be a major impediment to the sustainability of family farm operations.

A majority of the estate tax returns in 2013 were nontaxable, continuing a trend. Some 6,610 returns owed no estate tax, either because of the marital deduction, the charitable deduction, or the fact that the estate was too small to be taxable and the return was filed solely to make a portability election.

Revised IRS publications

In February the IRS released Publication 559 (rev. 2016), “Survivors, Executors, and Administrators,” for use in preparing 2016 tax returns. Most of the information concerns the income tax—the decedent’s final return, the estate’s income tax return, income in respect of a decedent, distributions to beneficiaries and so on. Only three pages of the 47-page Publication were needed to cover estate and gift taxes. Presumably, those estates large enough to be concerned about transfer taxes will be managed by professionals.

A revised Publication 551 also was released, covering the basis of assets. It includes a brief section on the basis of inherited assets.

Estate tax repeal?

Two bills have been introduced in Congress to repeal the federal estate tax.

In the House, H.R. 451, the “Permanently Repeal the Estate Tax Act of 2017,” simply repeals Chapter 11 of the tax code, effective retroactively to January 1, 2017. No change is made to basis step-up at death, and the gift tax and generation-skipping transfer tax are left untouched by the bill.

The Senate has a more fully developed piece of legislation, S. 205, the “Death Tax Repeal Act of 2017.” This law would take effect upon passage, so only those estates of decedents who died afterward would avoid estate taxes. The GST tax also would be repealed, and the gift tax would be retained and modified. The top gift tax rate would be 35% on taxable transfers over \$500,000, and the current inflation-adjusted lifetime exemption of \$5 million would be retained.

The Family Business Estate Tax Coalition, which represents some 63 different lobbying groups, has endorsed the Senate bill.

Regulatory freeze

The IRS has been affected by President Trump’s executive order freezing new regulations and requiring the elimination of two regulations for every new one added. At the Federal Bar Association Section on Taxation tax law conference in Washington, D.C., Thomas West, acting Treasury assistant secretary for tax policy, reported that the Service continues to work on guidance internally, and he expressed hope that public releases would be possible soon.

West also reported that the IRS is actively working on tax reform, and he hoped that something could be passed this year. However, he also cautioned that IRS resources are strained, which could hamper their effectiveness in implementing any reforms that might be passed.
