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International Tax

United States Tax Alert

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Administration Releases FY2014 Budget and Treasury Releases Descriptions of International Tax Proposals in Greenbook

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On April 10, 2013, the Obama Administration released its FY2014 Budget and the Treasury Department released the General Explanations of the Administration's Fiscal Year 2014 Revenue Proposals (the "Greenbook"). The FY2014 Budget contains several carryover international tax proposals from the FY2013 Budget ("carryover proposals"). It also includes two proposals that have not been in prior Obama Administration budgets.

New Proposals

Minimum Tax on Foreign Earnings

Proposal description: The FY2014 Budget incorporates by reference the President's Framework for Business Tax Reform, released in February 2012 (the "Framework"), and it specifically references the Framework's proposed minimum tax on foreign earnings. While the Budget incorporates the Framework, neither it nor the Greenbook provides additional details or explanations of the proposals in the Framework.

The Framework proposes that "income earned by subsidiaries of U.S. corporations operating abroad must be subject to a minimum rate of tax." More specifically, "foreign income deferred in a low tax jurisdiction would be subject to immediate U.S. taxation up to the minimum tax rate with a foreign tax credit allowed for income taxes on that income paid to the host country." The Framework does not specify what the Obama Administration believes the minimum tax rate should be or whether there would be additional US taxation on these foreign earnings upon repatriation.

In addition to this minimum tax proposal, the Framework includes a proposal to disallow deductions for expenses related to moving production overseas and several carryover international tax proposals from earlier budgets.

Observations: The Framework could be viewed as the Obama Administration's response to tax reform proposals in Congress which include a shift to a territorial system of taxing offshore income. Rather than adopting territoriality, the Framework seeks to combat what the Administration perceives as incentives to shift income outside the United States, primarily by curtailing deferral and by imposing greater costs on transferring assets offshore. At the same time, the Framework encourages investment in the United States through a reduction in the corporate tax rate to 28% and with a variety of credits and incentives to encourage manufacturing and R&D.

Exempt Foreign Pension Funds from the Application of the Foreign Investment in Real Property Tax Act (FIRPTA)

Proposal description: FIRPTA generally imposes a tax on gains of foreign individuals or foreign corporations from the disposition of U.S. real property interests.[1] The proposal would exempt from the application of FIRPTA the gains of foreign pension funds derived from the disposition of U.S. real property interests. For purposes of this exemption, generally, a foreign pension fund would mean a trust, corporation, or other organization or arrangement that 1) is created or organized outside of the United States, 2) is exempt from income tax in the jurisdiction in which it is created or organized, and 3) substantially all of the activity of which is to administer or provide pension or retirement benefits. The Secretary would be granted authority to issue regulations necessary to carry out the purposes of the proposal, including whether for this purpose an entity or arrangement is a foreign pension fund or a benefit is a pension or retirement benefit.

The proposal would be effective for dispositions of U.S. real property interests occurring after December 31, 2013.

Observations: The proposal is part of the Administration's "Rebuild America Partnership" aimed at encouraging private investment in U.S. infrastructure.[2] U.S. pension funds are generally exempt from U.S. tax upon the disposition of U.S. real property investments. By exempting their gains from the disposition of U.S. real property interests, this proposal would put foreign pension funds on equal footing with U.S. pension funds and would therefore encourage foreign private investment in U.S. infrastructure.

Carryover Proposals

The descriptions of the carryover proposals in the Greenbook are nearly identical to those in last year's Greenbook, with effective dates updated to be December 31, 2013.

Revenue Estimates

FY 2014 Treasury Budget Proposal	
Proposal	**Revenue Estimate FY2014 (in billions)**
Defer deduction of interest expense related to deferred income	36.52
Determine foreign tax credit on a pooling basis	65.75
Tax currently excess returns associated with transfer of intellectual property offshore	24.0

[1] See section 897(c).
[2] http://www.whitehouse.gov/the-press-office/2013/03/29/rebuild-america-partnership-president-s-plan-encourage-private-investmen

Define intangibles for sections 482 and 367(d) to include workforce in place and goodwill	2.1
Disallow deductions for non-taxed reinsurance premiums paid to affiliates	6.2
Limit earnings stripping by expatriated entities	4.66
Modify tax rules for dual capacity taxpayers	10.96
Tax gain from the sale of a partnership interest on look-through basis	2.65
Prevent use of leveraged distributions from related foreign corporations to avoid dividend treatment	3.24
Extend section 338(h)(16) to certain asset acquisitions	.96
Remove foreign taxes from a section 902 corporation's foreign tax pool when earnings are eliminated	.39
Exempt certain foreign pension funds from the application of FIRPTA	-2.16
Repeal gain limitation for dividends received in reorganization exchanges	2.7
President's Framework for Business Tax Reform	Revenue neutral
Total for all international proposals	**157.97**