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Tax Reform: Human Resources and Global Mobility

October 2017

Setting the tax reform stage

Tax reform is a top priority for President Trump and Republican leaders in Congress. With major health care legislation almost certainly off the agenda for the remainder of the year, comprehensive tax reform is poised to take center stage as a key legislative focus.

Congressional Republicans, the President, and top Administration officials worked together over the summer to refine proposals and now the "Big Six" team of negotiators[1] has released a unified tax reform framework ("the framework"). The framework provides high-level guidance regarding the priorities for the tax reform process and it challenges the Congressional taxwriting committees to work out the details to make those priorities a legislative reality. Core elements include reducing corporate, passthrough, and individual tax rates and encouraging the "on-shoring" of profits and jobs to the US.

The potential impact of tax reform on US companies is a high priority issue and the effect to HR and global mobility programs should not be overlooked.

Top considerations and planning for human resources and global mobility

Refreshing global mobility strategy
Changes to individual income tax rates could have a direct impact on the cost of global mobility programs for companies that apply a tax equalization policy. Lower US tax rates, with no change in foreign tax rates, will result in a rebalancing between hypothetical and actual taxes, thereby impacting overall tax reimbursement costs. Whether this change will result in overall increase or decrease to a company's costs will depend on the mix of assignments into high-tax or low-tax countries. A holistic review of policies can help companies determine whether the structure and costs of global mobility are in-line with the company's business needs.

Analyze impact of reduced tax rates on rewards programs
As corporate tax rates are reduced, deductions become less valuable and companies may realize additional benefit by accelerating deductions to a higher tax year. Employee benefit and rewards plans may present several opportunities to accelerate business deductions; for example, accelerating the accrual of bonus payments and pre-funding Voluntary Employees Beneficiary Association Plans (VEBAs) each present opportunities to take deductions in a higher-tax year. Companies should analyze the potential impact of reduced tax rates on their rewards programs and review opportunities to enhance corporate tax deductions.

Consider impact of "on-shoring" of profits on rewards programs
The framework calls for switching from the current worldwide system, where all profits are subject to the US statutory rate upon repatriation regardless of where they were earned, to a territorial system that provides for a 100 percent exemption for dividends paid by a foreign subsidiary to a US parent. To transition to the new system, the framework proposes a one-time deemed repatriation that would subject existing foreign profits to US tax (at a to-be-determined but lower rate than the corporate rate). In light of these proposed changes, companies may want to analyze tax deductions associated with contributions and accruals under foreign pension arrangements to determine whether they can reduce the impact of any deemed repatriation. Additionally, with respect to equity programs, changes in the repatriation rules may cause a company to revisit cost-charging arrangements related to share plans and may create an opportunity to repatriate reimbursements in "real time." Under existing rules, such charge out and repatriation prior to share delivery may create some risk of taxation to repatriated reimbursement payments.

[1] House Ways and Means Committee Chairman Kevin Brady, R-Texas, Senate Finance Committee Chairman Orrin Hatch, R-Utah, House Speaker Paul Ryan, R-Wis., Senate Majority Leader Mitch McConnell, R-Ky., Treasury Secretary Steven Mnuchin, and National Economic Council Director Gary Cohn

Addressing timing around individual income inclusion relating to employee benefit and equity programs

In anticipation of potentially lower individual income tax rates, employees may be motivated to defer income to future tax years through delayed exercise of stock options or greater participation in deferred compensation programs. While the lower tax rates may present a tax planning opportunity for individuals, the increased deferral of income may also delay the corporate tax deductions related to that income, which could impact a company's ability to accelerate compensation deductions into a higher-tax year.

Monitoring changes to the Affordable Care Act (ACA)

Congress has made several attempts to repeal and replace the ACA; however, as these efforts have been unsuccessful to date, the ACA remains the law. In addition, the reporting requirements have been retained in each of the many bills that have considered repeal and replace. Identifying full-time employees based on the tax law and regulations can be complex and employers could face a significant liability for non-compliance with ACA requirements. Employers should continue to assess whether internal processes are adequate to determine the potential risk liability for each month of 2017 reporting.

Next steps

Tax reform will be one of Congress' highest priorities for the remainder of 2017, and possibly into the first quarter of 2018, as they work to enact significant legislation before the 2018 election cycle gets into high gear. Deloitte Tax LLP's Global Employer Services group will continue to publish updates as the legislative process progresses and new developments emerge. In the meantime, companies can begin to conduct impact analyses to assess the potential cost of these changes to their global mobility and rewards programs and analyze potential cash tax savings that could be realized through acceleration of corporate tax deductions related to employee benefit plans.

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