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Trump Releases Plan for Tax Reform

At a press conference held on April 26 U.S. Secretary of the Treasury Steven Mnuchin and National Economic Director Gary Cohn revealed the details of President Trump’s plan for tax reform. The highlights of the reform effort are as follows:

- Individual income tax brackets collapsed into three brackets at rates of 10 percent, 25 percent and 35 percent (currently the highest of seven marginal rates of tax for individuals is 39.6 percent).
- Increase the standard deduction to \$12,700 for single filers and \$25,400 for joint filers (the current standard deductions are \$6,350 for individuals and \$12,700 for joint filers).
- Eliminate itemized deductions and repeal other tax preferences, excluding the deductions for mortgage interest and charitable contributions.
- Reduce the corporate tax rate to 15 percent and pass-through entities to be taxed at the lower individual income tax rates; income from operations would be taxed at a rate of 15 percent.
- Eliminate the alternative minimum tax, estate tax and 3.8 percent tax on investment income.
- Implement a territorial tax system that does not tax U.S. corporations’ foreign earnings (U.S. companies’ earnings that are currently held abroad would pay a onetime repatriation tax, but the rate was not specified).
- No border adjustment tax was included in the proposal. The border adjustment tax is a component of congressional Republicans’ “A Better Way” tax reform blueprint.

More details on President Trump’s plan will be provided as they become available. See our prior coverage on tax reform here (<http://www.stradley.com/insights/publications/2017/03/tax-insights-march-8-2017>) and here (<http://www.stradley.com/insights/publications/2017/03/tax-insights-march-22-2017>).

Tax Court Rules Extension of Variable Prepaid Forward Contracts Is Not a Sale

The U.S. Tax Court held in *McKelvey, Estate of Andrew J. et al. v. Commissioner*, No. 26830-14; 148 T.C. No. 13 (<https://www.ustaxcourt.gov/UstcInOp/OpinionViewer.aspx?ID=11187>), that the execution of extensions of variable prepaid forward contracts (VPFCs) by an individual taxpayer constituted sales or exchanges of property under Section 1001 (section references are to the Internal Revenue Code of 1986, as amended), and that the open-transaction treatment afforded to the original VPFCs under Revenue Ruling 2003-7, 2003-1 C.B. 363 (<http://www.unclefed.com/Tax-Bulls/2003/rr03-07.pdf>) continues until the transactions are closed by the future delivery of the stock. (Revenue Ruling 2003-7 addresses whether entry into a prepaid forward contract results in an actual sale of stock under Section 1001 or a constructive sale under Section 1059.) In

McKelvey, the taxpayer entered into VPFCs with two investment banks in 2007. Pursuant to the terms of the original VPFCs, the investment banks made prepaid cash payments to the taxpayer, and the taxpayer was obligated to deliver variable quantities of stock to the investment banks on specified future settlement dates in 2008. The taxpayer treated the execution of the original VPFCs as open transactions pursuant to Revenue Ruling 2003-7 and did not report any gain or loss for 2007. In 2008, before the original settlement dates, the taxpayer paid consideration to the investment banks to extend the settlement dates until 2010. The taxpayer did not report any gain or loss upon the execution of the extensions of the VPFCs and continued the open-transaction treatment. The court further held that the taxpayer did not engage in constructive sales of stock in 2008 pursuant to Section 1259.

Pennsylvania Tax Amnesty Program Begins

The Pennsylvania Tax Amnesty Program established under Act 84 of 2016 (L. 2016, H1198) began on April 21 and will run through June 19. As described in our prior coverage (<http://www.stradley.com/insights/publications/2016/tax-insights-2016/tax-insights-september-21-2016>), during the 60-day period, the Pennsylvania Department of Revenue will waive all penalties and half of the interest for anyone who participates in the Tax Amnesty Program.

IRS Provides Automatic Changes List for Accounting Methods

The IRS released Revenue Procedure 2017-30 (<https://www.irs.gov/pub/irs-drop/rp-17-30.pdf>), which provides the List of Automatic Changes to which the automatic change procedures in Rev. Proc. 2015-13, 2015-5 I.R.B. 419, as clarified and modified by Revenue Procedure 2015-33, 2015-24 I.R.B. 1067, and as modified by Revenue Procedure 2016-1, 2016-1 I.R.B. 1, (or successor) apply. The following sections are added to the List of Automatic Changes by Revenue Procedure 2017-30 and provide additional changes in the method of accounting to be made under the automatic change procedures:

- Section 10.02, relating to organizational expenditures under Section 248.
- Section 10.03, relating to organization fees under Section 709.
- Section 21.18, relating to changes from currently deducting inventory to a permissible method of identifying and valuing inventories.

IRS Issues Guidance on PATH Act Changes to Depreciation Rules

The IRS issued Revenue Procedure 2017-33; 2017-19

I.R.B. 1 (<https://www.irs.gov/pub/irs-drop/rp-17-33.pdf>) to provide guidance under changes enacted in the Protecting Americans From Tax Hikes Act of 2015 (PATH Act) to Sections 179 and 168. The PATH Act amended Section 179 by, among other changes, (i) making permanent the treatment of qualified real property as Section 179 property under Section 179(f) and (ii) making permanent the permission granted under Section 179(c)(2) to revoke without the consent of the Commissioner of Internal Revenue any election made under Section 179 and any specification contained in that election. Revenue Procedure 2017-33 provides that for any taxable year beginning after 2014, a taxpayer may make a Section 179 election with respect to any Section 179 property without the commissioner's consent on an amended federal tax return for the taxable year in which the taxpayer places in service the Section 179 property.

The PATH Act amended Section 168(k) by, among other changes, (i) extending the placed-in-service date for property to qualify for the additional first-year depreciation deduction, (ii) modifying the definition of qualified property under Section 168(k)(2), (iii) adding Section 168(k)(6), which provides a phase down of the additional first-year depreciation deduction percentage for future taxable years, and (iv) adding Section 168(k)(7), which allows a taxpayer to elect not to deduct additional first-year depreciation for any class of property. To determine whether the acquisition date requirement is met, rules similar to the rules in Treasury Regulations Section 1.168(k)-1(b)(4) for "qualified property" or for "30-percent additional first year depreciation deduction" apply. However, in applying these rules, Treasury Regulations Section 1.168(k)-1(b)(4)(ii)(A)-(D) and (iv) do not apply (related to the definition of binding contract, self-constructed property and disqualified transactions). Generally, for purposes of the additional first-year depreciation deduction, rules similar to the rules in Treasury Regulations Section 1.168(k)-1 for "qualified property" or for "30-percent additional first year depreciation deduction" apply to Section 168(k)(2) and (3). Pursuant to Section 168(k)(6), the additional first-year depreciation deduction percentage of 50 percent is phased down beginning for qualified property placed in service after Dec. 31, 2017 (after Dec. 31, 2018, for property described in Section 168(k)(2)(B) or (C)). The rules for making the election under Section 168(k)(7) not to deduct the additional first-year depreciation are similar to the rules for making such election under Section 168(k)(2)(D)(iii) as in effect before the enactment of the PATH Act. As a result, the Section 168(k)(7) election applies to all qualified property that is in the same class of property and placed in service in the same taxable year.

The PATH Act amended Section 168(j)(8) by adding new Section 168(j)(8), which allows a taxpayer to elect not to apply Section 168(j) for any class of property. A Section 168(j)(8) election must be made by the due date, including extensions, of the federal tax return for the taxable year in which the taxpayer places in service the qualified Indian reservation property. Except as provided in the revenue procedure, the Section 168(j)(8) election must be made in the manner prescribed on Form 4562, Depreciation and Amortization, and its instructions.

The Treasury Department and the IRS anticipate issuing guidance regarding the extension and modification of the election under Section 168(k)(4) in a separate revenue procedure.



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