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Trump Tax Cut Cheat Sheet

By Robert W. Wood

Is tax reform really coming? With all the drama over this question since January, it is hard to say. Late last year, Donald Trump was elected president in what can only be described as an upset of historic proportions. Both before and after his election, he promised to take on health care, and to take on the tax code.

As it turned out, repealing the Patient Protection and Affordable Care Act, aka Obamacare, did not go so well, despite a Republican House and a Republican Senate. That has a tax impact too, since the Affordable Care Act is full of tax provisions, including the Cadillac excise tax, and the 3.8 percent net investment income tax, to name only two of many. How the health care debate will end remains unclear.

As for tax reform, immediately after Trump's election, individuals and companies alike were planning for big tax reform and lower rates. Many taxpayers pushed income from 2016 into 2017, assuming that taxes were going down.

As 2017 drags on, however, we aren't so sure. According to Republicans, the most certain change may be a corporate tax rate cut below the current 35 percent. As Trump put it, "The United States has the highest tax rate on business anywhere in the world." Viewed internationally, the 35 percent rate does seem to be an anachronism. Many U.S. companies go through corporate gyrations so that their 'headquarters' are really overseas.

Moreover, even if companies do not migrate away, they keep foreign profits — and the cash that goes with it — parked in offshore subsidiaries. Presently, there are said to me about $1.3 trillion dollars parked abroad by American companies. Apple alone has something like $230 billion that the IRS is not allowed to tax. If Apple brought it back to the United States, the IRS could tax it.

But if the 35 percent corporate rate is dropped, how low is low? White House economic advisor Gary Cohn suggested dropping below 23 percent. Trump wants a 15 percent rate, which seems almost impossible. Senate Finance Committee Chairman Orrin Hatch (R-Utah) has said that even 25 percent would be difficult.

Will there be a special tax rate for partnerships, S corporations, and LLCs? This has been a puzzling one, and its potential impact is big. Currently, something like half of all business income passes through pass-through entities. With no corporate tax, that means it is taxed once, at individual rates. So, if you cut individual tax rates, you cut the tax rates these business and investment vehicles pay.

At one time, Trump proposed a 15 percent rate of these flow-through entities. That prompted lots of talk about how every Uber driver would form a pass-through vehicle to pay lower taxes. The idea is still alive though, as we'll see.

Any tax reform is likely to push for faster write-offs for business. Immediate expensing is much more attractive than write-offs over time. So that is likely to expand. But how much more will be allowed? Small businesses can already expense up to $500,000 of capital equipment.

The most recent proposal from House Republicans is the Better Way Tax Plan. The proposal would replace the current corporate income tax with a cash flow tax. The idea would be to tax corporate "cash flow" income at 20 percent. It would allow immediate expensing of investment. Since companies must have workers, it would allow the deduction of wages.

Controversially, it would remove the deduction for interest expense. Many companies borrow heavily, and are used to deducting interest. Regarding monies from abroad, the proposal would allow a 100 percent exemption for dividends from foreign subsidiaries. For existing offshore cash, it would allow foreign earnings to be repatriated at rates of 8.75 percent and 3.5 percent.

What proposed tax cuts would impact individuals? The Republicans want to do away with many deductions, exemptions, and credits. The proposal would trim down the tax code's five tax brackets. Instead of topping out at 39.6 percent, there would be three brackets: 35 percent, 25 percent and 12 percent.

But some deductions would go. Indeed, on the chopping block might be virtually all itemized deductions, except for mortgage interest and charitable contributions. On the other hand, there would be a larger standard deduction, and a larger child tax credit.

One key feature that Republicans and President Trump agree about is the dreaded alternative minimum tax or AMT. The AMT in effect takes away the benefits of tax deductions, and *adds them back in* to your income. State and local taxes, large attorneys' fees, and numerous other legitimate tax deductions can get swept back in. Plus, AMT is notoriously hard to eye-ball. You have to run the calculations, which can make planning difficult.

The Republicans also want to eliminate the estate and gift tax. Trump agrees, but much of America may not. Hillary Clinton wanted to *increase* it, and so did Bernie Sanders. Presently, a married couple can give away $10.9 million tax free, before paying estate tax. Still, victims of the tax include small businesses that often do not plan around it.

Regarding Trump's 15 percent rate on small business, the Better Way Plan tries to meet him part way. After an allowance for reasonable imputation of wage income, it would subject small business pass through income to a maximum 25 percent tax.

Where will all of this end up? Comprehensive reform is long overdue, but it is not easy. Possible rate cuts suggest trying to push income into 2018 if you can. Conversely, some will try to accelerate tax deductions into 2017, when they are worth more. With all the usual year-end gyrations, let's hope those efforts do not end up the way they did at the end of 2016.

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