LAW360

Portfolio Media. Inc. | 111 West 19th Street, 5th Floor | New York, NY 10011 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Trump Tax Talk's Few Details Let M&A Uncertainty Persist

By **Chelsea Naso**

Law360, New York (August 30, 2017, 10:17 PM EDT) -- President Donald Trump's Wednesday speech calling for an overhaul of the tax code was light on details and offered little new information, leaving in place uncertainty in the merger and acquisitions market about exactly what changes may be coming for corporations and when they might be enacted.

The speech, delivered at a manufacturing plant in Springfield, Missouri, centered mainly on describing a need to overhaul the tax code to keep American businesses competitive. Rather than dive into the specific policy changes the president would like to see made, Trump touched on broader themes like the reduction of the corporate tax rate and removing financial and administrative impediments to repatriating capital.

The lack of specifics is expected to do little to quell uncertainty for U.S. companies as they — or their acquirers — attempt to calculate valuations or determine the most tax-efficient way to finance a transaction. And uncertainty, no matter what its cause, can weigh heavily on M&A.

"This whole notion of uncertainty is really kind of causing a fair degree of stagnation in the world," said Bernie Pistillo, a partner in Morrison & Foerster LLP'sfederal tax group. "Some people, because a transaction makes so much business sense, they'll go for it anyway. For other transactions, there's been some paralysis, because people keep thinking, 'I'm going to wait and see what happens.'"

The slow pace of getting tax legislation in motion has already spurred some companies to say publicly that they plan to hold off on deal-making until the future becomes a little more clear. Pfizer Inc. executives, for example, said this month during a quarterly earnings call with shareholders that they planned to wait on certain corporate deals until they have clarity on how any legislation will affect asset values.

During his speech, Trump called for a bipartisan 21st-century tax code that will make America more competitive with other developed nations. His vision includes eliminating loopholes and simplifying the tax code, as well as slashing the corporate tax rate to "ideally" 15 percent and easing the hurdles to repatriating offshore cash.

"[Other countries] are taking us, frankly, to the cleaners. So we must — we have no choice — we must lower our taxes," Trump said.

“We must reduce the tax rate on American businesses so they keep jobs in America, create jobs in America and compete for workers right here in America,” he added.

The president also called for the reduction of costs and administrative hurdles associated with repatriating revenue earned outside the U.S., which he said could bring trillions of dollars back into the U.S. economy.

“Large companies that do business overseas will often park their profits offshore to avoid paying a high U.S. tax if the money is brought back home,” he said. “By making it less punitive for companies to bring back this money and making the process far less bureaucratic and difficult, we can bring back trillions and trillions into the U.S. economy.”

The comments, however, offered little in terms of concrete details or timing, which will likely keep those already hesitant about deal-making due to potential tax changes firmly on the sidelines, noted Jasper Howard, a Hogan Lovells tax partner.

“I don’t think it’s likely to provide enough comfort to anyone who is sitting on the sidelines to say, ‘Okay, now I think everything is concrete, so let’s move forward,’” he said. “There’s likely to be winners and losers, and people have noted that taxes affect the value of what gets bought and sold.”

Trump’s comments in Missouri did not go beyond the one-page document released in April, which outlined the broad strokes of what the president hoped to accomplish with the tax code.

The section regarding corporate taxes consisted of four bullet points that call for a “15 percent business tax rate,” a “territorial tax system to level the playing field for American companies,” a “one-time tax on trillions of dollars held overseas” and the elimination of “tax breaks for special interests.”

More clarity or concrete action could spur a notable amount of M&A, however, if the broad themes Trump has presented bear out.

“M&A activity could definitely spike even just on the prospect that a tax reform bill is moving through Congress, even before its economic effects are seen or felt on companies’ balance sheets,” said Wilhelm Liebmann, leader of Dykema Gossett PLLC’s corporate finance group.

And an actual reduction of the corporate tax rate, even if not all the way to 15 percent, would pave the way for companies to quickly have access to more cash that had been earmarked for taxes.

“By lowering the tax rate, obviously companies would almost immediately have more disposable cash to throw at a potential M&A deal or bid,” Liebmann said. “One result of that could be a further heating up of the M&A market.”

Making it easier to repatriate offshore capital would likely have an even larger effect on M&A. Trump on Wednesday said he hoped to reduce the cost and bureaucracy surrounding repatriation, although it’s still unclear exactly how that would be administered.

Regardless, companies would be able to put a large amount of capital to work that was otherwise too expensive to access. They might use that extra cash to fund share buybacks or pay dividends to shareholders, but many companies are also likely to use that money to fund acquisitions or invest in U.S. projects.

“If that particular piece goes through, I imagine that will facilitate far more M&A by U.S.-based companies,” said Thomas May, a Baker McKenzie tax partner. “We kind of see even in the current situation they have to really go out of their way to get cash for acquisitions even though they may have a large piece of cash offshore that they feel they can’t access.”

There are still some potential changes out there that were not mentioned in Wednesday’s speech, though, such as the fate of interest expenses, May noted.

“It will be interesting to see what happens with interest expenses, and whether they allow a deduction for it. That makes an impact on whether to fund an acquisition with equity or debt,” he said.

--Additional reporting by Vidya Kauri. Editing by Brian Baresch and Jill Coffey.
