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# Trump's Corporate Tax Reform Poised To Fuel More M&A

By **Chelsea Naso**

*Law360, New York (April 28, 2017, 6:13 PM EDT)* -- The Trump administration rolled out an early outline for corporate tax reform recently, suggesting that a steep rate reduction and an incentive to repatriate offshore funds are in the works, changes that are expected to give companies access to more capital to do deals, experts say.

Treasury Secretary Steven Mnuchin and National Economic Director Gary Cohn on Wednesday confirmed rumors that President Donald Trump is sticking to his campaign promise to slash the current 35 percent corporate tax rate by 20 percent.

The proposal is still in its early stages, with the business reform section of the one-page document consisting 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."

Likely, the immediate impact will be uncertainty as companies are still unsure of the details behind the proposal or a timeline for their implementation.

"In the short run, perhaps some uncertainty as people wait to see what develops," said Robert Townsend, co-chair of Morrison & Foerster LLP's global mergers and acquisitions practice.

But in the long term, a reduction of the corporate tax rate and a one-time tax on capital held offshore by U.S. corporations, or a repatriation tax, are expected to free up capital that was either previously unavailable or too expensive to use in the U.S.

"We would expect to see an increase in domestic acquisitions by U.S. multinationals. They would have access to their cash that has been trapped overseas, so repatriation tax or deemed repatriation tax at a rate that is below 35 percent would allow companies, instead of having to borrow, to access that cash to make domestic acquisitions," said Joshua Odintz, a Baker McKenzie partner.

The Trump administration is also calling for a change to a territorial system, which would see only revenue generated in the U.S. taxed. Under the current system, all revenue earned by U.S.-incorporated companies, regardless of where it is earned, is taxed. That transition, combined with the reduction in the corporate tax rate, is expected to reduce tax-motivated inversion transactions, which see a U.S.-incorporated company become a subsidiary of a company incorporated in a more tax-friendly jurisdiction.

“The combination of those two would seem to be to make it very less likely that you would have future inversions that were driven principally by U.S. tax reasons,” Howard said.

While the broad strokes of the Trump administration’s plan for corporate tax reform may spur more M&A, it’s still unclear what the true effect a detailed plan, once it has passed through Congress, will have on particular industries and even corporate America in general.

“You don’t really know from the one page as to who the winners and losers are and what types of specific industries might be spurred by whatever specifics are of any eventual detailed legislation,” Howard said.

The document does not provide details on whether the administration plans to call for a change in the current tax treatment of carried interest, a regular topic on the campaign trail. Eliminating carried interest tax, for example, would allow the government to tax the income that flows to the general partner of a private investment fund like ordinary income, instead of at the lower capital gains rate of 20 percent. That would have a negative effect on how private equity funds and hedge funds, among other private investors, operate.

“The financial models of [leveraged buyout]-fueled M&A activity are very much based on the interest shield created by the leverage you put on the company. That could potentially put some chill on PE activity,” said Jonathan Talansky, a King & Spalding LLP partner.

The outline for the plan also offers no clarity on a recent headline-maker: a border adjustment tax, Howard noted.

“All this talk about a border adjustment tax for months and months, and the one-pager does not say that they’re going to push a border adjustment system, but it doesn’t say they’re not. So you don’t really know if it’s still on the table or not,” he said.

The proposal acknowledges that it is still a work in progress, noting that the Trump administration plans to “hold listening sessions with stakeholders to receive their input and will continue working with the House and Senate to develop the details of a plan that provides massive tax relief, creates jobs and makes America more competitive — and can pass both chambers.”

So for now, deal-makers are left guessing the potential effects of corporate tax reform.

“It’s like throwing a rock into a lake and predicting what the splash is going to look like. There’s so many different moving parts,” Talansky said.

--Additional reporting by Vidya Kauri. Editing by Christine Chun and Emily Kokoll.

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