United States

2016 Budget – Business tax changes included in Administration’s 2016 proposals to Congress

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President Obama has submitted his Administration's fiscal year 2016 Budget to the US Congress (see United States-5, News 3 February 2015). The 2016 Budget includes proposals for changes to the provisions of the US Internal Revenue Code (IRC) with respect to the taxation of businesses.

The significant proposals include the following:

– permanently extending and modifying the work opportunity tax credit (WOTC) for employers who hire qualified individuals from designated groups, including American Indians and veterans;
– providing additional tax credits for investments in advanced domestic clean energy manufacturing;
– modifying and permanently extending the renewable electricity production tax credit and the investment tax credit for certain energy property;
– providing tax incentives for 20 “Promise Zones” to promote job creation and investment in economically distressed areas that have demonstrated potential for future growth and diversification into new industries;
– providing a new “Manufacturing Communities” tax credit to encourage investments in communities that have suffered major job losses by reason of events such as military base closures, plant closures and mass layoffs;
– enhancing the research and experimentation (R&E) tax credit by making it permanent, increasing the rate of the alternative simplified research credit (ASC) from 14% to 18%, and repealing the requirement that R&E costs be amortized over a 10-year period for purposes of the individual alternative minimum tax (AMT);
– requiring gain or loss from derivative contracts to be marked to market no later than the last business day of the taxpayer's taxable year, with the gain or loss being treated as ordinary, attributable to a trade or business of the taxpayer for purposes of net operating loss (NOL) rules, and with the source of the income associated with a derivative continuing to be determined under current law;
– extending the expense deduction amount of USD 500,000 for investments in qualified property by small businesses (IRC section 179 property) for property placed in service after 31 December 2014, and increasing such amount to USD 1 million for property placed in service after 31 December 2015, with a phase-out threshold of USD 2 million, and indexing the USD 1 million and USD 2 million amounts for inflation in taxable years beginning after 31 December 2016;
– permanently extending the 100% capital gain exclusion for investments in certain qualified small business stock by non-corporate taxpayers and eliminating such gains as a preference item for purposes of the alternative minimum tax (AMT);
– permanently increasing the immediate deduction amount for business start-up expenditures to USD 20,000 and allowing a 180-month amortization period for remaining amounts, subject to a phase-out when expenditures exceed USD 120,000;
– expanding the small business health care tax credit (i.e. a credit for an eligible employer's premium contributions towards their employee's health insurance) to make the credit available to employers with up to 50 full-time employees, beginning the phase-out at 20 full-time employees, and simplifying the credit system;
– establishing a uniform definition of small business taxpayers (to be defined as taxpayers with average annual gross receipts of USD 25 million or less) who are eligible for exemptions from certain accounting rules, including the uniform capitalization (UNICAP) rules for costs incurred to produce real or personal property for use in the taxpayer's trade or business, with the USD 25 million limitation to be indexed for inflation for taxable years beginning after 31 December 2016;
– providing a tax credit for the production of advanced technology vehicles;
– imposing a financial crisis responsibility fee of 7 basis points on certain liabilities of the largest firms in the financial sector (generally assets of USD 50 billion or more);
– eliminating a wide range of tax preferences for oil and natural gas, including, among others, the credit for enhance oil recovery (EOR) projects, the credit for oil and gas produced from marginal wells, the deduction or amortization of intangible drilling costs (IDCs), the deduction for tertiary injectants, and percentage depletion for oil and gas wells;
– eliminating a wide range of tax preferences for coal and fossil fuels, including expensing and amortization options for exploration and development costs for coal and other hard-mineral fossil fuels, percentage depletion for coal and other hard-mineral fossil fuels, capital gain treatment for royalties from coal and lignite, and the manufacturing deduction for domestic production of coal, other hard-mineral fossil fuels, and the primary products thereof;
– repealing the use of the last-in, first-out (LIFO) method of accounting for inventory;
repealing the use of the lower-of-cost-or-market (LCM) method of accounting for inventory and the deduction for the cost of subnormal goods;

- ensuring dividend treatment on distributions to shareholders by preventing a reduction in corporate earnings and profits (E&P) by reason of specified transactions that do not reduce the dividend-paying capacity of the corporation;

- repealing the "boot-within-gain" limitation that applies to shareholders in corporate reorganizations if the transaction has the effect of a distribution of a dividend under IRC section 956(a)(2);

- preventing the importation of related-party losses under IRC section 267(d) in circumstances where the transferor was not subject to US income tax on the gain;

- expanding the application of the provisions applicable to partnerships with substantial built-in losses;

- extending the partnership basis limitation rules to cover non-deductible expenditures;

- limiting the amount of capital gain that can be deferred under IRC section 1031 on the like-kind exchange of real property to USD 1 million per year, indexed for inflation, and eliminating like-kind exchange treatment for art and collectibles;

- conforming the control test for stock ownership for corporate reorganizations under IRC section 368 to the 80% level specified for corporate affiliations under IRC section 1504;

- amending the Federal Unemployment Tax Act (FUTA) by reinstating the 0.2% surtax and making the surtax permanent (new total tax rate of 6.2% on the first USD 7,000 of wages paid to each employee); and

- further amending FUTA by increasing the USD 7,000 wage base to USD 40,000 in 2017, adjusting such base for wage growth in subsequent years and reducing the Federal Unemployment Insurance (UI) rate from 0.8% to 0.165%.

The above proposals, if adopted, would have varying effective dates, depending on the particular tax provision affected.

See also

United States-5, News 3 February 2015
United States - Corporate Taxation - Country Surveys
United States - Corporate Taxation - Country Analyses