TAX EXECUTIVES INSTITUTE – TREASURY DEPARTMENT – OFFICE OF TAX POLICY LIAISON MEETING

February 23, 2017

AGENDA

I. Welcome and Introductions

II. 2017 Transition and Priorities

With the change in Administration and its posture shift on rulemaking in all administrative agencies across the federal government, we invite discussion of the Office of Tax Policy's (OTP or Treasury) priorities for the next year.

What is the expected timeframe for filling open positions within OTP?

III. Trump Administration Approach to Corporate Tax Reform

A. Tax Reform Priorities

TEI members are eagerly awaiting the Administration's comprehensive tax reform proposal and look forward to discussing it with OTP during our meeting.

What approach will the Administration take with respect to tariffs on imported goods, whether from recently inverted companies, "runaway" plants, or imports generally?

How much latitude does Treasury anticipate it will have to draft regulations for implementing any tax reform legislation? How will the recent Executive Order requiring two regulations to be identified for elimination before a new regulation can be passed impact the process?

B. Administration Approach to House "Better Way" Blueprint on Tax Reform

1. Generally

What concerns has Treasury identified with the "Better Way" blueprint, either substantively or administratively? How involved does Treasury expect to be with the drafting of any tax reform legislation, and how does it plan on engaging with stakeholders?

2. Scoring

Will the Joint Committee on Taxation staff be scoring the "Better Way" blueprint and, if so, will it use dynamic or static scoring? Is Treasury using any other third-party group's scoring?

3. Border Adjustability

Is Treasury involved in discussions with lawmakers regarding the macroeconomic impacts of border adjustability, and, if so, how? What are Treasury's views on a destination-based cash-flow tax's effects on the following?:

a. Low-margin importers
b. Near-term impacts on employment
c. Consumer prices
d. Possible trade impacts
e. Possible implications for the U.S. treaty network

4. World Trade Organization

Is Treasury involved in discussions with lawmakers or the United States Trade Representative office regarding World Trade Organization prohibitions on border adjustments for direct taxes, and, if so, how? What is Treasury's view on whether a border adjustment is compliant with WTO rules?

5. Pass-Through Income

Is Treasury involved in discussions with lawmakers regarding a possible distinction between "reasonable income" to owners of pass-through entities and other pass-through income, and, if so, how? What is Treasury's view of what constitutes "reasonable" income?

6. Section 41 Research Credit

Is Treasury involved in discussions with lawmakers regarding the contours of what a retained research credit might look like under forthcoming tax reform proposals, and, if so, how?

C. Path Forward for Congressional Compromise

The most discussed issue in corporate tax reform is the concept of a border-adjustable destination-based cash-flow tax. House Ways and Means Committee Chairman Kevin Brady has stated that such basis for corporate tax reform is necessary for removing trade distortions in the international marketplace and growing the economy. Several Republican Senators, however, have expressed skepticism about such a cash-flow tax. Is the Administration in talks with members from both houses of Congress about this issue so as to understand their competing concerns? Does the Administration see a path forward for achieving compromise between the House and Senate?

IV. OTP's Regulatory Agenda

A. Restrictions on Regulations

Outside of tax reform, what is the impact on OTP's regulatory agenda of the Executive Order requiring that two regulations be rescinded for every new regulation issued, both for current and near-term projects? What is OTP's view on the impact of this Executive Order on guidance that does not rise to the level of a regulation, such as revenue rulings, notices, and revenue procedures? Is OTP still working regulatory and business plan items that otherwise fall under the order?

Has OTP begun to assess what regulations could be rescinded to clear the way for new regulations? What recently promulgated regulations are subject to the Congressional Review Act, and does the Administration anticipate working with Congress to apply the Act to any of those regulations? If so, which ones?

Regarding recently proposed and temporary regulations, what is the impact of this Executive Order and the Administration's general moratorium on additional regulatory actions? For example, comments are due on March 8 with respect to the proposed regulations issued under sections 987 and 901(m). If the IRS and Treasury are not going to issue any new guidance in the near term, does that date still apply? Will comments received from stakeholders be reviewed under the normal practice?

B. Partnership Audit Regulations

In light of the Executive Order, does Treasury plan to submit the recently finalized partnership audit regulations to the Federal Register? If so, is there an expected timeframe for such action and does Treasury expect the regulations to be published in substantially the same form as released?

The proposed regulations reserve on whether a pass-through partner will be allowed to push out adjustments to its own partners instead of paying tax on an adjustment. Might final regulations speak to this issue?

Finally, section 6235 provides various limitation periods for the IRS to make partnership adjustments, some of which are triggered by the issuance of a notice of proposed partnership adjustment ("NOPPA"). The statute, however, does not provide a time limit for the issuance of a NOPPA. This ambiguity raises concern that section 6235 may be interpreted as authorizing the IRS to revive the statute of limitations period beyond the typical three-year period by issuing a NOPPA. The proposed regulations do not address this concern. Does Treasury share this concern and does it intend to address this concern in future guidance?

C. Section 987 Regulations

In December 2016, the government released final, temporary, and proposed regulations under section 987 relating to the recognition and deferral of foreign currency gain and loss under that section with respect to a qualified business unit (QBU). The final regulations impose a complex regime for transitioning to the new rules, as well as the rules that apply to taxpayers going forward. The new rules generally follow the 2006 proposed section 987 regulations, albeit with significant changes. In this regard, TEI has the following questions:

The December 2016 publication date imposed significant immediate compliance burdens on companies subject to SEC financial disclosure rules under U.S. GAAP, despite the delayed effective date of the final regulations for U.S. tax purposes. (For example, one company reported that its staff spent over 2,000 hours in the final three weeks of 2016 in response to the regulations and, after this effort, could only assess a portion of the regulation's impact.) What consideration is given to the financial statement consequences when timing the publication of final tax regulations?

The result of rules applicable to transitioning from a taxpayer's current approach under section 987 to the new approach under the final rules is significant—many taxpayers will be unable to recognize a genuine economic loss for tax purposes. It is unclear what abuse or other tax administration concern led the IRS and Treasury to adopt the significantly different approach reflected in the final regulations. We welcome discussion of the tax administrative concerns behind the approach of the final rules and how that approach addresses those concerns? Would the government be open to permitting taxpayers to recognize all deferred economic foreign currency gains and losses subject to section 987 upon transitioning to the new rules? This would seem to be a fairer approach to transitioning to the new rules, would prevent the anomalous result of taxpayers losing the tax benefit of a deferred economic loss, and would avoid unnecessary operational changes that taxpayers might undertake to recognize a loss before it disappears under the new rules (e.g., by borrowing money to make leveraged remittances).

V. Future of U.S. Participation in OECD Tax Agenda

How does OTP anticipate the United States' participation in the OECD changing from prior administrations, both generally and with respect to the OECD's role as an international standards-setting body for taxes? Will the United States continue to play a large role in both funding the OECD's work and in its various working parties on taxes? What is the Administration's view on the future role and scope of the OECD's BEPS project, both as a model for tax administration and information sharing in the United States and throughout the world?