By now you’ve surely heard about the “Unified Framework for Fixing Our Broken Tax Code” (hereinafter “the Framework”). This document, which was released on September 27th by the Trump Administration, together with a select group of members of the House Committee on Ways and Means and the Senate Committee on Finance, is intended to serve as a template for the drafting of tax reform legislation. This Framework, however, is very light on detail and leaves many important decisions to the discretion of the tax-writing committees.

Our View

We view this Framework as a small step forward in the path to comprehensive tax reform. One positive takeaway is that taxpayers can now make important tax-related decisions that they have previously put on hold. This is partly because the Framework provides for a significantly less transformative form of tax reform. For example, for many corporations, dropping the tax rate to 20% will not be a significant reduction when paired with the potentially increased limitations on the net interest deductions and elimination of section 199 benefits.

One negative aspect of this Framework is that it presents new challenges, specifically in terms of the timing to pass tax reform legislation. Without a clear budgetary approach, the legislative process is shaping up to be extremely difficult and time consuming. Based on these factors, we believe that there is an insufficient rationale for relying on game-changing tax reform in the near term; it’s back to status quo business for now.

The Framework

This nine-page Framework is intended to build on previous publications from the Administration, and although the Framework may be the longest to date, there is little detail, which to us is a sign that even at this advanced stage, the crafters could not come to an agreement on many of the provisions, and further indicating that consensus will be very difficult to achieve in the near future.

One of the most notable aspects is that the Destination Based Cash Flow Tax (DBCFT) has been abandoned, and along with it, the highly controversial Border Tax. The DBCFT would have fundamentally changed U.S. tax policy, and more importantly, raised revenues to fund proposed tax cuts. By dropping the DBCFT, we are no longer dealing with game-changing tax reform. Instead, a significant revenue source has been lost, leaving the promise of rate reductions without a solid plan on how to pay for them.

Additionally, the last time there was a significant rate reduction was in the 1980’s. During this time the U.S. debt level was just a fraction of what it is today. Enacting rate reductions this time around will be a much more challenging and delicate task as the fear of adding to our staggering debt will likely raise issues both economically and politically.

Putting those challenges aside, you can find the framework here [2]. Below we list out the points that we have found most notable about the Framework, which unsurprisingly is largely made up of what was left unsaid.

Here is what we found most surprising:
• No budgetary or scoring insights
• No timeline for the legislative process
• No effective dates or indication of a phase-in approach
• Unspecified limits on corporate interest deductions
• No coverage of capital gains or qualified dividends
• No mention of the 3.8% investment tax
• Deducting corporate dividends seems to be an option
• Elimination of state tax deductions for individuals
• No impact on retirement accounts or pensions
• A potential high-earner tax bracket above 35%

This Framework is helpful in that it provides some insight into what the Republicans will be trying to accomplish in the drafting of this legislation, but it is greatly lacking in meaningful detail. Many of the important decisions were left to the discretion of the drafting committees, and the next stage of this discussion will likely be difficult and time-consuming as the politics play out.

Here are some other details that we found notable:

Business

• Pass-through rate 25%
• Corporate rate 20%
• Eliminates corporate AMT
• Immediate expensing for new investments for 5 years
• Partial limit on interest deduction (details to be determined)
• Elimination of section 199 deduction
• R&D credit maintained
• One time tax (i.e., toll charge) on historical foreign earnings at two rates, one for liquid assets and one for illiquid assets (rates and payment terms to be determined)
• Foreign earnings taxed currently in the U.S. at a reduced rate (to be determined)
• Exempts foreign earnings when repatriated
• Unclear whether the CFC rules would remain
• Other corporate deductions would be affected (details to be determined)

Non-business

• Top individual rate 35% (option for a new top bracket for high-earners)
• Eliminates individual AMT
• Standard deduction nearly doubled
• Removes most itemized deductions (details to be determined)
• Keeps home mortgage interest and charitable contribution deductions
• Removes estate tax but not gift tax
• Enhances family/child tax credits

“Skinny” Tax Reform

There has been some speculation that the Republican Party may, in desperation, try to pass a watered-down version of tax reform. The concept would be to limit the reform to (1) less dramatically reduced rates, and (2) simple revenue generators, for
example, a toll charge on historical foreign earnings. Some are calling this “Skinny” tax reform, or “lower case r” tax reform, and the idea is that it could be passed as a last–ditch effort, perhaps in late 2017, to show that at least something has been done. This is akin to what the Republican Party recently tried with health care reform. We expect to see this concept tried. At first blush, it appears this approach might alleviate the budgetary challenges. But we also believe this approach is ripe with the same political hurdles as the broader reform faces, and is therefore also unlikely for passage. Regardless, even if skinny reform is possible, the bottom line for decision making today doesn’t change. In other words, skinny reform would have an ever further diluted impact on taxpayers. The construct of our tax system and the lion share of tax burdens would remain the same, getting us to the same conclusion today, that its back to tax planning as usual.

Alvarez & Marsal Taxand Says:

It is safe to bet on the status quo for the foreseeable future. This framework has shown us that the tax reform bill to be put before Congress (whenever that may be) will likely be a shell of what has been previously proposed. Putting forth rate reductions and leaving out the DBCFT complicates things further as the focus will now shift to how the rate reductions will be paid for. While anything is possible, we see very little chance of an impact in 2017, and too much uncertainty for passage anytime soon. Ultimately, the budgetary constraints will highlight and define the challenges that tax reform faces during the legislative process. For these reasons, we see very little incentive to delay potential tax planning strategies that can add–value today, as well as in the future under potential tax reform.

In the coming weeks, look for new TAW releases with our updated thinking on the types of tax planning that can and should be done right now, with specifics by industry and market segments, for both inbound and outbound investments. In the meantime, please reach out to any of our Tax Reform steering committee members with questions and comments: Albert Liguori [3], Drew Johnson [4], Ernie Perez [5], Adam Benson [6], Jill Harding [7], Brian Cumberland [8], and Doug Sayuk [9].

Disclaimer

The information contained herein is of a general nature and based on authorities that are subject to change. Readers are reminded that they should not consider this publication to be a recommendation to undertake any tax position, nor consider the information contained herein to be complete. Before any item or treatment is reported or excluded from reporting on tax returns, financial statements or any other document, for any reason, readers should thoroughly evaluate their specific facts and circumstances, and obtain the advice and assistance of qualified tax advisers. The information reported in this publication may not continue to apply to a reader’s situation as a result of changing laws and associated authoritative literature, and readers are reminded to consult with their tax or other professional advisers before determining if any information contained herein remains applicable to their facts and circumstances.

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Related Issues:
Update on Tax Reform Legislation and Debt/Equity Regulations [12]

The past few weeks have brought a couple of significant course corrections in the field of U.S. tax law: one on the regulatory front, dealing with debt versus equity determinations, and a second on the legislative front, dealing with possible tax reform.

Ambitious Tax-Cut Plan Short on Details [13]

The Trump administration yesterday (April 26, 2017) shared its ambitious but very short outline for U.S. Tax Reform as presented by Treasury Secretary Steven Mnuchin and National Economic Council Director Gary Cohn during a press briefing.

Making the Tax Code Great Again…or Something Like That [14]

Whatever your political affiliation might be, the recent election of Donald Trump to be the U.S.’s 45th president and the Republicans maintaining control of both the House of Representatives and the Senate presents us with the possibility of perhaps the most significant tax reform since the Reagan Tax Reform Act of 1986.

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