WILLKIE FARR & GALLAGHER LLP

CLIENT ALERT

Tax Reform Framework – Business Taxes

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The Tax Reform framework of the "Big 6" Republicans released late this morning would reduce the tax rate for small businesses to 25%, and the corporate tax rate to 20%. The framework says it "aims" to eliminate the corporate alternative minimum tax. The plan would also allow businesses to write off immediately (expense) the cost of new investments in depreciable assets other than structures, for investments made after today.

Although the plan provides few details as to how the tax rate reduction and expensing measure would be funded, it states that "[t]he deduction for net interest expense incurred by C corporations will be partially limited." The plan also states that the Congressional tax-writing committees will "consider the appropriate treatment of interest paid by non-corporate taxpayers." Obviously, broadly-applicable limitations on tax-deductibility of interest expense will represent a dramatic change in longstanding U.S. tax policy, and could have very significant implications for the financing of corporate operations and acquisitions.

The plan would also eliminate or restrict most special exclusions, deductions and credits available to businesses, including the domestic-production ("section 199") deduction, although the tax incentives for R&D and low-income housing would be retained.

For international operations, the plan would adopt a territorial approach, and exclude income earned outside the United States from U.S. corporate tax by exempting dividends from 10% or greater-owned foreign subsidiaries. Accumulated foreign earnings would be treated as distributed; the tax rate on such earnings is not specified except that a lower rate will be provided for earnings held in illiquid assets, and the payment of the tax will be spread over several years.

The plan makes no specific mention of the tax treatment of carried interest. However, in discussing the reduced 25% tax rate for small businesses operated as pass-throughs, the plan contemplates that measures will be adopted to prevent the recharacterization of personal income into business income to prevent wealthy individuals from avoiding the top personal rate. This could be a veiled reference to a carried interest repeal.

The plan does not include proposals for effective date of the proposed measures, other than the September 27, 2017, date for expensing new investments.

The ability of the Republicans to achieve these tax reforms and in what timeframe are obviously uncertain at this point, and significant input from affected parties can be expected as the proposals are considered by the Congressional tax-writing committees.

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