Senate Finance Continues to ‘Tweak’ Corporate Integration Plan

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By Andrew Velarde

The Senate Finance Committee’s tax counsel is continuing to “consider new ways to look at . . . [and] to tweak” its corporate integration proposal, according to a staffer who implied July 11 that partial integration combined with a rate cut may offer one path to a 15 percent corporate rate.

“You drop the 35 percent corporate tax rate to 15 percent; it’s a tremendous amount of money the federal government would lose just by doing that,” said Tony Coughlan, Senate Finance Committee majority tax counsel, even as he acknowledged the appeal of the rate cut championed by President Trump. “That gets us wondering: Are there other ways we could look at this?” Coughlan said on a webcast sponsored by PwC.

Coughlan then gave an example of a 25 percent corporate rate with a 40 percent dividends paid deduction, which could also effectively result in a 15 percent rate for the corporation. That may not result in as big a hit to government revenue as a full rate cut to 15 percent, he said, adding that it could be an alternative to the full integration proposal examined by the committee.

Coughlan’s comments closely mirror those given by Bret Wells from the University of Houston Law Center in June. Wells argued that a partial dividends paid deduction of 40 percent could help address the issue of a majority of corporate investors being tax exempt.

In October 2016, the Tax Policy Center estimated that Trump’s campaign proposal to slash the corporate rate to 15 percent, coupled with a repeal of the corporate alternative minimum tax, would lose $2.4 trillion over the next 10 years and $3.5 trillion more after that. In September 2016, the Tax Foundation estimated that lowering the corporate rate under his plan would cost $2.1 trillion over 10 years. In April, the White House released a one-page plan that also called for a 15 percent business tax rate.

While some observers have seen the corporate integration plan as languishing in recent months, staffers have insisted that it remains a viable proposal.

Coughlan also acknowledged the issue of base erosion, particularly relating to the migration of intellectual property and income production out of the United States. The issue could only be worsened with a move away from worldwide taxation with deferral to a territorial system if proper safeguards aren’t put in place, he said. Any proposals to “beef up subpart F” would require a “delicate balance” to avoid moving too much to a worldwide system, Coughlan said. He added that taxpayers may object to active business income of a controlled foreign corporation being subject to a minimum tax and that it could be difficult to define an active trade or business.

Another method to implement a minimum tax could be to subject taxpayers to a tax to an extent
they have supernormal returns, Coughlan said.

Turning to repatriation, Coughlan argued that there were concerns of taxpayers migrating from cash holdings to noncash holdings if a bifurcated rate — depending on the nature of the holding — was enacted through reform. Both the Tax Reform Act of 2014 (H.R. 1), proposed by former House Ways and Means Committee Chair Dave Camp, and the House Republicans’ tax blueprint propose taxing accumulated foreign earnings at a bifurcated rate: 8.75 percent for cash or cash equivalents, and 3.5 percent otherwise.

Jennifer Spang of PwC said that while the significance of Accounting Principles Board No. 23, “Accounting for Income Taxes — Special Areas,” which allows U.S. multinationals to avoid tax liability for investments in foreign subsidiaries that are indefinitely reinvested, may be diminished with deemed repatriation or a move to territoriality, it wasn’t likely to become inconsequential altogether.

“It is fundamental to the accounting model,” she said. “It still will matter. You still measure these at different levels in the structure,” Spang said. “How much less [it matters] may depend on what deemed repatriation looks [like] and what we look like going forward for an overall system. Do we have reform or do we just have some kind of relief? Its impact could vary.”

While tax reform is unlikely to be accomplished by the August recess, Coughlan noted that achieving tax reform in 2017 still remains the goal. He added that the 2018 election year will present “a highly charged, highly politicized environment” and the difficult votes required for tax reform will become even more difficult to obtain. That said, the last major reform package was accomplished in the election year of 1986, he noted.

Coughlan also addressed the prospect of tying tax reform efforts to the budget reconciliation process and the effects of having those measures potentially sunset, either after 10 years or possibly a longer period of time. The Senate’s Byrd rule prohibits bills from the budget reconciliation process from increasing deficits outside of the budget window — traditionally 10 years.

“There’s a lot of concern, broadly shared that . . . we don’t want to create the fiscal cliff of 2028,” Coughlan said, noting the long-range forecasting done by businesses. While wondering whether extending the window to 30 years could offer stability that businesses craved in their forecasts, Coughlan said, “I don’t want to help create the fiscal cliff of 2048 either, but that’s not as awful as 2028.” He added that while it could shift, “the betting money” was still on a 10-year budget window for the reconciliation process.