PRESIDENT'S FY 2017 BUDGET AIMS TO SEAL THE DEAL ON FISCAL LEGACY

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On February 9, President Obama released the last budget request of his Administration. The FY 2017 budget incorporates many proposals from past years but also looks to cement the president's legacy with a number of new fiscal policy initiatives in priority areas such as corporate and international tax reform, family and individual tax issues, and energy taxes. These and other proposals are outlined in the Department of the Treasury's General Explanations of the Administration's Revenue Proposals (otherwise known as the "Green Book"). This update highlights new proposals in this year's Green Book and notable changes to provisions included in prior requests.

NEW PROPOSALS FOR TAX REFORM, HEALTHCARE, AND ENERGY

Reform the U.S. International Tax System

- Impose a 19-percent Minimum Tax on Foreign Income: The basic concept and mechanics of the FY 2017 proposal remain the same as the FY 2016 proposal. New for FY 2017 is the grant of authority to Treasury to determine the foreign effective tax rate, rather than calculating it by rote based on a 60-month look-back period. The FY 2017 proposal would also make the controlled foreign corporation (CFC) look-through rule permanent. This provision, which was extended in the Protecting Americans from Tax Hikes Act of 2015 for five years, allows a controlled foreign corporation to exclude certain dividends, interest, rents, and royalties in determining its income under Subpart F.
- Impose a 14-percent One-Time Tax on Previously Untaxed Foreign Income: Unlike the FY 2016 proposal, the FY 2017 proposal does not earmark proceeds toward infrastructure.

Business Revenue Changes and Loophole Closers

- Modify Like-Kind Exchange Rules: The FY 2017 proposal is significantly expanded. While the FY 2016 proposal applied only to real property, the FY 2017 proposal applies to both real and personal property.
- Expand Simplified Accounting for Small Business and Establish a Uniform Definition of Small Business for Accounting Methods: Beginning in FY 2017, this proposal indexes the $25 million threshold for small businesses to be able to use cash accounting.
- Net Investment Income Tax (NIIT) and Self-Employment Contributions Act (SECA) Tax: In addition to reprising the FY 2016 proposal to subject the owners of professional service businesses who participate materially in the business to pay SECA taxes on their distributive shares of income, the FY 2017 proposal seeks to further harmonize tax treatment of active owners of pass-through businesses. Under this year's

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enhanced proposal, all active business income would be subject to the 3.8% Medicare tax, either through NIIT or SECA.

Reforms to Retirement and Health Benefit Plans

- Multiple Employer Defined Contribution Plan: The FY 2017 proposal would allow unaffiliated employers to adopt a multiple employer defined contribution plan in an effort to make the provision of retirement benefits easier and less costly by allowing multiple employers to use the same administrative structure. A regulated financial institution would serve as the provider in a dual capacity as a fiduciary and the plan administrator. The employer would retain fiduciary responsibility for prudent selection and monitoring of the provider.
- Cadillac (High-Cost Employer-Sponsored Health Excise) Tax: Under current law for 2020 and beyond, the cost of employer-sponsored health coverage in excess of a threshold is subject to a 40% excise tax. This Cadillac tax threshold is $10,200 for self-only coverage and $27,500 for other coverage (2018 dollars, indexed for inflation). In an effort to account for regional differences in the cost of health care, the FY 2017 proposal would modify the threshold above which the Cadillac tax applies to be equal to the greater of the current law threshold or the average premium for a marketplace gold plan in each state.

Incentives for Job Creation, Manufacturing, Research, and Technology

- Community College Partnership Tax Credit: The FY 2017 proposal includes a new, one-time $5,000 tax credit for employers who hire qualifying community and technical college graduates. An aggregate $500 million in tax credits would be made available for each of the five years beginning in FY 2017. Credits would be allocated to states on a per capita basis and states would have the flexibility to design competitive award criteria.
- Renewable Energy Credits: The FY 2017 budget would make the production tax credit and investment tax credit permanent at their current 2016 rates—notwithstanding the phasedowns for wind and solar enacted as part of last year's omnibus package.
- Energy-Efficient Commercial Building Property: The FY 2017 proposal would update the applicable energy efficiency standard for the energy-efficient commercial building property credit from the 2004 to the 2010 ASHRAE standard.
- Carbon Investment and Sequestration Tax Credit: The FY 2017 proposal revises a proposed $2 billion refundable investment tax credit for carbon dioxide sequestration in connection with electric generating units to make it available to new and retrofitted projects that capture at least one million metric tons of carbon dioxide each year. Projects would need to satisfy certain eligibility requirements with respect to the proportion of flue gas emissions diverted to a sequestration system. Seventy percent of the available credits would be set aside for sequestration projects at coal-fired generating plants, in addition to other allocation requirements. However, the FY 2017 proposal removes several technology-specific allocation provisions that were included in previous budget requests.

Other New Revenue Raisers

- Oil Fee: The FY 2017 proposal includes a $10.25 per barrel equivalent of crude oil "fee" on domestic and imported petroleum products, with proceeds going to support infrastructure and climate change programs.

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The fee would be phased in over a five-year period beginning on October 1, 2016, and a portion of revenues would be set aside to support households with high energy costs.

NEXT STEPS

The president's budget commences the debate over Congress's annual budget resolution. However, given that Republicans control the House and Senate, it is unclear what impact the president's budget will have on the FY 2017 budget and appropriations process. Following the release of the president's proposal, House Budget Committee Chairman Tom Price (R-GA) announced, "House Republicans will be offering a clear alternative to the president's stale, big government policies." Still, as the paramount statement on fiscal policy from the executive branch, the budget may serve as a source for ideas in future tax reform efforts and inform other economic policy debates. Stakeholders affected by the Obama administration's proposals should seek to engage with the relevant policymakers to help shape potential future iterations.

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