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U.S. TAX REFORM – WHAT CHINESE INVESTORS SHOULD KNOW 美国税务改革 – 中国投资者应该了解的内容

by

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I. U.S. Tax Proposals and Legislative Agenda 美国税收提案和立法议程

A. Republican Tax Proposals 共和党的税务建议

1. House Republican Tax Plan “A Better Way, Our Vision for a Confident America: Tax,” June 24, 2016
2016年6月24日，众议院共和党的税收计划 “我们希望以更好的方式成为一个自信的国家：税务”。
 - a. Conceptual document – no statutory language
2. Referred to as the “Blueprint” 简称 “蓝图”

I. U.S. Tax Proposals and Legislative Agenda (cont'd)

美国税收提案和立法议程（续）

B. President Trump – “2017 Tax Reform for Economic Growth and American Jobs: The Biggest Individual and Business Tax Cut in American History,” April 26, 2017

2017年4月26，美国总统Trump – “美国经济增长和就业2017年
税务改革: 美国历史上最大的个人和商业减税。”

1. Referred to as the “Trump Proposal”
简称 “Trump 提案”

I. U.S. Tax Proposals and Legislative Agenda (cont'd)

美国税收提案和立法议程（续）

C. Anticipated Legislative Action 预期的立法行动

1. Tax legislation can be passed by budget reconciliation
–target date has slipped to the end of 2017
预算调节可以使税务立法通过-目标日期要到2017年年底。
2. Budget Reconciliation 预算调节
 - a. House of Representatives and Senate agree on overall budget resolution
 - b. Provisions cannot increase the deficit outside the 10 year budget window
 - 1) “Revenue losing” provisions would “sunset” after 10 years

II. Overview of Proposed Tax Changes for Corporations, Pass-Through Entities and Individuals

对股份有限公司，转嫁税收实体和个人提议的税务变化概述

A. Corporations 股份有限公司

1. Income Tax Rate 所得税税率

- a. Trump Proposal – 15%
- b. GOP Blueprint – 20%

II. Overview of Proposed Tax Changes for Corporations, Pass-Through Entities and Individuals (cont'd)

对股份有限公司，转嫁税收实体和个人提议的税务变化概述（续）

2. Corporate Deductions and Credits

公司扣除和贷记

a. Trump Proposal

- 1) Calls for the elimination of tax breaks for special interests
 - a) Does not address “like-kind” exchanges of real estate
- 2) No stance regarding expensing for capital investment
- 3) No stance regarding loss of deduction for net interest expense

II. Overview of Proposed Tax Changes for Corporations, Pass-Through Entities and Individuals (cont'd)

对股份有限公司，转嫁税收实体和个人提议的税务变化概述（续）

b. GOP Blueprint 共和党蓝图

- 1) “Deduct investments” up front
 - a) Immediate expensing of capital investment and intellectual property (land is not deductible)
 - i) If full expensing of capital expenditures is enacted, tax-free like-kind exchanges would probably go away
 - b) Deduction for wages would continue
- 2) No deduction for net interest costs
- 3) NOL deduction limited to 90% of net taxable income (indefinite carryforward)

II. Overview of Proposed Tax Changes for Corporations, Pass-Through Entities and Individuals (cont'd)

对股份有限公司，转嫁税收实体和个人提议的税务变化概述（续）

B. Pass-Through Entities 转嫁税收实体

1. Partnerships and S Corporations Would Become Tax Paying Entities 合伙人公司和S型股份有限公司将成为纳税实体
 - a. Trump Proposal – entity level election of a 15% tax on business income earned by pass-through entities
 - b. GOP Blueprint – entity level tax of 25% for active business income
 - 1) Owners of pass-through entities subject to tax at ordinary rates on non-active business income

II. Overview of Proposed Tax Changes for Corporations, Pass-Through Entities and Individuals (cont'd)

对股份有限公司，转嫁税收实体和个人提议的税务变化概述（续）

C. Individuals 个人

1. Income Tax Rate 所得税率

- a. Trump Proposal – rates of 10%, 25% and 35%
- b. GOP Blueprint – rates of 12%, 25% and 33%

2. Investment Income - Capital Gains, Dividends and Interest 投资收入- 资本收益、股息和利息

- a. Trump Proposal – 20% maximum rate
 - 1) Carried interest taxed as ordinary income
- b. GOP Blueprint – 50% of gains or income excluded (16.5% effective rate)
 - 1) No proposal regarding carried interest

II. Overview of Proposed Tax Changes for Corporations, Pass-Through Entities and Individuals (cont'd) 对股份有限公司，转嫁税收实体和个人提议的税务变化概述（续）

3. Net Investment Income Tax (“Medicare Surtax”) 净投资所得税 (“医疗保险附加税”)
 - a. Trump Proposal – eliminates 3.8% Medicare surtax
 - b. GOP Blueprint – eliminates 3.8% Medicare surtax via repeal of Affordable Care Act
 - 1) While repeal of the Affordable Care Act initially failed, repeal of the Medicare surtax could be part of the renewed repeal effort or a budget measure
4. Tax Deductions 税务抵扣
 - a. Trump Proposal – No deductions except for charitable gifts and home mortgage interest
 - b. GOP Blueprint – no deductions except for charitable gifts and mortgage interest paid

II. Overview of Proposed Tax Changes for Corporations, Pass-Through Entities and Individuals (cont'd)

对股份有限公司，转嫁税收实体和个人提议的税务变化概述（续）

5. Estate tax would be repealed

遗产税将被废除

- a. Appears stepped-up basis rule would remain in place (limited to \$10,000,000 of decedent's assets)

6. Gift tax – not mentioned 赠与税-未提到

II. Overview of Proposed Tax Changes for Corporations, Pass-Through Entities and Individuals (cont'd)

对股份有限公司，转嫁税收实体和个人提议的税务变化概述（续）

D. Territorial Approach to Global Taxation 全球征税的地域办法

1. Trump Proposal – endorses a territorial-style tax system
2. GOP Blueprint – territorial tax system with a 100% exemption for active foreign business income

III. Proposed Destination-Based Corporate Cash Flow Tax 提议的基于最终消费地的现金流量税

A. Overview 概述

1. Proposed in Blueprint 蓝图中提议
2. The “Destination-Based Corporate Cash-Flow Tax (“DBCFT”) is levied on domestic sales with a deduction for purchases from domestic suppliers (including investment goods) and for labor costs 基于最终消费地的企业现金流量税 (DBCFT) 是对国内销售征税, 扣除从国内供应商进货 (包括投资商品) 和人工成本。
 - a. Import sales of products, services and intangibles would not be deductible in computing U.S. taxable income
 - 1) Result – Chinese imports taxed on gross revenue
 - b. Export sales of products, services and intangibles would be excluded in computing U.S. taxable income
 - 1) Result – U.S. exports generate tax losses

III. Proposed Destination-Based Corporate Cash Flow Tax (cont'd) 提议的基于最终消费地的现金流量税

B. Income Tax Treaties 所得税条约

1. Republicans believe the DBCFT is an income tax for purposes of tax treaties
 - a. Also represented that DBCFT is a border-adjustable consumption tax for purposes of trade agreements
2. DBCFT will generate treaty issues:
 - a. E.g., imposition of income tax on sales into the United States without U.S. nexus could be viewed as override of the permanent establishment concept
 - b. DBCFT could be a “special tax regime” triggering the “subsequent change in law” provision resulting in denial of treaty benefits to U.S. taxpayers

C. Impact on U.S. Economy, Financial Markets, Foreign Trade, and Interest Rates is Unknown 对美国经济，金融市场，外贸和利率的影响未知

1. Details of mechanics, implementation and enforcement are lacking

IV. “Reciprocal Tax,” “Matching Tax,” or “Mirror Tax” “互惠税”，“匹配税”或“镜像税”

- A. Trump Administration has indicated it is considering a “Reciprocal Tax,” “Matching Tax,” or “Mirror Tax” in lieu of the Border-Adjustable Tax
Trump政府已表示正在考虑“互惠税”，“匹配税”或“镜像税”代替边境可调税。
- B. What is a “Reciprocal Tax”? 什么是“互惠税”？
 - 1. Nobody knows
 - 2. “Whatever you charge, we charge”
- C. Guesses as to what is a “Reciprocal Tax”
 - 1. Import Tariff 进口关税
 - a. Taxing imports from other countries at the same rates those countries impose tariffs on U.S. products

IV. “Reciprocal Tax,” “Matching Tax,” or “Mirror Tax” (cont’d)

“互惠税”，“匹配税”或“镜像税”（续）

2. Retaliatory tax under section 891 – If President finds that U.S. citizens or corporations are subject to discriminatory or extraterritorial taxes in a foreign country, then U.S. tax rates can be doubled on citizens and corporations of that foreign country

互惠税 -- 如果总统认为美国公民或公司在外国受到歧视或治外法权的税收, 那么美国对该外国公民和外国公司可以按照美国双倍税率进行征税。

IV. “Reciprocal Tax,” “Matching Tax,” or “Mirror Tax” (cont’d)

“互惠税”，“匹配税”或“镜像税”（续）

3. Section 887 approach?

- a. Imposes a 4% tax on U.S.-source income of foreign ship owners whose country of residence does not provide the requisite “reciprocal exemption” to U.S. shipping operations
外国船东的居住国不提供针对美国航运业务必要的“互惠豁免”，美国向外国船东对源自美国的收入按照4%进行征税。
- b. Section 883 provides exclusion from gross income for ships and aircraft operated by certain foreign corporations if the foreign jurisdiction grants an equivalent exemption to U.S. corporations operating ships and aircraft
如果外国管辖权给予经营船舶和航空器的美国公司同等豁免，某些经营船舶和航空器的外国公司的总收入除外。

4. VAT?

V. Selected Legal, Policy and Practical Implications of Tax Proposals

税务提案的法律、政策和实际意义

A. Macro Implications for Chinese Investors

1. Prioritizing of Equity Over Debt 股权优先债务
 - a. Elimination or cap on business interest deductions
 - b. Use of leveraged stopper corporation to invest in the United States would be adversely impacted
2. Promotion of Capital Formation 促进资本形成
 - a. Depreciation of capital expenditures replaced with immediate expensing
3. Tax Incentive to Shift Production of Goods and Services into the United States 将商品的生产和服务转移到美国的税收激励
 - a. Corporate rates in foreign jurisdictions become irrelevant since net U.S.-foreign tax incentive is to shift production into the United States

V. Selected Legal, Policy and Practical Implications of Tax Proposals (cont'd)

税务提案的法律、政策和实际意义（续）

B. Tax Planning Considerations 税务策划考量

1. Domestically Assembled Goods with Imported Content
 - a. First purchasing domestic company could not deduct imported components (domestic wages and domestic input would be deductible)
 - b. Second purchaser is permitted to deduct the full cost of product purchased from first purchasing company (including imported components)
2. Focus of transfer pricing will probably shift to valuation of domestically owned intangibles in the production chain
3. Commissionaire arrangements
 - a. U.S. distributor might avoid import tax
 - b. U.S. distributor might avoid U.S. income tax

V. Selected Legal, Policy and Practical Implications of Tax Proposals (cont'd)

税务提案的法律、政策和实际意义（续）

C. Foreign Currency Exchange 外币兑换

1. Proponents of DBCFT argue that U.S. dollar would immediately appreciate and match the higher cost of imports related to the Border Adjustable Tax resulting in no net change in real prices
DBCFT 的支持者争辩说, 美元尽快升值, 并与边境可调税有关的较高进口成本匹配, 从而导致实际价格没有净变动。
 - a. If exchange rates do not adjust 100%, negative impact on importers and consumers
 - b. Exemptions to DBCFT or Border Adjustable Tax would have unpredictable impact on exchange rates

V. Selected Legal, Policy and Practical Implications of Tax Proposals (cont'd)

税务提案的法律、政策和实际意义（续）

D. Problematic Industries 问题行业

1. Financial Industry 金融行业
 - a. Need for special rules
 - b. Proposed approach for financial transactions is to ignore all financial flows (e.g., interest, premiums, principal payments) when financial institutions conduct transactions with other taxable businesses
2. Digital goods 数字产品
3. Cloud computing 云计算



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