Obama 2013 Budget Proposal Makes Direct Assault on U.S. Multinationals

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President Obama's budget request for fiscal year 2013 proposes comprehensive tax reform, with a strong focus on the overseas activities of U.S. multinational corporations. One notable new proposal is a tax credit for insourcing with no deduction for outsourcing. This proposal would create a new general business credit equal to 20 percent of eligible expenses paid or incurred to "insource" business activity (essentially, to reduce or eliminate a trade or business currently conducted outside the United States and move the same trade or business within the United States). Any such costs would be creditable for U.S. tax purposes even if incurred by the foreign subsidiary of a U.S. multinational company.

To pay for this new credit, the administration proposes to disallow deductions for expenses paid to outsource business activity. Additionally, the subpart F income attributable to a controlled foreign corporation could not be reduced by any such expenses.

In addition to this new "insourcing-outsourcing" proposal, the budget includes some familiar proposals from last year. Of particular interest to multinational corporations are the following proposals:

- **Deferral:** The administration proposes restricting the ability of companies to take current interest expense deductions allocated to foreign-source income that is not currently subject to U.S. tax. As explained, "the proposal would defer the deduction of interest expense that is properly allocated and apportioned to stock of a foreign corporation that exceeds an amount proportionate to the taxpayer's pro rata share of income from such subsidiaries that is currently subject to U.S. tax."
- **Foreign tax credits:** The administration again proposes to require taxpayers to determine their deemed-paid foreign tax credits on a consolidated basis. The taxpayer would have to calculate the aggregate foreign taxes and earnings and profits of all foreign subsidiaries (including lower-tier ones) for which the taxpayer can claim a deemed foreign tax credit. The deemed foreign tax credit would then be "limited to an amount proportionate to the taxpayer's pro rata share of the consolidated earnings and profits of the foreign subsidiaries repatriated to the U.S. taxpayer in that taxable year that are currently subject to U.S. tax."
- **Intangible property transfers:** The administration has proposed two specific changes to rules affecting intangible property transfers.

First, if a U.S. person transfers an intangible from the United States to a related controlled foreign corporation that is subject to a low foreign effective tax rate, then certain excess income from transactions connected with or benefitting from the intangible would be treated as subpart F income in a separate foreign tax credit limitation basket. For purposes of the proposal, transfers would include sales, leases, licenses, or shared risk or development agreements, including cost-sharing agreements.

Second, the administration proposes that the definition of intangible property is to include workforce in place, goodwill, and going concern value. For transfers of multiple intangibles, the proposal would allow the commissioner the option to value the intangible properties on an aggregate basis. The proposal would also allow the commissioner to value intangible property by taking into consideration "the prices or profits that the controlled taxpayer could have realized by choosing a realistic alternative to the controlled transaction undertaken."

It will be interesting to see how the President's budget might overlap with Treasury's corporate tax reform "roadmap," expected to be released later this month. Arguably, without lowering the corporate tax rate, these proposals above will do nothing to achieve corporate tax reform, as U.S. multinationals will have even greater incentive to move production activity offshore.

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