



## Federal Tax ADVISORY ■

**DECEMBER 1, 2013**

### Tax Reform Update

---

Tax reform has been in the offing ever since the 2008 elections. It took a back seat to more pressing national problems for a few years, but calls for major tax legislation have become more frequent and believable. One source of the calls has been the White House when seeking a “grand bargain” on taxes and spending programs, which so far have fallen on deaf ears in Congress. The other sources have been various interest groups and members of Congress who are thinking of tax reform in other terms. Now, Senator Baucus has released drafts of several specific proposals. It is useful to review what form tax reform can take in general. We will discuss the specific Baucus proposals in later issues.

#### **1954-Style Tax Reform**

The 1954 Code can be seen as a rationalization of the existing tax laws—the last major rewrite had occurred in 1939. Since then, World War II had been fought, an excess profits tax enacted, and the income tax had been converted into a mass tax from a class tax through vast rate changes and withholding.

Also, a few years prior to the 1954 Code, the IRS had been rocked by scandals. As a result, a broad-scale reorganization had occurred, which was reflected in part in the Code itself.

Certainly many political calculations led to many favors and detriments being planted in the 1954 Code. However, it was not an occasion for massive redistribution of the tax burden. The tax rates hardly changed.

#### **1986-Style Tax Reform**

The 1986 Code also was supposed to be revenue neutral. However, it involved two major moving parts that did not appear in the 1954 Code: base broadening and rate lowering. It went far beyond rationalization of the tax law.

The rate lowering was one of a series of rate reductions that had been sought from the high World War II rates. Reductions did occur in fits and starts from the Kennedy administration forward, but even Eisenhower opposed some tax cuts, as did Nixon and Ford. Across the board, rate reductions accelerated when the

This advisory is published by Alston & Bird LLP to provide a summary of significant developments to our clients and friends. It is intended to be informational and does not constitute legal advice regarding any specific situation. This material may also be considered attorney advertising under court rules of certain jurisdictions.

Reagan years arrived. As it turned out, the lowest rates since 1926 appeared in the 1986 Code: 28 percent for individuals' ordinary income and capital gains.

But the bargain did not hold because deficits were ballooning in the 1980s as a result of earlier tax cuts and other factors. So the linkage of the capital gains rate and the ordinary income rate was broken in 1991 and the split has widened since, as the capital gains rate has been driven down and the base for it expanded to dividends.

A replay of 1986-style tax reform might seek to again eliminate the capital gains rate differential, but that has not been suggested by any of the major players in the process. Therefore, while base broadening and rate lowering, which is sometimes called loophole closing, may be pursued in 2014, elimination of many of the major complicating features of the Code—like the capital gains differential—is not likely to be addressed.

### **New Types of Taxes**

A totally different type of tax reform has not been seen in the United States since 1913: movement to a totally different type of tax, either to replace the income tax or to accompany it. During the 1980s and '90s, there was substantial discussion of flat taxes, consumption taxes and the VAT. The principal impetus for those discussions was the view that adopting such a tax would have a positive impact on economic activity.

Economic activity is at the top of the list of congressional concerns today, but discussions of consumption taxes have been relatively muted.

### **Other Targets for Economic Activity**

The major remaining sort of tax reform would be changes designed to encourage economic activity in particular, but broad, segments of the economy. The principal proposal discussed has been a change in the method of taxing foreign income earned indirectly by U.S. taxpayers. Multinational corporations, at least, would think that a change in the subpart F rules is major tax reform. The rest of the country may not understand what the big deal is.

### **Conclusion**

"Tax reform" is an all-purpose label for several legislative activities. What it may amount to in 2014 remains to be seen. However, one fundamental feature of all tax reform legislation surely will be true of this one, if it appears: if a tax law train starts to move toward enactment, many will want to climb on board. Lobbying will be heavy. We will issue future updates on tax reform.

For assistance with tax lobbying, call members of the Alston & Bird Tax Group.

*For more information, please contact [Jack Cummings](#) at (919) 862-2302.*

If you would like to receive future *Federal Tax Advisories* electronically, please forward your contact information to [taxgroup@alston.com](mailto:taxgroup@alston.com). Be sure to put “**subscribe**” in the subject line.

If you have any questions or would like additional information, please contact your Alston & Bird attorney or any of the following:

---

## Federal Tax Group

Sam K. Kaywood, Jr. Co-Chair 404.881.7481 sam.kaywood@alston.com	Edward Tanenbaum Co-Chair 212.210.9425 edward.tanenbaum@alston.com
---	---

John F. Baron 704.444.1434 john.baron@alston.com	L. Andrew Immerman 404.881.7532 andy.immerman@alston.com
--	--

Henry J. Birnkrant 202.239.3319 henry.birnkrant@alston.com	Brian E. Lebowitz 202.239.3394 brian.lebowitz@alston.com
--	--

James E. Croker, Jr. 202.239.3309 jim.croker@alston.com	Clay A. Littlefield 704.444.1440 clay.littlefield@alston.com
---	--

Jasper L. Cummings, Jr. 919.862.2302 jack.cummings@alston.com	Ashley B. Menser 919.862.2209 ashley.menser@alston.com
---	--

Brian D. Harvel 404.881.4491 brian.harvel@alston.com	Jennifer H. Weiss 404.881.7453 jennifer.weiss@alston.com
--	--

---

# ALSTON & BIRD LLP

WWW.ALSTON.COM

© ALSTON & BIRD LLP 2013

ATLANTA: One Atlantic Center ■ 1201 West Peachtree Street ■ Atlanta, Georgia, USA, 30309-3424 ■ 404.881.7000 ■ Fax: 404.881.7777  
 BRUSSELS: Level 20 Bastion Tower ■ Place du Champ de Mars ■ B-1050 Brussels, BE ■ +32 2 550 3700 ■ Fax: +32 2 550 3719  
 CHARLOTTE: Bank of America Plaza ■ 101 South Tryon Street ■ Suite 4000 ■ Charlotte, North Carolina, USA, 28280-4000 ■ 704.444.1000 ■ Fax: 704.444.1111  
 DALLAS: 2828 North Harwood Street ■ 18th Floor ■ Dallas, Texas, USA, 75201 ■ 214.922.3400 ■ Fax: 214.922.3899  
 LOS ANGELES: 333 South Hope Street ■ 16th Floor ■ Los Angeles, California, USA, 90071-3004 ■ 213.576.1000 ■ Fax: 213-576-1100  
 NEW YORK: 90 Park Avenue ■ 12th Floor ■ New York, New York, USA, 10016-1387 ■ 212.210.9400 ■ Fax: 212.210.9444  
 RESEARCH TRIANGLE: 4721 Emperor Blvd. ■ Suite 400 ■ Durham, North Carolina, USA, 27703-85802 ■ 919.862.2200 ■ Fax: 919.862.2260  
 SILICON VALLEY: 275 Middlefield Road ■ Suite 150 ■ Menlo Park, California, USA, 94025-4004 ■ 650-838-2000 ■ Fax: 650.838.2001  
 WASHINGTON, DC: The Atlantic Building ■ 950 F Street, NW ■ Washington, DC, USA, 20004-1404 ■ 202.756.3300 ■ Fax: 202.756.3333  
 VENTURA COUNTY: 2801 Townsgate Road ■ Suite 215 ■ Westlake Village, California, USA, 91361 ■ 805.497.9474 ■ Fax: 805.497.8804