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Update on 2010 Federal Tax Developments

A Look Back to Federal Tax Developments During 2010 and What to Expect for 2011

December 9, 2010

Westin Convention Center



About Today's Event

- **Welcome**
- **Agenda**
 - Presentations
 - Q & A
 - Announcements
 - Cocktail Reception



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Federal Tax Update

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Federal Tax Update Agenda

- I. New Tax Legislation in 2010
 - I. Hiring Incentives to Restore Employment (HIRE) Act
 - II. Small Business Jobs Act
- II. A Look at the Alternative Scenarios for 2011
- III. Some Tax Planning Ideas



Hiring Incentives to Restore Employment (HIRE) Act

Payroll Tax Forgiveness

- Temporarily suspends employers' portion of social security tax
 - Claim credit on revised Form 941
- Applies to pay periods between March 18, 2010 and December 31, 2010
- Qualifying employees
 - Began working on or after February 3, 2010 and before January 1, 2011
 - Cannot replace a current employee's position
 - No prior employment for > 40 hours during 60-day period before hire
 - No relationship to or ownership of the employer
- Certification requirements



Hiring Incentives to Restore Employment (HIRE) Act

Retained Worker Business Credit

- Employer tax credit for retaining new hires
 - Workers who qualified for payroll tax forgiveness
 - Workers who maintain employment for 52 consecutive weeks
 - Wages during last 26 weeks must be \geq 80% of first 26 weeks
- Lesser of \$1,000 or 6.2% of wages paid during 52-week period
- General business credit - may be carried forward but not back



Hiring Incentives to Restore Employment (HIRE) Act

Reporting on Certain Foreign Accounts

- Foreign financial institution reporting requirement
 - U.S. persons and U.S. owned foreign entities
- Must report
 - Name
 - Address
 - Taxpayer identification number
 - Account number and balance (for U.S. owned foreign entities only)



Hiring Incentives to Restore Employment (HIRE) Act

Reporting on Certain Foreign Accounts

- Withholding Requirements
 - Apply to non-compliant foreign financial institutions
 - 30% withholding required for “FDAP” payments

- “Small Accounts” Exception
 - Depository or custodial accounts
 - Aggregate value of all accounts must be \leq \$50,000

- Applicable for payments made after 2012



Small Business Jobs Act

Bonus Depreciation – IRC §168(k)

- Extends 50% first-year bonus depreciation through the end of 2010
- Special rules for percentage of completion method
 - Bonus applies to contracts not completed within the same year
 - Eligible for assets with a recovery period of 7 years or less
- Qualifying passenger automobiles under IRC §280F
 - Increases first-year limitation to \$11,060 (\$11,160 for light trucks)



Small Business Jobs Act

IRC §179 Expensing

- Increases expensing limitation for 2010 and 2011
 - Increases maximum limit to \$500K (previously \$250K under *HIRE Act*)
 - Investment limitation increased to \$2 million (previously \$800K under *HIRE Act*)
- Includes qualified real property
 - Leasehold improvement property, qualified restaurant property, and qualified retail improvement property
 - Maximum limitation is \$250K
 - Investment limitation applies to aggregate cost of all qualified property
 - Election to exclude qualified real property to avoid the investment limit
- Computer software continues to qualify as §179 property



Small Business Jobs Act

S-Corporation Built-In Gain Period

- General Rule
 - Tax on built-in gain property disposed of within 10-years after S-election
 - Taxed at highest corporate tax rate of 35%
- *ARRA of 2009* shortened holding period to 7 years for gains recognized in 2009 and 2010
- New law reduces holding period to 5 years for gains recognized in 2011
 - 5th year in recognition period must precede the tax year beginning in 2011



Small Business Jobs Act

Extended Carryback of General Business Credit

- Extends carryback period to 5 years for qualified small businesses
- Eligible small business
 - Non-publicly traded corporation, partnership, or sole proprietorship
 - Average annual gross receipts < \$50 million for prior 3 tax periods
- Credits may be used to offset both regular tax and AMT
- Effective for credits generated in the first tax year beginning after December 31, 2009



Small Business Jobs Act

Start-Up Expense Deduction

- Increases the deduction from \$5,000 to \$10,000
- Increases the phase-out from \$50,000 to \$60,000
- Excess expenditures continue to be amortizable over 180 months
- Effective only for 2010 tax year



Small Business Jobs Act

Self-Employment Income

- Cost of health insurance can be deducted for purposes of determining earnings from self-employment
- Under prior law, cost of health insurance could only be deducted for income tax purposes not when determining earnings from self-employment
- Effective for first tax year beginning after December 31, 2009



Small Business Jobs Act

Rental Expense Information Reporting

- Information returns (1099s) required by rental property owners who make payments of \$600 or more per year per recipient
- Examples include landscapers, repairmen, contractors, etc.
- Exceptions for filing
 - Reporting causes undue hardship
 - Rental income considered nominal
- Effective for payments made after December 31, 2010



Small Business Jobs Act

Other Provisions

- Removal of cell phones from listed property rules - IRC §280F
- Increased exclusion for qualified small business (QSB) stock – IRC §1202
- Modified penalty relief provisions – IRC §6707A
- Retirement savings provisions
- Increased failure-to-file penalties for information returns
- U.S. sourcing for income from loan guarantees
- Corporate estimated tax payment changes



What to Expect for 2011?

The New Obama-Republican Plan

- ***2-year extension of Bush tax cuts***
- ***13-month extension of UC benefits***
- ***2% employee payroll tax break***
- ***Extension of other popular credits and expiring provisions***
- ***2-year estate tax fix***
 - \$5 million exemption
 - 35% tax rate



What to Expect for 2011?

Three Possibilities

- ***Temporary or permanent extension of Bush tax cuts (“Status Quo”)***
- ***Obama budget proposals adopted (“Obama Plan”)***
 - Increased tax rates for incomes > \$250,000
- ***No action - Bush tax cuts left to expire (“Pre-2001”)***
 - Higher rates, no AMT patch, Estate tax issues, etc.
 - The WORST possible scenario!



Key Income Tax Rates

	<i>Pre-2001</i>	<i>Obama Plan</i>	<i>Status Quo</i>
Tax Brackets	15, 28, 31, 36, 39.6%	10, 15, 25, 28, 36, 39.6%	10, 15, 25, 28, 33, 35%
Capital Gains	10, 20%	0, 15, 20%	0, 15%
Dividends	Regular rates	0, 15, 20%	0, 15%



Key Estate Tax Information

	<u><i>Pre-2001</i></u>	<u><i>Obama Plan</i></u>	<u><i>Status Quo (2009)</i></u>
Estate Tax Rate	55%	45%	45%
Estate Tax Exclusion	\$1 million	\$3.5 million	\$3.5 million
Annual Gift Tax Exclusion	\$13,000	\$13,000	\$13,000



Income Taxes - Case Study

	<u><i>Case 1</i></u>	<u><i>Case 2</i></u>	<u><i>Case 3</i></u>
Wages	100,000	500,000	1,000,000
Long-Term Capital Gains	20,000	-	100,000
Dividends	-	-	100,000
Pennsylvania State and Local Taxes	4,600	20,000	46,000
Real Estate Taxes	5,000	7,000	14,000
Mortgage Interest	10,000	20,000	40,000



Case 1

	<i>Pre-2001</i>	<i>Obama Plan</i>	<i>Status Quo</i>
Wages	100,000	100,000	100,000
Capital Gain	20,000	20,000	20,000
Dividends	-	-	-
Adjusted Gross Income	120,000	120,000	120,000
Itemized Deductions			
SALT	4,600		
RE Tax	5,000		
Mort Int	10,000		
	19,600	(19,600)	(19,600)
Exemptions	(7,500)	(7,500)	(7,500)
Taxable Income	92,900	92,900	92,900
Regular Tax	18,712	13,375	13,375
AMT	-	-	-
TOTAL TAX	18,712	13,375	13,375



Case 2

	<i>Pre-2001</i>	<i>Obama Plan</i>	<i>Status Quo</i>
Wages	500,000	500,000	500,000
Capital Gain	-	-	-
Dividends	-	-	-
Adjusted Gross Income	500,000	500,000	500,000
Itemized Deductions			
SALT	20,000		
RE Tax	7,000		
Mort Int	20,000		
	47,000	(37,004)	(47,000)
Exemptions	(4,866)	(7,500)	(7,500)
Taxable Income	458,130	445,500	445,500
Regular Tax	154,088	132,027	125,403
AMT	-	-	5,497
TOTAL TAX	154,088	132,027	130,900



Case 3

	<i>Pre-2001</i>	<i>Obama Plan</i>	<i>Status Quo</i>
Wages	1,000,000	1,000,000	1,000,000
Capital Gain	100,000	100,000	100,000
Dividends	100,000	100,000	100,000
Adjusted Gross Income	1,200,000	1,200,000	1,200,000
Itemized Deductions			
SALT	46,000		
RE Tax	14,000		
Mort Int	40,000		
	100,000		
	(69,004)	(100,000)	(100,000)
Exemptions	(4,866)	(7,500)	(7,500)
Taxable Income	1,126,130	1,092,500	1,092,500
Regular Tax	399,016	349,039	311,853
AMT	-	-	-
TOTAL TAX	399,016	349,039	311,853



Tax Planning - For a Tax Rate Increase

– *Accelerate income into 2010*

- Roth IRA conversion- elect to tax all in 2010 versus 2011 - 2012
- Sell appreciated assets in 2010 at lower capital gains rates
- Elect out of Installment Sale treatment
- Take dividends from C Corporations
- Distribute old E&P from S Corporations
- Cash-basis businesses– accelerate receipts from customers



Tax Planning - For a Tax Rate Increase

– *Defer deductions until 2011 and beyond*

- Elect out of Bonus Depreciation and Section 179 expense
- Forgo NOL carryback period for 2010 losses
- Cash-basis businesses– defer payments to vendors
- Bunch itemized deductions into 2011
 - Postpone fourth-quarter state and local tax payments
 - Delay charitable contributions until early 2011



Tax Planning - For the Status Quo

– *Defer Income until 2011 and beyond*

- Roth IRA conversion in 2010 - elect to tax in 2011 and 2012
- Sell appreciated assets after year-end
- Postpone dividends from C Corporations
- Watch out for mutual fund purchases - “don’t buy a dividend”
- Cash-basis businesses - delay receipts until after year-end



Tax Planning - For the Status Quo

– *Accelerate Deductions into 2010*

- Enhanced IRC §179 limits: \$500,000 deduction, \$2million investment limit
- Extension of Bonus Depreciation: 50% deduction for new assets
- Ensure adequate tax basis and at-risk basis to claim losses from pass-throughs
- Prepay state and local taxes (watch out for AMT)
- Cash-basis businesses - prepay expenses before year-end



Tax Planning for All Seasons

– *Review Accounting Methods*

- Overall method - Cash vs. accrual method
- Inventory methods - LIFO, FIFO, etc.
- Revenue recognition methods
- Expensing and capitalization methods

– *Maximize retirement plan contributions*

- IRAs, 401ks and self-employed plans



Tax Planning for All Seasons

– *Consider Cost Segregation Studies*

- Works for both new construction and older facilities
- Consider the timing of the negative Section 481(a) adjustment

– *Review Choice of Entity - Pass-Through Entity vs. C Corporation*

- Policy trend is toward higher individual tax rates and lower corporate rates



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International Tax Update

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Global Tax Trends

- Tax rate and base disparity continues to widen between the U.S. and the rest of the world, especially considering cost of repatriation

U.S. currently has 6th highest rate in the world

- Global tax authorities are becoming more aggressive
 - Increased scrutiny from international tax authorities with respect to tax withholding and reporting (stock options reporting a big one)
 - High penalties for noncompliance in U.S. and foreign countries
 - Over 100 global updates in the past year alone – hard to keep up with





International Tax – Recent Law Changes

Foreign Tax Loopholes Closed:

- Prevent “splitting” foreign taxes from foreign income
- Modify allocation of interest expense for foreign affiliates
- Limitation on affirmative use of Section 956 for FTC planning (i.e., the “hopscotch” rule)
- Covered asset acquisitions
- Use of treaty sourcing rules
- Special rule with respect to certain redemptions by foreign subsidiaries

Other Foreign Loopholes Closed:

- Repeal of the 80/20 company rules
 - Relief allowed for existing 80/20 companies meeting certain requirements
- Sourcing of Guarantee Fees
 - Effective Sept. 27, 2010, fees will be sourced like interest
 - Generally, as interest, subject to U.S. withholding tax



International Tax – Potential Legislation

- Obama Administration Proposals:
 - Closing of more international loopholes seen as abuses
 - Eliminate or curtail deferral of income from foreign corporations
 - Raises effective tax rate for companies doing business overseas
 - Subpart F rule changes
 - No same country exception allowed for foreign base company sales and services income
 - Review of U.S. persons doing business in lower-tax jurisdictions (i.e., “tax havens”)



International Tax – U.S. Enforcement Update

IRS Actions:

- Transfer Pricing
- Withholding Taxes

Tier I issue (mandatory audit item in all large and mid-size business audits)

- Expatriates and “Accidental” Expatriates
- International IRS Agents Added (700 approved to hire)

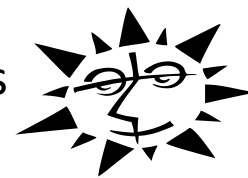




International Tax – U.S. Enforcement Update

Penalties:

- Forms 5471, 8865, 8858 and 5472:
 - \$10,000 per CFC or CFP per accounting year for failure to furnish required information; IRS can add additional \$10,000, up to \$50,000; and reduction of FTC s. Criminal penalties can also apply.
 - FBAR:
 - Negligent = Up to \$500
 - Non-Willful = Up to \$10,000
 - Pattern of Negligence = Up to additional \$50,000
 - Willful Failure to File = Greater of \$100,000 or 50% of account and criminal penalties
 - Failure to Withhold:
 - Up to \$10,000 for willful failure to collect and pay tax
- ❖ SD can help with getting up to date with filings





International Tax - Conclusion

Constant changes to tax laws for multinational companies

+

Anti- “big corporation” sentiment

+

Increased enforcement by IRS and foreign authorities

=

Big headache for you, business owners and CFOs!





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Healthcare Reform Update – Tax Implications

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Today's Agenda

- Overview of tax changes imposed by the latest health care bills
 - Patient Protection and Affordable Care Act
 - Health Care and Reconciliation Act of 2010
- Brief summary of certain tax changes and their effective date(s)
 - Changes effective currently through 2014
- Discuss any recent pronouncements
 - Internal Revenue Service Notice 2010-44
 - Internal Revenue Service Notice 2010-51
 - Much more to follow



Summary of Major Tax Changes

2010 – 10% federal excise tax for using indoor tanning facility

2010 – Small business tax credit

2011 – Over-the-counter limitations and additional tax on HSA/MSA distributions

2011 – Simple cafeteria plans; W-2 reporting of health insurance – **W-2 Reporting Now Delayed Until 2012**

2012 – Reporting of payments to corporations

2013 – Medicare tax increase for high income earners

2013 - New 3.8% Medicare tax on investment income

2013 - Flexible spending account contributions limited to \$2,500 for medical expenses

2013 – Itemized deduction threshold for health care expenses increased from 7.5% to 10% of AGI

2013 – Medicare retiree drug subsidy tax deduction eliminated

2013 – Excise tax on certain medical devices

2014 – “Pay or play” provisions begin for certain taxpayers

2014 – Increase of small business tax credit

2014 – Individuals refundable premium assistance credit created; penalty for no coverage

2018 – 40% excise tax on a portion of employer-sponsored “Cadillac plans”



Changes Starting after September 23, 2010

- Small Business Tax Credit
 - Credit established to offset the cost of employer-provided insurance
 - Businesses with less than 25 employees and average wages of less than \$50k could qualify for a tax credit of up to 35% of the cost of employees' premiums (salary reduction contributions are not included)
 - Employers with 10 or fewer employees and average wages of less than \$25k get full credit
 - This is part of IRC Sec. 38 general business credits



Changes Starting on January 1, 2011

- Restrictions On Use of HSA and FSA Funds for Over-the-Counter Drugs
 - Over-the-counter medicines or drugs are not eligible for reimbursement under a Health FSA, HRA or HSA without a doctor's prescription.
- HSA Excise Tax Increase From 10% to 20%
 - For non-medical HSA distributions



Changes Starting on January 1, 2012

- W-2 Reporting for Value of Insurance Coverage
 - Employers are required to report the “aggregate cost” of health care benefits, including medical, dental, vision and supplemental coverage, on employees’ W-2 tax statements.
 - It is expected that this requirement would apply to Forms W-2 for the year 2011 that are made available to employees in January 2012.
 - Contributions to HSA or FSA of the employee/spouse or salary reduction contributions to a flexible spending account under a cafeteria plan will not be included.



Changes Starting on January 1, 2012

- Information Reporting For Payments to Corporations
 - Act requires businesses to file an information return (for example, a Form 1099) for all payments aggregating \$600 or more in a calendar year to a single payee, including corporations (other than a payee that is a tax-exempt corporation).
 - Effective for payments made after December 31, 2011.
 - Prior to this act such payments to corporations were exempt from 1099 reporting
 - This will certainly be an additional burden to many businesses and also to the IRS who will be forced to process this information.



Changes Starting on January 1, 2013

- Health FSA limit on contributions
 - Contributions to a health FSA offered as part of a cafeteria plan are capped at \$2,500 each year.
 - Cap previously left to employer's discretion (\$4k to \$5k).
 - Indexed for Consumer Price Index (CPI) starting in 2014.
 - Critics wonder if an inflation index will in any way keep pace with actual costs of health care.



Changes for Plan Years Starting on or after January 1, 2013

- Additional Medicare Tax on Wages and Self-Employment
 - Individuals making \$200,000 a year or couples making \$250,000 would have a higher Medicare payroll tax of 2.35% on earned income, up from the current 1.45%.
 - Only applies to the earner & self-employed person – not to employer.
 - Not deductible as SE tax on individuals tax return.
 - Additional .9% tax is based on combined wages of taxpayer and spouse on a joint return.



Additional Medicare Tax (cont.)

- Employers are required to withhold additional .9% only if the employee receives more than 200,000 from them
- Example:
 - Employer A pays Sean 180,000. Sean earns 50,000 from Employer B. Sean's wife earns 125,000 from Employer C.
 - Neither employers A, B or C must withhold the tax since Sean did not earn in excess of 200,000 from one employer.
 - Sean will pay .9% on his personal return.



Changes Starting on January 1, 2013

- Medicare Contribution Tax on Unearned Income
 - A new tax of 3.8% on unearned income, such as dividends/interest, annuities, rent, also added. Not on retirement or tax-exempt income.
 - Tax applied on the lesser of net investment income or amount of modified AGI that exceeds the threshold amount (200,000, 250,000 MFJ, 125,000 MFS)
 - Estates and trusts are also subject to 3.8% on lesser of their undistributed net investment income or excess of their AGI over the dollar amount which starts the highest trust/estate tax bracket



Changes Starting on January 1, 2013

- Itemized Deduction Threshold for Medical Expenses Increases from 7.5% to 10% of AGI



Changes Starting on January 1, 2014

- Increase in Small Business Tax Credit
 - The 35% tax credit that goes into effect in 2010 for businesses with fewer than 25 employees and average wages of less than twice the applicable dollar amount increases to 50%.
 - The applicable dollar amount will be indexed for inflation for years after 2013



Changes Starting on January 1, 2014

- Pay or play provisions enacted for businesses
 - Large employers defined as having an average of at least 50 full-time employees
 - Assessable payment is calculated monthly as 1/12 of \$2,000 (166.67) times the number of full time employees in excess of 30.



Changes Starting on January 1, 2014

- Individuals – Mandatory Insurance Coverage
 - Penalty imposed for no coverage with certain exceptions
 - Applicable dollar amounts are:
 - ✓ 2014 - \$95
 - ✓ 2015 - \$325
 - ✓ 2016 - \$695
- Refundable health insurance premium assistance credit created



Recent IRS Pronouncements

- Notice 2010-44
 - Clarifies calculations for small business credits and provides many examples as well
- Notice 2010-51
 - Requests public feedback on information reporting
- Notice 2010-69
 - Delays W-2 reporting requirement for 1 year



Final Message

- Bulk of provisions effective after 2013
- Many clarifications will be coming in the future
- Talk to your business advisors about recent changes that will affect you and your business
- Refer to the SD website www.schneiderdowns.com for Health Care Reform Updates & Register for Automatic Health Care Reform “Insight” articles.

Thank you!



Q & A



Schneider Downs Announcements

- For full access to the electronic version of today's presentation, please visit us online:
www.schneiderdowns.com/Tax_CPE_Event_2010
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Thank You for Joining Us Today

Cocktail and Networking Reception

5 p.m. – 7 p.m.