AN EMERGING CONSENSUS AMONG TAX EXECUTIVES

Defining tax policy for the next administration.

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In a presidential election year, the legislative process often grinds to a halt and political posturing tends to dominate the tax policy debate. Notwithstanding the inevitable rise in rhetoric, the lead-up to an election plays an important role in setting the tone and helping define the tax policy environment for the next administration. Recognizing the important perspective and insight that in-house corporate tax executives can bring to the tax legislative process, in 2007 our firm instituted an annual survey designed to measure the current perspectives and attitudes of these individuals on the direction of tax policy. The Miller & Chevalier 2008 Tax Policy Forecast Survey[1] sheds light on the thoughts and concerns of leading corporate tax executives from many of the nation's largest and fastest-growing businesses. The survey reveals an emerging consensus among in-house tax professionals behind simplifying and broadening the tax base, reducing the corporate tax rate, and strengthening international tax policies that help companies stay competitive in the global business environment.

In-house tax executives face a wide range of challenges in exercising their function within today's large corporate enterprise. Our survey asked executives to identify their top business tax concern in the coming year. Respondents named management of the effective tax rate (28%) as the top business tax concern, followed by financial statement disclosure (FIN 48) issues (21%), and taxation of international operations (21%). Another concern expressed by many respondents was the tax-efficient structuring of transactions (16.5%). The responses provide further evidence that corporate tax executives are spending an increasing amount of time on financial reporting matters.

Asked whether the current tax structure for business income is in need of comprehensive reform, respondents answered almost two-to-one that comprehensive reform is needed. The sentiment was bipartisan — 57% of the respondents that identified themselves as Democrats and 72% of the respondents that identified themselves as Republicans expressed the view that the current system is in need of a fundamental overhaul. The survey results are in line with recent statements by business leaders expressing support for streamlining the corporate tax system to remove distortions and

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lower the statutory tax rate, similar to the reform approach taken in 1986 with respect to the individual income tax.[2] Broadening the corporate tax base in order to reduce the true corporate tax rate without losing revenue would inevitably create winners and losers, but would likely benefit the overall economy.

With Congress operating under renewed PAYGO budgetary rules, legislators have targeted large businesses as a major source for revenue that can be used to offset the cost of other tax changes, such as extension of expiring tax provisions. Our survey asked tax executives to identify which business tax revenue sources would have the most unfavorable impact on their business. Over a third of the respondents (37.5%) indicated that an increase in the taxation of international operations would have the most severe effect. Interestingly, respondents identified a potential elimination or reduction of the domestic manufacturing deduction under Section 199 as second on the list (18.75%). Identification of Section 199 is particularly noteworthy since the provision was only recently enacted in the American Jobs Creation Act of 2004. The survey results likely reflect the prominent position of Section 199 as the largest corporate tax preference in the tax code, exceeding both the R&D tax credit and the deferral of income from controlled foreign corporations in lost revenue.[3] Executives also expressed significant concern over the reduction of interest, rent, or royalty deductions (12.5%); executive deferred compensation (9.4%); and the elimination or reduction of LIFO inventory benefits (8.1%). Interestingly, although a large number of respondents (63.8%) stated that they anticipate Congress will seek to codify the economic substance doctrine, only nine respondents (5.6%) indicated that codification of economic substance would have the most unfavorable impact on their business.

POLITICAL POSTURING TENDS TO DOMINATE THE TAX POLICY DEBATE IN PRESIDENTIAL ELECTION YEARS.

Public finance economists and academics have identified numerous problems with our system for taxing corporate earnings. A complex set of tax deductions, exclusions, and credits creates unintended economic consequences that distort the corporate decision-making process. The Miller & Chevalier survey provides valuable insight regarding the problems that plague our corporate tax system from the perspective of in-house tax executives. Projecting forward, the executives responding to our survey clearly conveyed that in a year in which major tax legislation is unlikely, the business community is still concerned about the use of revenue raisers that affect business interests. In general, respondents called for greater simplification, a lower corporate tax rate, and international tax policies that will help their companies stay more competitive in the global business environment.

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1 The full survey may be viewed at: http://www.millerchevalier.com/files/upload/2008TaxPolicyForecastSurveyReport.pdf.

2 See, e.g., David L. Bernard, Int'l President, Tax Executives Institute, Inc., Testimony Before the Senate Committee on Finance (Sept. 20, 2006) ("TEI contends that a broader tax base coupled with a simpler, more administrable code will generate a system of taxation in which sound tax policy takes precedence over a patchwork of tax incentives and inducements.").

3 U.S. Department of Treasury, Treasury Conference on Business Taxation and Global Competitiveness Background Paper, at 11 (7/23/07).