Top 10 Tax Developments of 2014 With Impact on 2015

2014 was a notable year for tax developments on a number of fronts. Selecting the "top ten" tax developments for 2014 necessarily requires judgment calls based upon uniqueness, taxpayers affected, and forward-looking impact on 2015 and beyond. The following "top ten" list of 2014 tax developments is such a prioritization. Nevertheless, other 2014 developments may prove more significant to any particular client, depending upon circumstances. Please feel free to contact this office for a more customized look at the impact of 2014 developments upon your unique tax situation.

Passage of the Extenders Package

2014 was not a year for major tax legislation in Congress. In fact, Congress even failed to pass its usual two-year Extenders package, instead settling on a one-year retroactive extension to January 1, 2014. As one Senator put it, "This tax bill doesn't have the shelf life of a carton of eggs," referring to the fact that the 50-plus extenders provisions, signed by the President on December 19, 2014, expired again on January 1, 2015. Instead, it has been left to the 114th Congress to debate the extension of these tax breaks in 2015 and beyond, and for taxpayers to guess what expenses in 2015 will again be entitled to a tax break.

Affordable Care Act

In many ways, 2014 was a transition year for the Affordable Care Act. One of the most far-reaching requirements, the individual shared responsibility provision, took effect on January 1, 2014. Another key provision, the employer shared responsibility, was delayed (in 2013) to 2015. However, employer reporting under Code Sec. 6605 was not delayed. The IRS also issued guidance on the Code Sec. 36B premium assistance tax credit and other provisions of the Affordable Care Act. Meanwhile, the Supreme Court announced it would review a decision by the Fourth Circuit Court of Appeals upholding IRS regulations on the Code Sec. 36B premium assistance tax credit, a critical component to making the Affordable Care Act viable nationwide.

International Compliance

The IRS and Treasury increased their focus on requirements that U.S. taxpayers report foreign income and assets. The government took the final steps to implement the requirements for U.S. taxpayers and foreign financial institutions to report foreign assets under the Foreign Account Tax Compliance Act (FATCA). The government also tweaked its programs to induce U.S. taxpayers to report undisclosed income and assets from prior past years. At the same time, the IRS and the Department of Justice went to court to seek civil and criminal penalties, including jail time, against willful tax evaders.

Repair Regulations

In 2014, the IRS finished issuing the necessary guidance on the treatment of costs for tangible property under the sweeping so-called “repair” regulations, which impact most businesses. The most important development was the issuance of final regulations on the treatment of dispositions of tangible property under MACRS and under Code Sec. 168, including the identification of assets, the treatment of dispositions, and the computation of gain and loss, particularly in the context of general asset accounts (TD 9689). The IRS also issued several revenue procedures that granted automatic consent for taxpayers to change to the accounting methods allowed by the final regulations (including Rev. Proc. 2014-16 & 54).

IRS Operations

IRS Commissioner John Koskinen predicted a complex and challenging filing season due to cuts in the Service’s funding. Koskinen highlighted the Service’s having to do more with less because of reduced funding. In addition, the IRS is funded at $10.9 billion for FY 2015, which is $1.5 billion below the amount requested by the White House. The FY 2015 budget reduction "undercuts our ability to enforce the Tax Code," Koskinen said. "We will do everything we can to protect the integrity of the filing season." More budget cuts could cause "the wheels to start to fall off," he noted.

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Net Investment Income (NII) Tax

Many higher-income individuals were surprised to learn the full impact of the net investment income (NII) tax on their overall tax liability only during the 2014 filing season when their 2013 returns were filed. Starting in 2013, taxpayers with qualifying income have been liable for the 3.8 percent net investment income (NII) tax. The threshold amounts for the NII tax are: $250,000 in the case of joint returns or a surviving spouse, $125,000 in the case of a married taxpayer filing a separate return, and $200,000 in any other case. Recent run ups in the financial markets, and the fact that the NII thresholds are not adjusted for inflation, have increased the need to implement strategies that can avoid or minimize the NII tax. Issues persist that reduce certainty surrounding NII tax liability, in particular determining how a taxpayer "materially participates" in an activity to the extent it is exempt from the NII tax.

Retirement Planning

A number of changes have been made during 2014 affecting IRAs and other qualified plans which, cumulatively, rise to the level of a "top tax development" for 2014:

- Notice 2014-54 now permits a distribution from a 401(k), 403(b) or 457(b) account to have the taxable and non-taxable portions of the distribution directed to separate accounts.
- TD 9673 now permits IRA holders and defined contribution plan participants to obtain a "longevity" annuity to help insure that they will not outlive their required minimum distributions (RMDs).
- Notice 2014-66 now permits 401(k) plans to offer deferred annuities through target date funds (TDFs).
- *Bobrow*, TC Memo. 2014-21, held that, in contrast to the IRS guidance in Publication 590, a taxpayer is limited to one 60-day rollover per year for all IRA accounts under the tax code rather than one 60-day rollover per year for each IRA account. The IRS in Announcement 2014-32 stated that the new interpretation of the rollover rules would be applied to rollover distributions received on or after January 1, 2015.
- *Clark v. Rameker,* a 2014 Supreme Court decision, found that inherited IRA accounts were not retirement assets and therefore not subject to creditor protection under the Bankruptcy Code.

Identity Theft

Although clearly not confined to the area of federal tax, identity theft has been a major issue for both the IRS and taxpayers. In 2014, the IRS put new filters in place and took other measures to curb tax-related identity theft. The agency also worked with software developers, financial institutions and the prepaid debit card industry to combat identity theft. "We rejected 5.7 million suspicious returns last year that may have been tied to identity theft," IRS Commissioner Koskinen said. Nevertheless, few believe that the IRS has yet turned the tide.

Same-sex Marriage

After the Supreme Court struck down Section 3 of the *Defense of Marriage Act* in *Windsor,* the IRS issued guidance in 2013 adopting a place of celebration approach to recognizing same-sex marriage. The IRS followed-up with additional guidance in 2014 that required employers to take note of *Windsor* with regard to workplace tax benefits. Notably, the IRS focused on what changes needed to be made to retirement plan benefits in light of *Windsor*.

Tax Reform

Although 2014 was clearly not the year for tax reform (despite some 2013 forecasts that it would be), the foundations for serious tax reform discussions were laid in 2013 and 2014, when Congressional hearings and studies took place. Looking ahead to 2015 and beyond, there is optimism that Congress will complete some form of tax reform in 2015 or 2016.

The major difference of opinion, however, surrounds whether or not the reform would only address corporate tax provisions or also include individual provisions. Corporate reform has been pushed into the spotlight lately both by the controversy surrounding corporate inversions in changing foreign headquarters and by the general concern that American international business competitiveness is lessened by high U.S. corporate tax rates. House Ways and Means Committee Chairman Dave Camp, R-Mich., on the other hand has called for tackling comprehensive tax reform on both the business and individual side. His Tax Reform Bill of 2014 (HR 1) would make the Code "more effective and efficient," according to Camp, by getting rid of narrowly targeted provisions to lower tax rates across the board. "This will enable small and large businesses alike to expand operations, hire new workers, and increase benefits and take-home pay," he said.