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From the Editor

One Tax Code Reform to Rule Them All

By David E. Morse

Everyone's taxes will increase on New Year's Day 2026 when most of the 2017 tax cuts expire. Politicians and pundits, red, blue and purple, agree that would be bad. But could Democrats and Republicans possibly agree on tax reform? I think they could by using a few common sense ideas and understanding that the Tax Code is an ineffective (or worse) tool for achieving social and economic policy objectives.

The last four decades of reforms, enhancements, improvements, incentives and equalizers are proof that changing the rules benefits few people (except tax lawyers and accountants) and harms many. Zigzagging changes in rules make long-term planning impossible, waste a huge amount of brain power in learning new rules and forgetting old rules and (crucially) encourage taxpayers to take aggressive – if not fraudulent – tax positions.

Instead, Congress should agree on a tax architecture – what is taxable, nontaxable and deductible and when – and leave the rules alone regardless of the party that happens to be in power. As perfect is the enemy of good, constant revising of the tax rules – by Republicans or Democrats – is an economic waste.

The blueprint for the forever Tax Code should be based on the following simple goals.

REASONABLE FAIRNESS

Reasonable, because we are all human (even regulators), and we will never get it just right. Fair, because taxpayers should feel that they are not paying more than their share while those with better lobbyists are getting away with something. Obviously, wealthier people should pay more than the less wealthy, both because that is where the money is and because they are better able to afford it.

RATIONAL

The Tax Code should not push folks to act in way that makes little economic sense other than to reduce their taxes. Examples such as whether to buy or rent, sell or hold, borrow or lend, save or spend, should be driven by each person's perspective. A tax rule that encourages someone to act illogically wastes resources and stymies the economy.

THE BIG EASY

The Tax Code should be easy to comply with and enforce. Simplicity encourages compliance. If even Internal Revenue Service (IRS) agents cannot be sure of the law (see, e.g., Section 409A executive deferred compensation tax rules), it encourages honest taxpayers to be aggressive and some to cheat. And, the IRS – the only revenue positive government entity – should have the agents and tech resources needed to enforce the rules. Tax cheats cause higher tax rates and larger deficits. Having been involved in many IRS audits, I am absolutely certain that a properly-funded IRS will not be a threat to honest taxpayers or undermine democracy.

SOCIAL ENGINEERING AND TAXES DO NOT MIX

While rich folks should pay more than poor folks (in total dollars and proportionately), the Tax Code should not be a tool to punish success or favor one group over others. Instead, use the revenues raised from a simple, enforceable Tax Code to achieve government objectives via vouchers, credits, grants and the like. Reforming the Tax Code also is an ill-suited, and frequently counterproductive, solution to any achieving social objective, be it home ownership, growth, jobs, fairness, families or education.

CHANGE RATES NOT RULES

While the Tax Code should be set in stone, the rates can be set and reset depending on the state of the economy, government finances and current views of those in power. Granted, rates will be continuously adjusted depending on political winds. Separating rates and rules will enable rationale analysis and debate in crafting this one and done Tax Code, avoiding wasted time, squandered resources and unintended consequences of the current, irrational, ever-changing system.

The views set forth herein are the personal views of the author and do not necessarily reflect those of the law firm with which he is associated.

David E. Morse
Editor-in-Chief
K&L Gates LLP
New York, NY

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