Tax Cuts & Jobs Act: Effect on Renewable Energy

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SO YOU KNOW WHO IS TALKING

Greg Jenner advises and represents clients on a wide range of tax transactions and issues. He heads the firm's Washington, D.C., office, is a partner in the tax practice group and is a past co-chair of the firm's energy team. Greg first came to Stoel Rives out of law school, returning to the firm in 2008 after three tours of duty in the government and significant private practice experience.

Greg has ten years of combined experience at Treasury and on Capitol Hill. This experience provides him with unique and invaluable insights into legislative, tax policy, and budget processes, which in turn translates into value for the firm's clients.

He was privileged to serve as both Acting Assistant Secretary of the U.S. Treasury for Tax Policy (2004) and Deputy Assistant Secretary for Tax Policy (2002-2004). As Acting Assistant Secretary, Greg directed the Treasury's Office of Tax Policy, which is responsible for providing the Administration with policy analysis, advice and recommendations relating to all aspects of domestic and international issues of federal taxation. He advised President Bush and Secretaries Snow and O'Neill on tax policy issues, including launching the Administration's review of fundamental tax reform. Greg also served at Treasury from 1989-1992, as the Special Assistant to the then Assistant Secretary for Tax Policy.

Before joining Treasury in 1989, Greg began his tenure in Washington as Tax Counsel for the U.S. Senate Committee on Finance (1985-1989), where he helped write the Tax Reform Act of 1986, among other pieces of tax legislation. Greg's experiences throughout the tax reform process will prove invaluable to clients in 2017 and beyond.

Greg has had broad experience in virtually all federal tax matters, with particular focus on planning and implementing complex tax-related transactions, partnerships and joint ventures. At Stoel Rives, Greg has increasingly focused on planning for renewable energy projects.

As the prospect for fundamental tax reform in 2017 increases, Greg will be focusing more of his efforts on the various proposals and their effects on various industries and sectors.

Greg speaks nationally on renewable energy tax planning, agriculture tax issues, and tax and budget policy.

THE BEST YOU CAN SAY IS …

- It could have been worse!
- There is virtually nothing in the tax bill that really benefits renewables
- But how bad the bill is for renewables is yet to be determined

WHAT TCJA DID

- Lowered top marginal corporate tax rate from 35% to 21%
- Enacted 100% “expensing”
- Limited interest deductibility
- Enacted “BEAT” (Base erosion anti-abuse tax) as part of international reform
- Enacted mandatory repatriation
- Limited use of prepaid power contracts

Renewables Depend on "Tax Equity"

- Congress incentivizes renewables in the form of tax benefits
- Most developers don't have "tax appetite" -- the tax benefits are "stranded assets"
- Rather than let them go to waste, developers seek investors willing to invest primarily in return for the tax benefits
- The tax equity market is highly refined and sophisticated – about 30 major investors

The Effect of TCJA

- Tax Rates -- Basic supply and demand
  - Lower tax rates means lower tax liability
  - Lower tax liability means less tax equity available
  - Reduces “value” of depreciation
  - Likely means higher “price” for remaining tax equity
- BEAT
  - Applies only to multinationals
  - But must tax equity investors are multinationals
  - More detail below but net effect may be less willingness to invest
- Repatriation could have a counterbalancing effect

BEAT – The Little Dutch Boy

- International reform
  - Moved us from a worldwide to a territorial system
  - Even with a lower corporate rate, huge incentives to move income offshore
  - Without BEAT, our system would have been Swiss cheese
- BEAT functions like a minimum tax
  - Annual (year-end) calculation (making it hard to predict)
  - Harsher rule for banks, etc.
  - Two calculations – compare A to B – if B is less than A, taxpayer pays the difference
  - Renewable credits will reduce B (20% until 2025)
  - No carryover

BEAT – The Little Dutch Boy (con't)

- Effect on Tax Equity
  - Lower supply – investors exercise caution to avoid triggering BEAT?
  - Pricing of credits – 80%?
  - Election to claim ITC instead of PTC
- Delayed Effects

Mandatory Repatriation

- Multinationals with deferred foreign income
  - Deemed repatriation
  - Cash at 15.5%, non-cash at 8%
  - Spread over 8 years – back loaded
  - Bottom line – increase in tax liability, which could increase supply of tax equity

OTHER PROVISIONS

- 100% Expensing – very little effect
- Limitation on Interest Deductibility
  - Use of "back leverage"
- Prepaid Power (Service) Contracts
  - Limited effect but useful sometimes

QUESTIONS

- Many thanks for inviting me!