International Tax Strategies

Understanding the necessities for creating and sustaining effective tax strategies for individuals and businesses operating in the international marketplace.

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Agenda

• TCJA International Tax Overview
• Reporting Requirements
• Tax Structure Planning Opportunities
• Other International Tax Considerations
TCJA International Tax Overview
Making the world a little smaller

• Signed into law on December 22, 2017
• Largest major tax reform since 1986
• International Tax Highlights:
  • Transition from Worldwide Income Tax regime to Participation Exemption Tax regime
  • One-time Transition Tax on accumulated earnings
  • Significant changes to the treatment of foreign income
  • Incentives for companies to keep (or bring back) business in the U.S.
International Tax Reform - Goals

- Shift towards a territorial system
- Protect the U.S. tax base from cross-border erosion
- Incentive for economic investment in the U.S.
# International Tax Reform

<table>
<thead>
<tr>
<th>Corporate Tax Rate – 21%</th>
<th>CFC Rules</th>
<th>§962 Election</th>
<th>Transition Tax</th>
<th>GILTI</th>
<th>FDII</th>
<th>BEAT</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Decrease from top 35% Rate</td>
<td>- U.S. Shareholder re-defined</td>
<td>- Election to treat CFC Income as if received by corporation</td>
<td>- Deemed repatriation</td>
<td>- Tax on CFC’s earnings</td>
<td>- Opposite of GILTI</td>
<td>- US C Corps only</td>
</tr>
<tr>
<td>- Partnership Attribution Rules</td>
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<td>- U.S. Shareholder re-defined</td>
<td>- 15.5% Cash/cash Equivalents</td>
<td>- C Corp 50% deduction</td>
<td>- 37.5% tax deduction</td>
<td>- $500M avg gross receipts threshold</td>
</tr>
<tr>
<td>- Downward Attribution Rules (Repeal of §958(b)(4))</td>
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<td>- Partnership Attribution Rules</td>
<td>- 8% on remaining earnings</td>
<td>- New defined terms</td>
<td>- Disincentive to move IP</td>
<td>- related party transactions</td>
</tr>
</tbody>
</table>
CFC Status Determinations

CFC
50%+ of vote or value owned by a U.S. shareholder (on any day)

USS
Pre-TCJA: US “person” with 10% of vote
Post-TCJA: US “person” with 10% of vote or value

The status of a foreign corporation as a CFC and whether US person is a US Shareholder, determines USS CFC income inclusion.
CFC Rules: Attribution from Partnerships

**US Sh. 1 and 2 are US Shareholders (USS)**
- US Sh. 1 is a USS
- US Sh. 2 is not a USS
- Foreign Corp is a CFC
- No GILTI inclusion for US Sh. 2
- Form 5471 and 8992 Reporting

**Foreign Corp is not a CFC**
- Foreign Corp is not a CFC
- No GILTI inclusion for US Sh. 1 or 2
- Form 8865 and Form 5471 Reporting

**Form 8865 and Form 5471 Reporting**
- US Sh. 1 is a USS
- Foreign Corp is a CFC
- No GILTI inclusion for US Sh. 2
- Form 5471 and 8992 Reporting

**US Sh. 1 and 2 are USS**
- Foreign Corp is a CFC
- Pro-rata share of GILTI inclusion for US Sh. 1 and 2
- Form 5471 and 8992 Reporting
CFC Rules: Downward Attribution

- **Pre-TCJA**: No attribution of foreign corporations to U.S. corporations.
- **Post-TCJA**: §958(b)(4) repealed, and now attribution applies to foreign corporations.
- If corporation is 50% owned by another corporation, attribution applies.
- Not Congressional Intent (Sen. Perdue, R-GA)
- Reporting Relief
- Possible planning
IRS International Reporting Requirements
Information Reporting

- Form 5471 – CFC
- Form 8992 – GILTI
- Form 8993 – GILTI/FDII
- Form 5472 – 25%+ foreign owner (now includes U.S. Disregarded Entities)
- Form 8865 – Foreign Partnership
- Form 8858 – Foreign Disregarded Entity
- Form 965 – Transition Tax

Form 1099 Reporting
- CFC’s are considered U.S. payers and are required to file
Other Common International Tax Forms

<table>
<thead>
<tr>
<th>Form</th>
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</tr>
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<tbody>
<tr>
<td>Form 926</td>
<td>Return by a U.S. Transferor of Property to a Foreign Corporation</td>
</tr>
<tr>
<td>Form 8804/8805</td>
<td>Annual Return for Partnership Withholding Tax/Foreign Partner's Information Statement of Section 1446 Withholding Tax</td>
</tr>
<tr>
<td>Form 2555</td>
<td>Foreign Earned Income</td>
</tr>
<tr>
<td>Form 1042-S</td>
<td>Foreign Person's U.S. Source Income Subject to Withholding</td>
</tr>
<tr>
<td>Form 8832</td>
<td>Entity Classification Election</td>
</tr>
<tr>
<td>Form 8833</td>
<td>Treaty-Based Return Position</td>
</tr>
<tr>
<td>Form 5713</td>
<td>International Boycott Report</td>
</tr>
<tr>
<td>Form 8288, 8288-A, 8288-B</td>
<td>(FIRPTA) U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interests</td>
</tr>
<tr>
<td>Form W-8’s</td>
<td>Certificate of Foreign Status</td>
</tr>
</tbody>
</table>
Failure to File International Forms

• Common errors

• High Penalties
  • **Form 5471** - $10,000 initial penalty (per corporation), plus $10,000 for each 30-day period info is not filed, beginning 90-days after initial IRS notice (max of $50,000).
  • **Form 5472** - $25,000 initial penalty (per corporation), plus $25,000 for each 30-day period info is not filed, beginning 90-days after initial IRS notice

• May be able to argue reasonable cause to abate penalties
Tax Structure Planning Opportunities
Taxpayer Overview

37% 21% 37%

% based on ultimate owner
Planning Example

- Foreign wine business looking for direct investors
- WB Client, who is a U.S. individual, wants to invest along with other U.S. and foreign investors (who are all unrelated)
- WB Client calls their WB advisors PRIOR to investing, to ask what is the best route to invest.
- WB Team modeled out four scenarios
Planning Example

• Foreign wine business looking for direct investors
• WB Client, who is an individual, wants to invest along with other U.S. and foreign investors (who are all unrelated)
• Based on projections provided by wine business, WB Client plans to exit the business and sell within 10 years.
• WB Client calls their WB advisors PRIOR to investing, to ask what is the best route to invest.

• Questions to Consider:
  • Is foreign country in a treaty-friendly jurisdiction?
  • Applicable tax rates of foreign jurisdiction? (Income and withholding tax)
  • Is the foreign wine company a foreign corporation or foreign partnership?
  • How much is our client investing?
  • When are they planning to exit?
Facts and Assumptions:
- Jurisdiction: Ireland
  - 12.5% Corporate Rate,
  - US/Irish Treaty In-Force
  - Withholding Tax:
    - Corporate Treaty Rate: 5%
    - Individual Treaty Rate: 15%
- WB Client’s Ownership: 33%
- Exit Date: In 6-7 years, approx. Year 2025
- Individual Rate: 37%
- US C corp Rate: 21%
- Dividend distributions subject to NIIT @ 3.8%
- Assumed net available income will not be distributed to US individual
- There are no other CFCs or foreign branches
- Foreign corporation not expected to make significant profit until year 3. All income earned from foreign corp is subject to GILTI

Scenario 2 – This was most favorable option based on exit plan, and no yearly distributions, with recommendation to analyze each year if a §962 election is necessary.
Planning Example 2

• USCo is Georgia based S Corporation that manufactures soccer balls.
• Owners include Dad, Son, Friend, Investor 1, and Investor 2
• In June 2015, USCo formed ForCo in Dominican Republic as the manufacturing center. USCo owns 85% of ForCo, the other 15% is owned by a local resident.
• Both USCo and ForCo make sales
• ForCo currently has a Free-Zone Credit, and thus is not subject to any taxes in Dominican Republic
• ForCo is profitable, and expects to increase profits each year
• Management fee is paid from ForCo to USCo
• Dad wants to bring other son into the business
Planning Example

- US Company (USCo) is a Georgia-based S Corporation that manufactures soccer balls.
- Owners include Dad, Son, Friend, Investor 1, and Investor 2.
- In June 2015, USCo formed Foreign Company (ForCo) in the Dominican Republic as the manufacturing center. USCo owns 85% of ForCo, and the other 15% is owned by a local resident.
- Both USCo and ForCo make sales to customers.
- ForCo currently has a Free-Zone Credit, and thus is not subject to any taxes in the Dominican Republic.
- ForCo is profitable, and expects to increase profits each year.
- Management fee is paid from ForCo to USCo.
- Dad wants to bring other son into the business.

Questions to Consider:

- Any restructuring opportunities?
- Transition Tax
- GILTI
- Withholding Tax
- Management Fees
- Section 199A Deduction
- Do any of the U.S. Shareholders own any other foreign corporations?
- Estate and Gift Planning
- Valuation requirements
- Transfer Pricing
C corp allows for GILTI reduction of income at lower 21% tax rate, Management Fee reduces GILTI income, and still allows for 199A deduction at individual shareholder level. No current/future plans to exit.
Other International Tax Items
Other International Tax Considerations

• Common Reporting Standards
• FIRPTA
• Foreign Tax Credit
• Section 199A for Non-Residents
• Entity Classification (CTB Election)
• Expats and Inpats
• Technology
• Global Tax Policy
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