



U.S. Tax Reform Highlights and Other Updates

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Corporate Tax

- Old rules
 - 15%/25%/34%/35% graduated rate
 - Dividends-received deduction (“DRD”) is 80% and 70% for 20%-or-more and less-than-20%-owned corporations, respectively
- New rules (for tax years beginning after 12/31/2017)
 - 21%
 - DRD reduced to 65% and 50% respectively
 - 20% corporate Alternative Minimum Tax (“AMT”) repealed

Bonus Depreciation

- Old rules
 - 50% bonus depreciation allowance
 - New property only
- New rules
 - IRC Section 168: property placed in service after 9/27/2017 and before 2023
 - 100% Bonus depreciation for “qualified property” (tangible property with recover period of 20 years or less)
 - Includes used property, related party carve-out

Interest Deductions

- Old rules
 - IRC S.163(j) limits interest deduction where debt equity ratio exceeds 1.5:1 and net interest expense exceeds 50% of adjusted taxable income
- New rules
 - Deduction generally capped at 30% of adjusted taxable income
 - “level the playing field” between businesses that capitalize through equity and those that borrow
 - Exception for small businesses grossing on average \$25m or less for past 3 years

Sale of Partnership Interest

- Codifies look-through rule and trumps *Grecian Magnesite Mining v. Commissioner*, 149 T.C. No. 3 (July 13, 2017)
- Old rules
 - Court decision rejects 26 years of IRS practice (Rev. Rul. 91-32)
 - Held that generally foreign person's sale of partnership interest that is engaged in U.S. trade or business is foreign sourced
- New rules
 - Hypothetical sale of all assets at FMV
 - New 10% withholding tax

Net Operating Losses (“NOL”)

- Old rules
 - NOL fully deductible
 - Carry forward 20 years/back 2 years
- New rules
 - For losses arising in tax years beginning after 12/31/2017
 - Deduction generally limited to 80% of taxable income
 - Carry forward indefinitely, no carry back

20% Pass Through Deduction

- Old rules
 - Partnership/S Corp/Sole Proprietorship income taxed at individual tax rates up to 39.6%
- New rules
 - 20% deduction on certain qualified business income from pass through entities
 - Effective top individual tax rate reduced to 29.6%
 - Attorneys/accountants/doctors and other service providers ineligible
 - Planning structures to split qualified business income
 - IRS countermeasures

Notable Provisions

- Top individual rate cut to 37%, standard deductions increased (\$24k/\$12k)
- Gift/Estate tax exemption doubled to \$10m, indexed, 2018: \$11.2m
- State property/income tax deductions capped at \$10k for joint return, NY/CA/NJ charitable foundations, IRS countermeasures
- Home mortgage interest deductions capped, \$750k mortgage for joint return
- Alimony inclusion/deduction suspended (after 12/31/2018)
- Transitory (up to 1/1/2026), Tax Reform 2.0

One Time Deemed Repatriation Tax

- IRC Section 965 generally applies to U.S. shareholders of a Controlled Foreign Corporations (“CFC”)
- One-time tax on earnings and profits of CFCs accumulated after 1986
- Measurement date:
 - 11/2/2017; or 12/31/2017
- 15.5% tax rate for cash and liquid assets, 8% tax rate for other assets, 8 years to pay
- Applies to U.S. individuals shareholders (at higher rates)
- 2017 year end last minute guidance, regulations evolving
- \$339B tax revenue expected over 10 years (Apple’s share: \$?)

Global Intangible Low-Taxed Income (“GILTI”)

- Current income inclusion of Net CFC tested income (gross income other than Subpart F, ECI and certain other income) over net deemed tangible income return (generally 10% of basis of tangible assets over interest expense)
- 50% GILTI deduction and FTC for 80% of foreign taxes for corporate U.S. shareholders
- Generally no residual U.S. tax for U.S. corporate shareholders if GILTI is taxed at foreign tax rate of at least 13.125%
- Individual U.S. shareholders of CFC with low tangible assets (i.e., law/medical practice) or with high interest expense bear the burden
- Planning options suboptimal (IRC Section 962 election, ULC conversion, restructure shareholdings)
- Increased renunciation, planning required

Foreign Owned LLCs

- Suboptimal structure getting worse
- LLCs which are Disregarded Entities (“DREs”) are deemed to be corporations for Form 5472 purposes only
- Generally apply for years beginning on or after 1/1/2017 and ending on or after 12/31/2017
- Pro Forma Form 1120 (and extension) required in addition to Form 1120F
- \$10,000 penalty per each Form 5472
- Reasonable cause waiver
- Dealings with IRS NYC, LA Appeals Offices