U.S. Tax Update

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Tax Cuts and Jobs Act (TCJA)

- Most comprehensive tax reform since 1986
- Corporate tax rate cut from 35% to 21%
- New “Territorial” corporate tax system via participation exemption
- IRC Section 245A: Generally 100% Dividend Received Deduction (“DRD”) for U.S. corporate shareholder for foreign sourced dividends
- Lower rate, smaller base

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IRC Section 965

- One time transition tax, regulations issued 2/4/2019
- Generally applies to U.S. shareholders of a Controlled Foreign Corporations ("CFC") and U.S. shareholders of non CFC with at least one 10% U.S. corporate shareholder
- Based on foreign earnings and profits 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
- Expanded reporting: New Form 5471, Form 965 (replacing 965 statement)

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Global Intangible Low-Taxed Income ("GILTI")

- IRC Section 951A to address perceived abuse of Subpart F rules
- A territorial tax based on intangible asset?
- 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 GILTI tax if CFC is taxed at foreign tax rate of at least 13.125% ((21%X50%)/80%))
- Individual U.S. shareholders of CFC should consider IRC Section 962 election
- IRS guidance evolving, additional reporting (New Form 5471, Form 8992)

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Downward Attribution Rule

- Cdn Parent owns 100% of US Sub and 100% of Cdn Sub.
- US Sub does not own any shares of Cdn Sub, is Cdn Sub a CFC?
- Subpart F, GILTI implications?
- Direct, indirect and constructive ownership rules
- USD$10,000 penalty per *each* missed/late Form 5471
- Revised Form 5471 guidance and IRS relief

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Sale of Partnership Interest

- *Grecian Magnesite Mining v. Commissioner, 149 T.C. No. 3 (July 13, 2017),* held that generally foreign person's sale of partnership interest that is engaged in U.S. trade or business is foreign sourced

- Reverses decades of IRS position

- IRC Section 1446(f)
  - New 10% withholding tax on amount realized on the disposition of partnership interest
  - Proration based on assets generating ECI?

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Foreign Owned Disregarded Entity

- LLCs generally disregarded entities (“DREs”) for U.S. tax purposes when wholly owned unless election made
- Deemed to be corporations for Form 5472 purposes
- 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
- New USD$25,000 penalty per each missed/late Form 5472, up from USD$10,000
- Treaty hybrid issues

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Takeaways

- Post TCJA world complex/challenging, IRS guidance still evolving
- Increased reporting and increased penalties

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