

U.S. Tax Update

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Tax Cuts and Jobs Act (TCJA)

- Biggest U.S. tax reform in about 30 years
- Corporate tax reduced to 21% from 35% (40% drop)
- New “Territorial” corporate tax system via participation exemption
- One time IRC 965 transition tax on all post 1986 earnings of foreign subsidiaries
- IRS issuing letters on IRC 965 reporting/calculations
- New Global Intangible Low-Taxed Income (“GILTI”): U.S. tax on U.S. shareholder unless sufficient non-U.S. tax paid by foreign subsidiary

CARES Act

- Coronavirus Aid, Relief and Economic Security Act (March 2020)
- Non taxable cash rebates (\$1,200/adult and \$500/child) with high income phase out: U.S. citizens in Canada eligible
- Employee retention credit (up to \$5,000/employee)
- Payroll tax payment deferral (up to 2 years)
- New Net Operating Loss (“NOL”) carryback rules

NOL Carryback Rules

- TCJA eliminates NOL carryback after 2017, indefinite carryover
- CARES Act allows a 5 year carryback of 2018, 2019 and 2020 NOL
- 2013 corporate tax rate was 35%
- Post TCJA corporate tax rate is 21%
- Put cash back in taxpayers' hands

Revenue Procedure 2020-20

- Non-U.S. persons “stuck” in U.S. due to COVID-19
- Relief from the substantial presence test due to COVID-19
- 1/6, 1/3 and 1/1 test, 183 or more days
- Up to 60 days may be excluded if certain conditions are met
- COVID-19 Emergency Period: After Feb 1, 2020, before April 1, 2020
- COVID-19 Emergency Travel Disruptions: flight cancellations, border closures and “*Feel unsafe doing so*”
- Closer connection (Form 8840)/treaty relief still available

Foreign Owned LLCs

- Wholly owned LLCs generally disregarded entities (“DREs”) for U.S. tax purposes
- Deemed to be corporations for Form 5472 reporting purposes if foreign owned
- Need to file Form 5472, USD\$25,000 penalty per each missed/late Form 5472
- Treaty hybrid issues

Corporate Liquidations

- Common transaction that needs attention
- IRS Reporting due within 30 days of adoption of plan to liquidate
- Attach a copy of the plan to liquidate to IRS Form 966
- If non-U.S. parent: deemed sale of all assets/potential gain, additional IRS reporting (IRS Form 926)
- Form 926 penalty: 10% of FMV of assets transferred up to USD \$100,000
- Extended statute of limitation on any tax on transferred property

The President-Elect's tax proposals

- Aims to raise tax revenue by USD\$3.3T over 10 years (2021-2030)
- Raises corporate tax rate from 21% to 28% (33% increase)
- Creates a minimum tax on corporations with book profits of USD\$100 million or higher
- Doubles the GILTI tax rate from 10.5% to 21%

The President-Elect's tax proposals

- Raises top personal tax rate from 37% to 39.6%
- Eliminates preferred capital gain/dividend tax rates on high income filers
- Reduces the estate/gift tax exemption to USD\$3.5 million (2020 exemption: USD\$11.58 million)
- Increases the top estate tax rate from 40% to 45%
- Canadians with U.S. real estate/U.S. stocks beware

Takeaway

- Two certainties in life: Death and Taxes
- U.S. tax seems to be a changing certainty