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U.S.-based companies are not the only entities impacted by the U.S. Tax Cuts and Jobs Act of 2017 (Tax Act). It has also changed the taxation of non-U.S. earnings of multinational groups and investors. Although most of the individual income tax changes are scheduled to expire in eight years, the corporate income tax changes generally are permanent – including the survival of the IC-DISC.

BKR International recently presented an overview of noteworthy international tax

rates had a maximum corporate tax rate of 35%. This tiered system is now replaced with one, flat 21% corporate tax rate. The Tax Act also repeals the Corporate Alternative Minimum Tax (AMT).

The corporate tax rate reduction is designed to help U.S.-based companies be more competitive globally, and it may also incentivize increased U.S. investment or reshoring. This change in corporate tax law is where the simplicity of calculating tax ends, according to Gasbarra.

2. Move to Territorial System

Beginning in 2018, domestic corporations are entitled to a 100 percent Dividends-Received Deduction (DRD) for the non-U.S. source portion of dividends received from specified 10 percent owned non-U.S. corporations. A one-year holding period of the non-U.S. corporate stock is required to be eligible for this DRD. However, no foreign tax credit or deduction is allowed for any taxes paid. One more caveat: the 100% DRD only applies to C-corporation shareholders. "Although many accountants think this deduction is for everyone, prior tax law remains in effect for pass-through entities and individuals," Gasbarra says.

Treatment of Deferred Foreign Income aka Transition Tax

To speed up the process to the new approach to DRD, the Tax Act includes a mandatory one-time deemed repatriation of certain accumulated post-1986 earnings and profits of non-U.S. subsidiaries to all U.S. shareholders. C-corporation shareholders have to recognize income from controlled foreign corporations ("CFCs") and 10% owned foreign corporations eligible for the indirect foreign tax credit ("10/50 companies"), whereas, individual shareholders are only required to recognize income from CFCs. The deemed repatriation is treated like Subpart F income, creating significant disparity in the treatment between C-corporations and

penalties, too," Gasbarra says.

The shareholder's portion of earnings of the non-U.S. corporation held in cash and cash equivalents is taxed at a 15.5% rate; the shareholder's portion of all other earnings is taxed at an 8% rate. A taxpayer may elect to pay the tax due under this provision in installments over an eight-year period. Additional rules for deferral of this tax liability apply for S corporations. There are also different rules with respect to real estate investment trusts (REITs).

"I would think that most taxpayers will want to take advantage of the eight-year spread of payments being offered," says Kenneth Laks, CPA, MST, partner with Albrecht, Viggiano, Zureck & Company, P.C. (AVZ) in New York and the chair of the international tax practice group for BKR International. "Also, do not forget that foreign tax credits may be available to offset the tax arising from the repatriation."

3. U.S. Patent Box Provisions

The U.S. has now adopted a carrot and stick approach with respect to high-profit intangible income as a way to protect and retain U.S. intellectual property.

Essentially, the U.S. is creating two major classes of income. There is deemed tangible income, which is equal to a 10% return on tangible assets, and any income in excess of this deemed tangible income is treated as *intangible* income. If the intangible income is earned through a CFC and not otherwise treated as Subpart F income, or subject to foreign tax greater than 90% of the U.S. corporate tax rate, it is considered to be Global Intangible Low Taxed Income (GILTI). GILTI is treated like Subpart F income and immediately included in the U.S. shareholder's taxable income.

A U.S. corporation, not an individual, will benefit from a 50 percent deduction of GILTI included in income, resulting in a 10.5 percent effective tax rate on GILTI. Corporations also are allowed a foreign tax credit amounting to 80 percent of foreign tax credits paid by the CFC with respect to the GILTI included by a U.S. corporation.

is a healthy export incentive and, like the 50% deduction for GILTI inclusions, is specifically limited to C-corporations. Therefore, it is especially helpful that the IC-DISC provisions have survived. Pass-through entities and individuals, in addition to C-corporations, can benefit from an IC-DISC,

"I believe the power of the IC-DISC is still alive and well. With the new 20% QBI for pass-throughs and Schedule C and E owners (quite a bit of guidance is still pending from the IRS), the effective rate of tax for someone at the 37% fed rate drops to around 29%," Laks says. "With the use of the IC-DISC, you are able to create qualified dividend income taxable at 23.8% which is still almost a 6% spread. For pass-throughs that wind up falling under the specified trade or business restriction with taxable income of owners above thresholds, the spread could be up to 14%."

Other Significant International Tax Changes

There are several other significant changes to the U.S. international tax system, including

a new Base Erosion Anti-Avoidance Tax (BEAT) and a new separate limitation foreign tax credit basket for branch income (pass-through income of business profits that are attributable to one or more qualified business units (QBUs) in one or more foreign countries).

Corporations (other than REITs, regulated investment companies, or RICs, and S corporations) meeting certain threshold requirements are now required to pay a "base erosion anti-abuse tax" equal to the "base erosion minimum tax amount" for the tax year. The base erosion minimum tax only applies to a corporation that has average annual gross receipts of at least $500 million for the preceding three-year period. The tax is designed to penalize excessive deductible payments to foreign related parties by requiring those payments to be added back in when determining an alternative tax liability. The taxpayer is required to pay the greater of this regular

- Elect installment payment treatment, if desired, and make the first installment payment by the original due date of the 2017 income tax return (extensions are not allowed for this purpose and failure to do so results in the full amount of tax being due immediately).
- Consider the benefits of alternative tax legal structures (S Corp, C Corp, etc.). For example it is generally disadvantageous for pass-through entities and individuals to own CFCs directly, so consideration should be given to check-the-box elections, thereby treating the CFCs as pass-throughs for U.S. tax purposes in those cases.