



2017 U.S. TAX REFORM

“GILTI AS CHARGED”

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U.S. Federal Income Tax

- **U.S. Federal Income Taxation of U.S. Citizen, Residents and Domestic Corporations**

- Taxation of worldwide income irrespective of source.
- Foreign Tax Credit.

- **U.S. Federal Income Taxation of Nonresident Aliens and Foreign Corporations**

Taxed only on:

- Certain types of "U.S.-source" income – Taxed at a flat rate of 30 percent (or at a reduced rate whenever the provisions of an income tax treaty apply); and
- Income that is "effectively connected with the conduct of a trade or business within the United States" ("ECI") – Taxed at the regular graduated income tax rates.

Controlled Foreign Corporations ("CFC")

- Each "**U.S. shareholder**" of a foreign corporation that is treated as a "**controlled foreign corporation**" ("CFC"), who owns shares in the CFC, directly or indirectly through foreign entities, on the last day during such taxable year on which the foreign corporation is a CFC, must include in its income its pro-rata share of the CFC's:
 - Subpart F income (i.e., "bad-type income"), and
 - Earnings invested, or considered to be invested, in U.S. property ("Section 956 Income"),whether or not such income is actually distributed as a dividend.

CFC (Continued)

- A "**U.S. Shareholder**" - Any U.S. citizen, resident or corporation or other U.S. person who owns, directly or indirectly through foreign entities, or is considered to own by application of certain constructive ownership rules, 10 percent or more of the total combined voting power [new law - or value] of all classes of stock of the foreign corporation considered for CFC status.
- **CFC** - A foreign corporation, in turn, is treated as a CFC only if such U.S. Shareholders collectively own, or are considered to own by application of certain constructive ownership rules, *more than 50 percent* of the total combined voting power *or* total value of the corporation's stock.

CFC (Continued)

- “Previously Tax Income” (PTI) - Any amount of income included in a U.S. shareholder's income pursuant to the CFC rules is not subject again to U.S. taxation when actually distributed by the CFC.
- For purposes of the CFC rules, Subpart F income consists of three subcategories of income, namely, "Foreign Base Company Income" ("FBCI"), defined in Section 954, "Subpart F insurance income" ("SFII"), defined in Section 953, and certain income relating to international boycotts and other violations of public policy.
- “Trapped Cash”

International Provisions

- 21% corporate tax rate (reduced from 35%).
- Quasi participation exemption (100% DRD)
- Transition Tax
- GILTI
- BEAT

Quasi "Participation Exemption" For Foreign Dividends – New Section 245A

- Commencing in 2018, a 100% dividends received deduction (DRD) applies to the **foreign-source portion** of any dividend received:
 - from a "**specified 10-percent owned foreign corporation**" (any foreign corporation with respect to which any domestic corporation is a "United States shareholder");
 - by a **domestic corporation**;
 - which is a "**United States shareholder**" with respect to such foreign corporation.

Participation DRD - Exceptions

- **No DRD** is allowed for:
 - "Hybrid dividends" – dividends where the foreign corporation receives a deduction (or other tax benefit) with respect to taxes imposed by any foreign country. (Example: Luxembourg CPECs)
 - Dividends (including "purging" dividends) paid by a passive foreign investment company ("PFIC") with respect to the shareholder and which is not a CFC.

Participation DRD (Continued)

- No foreign tax credit and no deduction is allowed for any foreign taxes paid with respect to the portion of the dividend that qualifies for the DRD.
- 1 year holding period (365 days during a 731 day period) as a "U.S. shareholder".
- No exemption for gain realized upon sale of foreign corporation stock (except to the extent that the gain is recharacterized as a dividend under Section 1248).
- Basis reduction by the DRD for purposes of determining loss.

GLOBAL INTANGIBLE LOW-TAXED INCOME ("GILTI") – Section 951A

- Each **person** (whether a corporation or an individual) who is a **United States shareholder** of any **controlled foreign corporation** is required to currently include in gross income such shareholder's **global intangible low-taxed income** for the taxable year.

"Global Intangible Low-Taxed Income"

Means, with respect to any United States shareholder:

- such shareholder's **net CFC tested income** for such taxable year, over
- such shareholder's **net deemed tangible income return** for such taxable year ("normal return").

"Net Tested Income"

The gross income (over allocable deductions) of such corporation determined without regard to —

- any item of income described in section 952(b) (**ECI**),
- any **subpart F income** of such corporation,
- any gross income excluded from the foreign base company income (as defined in section 954),
- certain insurance income,
- any **dividend received from a related person** (more than 50% control, controlled by, or common control), and
- any foreign oil and gas extraction income.

"Normal Return"

- **10 percent** of the aggregate of such shareholder's pro rata share of the **qualified business asset investment ("QBAI")** of the CFC, over
- The amount of interest expense taken into account in determining the shareholder's net CFC tested income for the taxable year to the extent the interest income attributable to such expense is not taken into account in determining such shareholder's net CFC tested income.

Qualified Business Asset Investment

The quarterly average of the foreign corporation's aggregate adjusted bases of:

- **tangible property** used in the production of tested income.
- used in a trade or business of the corporation, and
- of a type with respect to which a deduction is allowable under Section 167.

GILTI (Continued)

- A person is treated as a United States shareholder of a CFC for any taxable year of such person only if such person owns (within the meaning of section 958(a)) stock in such foreign corporation on the last day in the taxable year of such foreign corporation on which such foreign corporation is a CFC.
- A foreign corporation shall be treated as a CFC for any taxable year if such foreign corporation is a CFC at any time during such taxable year.
- FTCs - Only 80% of foreign taxes are creditable for GILTI purposes; separate basket; no carryover or carryback.

FDII AND GILTI DEDUCTION – NEW SECTION 250

- A US corporation is allowed to deduct:
 - 50% of GILTI (effective rate of 10.5%); and
 - 37.5% of FDII (effective rate of 13.125%).
- Deduction rates are reduced after 2025 to 37.5% and 21.875%, respectively.

FDII – Foreign-Derived Intangible Income

- The new law contains a complex set of definitional rules for determining the amount of a U.S. corporation's FDII.
- In general, a U.S. corporation's FDII is the amount of its "**deemed intangible income**" that is attributable to sales of property (including licenses and leases) to foreign persons for use outside the United States or the performance of services for foreign persons or with respect to property outside the United States.
- A U.S. corporation's deemed intangible income generally is the excess of
 - its gross income that is not attributable to a CFC (SFI, GILTI, dividend), a foreign branch, or to domestic oil and gas income, reduced by related deductions (including taxes), over
 - an amount equal to 10% of the aggregate adjusted basis of its U.S. depreciable assets.
- The net result of the calculation is that a domestic corporation would be subject to the standard 21% tax rate on its fixed 10% return on its U.S. depreciable assets and a 13.125% (increased to 16.406% as of 2026) tax rate on any excess return that is attributable to exports of goods or services.

FDII – Foreign-Derived Intangible Income

- “Deemed Intangible Income”
 - the excess (if any) of —
 - the “deduction eligible income” of the domestic corporation, over
 - the “deemed tangible income return” of the corporation.
- “Deemed Tangible Income Return”
 - an amount equal to 10 percent of the corporation's qualified business asset investment.

FDII – Foreign-Derived Intangible Income (Cont.)

- “Deduction Eligible Income”

The excess (if any) of the gross income over related deductions of such corporation determined without regard to —

- SFI,
- GILTI,
- any financial services income (as defined in section 904(d)(2)(D)) of such corporation,
- any dividend received from a CFC,
- domestic oil and gas extraction income of such corporation, and
- any foreign branch income (as defined in section 904(d)(2)(J)).

FDII – Foreign-Derived Intangible Income (cont.)

- “Foreign-derived deduction eligible income”
- means, with respect to any taxpayer for any taxable year, any deduction eligible income of such taxpayer
- which is derived in connection with —
 - property —
 - which is sold by the taxpayer to any person who is not a United States person, and
 - which the taxpayer establishes to the satisfaction of the Secretary is for a foreign use, or
 - services provided by the taxpayer which the taxpayer establishes to the satisfaction of the Secretary are provided to any person, or with respect to property, not located within the United States.

Base Erosion and Anti-Abuse Tax (BEAT)

- The BEAT applies to **domestic corporations** that are not taxed on a flow-through basis (i.e., not S Corps, RICs, or REITs), are part of a group with at least \$500 million of annual **domestic** gross receipts (over a three-year averaging period), and which have a “base erosion percentage” of 3% or higher for the tax year (or 2% for certain banks and securities dealers, which are also subject to a higher BEAT rate).
- The provision also applies to foreign corporations engaged in a U.S. trade or business for purposes of determining their effectively connected income tax liability.

BEAT (Cont.) – Section 59A

- BEAT is a minimum tax – equal to the excess of
 - 10% (5% in 2018; 12.5% after 2025) of “modified taxable income” (where base erosion payments are added back), over
 - Regular tax liability.
- The targeted base erosion payments generally are amounts paid or incurred by the taxpayer to foreign related parties for which a *deduction is allowable*, and also include amounts paid in connection with the acquisition of *depreciable or amortizable* property from the foreign related party.
- Cost of goods sold is not a “base erosion payment”.

Other International Tax Changes

- Section 902 (indirect foreign tax credit) repealed.
- A separate FTC limitation basket for foreign branch income.
- A separate FTC limitation basket for GILTI.
- Source of gain from sale of inventory – place of production.
- Section 864(c) – Rev. Rul. 91-32 codified.
- Limitation on the deduction of net interest expense to 30% of EBITDA (EBIT after 2021) (exception to small business – Less than \$25M in gross revenue).
- 3 year holding period for certain carried interest income.

Other International Tax Changes (Cont.)

- Limit deduction of certain related-party amounts paid or accrued in hybrid transactions or with hybrid entities – Section 267A
 - The new law disallows a deduction for any disqualified related-party amount paid or accrued pursuant to a hybrid transaction, or by, or to, a hybrid entity.
 - A disqualified related-party amount is any **interest or royalty** paid or accrued to a related party if (i) there is no corresponding income inclusion to the related party under local tax law or (ii) such related party is allowed a deduction with respect to the payment under local tax law. A disqualified related-party amount does not include any payment to the extent such payment is included in the gross income of a U.S. shareholder under section 951(a) (i.e., a “subpart F” inclusion).