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Canadian Tax & Legal Alert

The 2022 Green Book – Fiscal year 2022 U.S. Federal Budget

June 9, 2021

On May 29, 2021 the White House released its proposals for the fiscal 2022 U.S. federal budget, including a number of tax-related proposals. President Biden based the economic planks of his 2020 election campaign on the premise that the benefits of the 2017's *Tax Cuts and Jobs Act* (TCJA) are skewed to large corporations and wealthy individuals, and that the federal income tax system needs to be retooled to ensure that these taxpayers are contributing "their fair share." All told, the administration projects that its tax proposals would generate a net increase in federal tax receipts of nearly $2.4 trillion between 2022 and 2031.

This represents the Biden Administration's proposals. Congress must act to draft legislative language that could ultimately become tax law, and there is little doubt that such legislation will not precisely mirror these proposals. However, as a general matter the proposals likely represent, directionally, the path that Congress will pursue, and taxpayers are well advised to consider them in planning for the future.

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The chart below summarizes the key revenue-raising proposals in both the American Jobs Plan and the American Families Plan (the latter is focused to a large extent on provisions affecting individuals/families and will not be further explored in this alert).

	Current law	Proposal	Notes & observations
Corporate income tax rate	*21% flat tax*	28% flat tax	• Applicable to tax years beginning after December 31, 2021. Tax years beginning after January 1, 2021 but before December 31, 2021 would be subject to a prorated increase • Not all Democrats in Congress support a 28% rate – a more modest increase to 25% has also been discussed
Global intangible low-taxed income (GILTI)	*Currently, U.S. shareholders include business income of their controlled foreign corporations (CFCs) (the "GILTI inclusion").* • *The first 10% of return from tangible assets is excluded (qualified business asset investment or QBAI)* • *Corporate U.S. shareholders may claim a 50% deduction that effectively reduces the tax rate on their GILTI inclusions to ½ of the corporate rate, or 10.5% before consideration of foreign tax credits (FTCs)* • *High tax exception can be elected, where applicable*	Proposed modifications to GILTI include: • GILTI deduction reduced to 25% • QBAI exemption eliminated • GILTI high tax exception eliminated • Computation of GILTI on a country-by-country basis with no ability to offset results from one country against another. Applies to CFCs as well as foreign branches • GILTI FTC "haircut" remains	• Applicable to tax years beginning after December 31, 2021 • The proposed modifications do not alter the GILTI FTC "haircut" (only 80% of a GILTI FTC may be claimed)

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	Current law	Proposal	Notes & observations
Foreign derived intangible income (FDII) deduction	*Provides a tax incentive for exports by providing a special deduction against certain U.S. sourced income from the export of goods and services by U.S. companies. The effective tax rates can be as low as 13.125% on qualified profits.*	Repeal of FDII deduction and using the savings to provide other, as-of-yet unspecified, research and development (R&D) tax incentives.	• Applicable to tax years beginning after December 31, 2021
Base erosion and anti-abuse tax (BEAT)	*An alternative tax of 10% applied to a U.S. taxpayer's income after certain "base eroding" payments are added back. Taxpayers pay the greater of the BEAT or the regular tax.* • *Applies to expanded groups with a three-year average of over $500M of U.S. gross receipts* • *Base eroding payments must be at least 3% of all below-the-line deductions*	Repeal BEAT and replace with the "SHIELD" (see below).	• Applicable to tax years beginning after December 31, 2022 • The U.S. government concluded that the BEAT was raising far less tax than expected
Stopping harmful inversions and ending low-tax developments (SHIELD)	*See BEAT*	Denial of deductions instead of a minimum tax. • $500M gross receipts test to apply on an annual basis to the global revenue of a financial reporting group • Deductions are denied in full when made to a related party that pays an effective tax rate under the Pillar 2 rate (or GILTI rate of 21%) • The portion of cost of goods sold (COGS) relating to cross-border, intercompany purchases or capitalized expenses may be similarly denied • Deductions are denied in part when a financial reporting group includes any low-tax entities	• Applicable to tax years beginning after December 31, 2022 • The proposal introduces new concepts such as the "financial reporting group" and references to financial statement reporting that may be complicated to implement and will likely be the subject of much further guidance from the government. The new proposal may also put a portion of a taxpayer's deduction for COGS at risk.
Subpart F	*Current tax on passive income earned by CFCs*	Repeal of high-tax exception (which allows avoidance of a U.S. shareholder inclusion where the effective foreign tax rate exceeds 90% of the highest U.S. tax rate).	• Applicable to tax years beginning after December 31, 2021 • Synchronizes with the repeal of GILTI high-tax exception
Anti-inversion rules	*A foreign corporation that acquires a U.S. corporation may itself be treated as a U.S. corporation permanently if the original investors in the U.S. corporation have an 80% or greater interest in the foreign acquiring corporation.*	Reduction of the 80% threshold to 50%. • A reverse acquisition may be deemed an inversion when, after the acquisition, the expanded group is generally managed in the U.S. and there is no substantial business in the acquirer's country of residence • The acquisition of assets constituting an entire trade or business from a U.S. entity may now be subject to the inversion rules	• Applies to transactions that occur after the date of enactment • Continues a trend of increasingly tougher anti-inversion laws in the U.S.

	Current law	Proposal	Notes & observations
Oil and gas	*A number of direct and implicit subsidies are provided for taxpayers in the oil and gas industry (e.g., small-producer percentage depletion in excess of basis).*	Repeal of all tax incentives benefitting the oil and gas industry including: • Percentage depletion • Expensing of intangible drilling costs • Deduction for tertiary injectants • Credit for oil and gas produced from marginal wells • Exception from the passive loss rules for working interests in oil and gas properties • Two-year amortization of geological and geophysical expenditures • Accelerated amortization for air pollution control facilities • Capital gains treatment for royalties • Exemption of foreign oil and gas extraction income (FOGEI) from GILTI tested income	• Applicable to tax years beginning after December 31, 2021
Minimum book tax	*N/A*	A minimum tax of 15% on companies' earning net income of $2B or greater. • Similar to the old AMT, credit may be given for excess tax paid in prior years • Credit may also be given for general business tax credits and foreign tax credits but not for deductions	• Applicable to tax years beginning after December 31, 2021 • Gives the Financial Accounting Standards Board (FASB) a greater tax role in tax policy
Credit for carbon oxide sequestration	*Credit available for capturing certain carbon gases from industrial sources for other use in industry or permanent storage. In general, credit is:* • *$20 per metric ton placed into secure geological storage* • *$10 per metric ton used in certain other industrial processes*	Applies to construction started by January 1, 2031. • Enhanced credit for capture of carbon from hard-to-mitigate industrial processes (*e.g.*, steel, cement) • Enhanced credit for direct air capture projects • Direct pay mechanism	• Applicable to tax years beginning after December 31, 2021
Disproportionate interest deduction	*Interest deductions are subject to a number of limitations including a limit under section 163(j) whereby the net interest deducted by a taxpayer cannot exceed 30% of adjusted taxable income (ATI – a figure approximating EBIT).*	Applies to U.S. members of multinational groups when the U.S. members report $5 million or more of net interest expense annually. • U.S. member net interest deductions disallowed to the extent they exceed the U.S. member's proportionate share of the group's net interest expense • Proportionality determined by comparing the EBITDA of the member to the EBITDA of the group • Alternative to limit a member's interest deduction to the member's interest income plus 10% of the member's ATI • Disallowed interest is carried forward • Applies concurrently with section 163(j) – taxpayers may only claim the lower amount	• Applicable to tax years beginning after December 31, 2021 • Targets groups that have greater leverage in the U.S. than other jurisdictions • Modelling likely required to assess applicability to particular fact patterns

	Current law	Proposal	Notes & observations
On-shoring credit and off-shoring deduction limitation	*N/A*	Incentives meant to encourage expanding or moving business to the U.S. while also discouraging the off-shoring of U.S. business. • Creates a general business credit equal to 10% of the eligible expenses paid or incurred in connection with onshoring a U.S. trade or business • No deduction would be allowed to a U.S. shareholder of a CFC in determining its GILTI or Subpart F inclusion for any expenses paid or incurred with moving a U.S. trade or business outside the U.S.	• Applicable to expenses paid or incurred after the date of enactment
Increased individual income tax rate	*37% for the income of single individuals over $523,600 and for the income of married individuals filing jointly over $628,300.*	39.6% for the income of single individuals over $452,700 and for the income of married individuals over $590,300.	• Applicable for tax years beginning after December 31, 2021
Stepped-up basis at death	*Certain transfers that occur upon death include an increase in the assets' tax bases to fair market value without a corresponding taxable gain for the estate.*	No step-up in basis if income is $1M or greater. • Introduces a deemed realization event every 90 years • Provides a 15-year payment plan for gains that do result	• Applicable to property transferred by decedents dying after December 31, 2021 and on certain property owned by trusts, partnerships, and other non-corporate entities on January 1, 2022
Capital gains rate	*20% rate*	Long-term capital gains and qualified dividends of taxpayers earning over $1 million to be taxed at ordinary rates.	• Applicable to transactions after the date of announcement (presumably April 28, 2021)
Like-kind exchange limitation	*Exchanges of real property held for productive use or investment for other such property may be completed without recognizing gain or loss.*	Tax-deferred exchange treatment limited to properties with gain of $500,000 or less.	• Applicable for tax years beginning after December 31, 2021
Bank account reporting	*No reporting by banks to IRS for domestic bank accounts.*	A 1099-like form issued for every bank account in the U.S. showing all the deposits made during the year.	• Applicable for tax years beginning after December 31, 2022 • Applies when deposits exceed $600
Carried interests	*Partnership interests held in connection with the performance of services are taxable at capital gains rates.*	Capital gains treatment available only to those taxpayers with income from all sources under $400,000.	• Applicable for tax years beginning after December 31, 2021

Certain proposals of note for cross-border businesses are outlined in greater detail below:

Corporate tax rate increase

Applicable to tax years beginning after December 31, 2021. Taxable income earned in years beginning after January 1, 2021 but before December 31, 2021 would be subject to a prorated increase

- Proposes an increase in the corporate income tax rate from 21% to 28%.

Deloitte's observations – A prospective increased corporate income tax rate means that opportunities to accelerate income/defer deductions should be explored, including via changes in accounting method.

Transfer pricing policies should be re-examined to identify opportunities to shift income to lower tax jurisdictions.

Remember the financial statement implications of a corporate tax rate increase when accounting for deferred tax balances.

Inadvertent taxability in the U.S. (*e.g.*, by operating through a permanent establishment) will increase effective tax rates in many cases.

Replace the BEAT with the SHIELD

Applicable to tax years beginning after December 31, 2022

The proposal would repeal the current-law base erosion and anti-abuse tax (BEAT) and replace it with a new rule – known as the stopping harmful inversions and ending low taxed developments (SHIELD) rule – that would disallow deductions to domestic corporations or branches by reference to low taxed income of entities that are members of the same financial reporting group (including a member that is the common foreign parent, in the case of a foreign-parented controlled group).

Under this proposal, a deduction would be disallowed to a domestic corporation or branch, in whole or in part, by reference to all gross payments that are made (or deemed made) to "low-taxed members." A low-taxed member is any financial reporting group member whose income is subject to (or deemed subject to) an effective tax rate that is below a designated minimum tax rate.

The proposal does not provide important detail about how net operating losses or temporary and permanent differences between book and tax income would be considered.

Agreed-upon minimum tax rate: If the SHIELD is in effect before a Pillar Two agreement has been reached, the designated minimum tax rate trigger will be the U.S. global minimum tax rate for GILTI (which is effectively 21% under this proposal after the proposed reduction of the Section 250 deduction). If a Pillar Two agreement has been reached, the agreed-upon rate will apply for purposes of the SHIELD.

Definition of financial reporting group: A financial reporting group is any group of business entities that prepares consolidated financial statements and that includes at least one domestic corporation, domestic partnership, or foreign entity with a U.S. trade or business (*i.e.*, a U.S. branch or permanent establishment).

Consolidated financial statements mean those determined in accordance with U.S. Generally Accepted Accounting Principles (GAAP), International Financial Reporting Standards (IFRS), or other method authorized by the Secretary of the Treasury under regulations. A financial reporting group member's effective tax rate is determined based on the income earned (in the aggregate, taking into account both related- and unrelated-party income) and taxes paid or accrued with respect to the income earned in that jurisdiction by financial reporting group members, as determined based on the members' separate financial statements or the financial reporting group's consolidated financial statements, as disaggregated on a jurisdiction-by-jurisdiction basis. The rule would apply to financial reporting groups with greater than $500 million in global annual revenues (as determined annually based on the group's consolidated financial statements).

Calculation of denied deduction: Payments made by a domestic corporation or branch directly to low-tax members would be subject to the SHIELD rule in their entirety. In particular, payments that are otherwise deductible costs would be entirely disallowed, while payments for other types of costs (such as COGS), other deductions (including unrelated-party deductions) would be disallowed up to the amount of the payment.

Payments made to financial reporting group members that are not low-tax members would be partially subject to the SHIELD rule to the extent that other financial reporting group members were subject to an effective tax rate of less than the designated minimum tax rate in any jurisdiction. In such cases, the domestic corporation or branch would effectively be treated as having paid a portion of its related-party amounts to the low-taxed members, if any, of the financial reporting group based on the aggregate ratio of the financial reporting group's low-taxed profits to its total profits, as reflected on the financial reporting group's consolidated financial statements.

Deloitte's observations – The SHIELD is likely to have a significant impact on larger cross-border businesses. By adjusting many of the thresholds and exceptions found in the original BEAT (*e.g.*, the $500M threshold that will reference annual gross revenues of the global financial reporting group) and by making COGS subject to the add-back provision, many more payments are likely to be affected by the SHIELD than the BEAT, provided that a corporate group has at least some members that are subject to low effective rates of tax.

With the introduction of the "financial reporting group" for many of the SHIELD calculations, there will be new and significant compliance burdens associated with determining the portion of relevant payments for which a deduction must be disallowed due to the presence of a low-tax entity within the group.

For some businesses, a modification of operating models and supply chains will be necessary to avoid a material tax increase from the SHIELD provisions.

Additional interest limitation for multinational groups

Applicable to tax years beginning after December 31, 2021

Multinational groups would be subject to a new interest expense limitation meant to target groups that have greater leverage with respect to their U.S. operations than the group has overall. Taxpayers subject to both this limitation and the existing section 163(j) would apply whichever limitation is lower each taxable year.

The new limitation would apply to any U.S. subgroup (or stand-alone U.S. entity) that is included in the consolidated financial statements of a multinational group and that reports $5 million or more of net interest expense on U.S. tax returns annually (financial services entities would be exempt).

Interest expense deductions of the U.S. subgroup would be disallowed in proportion to the portion of the subgroup's net interest expense (calculated for financial reporting purposes on a separate company basis) that exceeds the subgroup's proportionate share of the overall group's net interest expense reported on the group's consolidated financial statements.

The U.S. subgroup's proportionate share of the group's net interest expense would be based on the subgroup's proportionate share of the group's earnings before interest, taxes, depreciation, and amortization. Interest expense disallowed under the limitation would be carried forward to subsequent years, and the U.S. subgroup would also carry forward any excess limitation.

A U.S. subgroup would be comprised of any U.S. entity that is not directly or indirectly owned by another U.S. entity as well as all direct or indirect subsidiaries (U.S. and foreign) of such U.S. entity that are included in the group's consolidated financial statements. The U.S. subgroup would also be permitted to elect to limit its interest deductions to its interest income plus 10%.

Deloitte's observations – The annual interest limitation may be problematic for Canadian parented groups that have introduced significant leverage into their U.S. operations – potentially through the use of a financing structure. Determining the impact of these rules would likely require modelling to provide the correct response for a particular taxpayer.

The required analysis for Canadian multinational groups will be complicated by the Canadian interest limitation rules introduced in the new 2021 Federal Budget.

Under existing U.S. tax law, interest expense is often allocated according to the tax bases of assets. This provision would represent a departure from this practice in that the relative EBITDA of the U.S. subgroup dictates its proportionate share of allowed interest expense.

Proposed revisions to the global intangible low-taxed income (GILTI) rules

Applicable to tax years beginning after December 31, 2021

Several changes to GILTI are proposed that would subject a U.S. shareholder to higher rates of tax on its GILTI inclusion amounts, require a country-by-country type approach to GILTI reporting, and increase the record-keeping and compliance requirements for at least some taxpayers.

- Elimination of the exemption for income equal to 10% of a CFC's qualified business asset investment (QBAI) (*i.e.*, tangible business assets). This change results in the inclusion of a U.S. shareholder's entire net GILTI tested income in its U.S. taxable income.
- Reduction of the section 250 deduction from 50% to 25% of a U.S. shareholder's GILTI inclusion amount.
- Repeal of the high-tax exception for both GILTI and Subpart F income.
- Change from the current "global averaging" approach to a "country-by-country" GILTI calculation whereby GILTI tested loss generated in one jurisdiction where a CFC has operations cannot be used to offset GILTI tested income generated in another jurisdiction. A separate foreign tax credit (FTC) limitation would apply to the GILTI FTC basket for each jurisdiction.
- This new country-by-country approach would also carry over to the FTC rules in general and apply to a U.S. taxpayer's foreign branch income. Taxes paid in higher tax jurisdictions would no longer reduce the residual tax paid on income earned in lower tax jurisdictions.

Deloitte's observations – The changes to the GILTI rules would generally increase the effective tax rate of a U.S. parented group with foreign subsidiaries. For instance, the elimination of the 10%-of-QBAI exemption means a larger GILTI inclusion each year taxed at a higher rate.

Given Canada's corporate tax rates are relatively comparable to the U.S., the high-tax exception had provided some relief for U.S. shareholders of Canadian CFCs with respect to record-keeping and reporting requirements. The repeal of the high-tax exception would require U.S. shareholders to monitor the Subpart F income, tested income and earnings and profits of CFCs more closely and generally increase the compliance and record-keeping costs related to CFCs.

The country-by-country FTC limitation means that U.S.-based multinationals may have a greater interest in reducing Canadian corporate tax liabilities given an inability to cross-credit.

For going-public transactions (*e.g.*, involving special purpose acquisition companies or SPACs), a U.S.-parented group may result in higher effective tax rates when compared with a Canadian-parented group.

Limit FTCs from sales of foreign hybrid entities

Applicable as of the day of enactment

Under current law, when the stock of a foreign target corporation is sold but a Section 338 election is made to treat the transaction as an asset sale, Section 338(h)(16) applies to prevent the earnings and profits generated by the asset sale from changing the character of the gain from capital to ordinary and, therefore, prevents the use of FTCs to reduce or eliminate the residual U.S. tax on the stock gain. However, this rule does not apply to economically similar transactions, such as the sale of a hybrid entity that is treated as a corporation for foreign tax purposes but flow-through for U.S. federal income tax purposes (specified hybrid entities) or changes in entity classification that are taxable for U.S. purposes but not regarded for foreign tax purposes.

Under the proposal, for purposes of the FTC rules the source and character of any item resulting from the disposition of an interest in a specified hybrid entity or a change in entity classification would be determined based on the source and character of an item of gain or loss the seller would have taken into account upon the sale or exchange of stock (determined without regard to Section 1248).

The proposal would not affect the amount of gain or loss recognized as a result of the disposition or the change in entity classification.

Deloitte's observations – The expansion of the principles of Section 338(h)(16) to transactions involving specified hybrid entities or changes in entity classification may make it more difficult to efficiently utilize tax attributes when disposing of a hybrid entity in a taxable transaction (*e.g.*, moving a foreign branch owned by a specified hybrid entity "out from under" a U.S. corporation in a taxable transaction).

15% minimum tax on book earnings of large corporations

Applicable to tax years beginning after December 31, 2021

Taxpayers with more than $2 billion of worldwide book income would be subject to a new 15% minimum tax.

Taxpayers would pay the greater of a "book tentative minimum tax" or their regular tax. The book tentative minimum tax would be equal to 15% of worldwide pre-tax book income (calculated after reducing book income by book net operating loss deductions), less general business credits (including R&D, clean energy, and housing tax credits) and foreign tax credits.

Under the proposal, taxpayers would be allowed a book tax credit (for a positive book tax liability) against regular tax in a subsequent year, but the credit may not reduce the regular tax liability below the book tentative minimum tax for that year.

This tax is specifically targeted at the largest companies that report significant pre-tax net income on their financial statements but pay no tax. The proposal estimates 120 companies earn the requisite $2 billion of pre-tax net income annually.

Deloitte's observation – Even considering the high-level description of this proposed minimum tax and the proposed mechanics to maintain fairness, the tax accounting associated with its application raises a myriad of issues.

Expanded anti-inversion rules

Applicable to transactions that occur after the date of enactment

This proposition would reduce the ownership threshold of the "80%" inversion test to greater than 50% and eliminate the "60%" test. Transactions where the shareholders of the former U.S. entity comprise more than 50% of the shareholders of the foreign entity would be treated as inversions and the foreign entity would continue to be treated as a U.S. corporation for U.S. federal income tax purposes.

Certain reverse acquisitions would be treated as inversions regardless of the level of shareholder continuity. For instance, a transaction would be treated as an inversion if: (1) immediately prior to the acquisition, the fair market value of the U.S. entity is greater than the fair market value of the foreign acquiring corporation, (2) after the acquisition the expanded affiliated group is primarily managed and controlled in the U.S., and (3) the expanded affiliated group does not conduct substantial business activities in the country in which the foreign acquiring corporation is created or organized.

The definition of an acquisition for purposes of the inversion rules is also expanded to cover the direct or indirect acquisition of substantially all of the assets constituting a trade or business of a U.S. corporation, substantially all of the assets of a U.S. partnership, or substantially all the U.S. trade or business assets of a foreign partnership. Outbound distributions of foreign corporation stock by a U.S. corporation or a U.S. partnership may also be treated as inversions.

Deloitte's observations – A number of items will need to be clarified through further guidance before the true reach of this proposal can be assessed. The percentage test would be applied with respect to the expanded affiliated group meaning that the overall corporate group after the acquisition would need to be considered for purposes of this test. As the proposal would expand what constitutes an "acquisition" for purposes of the inversion rules, it is likely that more cross-border transactions will need to take these rules into account.

Oil and gas related changes

Applicable to tax years beginning after December 31, 2021 (unless otherwise indicated below)

The repeal of the following provisions:

- The exemption from GILTI for foreign oil and gas extraction income (FOGEI) and the expansion of FOGEI and foreign oil and gas related income (FORI) to include income derived from shale oil and tar sands activity.
- The Section 43 enhanced oil recovery credit for eligible costs attributable to a qualified enhanced oil recovery project.
- The Section 451 credit for oil and gas produced from marginal wells.
- The election to expense intangible drilling costs under Sections 263(c) and 291.
- The deduction for costs paid or incurred for any tertiary injectant used as part of a tertiary recovery method under Section 193.
- The Section 469 exception to passive loss limitations provided to working interests in oil and natural gas properties.
- The use of percentage depletion with respect to oil and gas wells and hard mineral fossil fuels (*i.e.*, small producer percentage depletion).
- The two-year amortization of independent producers' geological and geophysical expenditures under Section 167(h), instead allowing amortization over the seven-year period used by integrated oil and gas producers.
- The expensing of exploration and development costs.
- The capital gains treatment for royalties under Section 631(c).
- The exemption from corporate income tax for publicly traded partnerships with qualifying income and gains from activities relating to fossil fuels (applicable to tax years beginning after December 31, 2026).
- The exemption from the Oil Spill Liability Trust Fund excise tax for crude oil derived from bitumen and kerogen rich rock.
- The accelerated amortization for air pollution control facilities.

Deloitte's observations – The repeal of these provisions – in particular the repeal of the GILTI exception for FOGEI – may have interesting effects on the economics both of U.S. outbound oil and gas investments into Canada as well as for those Canadian entities in the Canadian oil and gas industry.

For Canadian parented groups that, due to past acquisitions, have U.S. entities which hold foreign oil and gas producing entities, these changes (combined with the changes to the anti-inversion rules) may accelerate the desire to move those assets "out from under" the U.S. entity.

Repeal of the foreign derived intangible income deduction (FDII)

Applicable to tax years beginning after December 31, 2021

The repeal of FDII deduction is intended to help pay for improved incentives for performing R&D activities in the U.S. (These new incentives are as-of-yet unannounced.)

Deduction disallowance for exempt or tax-preferred foreign gross income

Applicable to tax years beginning after December 31, 2021

Current Section 265 denies a deduction for expenses that are allocable to tax-exempt income. The proposal would expand the scope of this section so that it applies to income that receives a partial exemption from U.S. tax (*e.g.*, the Section 245A dividend received deduction for dividends distributed by specified 10-percent owned foreign corporations or the Section 250 deduction that applies against a corporate U.S. shareholder's GILTI inclusion amount), and denies the allocated deductions at least in part.

A corresponding change would be made to the FTC rules by repealing Section 904(b)(4).

Deloitte's observations – These changes would be expected to increase the U.S. effective tax rate for U.S. shareholders having GILTI inclusions or receiving foreign dividends.

Credit for "on-shoring" U.S. business

Applicable to expenses paid or incurred after the date of enactment

Creates a new general business credit of 10% of eligible expenses paid or incurred with on-shoring a U.S. trade or business.

Under the proposal, onshoring a U.S. trade or business means reducing or eliminating a trade or business (or line of business) currently conducted outside the U.S. and starting up, expanding, or otherwise moving the same trade or business to a location within the U.S., to the extent that this action results in an increase in U.S. jobs. Eligible expenses may be incurred by a foreign affiliate of the U.S. taxpayer, notwithstanding the tax credit would be claimed by the U.S. taxpayer.

A corresponding provision would prevent a U.S. shareholder from taking into account expenses incurred for "off-shoring" a U.S. trade or business in determining the U.S. shareholder's GILTI or Subpart F inclusion.

Deloitte's observation – It may be possible for Canadian taxpayers seeking to expand their U.S. presence to plan into this credit, depending on the final guidance and how strong the factual link must be between the "reduction" or "elimination" of the foreign business and the establishment or expansion of the U.S. trade or business.

How can Deloitte help you?

Deloitte's US Tax professionals can help you understand how these tax proposals may impact your business.

If you have any questions on any of the above, please reach out to your Deloitte advisor or any of the individuals noted on this alert.

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