United States Alert
Amendments to international tax provisions of the Tax Cuts and Jobs Act

On November 6, 2017, Kevin Brady (R-TX), Chairman of the House Ways and Means Committee, introduced an amendment (the "Amendment") to the Tax Cuts and Jobs Act, H.R. 1 (the "Original Bill"), which would make certain changes to its international tax provisions, including certain changes that would soften the impact of the 20% excise tax on deductible amounts paid or incurred by a domestic corporation to foreign corporate members of its international financial reporting group.

The following is a summary of the relevant changes.

20% excise tax

The Original Bill denied both a foreign tax credit and deduction for any taxes paid or accrued with respect to any "specified amount" which the foreign recipient elects to treat as effectively connected income (the ECI election).

- The Amendment instead would allow such a foreign recipient a credit on its specified amounts (after taking into account its "deemed expenses" with respect to such amount) at an assumed tax rate equal to the lower of (i) 20% or (ii) 50% of the international financial reporting group's effective foreign tax rate for the relevant financial reporting period.

Under the Original Bill, if a foreign recipient made an ECI election, only "deemed expenses" were allowed as a deduction against such amount.

- The Amendment would increase this deduction by multiplying such “deemed expenses” by 104% plus the relevant federal short term rate (currently 1.27% as of October 2017).

- The Amendment revised the determination of the “net income ratio” for purposes of calculating the foreign recipient’s deemed expenses (generally, only taking into account revenues and expenses of foreign group members derived from, or incurred with respect to, third parties and US group members). Previously this determination was made with respect to the revenue and expenses of all group members, foreign and domestic.

The Amendment makes a technical correction to the exclusion for amounts subject to tax under section 881(a) (i.e., US source FDAP subject to withholding tax) from treatment as “specified amounts.”

The Amendment also expands the scope of exceptions to the definition of “specified amounts,” adding exceptions for amounts paid to acquire certain securities, and expanding the class of excluded payments for commodities.

Income inclusion for foreign “high returns” — new section 951

The Amendment expands the category of “commodities gross income” that is excluded from the calculation of a US shareholder’s “foreign high return amount” to also include income from the disposition of property giving rise to income from the disposition of commodities extracted or produced by the relevant controlled foreign corporation (CFC).

Transition tax

The Amendment makes a technical correction to the calculation of the section 78 gross-up for foreign taxes that are creditable with respect to the transition tax.

Contacts

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