
International Planning Issues – Evolving in the Face of Uncertainty

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Agenda

- I. Proposed International Regime
- II. Repatriation Tax Reform Proposals and Planning
- III. BEPS Update
- IV. EU Developments

New Participation Exemption and Anti-Base Erosion Provisions in the Tax Cuts and Jobs Act

The Proposed Participation Exemption System

- 100% deduction for “foreign-source portion” of dividends received by a domestic corporation that is a U.S. shareholder from a “specified 10% owned foreign corporation.”
 - A specified 10% owned foreign corporation is a foreign corporation of which 10% or more is owned by a U.S. corporate shareholder, other than a foreign corporation that is a PFIC but not a CFC.
 - The foreign-source portion of any dividend is generally the portion that is attributable to the specified 10% owned foreign corporation’s post-1986 undistributed foreign earnings (*i.e.*, income that is not effectively connected with the conduct of a U.S. trade or business or that is not attributable to dividends received from a domestic corporation 80% of which is owned by the specified 10% owned foreign corporation).
 - 6-month holding period requirement:
 - Foreign corporation must be a specified 10% owned foreign corporation for at least 181 days during the 361-day period that begins 180 days before payment of the dividend.
 - Domestic corporation must be a U.S. shareholder with respect to the specified 10% owned foreign corporation for at least 181 days during the 361-day period that begins 180 days before payment of the dividend.
 - Applies participation exemption system to undistributed foreign earnings that are reinvested in U.S. property.
 - Repeals Section 956 with respect to U.S. corporate shareholders.
 - Section 956 would continue to apply with respect to non-corporate U.S. shareholders.
 - Coordination with foreign tax credit rules (see slide 9 below).
 - Effective for dividends paid after December 31, 2017 (and, with respect to disallowance of foreign tax credits, taxable years ending after December 31, 2017).
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Sale of Subsidiary Stock

- In general, capital gains recognized from the sale of foreign subsidiary stock would not qualify under the proposed participation exemption system.
 - Sections 355 and 368 would continue to be relevant.
 - Consider check-and-sell transactions for lower-tier CFCs.
 - For purposes of determining loss on the sale or exchange of stock of a specified 10% owned foreign corporation by a U.S. corporate shareholder in a taxable year, the basis of the U.S. corporate shareholder in such stock would be reduced by the amount of any exempt dividends received by the U.S. corporate shareholder in such taxable year or a prior taxable year.
 - Not applicable to determination of gain on the sale or exchange of subsidiary stock.
 - Basis cannot be reduced below zero.
 - Effective for dividend payments after December 31, 2017.
 - Proposal does not modify Section 1248 or Section 964(e) and is silent on the application of the proposed participation exemption system to gain recognized pursuant to sale of CFC stock and dividend-equivalent Section 304 transactions.
 - The Section-by-Section Summary acknowledges that, “[u]nder current law, any gain that is recognized by a U.S. parent corporation on the sale or exchange of its stock in a foreign subsidiary generally is treated as a dividend distribution by the foreign subsidiary to its U.S. parent to the extent of earnings and profits (E&P) that have been accumulated by the foreign subsidiary while it had been owned by the U.S. parent. Any gain in excess of that typically is capital gain to the U.S. parent.”
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