United States Tax Alert
The international tax provisions of the Tax Cuts and Jobs Act – conference agreement

On Friday, December 15, 2017, the conference committee on the Tax Cuts and Jobs Act released its report. With respect to the international tax provisions that differed in the House and Senate versions of the bill, the conferees typically leaned in favor of the Senate version.

The table below summarizes the final shape of key provisions where the House and Senate differed in significant respects. Following the table, we list (1) the House and Senate provisions that were entirely dropped from the bill, (2) Senate-only provisions that were included in the bill more or less unchanged, and (3) provisions included in the conference bill that were essentially the same in the House and Senate bills.

<table>
<thead>
<tr>
<th>Participation exemption (new section 245A)</th>
<th>100% deduction (DRD) for the &quot;foreign-source portion&quot; of dividends received by US corporations after 2017 from &quot;specified 10-percent owned foreign corporations.&quot; Shareholder must meet 181-day holding period requirement to qualify.</th>
<th>Similar to House bill, but effective for tax years of foreign corporations beginning after 2017. &quot;Hybrid dividends&quot; denied the DRD. Hybrid dividend received by a CFC generally treated as subpart F income. Length of required holding period increased to 366 days.</th>
<th>Generally follows Senate amendment, but effective for distributions made after 2017.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transition tax on deferred earnings (revised section 965)</td>
<td>Subpart F income inclusion taxed at effective tax rate of 14% (to extent of cash assets) or 7% (for the remainder) to US shareholder of &quot;specified foreign corporations&quot; (SFCs), based on shareholder's pro rata share of SFCs' &quot;accumulated post-1986 deferred foreign income&quot; as of 11/2/2017 or 12/31/2017 (whichever is larger), net of the US shareholder's pro rata share of post-1986 deficits of SFCs.</td>
<td>Similar to House bill, with higher effective rates: 14.45% (cash) and 7.45% (remainder). Inclusion limited to foreign corporation's income accumulated during periods when the corporation's stock ownership by US persons was sufficient to meet SFC definition. Substitutes a 11/9/2017 measurement date for House's 11/2/2017 measurement date.</td>
<td>Similar to Senate bill, with still higher effective rates: 15.5% (cash) and 8% (remainder). Uses House bill's 11/2/2017 measurement date rather than 11/9/2017.</td>
</tr>
<tr>
<td>FHRA/ GILTI inclusion (new section 951A)</td>
<td>Requires US shareholder of CFCs to include in gross income 50% of the &quot;foreign high return amount&quot; (FHRA). FHRA is shareholder's pro rata share of the CFCs' &quot;net CFC tested income&quot; to the extent it exceeds a benchmark return (7% plus short-term applicable federal rate) on US shareholder's</td>
<td>Similar to House bill except that the inclusion is 100% of &quot;global intangible low-taxed income&quot; (GILTI), defined similarly to the FHRA, but based on the excess of net CFC tested income over a benchmark return of 10% on QBAI (not reduced by interest expense). The CFC income &quot;tested&quot; for the GILTI inclusion is generally</td>
<td>Follows Senate amendment, but GILTI is reduced by 10% of QBAI, less interest expense. 50% corporate deduction not allowed to RICs and REITs.</td>
</tr>
<tr>
<td><strong>Deduction for Foreign-Derived Intangible Income (FDII)</strong> (new section 250(a)(1)(A))</td>
<td><strong>No provision.</strong></td>
<td><strong>Generally allows a domestic corporation a deduction for 37.5% (21.875% for tax years beginning after 2025) of its FDII.</strong></td>
<td><strong>Follows Senate amendment, but FDII deduction not allowed to RICs and REITs.</strong></td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td><strong>Excise tax/ base erosion and anti-abuse tax (BEAT)</strong> (new section 59A)</td>
<td><strong>Subject to exceptions, generally imposes 20% excise tax on &quot;specified amounts&quot; paid or incurred by a domestic corporation to a foreign corporation that is a member of the same &quot;international financial reporting group&quot; (IFRG).</strong></td>
<td><strong>Imposes tax, on a corporation that is an &quot;applicable taxpayer,&quot; equal to the &quot;base erosion minimum tax amount&quot; (BEMTA).</strong></td>
<td><strong>Generally follows Senate amendment with modifications:</strong></td>
</tr>
</tbody>
</table>

For tax years beginning in 2018, tax based on 5% of MTI rather than 10% of MTI (6% of MTI for banks and securities dealers).

Prior to 2026, the credits that do not reduce regular tax liability in the formula (and therefore generally do reduce the BEAT) include 80% of the low-income housing credit, the renewable electricity production credit, and the energy credit, as well as (consistent with the Senate amendment) 100% of the research credit.
<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Revision of section 163(j)</strong></td>
<td>Rewrites section 163(j) to cap deductions (subject to exceptions for certain businesses) for all “business interest” by reference to 30% of “adjusted taxable income” (ATI), defined similarly to present-law section 163(j)(6)(A). 5-year carryforward of disallowed deductions.</td>
</tr>
<tr>
<td><strong>Denial of deductions involving related parties and hybrids (new section 267A)</strong></td>
<td>No provision.</td>
</tr>
<tr>
<td><strong>Dispositions of partnership interests by foreign persons</strong></td>
<td>No provision.</td>
</tr>
</tbody>
</table>

Foreign related persons (“base erosion payments”) and a percentage (“base erosion percentage”) of the NOL deduction.

“Applicable taxpayer” excludes corporations with a base erosion percentage less than 4%.

Base erosion payments exclude certain payments pursuant to derivatives.

Base erosion percentage safe harbor reduced from 4% to 3% (2% for banks and securities dealers.

For purposes of applying the base erosion payment exclusion for “derivatives,” insurance, annuity, and endowment contracts issued by insurance companies will not be considered “derivatives.”
| (Rev. Rul. 91-32) | interest in a partnership that is engaged in a US trade or business, effective for dispositions on or after 11/27/2017, and imposes withholding obligations. |

The following Code amendments that were passed by one or both houses of Congress were eliminated from the bill by the conference agreement:

- Proposed modifications to existing subpart F rules:
  - Proposal to make section 954(c)(6) “CFC look-thru rule” permanent
  - Proposed repeal of section 956 with respect to corporate US shareholders
  - Proposed inflation adjustment of de minimis exception (section 954(b)(3)) for foreign base company income

- Proposed international group-based limitations on interest deductions (proposed new Code section 163(n))

- Proposed rules for the tax-free repatriation of intangible property (proposed new Code section 966)

The following provisions that were added by the Senate amendment were included in the conference agreement:

- Repeal of the “active trade or business” exception (section 367(a)(3)) from the general non-recognition override provision for certain outbound transfers (section 367(a)(1))

- Amend the definition of intangible property (IP) in section 936(h)(3)(B) to include workforce in place, goodwill, and going concern value

- Provide explicit statutory authority for IRS to value IP on an aggregate basis (“aggregate basis valuation”), if doing so would achieve a more reliable result than an asset-by-asset approach, and to determine an arm’s-length price by reference to a transaction different from the one actually completed (“realistic alternatives principle”)

- Provide separate section 904 limitation “basket” for foreign branch income

- Eliminate the fair market value method for allocating interest expense under section 864(e)
• Modify the stock attribution rules under subpart F, and allow “downward attribution” of stock owned by foreign persons to US persons, effective for a foreign corporation’s last tax year beginning before 2018 and each subsequent year
• Expand subpart F definition of “US shareholder” to include a US person who owns 10% or more of the value of a foreign corporation

Finally, the following provisions that were passed by both houses were included in the conference agreement:

• Repeal section 902 (relating to foreign taxes deemed paid by corporations upon receipt of dividends from foreign corporations)
• Eliminate the “pooling” principle from section 960 (relating to foreign taxes deemed paid by corporations upon receipt of subpart F inclusions)
• Source section 863(b) sales income based solely on place of production
• Repeal section 955 (taxing certain CFC withdrawals of investment in shipping operations)
• Repeal foreign base company oil related income as a type of subpart F income
• Eliminate 30-day requirement for subpart F inclusion
• Restrict the insurance business exception to the PFIC rules

Contacts

If you have any questions or would like additional information on the topics covered in this alert, please email one of the following Deloitte professionals:

Harrison Cohen
harrisoncohen@deloitte.com

Gretchen Sierra
gretchensierra@deloitte.com

Jason Robertson
jarobertson@deloitte.com

David Levine
dlevine@deloitte.com

Paul March
pmarch@deloitte.com
Additional resources

Global Tax Alerts subscription page
Global Tax Alerts archive
World Tax Advisor
Deloitte International Tax Source (DITS)
Deloitte tax@hand app
Dbriefs
www.deloitte.com/tax

As used in this document, “Deloitte” means Deloitte Tax LLP, a subsidiary of Deloitte LLP. Please see www.deloitte.com/us/about for a detailed description of our legal structure. Certain services may not be available to attest clients under the rules and regulations of public accounting.

This alert contains general information only and Deloitte is not, by means of this alert, rendering accounting, business, financial, investment, legal, tax, or other professional advice or services. This alert is not a substitute for such professional advice or services, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional advisor. Deloitte shall not be responsible for any loss sustained by any person who relies on this alert.

Copyright © 2017 Deloitte Development LLC. All rights reserved.

Add Deloitte as a safe sender

If you no longer wish to receive these emails, please send an email to the sender with the word “Unsubscribe” in the subject line.