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Tax Policy Decision Ahead: Impact of the 2016 Elections

On January 20, 2017, Donald Trump was inaugurated as the forty-fifth president of the United States and assumed significant authority over federal tax law and regulations. The beginning of a new presidential administration typically ushers in the prospect of significant policy changes and along with it an awareness of the complexity involved as proposals are released, debated, modified, and, in some cases, enacted.

President Trump campaigned for office on an ambitious plan to overhaul the tax rules for businesses and individuals.

On the corporate side, President's Trump's campaign plan included proposals that would, among other things:

- Reduce the tax rate for corporations and certain passthrough entities to 15 percent;
- Provide an election for companies engaged in US manufacturing activities to fully expense their capital investments in year one (with a concomitant loss in deductions for interest expenses);
- Eliminate the corporate alternative minimum tax (AMT);
- Repeal the Patient Protection and Affordable Care Act (PPACA), including all the business taxes enacted as part of that legislation; and
- Provide new incentives for employers to provide on-site employee child care

Notable new incentives on the individual side included proposals to:

- Compress the current seven income tax rate brackets (ranging from 10 percent to 39.6 percent) to three brackets of 12 percent, 25 percent, and 33 percent);
- Eliminate the individual AMT;
- Repeal the PPACA surcharges on wage and investment income that currently are imposed on certain higher-income taxpayers
- Repeal the estate tax (although capital gains on appreciated assets held at death would be subject to tax to the extent they exceed $10 million); and
- Provide expanded tax relief for families facing child care or elder care expenses.

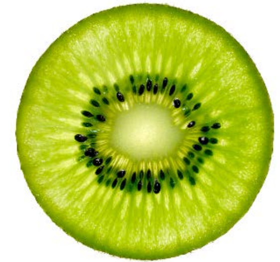
President Trump's proposed tax relief would be offset – at least in part – by provisions to tighten or eliminate many of the deductions, credits, and incentives currently available to businesses and individuals, however.

It is unclear whether the tax code changes that President Trump has envisioned will be enacted into law. Most of the proposals are not fully fleshed out, and as the administration begins to provide technical details around its tax plan, Congress and stakeholders in the taxpayer community may weigh in with comments that could result in the elimination of some proposals and significant modifications to others. Moreover, Republican lawmakers on Capitol Hill have been advancing their own tax reform agenda over the past year and their priorities may not always mesh with those of the new presidential administration.

Tax policy decisions ahead: Impact of the 2016 elections, a publication released by Deloitte Tax LLP's Tax Policy Group just after the election, looks at where President Trump stands on key policy issues related to corporate and individual taxes based on the positions he articulated during the presidential campaign. It also looks at proposals from congressional Republican leaders – most notably the tax reform blueprint released last year by House Speaker Paul Ryan, R-Wis., and Ways and Means Committee Chairman Kevin Brady, R-Texas – and considers how they may shape the tax policy debate going forward.

URL: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-trump-tax-policy-decisions-ahead.pdf

Final Regulations: New Reporting Obligations for Foreign-owned Domestic Disregarded Entities



On December 13, 2016, the Department of the Treasury ("Treasury") and the Internal Revenue Service (IRS) issued final regulations (the "Final Regulations")[1] that require domestic disregarded entities (DREs) that are wholly owned by a foreign person ("foreign-owned domestic DREs") to comply with reporting and recordkeeping obligations under section 6038A. The Final Regulations follow proposed regulations issued on May 10, 2016 (the "Proposed Regulations").[2] Consistent with the Proposed Regulations, the Final Regulations extend the following obligations to foreign-owned domestic DREs:

- The requirement to file Form 5472, Information Return of a 25% Foreign-Owned Corporation or a Foreign Corporation with respect to reportable transactions with related parties;
- The requirement to maintain books and records sufficient to establish the accuracy of Forms 5472 and the correct US tax treatment of reportable transactions; and
- The requirement to obtain an employer identification number (EIN) in order to file Form 5472.

While the Final Regulations generally adopt the Proposed Regulations, the Final Regulations include the following revisions:

- The Final Regulations exclude foreign-owned domestic DREs from the scope of two additional exceptions under the 6038A regulations. Under the Final Regulations foreign-owned domestic DREs are not eligible for the following exceptions to the Form 5472 reporting requirement:
    - The exception with respect to certain reportable transactions already reported on a Form 5471, Information Return of US Persons With Respect to Certain Foreign Corporations (the "Form 5471 exception"), and
    - The exception with respect to foreign related parties that qualify as foreign sales corporations (FSCs) (the "FSC exception");
- The Final Regulations provide a rule for determining the taxable year of a foreign-owned domestic DRE for section 6038A purposes; and
- The Final Regulations modify the effective date stated in the Proposed Regulations so that the Final Regulations apply to taxable years that begin on or after January 1, 2017, and that end on or after December 13, 2017.

Background

Under the entity classification regulations, certain domestic business entities that have one owner, such as single-member LLCs, are classified by default as DREs.[3] As a result, and in the absence of regulations to the contrary, domestic DREs may not have an obligation to file US tax or information returns, maintain associated records, or obtain an EIN. In the case of foreign-owned domestic DREs, the foreign owners also have no such obligations in certain circumstances. In the preamble to the Proposed Regulations, Treasury and the IRS noted that the absence of reporting and recordkeeping obligations for foreign-owned domestic DREs "hinders law enforcement efforts and compliance with international standards for transparency and cooperation in the area of tax information exchange," and "makes it difficult for the IRS to ascertain whether the [foreign-owned domestic DRE] or its owner is liable for any federal tax."[4] Section 6038A imposes reporting and recordkeeping requirements on domestic corporations that are at least 25%

[1] T.D. 9796 (Dec. 13, 2016).
[2] REG-127119-15, 81 Fed. Reg. 28784 (May 10, 2016).
[3] See Treas. Reg. §301.7701-2(c)(2)(i).
[4] 81 Fed. Reg. 28785 (May 10, 2016).

owned by a foreign person (a "domestic reporting corporation").[5] Subject to certain exceptions, a domestic reporting corporation is required to file a Form 5472 with respect to each related party that it had a "reportable transaction" with during a taxable year.[6] In addition, unless a domestic reporting corporation is classified as a "small corporation" or only has "de minimis reportable transactions," it must keep permanent books of accounts or records that are sufficient to establish the correctness of its federal income tax returns.[7]

The Proposed Regulations extended the section 6038A reporting and recordkeeping requirements to foreign-owned domestic DREs by treating these entities as domestic corporations for purposes of section 6038A. The Form 5472 reporting requirement, in turn, obligated foreign-owned domestic DREs to obtain an EIN.[8] The Proposed Regulations excluded foreign-owned domestic DREs from eligibility for the "small corporation" and "de minimis reportable transactions" exceptions from the section 6038A recordkeeping requirements. In addition, the Proposed Regulations added another category of reportable transactions applicable only to foreign-owned domestic DREs, comprised of "any other transaction as defined by [Treas. Reg.] §1.482-1(i)(7)." Thus, for example, contributions and distributions were included as reportable transactions with respect to foreign-owned domestic DREs. Moreover, a transaction between the domestic DRE and its foreign owner (or another DRE of the foreign owner) was considered a reportable transaction, despite being generally disregarded for US tax purposes. The Proposed Regulations included an effective date that was for taxable years of foreign-owned domestic DREs ending on or after the date that is 12 months after the date of the final regulations.

The Final Regulations

The Final Regulations adopt the Proposed Regulations as drafted, with limited changes.

The Final Regulations provide that foreign-owned domestic DREs are not eligible for the Form 5471 Exception and the FSC Exception from filing a Form 5472.[9]

The Final Regulations provide a rule for determining the taxable year of a foreign-owned domestic DRE for purposes of section 6038A. If the foreign owner of the domestic DRE files a US income tax or information return, then the taxable year of the domestic DRE is the taxable year of its foreign owner. In all other cases, the taxable year of the domestic DRE is the calendar year (unless otherwise provided in forms, instructions, or other published guidance).[10]

Finally, the Final Regulations modify the effective date provision in the Proposed Regulations. The Final Regulations are effective for taxable years beginning on or after January 1, 2017, and ending on or after December 13, 2017.[11] As proposed, the Final Regulations would have been effective for all taxable years ending on or after December 13, 2017.

URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-united-states-6038a-20-december-2016.pdf

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[5] Treas. Reg. §1.6038A-1(c)(1). A foreign corporation may also be considered a "reporting corporation" and subject to similar reporting and recordkeeping requirements if it is engaged in a US trade or business. See Section 6038C, Treas. Reg. §1.6038A-1(c)(1), and the exceptions in Treas. Reg. §1.6038A-1(c)(5).
[6] See Treas. Reg. §1.6038A-2(a) and the exceptions in Treas. Reg. §1.6038A-2(e).
[7] See Treas. Reg. §1.6038A-3 and the exceptions in Treas. Reg. §1.6038A-1(h) and (i)(1).
[8] See section 6109(a)(1) and Treas. Reg. §301.6109-1(b)(1).
[9] Treas. Reg. §1.6038A-2(e)(3) and (e)(4).
[10] Treas. Reg. §301.7701-2(c)(2)(vi)(C).
[11] Treas. Reg. §§1.6038A-1(n)(1) and (2) and 301.7701-2(e)(9).

IRS Announces Position on Unilateral APA Applications by Maquiladoras

The Internal Revenue Service on October 14 announced that U.S. taxpayers with maquiladora operations in Mexico will not be exposed to double taxation if they enter into a unilateral advance pricing agreement (APA) with the Large Taxpayer Division of Mexico's Servicio de Administración Tributaria (SAT) under an elective framework that has recently been agreed to by the U.S. and Mexican competent authorities.

Maquiladoras typically operate in Mexico as contract manufacturers of foreign multinationals. In 1999, a set of safe harbors was introduced in a transfer pricing agreement between the United States and Mexico that established what both governments determined was an arm's length result for a maquiladora operating in Mexico. Then, in 2014, the Mexican tax laws were reformed, and as part of that reform, maquiladora companies were essentially required to enter into a unilateral APA to receive income tax benefits. As a result, approximately 700 maquiladoras have requested unilateral APAs from the Mexican government, often in an effort to negotiate a profitability rate that is less than the rates included in the 1999 agreement.

The IRS's announcement – IR-2016-133 -- represents the culmination of two years of collaboration between the competent authorities to address the current inventory of pending APA applications. The two governments believe this is an important step forward in strengthening ties between the IRS and the SAT and in providing certainty in the taxation of multinationals.

The centerpiece of the new maquiladora framework is an election the SAT would extend to "qualifying taxpayers" with unilateral APA requests pending with the SAT. The SAT has indicated that the term "qualifying taxpayer" will exclude the following two types of companies: (i) large taxpayers (Mexican maquiladoras with annual revenues in excess of MXN 1,200 million or approximately $64 million); and (ii) maquiladoras with a principal company located in a country other than the United States. Those taxpayers will not be eligible for the new maquiladora framework.

Under the new agreement, taxpayers will have the following options:

- If a maquiladora meets the definition of a qualifying taxpayer, it may elect to apply the new maquiladora framework in a unilateral APA with the SAT. The U.S. and Mexican competent authorities have agreed in advance that the method adopted pursuant to the new maquiladora framework and included in the unilateral APA will produce arm's length results.
- Qualifying taxpayers that decline to elect into the new maquiladora framework may either: (i) continue to apply for a unilateral APA using a method that is different than the one included in the new maquiladora framework; (ii) apply the safe harbors that were included in the 1999 agreement; or (iii) file a request for a bilateral APA with the U.S. and Mexican competent authorities.
- Maquiladoras that do not qualify for the new framework but that have applied for a unilateral APA may continue with the unilateral APA application. If a nonqualifying maquiladora does continue its unilateral application with the SAT, the terms to which it will have to agree are not known. Presumably, the method will be different than the one applicable under the new maquiladora framework. As alternatives to a unilateral APA, the nonqualifying taxpayer may either apply the safe harbors from the 1999 agreement or apply for a bilateral APA between the United States and Mexico.

The new maquiladora framework updates and expands upon the 1999 agreement to reflect recent revisions to Mexican domestic tax law governing transfer pricing rules, documentation requirements, and other tax attributes of maquiladoras. The SAT will release details shortly about the election to use the new maquiladora framework, and will directly notify, via an invitation letter, qualifying Mexican taxpayers whose unilateral APA applications are pending with the SAT.

URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-16-034-24-october-2016.pdf

Individual Tax: IRS Launches New Online Tool Allowing Taxpayers to Check Basic Account Information

Overview

As part of its effort to make tax information available to taxpayers in a secure, efficient manner, the US Internal Revenue Service (IRS) has launched a new online tool that allows individual taxpayers to view their IRS account balance. This tool is in addition to other online tools available to taxpayers, primarily related to online payment options. The IRS anticipates adding other capabilities to the online platform in the future as they are developed and tested.

Online tool

Individual taxpayers now may check their current balance due online. The balance will reflect any amounts owed for taxes, penalties, and interest. It will be updated no more than once every 24 hours, usually overnight. Taxpayers may use this tool to determine their current payoff amount, which is calculated through the current calendar day and the balance for each tax year for which there is an amount owed. Taxpayers will have the ability to immediately pay the balance using one of the IRS online payment options.

URL: https://www.irs.gov/payments/finding-out-how-much-you-owe

Security

Consistent with continuing efforts to protect taxpayer data, taxpayers will be required to authenticate their identity through the IRS' Secure Access process. Users who have previously registered through Get Transcript, Identity Protection PIN (IP PIN), Online Payment Agreement (OPA), or ePostcard may use the same username as password to access account balances. New users will need to follow the Secure Access registration process, which requires the following:

- Social Security Number, date of birth, filing status, and mailing address from their latest tax return
- Access to an email account;
- A personal account number from a credit card, mortgage, home equity loan, home equity line of credit, or car loan; and
- A US-based mobile phone that can receive text messages, with the taxpayer's name on the account.

As part of the security process to authenticate taxpayers, the IRS will send verification, activation, or security codes via email and text. However, the IRS reminds taxpayers that it will not initiate contact via text or email asking for log-in information or personal data. The IRS texts and emails will only contain one-time codes. For more details, visit the IRS website.

URL: https://www.irs.gov/individuals/secure-access-how-to-register-for-certain-online-self-help-tools

URL:https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dtt-tax-globalinsight-161216.pdf

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