La Riforma Fiscale negli USA

Evoluzione delle prospettive economiche e delle relazioni fiscali per le imprese

Confindustria

Roma, 29 Gennaio 2018
Going back a few years

- Economic and Financial Crisis = Austerity measures = Backlash against offshore tax evasion
- FATCA, End of Bank Secrecy for tax purposes, Multilateral Convention on Adm Assistance, Automatic Exchange of Information

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- Focus gradually shifting on practices of MNEs: Landmark articles on tax avoidance (some win Pulitzer Price)
- New means of communication used efficiently by advocacy groups / denial stage of those who had to respond

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- OECD launches **BEPS Project** with strong G20 support
- Little belief that will in fact change anything

BUT
The last couple of years

- In little more than 2 years, major revision of the standards, new standards introduced, peer review process, and inclusion beyond OECD and G20 countries (Could have done more and better? Yes. Always)

- Together with implementation (domestic level, EU ATADs, MLI)... Digital taxation takes centre stage – and meanwhile, wind changes vis-à-vis tech companies, now BAADD (cit. The Economist last week)

- Unilateral measures popping up / EU announces action / G20 asks for quicker interim report (instead of waiting until 2020)

  Meanwhile, in the USA …
After decades of discussions, many different proposals and drafts, announcement that it would be done.

Little belief that will in fact be done.

BUT


A lot of interesting features but now we are going to focus on corporate tax and in particular cross-border aspects.
My Questions

- Is it TRUE that the US is moving from worldwide to territorial? Or is it moving from a synthetic territorial system to a synthetic worldwide system (above a 10% return on QBAI)?
- Is it a reform out of line with international norms?
- What happens if all countries introduce a BEAT?
- Is GILTI grabbing something that belongs to others?

- I reserve the right to interrupt Bob and to tell you what I think

(and let me underline that this is my personal view, does not bind the Ministry, the OECD, nor its member countries, no one)
Tax Policy Overview of US Tax Reform

Key Regulations in Respect of International Tax

- **Corporate rate cut**: 21%, effective 1 January, 2018
- **Territoriality**: full exemption system for foreign dividends (dividend received deduction)
- **Transition Tax**: deemed repatriation of foreign profits – 8% non-cash/15.5% cash
- **Global minimum tax on (deemed) intangible income**: high return Sub F provision; Global Intangible Low Taxed Income or ‘GILTI’, effective tax rate of 10.5% for 2018 – 2025, 13.125% starting 2026)
- **Favorable US tax regime for foreign derived intangible income (FDII)**: deduction for IP income in the US; 13,125% effective tax rate (16.406% starting 2026)
- **Base Erosion & Anti-Abuse Tax (BEAT)**: minimum tax on “base erosion minimum tax amount“ (5% in 2018, 10% in 2019-2025, 12.5% after 2025)
- **Interest expense limitation**: deduction for business interest limited to business interest income + 30% of Adjusted Taxable Income (EBIT(DA))
Tax Policy Overview of US Tax Reform

Long-Standing Bipartisan Corporate Tax Goals:

• **Lowering statutory corporate rate from 35%**
  - Eliminating wide variation among industries and asset classes in effective tax rates

• **Broadening the tax base**
  - Interest limitations for domestic companies
  - Elimination of various deductions

• **Ending “lock out effect” whereby US companies were incentivized to keep earnings off shore**
  - US companies reportedly held $2.6 trillion offshore pre-tax reform
  - Mostly treated as “permanently reinvested” for GAAP; no need to book US taxes on these amounts

• **Move to a territorial regime with base protection measures**
  - Base protection through minimum tax concept – Global Intangible Low Taxed Income (“GILTI”) regime
  - Maintenance of CFC rules

• **Protect against inbound base stripping**
  - Interest limitation applies to domestic and inbound companies
  - BEAT
  - Hybrid rules

• **Transition tax, switch to participation regime and repatriation prior post-1986 earnings & profits**

Other Features worth noting:

• **Expensing for new capital equipment (limited duration)**

• **Provision for “foreign derived intangible income”**
  - Concept: Income from foreign sales is taxed similarly whether they occur within or without the US
Tax Policy Overview of US Tax Reform

Key Regulations in Respect of International Tax

**Pre-US Tax Reform**
- **US Parent**
  - ETR ≈ 35%
  - 20% additional tax when funds are repatriated
- **ROW**
  - ETR ≈ 15%

**Post-US Tax Reform**
- **US Parent**
  - ETR ≈ 21% + Dividend Received Deduction
- **ROW**
  - ETR ≈ 15%

No additional tax when funds are repatriated
International Tax Key Provisions
Global Intangible Low-Taxed Income

Example pre-US tax reform:

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Effective Tax Rate
- Income: $100 + $4 + $4 + $4 = $112
- Tax: $2.5 + $1 + $1 + $1 = $5.5
- Effective Tax Rate: $5.5 / $22 * 100 = 4.9%

Key considerations:
- US taxation deferred until repatriation to the US
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**International Tax Key Provisions**

**Global Intangible Low-Taxed Income**

**Example post-US tax reform:**

- **US Parent**
  - CFC
    - Gross Income: $100
    - Taxes: $2.5
    - QBAI: $0

- **Non-US Manufacturer**
  - Gross Income: $4
  - Taxes: $1
  - QBAI: $0

- **Non-US Service Co**
  - Gross Income: $4
  - Taxes: $1
  - QBAI: $0

- **Non-US Distributor**
  - Gross Income: $4
  - Taxes: $1
  - QBAI: $0

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**Effective Tax Rate on GILTI**
- Global Intangible Low Taxed Income: $100 + $4 + $4 + $4 = $112 - (10% * QBAI) = $112
- Deemed deduction: 50% * $112 = $56
- GILTI taxation: ($112 - $56) * 21% = $11.76
- Foreign tax credit calculation:
  - Inclusion percentage: 112/112 = 100%
  - Aggregate foreign income taxes: $2.5 + $1 + $1 + $1 = $5.5
  - Deemed paid credit: 80% * 100% * $5.5 = $4.4
- GILTI taxation after credit: $11.76 - $4.4 = $7.36

**Effective tax rate on GILTI:**
- $5.5 foreign tax + $7.36 GILTI tax = $12.86 total tax
- $12.86 / $112 * 100 = **11.48%**

**Key considerations:**
- Need to allocate expenses and taxes between tested income and other categories of income such as subpart F income or net deemed tangible income return
- Additional complexities exist if there are tested losses

*QBAI = Qualified Business Asset Investment*
International Tax Key Provisions
Foreign Derived Intangible Income

- Similar rule to GILTI, in that FDII is taxed at a lower rate than the 21% headline rate, but FDII applies to US corporations.

- The FDII calculation is similar to the GILTI calculation. This time the income of the US company that exceeds the **10% return on the depreciable tangible assets** of the company and which is “foreign” in nature is taxed at an effective rate of **13.125%**.

- Applies to accounting periods beginning after 31 December 2017.
**International Tax Key Provisions**

**Base Erosion Anti-Abuse Tax**

- "Minimum tax" concept; applies to deductible amounts paid or accrued to related parties in tax years beginning after 31 December 2017 (including interest payments).

- **Two carve outs** – a $500m US gross receipts de minimis, and it also only applies where deductible related party payments exceed a threshold of total tax deductions (3% for most, 2% for banks).

- "Modified taxable income" (MTI) calculation – rerun of tax computation without the benefit of related party tax deductions. MTI is multiplied by 10% (5% for accounting periods beginning in 2018) and compared to the company’s "regular tax liability" (before taking into account certain credits). The excess is the BEAT amount due.

- **Cost of goods sold, payments for certain services at “cost”** (with no markup) and **qualified derivative payments** may be excluded from calculations. Financial transactions qualify as base erosion payments to the extent they fail to qualify for the qualified derivatives exception.

- If taxpayer’s **regular tax liability is reduced more than 50%** by credits or if taxpayer’s taxable income is reduced more than 50% by base erosion payments, **BEAT may impose additional tax**.

- No consideration for how the other side of the payment is taxed; **risk of economic double taxation, FTCs cannot shelter BEAT liability**.

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**Relevant to US headquartered companies and non-US companies doing business in the US**
International Tax Key Provisions
Base Erosion Anti-Abuse Tax

For purposes of the BEAT computation, assume that:
(1) USCo qualifies as an Applicable Taxpayer; and
(2) The $200 payment for services by USCo is a payment for which a deduction is allowed in the taxable year.

- **Base Erosion Tax Benefit**: $200
- **3% Safe Harbor**: Does not qualify
  - USCo Base Erosion Percentage: 90.9%
    \[
    \frac{200}{220} = 0.909 \text{ or } 90.9\%
    \]

- **BEMTA** = Modified Taxable Income * 10% – (Regular Tax Liability ("RTL") – Non-R&E Credits)
  - **MTI**: $280
  - **RTL**: $16.8

- **RTL**: $16.8
  - $300 Gross Income
    - $20 Deductions (w/o regard to any base erosion tax benefit)
    - $280

- **Residual U.S. Tax**
  - $280 * 10% = $28
  - Less RTL = $16.8
  - BEMTA = $11.2

**Key Takeaways**
- Total U.S. tax of **$28**
- Additional U.S. taxable income would be taxed at 10% on the margin