US TAX REFORM

BDO International Tax Webinar Series

30 November 2017

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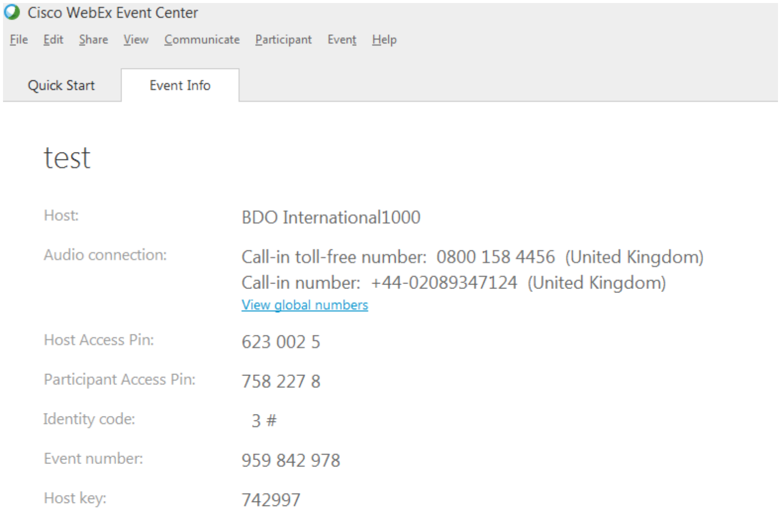

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AGENDA

1	Introduction
2	Federal Tax Reform– Legislative Process
3	Impact on Corporations and their Shareholders
4	International Aspects
5	Practical Implications

INTRODUCTION

MALCOLM JOY

FEDERAL TAX REFORM – LEGISLATIVE PROCESS

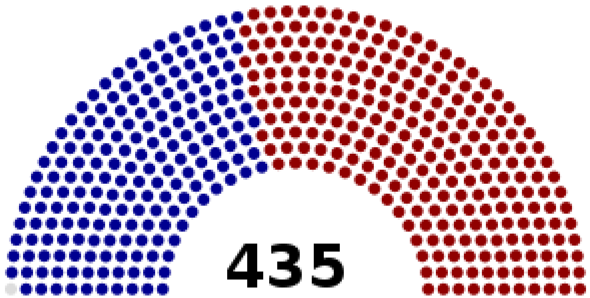
Todd Simmens

FEDERAL TAX LEGISLATIVE PROCESS

Who's involved?

- "All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills." U.S. Const. Art. 1, Sec. 7.1. Formally, tax legislation must originate in the House of Representatives; it must take action before the Senate
- Individual members of the House or Senate may prepare a proposed law, or 'bill'
- The House Committee on Ways and Means and Senate Committee on Finance are each responsible for considering tax legislation. Proposals are 'marked up' by a committee
- Staff from the (Congressional) Joint Committee on Taxation and U.S. Treasury Department generally assist in analysing policy changes. The Joint Committee on Taxation is the official scorekeeper.
  - Legislation counsel from both the House and Senate assist with drafting bill language
  - Ways and Means and Finance generally prepare 'committee reports' to describe marked up bills
  - The Joint Committee on Taxation generally prepares a 'blue book' explanation of legislation after it is enacted
- Conference Committees are chosen to reconcile House and Senate bills when they are different. A conference report is generally prepared describing the agreed-to bill
- The President/Treasury Department generally issues its suggested legislative changes ('revenue proposals') near the start of the calendar year. These can often become part of the legislative discussion

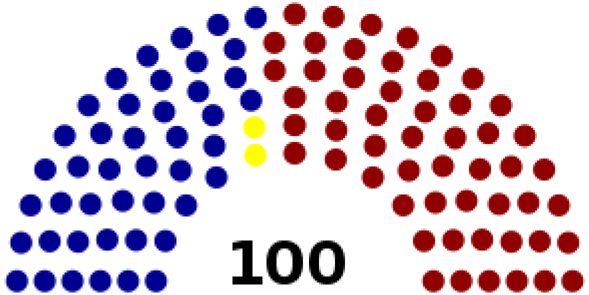
THE PROSPECT OF TAX REFORM – THE NUMBERS



Source: google

House:
Republicans… 240
Democrats--- 194
Independent… 1

Source House Press Gallery as of 11/13/17



Source: google

Senate:
Republicans… 52
Democrats--- 46
Independent… 2 (caucus with Democrats)

Source Senate as of 11/13/17

THE PROSPECTS OF TAX REFORM – THE SENATE

Senate R's to watch *(source The Hill's Whip List 11/27/17)*

- No?: Ron Johnson (Wisconsin) – pass through tax concerns; still negotiating
- Unclear: Susan Collins (Maine) – concerned about including Obamacare tax repeal; still trying to work out changes
- Unclear: Bob Corker (Tennessee) – retiring; against raising deficit
- Unclear: Steve Daines (Mont.) – pass through tax concerns
- Unclear: Jeff Flake (Arizona) – retiring; worried about debt
- Unclear: James Lankford (Okla) – concerns about debt
- Unclear: John McCain (Arizona) – likely retiring wildcard; concerns about deficit
- Unclear: Jerry Moran (Kan.) – concerned about including Obamacare tax repeal; concerned about impact on deficit and qualified tuition waivers
- Unclear: Lisa Murkowski (Alaska) – backs Obamacare tax repeal, but not offered support for full bill
- Likely: Mike Lee (Utah) – likely after Finance Committee increased child credit
- Likely: Marco Rubio (Florida) – likely after Finance Committee increased child credit

THE PROSPECT OF TAX REFORM – OTHER CONSIDERATIONS

- Number of legislative days remaining as of Nov. 30
  - House has 10 legislative days through December 14, 2017 (then recess)
  - Senate has 12 legislative days through December 15, 2017 (then recess)
- Climate
  - Distractions
  - Momentum
- Senate rules
  - Filibuster
  - Reconciliation
- Complexity of tax legislation
- Consequences of tax reform moving into 2018

IMPACT ON CORPORATIONS AND THEIR SHAREHOLDERS

Ben Willis

TAX REFORM – SHAREHOLDERS & DOMESTIC CORPORATIONS
Tax Rates

Corporations

- House and Senate proposals would combine the four rates 15, 25, 34, and 35% into a single 20% rate.
- House proposal taxes personal service corporations at flat 25%; Senate treats like C corporations.
- Corporate AMT repealed.

Individuals

- Current seven rates of 10, 15, 25, 28, 33, 35, and 39.6. Capital gain 0, 15, and 20. AMT repealed.
- House proposal four rates of 12, 25, 35, and 39.6. Capital gain rates are 0, 15, and 20.
- Senate proposal adjusts current brackets as follows 10, 12, 22.5, 25, 32.5, 35, and 38.5.
- Top rates are imposed at on over $1M for joint filers, more than double the current amount.
- Standard deduction: $12,700 (current law), $24,400 (House), and $24,000 (Senate) for joint filers.

Pass-Through Entities

- House rate on pass-through "qualified business income" would be 25%.
- Senate provides an individual deduction of 17.4% on "domestic qualified business income," limited to 50% of the W-2 wages for taxpayers who have qualified business income from a pass-through.

TAX REFORM – SHAREHOLDERS & DOMESTIC CORPORATIONS

General Business Tax Considerations

- Expensing - Section 168(k) expensing for certain property would be increased from a 50% to 100% deduction for property placed in service before 2023 under the House and Senate Proposals
  - Under the House proposal the expensing limitation under section 179 would be increased from $500,000 to $5 million and phase-out at $20 million. Senate proposal uses a $1 million limit.

- Interest deductions of businesses limited to taxpayer's business interest income plus 30 percent of the adjusted taxable income of the taxpayer for such taxable year.
  - Disallowed interest can be carried forward up to 5 years (House) or indefinitely (Senate).

- NOLs, or net operating losses, may currently be carried back 2 years and forward 20 years, subject to the AMT, which may be eliminated as discussed above.
  - Under the House proposal, 2-year NOL carrybacks are generally eliminated and remaining NOLs are limited to 90% of taxable income.
  - Senate proposal is generally the same, except limited NOLs would be eligible for indefinite carryforward.

- Eliminates nearly all other credits/deductions.

TAX REFORM – SHAREHOLDERS & DOMESTIC CORPORATIONS

Choice of Entity - Factors

- The effective reduced rate on C corporations and dividends combined is roughly 36%.
  - Individual rates top off at 39.6 or 38.5. Corporate rate would be 20%.

- Corporate deduction for dividends received from domestic corporations is 70% of the dividend received. If from a 20% owned corporation, the amount is 80%.
  - The Senate proposal would reduce the 70- and 80-percent amounts to 50 and 65 percent, respectively.

- House proposal includes section 76 providing that contributions to capital would be included in the gross income of any entity unless equity is received by transferor equal to the FMV of property contributed (e.g., section 351 with no meaningless gesture doctrine applicability).
  - Basis in property contributed to capital would be greater of either basis of transferor increased by gain recognized, or amount included in gross income.

- Deferral of corporate income.

- Consolidated returns and tax-free reorganizations.

INTERNATIONAL ASPECTS OF TAX CUTS AND JOBS ACT SIDE BY SIDE SUMMARY

Joe Calianno

INTERNATIONAL TAX REFORM

Side-by-side Summary

Proposal	House Version	Senate Version
Dividend Exemption System	▸ 100% DRD for foreign source portion of dividends paid by foreign subsidiary to 10% U.S. corporate shareholder ▸ No FTCs ▸ 6 month holding period requirement	▸ Generally similar ▸ 1 year holding period requirement ▸ No DRD for hybrid dividends
Section 956	▸ Repeal for corporate shareholders in CFCs	▸ Generally similar
Loss Limitations with Respect to Specified 10% Owned Foreign Corporations	▸ Reduce basis by exempt dividends but only to calculate loss ▸ Post-2017 foreign branch loss recapture rules	▸ Generally similar

INTERNATIONAL TAX REFORM
Side-by-side Summary

Proposal	House Version	Senate Version
Transition Tax	▸ 10% U.S. shareholders of specified foreign corporations required to include post-1986 historical E&P as of 11/2/2017 or 12/31/2017 (whichever is greater) ▸ Subpart F ▸ 14% rate for E&P comprising of cash and cash equivalents ▸ 7% rate for E&P comprising of illiquid assets ▸ Deficits available to reduce inclusion ▸ Scaled back FTCs ▸ Election to pay over 8 equal installments ▸ Special deferral election for S-corporation shareholders	▸ Generally similar ▸ Testing as of 11/9/17 or 12/31/17 (whichever is greater) ▸ 10% rate for E&P comprising of cash and cash equivalents ▸ 5% rate for E&P comprising of illiquid assets ▸ Election to pay over 8 installments with amounts increasing over time ▸ 35% transition tax rate for an entity that becomes a surrogate foreign corporation ▸ Limitations on assessment extended ▸ Special rules regarding REITs ▸ Election to preserve NOLs and coordinate NOL, ODL and foreign tax credit carryforward rules on transition

INTERNATIONAL TAX REFORM

Side-by-side Summary

Proposal	House Version	Senate Version
Indirect Foreign Tax Credits	▸ No section 902 indirect FTCs ▸ Section 960 indirect FTCs on a current year basis	▸ Generally similar
Sourcing for Produced Inventory	▸ Sourced based solely on jurisdiction(s) of production activities	▸ Generally similar
Modification to CFC and Subpart F Rules	▸ Repeal of section 955 ▸ Repeal of foreign base company oil related income ▸ Inflation adjustment for de minimis exception ▸ CFC look-thru rule made permanent ▸ Expansion of stock attribution rules for determining CFC status by repealing section 958(b)(4) ▸ Eliminate 30 day requirement for Subpart F inclusions	▸ Generally similar ▸ Expands U.S. shareholder definition to include 10% value ▸ See effective date of rule relating to expansion of stock attribution rules for determining CFC status by repealing section 958(b)(4)

INTERNATIONAL TAX REFORM

Side-by-side Summary

Proposal	House Version	Senate Version
Intangible Income	▸ U.S. shareholders of CFC must include in gross income for a tax year an amount equal to 50 % of its "foreign high return amount" in a manner generally similar to inclusions of subpart F income (complex formula for determining the amount of the inclusion)	▸ U.S. shareholders of CFCs would be subject to current U.S. taxation on 50% of "global intangible low-taxed income"(GILTI) in a manner generally similar to inclusions under subpart F (complex calculation). The 50% GILTI deduction would be reduced to 37.5% for tax years after 12/31/25 ▸ Deduction of foreign-derived intangible income equal to 37.5% (complex calculation). Foreign derived intangible income deduction would be reduced to 21.875% for tax years after 12/31/25

INTERNATIONAL TAX REFORM
Side-by-side Summary

Proposal	House Version	Senate Version
Intangible Income		CONTINUED ▸ Rules permitting tax free transfers of IP from CFCs to their U.S. shareholders ▸ Limitations on income shifting through intangible property transfers (including treating workforce in place and goodwill and going concern value as section 936(h)(3)(B) intangibles)

INTERNATIONAL TAX REFORM
Side-by-side Summary

Proposal	House Version	Senate Version
Excise Tax/Anti-abuse Tax	▸ 20% excise tax on certain deductible payments (not including interest, services at cost or certain commodities transactions but including amounts representing COGS) made by certain U.S. corporations to related foreign persons unless recipient elects to treat as ECI ▸ Foreign recipient may claim partial FTCs ▸ Applies to international financial reporting groups with average annual outbound aggregate payments of at least $100 million	▸ Base erosion tax equal to the excess (if any) of 10% of "modified taxable income" over regular tax liability reduced by certain credits (increased to 12.5% after 12/31/25) ▸ Applies to certain U.S. corporate taxpayers with annual gross receipts of at least $500 million (three year testing period) and a "base erosion percentage" of 4% or more ▸ Base erosion payments generally are certain deductible payments paid or accrued to a related foreign person (doesn't apply to COGS unless inverted)

INTERNATIONAL TAX REFORM

Side-by-side Summary

Proposal	House Version	Senate Version
Interest Deduction Limitations	▸ Limited to 30% of adjusted taxable income (with some exceptions) ▸ Additional limitations for certain international financial reporting groups	▸ Some differences from House version ▸ Additional limitations for certain worldwide affiliated groups
Possessions	▸ Extends Puerto Rico DPAD ▸ Extends American Samoa Credit ▸ Extends limit on excise taxes on distilled spirits that is covered over to Puerto Rico and Virgin Islands	▸ Modification of sourcing rules (see next slide)
PFIC Insurance Business Exception	▸ Adds restriction on insurance business exception to PFIC rules	▸ Generally similar

INTERNATIONAL TAX REFORM

Side-by-side Summary

Proposal	Senate Version
Additional Senate Proposals not Included in House Version	▸ Denial of reduced rates for dividends received through surrogate foreign corporations ▸ Separate foreign tax credit limitation basket for foreign branch income ▸ Acceleration of elections to allocate interest, etc. on a worldwide basis ▸ Taxation of passenger cruise gross income of foreign corporations and nonresident alien individuals ▸ Repeal of fair market value interest expense election ▸ Denial of certain interest and royalty payments to related parties in hybrid transactions or with hybrid entities ▸ Repeal the special rules applicable to DISCs and IC-DISCs ▸ Codify Rev. Rul. 91-32 ▸ Modify source rules involving possessions under **sections** 937(b)(2) and 865(j)(3) ▸ Repeal exclusion applicable to certain passenger aircraft operated by a foreign corporation ▸ Increase excise tax on stock compensation in an inversion

PRACTICAL IMPLICATIONS

Monika Loving

5 QUESTIONS IN LIGHT OF THE CHANGING INTERNATIONAL TAX LANDSCAPE

BEPS, Brexit, and now, US Tax Reform

1. HOW DOES THE INTERPLAY OF THESE THREE INITIATIVES IMPACT:

- Tax profile
- Treasury options
- Supply chain
- Corporate structure
- Global effective tax rate

2. WHAT AREAS SHOULD BE VETTED?

- Repatriation options
- Maximize U.S. foreign tax credits
- Navigate the potential“ one-time tax” on foreign earnings under U.S. tax reform proposals
- Reassess EU structures to mitigate IP, finance and supply chain challenges, as well as potential local exit and withholding taxes
- Evaluate overall impact on tax financial statement disclosures

5 QUESTIONS IN LIGHT OF THE CHANGING INTERNATIONAL TAX LANDSCAPE

3. WHAT TAX ATTRIBUTES SHOULD BE REVIEWED?

- Earnings and profits (“E&P”)
- Foreign tax credit pools
- Tax accounting methods
- Net operating loss carry forwards
- Tax credit carry forward

4. WHAT ARE THE KEY AREAS OF PLANNING CONSIDERATIONS?

- Holding company structures
- Intellectual property
- Tax attribute utilization
- Supply chain modification

5 QUESTIONS IN LIGHT OF THE CHANGING INTERNATIONAL TAX LANDSCAPE

5. NEXT STEPS?

- Review common denominators to evaluate alternatives (i.e., assess inventory of cash, including “trapped” cash; firm up E&P and associated foreign tax credit pools).
- Harvest tax attributes as appropriate.
- Model practical options for repatriation of foreign earnings.
- Identify changes to the supply chain that balance the U.S. tax reform proposal with the adjustments due to BEPS and Brexit.

DISCLAIMER

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