Introduction to U.S. Taxation
An Overview of Key Concepts and Considerations for Non-U.S. Investors

October 2017
Agenda

• Framework of the U.S. Tax System

• Structures for Entering the U.S. Market

• Non-Income Tax Considerations

• Transfer Pricing and “BEPS”

• Employee & Executive Considerations

• U.S. Tax Reform Proposals
Framework of the U.S. Tax System
Progressive → as a taxpayer’s tax base increases, the taxpayer’s tax increases proportionally
“the more money you make, the more taxes you pay”
Types of Taxes

Federal Taxes – Treaty
State & Local Taxes – No Treaty
Types of Taxes

• Federal Taxes
  ✓ Income taxes
  ✓ Employment and unemployment taxes
  ✓ Excise taxes
  ✓ Estate and Gift taxes

• State & Local Taxes
  ✓ Sales and use taxes
  ✓ Property taxes
  ✓ Income taxes
  ✓ Excise taxes
Framework of U.S. Tax System

Congress (legislative branch)
- Writes tax laws included within IRC

President (executive branch)
- Approves or vetoes tax law/acts passed by Congress

Courts (judicial branch)
- Dispute resolution – interprets IRC and decides how Congress intended its application

Agency within U.S. Dept. of Treasury
- IRC authorizes IRS to
  - collect federal taxes
  - enforce tax rules
  - issue tax refunds
Structures for Entering the U.S. Market
Foreigners (NRAs or Corporations) are generally subject to income tax on two “buckets” of income

✓ **Fixed or Determinable Annual or Periodic Income (“FDAPI”)**
  - Types (wages, interest, dividends, rents, royalties, etc.)
  - Must be derived from U.S. sources
  - 30% withholding tax on **GROSS** income by payor (treaty can reduce)

OR

✓ **Income Effectively Connected with a U.S. Trade or Business (“ECI”)**
  - Business income derived from U.S. trade or business
  - Subject to graduated rates topping out at 35% on **NET** income
  - Business activities of a U.S. partnership (e.g., U.S. LLC) will be attributed to the partners/investors which triggers a withholding obligation by the U.S. LLC/partnership
Structures for Entering the U.S. Market

Direct Presence – Branch

- Generally not recommended
- Tax issues
- Liability/asset exposure

Agents?
- Activities carried out by agents may be attributable to the principal
- No tax regulations on point
- Law set forth in a number of rulings and cases
Structures for Entering the U.S. Market

**Corporation (Inc. or Corp.)**

- Most common
  - Establishment is convenient and straightforward
  - Limited liability
  - No audited financial statement requirement for private companies
  - Financial results for private companies are confidential
  - Ownership generally confidential
  - Importance of proper capitalization and maintenance
- Corporation subject to U.S. federal, state and local income (and possibly other) taxes
  - Benefits under Income Tax Treaty with the U.S. may be available (at federal level)
Limited Liability Company (LLC)

- Similar liability protection to a corporation
- Less common for non-U.S. owners
- Tax treatment
  - LLC, in general, is treated the same for tax purposes as a branch, so the non-U.S. owner files tax returns and pays U.S. federal, state and local taxes
  - Treaty benefits may NOT be available
Non-Income Tax Considerations
Non-Income Tax Considerations

“First-Sale” Rule

Example of First Sale

Let’s assume the Duty Rate is 10%

If the Vendor’s invoice is $16,000

$15,000

$1,500

The duty payment will equal $1,500

If the Manufacturer’s invoice is $10,000

$10,000

$1,000

The duty payment will equal $1,000

That’s a savings of $500!
Transfer Pricing and Base Erosion Profit Shifting ("BEPS")
Transfer Pricing and “BEPS”

- **Transfer pricing**
  - Worldwide standard governing transactions between related parties
  - Such transactions must be “arms’ length”

- **Transfer of profits**
  - Generally, if a U.S. company has retained earnings, a transfer of profits will attract a 30% withholding tax (unless reduced by a tax treaty)
  - The U.S. corporation does not receive a tax deduction for the transfer of profits
  - Be aware of corporate law limitations on dividend payments
U.S. persons that are the ultimate parent entity of a U.S. multinational enterprise (U.S. MNE) group with annual revenue for the preceding reporting period of $850 million or more are required to file Form 8975.

Form 8975 and Schedules A (Form 8975) are used by those filers required to report annually certain information with respect to the filer’s U.S. MNE group on a CbC basis.

The filer must report the U.S. MNE group’s constituent entities, indicating each entity’s:

- Tax jurisdiction (if any)
- Country of organization
- Main business activity
- Financial and employee information for each tax jurisdiction in which the U.S. MNE does business (including revenues, profits, income taxes paid and accrued, stated capital, accumulated earnings, and tangible assets other than cash)

Form 8975 and Schedules A (Form 8975) must be filed with the IRS with the income tax return of the ultimate parent entity of a U.S. MNE group for the tax year in or within which the reporting period covered by the Form 8975 ends.
Employee & Executive Considerations
Pre-Arrival Tax Planning Checklist

Key U.S. Tax Considerations

• Consider establishing a foreign or U.S. trust for estate planning purposes
• Determine if accelerating gift planning or contemplated sales of assets prior to entering the U.S. will save global tax
• Explore tax strategies that will step up the tax basis of assets to their FMV so only appreciation after becoming a U.S. resident will be taxable in the U.S.
• Review existing investment structures to determine whether there will be adverse tax impacts under U.S. tax laws
• Stock options, when exercised, usually generate ordinary income in the U.S. that is taxable at the top rate – consider exercising prior to arrival
• Review deferred compensation and retirement benefits, to determine how to efficiently access these sources with minimum tax before and after arrival
• If you have a foreign stock plan, check whether vesting will be taxable to you after entering the U.S.
• Plan the proper timing for arrival – Arriving in the last half of the calendar year will usually result in nonresident status for the full year (thus exempting from U.S. tax foreign income and capital gains)
• If you are being relocated, consider whether you should be employed by the U.S. or foreign affiliate and whether you should be covered by social security in the U.S. or home country
U.S. Tax Reform Proposals
U.S. Tax Reform – Highlights

“Unified Framework For Fixing Our Broken Tax Code”

Current

- Top Corporate Tax Rate = 35%
- Top Individual Tax Rate = 39.6%
- Top Pass-Through Tax Rate (S Corps, Partnerships, Sole Proprietors) = 39.6%
- Worldwide Taxation
- Estate and Gift Taxes

Proposed

- Top Corporate Tax Rate = 20%
- Top Individual Tax Rate = 35%
- Top Pass-Through Tax Rate (S Corps, Partnerships, Sole Proprietors) = 25%
- Territorial Taxation
- **NO** Estate and Gift Taxes
U.S. Tax Reform – Highlights

Border Adjustability Tax NOT Included
THANK YOU......

For the Opportunity to Present to You Today

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