



2021 Year-End Tax Planning

For Privately-Held Businesses

MEET THE SPEAKERS



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Federal Taxation

COVID-19 Related Tax Issues

- PPP Loan Forgiveness
- Employee Retention Credit – Extended through September 30, 2021
- Paid Leave Credit – Extended through September 30, 2021
 - Emergency Paid Sick Leave (EPSL)
 - Emergency Paid Family Leave (EMFLA)



Other Tax Issues affecting businesses

- Excess business loss limitation is back in 2021
- Net Operating Loss (NOL) deduction limitation is back for 2021
- Qualified Business Income (QBI) Deduction – Sec. 199A deduction is still available through 2025
- Interest expense limit has gone down to 30% of Adjusted Taxable Income (ATI) + Business Interest Income for 2021
- Pass-through entity tax
- New K-2, K-3 attached to schedule K-1



Build Back Better Framework

- 15% Corporate Alternative Minimum Tax on book income for Large Corporations
- 15% Global Minimum Tax
- 1% Surcharge on Corporate Stock Buybacks
- 3.8% NII Tax Expanded
- SALT Cap Changes
- Expanding climate-related tax credits
- Expanding Low-Income Housing Tax Credit
- Paring back QSBS sold after 9/13/2020
- Increase IRS funding – more audits



Build Back Better Framework

Not Included in the Framework:

- Changes to Individual, Corporate tax rates
- Capital Gains tax rates
- Changes to Carried Interest
- Changes to 199A deduction
- Work Opportunity Tax Credit (WOTC)



Cannabis Update

- New States legalizing cannabis
- No Federal legalization in 2022
- No changes to SAFE Banking Act in 2022
- Sec. 280E, 471, 263A
- Qualified Small Business Stock
- Structuring is very important in this industry

Polling Question #1:
Have you read the
2,135-page Build
Back Better Act?





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State & Local Tax



Pass-through Entity (PTE) Tax

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- TCJA established a \$10K cap on SALT deduction for individual taxpayers for 2018 – 2025
- Many states have established entity-level taxes on PTEs as a workaround
- PTEs may elect to be taxed at entity level for state income tax
- IRS Notice 2020-75
- 20 states have enacted PTE tax to date, other states in process of enacting legislation
- Tax is elective (except CT)



PTE Taxes (Cont'd)

- PROCESS
 - Tax assessed at highest individual rate in most states and PTE deducts entire amount
 - Reduces each owner's distributive share of income and avoids limitation
 - Credit vs. income exclusion
 - Generally revenue-neutral for the states
- Massachusetts PTE tax effective in 2021
 - 5% tax rate
 - Refundable credit for 90% of MA tax paid
- Due diligence required by PTEs
- Many states will rescind PTE tax laws if SALT cap is lifted
- Build Back Better – Repeal? Increase cap?



STATE RESPONSES TO CARES ACT

PAYCHECK PROTECTION PROGRAM (PPP) LOANS

- Most states follow federal – not taxable when forgiven, expenses deductible
- If state doesn't issue specific guidance, follow the rules for adoption of the current IRC
- Some states (HI, NC) will treat the forgiveness as nontaxable but do not allow deduction of the expenses
- RI - the loan forgiveness is taxable income if it exceeds \$250K
- VA – the loan forgiveness is not taxable but they only allow a deduction of up to \$100K

STATE RESPONSES TO CARES ACT (Cont'd)

BUSINESS INTEREST LIMITATION

- **TCJA**
 - Limited amount of business interest expense to 30% of ATI
 - Excess expense carried over indefinitely
- **CARES Act**
 - Raised deduction limitation to 50% for 2019 and 2020
 - Taxpayers can use 2019 ATI to calculate limitation for 2020
- **State Responses**
 - Depends on conformity with IRC
 - Even states that conform can decouple from these provisions
 - Can create significant differences between federal and state taxable income

REMOTE WORKERS

DURING COVID

- Safe harbor nexus provisions
- MA emergency regulations
- Withholding requirements

RECENT CHANGES

- States of emergency lifted
- More employees will be permanently remote
- Back to previous nexus rules – could increase tax burden
- Employees must now track work locations



REMOTE WORKERS (Cont'd)

ACTION ITEMS FOR EMPLOYERS

- Require employees to inform employers of any anticipated change in work location
- Employers may have to say no if that presence creates a large tax burden
- Keep track of each new state's withholding requirements

Wayfair – Where Are We Now?

- All 45 states (plus DC) that have a sales tax have adopted economic nexus laws for sales tax
 - FL – effective 7/1/21
 - MO – effective 1/1/23
- Small businesses are often noncompliant
 - More costly to comply
 - Administrative burden
- Physical nexus created by remote workers will trump economic nexus

Polling Question #2:
Does your business have
remote workers/
telecommuters in
various states?





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International Tax Considerations for Multi-National Companies

TCJA vs. The Biden Administration



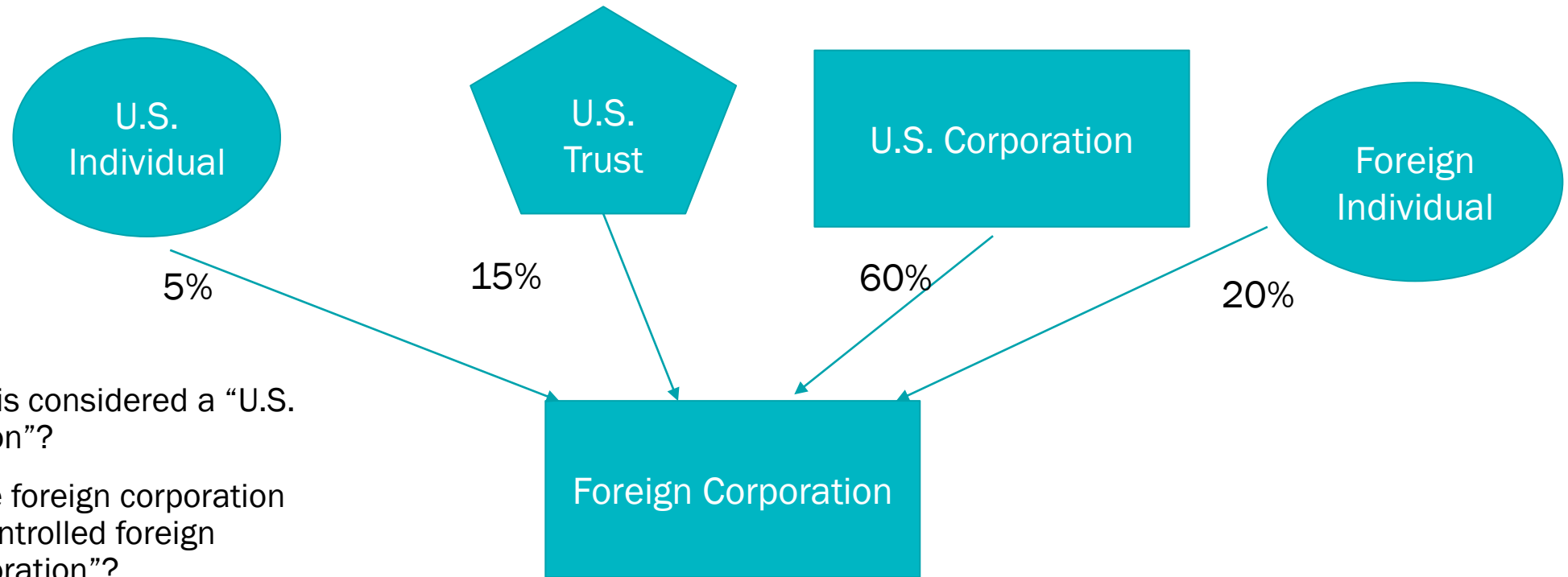
What is GILTI?

- Global Intangible Low-Taxed Income, §951A
- Anti-deferral tax on foreign earnings (tax current E&P now vs. when distributed)
- Minimum tax on foreign source net tested income (10.5% rate for C-corps)
- **NOT** solely linked to intellectual or intangible property
- Income is *deemed* repatriated in the year *earned*
- This is an annual inclusion, **NOT** a one-time charge

Who is GILTI?

- 10% **US shareholders** of **Controlled Foreign Corporations (CFCs)** who own stock on last day of the tax year.
- 10% can be satisfied by vote or value at any day during the year
- “**US person**” – US citizen/resident alien individual, US flow-through entity, US C-corporation
- “**CFC**” – any foreign corporation where a US shareholder(s) own(s) more than 50% of the of the stock on any day during the year
- “Look through” provisions adopted for 2020, downward attribution rules repealed IRC958(b)

Examples of US Shareholders & CFCs



- Who is considered a “U.S. person”?
- Is the foreign corporation a “controlled foreign corporation”?
- Is there a potential GILTI consideration?



US Corporate Shareholder vs. US Individual Shareholder

	Corporate Shareholder	Individual Shareholder
Foreign Tax Gross Up Inclusion (§78)	YES	NO*
50% Deduction (§250)	YES	NO*
Foreign Tax Credit (§960)	YES	NO*
Tax rate on GILTI	10.5% (1/2 of 21% with 50% deduction assumed allowed)	37% (or applicable marginal rate)*

Other International Components to TCJA

Foreign-Derived Intangible Income (FDII), §250

- Interaction of GILTI and FDII
- Applies only to C-corporations with taxable income and foreign sales
- 37.5 rate of deduction
- Incentive for US Corporations to conduct global business from the US
- Requires significant recordkeeping





Form 5471 for Interests in Foreign Entities





Overview of Form 5471

- Report the interest in and transactions related to foreign corporations
- An important IRS tool for assessing the scope of a taxpayer's foreign holdings and operations
- Tool for keeping track of the E&P of foreign corporations
- GILTI inclusion and calculations roll into this form
- IRS estimates 83 hours of recordkeeping and 24 hours of preparation
- Hefty fines for non-compliance – \$10,000 and can go to \$50,000 per form per year



More Changes Coming!

2 new international-related schedules for passthrough entities:

- Schedule K-2
- Schedule K-3



Foreign Bank Account Reports (FBARs)

What Are FBARs and Why Do They Matter

- Report the interest or authority you have over financial accounts in a foreign country (i.e. bank accounts or securities)
- Due by April 15th or October 15th each calendar year
- Filed with FinCEN not the IRS
- Required by U.S. persons with a financial account(s) in another country whose aggregate value(s) exceeded \$10,000 during the reporting period
- Virtual currency reporting update FinCen Notice 2020-2
- Hefty fines for non-compliance – \$10,000 and can go to \$100,000 or more
- Form 8938 may also be required, IRS equivalent form of an FBAR with a higher reporting threshold.

Proposed Changes

Elimination of QBAI in GILTI calculation

Reduction of IRC 250 deduction from
50% to 25%

GILTI computed on a country-by-
country basis

Repeal the high tax exemption

Repeal FDII entirely





Conclusion and Takeaways

- Proposed changes = opening bid in negotiations with Congress
- Changes are likely
- Take stock & be compliant
- Consider:
 - E&P Studies
 - Transfer pricing re-examination
 - Federal NOLs to offset GILTI
 - IRC 962 Election
 - DRE vs. CFC


Polling Question #3: Are you comfortable all your filing requirements are being met?



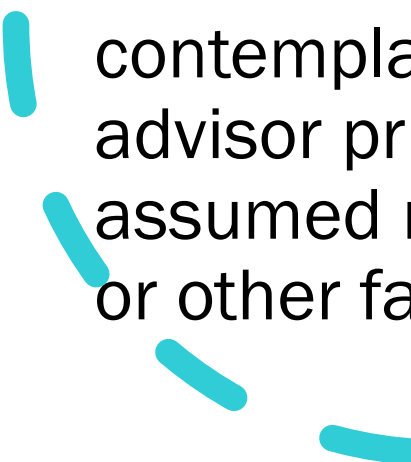
Questions



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