Major US Tax Reforms apply effective 2018 to all US businesses and investors – but they also apply to US headquarters of foreign businesses and investors! What are the chief impacts of these Reforms on such taxpayers?

THREE KEY OPPORTUNITIES

First, US corporations – including those owned by foreign businesses and other foreign investors – are now taxed at a maximum federal income tax rate of 21% (rather than the previous 35%). This reduces the tax rate by 40% and provides over 20% greater after-tax income, whether from US or foreign sources. In addition, for non-corporate pass-through entities – as explained more fully in the April 2018 edition of this column by my CBIZ colleague Jim Slouber at www.labusinessjournal.com/trustedadvisors – the US now provides a 20% deduction from many types of business income, including for such entities owned by foreign persons. (As Jim also noted, several offsetting Reforms limit the use of interest deductions and net operating losses.)

Second, using a US corporation – including one owned by foreign persons – to generate foreign income can result in even lower corporate tax rates of between 10.5% and just over 13%. These reduce the pre-Reform tax rate by up to 70% and provide at least one-third more after-tax income for the corporation!

Third, the US federal exemption of assets from estate and gift taxes is now $11.2 million per individual and $22.4 million per couple – including for foreign individuals taking up US domicile in connection with their US business or other investments. (However, foreign individuals who remain domiciled abroad are still entitled only to much smaller exemptions from US taxable assets.)

FOUR KEY CHALLENGES

First, US corporations – including those owned by foreign persons – must be careful not to make deductible payments to foreign related parties in excess of a threshold amount, since they may incur a new base erosion anti-abuse tax (BEAT) of up to 12.5%. This tax, however, only applies to US corporations with at least $500 million in annual gross receipts, so most foreign-owned and other US businesses are excluded.

Second – of broader application – if an interest in a US pass-through entity is sold by a foreign person, the gain attributable to assets used in the entity’s US trade or business is now taxable to the seller and the buyer must withhold 10% of the sale price to enforce this tax.

Third, the US Internal Revenue Service has recently announced that new tax enforcement campaigns will include nonresident aliens with US income or assets, although this of course should not adversely affect those who already comply with federal tax obligations.

Fourth – but not due to US Tax Reform – the US still taxes foreign individuals who become US income tax residents on their worldwide income and does not automatically provide a step-up in tax basis to fair market value for foreign assets owned before taking up US residence. This means foreign individuals acquiring US residence in connection with their US business or other investments need to obtain sound US tax planning advice in advance!

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