WHAT U.S. TAX REFORM REALLY MEANS FOR INTERNATIONAL TAX: One-Plus Years In

The Tax Cuts and Jobs Act added a host of new international tax provisions to the Internal Revenue Code. Is practice consistent with policy? How are new rules impacting taxpayers’ decisions? Hear from three tax practitioners how these new provisions are impacting taxpayers.

Date: Tuesday, March 19, 2019
Time: 12:30 p.m.–2:00 p.m.
(Light lunch will be served at 12:15 p.m.)
Location: New York Law School, W300
185 West Broadway, New York, NY 10013
RSVP: www.nyls.edu/TaxRSVP
CLE: 1.5 credits in Areas of Professional Practice
(NY transitional and nontransitional)
Contact: ashley.oliver@nyls.edu • 212.431.2147

Moderator: Professor Alan I. Appel ’76, Distinguished Practitioner; Professor of Law; Director, International Tax Program; and Co-Director, Center for Business and Financial Law, NYLS

Speakers: Nicole Hinton, Partner, International Tax Services, PricewaterhouseCoopers
A. Fanny Karaman ’12, Associate Attorney, Ruchelman P.L.L.C.
Shi-Chieh Lee, Partner, International Tax Services, PricewaterhouseCoopers
What U.S. Tax Reform Really Means: One+ Year In
Update on U.S. Tax Reform
Update on U.S. Tax Reform

Participation Exemption
- 100% dividends received deduction for foreign source dividends
- Transition tax to shift to new regime

Global Intangible Low-Taxed Income ("GILTI")
- Territorial system?
- GILTI intended to be an effective tax rate of 13.125% on foreign operations \[13.125% \times 80\% \text{ FTC} = 10.5\%\]
- Expense apportionment can result in companies with effective tax rate in excess of 10.5% being subject to GILTI
- Foreign-derived intangible income ("FDII") provides benefit for intangible income derived from serving foreign markets

Impacts on Financing
- Interest deduction at 21% corporate tax rate
- New Section 163(j) limitations expanded to cover debt with related and unrelated parties
- BEAT tax could apply for outbound payments of interest to foreign related parties

Base Erosion and Anti-Abuse Tax ("BEAT")
- New minimum tax on outbound payments to foreign related parties provided certain thresholds are satisfied
- Outbound payments potentially subject to BEAT include interest payments, royalties, service fees, and other similar payments
- There are several exceptions to the BEAT rules, including payments for low-value services, items properly treated as payments in connection with the production of goods (i.e., COGS), and payments which are eligible for netting
- Only applicable to C Corporations with at least $500M in revenues and whose "BEATable" payments equal or exceed 3% of all deductions

Controlled Foreign Corporation ("CFC") Status
- Change in attribution rules such that foreign corporations not under U.S. ownership may be CFCs
## Timeline for Regulatory Guidance

<table>
<thead>
<tr>
<th>Regulations</th>
<th>Release Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Final Section 965 Regulations</td>
<td>February 5, 2019 (Published)</td>
</tr>
<tr>
<td>Proposed GILTI Regulations</td>
<td>September 13, 2018</td>
</tr>
<tr>
<td>Proposed 163(j) Regulations</td>
<td>November 26, 2018</td>
</tr>
<tr>
<td>Proposed Foreign Tax Credit Regulations</td>
<td>November 28, 2018</td>
</tr>
<tr>
<td>Proposed BEAT Regulations</td>
<td>December 13, 2018</td>
</tr>
<tr>
<td>Proposed Hybrid Regulations</td>
<td>December 20, 2018</td>
</tr>
<tr>
<td>Proposed Section 250 Regulations</td>
<td>March 4, 2019</td>
</tr>
<tr>
<td>Proposed PTEP Regulations</td>
<td>TBD</td>
</tr>
</tbody>
</table>
International Tax Considerations for Corporations and Individuals
Participation Exemption

Transition Tax

- Accumulated earnings 12/31/17: $180
  - Cash 15.5%
  - Non-Cash 8%

- Foreign tax credit subject to toll charge haircut
- Basis adjustment election available to shift basis between CFC chains
- Trap for the unwary? Acceleration of deferred toll charge tax in some situations
Participation Exemption

Participation Exemption for Dividends

**Old Regime**

- Dividend Income: $120
- US Tax: $42
- FTC: ($20)
- US Tax: $22

**New Regime**

- Dividend Income: $120
- Less: DRD: ($120)
- Taxable income: $0
- US Tax: $0

- Strong incentive to repatriate
- Foreign law requirements for repatriation must be taken into account
- Consider potential application of the anti-hybrid rules under Section 245A(e)
- Potential use of upstream loans from CFCs to the U.S. to facilitate repatriation
Overview of GILTI and FDII

A Carrot and a Stick

- GILTI is a minimum tax resulting in full inclusion for corporate shareholders of net CFC tested income on U.S. return and incremental U.S. tax if foreign rate on intangible income is less than 13.125%
  - Expense apportionment, QBAI, and foreign tax credit allocations likely create incremental U.S. tax even if foreign effective rate is higher than 13.125%
- FDII results in federal effective rate of 13.125% on foreign derived intangible income

Mechanism: Section 250 Deduction for Corporate Shareholders

- GILTI deduction of 50% subject to taxable income limitation rules
- 37.5% deduction on foreign derived intangible income
GILTI – General Overview – Mechanics Flowchart

Aggregate pro rata share of TESTED INCOME of all CFCs
Minus
Aggregate pro rata share of TESTED LOSS of all CFCs
Equals
US Shareholder’s Net CFC Tested Income
Minus
Net Deemed Tangible Income Return
Equals
GILTI Amount

GILTI Amount
Plus
Section 78 Gross-Up
Equals
US Shareholder Inclusion
Minus 50% Deduction
US Shareholder Inclusion net of deduction
Times 21%
Tentative GILTI Tax

Tentative GILTI Tax
Minus
Deemed Paid Foreign Tax Credit
Equals
US Tax Liability
GILTI – General Overview

Tested Income is gross income of C.F.C. determined without regard to:
1. U.S. source E.C.I.
2. Gross Subpart F Income
3. Gross Subpart F Income subject to high effective tax rate and excluded from Subpart F
4. Dividend received from a related person
5. Foreign oil and gas extraction income

Tested Income as defined above

The deductions (including taxes) allocable to Tested Income

The deductions (including taxes) allocable to Tested Income

Interest expense taken into account in determining net C.F.C. Tested Income to the extent the interest expense exceeds the interest income taken into account in determining net C.F.C. Tested Income

- 10 percent of the aggregate pro-rata share of Q.B.A.I. of each C.F.C.

S/H’s aggregate pro-rata share of Tested Income of each C.F.C. in which it is a U.S. S/H

S/H’s aggregate pro-rata share of tested losses of each C.F.C. in which it is a U.S. S/H

G.I.L.T.I.

S/H’s net C.F.C. Tested Income for such taxable year

S/H’s net deemed tangible income return
GILTI – General Overview

Property, plant and equipment not giving rise to the following items of gross income:
1. U.S. source E.C.I.
2. Gross Subpart F Income
3. Gross Subpart F Income subject to high effective tax rate and excluded from Subpart F
4. Dividend received from a related person
5. Foreign oil and gas extraction income

The deductions (including taxes) allocable to the above
### GILTI

<table>
<thead>
<tr>
<th>Item</th>
<th>CFC1</th>
<th>CFC2</th>
<th>US$H</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Tested Income(^1)</td>
<td>$105</td>
<td>$95</td>
<td>$200</td>
</tr>
<tr>
<td>2 Tested Loss</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>3 Net CFC Tested Income</td>
<td></td>
<td></td>
<td>$200</td>
</tr>
<tr>
<td>4 Tested Foreign Income Taxes</td>
<td></td>
<td></td>
<td>$31</td>
</tr>
<tr>
<td><em>Foreign effective tax rate on tested income</em></td>
<td>19.2%</td>
<td>5.5%</td>
<td>13.2%</td>
</tr>
<tr>
<td>5 Qualified Business Asset Investment(^2)</td>
<td>$1,500</td>
<td>$200</td>
<td>$1,700</td>
</tr>
<tr>
<td>6 Net deemed tangible income (10% (L_5))</td>
<td></td>
<td></td>
<td>$170</td>
</tr>
<tr>
<td>7 Interest expense that reduced tested income</td>
<td>$50</td>
<td>$0</td>
<td>$50</td>
</tr>
<tr>
<td>8 Excess of (L_6) over (L_7)</td>
<td></td>
<td></td>
<td>$120</td>
</tr>
<tr>
<td>9 GILTI (Excess of (L_3) over (L_8))</td>
<td></td>
<td></td>
<td>$80</td>
</tr>
<tr>
<td>10 Inclusion percentage ((L_9/L_1))</td>
<td></td>
<td></td>
<td>.40%</td>
</tr>
<tr>
<td>11 Deemed Paid Credit before 20% haircut ((L_{10} \times L_4))</td>
<td></td>
<td></td>
<td>$12.20</td>
</tr>
<tr>
<td>12 Deemed Paid Credit after 20% haircut (80% (L_{11}))</td>
<td></td>
<td></td>
<td>$9.76</td>
</tr>
<tr>
<td>13 Grossed up GILTI ((L_9 + L_{11}))</td>
<td></td>
<td></td>
<td>$92.20</td>
</tr>
<tr>
<td>14 50% Deduction (50% (L_{13}))</td>
<td></td>
<td></td>
<td>$46.10</td>
</tr>
<tr>
<td>15 Taxable income before credit ((L_{13} - L_{14}))</td>
<td></td>
<td></td>
<td>$46.10</td>
</tr>
<tr>
<td>16 US tax before credit (21% (L_{15}))</td>
<td></td>
<td></td>
<td>$9.68</td>
</tr>
<tr>
<td>17 Foreign tax credit ((L_{12}))</td>
<td></td>
<td></td>
<td>$9.76</td>
</tr>
<tr>
<td>18 US Tax on GILTI ((L_{16} - L_{17}))</td>
<td></td>
<td></td>
<td>$0.00</td>
</tr>
</tbody>
</table>

\(^1\)Excess of gross income reduced by ECI, subpart F income, income that would be subpart F income but for high-tax exception and FOGEI, less allocable deductions

\(^2\)Average of end-of-quarter adjusted bases in tangible depreciable property that generates tested income or loss, determined under ADS
### GILTI Foreign Tax Credit Considerations

#### Example of Calculation of US Tax on GILTI

<table>
<thead>
<tr>
<th>Item</th>
<th>CFC1</th>
<th>CFC2</th>
<th>US Parent</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Item</th>
<th>CFC1</th>
<th>CFC2</th>
<th>US Parent</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Tested Income¹</td>
<td>$200</td>
<td>$200</td>
<td>$400</td>
</tr>
<tr>
<td>2 Tested Loss</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>3 Net CFC Tested Income</td>
<td>$200</td>
<td>$35.43</td>
<td>$60</td>
</tr>
<tr>
<td>4 Tested Foreign Income Taxes</td>
<td>$25</td>
<td>$35.43</td>
<td>$60</td>
</tr>
<tr>
<td>Foreign effective tax rate on tested income</td>
<td>11.1%</td>
<td>15.0%</td>
<td>13.125%</td>
</tr>
<tr>
<td>5 Qualified Business Asset Investment²</td>
<td>$1,400</td>
<td>$200</td>
<td>$1,600</td>
</tr>
<tr>
<td>5a Int. exp. related to int. not included in tested inc.</td>
<td>$20</td>
<td>$20</td>
<td>$20</td>
</tr>
<tr>
<td>6 Net deemed tangible income (10% * L5) - L5a</td>
<td>$260</td>
<td>$260</td>
<td>$260</td>
</tr>
<tr>
<td>7 GILTI (Excess of L3 over L6)</td>
<td>$39</td>
<td>$39</td>
<td>$39</td>
</tr>
<tr>
<td>8 Indusn percentage (L7/L3)</td>
<td>$31</td>
<td>$31</td>
<td>$31</td>
</tr>
<tr>
<td>9 Deemed Paid Credit before 20% haircut (L8*L4)</td>
<td>$299</td>
<td>$299</td>
<td>$299</td>
</tr>
<tr>
<td>10 Deemed Paid Credit after 20% haircut (80%*L9)</td>
<td>$150</td>
<td>$150</td>
<td>$150</td>
</tr>
<tr>
<td>11 Gross up GILTI (L7 + L9)</td>
<td>$299</td>
<td>$299</td>
<td>$299</td>
</tr>
<tr>
<td>12 50% Deduction (50% * L11)⁴</td>
<td>$150</td>
<td>$150</td>
<td>$150</td>
</tr>
<tr>
<td>13 Taxable income before expense alloc. (L11-L12)</td>
<td>$150</td>
<td>$150</td>
<td>$150</td>
</tr>
<tr>
<td>14 Expenses allocated to GILTI basket⁵</td>
<td></td>
<td></td>
<td>$50</td>
</tr>
<tr>
<td>15 GILTI for FTC limitation (L13 - L14)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>16 FTC limitation⁶ (21% * L15)</td>
<td>$31</td>
<td>$31</td>
<td>$31</td>
</tr>
<tr>
<td>17 US tax before credit (21% * L15)</td>
<td>$21</td>
<td>$21</td>
<td>$21</td>
</tr>
<tr>
<td>18 Foreign tax credit (lesser of L4 and L16)³</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>19 US Tax on GILTI (L17 - L18)</td>
<td>$0</td>
<td></td>
<td>$11</td>
</tr>
</tbody>
</table>

¹ Gross income reduced by ECI, subpart F income, income that would be subpart F but for high-tax exception, and FOGEI, less allocable deductions.
² Average of end-of-quarter adjusted bases in tangible depreciable property that generates tested income or loss, determined under ADS.
³ A separate foreign tax credit limitation applies to GILTI income, with no carryforward or carryback of excess credits.
⁴ The deduction is reduced to 37.5% for tax years beginning after 12/31/25.
⁵ Interest, stewardship and research expenses allocable to income in the GILTI basket.
FDII Calculation

Income $250
Less GILTI ($50) 
DEI $200
U.S. QBAI $100
10%
DTIR $10
DEI $200
Less DTIR ($10)
DII $190

FDDEI $100
-------------------------------- = .5
DEI $200

FDII = $95 [0.5×DII ($190) = $95]

FDII Benefit = $35.6 [FDII $95×37.5%]

- Provides benefit for income from foreign persons at 37.5% (benefit decreases to 21.875% after 2025)
- Amount of FDII benefit subject to taxable income limitations
- Documentation requirements to substantiate foreign use

- U.S. Parent taxable royalty income essentially decreased by 35.6%
GILTI and FDII Considerations for Individuals

GILTI

- U.S. individuals with greater than 10% ownership interest in CFC may be subject to GILTI
- GILTI deduction may not be available

Section 962 Election to Treat Individuals as Corporations

- Individuals may make an election to be taxed as a corporation for certain purposes
- Section 250 deduction only available for U.S. corporations
- If an individual makes a Section 962 election to be taxed as a corporation
  - GILTI deduction available
  - FDII deduction not available
Financing

U.S. Tax Impact

- Deduction for interest expense at 21% for U.S. payables
- Outbound payments of U.S. interest subject to 30% withholding tax. (Potential reduction under domestic law exceptions and income tax treaties)
- Debt vs. equity characterization of loans must be considered
- New Section 163(j) interest deductions limited to 30% of EBITDA (EBIT in 2022)
- BEAT tax on outbound interest payments to related parties
BEAT

- Threshold increases to 12.5% after 2025
- Regular tax liability reduced by foreign tax credits and certain other credits
- Applies to U.S. multinationals as well as inbound companies with foreign parents
- Applies to “applicable taxpayers” if have more than $500M average annual gross receipts during prior 3 years and base erosion percentage is 3% or more

### Example Calculation

**BEAT**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>U.S. Taxable Income</td>
<td>$500</td>
</tr>
<tr>
<td>Add Base Erosion Payments</td>
<td>$100</td>
</tr>
<tr>
<td>MTI</td>
<td>$600</td>
</tr>
<tr>
<td>×10%</td>
<td></td>
</tr>
<tr>
<td><strong>Base Erosion Min Tax amount</strong></td>
<td>$60</td>
</tr>
<tr>
<td>Less Regular tax liability [$500 × 21% = $105]</td>
<td>($105)</td>
</tr>
<tr>
<td><strong>No BEAT Tax</strong></td>
<td>($45)</td>
</tr>
</tbody>
</table>
CFC Status

- **CFC Status**: 10% U.S. Shareholders owns at least 50% of foreign corporation
- **CFC Inclusion**: 10% U.S. Shareholders foreign operating company

Diagram:
- Foreign Parent
  - US
  - Foreign Operating Company
    - UK
    - Mexico
    - CFC
Presenters
Presenters

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Suchi is an International Tax Services Partner (ITS) partner with PwC US based in New York. He served as the ITS leader for the PwC global network from 2015-2018. Suchi has over 30 years of experience and specializes in international tax consulting for major multinational enterprises, including structure planning, mergers and acquisitions, repatriation planning, foreign tax credit planning, value chain transformation and integrated holding and finance company structuring. He works with both U.S. and non-U.S. parented multinational enterprises.

Suchi has clients across a wide range of industries, including entertainment and media, technology, industrial products, pharmaceutical and life science, medical device, and financial services. He is a frequent speaker on international tax topics at the Tax Executives Institute, International Fiscal Association (IFA), and other organizations. He sits on the Executive Committee of the USA chapter of the International Fiscal Association (IFA) as well as the Steering Committee of IFA New York. Suchi also sits on the Board of Advisors of the USC Leventhal School of Accounting. He is an adjunct professor in the masters of taxation program at Fordham University.
Nicole Hinton

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Nicole Hinton is an International Tax Partner at PwC in New York. Nicole has worked in both business and industry, having worked at PwC from 1994 to 2000, returning to PwC in 2006. From 2000 through 2005, Nicole was the Director of International Tax at DoubleClick Inc.

Nicole works primarily with outbound and inbound multinational corporations to advise on international tax planning. Nicole assists her clients in a variety of areas, including designing and implementing integrated holding and financing company structures, intellectual property migration and planning, intercompany financing, foreign tax credit planning, repatriation, and cross-border merger and acquisition strategies.

Nicole holds an undergraduate degree in Economics from Duke University and a Masters of Accounting from The University of North Carolina.
Presenters

**Alev Fanny Karaman**
Attorney at Law, Avocat à la Cour
Ruchelman P.L.L.C.
Telephone: 212.755.3333 ext. 127
Email: karaman@ruchelaw.com

Fanny Karaman is a tax lawyer admitted both in France and the U.S. She concentrates her practice in the areas of U.S. and international taxation with a focus on cross-border issues between French-speaking countries and the U.S. Fanny regularly advises entities and individuals on the U.S. tax treatment of U.S. and European investments, trusts, corporate restructurings, and cross-border inheritances or gifts. Language proficiency in French and German and understanding of civil law mechanisms facilitates the major aspects of her practice and enables easy communication with non-U.S. clients.

Fanny has practiced in Paris with a mid-size international law firm where she advised on French cross-border tax issues and major French corporate transactions. She also represented institutional clients in front of the French tax authorities. Before practicing with Ruchelman P.L.L.C., she began her U.S. career focusing on U.S.-German tax issues. Fanny received her LL.M. in Taxation from New York Law School. She also holds a Licence en Droit and Master II en Droit Fiscal des Affaires (the French equivalents of the J.D. and LL.M. in Taxation) from the Université de Rennes 1 Law School. Since 2018, she has taught a one-week program on international U.S. tax law in the Master II en Droit Fiscal des Affaires program. She is active in the French-American Bar Association, where she regularly lectures in both New York and Paris.
Thank You.
Moderator Biography
Professor Alan I. Appel

Professor Alan I. Appel specializes in international and domestic tax planning. He is on the Board of Advisors for the Journal of International Taxation and the Journal of Taxation and Regulation of Financial Institutions. He was formerly Council Director for the International Tax Committees as well as the Chair of the U.S. Activities of Foreigners and Tax Treaties Committee of the American Bar Association Section of Taxation. Professor Appel holds a J.D. from New York Law School and an L.L.M. from New York University. At New York Law School, he is the Director of the International Tax Program. He teaches courses in International Tax, Corporate Tax, and Federal Income Tax. Prior to joining New York Law School, he spent 13 years in the New York office of Bryan Cave Leighton Paisner LLP (formerly Bryan Cave LLP).