Baker McKenzie.

Foundation for International Taxation

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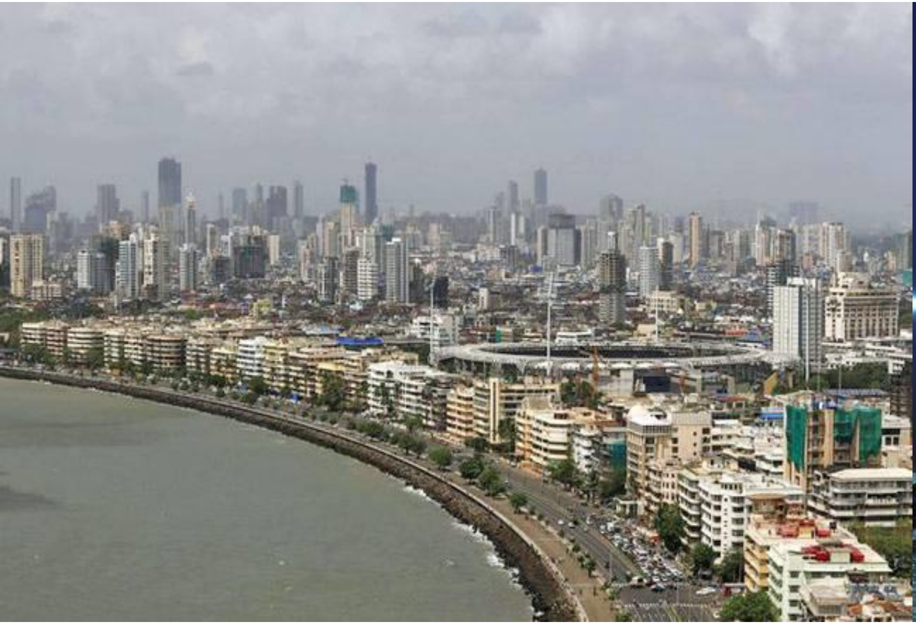


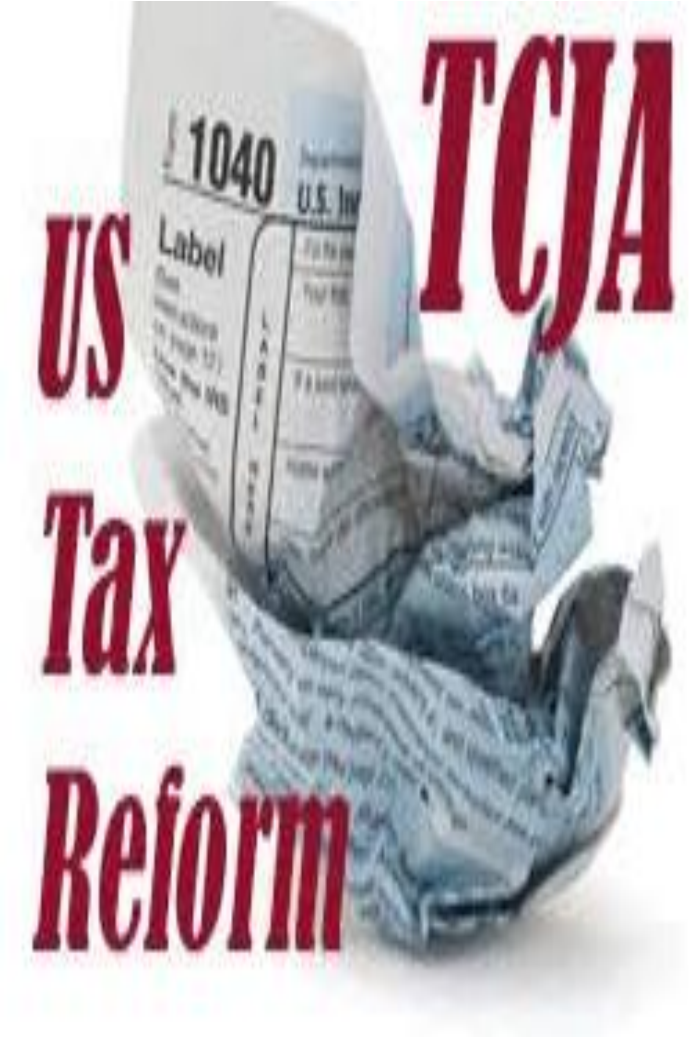
Panel

Recent Tax Reforms in the United States (2017): Their Current Status and their Impact in other Major Global Tax Systems

Chairman: Rodney Lawrence, KPMG, United States

Moderator: Marc Levey, Baker McKenzie, United States

Panelists: Hitesh Gajaria, KPMG, India
Pragya Saksena, Ministry of Finance, India
Robert Stack, Deloitte, United States
Christopher Xing, KPMG China
Lawrence Zlatkin, Dhruva Advisors, United States



Agenda—

US Tax Reform and its Impact on Non-US Tax Policy

1. US Tax Rate Reduction and Impact on US Outbound Behavior
2. US Territorial Regime (GILTI/FDII)
3. BEAT
4. Digital Economy
5. Impact of the US Tax Reform in India and China

US Tax Rate Reduction

US tax rate now 21% (~25% including US state taxation)…what are the non-US reactions to the reduced US Corporate Tax Rate?

- **US now has a highly competitive tax rate for domestic operations**
- **Does it really matter given the general effective tax rate of US MNCs was about 22-23%?**
- **Does this rate change operate to attract more non-US MNCs to the United States?**
- **What does it mean for countries with higher tax rates, like India? China?**
- **How do you reconcile the rate change with the provisions of Section 163(j) (Earnings stripping rules) and the NOL limitations among other things?**
- **Will this rate survive over the medium/long term, especially with a Democratic Congress in 2019?**

Tax Cuts and Jobs Act

Lower Corporate Income Tax Rate
21%

Participation Exemption
Greater access to foreign cash

GILTI
New minimum tax on offshore earnings

FDII
New preferential rate for income from foreign use

BEAT *Outbound Payments*
New taxes on outbound payments

Repeal of 902 Credit
New incentives to minimize foreign tax and/or seek 960 credits (Sub F)

FTC Baskets
Passive, General, GILTI, Foreign Branch Income

Capital Investment Expense Deduction
100% expensing of qualified property placed in service before 2023

Net Operating Loss Deduction
Limited to 80% of taxable income; no carryback but can be carried forward indefinitely

Interest Deduction Limitations
Limited to 30% of adjusted taxable income

New Valuation Methods
New methods prescribe higher valuations for outbound IP transfers

US Territorial System (GILTI/FDII)

New US Global Intangible Low Tax Income (GILTI) and Foreign Derived Intangible Tax (FDII) provisions were enacted as part of a territorial system

- **Overview of GILTI and FDII–**
  - **Territorial regime reserved for non-US normal return of 10% on tangible assets**
  - **Current US taxation of all extra-normal returns above 10% on tangible assets;**
    - **Does GILTI really solve the issues of Subpart F Income?**
    - **Does GILTI really capture intangible income?**
    - **Did Treasury consider simply reforms to Subpart F Income?**
  - **US tax of 21% imposed, with deduction available of 37.5%-50%**
  - **Integrated with US CFC and FTC regimes, not as minimum tax**

US Territorial System (GILTI/FDII)

New US Global Intangible Low Tax Income (GILTI) and Foreign Derived Intangible Tax (FDII) provisions were enacted as part of a territorial system

- **Non-US reactions**
  - **ATAD/GAAR**
  - **Tightened CFC tax regimes**
  - **Minimum tax**
  - **Digital economy**
- **Is FDII WTO compliant or create a "harmful tax regime" as suggested by the OECD?**
  - **Not quite a "patent box"**
  - **Non-US reactions?**
  - **German view of non deduction for non compliant patent boxes.**

BEAT

New Base Erosion Profit Shifting Tax (BEAT) is a "back stop" minimum tax imposed on certain deductible flows to non-US related persons

- Why the BEAT? What was it trying to accomplish? What was its history?
- Minimum tax of 5%-10% on deductible payments to non-US related persons
  - Imposed regardless of US tax treaties
  - Reduced if payment is subject to US withholding tax
  - Not reduced if payment is subject to US tax through non-US related person
  - Significant impact on servicing payments (e.g., Indian BPOs)
- Is this a viable option for other countries struggling with transfer pricing and marketing intangibles considerations?
- What are the ramifications on non-US companies doing business in the United States?
- What is the impact, if any, on the arm's length standard?
- What technical corrections can we expect? Definitions of COGS and embedded intangibles?
- Is the BEAT a viable alternative to new article 12A of the UN Model Treaty?

Digital Economy

What is the future of the Digital Economy?

- **Did GILTI indirectly address these concerns?**
  - **“Stateless income” and zero taxation no longer available for US tech companies**
- **Is there a nexus/permanent establishment fix?**
  - **Diverted profits tax**
  - **Expanded virtual PE regime through BEPS**
- **UK, Indian, Proposed EU revenue based excise taxation– is this consistent with international tax norms?**
- **How are marketing intangibles addressed in a digital world?**

Impact on US Outbound Behavior

How has the US Tax Reform Bill changed US MNC behavior on outbound transactions?

- **Will US MNCs use more limited risk distribution operations?**
- **Will major restructuring occur?**
- **Because of GILTI/FDII, will the US MNC's check-the-box on its CFC's for foreign tax credit purposes or migrate intangibles to the United States?**
- **How will US MNC's address marketing intangibles in an outbound context?**
- **How are digital economies impacted?**

Impact of US Tax Reforms in India

- **Reduction in US corporate tax rate to 21% - steep reduction for certain “export income”**
  - Inbound - Will India still be preferred for outsourcing given the corporate tax rate in India being 34% coupled with phasing out of direct tax incentives on exports?
  - Outbound – Will Indian MNCs consider setting up / expanding operations in the US?
- **BEAT limitations - Impact on US MNCs with significant offshore operations in India AND Indian MNCs having a US group entity as the customer contracting entity**
  - Existing Contractual Arrangements to be Revisited – India / Hybrid / Tripartite? Suitability of Various Options? Branch Structure? Possible Exit charge? / Withholding and Indirect Tax in US? / PE Exposure in US? / POEM Exposure in India?
  - Commercial considerations; Onshore – Offsite Split; Entity Re-characterization / Tested Party / Benchmarking / Harmonization across jurisdictions / Attribution of Profits
- **Limiting interest deductions**
  - Potential impact on M&A asset deals due to step up in value of asset and ability for debt push down in US
  - Re-evaluate Leverage in US funding structures

Impact of US Tax Reforms in China

What are the particular concerns and/or impacts of the US Tax Reforms on China

- US rate reduction brings combined (federal/state) CIT rate in line with China's 25% and improves attractiveness of FDI into US
- China Tax incentives to encourage innovation and investment (e.g. capex expensing, improved super deduction, VC regimes, dividend WHT deferral) parallel US tax reform measures (e.g. capex expensing, FDII)
- Structuring of China 'go out' investment in US may need to be reviewed in light of EBITDA and BEAT interest deduction limitations
- Potential for IP migration to / retention in US in view of FDII
- Need to see how detailed regulations on GILTI and BEAT, and evolving state of China-US trade relations, play out before impact on foreign MNE structuring/supply chains into China is fully apparent

In global DE tax debate, parallels between positions of China and US: home to major DE enterprises; neither favors DSTs/interim measures; open to discussion on possible allocation rights changes within OECD-run process.

Topics for Discussion

Questions?

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