

NovioTax

Changes to US tax code will affect all companies doing business in the US

January 2018

On 22 December 2017, the *Tax Cuts and Jobs Act* was signed into law by President Trump. It will provide the most comprehensive overhaul of the US tax code in more than 30 years. The reformed US tax system will affect group companies doing business in the US. The most obvious areas that will be affected include tax accounting of US corporations and transfer pricing in relation to US companies/activities.

Key provisions of the new US tax code from a corporate tax perspective

- Corporate Income Tax Rate Reduced from 35% to 21%. Effective from 1 January 2018 – a pro rata calculation will be required for US corporations not using a calendar year-end.
- 100% Dividend Participation Exemption. Dividends received from 10% owned non-US subsidiaries would be exempt from US tax (capital gains still generally subject to US tax). A one year holding period applies.
- Limitations on Net Operating Loss (“NOLs”). For losses incurred in 2018 or later, the NOL deduction would be limited to 80% of taxable income.
- R&D expenses. In general, R&D expenses would be required to be amortized over a five year period, with R&D conducted outside the US required to be amortized over a fifteen year period.
- Mandatory One-Time Transition Tax. A one-time transition tax is levied on existing accumulated untaxed earnings of a US company (at a 15.5% rate for cash/cash equivalents and 8% for the balance).
- Additional Controlled Foreign Corporation Rules. The existing US CFC rules are retained and expanded to include a new category of CFC income, namely global intangible low-taxed income, which effectively subjects offshore earnings to US tax at a 10.5% rate. In addition, certain export income (including royalties, services, sales) earned by US companies should become subject to US tax at a rate of 13.125%.



Provisions aimed to prevent avoidance and base erosion

- Interest Expense Limitations. US interest deductions on related and unrelated party debt are limited to 30% of EBITDA (restricted to EBIT beginning in 2022).
- Anti-Base Erosion Provisions. Provisions that may disallow a deduction in respect to certain related party deductible payments, only applicable to US groups with (i) gross receipts in excess of \$500m and with (ii) related party deductible payments of 3% or more of its total deductions.
- Anti-Hybrid Rules. No deduction would be allowed for payments to a related non-US hybrid entity or payments to non-US related parties on hybrid instruments.

Attention points for multinational groups with a branch or company in the US

- o Group structures with a CV/BV combination, Dutch Coop or a US branch will need to be reviewed and potentially be amended such to ensure compliance with the anti-avoidance and anti-hybrid provisions introduced in the US tax code.
- o US corporations will need to review the tax accounting aspects related to the tax changes (especially the reduced corporate tax rate) which will have an effect on deferred tax assets and liabilities. Companies that had not provided deferred taxes on unremitted earnings of foreign subsidiaries, will also need to take into account the one-time transition tax for the mandatory income inclusion. Also the effective tax rates will need to be re-computed, as well as any effect of new global “minimum” taxes and various base broadening changes.
- o The transfer pricing position of groups will need to be reviewed and in particular the related party transactions with US corporation/branches. The drop in tax rate may make it more beneficial to transfer key functions into the US and accordingly allocate a larger proportion of the worldwide profits to the US. Businesses with a significant R&D function should also consider the changes in respect of R&D expenses incurred within the US.
- o Netherlands companies benefitting from the preferential Netherlands IP regime should monitor and double check whether they are not subject to the new expanded category of CFC income, namely global intangible low-taxed income. To a certain extent they might consider reducing the effective IP income attributed to the Netherlands preferential IP regime.
- o Review of the debt position of the group. The impact of existing US debt financing should be considered, and the possibility to capitalize debt or to increase the US group EBITDA/EBIT.

ABOUT NOVIOTAX

NovioTax is a Dutch research-oriented tax consultancy firm with offices in Amsterdam and Nijmegen. Our employees are members of the Dutch Association of Tax Advisers (NOB) and the International Fiscal Association (IFA), have many years of experience and some are much sought-after guest speakers on tax policy and other topics that fall within their field of expertise. We typically serve midsized and large MNE clients, coordinate discussions with the DTA and closely cooperate with international law and tax law firms.

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