TCJA International Provisions: Reflections on the First Year

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Behavioral Responses: Practitioner’s Perspective
A practitioner’s perspective

• Most planning is still very preliminary; companies will start making any major changes once we have a comprehensive set of final regulations

• Even then, there are real concerns about the stability of TCJA, and thus most planning will require “off ramps”
  • Democrats’ emerging approach to TCJA in the new Congress
  • Broader political uncertainty and turbulence
  • New expiring provisions
  • Grim budget outlook
  • Impact of developments outside the US

• For all of the unprecedented complexity and uncertainty companies are dealing with now, there is also a sense that this is as good as we’re ever going to have it....
A practitioner’s perspective, cont’d

• At a high level, TCJA got a lot right
  • Broadened base
  • Lowered rate
  • Addressed income shifting
  • Addressed lock-out effect (although PTEP planning turns out to be more of an adventure than anticipated)

• IP location and supply chain planning is more complex than ever, due to the proliferation of plausible alternatives to the standard pre-TCJA planning
  • GILTI – FDII comparison
  • BEAT impacts
  • Foreign branches
  • Practicalities of US IP onshoring
  • Practicalities of foreign-to-foreign IP onshoring
  • New limits on IP outbounding
<table>
<thead>
<tr>
<th>FDII</th>
<th>GILTI on zero-rate IP</th>
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<tbody>
<tr>
<td>13.125%</td>
<td>10.5% or 0% or other</td>
</tr>
<tr>
<td>16.406% (starting in 2026)</td>
<td>13.125% (starting in 2026) or 0% or other</td>
</tr>
<tr>
<td>WTO challenge</td>
<td>N/A</td>
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<tr>
<td>FDII documentation complexity</td>
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<tr>
<td>US use of IP disqualifying for lower rate</td>
<td>US use of IP not disqualifying for lower rate</td>
</tr>
<tr>
<td>QBAI unfavorable attribute</td>
<td>QBAI favorable attribute</td>
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A practitioner’s perspective, cont’d

• DEMPE alignment
• Tax attributes—e.g., excess credits in general basket
• Public/government relations
• BEAT considerations—inbounding may increase US base but potentially increase outbound related party payments (e.g., R&D)