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

A practitioner's perspective, cont'd

FDII	GILTI on zero-rate IP
13.125%	10.5% or 0% or other
16.406% (starting in 2026)	13.125% (starting in 2026) or 0% or other
WTO challenge	N/A
FDII documentation complexity	N/A
US use of IP disqualifying for lower rate	US use of IP *not disqualifying* for lower rate
QBAI unfavorable attribute	QBAI favorable attribute

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)