Tax Matters
US Tax Reform

Corporate Tax

22 December 2017

The Tax Reform has now been adopted, and it only needs to be signed by President Trump. He is expected to sign it before the end of 2017. USA has not seen such root and branch tax reform in over 30 years, so entities that carry out activities or have employees stationed in USA should be ready for the changes as from 1 January 2018.

Below is an update of our Tax Matters article from 4 December 2017 based on the consolidated Act.

Corporate tax

- The federal corporate tax is reduced from 35% to 21%. Previously, it had not been agreed when the amendment would come into force, but it has now been decided that in general the amendment will take effect on 1 January 2018.
- Limitations in the interest deductibility corresponding to 30% of a so-called ”adjusted taxable income”. As a rule, the adjusted taxable income will generally be determined on the basis of EBITDA until 2021 and after this on the basis of EBIT.
- A limitation is imposed on companies' offsetting of previous years' tax losses against the taxable income for the year, applicable as of accounting periods after 2017. According to the agreement, losses cannot reduce the taxable income by more than 80%, and the carryback rules are cancelled. Losses that cannot be set off against profit for the year will be carried forward without any time limit.
- Partial change to a territorial source principle of taxation where in the future dividends received by US companies from their foreign subsidiaries will be tax-exempt, if the subsidiary owns at least 10% (*participation exemption*).
- Expectedly, investments in certain depreciable assets can be written off immediately. Furthermore, it has been suggested that the existing so-called ”bonus depreciation” allowing a 50% depreciation of certain qualifying assets should be increased to 100% going forward, however subject to a gradual reduction of the depreciation rate.
- The House of Representatives suggested an excise tax of 20% on certain payments to foreign group companies. This was not included in the final wording of the Act.
- A number of measures will be introduced to address evasion, and the Act includes e.g. a specific anti-abuse clause in connection with payments from US companies to foreign group companies. Generally, the Act will thus introduce a minimum tax of 10% (12.5% from 2026) on certain payments to foreign group companies. The 10% minimum tax will generally be triggered, if the taxable income for the year plus intercompany payments to foreign companies exceed the ”regular” taxable income by 10%. As a rule, this will also only affect foreign groups with relatively large US activities. US companies where the annual gross income does not exceed USD 500m and where the intercompany payments to foreign companies do not exceed 3% of the company's total costs will not be subject to the minimum taxation. The amendments will be effective as of 1 January 2018.

KPMG ACOR TAX

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Mobility & People Services

Please be aware that most of the amendments that concern personal tax rates, deductions, etc. only apply until 31 December 2025, after which the current tax rules and rates for 2017 will resume.

- The personal tax rates will change to 10%, 12%, 22%, 24%, 32%, 35% and 37%. The reduced tax rates and the increase in the income level will generally mean a lower taxation. State and local taxes should be added.
- Deductibility of State and local tax will be limited to a total of USD 10,000 per year as opposed to full deductibility today.
- Foreign paid real estate tax is no longer deductible.
- There are no changes to the taxation of investment incomes. The tax rates remain 15%, 20% plus 3.8% investment tax.
- The standard deductions are nearly doubled for US fully tax liable persons, whereas personal exemption is cancelled. This means that more business travelers will be obligated to file tax returns in USA.
- Deductions per child will increase to USD 2,000 and partially compensate for the cancellation of personal exemption. The deduction requires an SSN, however, so many seconded employees will not be able to apply the deduction.
- Deductibility of interest expenses to private real estate will be limited.
- Both chambers have included suggestions to tighten the taxation on sale of house. These changes have not been included, however. Therefore, there are no changes to the current taxation on sale of house in USA and two years out of the five-year rule.
- Employers stationing employees to USA should be aware that moving costs paid for the employee are no longer tax-exempt and must be filed as the employee's income. This may involve a significant additional cost for the employer (gross-up) as well as high tax rates for the employee in the year of entry.

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