



**BDO Seidman, LLP**  
Accountants and Consultants

May 2005

## Subject:

### Notice 2005-38: New Guidance on Repatriation

# International Tax Alert

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## Issue:

On May 10, 2005 the Treasury Department and Internal Revenue Service (IRS) announced the second in a series of notices providing detailed guidance for U.S. companies that elect to repatriate earnings from foreign subsidiaries subject to a temporary reduced tax rate available under the American Jobs Creation Act. Notice 2005-38, which was issued May 10, 2005, addresses guidance on what constitutes a qualifying dividend, the impact of mergers and acquisitions and issues related to the section 78 gross-up.

## Affecting:

U.S. corporate taxpayers seeking to take advantage of the 85 percent dividend received deduction for repatriated foreign dividends as provided for under IRC section 965.

## Details:

In addition to clarifying Notice 2005-10, the Notice provides:

- (1) Rules on how taxpayers should calculate the base period and related financial statement amounts, including APB 23 amounts and related party indebtedness, for eligible dividends;
- (2) Detailed guidance on how the tax relief will operate in mergers and acquisitions; and
- (3) Guidance on how foreign tax inclusions will be treated under IRC section 78, as well as the treatment of expenses under the new tax relief.

The Treasury Department and the IRS expect to issue guidance soon on the treatment of distributions to intermediary pass-through entities owned by U.S. shareholders, as well as the interaction of section 965 with the existing foreign tax credit regime.

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