AN ALERT FROM THE BDO INTERNATIONAL TAX PRACTICE

BDO KNOWS:
INTERNATIONAL TAXATION

SUBJECT

CURRENT U.S. TAXATION OF FOREIGN EARNINGS: THREE ALTERNATIVE PROPOSALS INTRODUCED

AFFECTING

All United States multinational corporations with foreign operations that have unrepatriated and previously untaxed foreign earnings.

BACKGROUND

The Administration and certain House and Senate members have recently introduced three different proposals with respect to United States taxation of unremitted foreign earnings of United States multinational companies.

This alert highlights the repatriation provisions with respect to each of the proposals.

Administration Proposal: 14% back/19% forward

President Obama’s proposed fiscal year 2016 budget includes a provision to impose a 14% one-time tax on untaxed, unremitted foreign income. This proposal is intended to work together with another provision in the proposed budget that would impose a 19% minimum tax on future foreign subsidiary earnings, thereby eliminating the deferral previously available with respect to foreign income.

The foreign income subject to this proposed tax on unremitted earnings would only include income that has not already been subject to tax in the United States, *i.e.*, previously taxed income (“PTI”) would be excluded. A foreign tax credit with respect to foreign taxes associated with this income would be available to offset the tax imposed. The tax available for credit would be “haircut” using the following formula: foreign income taxes associated with the income would be multiplied by a ratio of the 14% one-time tax rate to the maximum United States corporate tax rate for 2015. After paying this one-time tax, the associated foreign earnings could be brought back to the United

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States without additional United States tax. In addition, the 19% minimum tax would be imposed on current foreign earnings (whether or not repatriated) and future repatriation of such foreign earnings would not suffer additional United States taxation.

The proposed 14% one-time tax would be effective as of the date of enactment and would apply to earnings accumulated for taxable years beginning before January 1, 2016. This tax would be payable ratably over five years.

The proposal with respect to the 19% minimum tax would be effective for taxable years beginning after December 31, 2015.

Boxer-Paul Proposal: 6.5% tax rate on repatriated income

On January 29, 2015, Sens. Barbara Boxer (D-Calif.) and Rand Paul (R-Ky.) released details of their proposed legislation, Invest in Transportation Act of 2015, which they will introduce in the near future. Unlike the Administration's Budget Proposal, this proposal would be voluntary and require an actual repatriation of the foreign earnings. The repatriated earnings would be taxed at a 6.5% rate and would apply to pre-2016 foreign earnings. The lower rate would only apply to repatriations that exceed a company's average repatriation in recent years. Companies would have to complete their distributions over a five-year period in order to obtain this rate. A portion of the funds would need to be used for increasing wages and hiring, research and development, capital improvements, and acquisitions, but not for executive compensation. Using the repatriated funds for increased dividends and stock buybacks would be limited for three years. Also, any companies that have taken part in this program would need to repay the tax incentive, with interest, if they inverted within ten years after participating in the program.

Delaney-Hanna Proposal

On January 28, 2015, Rep. John Delaney (D-Md.) announced that he would introduce a bipartisan bill, The Infrastructure 2.0 Act, in order to help fund the Highway Trust Fund. Rep. Richard Hanna (R-N.Y.) is a co-sponsor of the bill. Similar to the Administration's proposal, this is a mandatory, one-time deemed "repatriation" of a company's foreign earnings. The unrepatriated earnings would be taxed at a rate of 8.75%, replacing the deferral option and the current rate of 35%. In addition, the bill will include an 18-month deadline for implementing international tax reform. If no reform is implemented, the bill will provide for a fallback international tax package which, among other things, will end deferral with respect to foreign earnings and decrease taxes for companies paying fair rates abroad but increase taxes for companies in tax havens. For example, as it relates to what is described as "active market foreign income," a company would pay a minimum tax of 12.25% to the United States on income that is not currently subject to foreign tax and a 2% tax to the United States if the income is subject to a rate of 25%. A sliding tax-rate scale would be used for income subject to foreign taxes at rates between zero and 25%.

OBSERVATION

While there has been continued opposition in Washington to any sort of foreign earnings repatriation relief, the fact that three proposals have been recently put forth indicates that perhaps there may be now broader support for such relief than at any time in the recent past.

HOW BDO CAN HELP

BDO's international tax practice has the knowledge and expertise to assist in reviewing your structure, modeling the various proposals and their potential impact to your organization, and provide planning solutions to optimize their effect on your company's income tax expense as well as assessing the timing of the expense recognition pursuant to ASC 740-30-25-19 (APB 23), *Exceptions to Comprehensive Recognition of Deferred Income Taxes*. We will continue to track these proposals and keep you updated on any legislative changes and the impact to United States–based multinational companies.