GLOBAL EXPANSION GUIDEBOOK

TAX

United States

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INTRODUCTION

Welcome to the 2024 edition of DLA Piper's *Global Expansion Guidebook – Tax.*

GLOBAL EXPANSION GUIDEBOOK SERIES

Many companies today aim to scale their businesses globally and into multiple countries simultaneously. In order to help clients meet this challenge, we have created a handy set of global guides that cover the basics companies need to know.

The *Global Expansion Guidebook* series reviews business-relevant corporate, employment, intellectual property and technology, global equity and tax laws in key jurisdictions around the world.

TAX

Multinational companies continue to expand globally at an ever faster pace. Successful expansion depends, in part, on strategic and effective tax planning and compliance. This guide, brought to you by DLA Piper's Tax group summarizes the key features of tax laws in 41 popular jurisdictions.

This guide addresses common tax questions, by jurisdiction, including:

- Taxation of resident companies and non-resident companies
- Availability of tax holidays, rulings, and favorable tax regimes
- Ability to use losses to offset income
- Anti-deferral (ie CFC) rules
- Withholding taxes
- Employment tax issues

With more than 300 tax lawyers and economists in offices throughout the Americas, Europe and Asia Pacific, DLA Piper's global tax advisory services help multinational companies address the complex challenges of international commerce and business operations as well as manage and resolve tax audits. Our global tax group also assists clients in structuring a wide range of transactions, from private equity deals to corporate acquisitions and disposals. We provide these tax services across our global platform, while at the same time offering clients the benefits of the attorney-client and work-product privileges.

The information in this guide is an accessible, high-level summary of the tax laws in each jurisdiction. This is not a substitute for legal or tax advice. If you have specific questions or require detailed advice, we encourage you to contact one of the attorneys listed in the contributors section of this guide.

We hope that you find this guide valuable and we welcome your feedback.

UNITED STATES

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RESIDENCE AND BASIS FOR TAXATION

A corporation formed in a US jurisdiction will be treated as a domestic corporation.

Domestic

A domestic corporation is subject to a modified territorial tax regime on US-source income and certain earnings related to foreign entities. A domestic corporation may be subject to tax on income of its foreign subsidiaries if the global intangible low-taxed income (GILTI) rules or another anti-deferral provision applies (ie, the CFC or PFIC rules).

Foreign

Foreign corporations generally are not subject to US tax except on

- Income effectively connected with the conduct of a US trade or business and
- Certain FDAP (fixed or determinable annual or periodical gains, profits and income, which is generally passive) income from US sources.

Tax treaties can reduce or eliminate these taxes.

TAXABLE INCOME

Domestic

Taxable income of a domestic corporation is equal to all gross income less applicable deductions.

Foreign

Effectively connected income is subject to US tax at regular tax rates on a net income basis. In addition, a branch profits tax at a rate of 30 percent may apply to foreign corporations operating through a branch in the US. Gross FDAP income is taxed at a flat 30-percent rate and cannot be reduced by deductions. Tax treaties can reduce or eliminate these taxes.

TAX RATES

Flat federal corporate income tax rate of 21 percent. State and local taxes also may apply.

TAX COMPLIANCE

Domestic corporate income tax returns are due on the 15th day of the fourth month after the end of the tax year. A taxpayer may also file for a 6-month extension of the due date.

ALTERNATIVE MINIMUM TAX

The corporate alternative minimum tax is repealed for tax years beginning after 2017.

TAX HOLIDAYS, RULINGS AND INCENTIVES

Tax holidays

Not applicable for this jurisdiction.

Tax rulings

An industry issue resolution may be requested to provide generally applicable guidance on frequently disputed or burdensome business tax issues affecting a significant number of taxpayers. Pre-filing agreements may be requested by a taxpayer for a transaction already executed, prior to filing the applicable year's tax return. Advance pricing agreements may be available to address transfer pricing on future transactions between related parties. A taxpayer may also request a private letter ruling for guidance on specific issues as to that specific taxpayer.

Tax incentives

Tax incentives exist for specific activities and include R&D credits and deductions for certain US production activities. US corporate taxpayers earning foreign-derived intangible income (FDII) may qualify for a reduced effective tax rate on such income. Property acquired and placed in service may qualify for 100-percent bonus depreciation deduction in the year of acquisition.

CONSOLIDATION

Eligible corporations that are affiliated (generally based on at least 80-percent stock ownership) may elect to file corporate income tax returns on a consolidated basis.

PARTICIPATION EXEMPTION

Dividends received from foreign corporations may qualify for a 100-percent participation exemption, subject to ownership and holding period requirements. Dividends received from domestic corporations may qualify for a dividends received deduction, subject to ownership requirements.

CAPITAL GAIN

Long-term capital gain of non-corporate taxpayers may be eligible for reduced tax rates. Capital gain recognized by a corporation is taxed at the same rate as ordinary income. Capital loss may reduce capital gain, but not ordinary income.

DISTRIBUTIONS

Distributions paid by a corporation are treated as dividends to shareholders to the extent of the current and accumulated earnings and profits (E&P) of the payer corporation. A distribution in excess of current and accumulated E&P is treated as a return of capital to the extent of a shareholder's tax basis and thereafter is treated as capital gain.

LOSS UTILIZATION

Generally, net operating losses arising in tax years beginning before 2018 may offset 100 percent of taxable income and may be carried back 2 years or forward 20 years. Net operating losses arising in tax years beginning 2018 or later may offset up to 80 percent of taxable income in the year applied, with excess losses carried forward indefinitely. Special rules apply to certain net operating losses under the CARES Act.

TAX-FREE REORGANIZATIONS

Qualifying corporate formations, combinations and divisions may be tax-free to a participating corporation and its shareholders, except to the extent of any non-qualifying property received (ie, "boot"). Special rules apply to cross-border reorganizations.

ANTI-DEFERRAL RULES

CFC

Under the controlled foreign corporation (CFC) rules, a domestic corporation may be subject to tax on a current basis on Subpart F income of a foreign subsidiary. A domestic corporation may also be subject to tax on a current basis on the GILTI income of a foreign subsidiary.

PFIC

Under the passive foreign investment company (PFIC) rules, a foreign corporation may be treated as a PFIC if the percentage of its gross income or assets that are treated as passive exceeds certain thresholds. A shareholder of

a PFIC may be subject to current US tax and other unfavorable tax consequences on gain from the sale of PFIC stock and on certain distributions from a PFIC.

FOREIGN TAX CREDITS

Subject to limitations, foreign tax credits may be available for foreign taxes paid. An "indirect" foreign tax credit may be available to domestic corporations for taxes paid by on Subpart F income or GILTI income or distributions of previously taxed income.

SPECIAL RULES APPLICABLE TO REAL PROPERTY

Under the Foreign Investment in Real Property Act (FIRPTA), any gain recognized by a foreign person on a disposition of stock of a domestic corporation that is treated as a US Real Property Holding Corporation may be taxable as effectively connected income, taxable on a net income basis at regular US income tax rates.

TRANSFER PRICING

Arm's-length principles generally are applied under US law to transactions between related entities. The US rules are similar in many respects to the OECD guidelines, with certain material differences.

WITHHOLDING TAX

Dividends, roytalties, interest, rents, etc.

A 30-percent withholding tax applies to dividends, royalties, interest, rents and other FDAP income paid by a domestic corporation to a foreign person, subject to reduction or elimination by an applicable income tax treaty.

Service fees

Withholding tax may apply to service fees paid to a foreign person if the services are performed in the US.

CAPITAL DUTY, STAMP DUTY AND TRANSFER TAX

There is no capital duty. Stamp duties and transfer taxes may be imposed at the state or local level.

EMPLOYMENT TAXES

Employers must withhold federal income tax. Employers also must pay social security tax, unemployment tax and Medicare tax in respect of compensation paid to employees. These taxes are deductible by an employer for US income tax purposes. Other withholding obligations and taxes may apply at the state or local level.

OTHER TAX CONSIDERATIONS

Not applicable for this jurisdiction.

KEY CONTACTS

Anil Kalia
Partner
DLA Piper LLP (US)
anil.kalia@dlapiper.com
T: +1 650 833 2026
View bio

Sang Kim
Co-Chair, Global Tax Practice
DLA Piper LLP (US)
sang.kim@dlapiper.com
T: +1 650 833 2072
View bio