Aurimax TAX Seminar June 6, 21

- Biden Tax Proposal
- US China Tax Treaty
- Q&A

By David Qiu

Mr. Qiu is a tax manager at the Dyke Yaxley, an international tax firm. The combination of engineering and accounting backgrounds gives Xiping (David) a multi-faceted analytical approach to his practice, which focuses on high-net-worth individuals and small to medium-sized businesses. He specializes in tax planning and preparation, business consultation and financial reporting. Prior to joining Dyke Yaxley, David worked as a senior tax accountant since 2010, focusing on individuals and pass-through entities, especially in the fields of tax audit, loss deduction and multi-state income.

Areas of Expertise

- Individual tax compliance
- Individual tax planning
- Corporate tax compliance
- Corporate tax planning

Biden Tax Proposal

- Corporate and international tax proposals
- Individual and investment-related tax proposals
- Tax credit-related proposals

Background

- Tax Shift
  1. Tax Type
  2. Tax Authorities by Locations
- Tax Defer
  1. Tax Type
  2. Tax Authorities by Locations

Corporate tax proposals

- Increasing the statutory corporate rate to 28%
- Why?
- What affect?

International tax proposals-1

- Reducing to 25% the deduction for “global intangible low-taxed income” (GILTI), eliminating the “qualified business asset investment” (QBAI) exemption, and imposing a jurisdiction-by-jurisdiction calculation
- Imposing a 15% minimum tax on global book income of certain large corporations
- Repealing the deduction for “foreign-derived intangible income” (FDII)

International tax proposals-2

- GILTI
  - CFC (Controlled Foreign Corporation)
  - Currently 50% tax defer under GILTI
  - Proposal to 75% tax defer

International tax proposals-3

- FDII
  - Foreign Income for additional deduction
  - Related Parties

Individual tax proposals

- Increasing the top individual income tax rate to 39.6%
- 2.6% increase from current 37%

Investment-related tax proposals

- Taxing long-term capital gains and qualified dividends at ordinary rates for taxpayers with adjusted gross income exceeding $1 million (applicable to gains required to be recognized after the date of announcement)
- Treating transfers of appreciated property upon death or by gift with unrealized capital gains appreciation in excess of $1 million as realization events, with exclusions for donations and certain tangible personal property and deferral of gain for family-owned and operated businesses—special rules providing for spousal portability and treatment of capital gains attributable to a primary residence also to apply
- Repealing deferral of gain from like-kind exchanges completed in tax years beginning after December 31, 2021, when greater than $500,000

Tax credit-related proposals

- Extending the expansion of the Child Tax Credit to certain children through 2025 and making the credit fully refundable
- Making permanent the expansions to the Child and Dependent Care Tax Credit
- Making permanent the expansions to the Earned Income Tax Credit for childless workers
- Extending the expanded Affordable Care Act (ACA) premium tax credits

Conclusions

- Long Faraway as a new Law
- Exchange between Parties
- Flip sides for Revenue/Deductions and Economic

US China Tax Treaty

- Background
    - Avoid double taxes
    - Who taxed at first
        - 1. taxation at first
        - 2. tax withholding at first
    - Information Reporting
    - Limitation for use of tax treaty

Tax Residence under IRS Law-Individuals

- Citizen
- Tax Resident for a foreign person
  - Green Card
  - Substantial Residence Rule (183 days rule)
  - Exempt foreign persons
- Non Resident for a foreign person

Tax Residence under Tax Treaty-Individuals

- Permanent home
- Center of vital interests (Closer personal and economic ties)
- Place of habitual abode
- Nationality

- “Saving clause" which preserves the right of the United States to tax its citizens and residents under its domestic law.

Business Income under IRS Law-Businesses

- Legal Purpose

Business Income under Tax Treaty-Businesses

- PE (Permanent Establishment)
  - (a) a place of management; (b) a branch; (c) an office; (d) a factory; (e) a workshop; and (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources

Source Rules for Income of Nonresident Aliens under IRS Law

Item of income	Factor determining source
Salaries, wages, other compensation	Where services performed
Business income:	
Personal services	Where services performed
Sale of inventory—purchased	Where sold
Sale of inventory—produced	Where produced
Interest	Residence of payer
Dividends	Whether a U.S. or foreign corporation*
Rents	Location of property
Royalties:	
Natural resources	Location of property
Patents, copyrights, etc.	Where property is used
Sale of real property	Location of property
Sale of personal property	Seller's tax home (but see *Personal Property* , later, for exceptions)
Pension distributions attributable to contributions	Where services were performed that earned the pension
Investment earnings on pension contributions	Location of pension trust
Sale of natural resources	Allocation based on fair market value of product at export terminal. For more information, see section 1.863-1(b) of the regulations.

*Exceptions include: Part of a dividend paid by a foreign corporation is U.S. source if at least 25% of the corporation's gross income is effectively connected with a U.S. trade or business for the 3 tax years before the year in which the dividends are declared. Special rules apply for dividend equivalent payments.

Source Rules for Income of Nonresident Aliens under US China Tax Treaty-1

- Interest- 10%
- Dividend- 10%
- Pensions and Annuities – 0%
- Social Security – 30%
- Royalties – 10%
- Personal Services – 183 Days Rule
- Business Profits – PE Rule

Source Rules for Income of Nonresident Aliens under US China Tax Treaty-2

- Gain
  - 1. Income from real Property
  - 2. Income from business assets- PE rule
  - 3. Income from shares of business
    - ❑ Business principally from real property
    - ❑ Business with more than 25% shares in the other country
    - ❑ All others, where Gian arise

References

- Pub 519
- Pub 515
- https://www.irs.gov/businesses/international-businesses/china-tax-treaty-documents
- https://www.irs.gov/individuals/international-taxpayers/tax-treaty-tables

Other Issues

- Withholding
- Information reporting
- State and Local
- Other Taxes

Conclusions-1

- Step 1- Residence for tax purpose
- Step 2- if US tax resident:
  - no tax treaty
  - Global Income tax by US
  - Source under IRS law
  - Withholding by Source
  - Foreign tax credits
  - Information reporting, if any
  - State and Local Taxes under US tax law

Conclusions-2

- Step 1- Residence for tax purpose
- Step 2- if US non tax resident:
  - Tax treaty
  - US Income tax by US
  - Source under tax treaty
  - Withholding by US, if any
  - Claim tax refund
  - Information reporting – treaty disclosure
  - State and Local Taxes under US tax Law

Q&A? Thanks

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