LATHAM & WATKINS LLP

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Navigating Tax Reform: A Plain English Discussion of Financing, M&A Transaction, and Disclosure Issues

Agenda

- Welcome and Introduction
- Logistics and Today's Panel
- Topics
  - Relevant provisions in the Act, including corporate, international, and pass through changes
  - Opportunities and challenges presented for onshore and offshore equity and debt financings
  - Comparative advantages and disadvantages for US and non-US acquirers in M&A and related planning opportunities
  - Managing forward-looking disclosure in light of the tax and financial reporting implications of the Act
- Questions

Highlights of Tax Cuts and Jobs Act (TCJA)

- Reduced Tax Rate – Corporations and Pass-Through Entities
- Interest Deductibility Limitation
- Full Expensing of Costs for Certain Capital Investments
- Changes Relating to Corporate Net Operating Losses
- Sweeping International Tax Reform affecting decisions on US and Non-US Headquartered Businesses, International Finance and Cross-Border M&A, including some new acronyms in the tax world

Reduced Corporate Tax Rate

Permanently reduces top corporate income tax rate from 35% to 21%

- Effective January 1, 2018 (non-calendar year corporations have blended rate for the taxable year that includes January 1, 2018)
- Eliminates corporate alternative minimum tax
- Combined federal rate is now 36.8%, as compared to 48% under prior law
  - Results from 21% corporate rate combined with 20% rate on dividends received by non-corporate shareholders
  - Note that this ignores the 3.8% Medicare surtax rate – 39.8% combined rate if it is included

Reduced Corporate Tax Rate *(cont'd)*

Observations

- Increases valuation of most companies with material US operations
- Potentially alters structure of M&A transactions
  - Lower corporate tax rate (together with other incentives discussed below on purchaser side) may make corporate sellers more willing to sell assets
- May impact choice-of-entity decisions (*e.g.*, reduced tax leakage of blocker corporations in PE structures)
- Puts US on a more competitive footing in its corporate tax rate as compared to tax rates imposed by other OECD countries
- Diminishes value of previously incurred NOLs and other deferred tax assets

Reduced Rate for Pass-Through Entities

Entirely New Concept

- These entities (partnerships and S corporations) and sole proprietorships are not separately taxable => historically income earned simply taxed at the rate applicable to their owners (and hence non-corporate owners would otherwise be unaffected by reduction in corporate tax rate)
- Key premise of TCJA is that corporate and non-corporate business income should be treated more similarly
- Foregoing premise effectuated by providing for a special 20% deduction for certain types of pass-through income earned by noncorporate taxpayers => reduces new top marginal rate of 37% to 29.6% as compared to 39.6% under prior law (ignoring potential applicability of 3.8% Medicare surtax)

Reduced Rate for Pass-Through Entities *(cont'd)*

Applicability of 20% Pass-Through Deduction

- Applies to “qualified business income” (QBI) from with respect to “qualified trade or business” (QTB) of a non-corporate taxpayer
  - QBI generally includes income wrt conduct of a US trade or business but excludes investment and compensation-type income
  - Provision is generally applied at partner/shareholder level for partnerships/S corps
- Additional limitations apply above certain income thresholds
  - QTB excludes certain “specified service” businesses as well as the business of performing services as an employee
    - Various service professions (law, accounting, consulting, etc.)
    - Business where principal asset is the reputation/skill of one or more of its employees
  - Deduction limited to the greater of:
    - 50% of QTB’s W-2 wages or
    - 25% of QTB’s W-2 wages plus 2.5% of QTB’s basis of certain tangible depreciable property

Reduced Rate for Pass-Through Entities *(cont'd)*

- Additional Limitations
  - Where taxpayer has multiple QTB's, losses from one QTB apparently can reduce availability of deduction from other QTB's
  - Net loss from all QTB's for a given year is carried forward and treated as a loss (and therefore may reduce the pass-through deduction) in the succeeding year
  - Pass-through deduction in a given taxable year is limited to 20% of the excess of a taxpayer's taxable income over any net capital gain
- Separate "off ramp" for qualified REIT dividends and qualified publicly traded partnership income
  - Not subject to limitations based on W-2 wages paid or invested capital
- Sunsets on December 31, 2025

Reduced Rate for Pass-Through Entities *(cont'd)*

Observations

- Complexity
- Impacts choice-of-entity decisions
- Potential availability of 20% deduction for some partners, together with lowered corporate rate and limitations on SALT deductions, further complicates tax distribution provisions for partnerships (especially for credit agreements)
  - Previously, top individual rate was 39.6%, top corporate rate was 35%, and SALT deductions were generally allowed.
  - Now, top individual tax rate is 37% (or possibly 29.6%), top corporate rate is 21%, and SALT deductions are severely limited for individuals

Interest Deductibility Limitation

Imposes 30% Cap on Net Business Interest

- Applies to corporations and pass-through entities for tax years beginning after December 31, 2017 (no grandfathering for existing debt)
- Cap replaces the "earnings stripping" limitations, but other interest expense limitations remain
- Cap = 30% of "adjusted taxable income" (ATI)

Computation of ATI

- ATI includes earnings regardless of where earned so long as included in borrower's taxable income => Subpart F income and GILTI are both included in ATI
- Consolidated group treated as single taxpayer for purposes of computing the cap

Interest Deductibility Limitation *(cont'd)*

- ATI excludes nonbusiness income items, business interest expense, NOLs, 20% pass-through deduction and (solely before 2022) depreciation and amortization
  - Pre-2022, ATI approximates EBITDA
  - 2022 and thereafter, ATI approximates EBIT
- Disallowed expense can be carried forward indefinitely
- Application to Partnerships (Complex)
  - Cap applied at partnership level
  - Net business interest above cap may be carried forward and deducted by partner in later year, to the extent partner allocated "excess taxable income" above cap (ETI) from same partnership
  - Allocated ETI increases partner's ATI available to offset interest unrelated to partnership
  - Partner may increase basis in partnership upon disposition for previously incurred excess business interest that has not been utilized

Interest Deductibility Limitation *(cont'd)*

Observations

- Lack of grandfathering => borrowers need to reevaluate their existing capital structure immediately
- Note that limitation is on net business interest expense => less impact for banks (or other financing vehicles) that borrow to earn business interest income
- Does not apply to non-interest expenses even if such expenses are akin to interest (*e.g.*, leasing or rental expense) => may be worth considering alternative financing structures
- 30% cap plus lowered corporate tax rate may incentivize multinational groups to move debt to foreign affiliates
- More to come from our corporate finance colleagues

Full Expensing for Certain Capital Investments

Full expensing for "qualified property" acquired and placed in service after September 27, 2017 and before January 1, 2023

- "Qualified property" generally includes tangible property with recovery period of 20 years or less and certain computer software
- Significantly, applies to used property acquired from an unrelated party

Observations

- Cost of capital investments will generally be significantly reduced
- By applying to used property, may make asset acquisitions more desirable as it now allows purchaser to immediately deduct portion of purchase price allocable to qualified property
  - The above incentive for purchasers is in addition to corporate sellers being more willing to sell assets in light of the significantly reduced corporate tax rate.
  - If corporate consolidated tax group is selling a subsidiary, consider deemed asset sale

Changes to Corporate Net Operating Losses

NOL Carrybacks

- Generally repeals the two-year carryback period for NOLs arising in taxable years ending after December 31, 2017

NOL Carryforwards

- May now be carried forward for an unlimited period as opposed to 20 years (same effective date as above)
- For NOLs arising in taxable years beginning after December 31, 2017, imposes an annual limit of 80% on the amount of taxable income that such NOLs can offset (No such limitation on use of NOLs that arose in earlier taxable years)

Changes to Corporate Net Operating Losses *(cont'd)*

Observations

- Generally need to consider carefully the timing of income and deductions given new limitations. Particularly significant adverse effect on highly cyclical companies (with periods of both large income and loss generation) given new limitations.
- Potential financial accounting implications as deferred tax assets associated with NOLs get recomputed due to the foregoing changes combined with the new corporate rate
- Transaction Tax Benefits
  - Often heavily negotiated on sales of companies (especially if owner is PE firm)
  - Value is now reduced given elimination of carrybacks

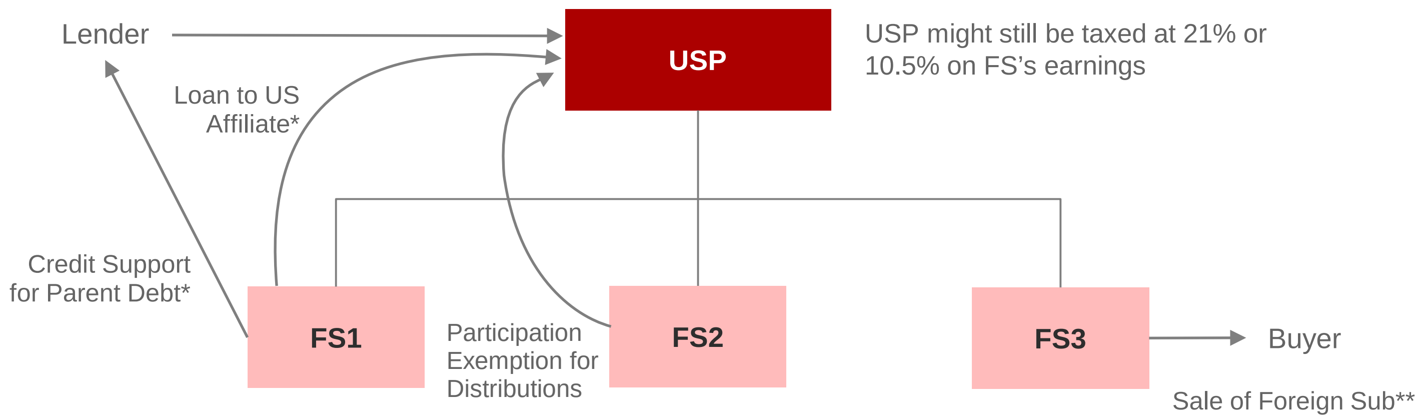
Sweeping International Tax Changes

- ***Partial* Participation Exemption System for Post-2017 Earnings** – Applies to overseas profits of US-based multinationals. No further friction of a US tax upon repatriation (but caveats remain)
- **Global Minimum Tax (GILTI)** – 10.5% tax on foreign earnings of US-based multinationals
- **Base Erosion and Anti-Abuse Tax (BEAT)** – Essentially limits tax deductions on transactions between US and non-US affiliated corporations, for both US and non-US headquartered groups
- **One-Time Transition Tax on Historic Accumulated Earnings** – Generally imposed in 2017 on estimated US$2-3 trillion of overseas historic earnings of US-based multinationals, payable over eight years, thus allowing repatriation without further US tax (but, again, caveats)
- **Several Other Changes**

Partial Participation System for Overseas Profits of US Multinationals

Beginning in 2018, a friendlier US regime for taxing offshore profits: Profits can be distributed without US tax. But three important limitations:

1) Continued application of Controlled Foreign Corporation (CFC) rules on certain “Foreign Base Company Income” (taxed at full Corporate Rate of 21%),
2) Minimum Tax of 10.5% on Global Intangible Low-Taxed Income (GILTI), and
3) Continued application of Code Section 956 providing that untaxed overseas earnings are taxed at full 21% Corporate Rate if loaned to US or used in Credit Support



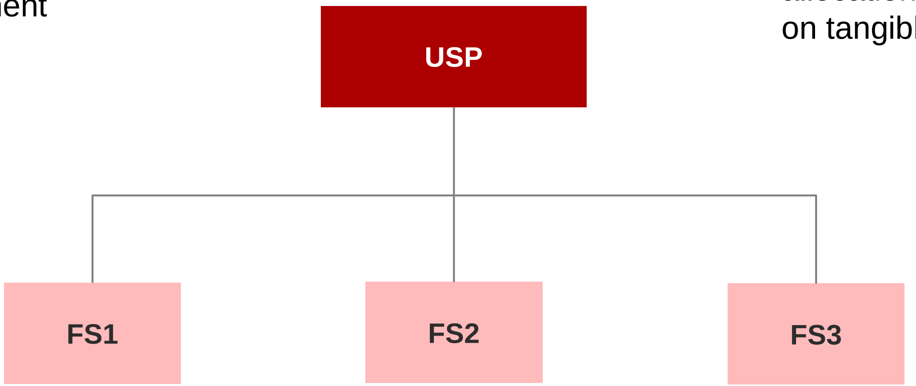
* Foreign subsidiary credit support for US Parent debt, or loans to US Affiliates, potentially taxed at 21%

** Participation Exemption to extent of Section 1248 (dividend) characterization

10.5% Minimum Tax – On Global Intangible Low-Taxed Income of US Parented Groups

- USP taxed currently on foreign subsidiaries' worldwide income consisting of GILTI
- 10.5% tax rate
- Global measurement

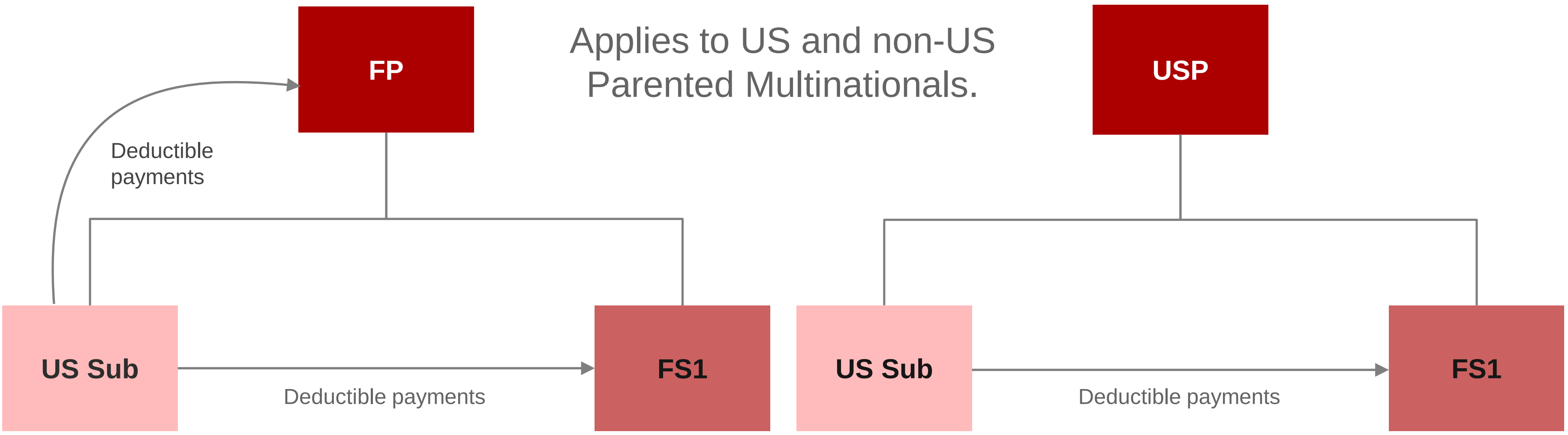
- Foreign Tax Credit for 80% of foreign taxes on GILTI
- Complex rules/calculations take into account interest expense allocations and "deemed" return on tangible property



GILTI is generally determined on a global basis (and allocated to each CFC), rather than on a per jurisdiction or per entity basis.

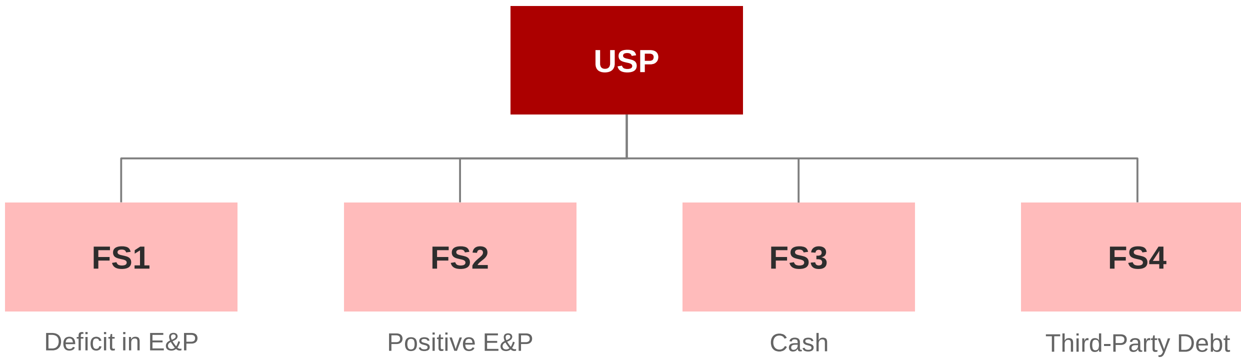
Base Erosion and Anti-Abuse Tax

Essentially a parallel regime for US taxpayers making deductible payments to foreign related parties. If the deductible payments exceed a threshold of overall deductions, such payments are added back and tax base is recomputed. [BEAT tax on modified taxable income] – [Regular tax]. BEAT tax rates are 5% in 2018, 10% post-2018, 12.5% post-2025.



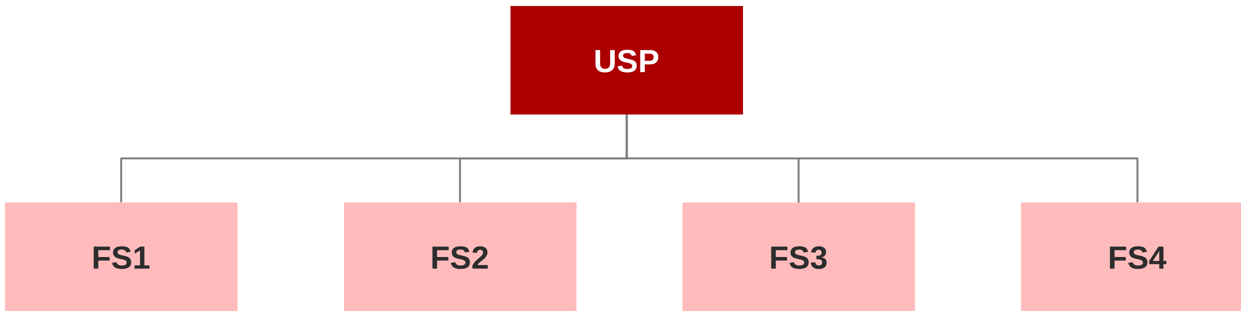
Note: Deductible payments *generally* do not include Cost of Goods Sold.

One Time Transition Tax on Overseas Earnings



- 15.5% on E&P to the extent of foreign cash or cash equivalents, and 8% on all residual E&P. Foreign Tax Credits partially available.
- FS1 deficit in E&P offsets FS2 positive E&P in calculating tax base
- Neither related nor third-party debt decreases the cash E&P subject to 15.5% cash tax rate
- Payable over eight years, without interest charge
- Accelerated in certain events
- Diligence item for years to come if USP or US affiliate of USP is acquired

Step Back and Look at a US Multinational's Foreign Earnings Post-2017



- Historic Pre-2018 earnings have essentially already been taxed under one time transition tax imposed in 2017
- Generally, Post-2017 earnings might be:
  - Subpart F Foreign Base Co. Income – taxed at 21%
  - GILTI – taxed at 10.5%
  - Neither, thus not taxed currently or upon repatriation *unless* loaned or used for credit support
- The interaction of these rules will need to be sorted out in the months to come

Other International Changes

- Harsher consequences for companies that undertake certain inversions, as result could be denial of lower dividend tax rate for shareholders, increased BEAT, Transition Tax increased to 35% (not 15.5%)
- US exporters can achieve an approximate 13% tax rate on the sale of property or provision of services to foreign persons
- IRS given more weaponry to challenge value asserted by taxpayer in IP migrations from US to foreign affiliates, thus increasing US tax
- Anti-Hybrid rules limit deductibility of payments to certain related foreign persons
- Expanded application of stock ownership attribution rules cause many more foreign companies in international groups to be considered CFCs (consequences for US shareholders)
- Other changes impacting source of income, foreign tax credits

M&A Issues – Revisiting some Fundamental Questions

- US or Foreign Topco? – Competitive Advantage of Foreign Topco over US Topco has been narrowed compared to a few years ago. This is due to enactment of (1) 21% Rate, (2) Partial Territorial Regime for US Topco, and (3) BEAT for payments by US affiliates to non-US affiliates. Congress sought (see 2016 House Blueprint) to "Level the Playing Field"
- Both US Topco and Foreign Topco have 21% Corporate rate on US income. Both must factor in a cap on US leverage of 30% of adjusted taxable income.
- But, a US Topco *remains subject to certain structural issues which a Foreign Topco might possibly avoid*. These include (1) application of CFC rules as a general matter to foreign subs of US Topco , (2) worldwide minimum tax on GILTI, (3) some level of taxable gain on sale of foreign subsidiaries. Couple these factors with the fact that there remains some ability (subject to BEAT) for US base erosion.
- And – there is the continued application of **US Anti-Inversion Rules**…

Once in the US, the US Anti-Inversion Rules Remain an Impediment to Exiting

- A US Company can be restructured into a Foreign Topco generally only in cases where a cross-border deal combines the US Company with a Foreign Company and the Shareholders of the US Company are sufficiently diluted.
- It is important to remember that the detailed and generally restrictive rules regarding the application of the anti-inversion ownership tests under Section 7874, including the Obama Administration regulatory framework, **remain fully in place** at this time.
- Post-TCJA, it is just as difficult for a US Company to combine with a Foreign Company and seek a new parent corporation to qualify as a foreign resident under Section 7874 as it was pre-TCJA. In other words, prohibitions against “exiting” the United States remain as restrictive as ever.
- Executives, dealmakers, and venture capitalists should keep the point in mind as they look to structure deals and new ventures. What will the future bring? Sustainability of 2017 Congress policy decisions?

M&A Issues – Bidders in Cash Deals

- US vs. Foreign Bidder for a US Target – Competitive Advantage of Foreign Bidder over US Bidder has been significantly narrowed compared to a few years ago. But see same points as page 22 above.
- Both US Bidder and Foreign Bidder have 21% Corporate rate on US income. Both must deal with a cap on US leverage of 30% of adjusted taxable income.
- Limits continue to apply on use of CFCs to provide credit support for US leverage. See page 16 above.

Other Deal Issues

- US Seller of Foreign Target – US Seller benefits from asset sale or asset sale election under Section 338. Reduces 21% tax rate to 10.5% on some income and may exempt the remainder under new partial participation system.
- US Buyer of Foreign Target will seek to step up asset basis for US tax purposes. This will help reduce GILTI.
- One Time Transition Tax – Payable over 8 years – will be a new diligence item in the datarooms. What tax did target calculate in 2017? Has target complied annually with payments? In certain cases, is there a potential inversion issue (raising tax to 35%)?

Financing

Key questions for Issuers and Creditors:

- What's the impact of the 30% cap on net business interest expense?
- How do the changes impact financial modeling?
- How are the changes treated under existing and new debt documentation?
- How do the changes impact the ability to obtain credit support from non-US entities?

30% Cap on Deductible Interest Expense

Calculating the 30% cap:

- "Adjusted Taxable Income" – *approximates* EBITDA prior to 2022 and EBIT thereafter
  - Not "adjusted" EBITDA – one time charges and other customary addbacks and exclusions are not accommodated
  - Non-US earnings only included to the extent included in US taxable income (for example, GILTI)
  - Starting in 2022, particularly given immediate expensing provisions, absence of depreciation addback may be a meaningful limitation
    - Note immediate expensing will gradually phase out after 2022
  - Applies to all net business interest, whether cash or PIK
- Cap applied at partnership issuer/borrower (includes LLCs treated as partnerships for tax purposes)

Simplified Example: Impact of 30% Cap & Rate Changes

Current highly-leveraged company:

- $1b EBITDA, $300m Interest Expense, $200m taxable D&A = $500m net income
  - Old law: $175m federal tax, $525m EBDA
  - New law: $500m net taxable income at 21%, so = $105m federal tax, $595m EBDA *($70m improvement)*
- Increase interest expense by $50m, reducing net income to $450m
  - Old law: $140m federal tax, $510m EBDA
  - New law: still $500m net taxable income (due to 30% cap) and $105m federal tax, $545m EBDA *(only a $35m improvement)*
- $500m business downturn: $500m EBITDA, $200m taxable D&A and $300m interest expense = $0 net income
  - Old law: $0 net taxable income (and $0 federal tax), $200m EBDA
  - New law: $150m net taxable income (due to 30% cap) taxed at 21%, so = $31.5m federal tax, $168.5m EBDA *($31.5m decrease)*

Need to test impact of the 30% cap in a downside model

Simplified example set forth above is a vast over-simplification, and does not reflect state tax implications.

What if you are close to the 30% cap?

What other financing options may become (more) attractive?

- Debt incurred at non-US subsidiaries
- Sale and leasebacks (combined with immediate expensing)
- Preferred not as relatively unattractive as it once was
- Lower coupon debt more important for highly leveraged companies (encouraging debt that is more senior, shorter maturity, floating rate, or convertible)
- Hedging strategies to lower interest rate

Debt Prepayment Requirements and Repatriation

Debt often requires prepayment with asset sale proceeds or excess cash flow

- BUT: covenants commonly have exceptions if repatriation of those proceeds / cash would have adverse tax consequences
- Tax reform eliminated those adverse U.S. tax consequences
  - Note: local tax and corporate law limitations still apply

Calculation of “Consolidated Net Income”

Important to understand the specific capital structure

- Where non-US entities are involved, this may be a fairly granular exercise

Corporate rates vary

- US corporate borrowers pay 21% directly, state taxes remain deductible
- “GILTI” (blended rate of 10.5%)
- Subpart F is taxable at 21% but non Subpart F and non GILTI is US tax free

Don’t forget the Transitional Tax – assessed now, may be paid over 8 years: 15.5% on cash, and 8% on non-cash assets

“Consolidated Net Income” *(cont.)*

Deduction to “CNI” must be specified (on GAAP basis tax is paid at investor level)

- Federal, plus state, plus local (additive)
- Actual tax rates for investors will vary (some tax exempt, some income taxed at beneficial pass-through tax rates)

Covenants: Permitted Tax Distributions

Debt commonly allows pass-through entities to dividend amounts to allow investors to pay at the maximum personal interest rate (Federal + State)

- With tax pass-though entities having a significantly higher maximum total effective tax rate, will lenders and bond purchasers prefer corporate borrowers?
- Will the market limit the amount of such distributions to the corporate rate?
- Fund investors may still have a preference for tax pass-though structures
- Important to understand difference between rate used in calculating “Consolidated Net Income” in debt covenants / projections / financial models

Credit Support From non-US Entities

- Credit Support from non-US entities: Section 956 remains = deemed dividends still taxable (at 21%)
- Where non-US credit support would be credit enhancing (for example, credits with a low percentage of US earnings), there are more options to minimize the amount of such “deemed dividends”
  - No longer creates tax on retained earnings (due to one-time transition tax on accumulated offshore earnings)
  - For corporate SH owning at least 10%: 21% tax on current earnings will be reduced by foreign taxes paid
  - Other potential strategies include effectively sweeping (for tax purpose) income on a current basis

Overview of Tax Reform Impact on M&A

- Reform not focused on M&A, and there are limited intentional changes to M&A taxation
- Indirect consequences for M&A are significant, affecting due diligence, valuation and financing
- Historic drivers of M&A activity—business confidence, equity valuations, availability and pricing of debt and activist agendas—are also meaningfully affected by tax reform

Transaction Structuring

- What hasn't materially changed
  - Tax-free reorganizations
    - Corporate level
    - Shareholder desirability
  - Overall efficiency of foreign Topco structures
  - Limitations on inverting through cross-border combinations
  - Benefits of leverage in enhancing returns, accretion
- Structuring of the purchases and sales of "divisions"
  - Advantaging actual and deemed asset purchases
    - Full expensing of "qualified property"
    - Sellers should be more receptive at lower corporate rate
    - Better path to utilization of NOLs
    - Will it lead to bifurcated deal structures?

Transaction Structuring *(cont'd)*

- Purchases and sales of foreign subsidiaries
  - For sale of foreign division, particularly important to have asset sale or election in order to gain benefit of participation exemption under new territorial tax regime for US seller
- Transaction finance
  - Limitations on deduction
  - Domicile of borrower(s)
  - Sale-leasebacks
  - Other considerations
- Implications of repeal of NOL carrybacks for transaction expense related tax refunds

Transaction Structuring *(cont'd)*

- Other implications of post-closing ownership structures
  - Notional rates
  - Foreign vs. US parent implications for ability to pay
    - Base erosion limitations
    - GILTI tax cost
    - After-tax cost of debt
  - Planning for dispositions
- Factors remaining unchanged
  - Tax treaties
  - Territorial advantages, particularly EU
  - Social considerations

M&A as a Vehicle for Exiting US Tax Regime

- Anti-inversion rules remain unchanged and restrictive
- Opportunities similarly remain the same, if appropriate shareholder profiles post-merger are feasible
- Benefits may be reduced due to reduction in nominal US rate
  - BEAT and GILTI taxes may still drive inversions
- Only clearing the 60% shareholder ownership hurdle now more punitive
- Other considerations remain unchanged

Due Diligence – New Areas of Focus

- Not as simple as reducing notional to 21%
- Tax attributes – net operating losses, repatriation expense
- Implications of international tax reform
  - GILTI, BEAT
- Limitations of deductibility of interest expense
- Executive compensation – 162(m)
  - Elimination of exception and expansion of covered persons and entities
  - Impact of material changes to grandfathered agreements

Due Diligence *(cont'd)*

- Financial Modeling
  - Historic versus forecasted financials
  - Establishing and sharing tax assumptions
  - Financial advisor analyses and opinions

Other Considerations

- Clarity afforded by completion of tax reform
- De-levering driven transactions
  - Sales
  - Spinoffs
- Corporates, financial sponsors and effective tax rates
- Activist agendas
  - Use of repatriated cash
  - Dispositions and other separations
  - Leverage

Public Company Disclosure Issues

Disclosure backdrop and challenges

- Significant and ongoing impact
  - Major effects on tax accounting
  - Similarly significant impact on financial statements
- Business and disclosure implications
  - Information gathering
  - Ongoing analysis of company-specific effects

Overview of disclosure and compliance topics

- Immediate disclosure issues
- SEC guidance for assessment of accounting implications
- Non-GAAP financial measures
- General disclosure issues and checklist

Immediate Disclosure Issues

Form 8-K disclosure items

- 2.06 Material Impairments
  - Tax law changes do not trigger 8-K for material impairment charges, which companies can instead disclose in their next periodic report, based on new SEC guidance (C&DI 110.02)
- 2.02 Results of Operations and Financial Condition
  - Still applies for release of material information regarding completed fiscal period
- 7.01 Reg FD Compliance
  - Broad dissemination of any material information to be communicated to shareholders or investment professionals
- 8.01 Other Events
  - Update to disclosure for ongoing offerings

SEC Accounting Guidance

Accounting requirement

- Companies must recognize taxes payable or refundable for current year as well as deferred tax assets and liabilities for future tax consequences of events recognized in financial statements (ASC 740)

Additional time based on SEC relief

- Gives companies reasonable time to assess, measure and record accounting effects of new tax law changes (SAB 118)
- Reporting relief for income tax effects disclosable in annual report on Form 10-K of calendar-year companies
- Must estimate in good faith
- Maximum estimation period is one year (ending 22 Dec 2018)

SEC Accounting Guidance *(cont'd)*

Assessment categories

- Completed assessment – requires effects to be recorded and disclosed in financial statements
- Reasonable estimate – provisional amount may be recorded by companies that can reasonably estimate the effects but have not yet completed the assessment
- Unable to estimate – no provisional amount would be recorded by a company unable to obtain, prepare and analyze the necessary information to complete the assessment

Significance of completed vs. estimated amounts

- Change in estimate
- Correction of error (restatement)

SEC Accounting Guidance *(cont'd)*

Financial statement footnote disclosures

- Qualitative disclosures of income tax effects
- Disclosures of items reported as provisional amounts
- Current or deferred tax amounts under assessment
- Why the initial accounting remains incomplete
- What additional information must be obtained, prepared or analyzed to complete the accounting assessment
- Nature and amount of measurement period adjustments
- Effect of adjustments on the effective tax rate
- Ultimate completion of accounting assessment

Non-GAAP Financial Measures

Changes to non-GAAP metrics

- Tax law changes may cause companies to change how they report non-GAAP metrics
- Add-backs for tax-related changes reflected in financial statements will require compliance with non-GAAP rules

Practice points

- Changes should be transparent and clearly explained
- Explain rationale and how any changes facilitate comparison
- Follow 2016 SEC Staff guidance regarding non-GAAP
- Non-GAAP cash tax rate generally viewed as liquidity measure rather than performance measure
- Other specific guidance for tax-related adjustments

General Disclosure Issues and Checklist

Risk factors

- Disclose any material risks relating to tax changes
- Avoid disclosure generally applicable to all companies

Forward-looking statements

- Safe harbor statement should highlight risks and uncertainties relating to tax law changes and accounting effects

Form 8-K disclosure

- Items 2.02, 7.01 and 8.01 remain relevant
- SEC relief for Item 2.06

MD&A narrative

- Known trends and uncertainties reasonably likely to be material
- Consider internal analysis and board-level discussions

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Questions?

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