

WHAT DO YOU THINK ABOUT...DEEMED REPATRIATION?

Date: 20 February 2018

U.S. Public Policy and Law/Tax Alert

By: Mary Burke Baker, Charles H. Purcell, Adam J. Tejada, Elizabeth C. Crouse, Eli M. Schooley

The tax reform bill signed into law by President Trump on December 22, 2017, taxes U.S. shareholders on their share of the previously untaxed deferred income of foreign corporations. Known as "deemed repatriation," this tax serves as a transition rule to a significantly revised system of international taxation where certain income of U.S. corporations derived through foreign subsidiaries may be exempted permanently from U.S. taxation. The tax on the deemed repatriation—15.5 percent for cash and cash equivalent assets and 8 percent for other assets—is imposed regardless of whether offshore earnings are actually repatriated or how the remaining assets are ultimately used.

Several of the most impactful changes brought about by the legislation known as the Tax Cuts and Jobs Act (TCJA) are found within its international provisions. The TCJA shifts the United States from its former worldwide system of international taxation, with deferral for certain offshore earnings, to a new system that includes aspects of "territorial" taxation, under which the income of U.S. corporations earned abroad is generally not subject to U.S. tax or may be subject to a lower rate of tax on an imputation basis. In order to bring about that change, however, the new law enacts a one-time deemed repatriation tax, requiring that U.S. shareholders include as income the previously untaxed, post-1986 earnings of any deferred foreign income corporation (DFIC). A DFIC is any controlled foreign corporation and any foreign corporation in which a U.S. corporation is a shareholder with post-1986 accumulated deferred foreign income greater than zero. The tax applies to tax years of DFICs beginning prior to December 31, 2017, generally the 2017 tax year for calendar year corporations. The new law also contemplates an election that allows taxpayers to pay the tax without interest over an 8-year period.

Given the immediate effect of the deemed repatriation tax and the number of stakeholder questions about how to calculate the tax, the Department of Treasury (Treasury) and the Internal Revenue Service (IRS) have prioritized guidance on the issue, issuing Notice 2018-7 on December 29, 2017, and Notice 2018-13 on January 19, 2018. The notices address several items already identified by taxpayers but acknowledge many details that remain to be identified and resolved. They request comments to identify questions and concerns and to provide input and suggestions on how to implement the new law. The Treasury and the IRS intend to issue regulations on the subject and may issue additional notices in the interim that will take this stakeholder input into account. In addition to interpreting the legislation, forms and instructions will be promulgated.

If you have questions or suggestions about the deemed repatriation provision or the taxation of foreign earnings going forward, this is the time to provide input to the Treasury and the IRS to maximize the chances that your concerns and comments will be addressed in a timely manner. Whether you have one question or many, the tax and tax policy teams at K&L Gates stand ready to discuss how the rules might apply and to assist in developing comments and suggestions to inform the regulatory and guidance process.

KEY CONTACTS



MARY BURKE BAKER
GOVERNMENT AFFAIRS COUNSELOR

WASHINGTON DC
+1.202.778.9223
MARY.BAKER@KLGATES.COM



CHARLES H. PURCELL
PARTNER

SEATTLE
+1.206.370.8369
CHARLES.PURCELL@KLGATES.COM



ADAM J. TEJEDA
PARTNER

NEW YORK
+1.212.536.4888
ADAM.TEJEDA@KLGATES.COM



ELIZABETH C. CROUSE
PARTNER

SEATTLE
+1.206.370.6793
ELIZABETH.CROUSE@KLGATES.COM

This publication/newsletter is for informational purposes and does not contain or convey legal advice. The information herein should not be used or relied upon in regard to any particular facts or circumstances without first consulting a lawyer. Any views expressed herein are those of the author(s) and not necessarily those of the law firm's clients.