2022 KAPAL Webinar

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The following information is not intended to be “written advice concerning one or more Federal tax matters” subject to the requirements of section 10.37(a)(2) of Treasury Department Circular 230.

The information contained herein is of a general nature and based on authorities that are subject to change. Applicability of the information to specific situations should be determined through consultation with your tax adviser.

U.S. Taxation on Domestic Corporation

Characteristics of U.S. Income taxation

- Worldwide income taxation
- Multiple taxation – Federal, State and Local level taxation on the same income
- Voluntary tax compliance
- Various business forms
  - ➢ C Corporation
  - ➢ S Corporation
  - ➢ Partnership
  - ➢ LLC
  - ➢ Trust and estate

Corporate Tax

Federal tax

- Corporate Income Tax (21%)
- Employment Taxes/Social Insurance Taxes
  - FICA (Federal Insurance Contributions Act) – OASDI (Old Age, Survivors, and Disability Insurance) Tax (6.2%), HI (Medicare Hospital Insurance) Tax (1.45%) and Additional HI Tax (0.9%, over certain threshold) for employers and employees
  - FUTA (Federal Unemployment Tax Act) – 6% on the first $7,000 wage for employers

State & local tax

- State & Local Income Taxes
  - State Corporate Income Tax (0% – 12%)
  - Local Corporate Income Tax (0% – 8.85%)
- Other State & Local Taxes
  - Franchise tax (privilege tax)
  - Sales & Use tax
  - Property tax (real property, tangible personal property)

Tax issues for foreign owned U.S. Corporation

- Transfer Pricing – IRC 482
- Withholding Tax – IRC 1442
- Thin Capitalization Rule – IRC 385
- Earning stripping rule – IRC 163(j)

State Corporate Income Tax - Nexus

- For a state to constitutionally impose a tax on a corporation, there must be sufficient connection between the corporation and the taxing state.
- If a corporation has no nexus in a state, it is unconstitutional for the state to impose taxes on the corporation.
- Nexus requirements are different by state
- Examples of contacts that will establish taxable nexus:
  - Maintenance of an office or other place of business.
  - Presence of employees or agents in the state who is engaged in the regular business.
  - Presence of real or tangible personal property, whether owned or rented.
  - Certain thresholds (e.g., $500,000 of revenue) are exceeded during the year
  - Obtains or regularly solicits trade or business from within the state, *without regard to physical presence*

U.S. Taxation on foreign corporation

Taxation on Foreign Corporation's U.S. Business

- Threshold: Is the foreign business engaged in U.S. Trade or Business ("USTB")?
- Regular or continuous activity will constitute a USTB
- If a treaty exists, then the threshold increases to "Permanent Establishment ("PE")"
- Have business profits attributable to the PE?

PE under the U.S. - Korea Tax Treaty

- PE is a fixed place of business through which the business of an enterprise is wholly or partly carried on. Fixed place includes:
  - A place of management
  - A branch
  - An office
  - A factory
  - A workshop
  - A warehouse
  - A store or other sales outlet
  - A place for extracting natural resources
  - A building site, or an installation or exploration site, if the activity lasts for more than 6 months
- A dependent agent that has, and habitually exercises in a Contracting State, the authority to conclude contracts "in the name of" the enterprise.

USTB or PE - Consequences

- Foreign Corporation must file U.S. tax return (Form 1120-F) and report all U.S. source income
- Failure to file tax return could result in loss of deductions/credits
  - ➢Existing regulations require tax return to be filed by normal due date (If no return has been filed, no later than 18 months after the due date)
  - ➢"Protective" filings are common if there is a risk of U.S. trade or business

U.S. Taxation on Foreign Corporation's FDAP Income

- Not effectively connected with a USTB (or not profits attributable to a PE)
- Fixed or determinable annual or periodical (FDAP) income is subject to U.S. withholding tax
- Withholding tax rate is 30% or lower based on treaty
  - 12% on interest
  - 10% or 15% on dividends
- Generally no tax on capital gains (unless U.S. Real Property)
- Form 1042/1042-T/1042-S

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