INTERNATIONAL TAX REFORM UPDATE

VSH

Cross-Border Tax Specialists


Clarity from your trusted
International Advisors


Established in 1997, VSH is a team of 50
serving domestic and international clients

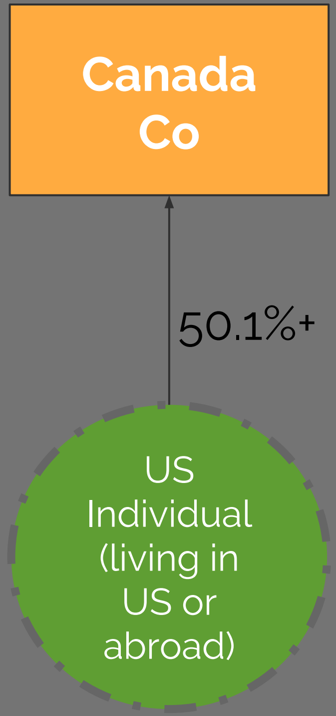
SERVING HUNDREDS OF CLIENTS AROUND THE WORLD

KEY POINT: 1

PLANNING IS KEY

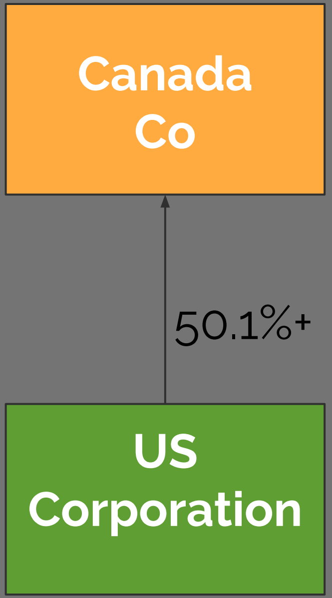
OUR FOCUS FOR TODAY

- ➔ GILTI (Global Intangible Low-Taxed Income)
- ➔ FDII (Foreign-Derived Intangible Income)
- ➔ Entity Selection and Optimization
- ➔ Wayfair implications



Global Intangible Low-Taxed Income (GILTI)

- ➔ Applies to US shareholders of CFC's
- ➔ A tax on shareholder's "excess return on investment" in the foreign corporation
- ➔ Affects individuals and businesses differently
- ➔ GILTI is a yearly calculation and deemed inclusion
- ➔ GILTI inclusion = net CFC tested income - net deemed tangible income return



Domestic Corporate US Shareholders are “special”:

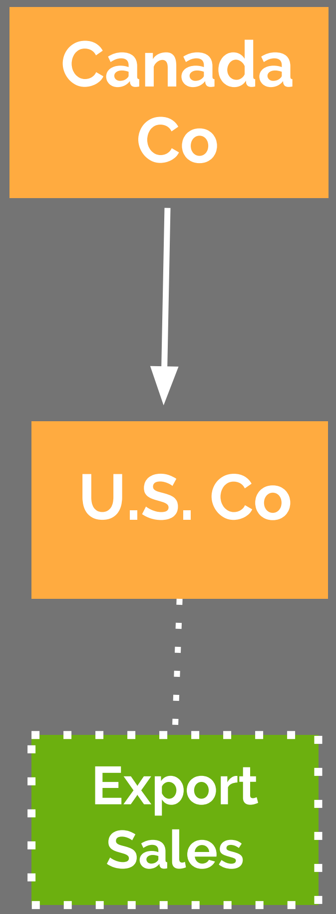
- ➔ Corporations effectively pay very little tax
- ➔ Allowed a 50% deduction on GILTI inclusion
- ➔ Effective corporate tax rate: 10.5%
- ➔ 80% indirect foreign tax credit allowed

	Individual US Shareholder	Corporate US Shareholder
Net Income of CFC (220,000 less 10% foreign tax)	200,000	200,000
Net Deemed Tangible Income Return (100,000 * 10%)	(10,000)	(10,000)
Section 78 Gross Up	N/A	19,000
GILTI Deduction	N/A	(104,500)
Net GILTI Inclusion	190,000	104,500
Federal Tax (37%/21%)	70,300	21,945
Indirect Foreign Tax Credit	N/A	(15,200)
Net Tax	70,300	0* Assumed Foreign Tax >= 13.125%

962
ELECTION

Allows an individual US Shareholder to be taxed as a corporation on their Subpart F and GILTI income

- 21% flat tax rate
- Indirect foreign tax credit allowed
- Unclear if 50% deduction will be permitted
- Income will be subject to a second layer of tax when distributed
- Election is made on an annual basis



FOREIGN-DERIVED INTANGIBLE INCOME (FDII) DEDUCTION

- ➔ Tax deduction available to US corporations
- ➔ Incentivizes exporting from US company rather than operating through a foreign subsidiary
- ➔ Results in 13.125% tax on export sales and service income in excess of a base amount

FDII

TRANSACTIONAL BENEFITS

- → Direct sales to non-US customers
- → Provision of services to property or persons located outside the US
- → Royalties from licensed properties used outside the US
- → Sales to related non-US parties followed by ultimate sales to non-US customers

FDII CASE STUDY

STEP 1: Determine Export Net Income Ratio	
Export Net Income/Total Net Income	$150,000 / $200,000 = 75%
STEP 2: Determine Deemed Intangible Income	
Total net income - 10% of tangible assets	$200,000 - (10% * $50,000) = $195,000
STEP 3: Determine Foreign-Derived Intangible Income (FDII)	
Apply Export Net Income Ratio to Deemed Intangible Income	75% * $195,000 = $ 146,250
STEP 4: Calculate Tax on FDII	
FDII* 13.125% (v. 21% U.S. Corporate Tax Rate)	$146,250 * 13.125% = $ 19,195 (vs. $30,712)

EXPANSION TO THE U.S.

GOAL OF U.S. TAX REFORM

Is to stimulate jobs and investment in the U.S. economy.

Will a U.S. presence become increasingly favorable for your clients going forward?

KEY POINT

PLANNING IS KEY FOR EXPANSIONS, START-UPS AND RESTRUCTURES

- ➔ Corporations are more viable due to 21% rate
- ➔ Pass - through entities qualifies for 20% business deduction
- ➔ Financing analysis is more important (large business)

WHAT IS THE EXPANSION STRATEGY WITH GILTI IN MIND?

CANADIAN CITIZEN/U.S. PERSON	U.S. RESIDENT
CONSIDER A FLOW-THROUGH ULC OR LP	CONSIDER A FLOW-THROUGH ULC OR LP
MITIGATE TAX IMPLICATION WITH SALARY AND MANAGEMENT FEE	CONSIDER A U.S. BLOCKER CORP
	OPERATE FROM A BRANCH (EXPORT SALES AND TAX INCENTIVES)

KEY POINT

MANY CANADIAN BUSINESSES MAY BE IMPACTED BY THE **WAYFAIR DECISION**

SOUTH DAKOTA VS. WAYFAIR

THE WAYFAIR DECISION

US Supreme Court overruled precedents requiring physical presence before a remote-seller can be subject to a state's sales/use tax regimen.

- Quill Corp. v North Dakota and National Bellas Hess, Inc. v. Department of Revenue of Ill. are no longer good law
- Complete Auto Transit, Inc. v. Brady now dictates whether a state's law violates the Commerce Clause of the US Constitution
- Congress has not acted in this area, thus leaving sales/use tax rule-making to the states

WHAT IS THE NEW STANDARD?

THE WAYFAIR DECISION

Complete Auto Transit, Inc. v. Brady's four-prong test is now the standard.

A state's sales/use tax law will be sustained if it:

1. Applies to an activity with a substantial nexus with the taxing state;
2. Is fairly apportioned;
3. Does not discriminate against interstate commerce; and
4. Is fairly related to the services the state provides.

CURRENT MEASURES OF NEXUS

1. **Economic Nexus** - Extensive business within the state, generally accompanied by factors to reduce burdens on smaller retailers
2. **Affiliate/Agency Nexus** - Generally expands definition of "place of business" to include agents and affiliates, such as "marketplace provider"
3. **Click-Through Nexus** - Considers remote sellers to be in-state vendors if K bound to other in-state residents for commission or consideration
4. **Notice and Reporting** - Onerous threshold system that requires remote sellers to collect and remit sales/use tax or provide notice to customers and then report to the state the transactions

S.D. GOLDEN LAW

THE WAYFAIR DECISION

SOUTH DAKOTA'S GOLDEN LAW

South Dakota's economic nexus law was specifically crafted to challenge Quill, and provided the Justices some protections that mitigate the existing burdens if Quill was overruled

- ➔ Deliver more than $100,000 of goods or services into the State, or
- ➔ Engage in 200 or more separate transactions for delivery into the state
- ➔ Forbid retroactive application of the Act
- ➔ Stayed until fully vetted in court system
- ➔ SD is part of 20+ state reporting system

INDUSTRY IMPACT

THE WAYFAIR DECISION

INTERNATIONAL, ONLINE, REMOTE

- ➔ Remote International Businesses - Treaties likely not effective in protecting international businesses availing themselves to the states
    - ◆ Treaties are at the federal level, states are their own sovereigns
    - ◆ The analysis will be state-by-state specific
- ➔ Online Services - Cloud, Iaas, Paas, SaaS, Information Services, Data Processing Services, Digital Goods
- ➔ Remote Retailers

INDUSTRY PERSPECTIVE

THE WAYFAIR DECISION

REMOTE BUSINESS WILL BECOME MORE CHALLENGING FOR MANY BUSINESSES

- ➔ REMOTE SELLERS will have to manage both Sales/Use tax determination and reporting
- ➔ KEY BUSINESS PRACTICE CONSIDERATIONS:
  - ◆ Expand existing practice, acquire tax rate file subscription, acquire third-party determination software
  - ◆ Estimated 10,000-12,000 potential jurisdictions
- ➔ COMPLIANCE AND REPORTING:
  - ◆ Whether to expand existing practice, acquire third-party reporting software, outsource tax reporting

ESTATE TAX

US rental property	350,000
worldwide estate	1,500,000
	23%
US citizen exemption	11,200,000
pro-rated exemption	**2,613,333**

- For US citizens, the estate tax exemption increased to $11.2 M beginning 2018
- Canadian citizens and residents who own US situs assets when they pass away get a percentage of the $11.2 M
- Per US-Canada income tax treaty

Q&A
WHAT DO WE EXPECT?

VSH

Cross-Border Tax Specialists