Chile - U.S. Investments

Investing in the United States after Tax Reform

March 7, 2019

Contents

Introduction

- The United Stated made significant alterations to its federal income taxation system in 2017 with the Tax Cuts and Jobs Act (“Tax Reform”).

- The general framework for the taxation of inbound investments into the United States has remained unchanged, although various anti-abuse rules were added.

- As will be discussed, the United States remains an <u>optimal</u> location for inbound investments with foreign capital.

- Presentation Overview
  - What led to Tax Reform and overview of changes resulting from Tax Reform
  - Framework for U.S. taxation of inbound investments
  - General advantages of U.S. inbound investments
  - Tax structuring opportunities

U.S. Tax Reform Headwinds & Overview

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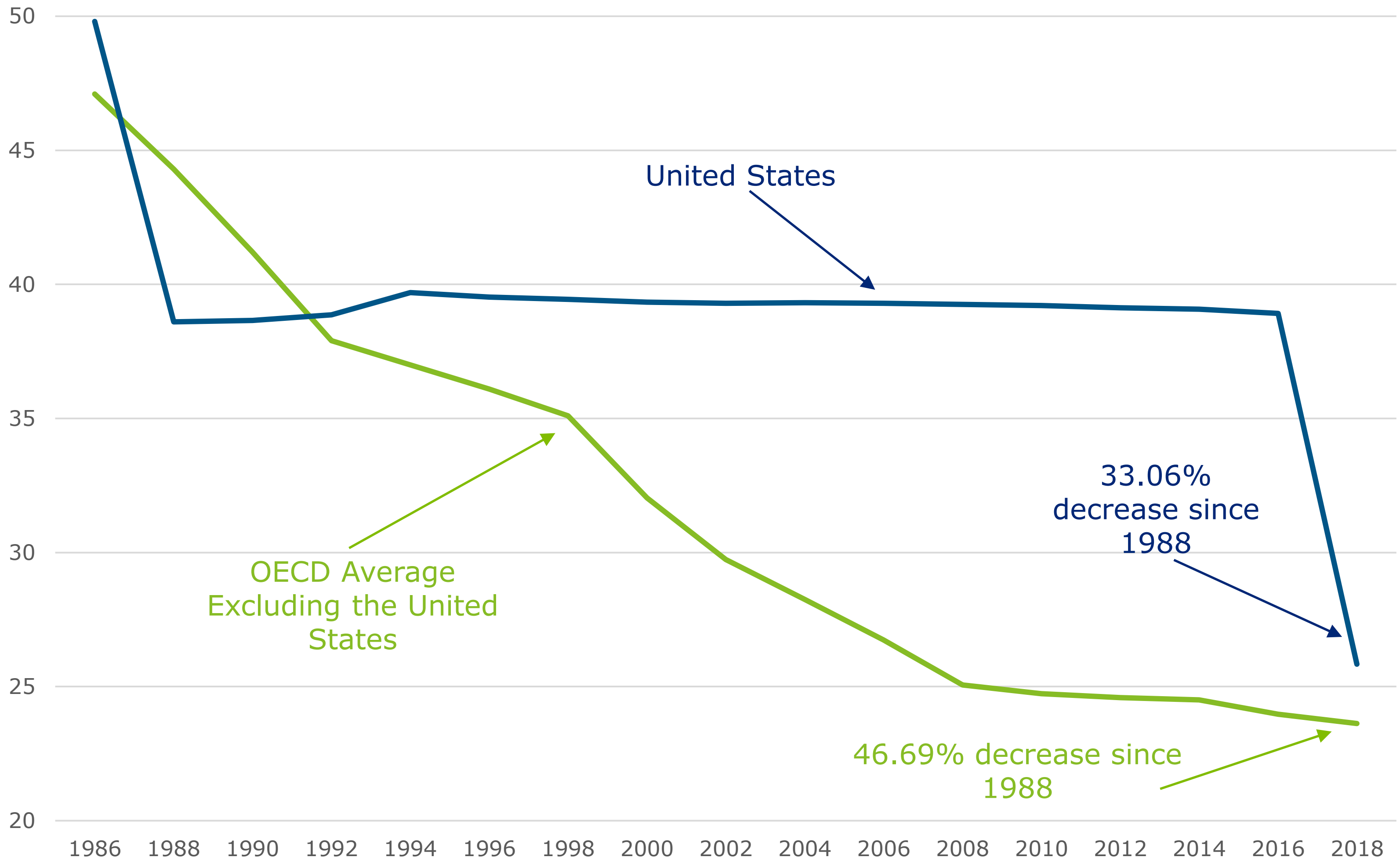
Top Statutory (Federal and State) Corporate Tax Rates, OECD 1986-2018



Source: OECD tax database (Apr. 2018). Available at http://www.oecd.org/tax/tax-policy/tax-database.htm

U.S. Tax Reform Headwinds & Overview

The Lock-Out Effect

Audit Analytics Trend Reports. (2017). Indefinitely Reinvested Foreign Earnings Still Climbing. Sutton, MA. Available at https://www.auditanalytics.com/blog/indefinitely-reinvested-foreign-earnings-still-climbing/

U.S. Tax Reform Headwinds & Overview

The Perfect Storm

U.S. Tax Reform Headwinds & Overview

Certain Broadly Applicable Provisions

Provision	Old Rule	Tax Cuts and Jobs Act of 2017
Corporate Tax Rate	Progressive/top tax rate of 35 percent	• Fixed corporate tax rate of 21 percent
Individual Tax Rates	Progressive/top tax rate of 39.6 percent	• Top marginal rate is 37 percent
199A Deduction	No deduction available for income earned through a partnership	• Deduction for qualified business income from a qualified trade or business operated directly or through a pass-through entity • Best case scenario, individual rate after application of section 199A deduction is 29.6 percent
Net Operating Losses	Carryback 2 years, carryforward 20 years, without any taxable income limitations	• No carryback, carryforward indefinitely • 80 percent of taxable income
Immediate Expensing	MACRS/bonus depreciation	• Property with 21-year or less useful life can be immediately expensed

U.S. Tax Reform Headwinds & Overview

Significant International Changes: Outbound

Provision	Old Rule	Tax Cuts and Jobs Act of 2017
Transition Tax	N/A	• Deemed subpart F income inclusions for untaxed foreign earnings of CFCs and certain other specified foreign corporations
Participation Dividends Received Deduction	Available indirect foreign tax credits (repealed)	• 100 percent dividends received deduction for dividends paid by certain foreign subsidiaries of 10 percent domestic corporate shareholders
Global Intangible Low-Taxed Income ("GILTI")	Income deferred until actually or deemed repatriated	• New subpart F category resulting in current taxation of deemed offshore intangible income • Certain domestic corporate shareholders are eligible for foreign tax credits and a 50 percent deduction against their GILTI inclusions
Foreign Derived Intangible Income ("FDII")	Domestic production activity deduction (repealed)	• New intangible preferential regime resulting in 13.125 percent tax rate imposed on deemed onshore intangible income • Certain domestic corporations are eligible for a 37.5 percent deduction against their deemed onshore intangible income

U.S. Tax Reform Headwinds & Overview

Significant International Changes: Outbound

Provision	Old Rule	Tax Cuts and Jobs Act of 2017
Expanded applicability of CFC regime	Definition of United States shareholder focused on vote; 30 day de minimis rule; no downward attribution to a related domestic person	• Broadened definition of United States shareholder by focusing on vote or value • Eliminated 30 day de minimis rule • Broadened attribution rules to permit inbound downward attribution of stock owned by a foreign person to a related domestic person
Limitations on Foreign Tax Credit	Potential foreign tax credit offset for dividend inclusion; two foreign tax credit baskets	• Repeal of indirect foreign tax credit provision • Two additional foreign tax credit baskets for GILTI income and foreign branch income
Restrictions on intangible property transfers	Permitted tax-free outbound transfer of goodwill and certain other specified intangibles	• Nearly all outbound intangible transfers subject to United States tax • Enhanced transfer pricing restrictions on intangible transfers

U.S. Tax Reform Headwinds & Overview

Significant International Changes: Inbound

Provision	Old Rule	Tax Cuts and Jobs Act of 2017
Interest Expense Deductions	Related-party interest expense deductions limited to 50 percent of adjusted taxable income	• 30 percent interest limitation on adjusted taxable income • Adjusted taxable income is calculated without regard to depreciation/amortization, interest, and taxes • Includes related and unrelated-party interest
Hybrids Deductions	No specific limitations on deducting hybrid payments	• Denies interest and royalty deductions paid to foreign related parties when the hybrid nature of the payment results in no income inclusion • Broad regulatory authority to attack similar issues involving branches, conduit arrangements, and other circumstances
Base Erosion Anti-Abuse Tax ("BEAT")	Corporate alternative minimum tax (repealed)	• Imposes a ten percent minimum tax on taxable income modified to exclude certain foreign related party payments • Minimum tax is calculated without the benefit of foreign tax credits • Imposed on domestic corporations and foreign corporations with effectively connected income

U.S. Inbound Taxation Framework

U.S. Inbound Taxation Framework

Tax Base: Territorial vs. Worldwide Regime

Domestic Persons

United States Income

Foreign Income

Residence Basis Jurisdiction: Citizens, residents, and domestic corporations generally taxed in the United States on worldwide income. Double taxation concerns addressed through foreign tax credit mechanism

Foreign Persons

United States Income

Source Basis Jurisdiction: Foreign persons generally taxed in the United States on United States source income

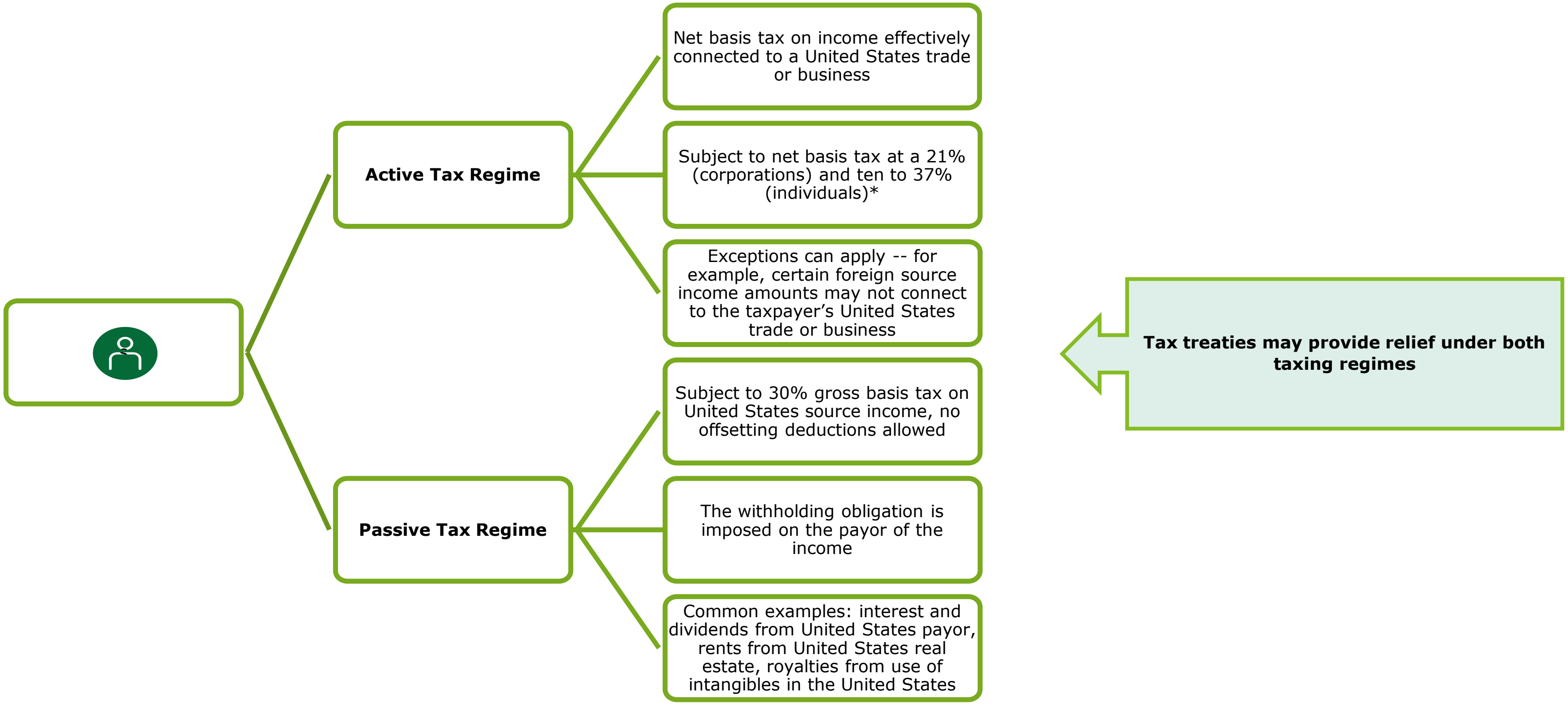
Foreign Income

Neither Residence Basis nor Source Basis Jurisdiction: Generally not subject to United States taxation, includes income from U.S. flow-through entities

U.S. Inbound Taxation Framework

Taxation of Foreign Persons: Overview

- Foreign corporations and individuals are subject to United States tax under two alternative taxing regimes: (i) net basis tax imposed on active business income (the “Active Tax Regime”) and (ii) 30 percent gross basis tax on certain United States sourced income (the “Passive Tax Regime”).



* There may be an additional 30% “branch profits tax” on deemed repatriation to foreign corporations.

U.S. Inbound Investments – Advantages

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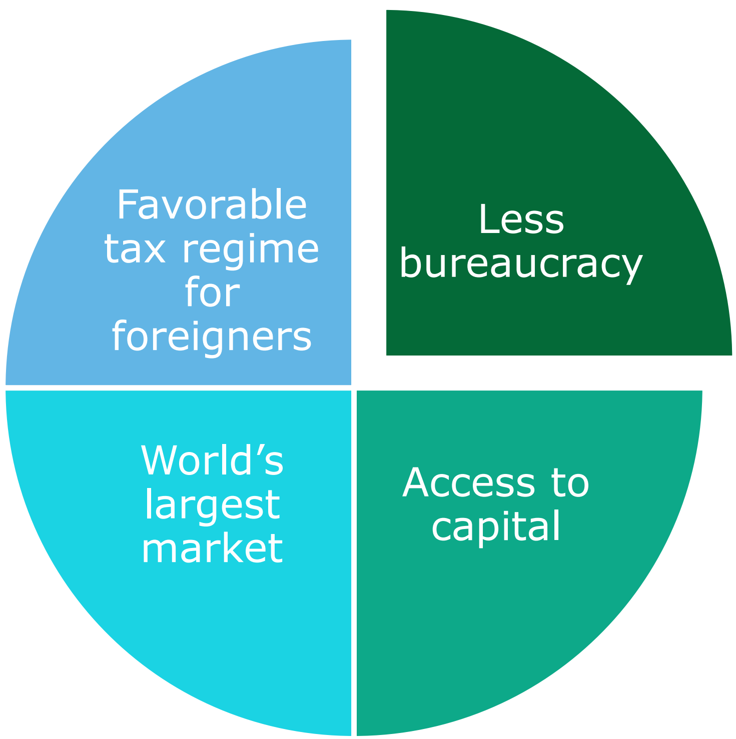
Why Invest in the United States?



U.S. Inbound Investments – Advantages
Special Passive Investment Incentives

Base Case

- Interest, dividends, rents, and royalties (i.e., passive income) are generally subject to **30%** tax without structuring and no treaty access.

Capital gains

- Capital gains of a foreign taxpayer are generally ***not*** taxed in the United States, unless it's a disposition of real estate U.S. property interest.

Portfolio Interest Exemption

- U.S. source interest is generally subject to 0% tax, as long as the foreign creditor owns directly or indirectly less than 10% of the debtor.
- Special attribution rules apply to calculate the 10% direct or indirect ownership (e.g., husband and wife).
- Example: Bonds, notes, etc. (public and private).

Trading Safe Harbor

- Trading in securities or commodities through an agent, or trading in stocks or securities for the taxpayer's own account whether directly by the taxpayer or through an agent does ***not*** create a taxable presence in the U.S.
- The trading safe harbor creates incentives for foreign taxpayers to have active investment activities in the United States without subjecting them to the active tax regime (e.g., having a U.S. office with an investment management team).

U.S. Inbound Investments – Advantages

Other investment types and U.S. activities

Renewables	Oil and Gas
Special Joint Ventures	Active U.S. businesses
Diversified investment portfolios	U.S. Investment Offices

Contact information

Contact Information
International Tax Team

Mitchell Weiss- Managing Director
mitweiss@Deloitte.com

- Over 20 years of international tax experience.
- Licensed attorney and CPA.
- Mitch has published articles in the International Tax Journal, the Tax Adviser, the Akron Tax Journal, Practical European Tax Strategies, BNA Tax structuring, among others.
- Mitch has advised domestic and foreign multinationals on various cross-border matters, including the tax-efficient structuring of international expansions, dispositions, reorganizations, and financings.

Josh Fieldstone- Manager
jfieldstone@Deloitte.com

- Over 7 years of international tax experience.
- Licensed attorney.
- Josh has extensive experience working on international tax inbound matters, including cross-border M&A, international financing vehicles, intellectual property migration, permanent establishment and tax treaty analysis, and tax-deferral mechanisms.
- Josh manages significant inbound clients, and has published numerous articles in the International Tax Journal.

Tiare Contador- Senior
ticontador@Deloitte.com

- Over 4 years of international tax experience.
- Licensed attorney from Pontificia Universidad Catolica de Chile.
- LLM from University of Florida.
- As a member of the international tax group, Tiare has experience advising domestic and foreign multinationals on tax-efficient structuring of reorganizations, and financings. Tiare has served private and public companies, in different industries.

Maria Jesus Ibanez – Senior
lmiaibanez@Deloitte.com

- Over 4 years of international tax experience.
- Licensed attorney from Pontificia Universidad Catolica de Chile.
- LLM from Universidad de Chile and University of Chicago.
- María Jesús has extensive experience on advising domestic and foreign clients on personal and corporate tax structuring, local and international tax consulting, mergers and acquisitions and foreign investment transactions.