

2009 International Tax Tipsheet

Individuals

- **WATCH FOR EXPATRIATION GAIN!!**
 - New provision effective 6/17/08
 - Causes deemed sale of ALL property on loss of U.S. citizenship or greencard
- Elect full credit for foreign taxes on dividends, interest, royalties, etc
 - Limited to \$600 joint, \$300 otherwise
 - No Form 1116 required!
 - Not automatic: requires election in ProSystem or FastTax
- Make QEF election for newly acquired PFICs (foreign investment corporations)
 - Consider other elections for missed PFICs
- Claim all foreign taxes from K-1s (see above)
- DISC dividends are qualifying dividends
- Include all foreign wages. If foreign income taxes paid, file 1116 for credits
 - Form 2555 may apply if the person lived outside the US
- Claim per diem travel allowances for unreimbursed (or under-reimbursed) travel in US or elsewhere: Form 2106
 - Could substantially reduce US tax for inbound assignees. Rates went up 10/1/08
- Watch for refund opportunities under treaties.
- Deduct basis of worthless securities: new §1.165-5
- **FILE FORMS 3520 and 3520-A FOR FOREIGN TRUSTS!!!** (severe penalties for failure)
- Don't forget Form 8833 with 1040NR to disclose treaty based return positions reducing US tax

Flow-Through Businesses (P/S, S Corp)

- Include revenues, CoGS, deductions, income taxes of pure branches, checked single member entities
 - Form 8858 for single member entities
- Calculate DISC “commission” on exports
 - Simple sales-to-sales apportionment for small cases
 - “No loss” rule can save big bucks for all but the smallest
 - Matching issues under §267
- Report DISC dividends (including deemed and “evergreen”) as dividend rather than business income: lower tax rate!
- Include net income (as partnership) from 8865 K-1
 - Form 8865 required for principal U.S. member
- Form 5471: missed planning opportunities!
 - Foreign taxes paid by foreign corporate entity are NOT eligible for credits to shareholders
- Include foreign dividends from treaty countries as qualifying dividends
- Report information so owners can claim foreign tax credits (gross income, deductions, foreign taxes)
- Don’t forget “withholding” payments with respect to foreign members (Forms 1042, 1042S, 8804, 8805, 8813)
- Use class lives (not MACRS life) for foreign assets
- Treat 50% or 100% of foreign title passage sales income as foreign source
- Reduced withholding taxes under protocol to U.S./Canada treaty may impact FTC and estimated payments
- Partnership anti-abuse rule strengthened; changes to substantial economic effect test: look thru to partners

C Corporations

- Consider tax planning strategies to reduce provision
 - Supercharged dividend opportunities (contrary to APB 23)
- Be sure Forms W-8BEN are in place for payments to related foreign persons
- Use §163(j) to “extend” federal or state NOLs
- Exclude related CFC dividends, interest, rents, royalties from Subpart F income for 2006-2009
- Include FX gain/loss on remittance of prior Subpart F inclusions
- Overall foreign loss or overall domestic loss planning:
 - Consider recapture of more than 50% for OFL
 - Use ODL recapture to improve FTC
- Allocate & apportion deductions for foreign tax credit limitation
 - Basis adjustments for E&P of subsidiaries
 - Include assets and interest expense of checked entities
 - Consider using specialized software
- Prepare Forms 5471, 8858, 8865. Watch for corporate events (reorganizations, liquidations, etc.) for which Schedule O is required. Potential late filing penalties!
- Consider check the box elections to reduce or eliminate Subpart F income
 - New contract manufacturing rules for 2009
- Don't forget Forms 5472 for transactions with related foreign entities (except subsidiaries)
- Report outbound transfers on Form 926
- Treat 50% or 100% of foreign title passage sales income as foreign source
- Changes to cost sharing and Subpart F contract manufacturing rules may affect international groups

Section 199 Deduction

- Ask clients about qualifying activities (making goods, construction, software development)
- Identify qualifying revenue streams
 - Where there are both qualifying and non-qualifying revenues, gather information to segregate sales, CoGS, directly related expenses, if over \$10 million gross revenues
- Determine whether imbedded services qualify (or are de minimis)
- Allocate and apportion post M-1 deductions
 - Sales to sales in small cases
 - Collect detailed information in larger cases
 - Consult an expert if needed
- All businesses can qualify! This includes those filing Form 1040 Schedule C, Form 1065, Form 1120

For more information, contact:

Stephen C. Fox, CPA, CMA
One Gateway Center 2600
Newark, NJ 07102
1 (973) 610-5669
steve@sfoxcpa.com