

GETAP

GRUPO DE ESTUDOS TRIBUTÁRIOS APLICADOS

Comissão de Tributos Diretos
08 de Março de 2018

AGENDA

- **Grupo de Trabalho – Câmara dos Deputados (Dep. Rodrigo Maia)**
 - Propostas na área do IRPJ em função da Reforma Tributária Americana

- **Reforma Tributária Americana – Conteúdo e Implicações**
 - Gustavo Carmona – EY
 - Priscila Vergueiro – PWC

GT Reforma Tributária

Câmara dos Deputados

- **Iniciativa Presidente Câmara dos Deputados: Rodrigo Maia**
 - **Objetivo:** apresentar propostas no Imposto de Renda Corporativo (IRPJ) para minimizar impacto da reforma americana
- **Convidados:** Bernard Appy e Isaias Coelho (CCiF), Marcos Lisboa (Insper) e GETAP.
- **Prazo:** 120 dias para apresentação de propostas
- **Modus operandi do GT:**
 - Reuniões semanais (às sextas-feiras) a partir de 16/03
 - Deliberações por maioria de votos
 - Discussão dos temas do GT com outros stakeholders (sociedade)
- **Próximos passos: 12-Mar: 1ª Reunião na Câmara: Lançamento oficial do GT**
- **Atuação GETAP: Associados: Prioridade na agenda da Comissão de Tributos Diretos – Celeridade nas discussões e votação dos temas**

Trump Administration: Objectives of US tax reform

- **Economic activities:** moving manufacturing activities back to USA
- **Investments:** Attracting both local and foreign investments to USA
- **Trade:** Encouraging “Made in USA” and export; and discourage import → correcting trade deficits
- **Capital:** Deleveraging, encouraging equity investment, upgrading investments in fixed assets and intangible assets
- **Talent:** Attracting and keeping top talent

Trump Administration: Main features

GETAP

GRUPO DE ESTUDOS TRIBUTÁRIOS APLICADOS

Lower rates



The final US tax reform legislation includes a significant reduction in the business tax rate as well as reduction in the individual tax rates.

Tax Incentives



Besides allowing for a reduced corporate income tax rate, the US Tax Reform also allowed for additional incentives in different fronts: FDII, Full expenditure

New international tax system



Republicans were unified in moving towards a “territorial” system of taxation. However, a new system for taxation of foreign earnings on an accrual basis has likewise been created (GILTI).

Budget adjustment provisions



To pay for the proposed lower rates, the new law includes a wide array of base broadening provisions (e.g., limitations on deductions, hybrids rule, BEATS, GILTI, NOL).

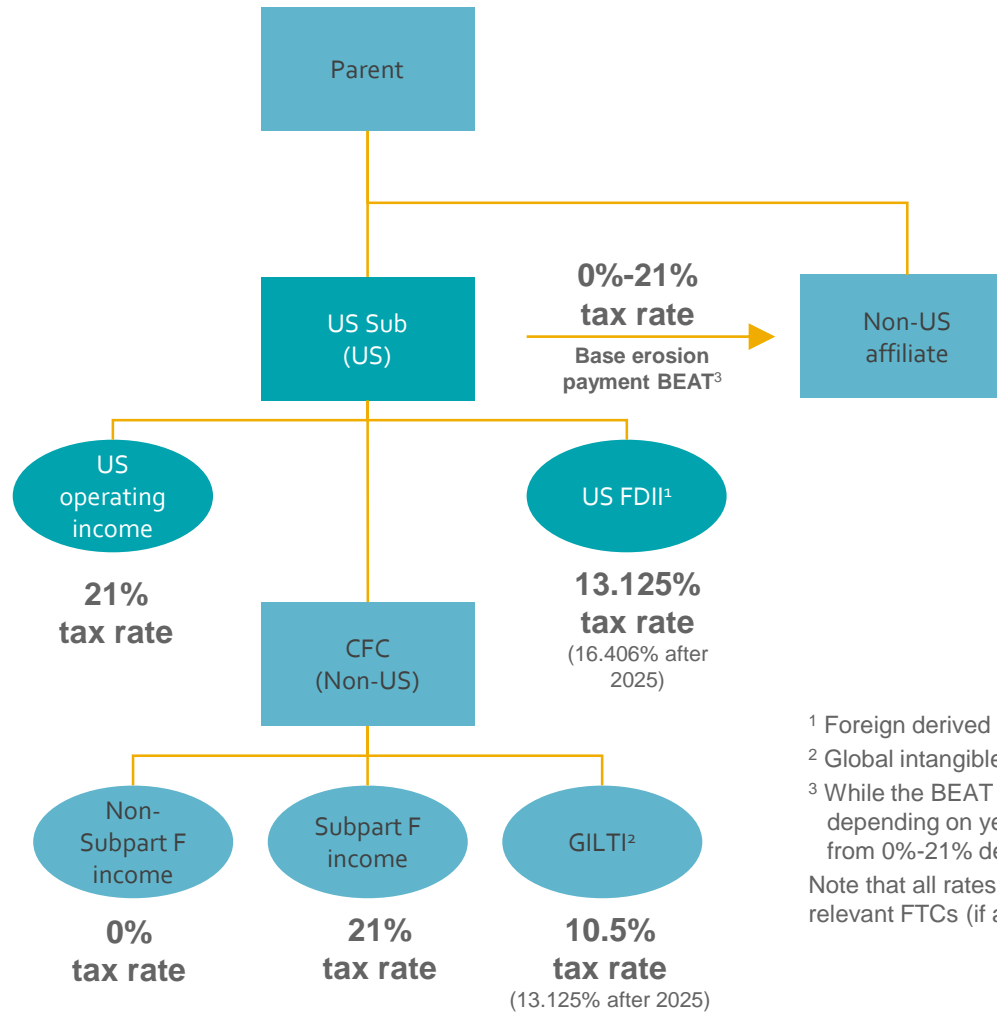
Overview of US tax reform provisions

Provision	The 2017 tax reform reconciliation act (the Act), also known as the 'Tax Cuts and Jobs Act'	Prior law
Corporate tax rate reduction/ AMT repeal	21% rate for taxable years beginning after December 31, 2017. A blended rate applies for fiscal year taxpayers. Corporate AMT repealed. Prior year AMT credits refunded over 2018-2021.	35% corporate rate and 20% corporate AMT
Transition Tax	Previously untaxed foreign earnings: <ul style="list-style-type: none"> • 15.5% cash & cash-equivalents • 8.0% non-cash assets • Payable over 8 years • Proportional reduction in foreign tax credits attributable to previously untaxed foreign earnings 	Currently no provision. Previously untaxed foreign earnings: <ul style="list-style-type: none"> • 35% corporate rate when repatriated with foreign tax credit
Shift to territorial system	<ul style="list-style-type: none"> • 'Territorial' system • 100% foreign dividend received deduction • No foreign tax credits allowed 	<ul style="list-style-type: none"> • 'Worldwide' system • Foreign tax credits to mitigate double taxation
Global intangible low-taxed income (GILTI)	Subpart F generally maintained; US shareholders of CFCs subject to current US GILTI tax, with a 50% deduction. 80% foreign tax credit permitted. The deduction is reduced to 37.5% for tax years beginning after December 31, 2025.	Subpart F anti-deferral regime includes CFC's insurance income, foreign base company income, among others with foreign tax credit

Overview of US tax reform provisions

Provision	The 2017 tax reform reconciliation act (the Act), also known as the 'Tax Cuts and Jobs Act'	Prior law
Foreign-derived intangible income (FDII)	A 37.5% deduction is allowed for foreign-derived intangible income produced in the US. The deduction is reduced to 21.875% for taxable years beginning after December 31, 2025. Applies to exports of property, licensing and services in which such property/services are used/performed outside the US with a third party.	Not provided
Base erosion and anti-abuse tax (BEAT)	New add-on minimum tax equal to the excess of (i) 10% of taxable income (5% in 2018 and 12.5% for tax years after December 31, 2025) generally determined without regard to amounts paid or accrued to a foreign related party (other than COGS and certain services), including amounts includible in the basis of a depreciable or amortizable asset; over (ii) regular tax liability (determined after reduction by credits other than the R&D credit and capped amounts of certain other general business credits). For tax years beginning after December 31, 2025, the regular tax is reduced by all credits (including GBC).	Not provided

Overview of US tax reform provisions



¹ Foreign derived intangible income (FDII)

² Global intangible low-taxed income (GILTI)

³ While the BEAT rates range from 5%-12.5% depending on year, actual marginal rate may vary from 0%-21% depending on tax profile

Note that all rates are presented without regard to relevant FTCs (if any)

Overview of US tax reform provisions

Provision	The 2017 tax reform reconciliation act (the Act), also known as the 'Tax Cuts and Jobs Act'	Prior law
Interest deduction limitation	<p>Limited to the sum of business interest income plus 30 % of the adjusted taxable income of the taxpayer for the taxable year. Adjusted taxable income is defined similar to EBITDA for taxable years beginning after December 31, 2017 and before January 1, 2022, and is defined similar to EBIT for taxable years beginning after December 31, 2021. Would not apply to certain regulated public utilities and certain electric cooperatives, floor plan financing interest, and at the taxpayer's election certain real property trades or businesses.</p> <p>Limitation applies to both related party and unrelated party debt. Disallowed interest is allowed to be carried forward indefinitely.</p>	Deductible as incurred
Hybrids	<p>No deduction for interest or royalties, if the income is not taxed or is accorded a deduction in the recipient's jurisdiction:</p> <ul style="list-style-type: none">• Applies to US inbound financing structures• Applies to interest and royalties• Applies to hybrid entities and instruments• There are no grandfather or transition rules for structures currently in place	Not provided

Overview of US tax reform provisions

Provision	The 2017 tax reform reconciliation act (the Act), also known as the 'Tax Cuts and Jobs Act'	Prior law
Full expensing	100% full expensing for investments in new and used property made after September 27, 2017 and before January 1, 2023. Five-year phase down of full expensing beginning in 2023 (additional year for certain qualified property with longer production period). Excludes property used by a regulated public utility, real property of a real property trade or business electing out of the interest limitation (below), and a trade or business that has had floor plan financing.	Recover investment over the investment's applicable life under MACRS or ADS
Net operating losses (NOLs)	Limited to 80% of income for losses arising in taxable years beginning after December 31, 2017; indefinite carryforward; no carryback for losses arising in taxable years ending after December 31, 2017.	Carryback up to 2 years and carry forward up to 20 years

Potential Impacts



Individual income tax rates

- ▶ Lowers rates to 10%, 12%, 22%, 24%, 32%, 35%, and 37%; adjusts rate bracket thresholds
- ▶ Roughly doubles standard deduction; suspends deduction for personal exemptions; repeals overall limitation on itemized deductions; repeals all miscellaneous itemized deductions subject to the 2% floor under present law



State and local tax deduction

- ▶ Caps deduction at \$10,000 which can be taken for the aggregate of state and local property and income taxes (or state and local sales taxes)



AMT

- ▶ Retains the individual AMT
- ▶ Increases the exemption amounts (\$70,300 single/\$109,400 married filing jointly) and phase-out thresholds (\$500,000 single/\$1m married filing jointly)



Estate tax

- ▶ Retains estate, gift, and generation-skipping transfer taxes; doubles \$10m basic exclusion and indexes it for inflation

Potential Impacts

Business HQ and Related Activities

- With the decrease in US corporate rate, low tax regime benefits begin to erode, US is attractive destination for investment
- The new laws penalize the long standing practice of placing IP and R&D and other high value functions in lower cost territories to reduce taxes. There will be more incentive to move R&D and IP to the US
- There may be a case for shifting certain functions to the US

Supply Chain and Manufacturing

- A key objective of this legislation is to encourage placing manufacturing operations in the US.
- The tax change impacts will need to be weighed against other cost factors
- The US could see an improvement in their manufacturing competitiveness

Capital Investment Portfolios

- Capital flows and the asset portfolios that they fund will be impacted
- The cash repatriation incentive will improve the financing profile for acquisitions and US capital projects-Will there be an uptick in deals activity?
- Asset portfolios will need to be revalued and reassessed to develop a more optimal mix of global and domestic projects

Potential Impacts

Sales and Distribution

- Companies may need to look at the economics of new distribution models and altering their supply chains to avoid some of the BEAT impacts

Manufacturing and Supply Chain

- Could make US a more attractive manufacturing location, but US labour cost remains high, regulations are in flux and the impact of NAFTA renegotiation is unknown
- For companies that use foreign related party services or labour, the BEAT could impact the cost of these services.

Other Investments and Functions

- The limitation on interest expense will impact investment in US projects and may require a review of existing project returns and a revaluation of US project plans and portfolios. Consider foreign versus domestic borrowing costs
- Treasury functions will likely be impacted

Ata / Sumário

- Foi divulgada à comissão a participação do GETAP no Grupo de Trabalho criado pela Câmara dos Deputados, cujo objetivo é elaborar propostas na área da tributação da renda corporativa em função da Reforma Tributária Americana, para minimizar seus efeitos no Brasil. O GT será lançado no próximo dia 12/03 em Brasília e terá prazo de 120 dias para apresentar as propostas. Como se trata de um GT que irá tratar essencialmente de temas relacionados a Imposto de Renda e ao prazo determinado para sua conclusão, o GT torna-se prioritário na agenda da Comissão.
- Considerando a relevância do GT e que Reforma Americana foi o grande impulsionador para a sua criação, foi apresentada à Comissão os seus principais pontos. Ao final da palestra, houve debates entre os associados de como o Brasil deveria se posicionar perante as implicações da reforma, bem como estratégias de atuação que o GETAP pode desempenhar no GT. Como próximos passos, o GETAP estará presente na reunião de “kick-off” do GT e informará aos associados a evolução de suas discussões para que a comissão possa se posicionar durante todo o processo.