



GRASSI & CO.
ACCOUNTANTS & SUCCESS CONSULTANTS®

Introduction to U.S. Taxation

*An Overview of Key Concepts and
Considerations for Non-U.S. Investors*

October 2017

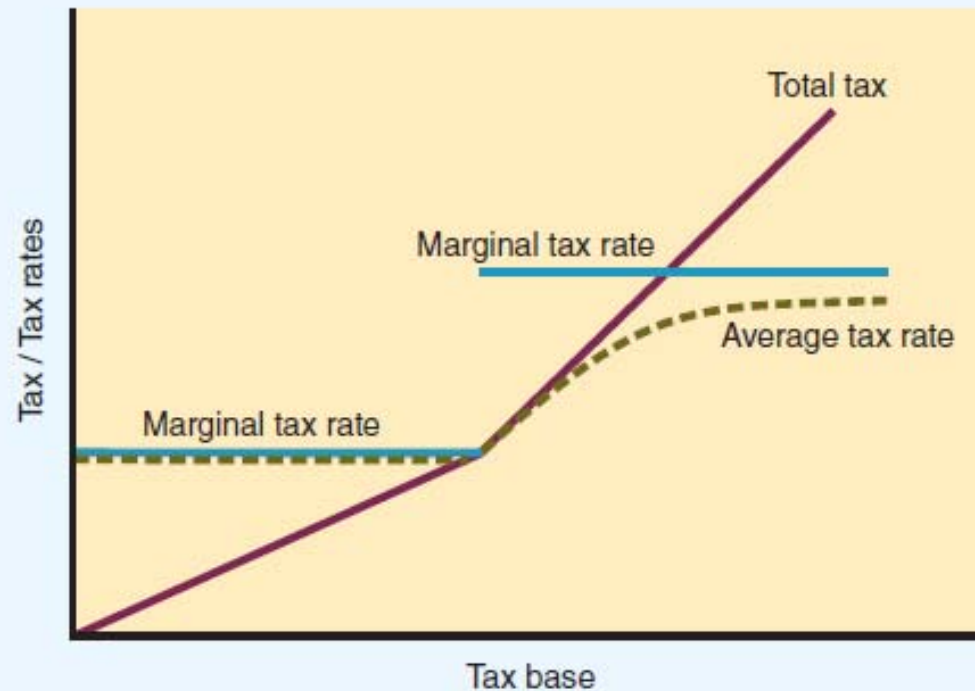


Agenda

- Framework of the U.S. Tax System
- Structures for Entering the U.S. Market
- Non-Income Tax Considerations
- Transfer Pricing and “BEPS”
- Employee & Executive Considerations
- U.S. Tax Reform Proposals

Framework of the U.S. Tax System

What Type of Tax System?



Progressive → as a taxpayer's tax base increases, the taxpayer's tax increases proportionally
"the more money you make, the more taxes you pay"

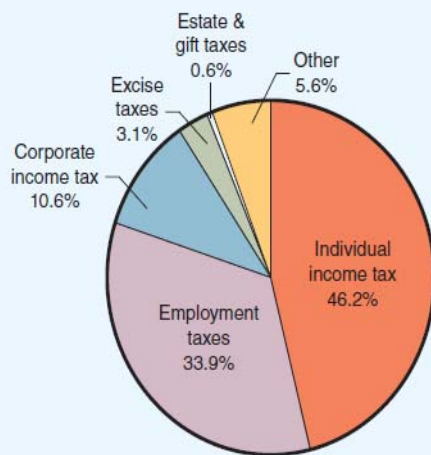
Types of Taxes



Types of Taxes

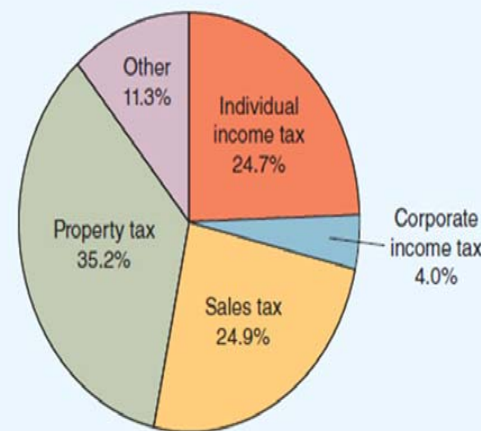
- **Federal Taxes**

- ✓ Income taxes
- ✓ Employment and unemployment taxes
- ✓ Excise taxes
- ✓ Estate and Gift taxes



- **State & Local Taxes**

- ✓ Sales and use taxes
- ✓ Property taxes
- ✓ Income taxes
- ✓ Excise taxes

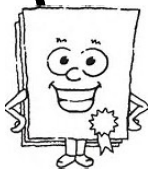


Framework of U.S. Tax System

Congress (legislative branch)



Writes tax laws
included within IRC



President (executive branch)



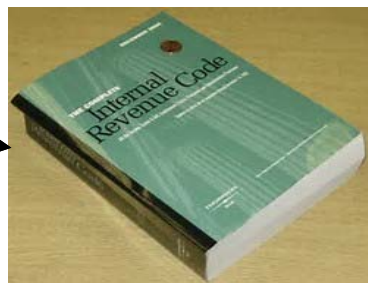
Approves or vetoes tax law/acts
passed by Congress

Courts (judicial branch)



Dispute resolution – interprets
IRC and decides how Congress
intended its application

Agency within U.S. Dept. of Treasury



IRC authorizes
IRS to



- ✓ collect federal taxes
- ✓ enforce tax rules
- ✓ issue tax refunds

Structures for Entering the U.S. Market

U.S. Taxation on Foreign Investment

Foreigners (NRAs or Corporations) are generally subject to income tax on two “buckets” of income



Fixed or Determinable Annual or Periodic Income (“FDAPI”)

- ❖ Types (wages, interest, dividends, rents, royalties, etc.)
- ❖ Must be derived from U.S. sources
- ❖ 30% withholding tax on **GROSS** income by payor (treaty can reduce)

OR

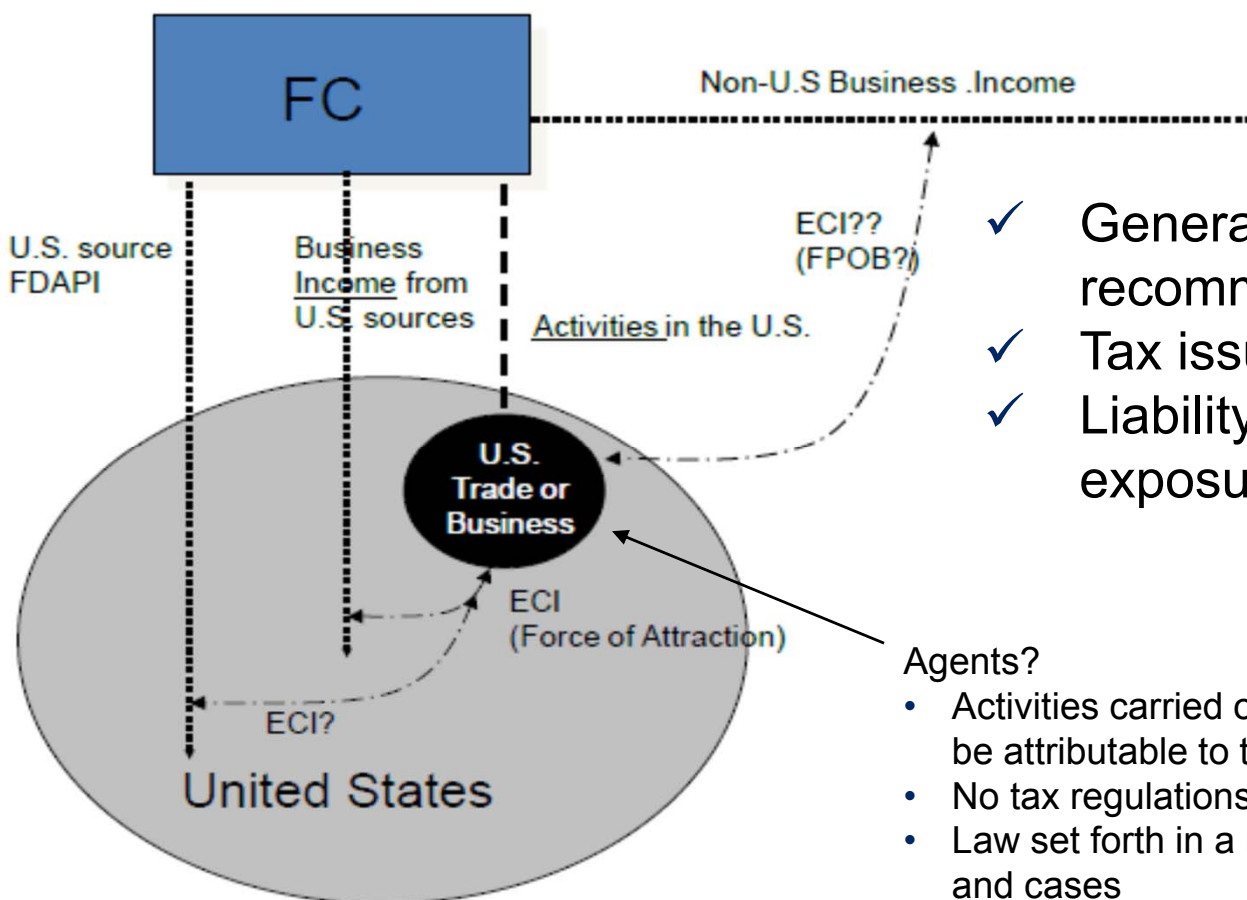


Income Effectively Connected with a U.S. Trade or Business (“ECI”)

- ❖ Business income derived from U.S. trade or business
- ❖ Subject to graduated rates topping out at 35% on **NET** income
- ❖ Business activities of a U.S. partnership (e.g., U.S. LLC) will be attributed to the partners/investors which triggers a withholding obligation by the U.S. LLC/partnership

Structures for Entering the U.S. Market

Direct Presence – Branch



Structures for Entering the U.S. Market

Corporation (Inc. or Corp.)

- Most common
 - ✓ Establishment is convenient and straight forward
 - ✓ Limited liability
 - ✓ No audited financial statement requirement for private companies
 - ✓ Financial results for private companies are confidential
 - ✓ Ownership generally confidential
 - ✓ Importance of proper capitalization and maintenance
- Corporation subject to U.S. federal, state and local income (and possibly other) taxes
 - ✓ Benefits under Income Tax Treaty with the U.S. may be available (at federal level)

Structures for Entering the U.S. Market

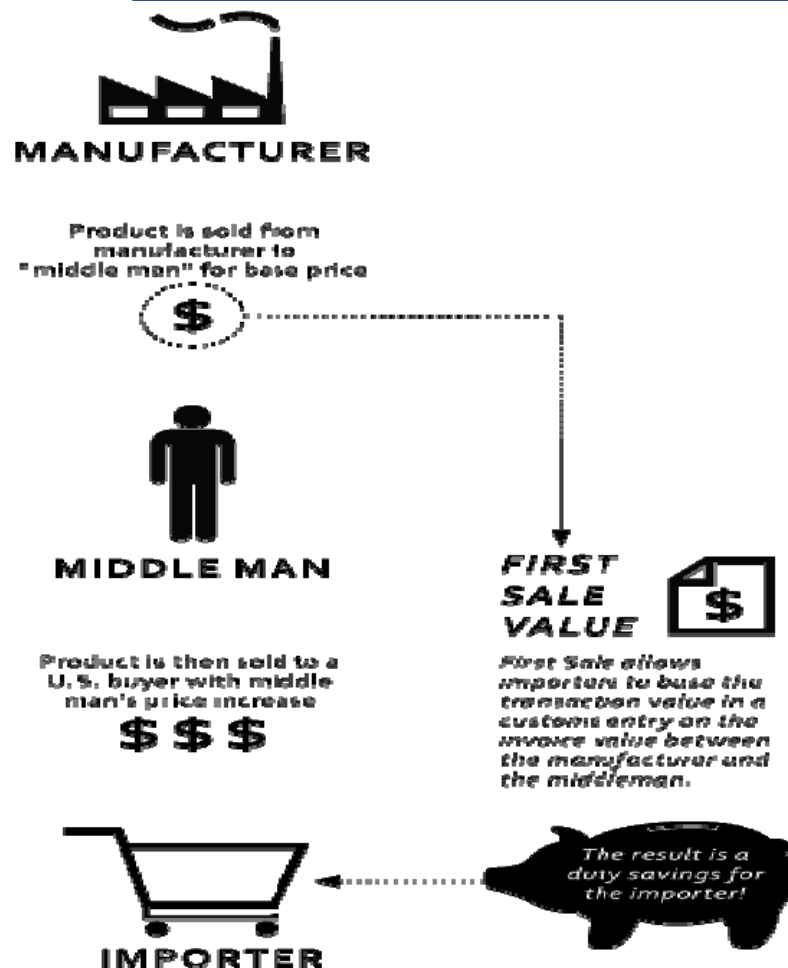
Limited Liability Company (LLC)

- Similar liability protection to a corporation
- Less common for non-U.S. owners
- Tax treatment
 - ✓ LLC, in general, is treated the same for tax purposes as a branch, so the non-U.S. owner files tax returns and pays U.S. federal, state and local taxes
 - ✓ Treaty benefits may NOT be available

Non-Income Tax Considerations

Non-Income Tax Considerations

"First-Sale" Rule



Example of First Sale

Let's assume the Duty Rate is **10%**

If the Vendor's invoice is **\$15,000**

\$15,000

← The duty payment will equal **\$1,500**

If the Manufacturer's Invoice is **\$10,000**

\$10,000

← The duty payment will equal **\$1,000**

— That's a savings of **\$500!**

Transfer Pricing and Base Erosion Profit Shifting ("BEPS")

Transfer Pricing and “BEPS”

- Transfer pricing
 - ✓ Worldwide standard governing transactions between related parties
 - ✓ Such transactions must be “arms’ length”
- Transfer of profits
 - ✓ Generally, if a U.S. company has retained earnings, a transfer of profits will attract a 30% withholding tax (unless reduced by a tax treaty)
 - ✓ The U.S. corporation does not receive a tax deduction for the transfer of profits
 - ✓ Be aware of corporate law limitations on dividend payments

Transfer Pricing and “BEPS”

IRS Form 8975, Country-by-Country Report

- U.S. persons that are the ultimate parent entity of a U.S. multinational enterprise (U.S. MNE) group with annual revenue for the preceding reporting period of \$850 million or more are required to file Form 8975
- Form 8975 and Schedules A (Form 8975) are used by those filers required to report annually certain information with respect to the filer's U.S. MNE group on a CbC basis
- The filer must report the U.S. MNE group's constituent entities, indicating each entity's:
 - ✓ Tax jurisdiction (if any)
 - ✓ Country of organization
 - ✓ Main business activity
 - ✓ Financial and employee information for each tax jurisdiction in which the U.S. MNE does business (including revenues, profits, income taxes paid and accrued, stated capital, accumulated earnings, and tangible assets other than cash)
- Form 8975 and Schedules A (Form 8975) must be filed with the IRS with the income tax return of the ultimate parent entity of a U.S. MNE group for the tax year in or within which the reporting period covered by the Form 8975 ends

Employee & Executive Considerations

Pre-Arrival Tax Planning Checklist

Key U.S. Tax Considerations

- Consider establishing a foreign or U.S. trust for estate planning purposes
- Determine if accelerating gift planning or contemplated sales of assets prior to entering the U.S. will save global tax
- Explore tax strategies that will step up the tax basis of assets to their FMV so only appreciation after becoming a U.S. resident will be taxable in the U.S.
- Review existing investment structures to determine whether there will be adverse tax impacts under U.S. tax laws
- Stock options, when exercised, usually generate ordinary income in the U.S. that is taxable at the top rate – consider exercising prior to arrival
- Review deferred compensation and retirement benefits, to determine how to efficiently access these sources with minimum tax before and after arrival
- If you have a foreign stock plan, check whether vesting will be taxable to you after entering the U.S.
- Plan the proper timing for arrival – Arriving in the last half of the calendar year will usually result in nonresident status for the full year (thus exempting from U.S. tax foreign income and capital gains)
- If you are being relocated, consider whether you should be employed by the U.S. or foreign affiliate and whether you should be covered by social security in the U.S. or home country

U.S. Tax Reform Proposals

U.S. Tax Reform – Highlights

“Unified Framework For Fixing Our Broken Tax Code”

Current

- ❖ Top Corporate Tax Rate = 35%
- ❖ Top Individual Tax Rate = 39.6%
- ❖ Top Pass-Through Tax Rate (S Corps, Partnerships, Sole Proprietors) = 39.6%
- ❖ Worldwide Taxation
- ❖ Estate and Gift Taxes

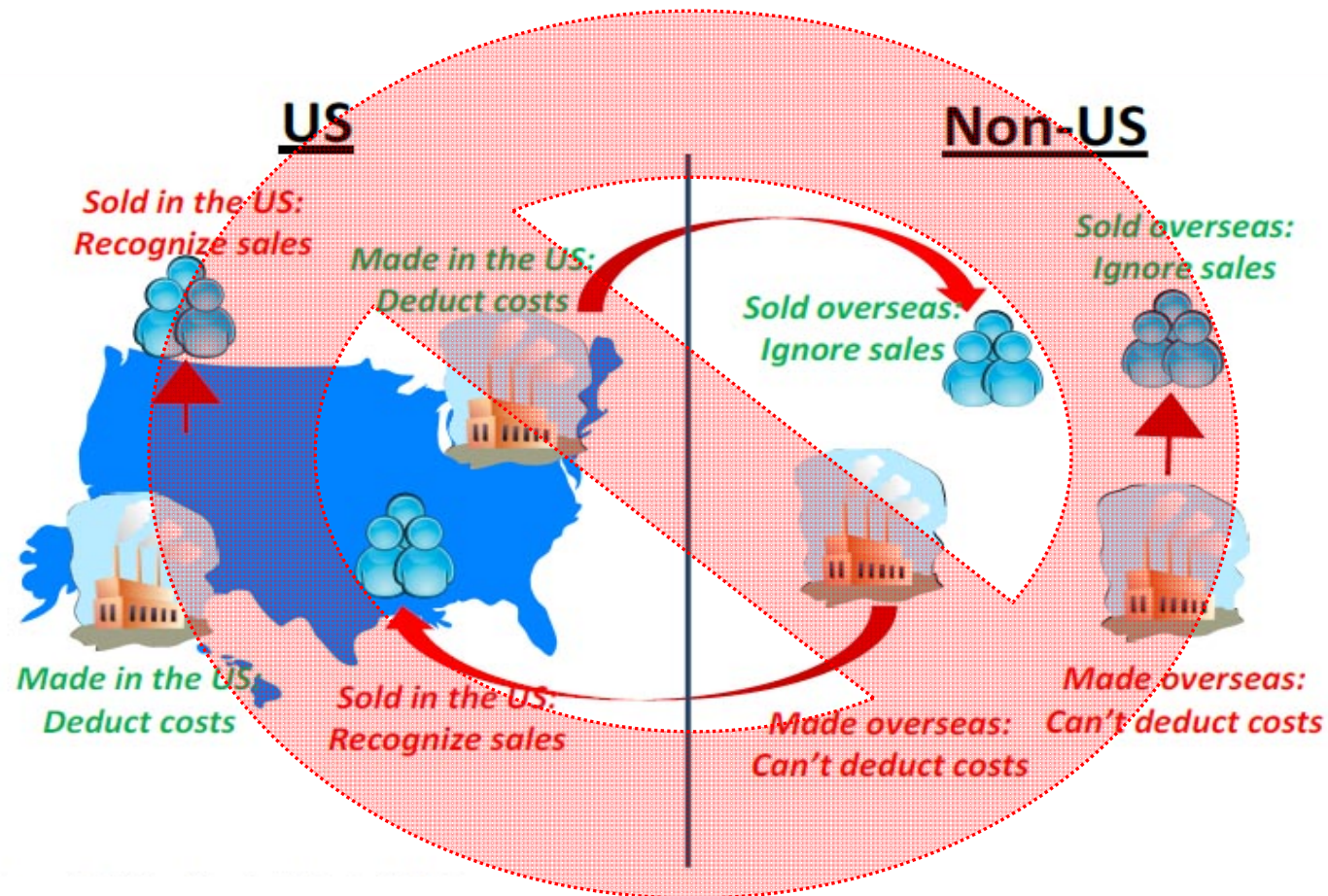


Proposed

- ❖ Top Corporate Tax Rate = 20%
- ❖ Top Individual Tax Rate = 35%
- ❖ Top Pass-Through Tax Rate (S Corps, Partnerships, Sole Proprietors) = 25%
- ❖ Territorial Taxation
- ❖ **NO** Estate and Gift Taxes

U.S. Tax Reform – Highlights

Border Adjustability Tax NOT Included



THANK YOU.....

For the Opportunity to Present to You Today



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