INTERNATIONAL TAX

M, Th -- 12:30-1:45pm

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“INBOUND” TRANSACTIONS

- US taxation of foreign persons with income connected to United States

“OUTBOUND” TRANSACTIONS

- US taxation of US persons with income connected to a foreign country

MECHANISMS TO MITIGATE DOUBLE-TAXATION

- Exemption Method → Capital Import Neutrality

  equal tax treatment of business operations within source country

- Credit Method → Capital Export Neutrality

  equal tax treatment of all investors residing in residence country

- Deduction Method → National Neutrality

  no special preference given to foreign taxes – treat like any other expenditure

- Bilateral Tax Treaty

RESIDENT ALIEN TESTS – IRC § 7701(b)(1)(A)

(i) “Green Card” Test

(ii) “Substantial Presence” Test – 7701(b)(3)

- >= 31 days of “presence” in test year, and
- >= 183 days of “presence” under 3-year weighted formula

Caveats:

- ✓ Not all days of physical presence count as “presence”
- ✓ “Closer connection” exception – 7701(b)(3)(B)
  - < 183 days of presence in test year
  - “tax home” in foreign country
  - “closer connection” to that foreign country than to US

(iii) First Year Election

§ 877A – TAX-MOTIVATED EXPATRIATION

I. § 877A APPLIES IF:

- Former citizen exceeds $124,000 5-year average income tax liability threshold ($172,000 in 2021); net worth threshold ($2 million); or fails to comply with certification reqts
- Exceptions: (i) Dual citizen at birth, if US resident for <=10 of past 15 years; or (ii) Relinquishment before age 18½, and US resident for <= 10 years
- Applies to former long-term green card holders (8 of past 15 years) who exceed thresholds (statutory exceptions inapplicable)

II. TAX CONSEQUENCES IF § 877A APPLIES:

- Mark-to-market: recognize gain as if assets sold
- Exclude first $600,000 of gain ($744,000 in 2021)
- Certain assets excluded; also, can post bond to defer payment

METHODS FOR ALEVIATING DOUBLE-TAXATION

Problem:

Jurisdiction to tax can be claimed by both:

- country of taxpayer's residence/citizenship ("residence" country)
- country where income-producing property/business located ("source" country)

Unilateral Solutions:

- Residence country imposes worldwide taxation, but gives foreign tax credit ("credit method")

- Residence country does not tax income earned in other countries ("exemption method")

Bilateral Solution:

- Income tax treaty (generally limits source-country taxation)

INCOME TAX TREATIES - OVERVIEW

- Bilateral agreement tailored to specifics of 2 countries tax laws
- Based on various model agreements (US / OECD / UN)
- Principal Goals:
  - Reduce/Eliminate potential for double taxation
  - Administrative aspects – info sharing & mutual agreement procedure
- Relationship with Internal Revenue Code
- Methods for reducing/eliminating potential for double taxation:
  - Business & personal services Income: Threshold activity before source-country taxation
  - Non-business investment income & capital gains: Reduce (sometimes to 0) source-country tax rate
  - Other types of income (e.g., pensions): limit source-country taxation
- Eligibility for benefits: “Resident” of a Contracting State
  - Tie-breaking & “Limitation on Benefits” provision