

"Bring it home" (reviewing the international provisions of the 2017 federal tax reform legislation)

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This article, as originally published in the September 2018 issue of Los Angeles Lawyer, analyzes provisions of the Tax Cuts and Jobs Act that relate to foreign income and investments.

The Tax Cuts and Jobs Act, P.L. 115-97 (the "Act") signed by President Trump on December 22, 2017, now fully in effect, is changing our international tax system foundationally and adding complexity in an already murky area. The Act professes to transform the United States international taxing system from a global one – which taxes worldwide income – to a territorial one – which taxes only U.S. source income. But something is lost in the translation, and the reality is that the new provisions tax on a quasi-territorial basis at best. Switching to this hybrid tax system is disruptive, taxing not globally but selectively, and as written is complex in application. Practically, different types of income and taxpayers are now taxed even more differently; the contrast is particularly pronounced comparing taxable "C" corporations versus individual and other non-corporate taxpayers.

One of the Act's other primary goals is to discourage U.S. businesses from shielding taxable income through low taxed foreign operations or investments and instead encourage them to maintain business assets – especially intangible assets – in the U.S. while exporting their products and services. In an increasingly globalized economy, these shifts in policy have a material impact on businesses and individuals since key changes in the Act often create contradictory economic incentives for those who transact business internationally. Overall, the application and interaction of the numerous changes to the Internal Revenue Code's international tax provisions remain unclear in many important respects, and guidance has been sporadic at best.

The Act attempts to accomplish its objectives by, among other things, imposing a one-time transition tax that taxes previously deferred foreign income, a current and on-going tax on certain foreign income, a tax break for select exports, and limits on deductions of payments between U.S. companies and their foreign affiliates.

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