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Beneficial ownership transparency

The U.S. Treasury's Financial Crimes Enforcement Network (FinCEN) issued a final rule[1] establishing a beneficial ownership information reporting requirement pursuant to the bipartisan Corporate Transparency Act. The rule, Jan. 1, 2024, requires most corporations, limited liability companies, and other entities created in or registered to do business in the U.S. to report information about their beneficial owners – the individuals who ultimately own or control the company – to FinCEN. Reporting companies created or registered before Jan. 1, 2024, will have until Jan. 1, 2025, to file their initial reports. Reporting companies created or registered after Jan. 1, 2024, will have 30 days to file initial reports.

FTC regs

New final foreign tax credit (FTC) regulations[2] were set at the end of 2021 and published early this year in the Federal Register. Effective beginning with the 2022 tax year, these regs can potentially make foreign income taxes that were creditable become non-creditable for U.S. purposes.

The regs (subsequently corrected here and here) address, among other issues, foreign income tax and a tax in lieu of an income tax; disallowance of a credit or deduction for foreign income taxes with respect to dividends eligible for a Sec. 245A deduction; the allocation and apportionment of interest expense, foreign income tax expense and certain deductions of life insurance companies; foreign branch category income; and when foreign taxes accrue and can be claimed as a credit.

Strengthened crypto enforcement

The federal Inflation Reduction Act (IRA), passed in August, pumped $80 billion to the Internal Revenue Service over the next 10 years, more than half of that money for intensified enforcement, including of cryptocurrency transactions.

Also this year, a federal court gave the IRS authorization for a John Doe summons on a Los Angeles-based crypto dealer for information about U.S. taxpayers who conducted at least $20,000 in crypto transactions between 2016 and 2021.

New schedules

IRS Schedule K2[3] and Schedule K3[4] kicked in for the 2021 tax year for foreign transaction information formerly reported on Form 1065, Schedule K. The K2 reports items of international tax relevance for certain businesses. Schedule K3 breaks down an individual's share of global income, credits and deductions. These forms both introduced in 2020 and later revised, aim to make federal income tax liability more transparent for partners and shareholders who share ownership in companies.

1 https://www.federalregister.gov/public-inspection/2022-21020/beneficial-ownership-information-reporting-requirements
2 https://public-inspection.federalregister.gov/2021-27887.pdf
3 https://www.irs.gov/pub/irs-pdf/f1065sk2.pdf
4 https://www.irs.gov/pub/irs-pdf/f1065sk3.pdf

FBAR penalties

This fall, the U.S. Supreme Court plans to hear Bittner v. U.S[5], a case that presents a conflict over statues under the Bank Secrecy Act (BSA). At issue will be whether a "violation" under the BSA is the failure to file an annual FBAR no matter the number of foreign accounts or whether there is a separate violation for each account not properly reported.

Offshore loophole slammed

Investigation by the U.S. Senate Finance Committee uncovered that the "shell bank" loophole in the Foreign Account Tax Compliance Act (FATCA) allows banks offshore to accept funds from U.S. persons without reporting them to the IRS.

The loophole was exploited by the late billionaire Robert Brockman, who evaded taxes on more than $2 billion in income. (Brockman, 81, was indicted in a tax-evasion case before he died in August.) In the eight countries where entities linked to Brockman were established, there are more than 128,000 entities registered with the IRS as financial institutions under FATCA, said[6] Committee Chair Ron Wyden (D-OR).

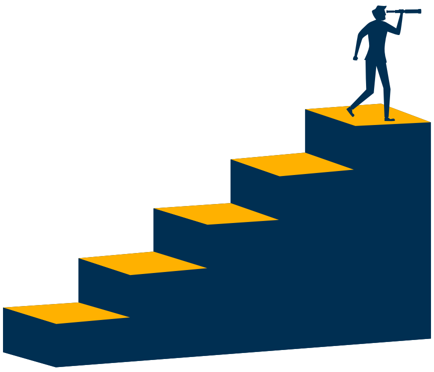
Wyden added that he's working on legislation to close this loophole.

Falling short

A provision in the Tax Cuts and Jobs Act of 2017 that was to raise hundreds of billions of dollars in taxes on deferred earnings from multinational companies and their shareholders is only bringing in less than a third of the projected revenue, according to a report[7] by the Treasury Inspector General for Tax Administration.

The repatriation tax provision (Sec. 965 of the Tax Code) aimed to generate $338.8 billion for the federal government for FY 2018 through 2027. Companies and their shareholders have only paid about $94 billion in taxes to the government on the taxes owed by foreign subsidiaries and their shareholders on the profits previously stockpiled abroad. Companies reported $251 billion in tax liability but $157 billion of that was deferred to be paid in instalments.

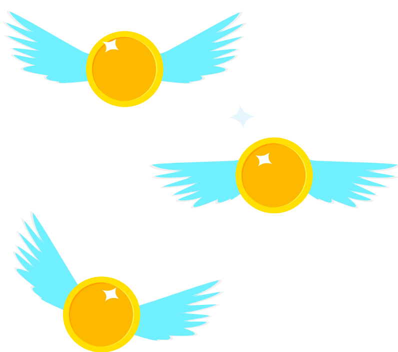
Before passage of the TCJA, taxpayers could defer their U.S. on certain foreign sourced net income by keeping the assets in a foreign jurisdiction. Section 965 removed that option and required taxpayers to pay this new tax on their previously untaxed post-1986 earnings and profits.



Ahead in 2023

Foreign currency delay

The IRS and the U.S. Treasury plan to defer for one year the effective date of final regulations pertaining to foreign currency used by multinational companies' business units abroad (Notice 2022-34[8]).



Crypto development

The U.S. has committed multiple agencies to a framework[9] for engagement with foreign counterparts regarding development of digital assets. President Biden's Executive Order earlier in 2022 also directs development of digital asset and central bank digital currencies technologies.

The Organization for Economic Cooperation and Development has a new global tax transparency framework to provide for the reporting and exchange of information with respect to crypto-assets. The framework aims for transparency in crypto-asset transactions through automatically exchanging information with the jurisdictions of residence of taxpayers annually. Entities or individuals that provide services effectuating exchange transactions in crypto-assets for will have to report under the framework.

Anti-laundering

U.S. lawmakers have introduced a bill[10] to expand anti-money laundering due diligence by finance pros. Authorities claim the "Establishing New Authorities for Businesses Laundering and Enabling Risks to Security (ENABLERS) Act" could combat money laundering and other crimes similar to the Pandora Papers.

Your tax specialist needs to be able to field these and many other questions in an ever-changing tax environment. If we can help, please let us know.

5 https://www.globaltaxes.com/blog.php?id=95

6 https://www.finance.senate.gov/chairmans-news/wyden-investigation-uncovers-major-loophole-in-offshore-account-reporting

7 https://www.treasury.gov/tigta/auditreports/2022reports/202234062fr.pdf

8 https://www.irs.gov/pub/irs-drop/n-22-34.pdf

9 https://home.treasury.gov/news/press-releases/jy0854

10 https://www.wicker.senate.gov/services/files/70F069DC-B6A3-4F64-9FD2-3AD683E6604B