TIP SHEET

10 tax tips for U.S. businesses with international ties

Does your U.S. business have customers, locations, suppliers or employees outside the U.S.? Or, do you have a foreign business with operations in the U.S.? If the answer is yes, you may be subject to particular U.S. tax rules and have special tax reporting requirements. Federal and state governments are seeking to capture additional tax revenue from international companies and transactions. Consider these tips as you approach tax planning.

1. Withhold U.S. taxes when you purchase U.S. real estate from a foreign individual or company.

The Foreign Investment Real Property Tax Act (FIRPTA) requires 15% of the "proceeds" from U.S. real estate sales by foreigners be withheld by buyers and remitted to the IRS. This withholding serves as a deposit on the ultimate tax, and the ultimate tax may be much less or even more. A foreign seller of U.S. real estate should consult an experienced U.S. tax professional.

2. Withhold U.S. taxes from dividend payments to foreign shareholders.

Some international businesses may have two layers of U.S. tax obligation: a corporate tax on profits, and a withholding tax on a dividend paid to a foreign shareholder. Withholding taxes may be reduced by an applicable U.S. income tax treaty.

3. Obtain a transfer pricing study before a transaction with a foreign subsidiary.

U.S. tax law requires companies to confirm that related-party transactions are priced at an "arm's length basis" via a transfer pricing analysis. This analysis must be done contemporaneously. It also needs to reflect current pricing; with recent inflation changes, studies that are more than a year or two old may be outdated.

4. File tax reports and properly withhold taxes on intercompany funds transfers, capital contributions or loans.

Transfers of funds between a U.S. company and a related foreign entity, as well as interest payments to a foreign entity, may be subject to tax withholding requirements and trigger certain filing requirements. There are significant penalties ranging from $10,000 - $25,000 for not filing such U.S. tax forms.

5. If needed, report on and withhold taxes from payments to external foreign consultants.

Companies often forget or mistakenly overlook required withholdings and/or filings, or don't realize certain consultants must be classified as foreign. Either can lead to IRS penalties.

6. Explore whether global intangible low-taxed income (GILTI) rules apply to you.

The GILTI tax provisions that apply to U.S. businesses that control foreign corporations have changed in recent years, increasing the number of U.S. individuals and companies subject to U.S. tax. Both corporations and non-corporate taxpayers may have an obligation to pay U.S. taxes on the profits of controlled foreign corporations.

7. Check applicable FBAR filing requirements.

U.S. businesses with financial accounts in foreign countries may be required to file an FBAR (FinCEN Form 114) if the aggregate value of all foreign financial accounts exceeded $10,000 at any time during the calendar year reported. Failure to file such FBAR could result in penalties of $10,000 per year.

8. Understand whether non-resident individuals are subject to U.S. taxes.

Sometimes, a foreign individual's U.S. income tax obligation may come as a surprise. Anyone considered a U.S. tax resident may be required to report and pay taxes on their worldwide income. They may also be subject to estate and other property taxes. To file a U.S. federal tax return, most foreign individuals will need an Individual Taxpayer Identification Number (ITIN), which can take several months or longer to acquire.

9. Prepare to file a report of your ultimate beneficial ownership.

After January 1, 2024, most entities organized in the U.S. and owned (wholly or partially) by an individual, individuals or company must file an annual report with FinCEN outlining their ultimate beneficial ownership.

10. Consider engaging an international tax advisor.

It can be a challenge to understand which companies and individuals have U.S. tax obligations, and the corresponding filing requirements. An experienced international tax advisor can help you understand your filing and tax obligations, stay up to date on tax law changes, and structure acquisitions and sales in a tax-efficient manner. Further, through proper tax planning, a tax advisor may be able to help your international business substantially reduce or avoid tax-related penalties.

Contact Kaufman Rossin's international tax team for help with understanding your tax obligations and opportunities.