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INSIGHTS

U.K. BUDGET PROCLAIMS DEATH KNELL FOR REMITTANCE BASIS TAXATION

THE MOST IMPORTANT 15 QUESTIONS TO ASK ABOUT THE FORFAIT IN SWITZERLAND

ISRAEL PROPOSES MODIFICATIONS TO TAX REPORTING OBLIGATIONS FOR *OLIM*

AND MORE

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EDITORS' NOTE

In this month's edition of *Insights*, our articles address the following:

- **U.K. Budget Proclaims Death Knell For Remittance Basis Taxation.** As was widely anticipated, the Chancellor of the U.K. used his budget speech on March 6 to announce the termination of the non-domicile regime and remittance basis of taxation effective April 12, 2025. In its place, a new foreign income and gains ("F.I.G.") regime will be available for individuals who become U.K. tax resident after a period of 10 tax years of nonresident status. Individuals who qualify for the new regime will be able to bring F.I.G. to the U.K. free from any U.K. tax for up to four years. Current non-doms who cannot qualify for the F.I.G. regime can benefit from a 50% deduction on remittances through April 5, 2026. Kevin Offer, C.A., a partner of Hardwick and Morris L.L.P., London, explains these and other provisions that will apply as the U.K. enters a brave new world.

- **The Most Important 15 Questions to Ask About the *Forfait* in Switzerland.** As one door closes for non-doms in the U.K., a tried and true door may open in Switzerland, in the form of a negotiated annual tax amount. For many decades, several cantons in Switzerland have adopted a special taxation regime known as the *forfait*. It allows foreign nationals relocating to the respective canton to pay tax based on worldwide living costs. Although the *forfait* regime was abolished in a number of cantons, a national vote was held in 2014 turning down a proposal calling for its elimination. In his article, Michael Fischer, the founding partner of Fischer Ramp Buchmann AG, Zürich, asks – and answers – questions about the most important elements to be considered when considering Switzerland as a new place of residence.

- **Israel Proposes Modifications to Tax Reporting Obligations for *Olim*.** Acting in response to recommendations by the O.E.C.D. Global Forum on Transparency and Exchange of Information for Tax Purposes, legislation has been proposed in Israel to adopt new reporting obligations for Israeli entities, certain trusts, and individuals known as "Residents for the First Time" and "Senior Returning Residents." The proposed amendment does not alter tax liabilities in Israel or eliminate preferred tax treatment of *Olim*. Rather, it revises certain reporting obligations in order to increase transparency. As of April 1, 2024, adoption is imminent. Boaz Feinberg, a partner of Arnon, Tadmor-Levy Law Firm, Tel Aviv, explains all.

- **The Sun is Setting on the T.C.J.A.: Time to Set Gaze on Pre-T.C.J.A. Tax Law.** The Tax Cuts and Jobs Act ("T.C.J.A.") was enacted in 2017, bringing substantial alterations to the tax landscape for individuals and corporations. Many of these alterations are set to expire at the end of 2025. Understanding these changes, including their implications and timelines, is crucial for individuals and corporations. Michael Bennett addresses some of the more problematic provisions that are scheduled to reappear in the tax law. Among other things, individual tax rates will increase, the standard deduction will decrease, S.A.L.T. deductions will be allowed, corporate tax rates will increase, the Q.B.I. deduction will expire, the corporate tax on G.I.L.T.I. will increase, and the tax benefit for F.D.I.I. will decrease.

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- **Altria, C.F.C.'s, Downward Attribution, and the "Real" Congressional Intent.** Determining Congressional intent is not often an easy task, especially when Congress has been silent, one way or the other. Nonetheless, when it comes to "downward attribution" of share ownership, the intent of Congress rises to the level of an enigma, at least in the eyes of Altria Group, Inc. As part of the T.C.J.A., the scope of Subpart F was expanded by eliminating a ban on the attribution of ownership in a series of foreign subsidiaries from a foreign parent corporation to all its U.S. subsidiaries. In a nutshell, all such foreign subsidiaries could be categorized as controlled foreign corporations or C.F.C.'s. This did not necessarily raise tax revenue as much as expose significant numbers of U.S. corporations to penalties for failing to file forms required of "U.S. Shareholders" of C.F.C.'s. The Treasury Department says the statutory language is clear with no room for carveouts. Altria looks to several items of legislative history and statements by leading senators to suggest otherwise. As Wooyoung Lee explains in his article, this is the substance of the tax dispute between Altria and the I.R.S., which is now before the U.S. District Court for the Eastern District of Virginia.

We hope you enjoy this issue.

- The Editors

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U.K. BUDGET PROCLAIMS DEATH KNELL FOR REMITTANCE BASIS TAXATION

Author
Kevin Offer

Tags
Arising Basis
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Foreign Trusts
F.I.G.
Inheritance Tax
Non-Dom
Remittance Basis

Kevin Offer, C.A., is a Partner at Hardwick and Morris L.L.P., London. Kevin specializes in the taxation of private clients and their business interests with a particular interest in taxation of sportsmen and entertainers.

INTRODUCTION

As was widely tipped, the Chancellor used his budget speech on March 6th to announce the termination of the U.K.'s non-domicile regime and remittance basis of taxation. This seems to be a complete steal from the Labour Party, which pledged to abolish the "non-dom loophole" if and when it would come into power.

The full details are yet to be known. Some of the changes to inheritance tax are to be the subject of a consultation. Based on the H.M.R.C. technical note published shortly after the chancellor's speech ended, this article addresses the highlights of the proposal.

OVERVIEW OF BUDGET PROPOSAL

The current remittance basis of taxation will end on April 5, 2025. The remittance basis of taxation as it currently operates will no longer be available after that date. The following changes will then take effect from April 6, 2025.

- A new foreign income and gains ("F.I.G.") regime will be available for individuals who become U.K. tax resident after a period of 10 tax years of nonresident status with regard to the U.K. During the first four tax years of U.K. tax residence, individuals who qualify for the new regime will be able to bring F.I.G. to the U.K. free from any U.K. tax charges. Tax will also not be payable on distributions received from nonresident trusts. During this period, U.K. income and gains will be subject to U.K. tax in the normal way.
- If, on April 6, 2025, individuals have been nonresident for 10 years and U.K. resident for less than four years they will be able to use the new regime for any tax year of U.K. residence until the fourth year of residence is completed.
- Overseas Workday Relief ("O.W.R.") will remain available for the first three tax years of U.K. residence but will be based on an employee's residence and whether he or she opts to use the new four-year F.I.G. regime from April 6, 2025.
- The protection from taxation on income and gains arising within trust structures will be removed for all current nondomiciled and deemed-domiciled individuals who do not qualify for the new four-year F.I.G. regime. Any F.I.G. arising in a nonresident trust structure from April 6, 2025, will be taxed on the arising basis when the settlor or transferor has been resident in the U.K. for more than four tax years. This mirrors the way trust income and gains are presently taxed when the settlor or transferor is domiciled in the U.K. Any F.I.G. that arose within a trust or trust structure before April 6, 2025, will

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be taxed on settlors or beneficiaries if they are matched to worldwide trust distributions.

- Any individual who is currently taxed on the remittance basis and not eligible for the new four-year F.I.G. regime will pay tax on 50% of foreign income for the U.K. tax year ending April 5, 2026. This reduction applies to foreign income only. It does not apply to foreign chargeable gains. Beginning with the U.K. tax year commencing on April 6, 2026, no reduced tax rate will apply to foreign income which will then be taxed in full on the arising basis.
- For foreign capital gains, an individual who does not fall within the four-year F.I.G. regime will be taxed when and as they arise after April 6, 2025. Transitional relief will be available for individuals who have claimed remittance basis taxation in the past. They will be allowed to rebase any asset disposed of to its value at April 6, 2019, if the asset was held at that date.
- Where an individual was previously taxed on the remittance basis, an election is available to pay tax at a reduced rate of 12% on remittances of pre-April 6, 2025, F.I.G. This benefit is temporary. It will apply for two years from April 6, 2025. The benefit will not be available for F.I.G. within trusts and trust structures.
- Subject to a consultation, it is intended that inheritance tax will be based on residence from April 6, 2025. The proposal is for U.K. inheritance tax to be charged on worldwide assets if an individual has been resident in the U.K. for a period of 10 years. Once the 10-year period has been exceeded, it will be necessary to remain resident outside the U.K. for a period of at least 10 years to escape U.K. inheritance tax.
- For assets held within trust structures, the inheritance tax position will follow the residence of the settlor. However, trusts funded before April 6, 2025 will remain outside the scope of U.K. inheritance tax provided trust assets are not brought into the charge to U.K. inheritance tax under existing rules.

PATH FORWARD FOR NON-DOM INDIVIDUALS REPORTING INCOME ON THE REMITTANCE BASIS

In light of the revisions discussed above, individuals currently claiming benefit under the remittance basis taxation rules will be affected in the following ways:

- Those persons already resident in the U.K. for four or more years will be entitled to claim a 50% reduction in foreign income subject to tax in the tax year beginning April 6, 2025.
- Individuals will be able to rebase foreign assets to the value on April 6, 2019, for disposals after April 6, 2025.
- Any unremitted F.I.G. remaining abroad on April 5, 2025, can be remitted after that date at a special rate of 12%. The relief exists only for a 2-year period. The relief is intended to incentivize repatriation of F.I.G. and investment in the U.K. The benefit appears to be available to anyone with unremitted

F.I.G., including those who are now deemed domiciled. It will not be available for remittances from trust structures. Consequently, trust beneficiaries who report income under the remittance basis should alert trustees of the benefit of making trust distributions before April 6, 2025.

- Trust structures will continue to be effective until April 5, 2025. After that date, any F.I.G. within a trust structure will be taxed on the settlor when and as it arises if the settlor, a spouse, or certain other individuals are beneficiaries or can receive a benefit from the trust. If such individuals are excluded from benefitting under the trust structure, it would appear the trust will continue to provide protection for beneficiaries resident in the U.K.
- An offshore trust structure set up before April 6, 2025 will continue to be effective for inheritance tax purposes.
- An existing offshore trust structure set up before April 6, 2025 will continue to be effective for F.I.G., provided the settlor, spouse, or certain other persons are excluded from benefitting under the trust before April 6, 2025.
- Where an offshore trust is created before April 6, 2025, and the settlor of the trust, spouse, or certain other persons are able to benefit from the trust, any F.I.G. realized within the trust structure will be taxed on the settlor on an arising basis.

CONCLUSION

On June 23, 2016, the U.K. held a referendum on its membership of the E.U. The question facing voters was whether the U.K. should remain a member of the E.U. A reported 51.89% of voters voted to leave the E.U., and the U.K. left the E.U. on January 31, 2020. On March 6, 2025, the Chancellor announced the demise of remittance basis taxation for non-dom individuals. The proposal has been explained above, as has a path forward for those currently reporting income on the remittance basis. The ultimate question is the extent to which non-dom individuals will remain or will "vote with their feet."

"The ultimate question is the extent to which non-dom individuals will remain or will '"ote with their feet.'"

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THE MOST IMPORTANT 15 QUESTIONS TO ASK ABOUT THE *FORFAIT* IN SWITZERLAND

Author
Michael Fischer

Tags
Employment
Forfait
Inheritance Tax
Minimum Income
Social Security Tax
Switzerland
Tax Treaty Benefits

Michael Fischer, certified tax expert and attorney, is a founding partner of Fischer Ramp Buchmann AG. He is an experienced lawyer in Swiss and international tax matters and has extensive knowledge in matters relating to the taxation of private clients and their companies.

INTRODUCTION

For many decades, the *forfait* taxation regime has been in effect in Switzerland, essentially allowing foreign nationals relocating to Switzerland to pay tax based on their worldwide living expenses.

The *forfait* regime is often mentioned alongside the soon-to-be former U.K. and non-dom regime and the Italian regime available to new residents. By comparison, the *forfait* regime, coupled with other advantages of the Swiss tax system, is more beneficial on many counts, such as legal certainty and inheritance tax.

Although the *forfait* regime was abolished locally in a number of cantons, a national vote was held in November 2014 with close to 60% of the voters voting in favor. It is fair to say that in most of Switzerland, the *forfait* is here to stay.

In light of the Budget Day announcement in the U.K., heralding the demise of non-dom taxation, wealthy non-domiciled individuals in the U.S. are likely to explore new countries in which to live under a favorable tax regime. For those contemplating Switzerland, this article answers the most important 15 questions that should be asked when considering a move to Switzerland

THE MOST IMPORTANT 15 QUESTIONS

1. I am a not a Swiss national and I intend to relocate to Switzerland. Do I qualify for the benefits of the *forfait* regime?

The *forfait* regime is available to foreign nationals taking up tax residence in Switzerland for the first time or after an absence of at least 10 years. Although the regime was originally aimed at wealthy foreigners coming to spend their autumn years in Switzerland, there has never been a minimum age nor a maximum age for *forfait* applicants.

2. If I qualify for the *forfait* regime, am I allowed to work in Switzerland?

To be eligible for the *forfait* regime an individual cannot exercise paid employment in Switzerland or be self-employed. Gainful activity abroad is permissible, however.

3. If my spouse is a Swiss national does that affect my qualification for the *forfait* regime?

Marriage to a Swiss spouse adversely affects an individual's qualification of the *forfait* regime. Beginning in 2016 neither the applicant nor the spouse can be a Swiss national.

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4. **If I am a dual national, and one of my nationalities is Swiss, does that affect my qualification for the *forfait* regime?**

Individuals who are dual nationals do not qualify for the *forfait* regime when one of the nationalities is Swiss.

5. **How is my income calculated when I qualify for the *forfait* regime?**

Under the *Forfait* regime, income is deemed to be the highest of the following four amounts:

- An amount based on the taxpayer's worldwide living expenses. Living expenses include costs for accommodation, general living, cars, aircraft, yachts, housekeeping, and personnel for all family members financially supported by the taxpayer. Put simply, the tax base corresponds to what it takes to keep the family going, whereby cantons have substantial leeway in determining the practical aspects.
- An amount based on the rent multiple. The multiple is seven times the annual rent for the person's living accommodations.
- An amount determined under the so-called control calculation. The tax payable under the *forfait* regime must be equal at least to the income and wealth tax payable at ordinary rates on (i) Swiss real estate and related income, (ii) movable assets located in Switzerland and related income, (iii) Swiss securities and related income, (iv) Swiss intellectual property and related income, (v) Swiss source pensions, and (vi) income for which treaty benefits are claimed in a country that has in effect an income tax treaty with Switzerland.
    - Swiss securities include Swiss shares and dividends or interest from Swiss sources. A portfolio of non-Swiss shares held and managed by a Swiss bank should not give rise to any issues. In comparison, interest on a Swiss cash account may be problematic.
    - Treaty-protected income will typically include non-Swiss dividends or royalties subject to a withholding tax in the source country. Such income must be included in the control calculation if a reduction of source tax is claimed under an applicable treaty. See the answer to Question 8 for claiming treaty benefits after a *forfait* is obtained.
- A minimum amount. The minimum base for Federal tax purposes is CHF 429,100.

6. **Under the *forfait* regime, how much tax will likely be paid?**

Tax payable is calculated by application of the ordinary progressive tax rates to the agreed tax base. By way of example, a taxpayer with a monthly rent of CHF 5,500 will have a minimum Federal tax base of CHF 462,000 (5,500 × 12 × 7). With a monthly rent of CHF 3,500 his tax base will be CHF 429,100 (rent multiple of 3,500 × 12 × 7 = 294,000). Because the amount of CHF 294'000 is below the minimum of CHF 429,100, the minimum amount will be deemed to be the tax base.

In addition, the tax base for computing tax under the *forfait* regime Swiss source income such as dividends or interest on Swiss securities, royalties, and rental income, assets located in Switzerland, and non-Swiss income for which treaty benefits are

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claimed in the treaty partner jurisdiction must be taken into account. will be subject to a so-called “control calculation” The sum of that addition, if exceeding the minimum amount of CHF 429,100 or the rent multiple, will be the income tax base.

To illustrate, a married taxpayer with two children and a deemed income of CHF 429,100 would pay tax in the following cantons of residence in the following amounts:

Canton of Residence	*Approx. Tax Payable*
Zug	CHF 130,000
Gstaad	CHF 165,000
Klosters	CHF 149,000
Geneva	CHF 160,000
Lausanne	CHF 172,000

Given the wide range of applicable tax rates in Switzerland at both the cantonal and communal level, there is considerable scope for geographical tax planning.

7. What is meant by the term “geographical tax planning?”

Despite its relatively modest size, Switzerland has 26 cantons each of which is subdivided into more than 2,000 local communes. Tax is levied at the federal, cantonal, and communal levels. A *forfait* is negotiated with the cantonal authority to arrive at the tax base to which ordinary tax rates apply. Although a statute exists calling for the harmonization of taxes between cantons, considerable differences exist in how the cantonal authorities apply the law in practice. In addition, cantons and communes have strongly differing tax rates.

In other words, if your main concern is to pay as little tax as possible you will look first at the communes with the lowest rates and most attractive local practice. Income tax, wealth tax, and inheritance tax must be taken into account when choosing a jurisdiction. As a rule of thumb, remote cantons are generally viewed as having the most attractive tax rates.

Usually, a client will have an idea of where he or she would like to live. The first cut is based on language preference, (German/French/Italian-speaking cantons). Then, the cut is preference for cities, mountains, or somewhere in between. Taking these preferences into account, an individual look at the likely tax results under the applicable *forfait* regime.

8. As a *forfait* taxpayer, do I benefit from income tax treaties entered into by Switzerland?

Any income for which treaty protection is claimed will need to be included in the control calculation addressed in the answer to Question 5.

Income tax treaties with several treaty partner jurisdictions do not treat a taxpayer who benefits from a *forfait* regime as tax resident in Switzerland. Withholding taxes on income arising in those countries are not reduced. Other treaties contain specific

provisions in respect of *forfait* taxpayers under which income from those countries must be included in the normal Swiss tax base. Income tax treaties with Germany, Belgium, Norway, Italy, Austria, Canada, and the U.S. contain this type of provision. In addition, there is some uncertainty in practice as to the treatment of French source income.

9. If I live the balance of my life in Switzerland and pay income tax under the *forfait* regime of a specific canton, what is the likely inheritance exposure for my heirs?

Inheritance tax remains a matter for the cantons to decide. Switzerland held a national vote in 2015 in which nearly 70% of the people voted against the introduction of a federal inheritance tax applying at 20% across the board.

All cantons offer full spousal exemption, and in the vast majority cantons, both lifetime and death transfers to descendants are not subject to tax. Vaud levies a relatively moderate inheritance tax on transfers to children. The same is true for Geneva if the decedent was subject to the *forfait* regime.

"Inheritance tax remains a matter for the cantons to decide."

Bequests to unrelated donees may be subject to gift or inheritance tax of up to approximately 54% depending on the canton. The cantons of Schwyz and Obwalden (German-speaking) have no inheritance tax at all, meaning that gifts and bequests to unrelated donees are free of tax.

10. If I benefit from the *forfait* regime, am I subject to social security taxes?

Forfait taxpayers under the age of 65 are subject to social security contributions. Depending on an individual's wealth, the annual contribution may be as much as CHF 25,700 plus approximately 5% administrative costs.

11. How do I obtain my *forfait* and what do I have to disclose?

Obtaining the *forfait* is usually less of an issue than immigration, especially for persons who are not E.U. nationals.

Once the residence canton and commune of choice have been identified, the local cantonal tax authorities issue the *forfait* ruling. Information to be provided in conjunction with an application for a *forfait* ruling includes an individual's worldwide living expenses and an approximation of his or her wealth. The level of detail requested by the authorities varies greatly among the cantons.

Once all required information is provided, a ruling may be issued within a couple of weeks. On an annual basis, a simplified annual tax return will normally have to be filed.

12. Which Cantons offer *forfait* regime tax rulings?

Forfait taxation is available in most cantons, including

- Geneva,
- Vaud,
- Valais,
- Berne,

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- Schwyz,
- Zug,
- Grison, and
- Ticino.

Zurich and Basel are among the cantons having abolished the regime.

13. How complicated is it to obtain an immigration permit?

The relevant criterion in determining the complexity of obtaining an immigration permit is the nationality of the applicant. The primary distinction is the one between E.U. nationals and nationals of countries outside the E.U. Nationals of the 27 E.U. Member States are entitled to a residence permit, provided they demonstrate the ability to finance their lifestyle, and obtain valid health insurance within three months from the arrival date. The procedure for nationals of other countries is somewhat more burdensome. Typically, an applicant must fit within one of three categories:

- The applicant must demonstrate a particular connection to Switzerland (*e.g.* childhood or holidays regularly spent, family members resident, or education in Switzerland).
- The applicant is 55 years old or older.
- The applicant qualifies for a statutory exemption. Statutory exemptions can include a cultural exemption or a fiscal exemption, which is similar to an investor visa in other countries.

Nationals of countries that are not E.U. Member States may also seek a permit for education or medical reasons. For *forfait* purposes, such permits are not relevant except for the stays of an extended period.

An applicant's family will normally be granted the right to join the *forfait* taxpayer once he or she has obtained a residence permit.

14. Will Swiss forced heirship rules apply to my estate?

Swiss forced heirship rules are optional for foreign nationals, who may select the law that applies to the devolution of their property. If an individual is a national of an E.U. Member State, the E.U. Succession Regulation will be applicable.

15. Am I allowed to buy an apartment to serve as my residence?

The right to purchase real estate is unrelated to an individual's tax status. The rules apply equally to a holder of a *forfait* as to a foreign national that is an ordinary taxpayer.

Switzerland has enacted a statute restricting the acquisition of real property by persons who are not Swiss nationals. The statute is known as "Lex Koller." More or less, it provides as follows:

- A national of a Member State of the E.U. or the E.F.T.A. who resides in Switzerland is not subject to any restriction under Lex Koller.
- A national of Member States of the E.U. or the E.F.T.A. who is not a Swiss resident must obtain a Lex Koller permit for the acquisition of a holiday home.
- A national of a country outside the E.U. or the E.F.T.A. who holds a permanent residence permit (a "C permit") is not subject to any restriction under Lex Koller.
- A national of a country outside the E.U. or the E.F.T.A. who holds an ordinary residence permit (a "B permit") is entitled to purchase a primary home without a Lex Koller-permit. The purchase of a second home will require a Lex Koller permit.
- A holiday apartment inherited from a parent is not subject to Lex Koller.

In addition, Switzerland has enacted second home legislation, that applies regardless of nationality. The legislation essentially restricts the quota of holiday homes within a commune to 20% of the housing stock in the commune.

CONCLUSION

Many European countries compete to be attractive jurisdictions for the wealthy or near wealthy. The list grows from year to year, but also shrinks. In comparison to the "wannabe's," Swiss voters approved the existence of the *forfait* regime in a national vote by over 60% of the population voting favorably. Of equal importance, the tax regime is controlled locally on a canton-by-canton basis, meaning that the regime is beyond the reach of a central government, which is the case in other jurisdictions. It may not be the non-dom regime with the lowest annual tax payment, but for those who can afford it, the Swiss *forfait* regime is here to stay.

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ISRAEL PROPOSES MODIFICATIONS TO TAX REPORTING OBLIGATIONS OF *OLIM*[1]

Author
Boaz Feinberg

Tags
Aliyah
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Global Forum
Israel
Olim
Reporting Exemption
Transparency

Boaz Feinberg is a partner at the Arnon, Tadmor-Levy Law Firm in Tel Aviv, where he serves as co-head of tax. His practice focuses on H.N.W. individuals and trusts they settle and on cross border M&A.

INTRODUCTION

The Israeli Finance Ministry recently published a proposal to modify existing tax reporting provisions contained in the Israeli Income Tax Ordinance [New Version], 5721-1961 (the "I.T.O."). The proposed amendment will affect Israeli entities, certain trusts, and Israeli "Residents for the First Time" and "Senior Returning Residents." Senior Returning Residents are those individuals who immigrated back to Israel after being considered foreign residents for Israeli tax purposes for at least 10 consecutive years prior to the date of return to Israel. In this article, Israeli Residents for the First Time and Senior Returning Residents are referred to as "*Olim*."[2]

O.E.C.D. GLOBAL FORUM

The proposed law was published following recommendations of the O.E.C.D. Global Forum on Transparency and Exchange of Information for Tax Purposes. As April 1, 2024, adoption of the proposed amendment is imminent. It is currently being reviewed by the Financial Committee of the Knesset, and is expected to become law shortly.

The proposed amendment is part of a wider effort by the State of Israel to comply with the international requirements on information exchange set forth by the Global Forum. The mission statement of the Global Forum is to promote the adoption of tax transparency on a global basis and to monitor the rules and practices of countries. In principal, the goal is to prevent tax evasion, money laundering, and terrorist financing. With 171 members, the Global Forum is `the leading international body working on the implementation of global transparency and exchange of information standards around the world. It issues peer review reports on transparency and exchanges of information on request.

In performing a peer review of Israel, the Global Forum identified deficiencies in Israel's current information reporting standards. If not corrected, Israel would risk being included in the O.E.C.D. blacklist of noncompliant countries. Blacklisted countries are exposed to significant sanctions by European Union countries. Examples are excessively high withholding tax rates on transfers of dividends and investments from E.U. countries to Israel.

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[1] Royi Heilig, an associate at Arnon, Tadmor-Levy, and Ximena Silberman, an L.L.M. candidate at Tel Aviv University, contributed to this article.

[2] Individuals who move to Israel permanently are said to "go up to Israel." The word "*Olim*" is the Hebrew word for those individuals.

THE FINANCIAL ACTION TASK FORCE

In 2016, the Global Forum adopted recommendations 24-25 of the Financial Action Task Force (the ".F.A.T.F."). The F.A.T.F. is the global money laundering and terrorist financing watchdog. It sets international standards that aim to prevent these illegal activities and the harm they cause to society. The issues that the F.A.T.F. works on include the following:

- Methods and trends
- Recommendations
- Mutual evaluations
- High-risk and other monitored jurisdictions

The F.A.T.F. works on the following areas in carrying out its mission:

- Asset recovery
- Beneficial ownership
- Corruption
- Digitalization
- Environmental crime
- Financial inclusion and N.P.O. issues
- Proliferation financing
- Terrorist financing
- Virtual assets

INFORMATION ON U.B.O.'S OF CORPORATIONS

The proposed amendment does not alter tax liabilities in Israel or eliminate preferred tax treatment of *Olim*. Rather, it revises certain reporting obligations in order to increase transparency.

According to the explanatory note to the proposed amendment, the Global Forum identified two main transparency deficiencies under existing Israeli law:

- The lack of accessibility of state authorities to information about ultimate beneficial owners ("U.B.O.'s") in entities, legal arrangements, and certain trusts operating in Israel.
- The lack of reporting obligations imposed on *Olim*.

The recommendations of the F.A.T.F. concern the necessity of identifying the U.B.O. or U.B.O.'s in entities and other legal arrangements. The Global Forum asserted that similar provisions to identify U.B.O.'s governing money laundering and terrorist

financing are also required to ensure that entities and legal arrangements are not being used to evade income taxes and to enable the tax authorities to receive full information regarding taxpayers.

According to the current legislation, Israel does not require corporations to include information regarding U.B.O.'s in corporate income tax returns. Currently, any corporation that has generated taxable income is liable to submit an annual report to the Israel Tax Authority ("I.T.A."). Under the proposed amendment, the tax return required inclusion of a list of its U.B.O.'s, their identifying details, and their countries of residence for tax purposes.

U.B.O. OR CONTROLLING PERSON DEFINED

The new reporting provisions would apply beginning with tax returns filed for the tax year 2024. For this purpose, a U.B.O., referred to as a controlling person in the I.T.O., would be one of following individuals:

- An individual who has the ability to direct the corporation's activities alone or together with others, either directly or indirectly, including the ability arising from such corporation's articles of association, or from any other source, excluding the ability arising from the role of an officer.
- Without detracting from the provisions of the first paragraph, an individual who owns 25% or more of any type of the corporation's means of control, and no other individual holds a larger portion of control, either alone or in concert with others.
- Without detracting from the above two paragraphs, if a corporation has no one individual that falls under the descriptions above, the controlling person would be the chairman of the board, any officer or the C.E.O. If none of the above exists in the corporation, the backstop provision looks to the officer who has effective control over the corporation.

The proposed amendment requires that each U.B.O. or controlling person must provide the corporation with relevant information about his or her identity in order to promote compliance in the tax return.

REPORTING OF U.B.O.'S IN CERTAIN TRUSTS

According to the current I.T.O. provisions, an Israeli resident trustee of a foreign resident trust, or a foreign beneficiary trust is not required to submit annual tax returns to the I.T.A., provided such trusts do not generate Israeli-source income. According to the Global Forum review, these circumstances may create a transfer of cash or other assets by Israeli trustees without submitting information to any tax authority regarding the U.B.O.'s. According to the proposed amendment, Israeli resident trustees who are not required to submit annual tax returns to the I.T.A. will be required to submit a list of controlling persons within 120 days from the date of enactment of the legislation.

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PROPOSED AMENDMENT REGARDING *OLIM*

Through 2002, taxes in Israel were imposed under a territorial regime, looking only on income generated in the State of Israel. Beginning in 2003, taxes in Israel have been imposed on a global basis, looking to worldwide income in addition to income generated in Israel.

In order to encourage immigration by both new arrivals and returning individuals, Israel granted certain tax benefits to individuals in both categories of *Olim*. Initially, they benefitted from an exemption on passive income and capital gains generated from sources outside Israel. In 2008, *Olim* were granted a tax exemption regarding all income generated from sources outside Israel for a period of 10 years from the start of Israeli tax residence. Moreover, *Olim* were not required to file tax returns or to provide information regarding foreign source income and assets during the 10-year period of exemption.

The Global Forum determined that the reporting exemption during the 10-year period of exemption creates transparency deficiencies. To remedy the deficiency, the proposed amendment eliminates the reporting exemption. *Olim* who arrive in Israel on or after June 1, 2025, must report worldwide income and assets during the 10-year period of their tax exemption. The explanatory note to the proposed amendment highlights that these changes are ultimately beneficial for law-abiding *Olim*. The basic rationale for this position is that, if the proposed amendment is not adopted, Israel would be blacklisted by the O.E.C.D. Were that to occur, access to foreign investments by *Olim* would be impaired.

It is relevant to emphasize that at this point in time, the 10-year tax exemption remains in full force. The proposed amendment affects only the reporting exemption. According to the explanatory note to the proposed amendment, it is expected the I.T.A. would allow *Olim* to comply with the new reporting obligations by presenting income tax returns from the jurisdiction in which the income originates and in the original language in which the foreign tax return was prepared.

CONCLUSION

The extent to which the current reporting exemption is a driving factor to immigrate to Israel is an open question. It is likely that some *Olim* immigrate to Israel principally to benefit from the reporting exemption. The effect of the proposed elimination of the reporting exemption on the future level of immigration is yet to be seen. In the short run, immigration may spike through the end of May 2025. Thereafter, only time will tell.

THE SUN IS SETTING ON THE T.C.J.A.: TIME TO SET GAZE ON PRE-T.C.J.A. TAX LAW

Author
Michael Bennett

Tags
B.E.A.T.
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Estate Tax
F.D.I.I.
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Individual Tax
Sunset Provisions
Tax Cuts and Jobs Act
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INTRODUCTION

In the realm of taxation, keeping abreast of changes can make a significant difference in how companies and individuals manage their finances. The Tax Cuts and Jobs Act ("T.C.J.A."), passed in 2017, brought substantial alterations to the tax landscape. Many of the amendments introduced by the T.C.J.A. are set to expire or change at the end of 2025. Understanding these changes, including their implications and timelines, is crucial for taxpayers. This article will discuss many of the "sunsetting" provisions and the potential impact on taxpayers.

INDIVIDUAL TAX

Individual Tax Rates

The T.C.J.A. reduced marginal rates for most individual tax brackets. Notably, the highest rate was reduced from 39.6% to 37%. However, beginning in 2026, the rates are slated to revert to their pre-T.C.J.A. levels.

Below is a breakdown of the tax rates for single filers in 2024 compared to the projected 2026 rates:

Taxable Income (2024, single filers)	2018-2025 T.C.J.A. Rate	2026 Post-T.C.J.A. Rate
$0 to $11,600	10%	10%
$11,600 to $47,150	12%	15%
$47,151 to $100,525	22%	25%
$100,526 to $191,950	24%	28%
$191,951 to $243,725	32%	33%
$243,726 to $609,350	35%	35%
$609,351 or more	37%	39.6%

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Standard Deduction and Personal Exemption

The T.C.J.A. essentially doubled the standard deduction for individuals, while simultaneously eliminating the personal exemption.[1] The standard deduction for 2024 amounts to $14,600 for single filers and $29,200 for a married couple filing jointly.

In 2026, the standard deduction will return to its pre-T.C.J.A. level of $6,500 adjusted for inflation. Meanwhile, the personal exemption will also return to its pre-T.C.J.A. level of $4,150 adjusted for inflation.

Itemized Deductions

The T.C.J.A. introduced significant changes to itemized deductions prompting many taxpayers to reassess their tax strategies. The sunset of the T.C.J.A. provisions in 2026 will both undo and reintroduce certain limitations, requiring a more detailed analysis to determine whether to accelerate or delay the timing of deductions before the legislative changes take effect.

Overall Limitation on Itemized Deductions

The T.C.J.A. removed the overall limitation on itemized deductions.[2] However, in 2026, the limitation is poised to be reinstated. For taxpayers whose adjusted gross income ("A.G.I.") exceeds certain thresholds, the amount of itemized deductions will be reduced by the lessor of 3% of the amount by which their A.G.I. exceeds the threshold or 80% of the total amount of itemized deductions otherwise allowable.[3] Itemized deductions exempt from this limitation include those for medical and dental expenses, investment interest, charitable contributions, casualty and theft losses, and wagering losses.[4]

S.A.L.T. Deduction

A limitation introduced by the T.C.J.A. that has attracted considerable attention in recent years is the State and Local Tax ("S.A.L.T.") deduction. The T.C.J.A. placed a $10,000 limit on the deduction for state and local income tax, sales tax paid in lieu of income tax, and property tax for taxpayers claiming itemized deductions.[5] The $10,000 cap is set to expire in 2026. Individuals should remember that an unlimited S.A.L.T. deduction could trigger an alternative minimum tax ("A.M.T.") for certain taxpayers. The minimum tax is designed to prevent taxpayers claiming many itemized deductions from escaping tax altogether. In principle, the A.M.T. imposes a lower rate of tax on a broader base of income.

Most states have enacted legislation aimed at assisting taxpayers with interests in pass-through entities to navigate the S.A.L.T. limit. However, in many of these states, these beneficial provisions are set to expire once the S.A.L.T. cap sunsets. Taxpayers residing in states that continue to offer pass-through entity benefits may find it prudent to consider utilizing such provisions, particularly concerning net investment and alternative minimum taxes, federal limitations on itemized deductions,

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[1] Code §§63(c)(7) and 151(d)(5).

[2] Code §68(f).

[3] Code §68(a).

[4] Code §68(d).

[5] Code §164(b)(6).

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nonresident individual filing obligations, and the availability of nonrefundable pass-through entity credits.

Miscellaneous Itemized Deductions

The T.C.J.A. eliminated the deduction for miscellaneous itemized deductions.[6] Miscellaneous expenses generally include fees for accounting and legal services, investment expenses, hobby-related costs, and unreimbursed employee expenses.[7] This provision is set to expire at the end of 2025. As a result, taxpayers who itemize deductions will regain the ability to deduct miscellaneous expenses, provided that these expenses collectively exceed 2% of A.G.I.

Mortgage Interest Deduction

The T.C.J.A. implemented two reductions in the amount of deductible mortgage interest expense:

- For new loans incurred after December 15, 2017, deductible interest is allowed on the first $750,000 of mortgage debt, which was reduced from $1 million.
- The deduction for interest payments made on new or existing home equity debt is disallowed if the debt is used for purposes unrelated to the property securing the loan.[8]

Beginning in 2026, taxpayers who itemize their deductions may deduct interest on the first $1 million of mortgage debt, along with home equity loan interest up to $100,000, regardless of how the loan proceeds are utilized.

Charitable Contribution Deduction

The T.C.J.A. raised the A.G.I. limit for cash donations made to public charities from 50% to 60%.[9] However, this adjustment will revert back to 50% in 2026.

BUSINESS TAX

Corporate Tax Rate

The T.C.J.A. reduced the corporate tax rate from 35% to 21%. Unlike other changes, this adjustment to 21% lacked a sunset provision and remains in effect unless modified by new legislation. There has been ongoing discourse regarding a potential rate hike. President Biden's 2025 Budget Plan, known as the "Green Book," recently suggested raising the corporate tax rate to 28%. However, the likelihood of this proposal being enacted in the near term is particularly low due to the current political climate and a divided government.

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[6] Code §67(g).

[7] Code §67(b).

[8] Code §163(h)(F).

[9] Code §170(b)(1)(G).

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Q.B.I. Deduction

The T.C.J.A. introduced a deduction for qualified business income ("Q.B.I") earned through a pass-through entity.[10] The deduction is equal to 20% of Q.B.I.

The Q.B.I. deduction will expire in 2026.

Limitation on Losses for Noncorporate Taxpayers

For taxpayers other than C-corporations, there is a temporary disallowance of deductions in the current tax year for excess business losses.[11] Originally set through 2026 by the T.C.J.A., this disallowance was subsequently extended to 2028 by the Inflation Reduction Act. These losses are considered as a net operating loss carryover to the subsequent year.

An excess business loss refers to the amount by which a taxpayer's total deductions related to a trade or and business surpass the combined total of gross income or gain from such activities plus $305,000 for single filers and $610,000 for a married couple filing jointly in 2024.

"For taxpayers other than C-corporations, there is a temporary disallowance of deductions in the current tax year for excess business losses. Originally set through 2026 by the T.C.J.A., this disallowance was subsequently extended to 2028 by the Inflation Reduction Act."

Bonus Depreciation on Qualified Property

Bonus depreciation is an added first-year depreciation allowance for qualifying business property.[12]

Initially set at 100% for all qualifying purchases made between September 27, 2017, and December 31, 2022, bonus depreciation decreased to 80% in 2023 and 60% in 2024. It will continue to decrease in ensuing years: 40% in 2025, 20% in 2026, and eventually reaching 0% in 2027. Taxpayers will retain the option to claim accelerated depreciation on certain qualified property under Code §179.

On January 31, 2024, the House of Representatives voted 357 to 70 to approve H.R. 7024, the Tax Relief for American Families and Workers Act of 2024. The bill is now with the Senate for consideration. With the strong bipartisan support demonstrated in the House, taxpayers can remain optimistic that the Senate will also pass the bill.

H.R. 7024 would extend the 100% bonus depreciation for qualified property placed in service after December 31, 2022, and before January 1, 2026. The legislation would retain 20% bonus depreciation for property placed in service after December 31, 2025, and before January 1, 2027.

Business Interest Expense Deduction

The T.C.J.A. imposed a new limitation on the deduction for business interest expense.[13] This cap typically amounts to 30% of adjusted taxable income ("A.T.I."), which is calculated as taxable income before taking into account net interest expenses and various other adjustments. In tax years preceding 2022, the calculation

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[10] Code §199A. See also "Qualified Business Income - Are you Eligible for a 20% Deduction?" (*Insights* Vol. 5 No. 1) for a review of the Q.B.I. deduction.

[11] Code §461(l).

[12] Code §168(k).

[13] Code 163(j). See "Tax Cuts and Jobs Act Adopt Provisions to Prevent Base Erosion" (*Insights* Vol. 5 No. 1) for a review of the expansion of Code §163(j) by the T.C.J.A.

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of A.T.I. involved adding back deductions for depreciation, amortization, and depletion, thereby increasing the allowable deduction for business interest expense. However, starting in 2022, these deductions were no longer added back into income, resulting in a reduction in the overall amount of interest expense deductions available to many businesses.

H.R. 7024 would extend the add-back of the deductions to tax years beginning after December 31, 2023, and tax years commencing after December 31, 2021, if elected, and before January 1, 2026.

R&E Expensing

The T.C.J.A. altered the deduction of research and experimental ("R&E") expenses, transitioning from immediate deduction to amortization. This change took effect with a delay, commencing in 2022.

H.R. 7024 would allow taxpayers to maintain immediate deductibility of R&E expenses incurred between 2022 and 2026.

International Corporate Regimes

As the countdown to 2026 draws near, the international trio of the T.C.J.A. – G.I.L.T.I., F.D.I.I., and B.E.A.T. – are all poised for change.

Beginning in 2026, the G.I.L.T.I. deduction that reduces taxable G.I.L.T.I. for corporations will be decreased from 50% to 37.5%, while the F.D.I.I. deduction for corporations will be decreased from 37.5% to 21.875%, leading to heightened effective tax rates for numerous U.S. corporations.[14] Additionally, the B.E.A.T. will rise from its current 10% tax rate to 12.5%.[15]

ESTATE TAX

The T.C.J.A. doubled the federal estate tax exemption from approximately $5.5 million in 2017 to $11.2 million in 2018 for individuals. The 2024 exemption is $13.61 million. However, the exemption is set to revert to pre-T.C.J.A. levels, adjusted for inflation.

Leading up to 2026, taxpayers may explore various strategies to capitalize on the higher exemption, such as gifting to family and friends, charitable giving, utilizing trusts, and planning for family business succession.

CONCLUSION

As the sun begins to set on the T.C.J.A., taxpayers must factor in various considerations when tax planning for the upcoming years. The forthcoming changes to individual, business, and estate taxes demand a clear understanding of the evolving landscape to make the most of opportunities and mitigate risks. What's more is that Congress may alter the changes expected to take effect in 2026, as evidenced by

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[14] See "A New Tax Regime for C.F.C.'s: Who is G.I.L.T.I.?" (*Insights* Vol. 5 No. 1) for a review of the G.I.LT.I. and F.D.I.I. regimes.

[15] See "B.E.A.T.-ing Base Erosion: U.S. Subjects Large Corporations to Anti-Abuse Tax" (*Insights* Vol. 5 No.) for a review of the B.E.A.T. regime.

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H.R. 7024, leading to another layer of complexity to taxpayers' decision-making processes. Clearly, nothing is certain to derail the scheduled tax increases under the T.C.J.A. prior to the November elections. Depending on the results, nothing may happen after the November elections.

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ALTRIA, C.F.C.'S, DOWNWARD ATTRIBUTION, AND THE "REAL" CONGRESSIONAL INTENT

Author
Wooyoung Lee

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INTRODUCTION

If a person thinks one thing but says another, what are others to believe? Statutory interpretation often favors the latter over the former. But within the context of controlled foreign corporations ("C.F.C.'s"), one taxpayer has effectively suggested modifying that paradigm to undo the effects of an unpopular law change.

Altria Group, Inc. ("Altria") is a large U.S. corporation in the business of tobacco, cigarettes, and related products.[1] Its other activities include an investment in Anheuser-Busch InBev SA/NV ("ABI"), a large brewing company that is structured as a Belgian corporation. ABI holds a number of subsidiaries.

The dispute concerns the 2017 tax year, when Altria owned slightly more than 10% of ABI, measured by both vote and value. The balance was held by non-U.S. shareholders. Prior to 2017, certain foreign subsidiaries of ABI would not have been considered C.F.C.'s. However, a change to the ownership attribution rules under the C.F.C. regime changed this result. By reason of the change, the subsidiaries were deemed to be owned by U.S. persons that did not actually own any of the subsidiaries' stock. This caused the foreign entities to become C.F.C.'s, greatly increasing tax compliance burdens for Altria, along with significant penalties for shortfalls in compliance.

Altria filed its 2017 tax return in accordance with the rule change, but it then sued for a refund.[2] The basis of its claim is that the 2017 rule change went against the plain reading of the statute as well as Congress's stated intent.

STOCK ATTRIBUTION UNDER C.F.C. RULES

C.F.C.'s in General

In a purely domestic context, U.S. law generally does not tax shareholders on the income of a corporation until the time of distribution. The same rule applied generally to U.S. persons and their foreign corporations. Nonetheless, several antideferral regimes override this principle by requiring certain U.S. shareholders of controlled foreign corporations ("C.F.C.'s") to include some or all of the C.F.C.'s income when and as generated at the level of the C.F.C. A foreign corporation is a C.F.C. if more than 50% of the voting power of all shares of a C.F.C. or more than 50% of the value of all shares outstanding is owned by "U.S. Shareholders." For this purpose, a U.S. Shareholder includes U.S. persons who own shares representing at least 10% of

[1] The business is perhaps better known as Philip Morris, its originator, predecessor, and affiliate.

[2] *Altria Group, Inc. v. U.S,* (E.D. Virginia, Docket No. 3:23-CV-00293).

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the voting power of all shares of the C.F.C. issued or outstanding or 10% of the value of all shares of the foreign corporation that are issued or outstanding.

Until the T.C.J.A. was enacted in 2017, the policy of Subpart F was to prevent certain intercompany transactions undertaken by a C.F.C. or structures for foreign investment by the C.F.C. to defer income recognition by the U.S. Shareholders of the C.F.C.

Attribution Rules

The 10% and more-than-50% thresholds are measured not just by direct ownership of foreign corporate shares, but also through indirect ownership arising by application of the attribution rules of Code §318. This provision generally attributes stock ownership to persons related to the actual shareholder.

The attribution rules fall under three categories.

- First, an individual shareholder's stock may be attributed to certain family members.
- Second, stock owned by an entity, such as a corporation, may be attributed to the entity's owners. This category of attribution is known as upward attribution.[3]
- Third, stock in other corporations actually owned by an owner of an entity may be attributed to that entity. This is known as downward attribution. If the entity is a corporation, downward attribution only applies if the shareholder holds at least 50% of the corporation. But if this threshold is met, all stock held by the shareholder is attributed to the corporation, rather than downward attribution to the to the shareholder's ownership percentage in the corporation. For example, if a shareholder holds 50% of a corporation, then the corporation is deemed to hold all other stock held by the shareholder rather than 50% of the stock in another corporation.

In some, but not all, instances, these rules can apply multiple times. If a person is deemed to own stock via attribution, the stock can be attributed again to another person. Suppose a shareholder of a corporation is deemed to own the stock of the corporation's subsidiary. The subsidiary stock can be further attributed to the shareholder's family members.

The C.F.C. rules import the attribution rules found in Code §318, with some modifications. The modification at the heart of the Altria case concerns downward attribution. Prior to the effective date of the Tax Cuts and Jobs Act of 2017 (the "T.C.J.A,"), Code §958(b)(4) turned off downward attribution if the effect was that a U.S. person would be attributed stock from a non-U.S. person. This provision was repealed by the T.C.J.A.

The following diagram shows a standard application of downward attribution. B, being a corporation owned by A, is deemed to own other stock held by A (namely, stock in C).[4]

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[3] If the entity is a foreign entity, a slightly different set of rules apply under Code §958(a)(2).

[4] Note that in parallel, C is deemed to own stock of B.

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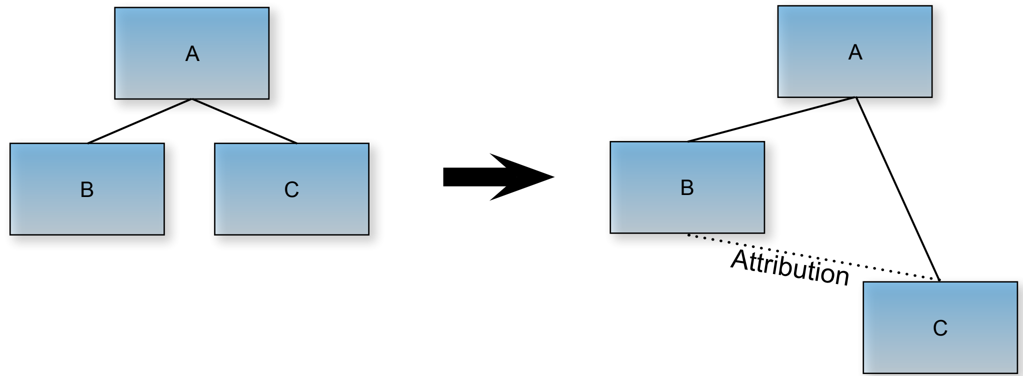
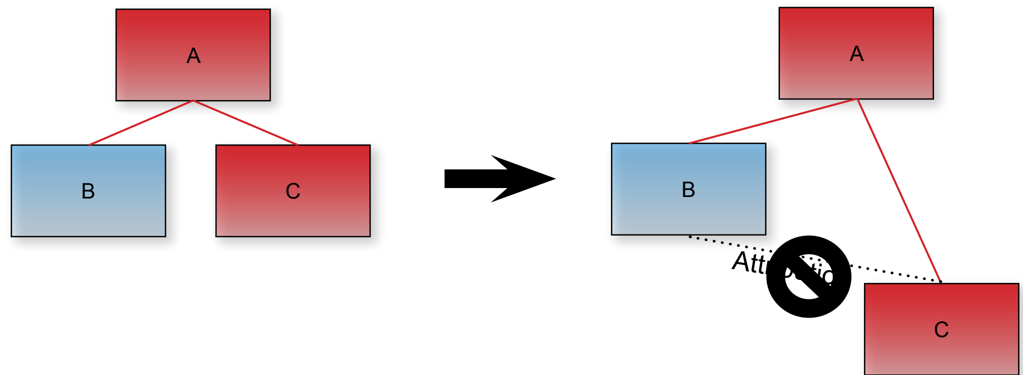


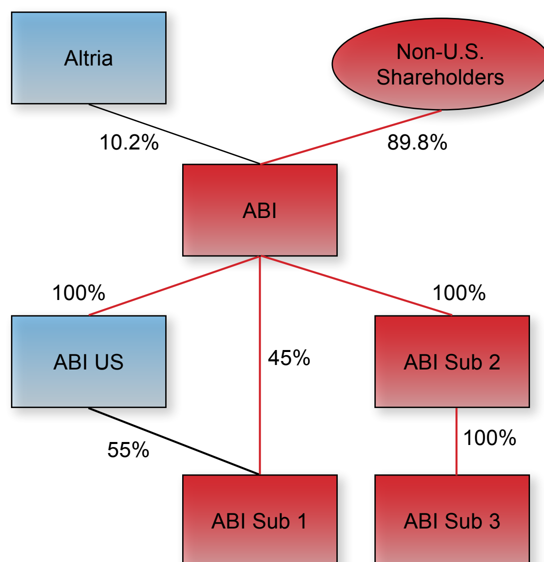
Now suppose A is a foreign corporation. Prior to the effective date of the T.C.J.A., Code §958(b)(4) barred downward attribution from a foreign person to a U.S. person for purposes of the C.F.C. rules. If A were a foreign corporation, B would not have been deemed to own other stock held by A.



This is no longer the case with the repeal of that provision.

APPLICATION TO ALTRIA

The following diagram shows, in relevant part, the structure of Altria *vis-à-vis* ABI.



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Altria directly held 10.2% of ABI. Through the application of the indirect ownership rules and constructive ownership, Altria was also deemed to hold 10.2% of each of the foreign ABI subsidiaries. ABI directly or indirectly wholly owned each subsidiary, and Altria was considered to hold its proportionate 10.2% share of ABI's 100% ownership. The result was that while Altria was a U.S. Shareholder with respect to all foreign entities, total U.S. ownership did not exceed 50% for ABI Subs 2 and 3. The only C.F.C. was ABI Sub 1, as it was majority-owned by ABI US, a U.S. person.

The analysis became more complicated with the T.C.J.A. With downward attribution now freely applicable, ABI US was deemed to own the stock held by its parent, ABI. Therefore, ABI US actually and constructively held all of the shares of ABI Subs 1, 2, and 3. With the latter two subsidiaries, ABI US's ownership was entirely constructive, as it did not directly hold shares in either subsidiary.

"The analysis became more complicated with the T.C.J.A. With downward attribution now freely applicable, ABI US was deemed to own the stock held by its parent, ABI."

Because a U.S. person (ABI US) was now considered to hold more than 50% of Subs 2 and 3, each subsidiary became a C.F.C. And since Altria was already a U.S. Shareholder with respect to those subsidiaries, their change to C.F.C. status meant that Altria would have to include, on a current basis, its proportionate share of the subsidiaries' income as of 2018 and onward.[5]

Altria's Arguments

Altria's claim for a refund rests on two main arguments. First, it believes that treating Subs 2 and 3 as C.F.C.'s violates the plain-language definition of a C.F.C. that appears in Code §957. This is in spite of the fact that Code §957's plain language requires, via Code §958(b), the incorporation of Code §318's attribution rules. To get around this issue, Altria cites Treasury comments from the 1960's, when the C.F.C. regime was first enacted, to define the term "control." Those comments indicate that control is a concern because control would mean U.S. shareholders have effectively already realized the income earned by C.F.C.'s.:

> Congress has the power under the 16th Amendment to impose a tax on undistributed earnings of a foreign corporation controlled by U.S. shareholders on the ground that it may find that such income is constructively received by the U.S. shareholder * * *.[6]

The legislative history adds that the 10% threshold for counting U.S. Shareholders is important because control exists when it is concentrated in a relatively limited number of U.S. shareholders. *Altria* underlines that this is not true in "situations where ownership was widely scattered, and no U.S. group was in *effective control*."[7]

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[5] Note that while ABI US's constructive ownership caused Subs 2 and 3 to become C.F.C.'s, constructive ownership does not apply for purposes of income inclusion. Therefore, ABI US was not required to include C.F.C. income from Subs 2 and 3. However, constructive ownership is distinguished from indirect ownership through foreign entities, which applies for purposes of income inclusion. Consequently, Altria was required to include its share of the income of Subs 2 and 3.

[6] President's 1961 Tax Recommendations: Hearings Before the H. Comm, on Ways & Means, 87th Cong., 1st Sess.

[7] S. Comm. on Finance, 87th Cong., 2d Sess. (1962) (emphasis added by Altria).

Plainly, neither Altria nor ABI US effectively control ABI or Subs 2 and 3. Consistent with this argument, Altria's complaint emphasizes that it has little influence on ABI's governance.

Second, *Altria* cites legislative history relating to the repeal of Code §958(b)(4) to point out that situations like Altria's were not meant to be captured by the repeal. The repeal was aimed at situations where a foreign-owned U.S. corporation with a foreign subsidiary could decontrol the foreign corporation through asset-stuffing transactions between the ultimate foreign parent of the U.S. corporation and the foreign subsidiary. Attribution to the U.S. corporation would have been barred under Code §958(b)(4), allowing the group to "convert[ ] former CFCs to non-CFCs, despite continuous ownership by U.S. shareholders."[8]

Outside that fact pattern, it seems Congress intended for Code §958(b)(4) to remain in place:

> This provision is *not intended* to cause a foreign corporation to be treated as a controlled foreign corporation with respect to a U.S. shareholder as a result of attribution of ownership under section 318(a)(3) to a U.S. person that is not a related person (within the meaning of section 954(d)(3)) to such U.S. shareholder as a result of the repeal of section 958(b)(4).[9]

In fact, the Senate considered amending the T.C.J.A. to explicitly limit the scope of the change, but it appears that the Senate decided it was unnecessary according to Orrin Hatch, the then-chairman of the Senate Finance Committee:

> The conference report language for the bill does not change or modify the intended scope [of the above statement]. The Treasury Department and the Internal Revenue Service should interpret the stock attribution rules consistent with this explanation, as released by the Senate Budget Committee. I would also note that the reason [the] amendment No. 1666 was not adopted is because it was not needed to reflect the intent of the Senate Finance Committee or the conferees for the Tax Cuts and Jobs Act.[10]

In other words, the complete repeal of Code §958(b)(4) may have been a result of a misunderstanding. Altria's evidence makes clear that at some point, the Treasury Department overstepped the intended scope of the 2017 change in law.

With both arguments, Altria believes an understanding of congressional intent is required to apply the rules as intended by Congress. That would seem contrary to typical practice, where congressional intent is brought in if rules are unclear or contradictory. For example, the Supreme Court stated that legislative history "need not be consulted when…the statutory text is unambiguous."[11] Here, while the rules may have unintended consequences and be substantively inequitable, the mechanics

[8] H.R. Rep. No. 115-409, at 387 (2017); H.R. Rep. No. 115-466, at 507-508 (2017).

[9] S. Comm, on Budget, Reconciliation Recommendations Pursuant to H. Con. Res. 71, S. Rep. No. 115-20, at 383 (2017) (emphasis added by Altria).

[10] 163 Cong. Rec. S8, 110 (2017).

[11] *U.S. v. Woods*, 571 U.S. 31 (2013).

are clear. The idea that congressional intent may be insufficient to modify application of the post-T.C.J.A. law is underlined by the number of proposals from legislators and commentators to remedy the situation.

CONCLUSION

Many commentators agree with Altria's characterization of the repeal as "absurd."[12] But whether Altria's desired method for undoing the absurdity will succeed is uncertain. For the moment, Altria has petitioned the court to stay proceedings until *Moore*, another prominent lawsuit regarding C.F.C.'s that is currently before the Supreme Court, is decided. The C.F.C. regime may see several significant changes in the near future.

[12] Citing *KMart Corp. v. Cartier, Inc.*, 486 U.S. 281 (1988) ("[It is a] venerable principle that a law will not be interpreted to produce absurd results.").

About Us

Ruchelman P.L.L.C. is a boutique law firm based in New York City. It was founded in 1989 by an alumnus of a legacy firm that is now Deloitte's. It maintains an affiliate, Ruchlman Advisory Ltd., that provides U.S. Tax advice from its base in Tel Aviv, Israel.

Whether in New York City or Tel Aviv, a wide range of tax planning and commercial legal services is provided to clients across the Americas, Asia, Europe, and the Middle East. Clients include global investors, multinational corporations expanding into the U.S., and U.S. businesses with international operations. Our core practice focuses on cross-border transactions.

About Insights

Insights, the tax journal of Ruchelman P.L.L.C., provides in-depth reporting on the evolving landscape of U.S. and international taxation. It offers complex analysis of current issues, legislative updates, and practical introductions to the tax law from leading tax professionals in their respective countries.

Special features include an annual examination of the use of holding companies in European tax planning and a look at the year in review.

Locations

Ruchelman P.L.L.C. | 150 East 58th Street, 22nd Floor | New York, New York 10155

Ruchelman Advisory Ltd. | 63 Rothschild Boulevard, Suite 207 | Tel Aviv, Israel 6578510

Contacts

If you have any questions regarding this publication, please contact the authors or one of the following members.

Name	Email	Phone
Galia Antebi	antebi@ruchelaw.com	+972 52.258.5161
Michael Bennett	bennett@ruchelaw.com	+1 212.755.3333 x 123
Nina Krauthamer	krauthamer@ruchelaw.com	+1 212.755.3333 x 118
Wooyoung Lee	lee@ruchelaw.com	+1 212.755.3333 x 121
Michael Peggs	peggs@ruchelaw.com	+1 212.755.3333 x 232
Simon H. Prisk	prisk@ruchelaw.com	+1 212.755.3333 x 114
Neha Rastogi	rastogi@ruchelaw.com	+1 212.755.3333 x 131
Stanley C. Ruchelman	ruchelman@ruchelaw.com	+1 212.755.3333 x 111

Editorial Staff

Stanley C. Ruchelman .... Editor in Chief

Francesca York .... Graphic Designer

WITH PHOTOS BY:

Galia Antebi, Jennifer Lapper, Simon Prisk, Stanley C. Ruchelman, and Francesca York.

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