

Tax Accounting for Foreign Persons

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Introduction

The Internal Revenue Code is the most complicated statute in the world. It contains the excrescence of almost 70 years of conflict between government and taxpayer. Over that time, many provisions have been added by Congress to deal with perceived abuses. Some of these are so complex that great effort is required to fathom them. Quite often, however, the most complex provisions are fairly predictable in application once deciphered. Indeed, that is often their principal justification—that they provide a relatively clear and certain result.

Other portions of the tax law, in the Code and elsewhere, are much simpler to comprehend. In contrast to some of the more complex provisions, however, many of these simpler tax rules are quite difficult to apply and frequently produce results which were not easy to predict.

The marriage of these two sorts of provisions is probably inevitable. Predictability has a high value in economic planning; complex provisions are perhaps unavoidable in attempting to deal precisely with the vast array of sophisticated transactions structured by taxpayers, lawyers, accountants, and investment bankers. On the other hand, even a statute which became mythically prolix could not hope to deal comprehensively with the infinite varieties of taxpayers' behavior. Thus, the tax law is led irresistably to incorporate at least some more fundamental rules to protect the system against subversion, despite the cost of lessened predictability.

Many of the Code provisions affecting foreign persons or foreign income are of the first kind: complex, detailed, difficult to grasp, but often fairly easy to apply in practice once the complexities are mastered. By contrast, many of the tax accounting notions applicable to foreign persons are of the second kind: deceptively simple to understand, but often quite difficult to apply in practice. Yet tax accounting rules are the very earth upon which many of the most complex foreign tax towers rest.

This article will examine selected aspects of tax accounting for foreign persons. It will discuss the rules for choosing or changing taxable years

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