



## The American Taxpayer Relief Act of 2012

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### Key International Tax Provisions

Great news comes in with the American Taxpayer Relief Act of 2012 (the "Act" or "ATRA") and its amendments to the Internal Revenue Code (the "Code"). The Act was passed by Congress on January 1, 2013 and signed into law by President Obama on January 3, 2013. Although there have been many news flashes summarizing the Act's provisions, most have overlooked the international tax aspects of the Act. This Alert summarizes the key international tax provisions.

#### Look-Through Rules for Payments between Related CFCs.

*ATRA § 323 amends Code § 954(c)(6)(C).*

Look-through is back until the end of 2013 for calendar year taxpayers and is effective for tax years beginning after December 31, 2011. The Act allows deferral for certain payments (interest, dividends, rents and royalties) between commonly controlled foreign corporations ("CFCs"). An adjustment is available if you have been providing income taxes for possible Subpart F income from intercompany dividends, interest, royalties or rent. This should be great news to U.S. corporations with overall foreign losses and to individuals with Subpart F income, which is taxed at the ordinary income rates, not the lower tax rate for qualified foreign dividends.

#### Active Financing Exception to Subpart F.

*ATRA § 322 amends Code § 954(h)(9).*

The U.S. parent of a foreign subsidiary engaged in a banking, financing, or similar business is eligible for deferral of tax on such subsidiary's earnings if the subsidiary is predominantly engaged in such business and conducts substantial activity with respect to such business. The subsidiary must pass an entity level income test to demonstrate that the income is active income and not passive income. The Act extends the provision to the end of 2013. This is great news for US companies with international lending, factoring or consumer retail loan and finance activities.

#### **Deduction for Domestic Activities in Puerto Rico.**

*ATRA § 318 amends Code § 199(d)(8).*

The Act extends for two (2) years the provision extending the Code § 199 domestic production activities deduction to activities in Puerto Rico.

#### **Treatment of Certain Dividends of Regulated Investment Companies.**

*ATRA § 320 amends Code § 871(k).*

The Act extends a provision allowing a regulated investment company ("RIC"), under certain circumstances, to designate all or a portion of a dividend as an "interest-related dividend," by written notice mailed to its shareholders not later than 60 days after the close of its tax year. Also, an interest-related dividend received by a foreign person generally is exempt from U.S. gross-basis tax under Code §§ 871(a), 881, 1441 and 1442. The Act extends the treatment of interest-related dividends and short-term capital gain dividends received from a RIC to taxable years of the RIC beginning before January 1, 2014. The Act also extends the inclusion of a RIC within the definition of a "qualified investment entity" under Code § 897 through December 31, 2013.

#### **Other Notable Tax Provisions**

1. Extension of the R&E Credits - *ATRA § 301 amends Code § 41(h)(1)(B).*
2. Extension of Bonus Depreciation - *ATRA § 331 amends Code § 168(k).*
3. Extension of Energy Credits - *ATRA §§ 407 amends Code § 45(d)(1).*
4. Extension of Increased Section 179 Deductions - *ATRA § 315 amends Code § 179.*

*For more information about this topic, please contact the author or any members of the Williams Mullen Tax Law Section.*

## **Related People**

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