Fundamentals of International Business Transactions

Taxation of International Business Transactions
Part 2
Introduction to International Taxation

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Focus of Presentations

• United States corporation selling goods internationally either directly or through related foreign entities or providing services to international customers either directly or indirectly
• United States income taxation, not including state and local taxation
• Simple as compared to complex foreign corporate structures and transactions
• Tax laws effective as of January 1, 2005
Outline of Presentations

Part
1. Taxation of the Sale of Goods and Services

2. Introduction to International Taxation

3. Tax Aspects of Intellectual Property Transactions

4. Transfer Pricing, Treaties and Related Areas

Introduction to International Taxation

• Source of income
• Foreign currency gains and losses
• Indirect taxation of foreign corporations (Subpart F rules)
• Avoidance of double taxation (foreign tax credit mechanism)
Source of Income

• Source of income is relevant to the following issues, among others
  – Jurisdiction to tax (branch profits, etc.)
  – Calculation of foreign tax credit limitation
  – Qualification for special tax status (i.e., possession corporations)
  – Computation of subpart F income
  – Complicated rules allocate and apportion costs and deductions against income by source
Source of Income (cont’d)

- Source of income is determined separately for different types of income (e.g., interest, dividends, royalties, sale of goods, etc.).
- A related important area is the allocation and apportionment of costs and deductions to income by source. Detailed rules relating to different types of expenses, such as interest, research and development and other costs, are provided in the tax law.

Source of Income - Services

- Source of income on the performance of personal services in where the services are actually performed.
- Typically, a dollar/time minimum is established to avoid including service income from short business visits, etc., in locally sourced income.
- An allocation of the source of income from the performance of services will be required where the service is performed both within the U.S. and without the U.S.
Taxation of International Business Transactions

Source of Income – Sale of Goods

- Subject to certain exceptions, the source of income on the sale of personal property is based upon the tax status of the seller (i.e., US source for US seller and visa versa).
- Source of income on sale of inventory property typically is "place of sale" rule, that is, where title to the goods passes to the purchaser.
- Where goods are manufactured in one jurisdiction and sold in another, an allocation of the source of income will be required.

Source of Income – Intangible Property

- Source of income on transfer/license of intangible property is where the intangible property is used.
- With respect to a patent, use would be the country where the patent applies.
- With respect to a trademark and other marketing intangibles, use would be were the consumer/customer is located.
- The IRS does not unbundle the source of income on the sale of goods that carry with them both patent rights and trademarks. It would be the source of income of the goods.