

Clark Armitage Speaks to Law360 on 5 Ways TCJA Could Play Out for Multinational Companies

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The game-changing nature of the U.S. tax overhaul's international measures means officials at home and abroad will be dealing with issues under these provisions for a long time, contending with reams of new tax regulations and possibly a dramatic increase in international clashes.

"It's not a question of what's going to happen in the next couple of years, but in the next five to 10," said Clark Armitage of Caplin & Drysdale Chtd. "These are major changes to the U.S. international tax system, some of which are being challenged in international forums, and it's going to be a long time before all the dust settles."

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As for what guidance from Treasury is most in need, Armitage said two provisions had emerged as the top priorities.

One of those measures creates a new category of taxable profit — global intangible low-taxed income, or GILTI. The other is the tax overhaul's base erosion and anti-abuse tax, or BEAT, which limits deductions on payments by a U.S. corporate entity to related parties abroad.

"I think those two require immediate attention because of their expected size in terms of revenue generated and their importance to the multinational community," Armitage said.

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While BEAT may lead to treaty challenges, Armitage said that when it comes to the GILTI provision, countries might be interested in adopting a similar measure for themselves.

The provision includes income earned through offshore subsidiaries beyond 10 percent of their tangible depreciable assets. That income is immediately pulled in for U.S. taxation, although it receives a deduction that ultimately sets its tax rate at 10.5 percent, compared with the 21 percent corporate income tax rate.

"GILTI can be structured as a base erosion measure in a way that respects treaty obligations," he said. "The provision is concerned with U.S. companies operating abroad, not foreign multinationals, so it's less likely to create the same kind of angst on the part of other countries, particularly if it were revised in the years to come."

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Excerpt taken from the article "5 Ways The TCJA Could Play Out For Multinational Companies" by Natalie Olivo for Law360.

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