Destination-Based Cash Flow Tax (DBCFT)
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Features of the DBCFT

- Lower Corporate Tax Rate – 20%
- Immediate Expensing of Equipment and Buildings
  - Not land
  - Not financial assets
  - Not inventory (?)
- The DBCFT is a hybrid system
  - Financial assets, land and inventory (?) are taxed on an income tax basis
  - The foreign personal holding company (FPHC) rules are retained

Features of the DBCFT

- No Deduction for Net Interest Expense
- Territorial Taxation
  - Foreign subsidiary earnings not taxed (except for FPHC income)
  - Eliminates indirect foreign tax credit
  - Transition tax on “old earnings”
    - 8.75% on cash/3.5% on non-cash property
    - 8 years to pay tax (appears to apply to cash and non-cash liabilities)
    - FTCs not mentioned, but presumably will follow Rep. Camp’s approach in TRA ’14 (proportionate disallowance)

Features of the DBCFT

- NOLs
  - Not carried back
  - Carried forward indefinitely
  - Indexed for inflation
  - Can offset only 90% of taxable income in a given year
- Border Adjustments
  - Export revenue is exempt
  - Import costs are not deductible
    - Assume tax on direct sales to individuals
  - Applies to goods, services & intangibles

DBCFT Corporate International Policy Issues

- **Scenario 1:** A U.S. corporation sells property to its foreign branch (*i.e.*, a trade or business located abroad)
  - Property purchased for 100 and sold for 150

DBCFT Corporate International Policy Issues

- **Scenario 2:** A U.S. corporation purchases property from its foreign branch
  - Property purchased for 100

DBCFT Corporate International Policy Issues

- **Scenario 3:** The foreign branch of a U.S. corporation sells property to an unrelated U.S. corporation
  - Property purchased for 100 and sold for 150

DBCFT Corporate International Policy Issues

- **Scenario 4:** The foreign branch of a U.S. corporation purchases property from an unrelated U.S. corporation
  - Property purchased for 100 and sold for 150

DBCFT Corporate International Policy Issues

- **Scenario 5:** A foreign corporation sells property to its U.S. branch
  - Property purchased for 100 and sold for 150

DBCFT Corporate International Policy Issues

- **Scenario 6:** A foreign corporation purchases property from its U.S. branch
  - Property purchased for 100

DBCFT Corporate International Policy Issues

- **Scenario 7:** The U.S. branch of a foreign corporation sells property to an unrelated foreign corporation
  - Property purchased for 100 and sold for 150

DBCFT Corporate International Policy Issues

- **Scenario 8:** The U.S. branch of a foreign corporation purchases property from an unrelated foreign corporation
  - Property purchased for 100

DBCFT Corporate International Policy Issues

- **Scenario 9:** The foreign branch of a U.S. corporation distributes property to the U.S. home office
  - Property purchased for 100 and distributed when property worth 150

DBCFT Corporate International Policy Issues

- **Scenario 10:** The foreign subsidiary of a U.S. corporation distributes property to its U.S. parent
  - Property purchased for 100 and sold for 150

DBCFT Corporate and International Policy Issues

- **Scenario 11A:** A U.S. corporation **buys equipment and contributes** it to its nonconsolidated U.S. subsidiary
  - Who deducts/expenses the cost of the equipment?
  - Does the parent have basis in its subsidiary?

DBCFT Corporate and International Policy Issues

- **Scenario 11B:** A U.S. corporation **contributes cash** to its nonconsolidated U.S. subsidiary and the subsidiary purchases the equipment
  - Does the subsidiary get to deduct/expense the purchase price?
  - Does the parent have basis in the subsidiary equal to the cash contributed?
  - Who deducts/expenses the cost of the equipment?
  - Does the parent have basis in its subsidiary?

DBCFT Corporate and International Policy Issues

- **Scenario 12A:** A U.S. corporation buys a Paris apartment building from a foreigner, holds it, and later sells it to a foreigner
  – Purchased for 100 and sold for 150

DBCFT Corporate and International Policy Issues

- **Scenario 12B:** A U.S. corporation forms a French subsidiary, and contributes cash to a French subsidiary; the French subsidiary buys a Paris apartment building, holds it, and sells it to a foreigner
  - 100 contributed and used to purchase the building, and sold for 150

DBCFT Corporate and International Policy Issues

- **Scenario 13A:** A U.S. corporation purchases a Paris apartment building from a foreigner and sells it to a U.S. individual
  - Purchased for 100 and sold for 150

DBCFT Corporate and International Policy Issues

- **Scenario 13B:** The French subsidiary of a U.S. corporation purchases a Paris apartment building from a foreigner and sells it to a U.S. individual
  - Purchased for 100 and sold for 150

DBCFT Corporate and International Policy Issues

- **Scenario 13C:** A U.S. corporation sells a building in Manhattan to a foreign individual
  - Purchased for 100 and sold for 150

DBCFT Corporate and International Policy Issues

- **Scenario 14A:** A U.S. corporation buys non-U.S. intellectual property rights from a foreigner and licenses them to unrelated foreign third parties
  - Purchased for 100; licensed for 10/year

DBCFT Corporate and International Policy Issues

- **Scenario 14B:** The foreign branch of a U.S. corporation buys non-U.S. intellectual property rights and licenses them to an unrelated foreign third party
  - Purchased for 100 and licensed for 10/year

DBCFT Corporate and International Policy Issues

- **Scenario 14C:** A U.S. corporation contributes cash to its foreign subsidiary, and the foreign subsidiary buys non-U.S. intellectual property rights from a foreigner, and licenses them to unrelated foreign third parties
  - FPHC if the foreign subsidiary's employees did not substantially improve the IP?
  - Exempt if foreign subsidiary's employees did substantially improve the IP?

DBCFT Corporate and International Policy Issues

- **Scenario 15:** I take a (U.S. or French) client out for a business dinner in France

DBCFT Corporate and International Policy Issues

- How strictly is “loss trafficking” policed?
  - Under a pure DBCFT, losses would be refunded
  - Under the Republicans’ DBCFT, losses are not refunded and NOLs can offset only 90% of taxable income
  - Can taxpayers use any of these techniques?
    - Splitter partnerships
    - Exporters with NOLs buy imports for the importers
    - Mergers of importers and exporters
    - Sale lease-backs
    - Individual shareholder puts investment assets into an exporter C corporation

DBCFT Corporate and International Policy Issues

- Assume that border adjustments are administered by denying deductions to businesses and collecting the tax directly on purchases by individuals from foreign sellers
  - How do you prevent individuals from claiming that they are businesses and avoiding the import tax?
  - How do you prevent businesses from letting their shareholders use imported property for personal purposes?

DBCFT Corporate and International Policy Issues

- What does “foreign” mean for purposes of border adjustments?
  – If services are provided by a U.S. hedge fund manager to a foreign corporation owned by a U.S. individual, are the fees exempt?
  – If so, is the foreign corporation deemed to provide services to U.S. shareholders (i.e., services to which an excise tax would apply)?
  – What result if 1,000 shareholders—some U.S. and some foreign?

DBCFT Corporate and International Policy Issues

- How are **earnings and profits** measured?
  - Under economic income principles, or by allowing expensing for equipment and denying interest deductions?
  - Is there a policy concern if a foreign subsidiary borrows and uses the interest expense to offset subpart F income?