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# Topics

- 2012 U.S. income tax proposals
- Increasing global tax costs of investing
- Regulatory changes affecting investment structures
- U.S. Virgin Islands economic stimulus program

# 2012 Income tax proposals

# Individual tax proposals

## Tax increases

- Limit on value of itemized deductions to 28% for high income taxpayers
- Restoration of 39.6% bracket in 2013
- Restoration of 36% bracket for AGI over 200K single 250k married
- Phase-out of itemized deductions and personal exemptions returns for high income taxpayers

# Individual tax proposals

## Tax cuts

- 10% bracket made permanent
- Reduction of 28% and 31% brackets to 25% and 28%
- Restoration of 36% bracket for 200k+ single and 250k+ married
- 20% rate on capital gains for those in the 36 or 39.6 brackets
- Portability between spouses for unused estate and gift exclusion

# Individual tax proposals

## Permanent benefit extensions

- Child and dependent care - phase out from \$15 to 75k
- Employer provided child care credit
- Education tax benefits
- Expanded earned income tax credit (3 or more children)

# Individual tax proposals

## Other

- Automatic enrollment in retirement plan for businesses 10+ employees after 2 years
- \$250 refundable tax credit for public sector employees ineligible for social security
- Three year AMT patch

# Business tax proposals

## Tax Increases

- Repeal of deductions and credits used by oil, coal and gas companies
- Income tax rate increases for S corp and passthrough owners due to individual rate increases



# Business tax proposals

## Tax Cuts

- Elimination for capital gains taxes on small business stock
- Enhancement and permanent extension of R & E credit
- Enhanced energy tax credits
- Permanent extension of 179 expensing for small businesses
- Credits for businesses offering SEP or SIMPLE plans

# Tax proposals

## Community Revitalization

- Extension of New Markets tax credit for 2012
- Permanent extension of Build America Bonds
- Further incentives for low income housing
- Employment and property tax incentives for 20 designated “growth zones”
- Tax credit to NYC and State for transportation around Liberty Zone

# Tax proposals

## Tax administration and enforcement 1099's

- Repeal of expanded 1099 reporting for business payments for only property
- Bills are currently in congress for repeal of expanded 1099 to businesses

# Tax Proposals

## Independent Contractor Withholding

- Applies to independent contractors receiving more than \$600
- Require a certified TIN
- Businesses would be required to verify TIN with IRS
- Could require withholding at 15%, 25%, 30% or 35%

# Tax Proposals

## Independent Contractor Classification

- IRS to issue guidance as to classification as employee or independent contractor
- Must “interpret common law in neutral manner”
- IRS must provide safe harbors and rebuttable presumptions
- Guidance would be industry or job specific~

# Tax Proposals

## Business Compliance

- All Businesses required to complete M-3 must e-file
- Require additional information on forms 5500
- Clarification of employment tax responsibility for employee leasing firms
- Repeal special estimated tax rules for insurance companies

# Tax Proposals

## Domestic Revenue Raisers

- Financial crisis responsibility fee on US based financial services companies
- Define an interest component of forward sales of corporate stock
- Eliminate 1256 capital gains benefits for commodity dealers
- Reinstate Superfund tax

# Tax Proposals

## International Revenue Raisers

- Defer interest deduction where foreign source income not subject to US tax
- Deemed foreign tax credit determined on consolidated basis
- Current taxation of “excess returns on intangibles transferred offshore
- Limit income shifting through transfers of intangibles
- Disallowance of reinsurance payments to affiliated foreign insurers
- Limit earnings stripping
- Modify treatment of dual capacity taxpayers



# Tax Proposals

## Tax Simplification

- Eliminate minimum distribution rules for IRA's where less than \$50k and individual is 70 1/2
- Allowance of rollover for inherited IRA's or other tax favored retirement accounts

# Increasing global tax costs of investing

- A focus on uncertain tax positions
- Changing withholding tax regimes
- New information reporting regimes

# Regulatory changes affecting investment structures

## HIRE Act

- Foreign Account Tax Compliance provisions (FATCA)
- 30% withholding tax on certain dividend equivalent payments

# U.S. Virgin Islands EDC Program

## Overview

- Provides for an effective tax rate of 3.37%
- Compelling questions: Can a business
  - Operate in the USVI
  - Meet the Federal technical requirements
  - Meet the local USVI program requirements

# EDC Program Example 1&2

Form: Operating in:	Passthrough		Corporate	
	U.S.	U.S.V.I.	U.S.	U.S.V.I.
Revenue	15,000,000	15,000,000	15,000,000	15,000,000
Expenses	(5,000,000)	(5,000,000)	(5,000,000)	(5,000,000)
Net Income	10,000,000	10,000,000	10,000,000	10,000,000
Entity level tax	-	-	(4,100,000)	(3,850,000)
Dividend of profits			5,900,000	6,150,000
Owner level tax	(4,100,000)	(3,500,000)	(1,239,000)	(922,500)
Reduction*	-	3,150,000	-	4,295,250
Net tax	(4,100,000)	(350,000)	(5,339,000)	(477,250)
Net Income after tax	<b>5,900,000</b>	<b>9,650,000</b>	<b>4,661,000</b>	<b>9,522,750</b>
Savings		<b>3,750,000</b>		<b>4,861,750</b>

## Assumptions:

- \*USVI residency is established by business owners
- 35% Federal rate, 6% state tax rate
- 15% QDI rate
- Expenses decreased to reflect reduced labor costs
- Expenses increased for compliance/relocation costs

# EDC Program Example 3

Form: Operating in:	Corporate, US Shareholders US	Corporate, US Shareholders U.S.V.I.
Revenue	15,000,000	15,000,000
Expenses	(5,000,000)	(5,000,000)
Net Income	10,000,000	10,000,000
Entity level tax Reduction	(4,100,000) -	(3,850,000) <b>3,465,000</b>
Dividend of profits	5,900,000	9,615,000
Shareholder level tax	(1,239,000)	(2,019,150)
Net tax	(5,338,986)	(2,404,150)
Net Income after tax	<b>4,661,014</b>	<b>7,595,850</b>
Effective tax rate	<b>53%</b>	<b>24%</b>

Assumptions:

- Operation in the Virgin Islands, owned by non-USVI residents
- 35% Federal rate, 6% state tax rate
- 15% QDI rate
- Expenses decreased to reflect reduced labor costs
- Expenses increased for compliance/relocation costs

# EDC Program

## Certain Requirements

- Investment of at least \$100,000
- Employ at least ten (10) persons on a full time basis, 80% of which need to be locally based
- Contract for service providers and purchase goods from VI residents where possible
- Implementation of management training programs
- Establish and maintain an employee pension plan
- Meet the requirements of Section 934 of the Internal Revenue Code in the case of a USVI corporation, individual or partnership

# EDC Program

## Technical considerations

- How is residency established and maintained?
- What types of income are eligible for benefits?
- What is a fair “arms-length” price between related taxpayers?
- How does operating in the U.S. Virgin Islands impact your business?





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