TAX
A BRIEF UPDATE

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OVERVIEW

1. US Income Tax Reform – Major changes as of December 2017
2. State Sales and Use Tax – Major changes as of June 2018
3. Treaty Elections – Common mistakes, an example

TAXES – bla bla bla blablabla bla!

- Rate cuts… but also… Deduction cuts

Some Wins; Some Loses

TAX REFORM - WINS

- Major change federal income tax
  - Went from graduated up to 35% to a flat 21%
- Incentive for export from US – reduced federal income tax rates to 13.1% through 2025, then increased to 16.4%
- Section 179 fixed asset expense allows immediate deduction from $500K up to $1M for five years
- Eliminates the corporate alternative minimum tax

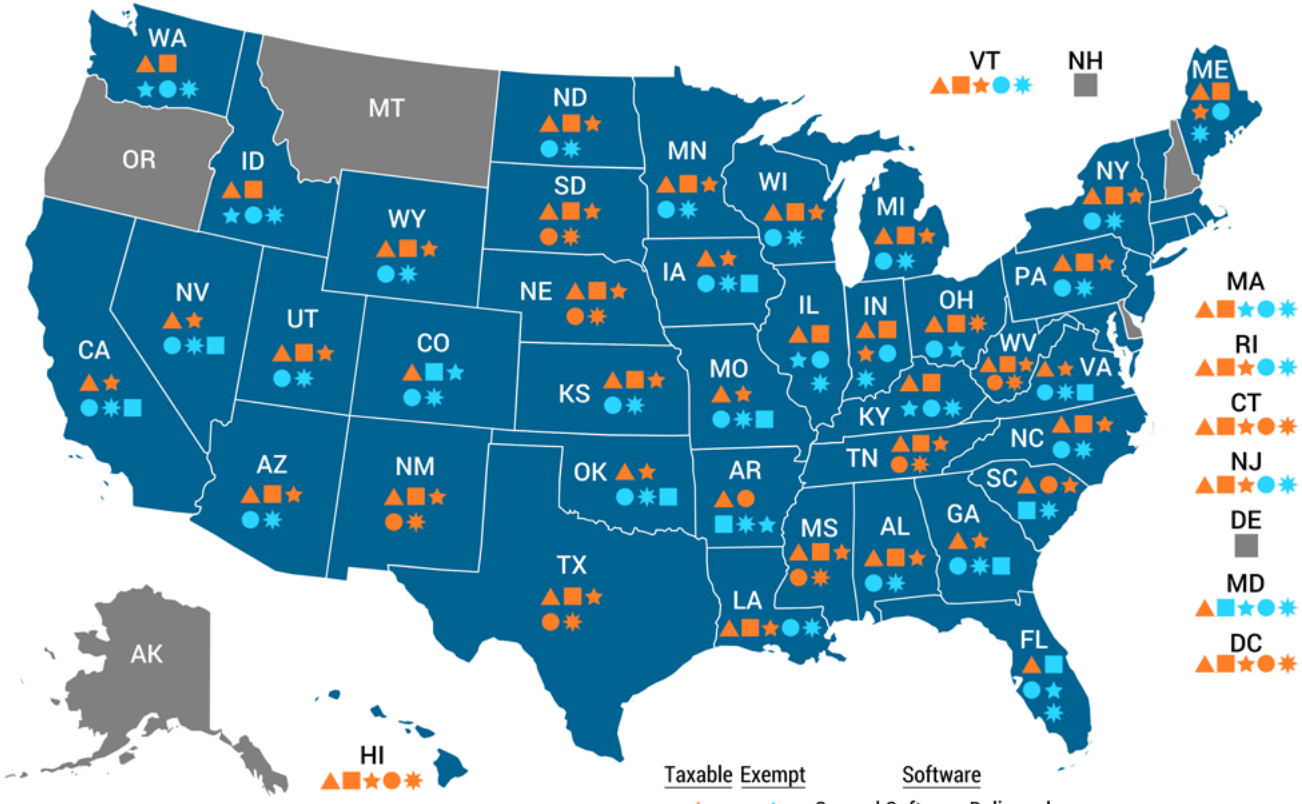
TAX REFORM - LOSES

- Eliminates entertainment expense deduction
- Net operating loss – only forward and limits carryforwards to 80% of taxable income
- Limits deduction for net interest expenses incurred to 30% of adjusted taxable income

STATE SALES AND USE TAX

- Major supreme court ruling June 2018 may make sales and use tax applicable in many more states
    - *South Dakota v. Wayfair, Inc.*
- Internet retailers challenged South Dakota's economic nexus law. The law asserts nexus against out-of-state retailers if:
    - More than $100,000 taxable sales of property or services
    - Or - more than 200 separate sales transactions
- Prior to ruling state laws usually required a physical presence (nexus) in the state, either property, activities, or representatives, before a state could assert jurisdiction to tax
- Many states are changing their laws as a result of the Wayfair ruling
- Companies should expect to have nexus and need to register in many more states

SOFTWARE – CURRENT DIFFERENCE



Taxable	Exempt	Software
▲	▲	Canned Software Delivered on Tangible Personal Property
■	■	Canned Software Downloaded
●	●	Custom Software Delivered on Tangible Personal Property
✸	✸	Custom Software Downloaded
★	★	Customization of Canned Software

Note: Alaska, Delaware, Montana, New Hampshire, and Oregon have no state sales tax. Data as of Jan 14, 2013. Map published January 23, 2013.

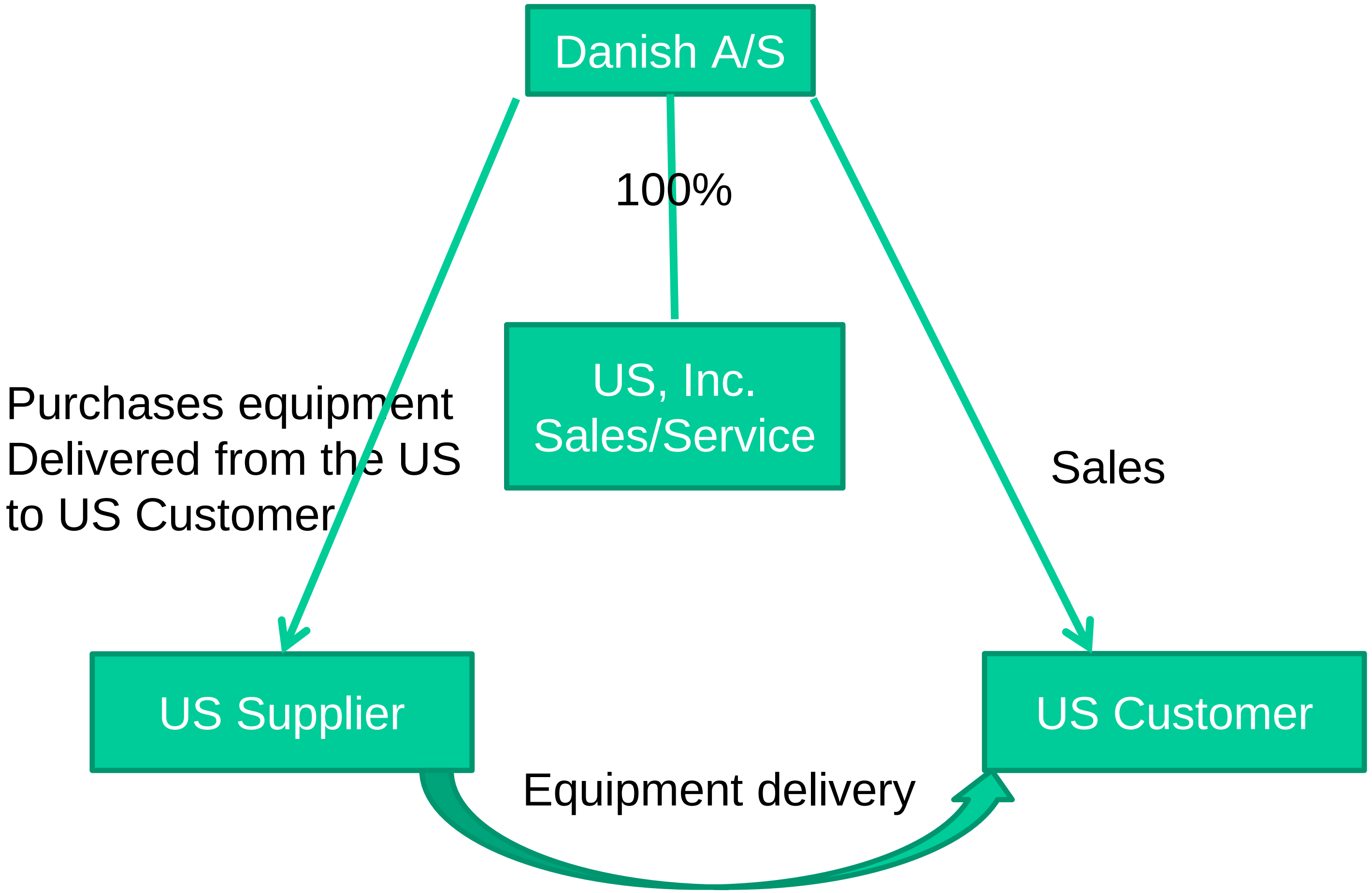
Source: Commerce Clearing House

taxfoundation.org/maps

MAKING TREAT ELECTIONS

- The US and Denmark tax treaty makes it easier to transact business between the two countries.
- US tax law requires the filing of a treaty election each year, if a Company is utilizing the tax treaty.
    - The filing is relatively simple, but often missed.
- <u>Without the treaty election, treaty benefits are not available!</u>
  This means the Danish Company might be deemed to have a permanent establishment.
- Failure to file a treaty election, when required, could be VERY expensive!

A REAL LIFE EXAMPLE



- US Subsidiary was established to control US tax and liability exposure
- DK entity has inventory in the US, this is allowed under the US/DK treaty
- Installation by **DK** employees, this is allowed under the US/DK treaty
- Without the treaty the **Danish A/S has a US branch and must pay US tax!**

TREATY PROTECTION

- Must file a treaty election.
  (A tax return with treaty election attached)

- Under §882(c), a foreign corporation is **entitled to deductions and credits only if it files "a true and accurate return"**, in the manner prescribed
  - Worst case – **IRS can assess tax on gross US sales with no deductions allowed.**

SAY AGAIN?

ANALYSIS OF CONSEQUENCES

	Estimated consequence if investigated by the IRS:	Estimated consequence if treaty election filed prior to an IRS investigation:
Taxable sales in US 2016 (without and with treaty election)	$5,000,000	$0
Deductions allowed	0	0
Net income	5,000,000	0
Estimated federal tax (35%)	1,750,000	0
Estimated penalties for failure to file and pay	480,000	0
Estimated interest through 12/31/17	52,000	0
Total estimated federal tax risk	$2,282,000	$0


THE IRS

KEY TAKE AWAY

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- The new tax law provides new opportunities and incentives
- Monitor activity by state, consider if sales tax is applicable. The rules will continue to change and evolve in this area.
- When in doubt about potential for nexus, file a protective filing / treaty election
- Select a US accounting firm with international expertise

Peace of mind… Minimal surprises.

QUESTIONS?

MANY THANKS!

For more information, please contact :

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