



## Federal Tax ADVISORY ■

**JANUARY 2, 2018**

### Tax Act: Vote and Value

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#### **United States Shareholders**

One of the new Tax Cuts and Jobs Act's changes to Subpart F is to amend the definition of U.S. shareholder to include at least 10% of the value of the foreign corporation as well as 10% of the vote. The change should matter only to shareholders that own and are deemed to own only nonvoting preferred stock for investment reasons and to foreign corporations that have put in place high- and low-vote classes for the purpose of avoiding U.S. shareholder status for some shareholders.

Indeed, all of the sections of the Code affected by the Act going forward will use the vote or value definition, but one: Section 1248. It continues to apply to U.S. persons owning, directly or indirectly, 10% or more of the vote under certain circumstances. Section 902's indirect foreign tax credit also was based on voting stock ownership, but it has been repealed.

The result will be to bring into the U.S. shareholder category the owners of nonvoting preferred stock and to possibly render unusual voting structures unnecessary, except for Sections 1248 and 964(e).

A nonvoting shareholder still may be able to sell its stock and avoid Section 1248 recharacterization, but may not want to. Without the dividend that Section 1248 imputes, a selling domestic corporation cannot claim the new participation exemption deduction of Section 245A.

#### **Controlled Foreign Corporations**

The Act also deletes Section 958(b)(4). As a result, a U.S. subsidiary of a foreign parent can be deemed to own the stock of the foreign parent's foreign subs, making them CFCs. While that part of the Act has been generally discussed, it may be a surprise to understand that the CFC status will exist for the calendar year 2017 if the foreign corporation and the U.S. shareholder use the calendar year.

For more information, please contact [Jack Cummings](#) at 919.862.2302.

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