Finance Talk: The American Jobs Creation Act of 2004

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The American Jobs Creation Act of 2004, signed by President Bush prior to the election, provides major tax incentives to operators of large vessels, makes other changes that affect operators of vessels in foreign countries, and changes the rules for deferred compensation plans often provided to key employees.

Specifically, "C" corporations that operate "qualified vessels" may choose to be taxes on "notional shipping income" instead of regular income based on the tonnage of the vessels they operate. This so-called "tonnage tax" should result in a substantial tax savings to eligible operators. Qualified vessels are at least 10,000 deadweight tons and used exclusively in the U. S. foreign trade, including self-propelled vessels, barges and combinations of both.

What do these provisions mean for you? If you are an operator of qualified vessels, you should investigate the new tonnage tax and exchange rules. These rules may give you the benefits of a Capital Construction Fund program (CCF) without all of the burdens. CCF allows an operator to shelter vessel profits and earnings as long as the amounts sheltered are invested in new vessels built, flagged and operated in the U.S. If you are an operator of small vessels, the Act offers no direct benefits. The best tax savings option is the CCF.

The Act also allows U.S. corporations to deduct 85 percent of certain cash dividends received from controlled foreign corporations (CFC) in which they are shareholders.

The amount of deductible dividends is limited to $500,000 or the CFC's earnings that are permanently invested outside the U.S. Also, the U.S. company must reinvest the dividends pursuant to a domestic reinvestment plan approved by senior management and its board of directors.

Lastly, the Act makes significant changes to the roles affecting the taxation of nonqualified deferred compensation plans, effective 2005. The Act applies to any nonqualified plan, agreement or arrangement that provides for deferral of income, including supplemental retirement plans, stock option plans and bonus arrangements. Failure to comply with the Act results in immediate taxation of deferred amounts, interest and an additional tax equal to 20 percent of deferred amounts.