

TEI-SJSU High Tech Institute – November 9, 2021

International Tax Reform of Build Back Better

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Recent international tax reform proposals and bills Overview

President Biden Made in America Tax Plan	Sen. Wyden Overhauling International Taxation framework	Rep. Neal Build Back Better Act
<ul style="list-style-type: none">• Plan issued by Treasury Department in April 2021 and Green Book released in May 2021• Increases US corporate tax rate to 28%• Introduces 15% minimum tax on book income• Introduces additional interest expense limitations• Repeals FDII• Tightens inversion rules• Modifies GILTI and BEAT rules	<ul style="list-style-type: none">• Framework introduced in April 2021 and draft bill released in August 2021• Focuses on overhauling the international tax system post-TCJA• Modifies FDII• Modifies GILTI and BEAT	<ul style="list-style-type: none">• Released September 2021• Increases the top US corporate tax rate to 26.5%• Introduces additional interest expense limitations• Modifies GILTI, FTCs, subpart F, BEAT and FDII• Delays the effective date of R&E capitalization• Modifies the treatment of certain losses• Imposes basis limitations in certain divisive reorganization transactions• Limits the 245A dividends received deduction (DRD) to controlled foreign corporations (CFCs)• Treats certain dividends from CFCs as extraordinary dividends for purposes of Section 1059• Reinstates Section 958(b)(4), which prohibits downward attribution; retroactively• Clarifies the treatment of gains from, or distributions by, a DISC or FSC to a foreign shareholder• Modifies portfolio interest ownership threshold

New Section 163(n) — limitation on deduction of interest of certain domestic corporations that are members of an international financial reporting group

- Proposal intends to limit deductibility of interest expense of multinational's US operations that is part of an international financial reporting group (**IFRG**) to its proportionate share of the group's interest expense
- Specified domestic corporation (**SDC**) deduction for interest expense in excess of interest income is limited to 110% of net interest expense (**NIE**) multiplied by the "allowable percentage"
- Allowable percentage is equal to the SDC's allocable share of IFRG's book NIE over the SDC's NIE
- SDC's allocable share of IFRG's book NIE is equal to total IFRG book NIE multiplied by the SDC's earnings before interest and taxes (**EBITDA**) over the IFRG's total EBITDA

<i>Limitation</i>	$SDC\ NIE\ (tax) * 110\% * \text{allowable percentage}$
<i>Allowable percentage</i>	$\frac{SDC\ \text{allocable share of IFRG NIE}}{SDC\ NIE\ (book)}$
<i>Allocable share</i>	$IFRG\ NIE * \frac{SDC\ EBITDA}{IFRG\ EBITDA}$

- Generally applicable to tax years beginning after December 31, 2022.



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New Section 163(n) — definitions and operating rules

- Generally applies to any domestic corporation that is part of an IFRG
 - Exceptions for domestic corporations with average NIE of less than \$12m over last three years, small businesses (defined under Section 163(j)(3)), and S corporations, real estate investment trusts (REITs), and regulated investment companies (RICs)
 - May apply to outbound US multinationals, unlike the Green Book
- Special rules apply to SDCs/IFRGs with EBITDA equal to or less than zero
 - If IFRG EBITDA is equal to or less than zero, Section 163(n) does not apply
 - If SDC EBITDA is equal to or less than zero, allowable percentage equals zero
- IFRG means two or more entities if:
 - Either (i) at least one entity is a foreign corporation engaged in a US trade or business, or (ii) at least one entity is a domestic corporation and another entity is a foreign corporation, and
 - The entities included are included in the same applicable financial statement (within the meaning of Section 451(b)(3))
- Gives the Secretary of Treasury authority to address several issues, including coordination with Section 163(j)(4), which is also proposed to be modified to have Section 163(j) apply at the partner, not partnership level



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New Section 163(n) — example

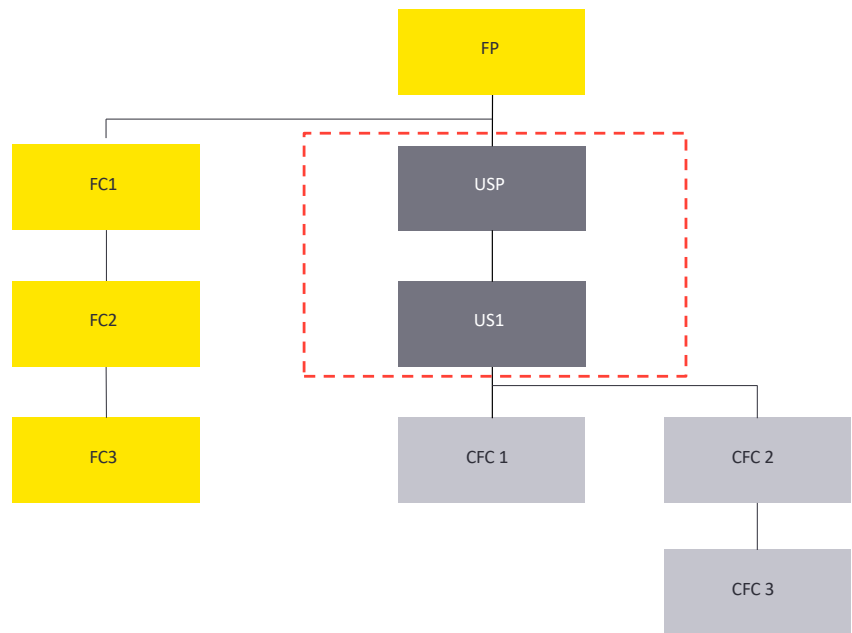
Facts

1. FP is head of a group of companies included in the same applicable financial statement. Accordingly, the group constitutes an IFRG.
2. It is assumed that each of the domestic entities will constitute a single SDC and that none of the foreign entities generate effectively connected income.
3. Items of IFRG and SDC:

	Net interest exp (US tax)	Net interest exp (IFRG)	EBITDA
IFRG	N/A	\$1,000	\$10,000
SDC	\$750	\$850	\$5,000

Results to SDC

1. Allocable share of IFRG NIE = $\$1,000 * (\$5,000/\$10,000) = \500
2. Allowable percentage = $\$500/\$850 = 58.8\%$
3. Limitation = $\$750 * 110\% * 58.8\% = \485
4. Excess of the limitation = $\$265 (\$750 - \$485)$, may be carried forward.



FDII

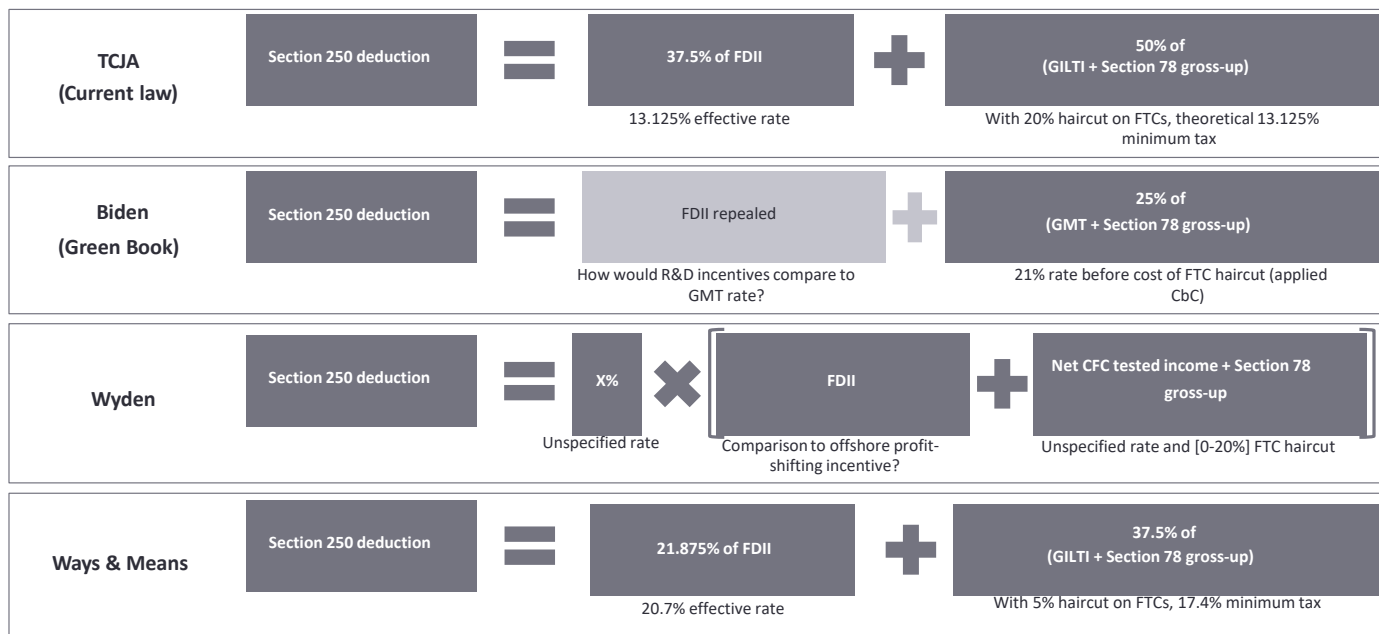


FDII proposals

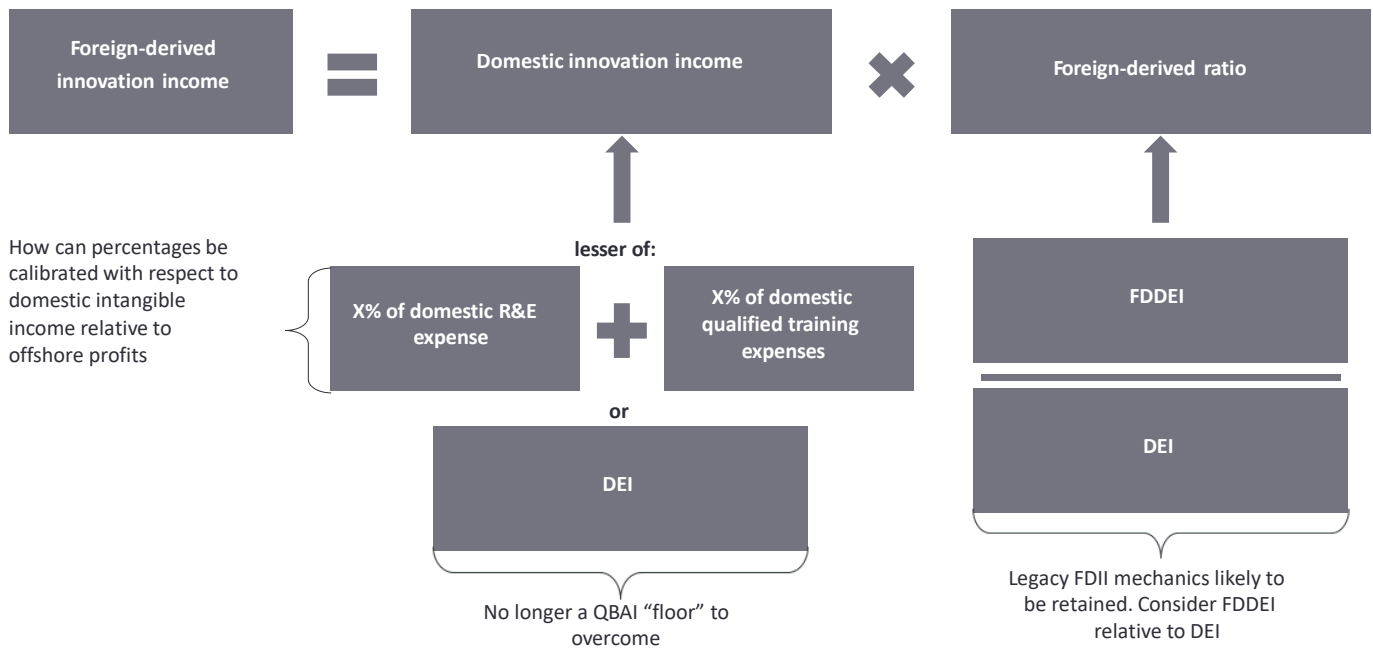
President Biden <i>Made in America Tax Plan</i>	Sen. Wyden <i>Overhauling International Taxation framework</i>	Rep. Neal <i>Build Back Better Act</i>
<ul style="list-style-type: none"> Repeal FDII effective for tax years beginning after December 31, 2021 Resulting revenue (\$124b over 10 years) used to “encourage R&D” in the United States 	<ul style="list-style-type: none"> Replace current FDII regime with foreign-derived “innovation income” regime; effective date unspecified Calculated as “domestic innovation income” times “foreign-derived ratio” Domestic innovation income would be unspecified percentages of domestic R&E and qualified training expenses Foreign-derived ratio is foreign-derived deduction eligible income (FDDEI) divided by deduction-eligible income (DEI) (legacy FDII concept) QBAI eliminated Single (unspecified) rate applied to FDII and net tested income 	<ul style="list-style-type: none"> Largely retains existing FDII framework but reduces FDII deduction to 21.875% (20.7% effective rate) Effective for tax years beginning after December 31, 2021, with pro-rated transition rates for fiscal year taxpayers 10% QBAI floor retained Taxable income limitation removed, and Section 250 deduction can result in an NOL for the tax year Additional exclusions to DEI (e.g., foreign personal holding company income (FPHCI))



Comparison of Section 250 deductions



Wyden proposal: foreign-derived innovation income



Ways & Means proposal: additional exclusions to DEI

The following additional categories of income would be excluded from DEI (and FDDEI)			
FPHCI	Any income received or accrued which is of a kind which would be foreign personal holding company income (as defined in Section 954(c))	Consider extent to which exceptions to subpart F apply (e.g., look-through exception for related-party Royalties, 1.904-4, etc.)	Legislative text indicates would be effective retroactively to tax years beginning after December 31, 2017
Qualified electing fund (QEF) passive foreign investment company (PFIC) inclusions	Any amount included in the gross income of such corporation under Section 1293		
Disqualified extraterritorial income (ETI)	Basically, any amount that could be excluded from gross income under the ETI regime (with an option to elect out of ETI treatment)	Some taxpayers may be treating income from "transactions" occurring prior to ETI repeal as continuing to be eligible for ETI benefits	



Taxable income limitations (TIL) - example

Current law (TCJA)	Before Section 250	Section 250 deduction after TIL	After Section 250
FDII	\$100	—	\$100
GILTI	80	—	80
Section 78 gross-up	20	at 50% = (10)	10
Other income (loss)	(200)	—	(200)
Taxable income (loss)	—	(10)	(10)

- Taxable income limitation excludes Section 78 gross-up component
- However, Section 250 deduction cannot comprise an NOL carryover deduction (Section 172(d)(9)), so is effectively disallowed
- Historically considered a “glitch” by practitioners

Wyden	Before Section 250	Section 250 deduction after TIL	After Section 250
FDII	\$100	—	\$100
GILTI	80	—	80
Section 78 gross-up	20	—	20
Other income (loss)	(200)	—	(200)
Taxable income (loss)	—	—	—

- Would include Section 78 gross-up in taxable income limitation mechanics
- Section 250 deduction does not, by operation of taxable income limitation, result in a loss

Ways & Means	Before Section 250	Section 250 deduction (no TIL)	After Section 250
FDII	\$100	at 21.875% = (21.875)	\$78.125
GILTI	80	at 37.5% = (30)	50
Section 78 gross-up	20	at 37.5% = (7.5)	12.5
Other income (loss)	(200)	—	(200)
Taxable income (loss)	—	—	(59.375)

- Taxable income limitation eliminated
- Repeals Section 172(d)(9)
- Permits Section 250 deduction to result in a loss carryforward



BEAT



Tax reform proposals and bills

BEAT

Proposal	Primary base erosion mechanism	Threshold	Rate	FTCs
Biden <i>Made in America</i>	SHIELD* — similar to Organisation for Economic Co-operation and Development (OECD) Pillar Two undertaxed payments rule	Not addressed	Would deny deductions by reference to payments made to “low-taxed members” (i.e., lower than GILTI rate or OECD rate when agreed)	Not addressed
Wyden <i>Overhauling International Taxation</i>	Amending BEAT with two-rate structure	Not addressed	<ul style="list-style-type: none"> 10% rate retained for regular income Higher rate for base erosion payments 	Framework suggested FTCs potentially restored to full value, depending on revenue, but bill was silent
Neal <i>Build Back Better Act</i>	<ul style="list-style-type: none"> Expands base erosion payments to take into account certain payments with respect to inventory Narrows base erosion payment where ETR > BEAT rate or amounts subject to US tax 	Would eliminate 3% base erosion percentage threshold after 2023	<ul style="list-style-type: none"> 10% for 2022 and 2023 12.5% for 2024 and 2025 15% for 2026 and beyond 	Restored to full value

* Stopping Harmful Inversions and Ending Low-tax Developments (SHIELD)



Section 59A: House Ways & Means proposed amendments

Key proposed amendments include:

Category	Proposed amendment
BEAT rate	<ul style="list-style-type: none"> 10% for tax years beginning before 1/1/2024 12.5% for years beginning after 12/31/2023 and before 1/1/2026 15% for years beginning after 12/31/2025
Base erosion payments – exceptions	<ul style="list-style-type: none"> The services cost method (SCM) exception Exception for payments subject to sufficient foreign tax Exception for payments on which US tax is imposed
Gating thresholds	<ul style="list-style-type: none"> Gross receipts test Base erosion percentage test: eliminated for years beginning on or after 1/1/2024
Base erosion minimum tax amount	<ul style="list-style-type: none"> Regular tax liability is <u>not reduced</u> by any credits Section 38 credits may be applied to offset the BEAT tax liability
Cost of goods sold (COGS) and payments with respect to inventory	<ul style="list-style-type: none"> New Section 59A(d)(5) would treat certain payments with respect to inventory as base erosion payments: <ul style="list-style-type: none"> Certain indirect costs paid or accrued by the taxpayer to a foreign related party that are required to be capitalized to inventory under Section 263A The portion of the invoice price of inventory purchased from a foreign related party that exceeds the sum of certain direct and indirect costs Safe harbor: taxpayers may elect to determine indirect costs excludable from the definition of a base erosion payment by taking 20% of the invoice price For purposes of MTI, COGS would be determined without regard to any base erosion payments described in new Section 59A(d)(5)
Modified taxable income (MTI) – NOLs	<ul style="list-style-type: none"> The NOL deduction determined without regard to any base erosion tax benefit
Taxpayers subject to higher BEAT rates	<ul style="list-style-type: none"> Registered securities dealers, Banks (as defined in Section 585(a)(2)), or Members of an affiliated group which includes the US branch of a foreign bank as defined under Section 585(a)(2)

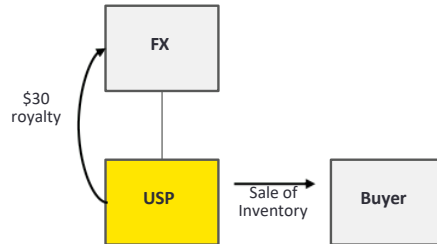


Section 59A: House Ways & Means proposed amendments

Base erosion basis adjustments with respect to COGS – Example 1

USP is an applicable taxpayer and a subsidiary of FX, a foreign related party.

- FX owns a patent and other manufacturing know-how that it licenses to USP to allow USP to produce inventory.
- USP pays FX \$30 per year in royalties and capitalizes this expense to the inventory it produces.
- USP sold all of the inventory it produced during the current year, so all costs capitalized to inventory during the year were recovered as COGS.



Implications

- Unless an exception applies (e.g., US tax is imposed, or payments subject to sufficient foreign tax):
 - \$30 of royalties paid to FX would be a base erosion payment, and
 - COGS used in computing MTI would be reduced by the \$30 (i.e., resulting in an increase to MTI of \$30).

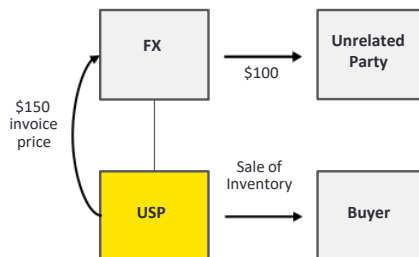


Section 59A: House Ways & Means proposed amendments

Base erosion basis adjustments with respect to COGS – Example 2

Assume the same facts as in the prior example except that FX manufactures inventory and sells it to USP for \$150.

- FX incurs \$40 of direct costs (i.e., \$30 of direct material and \$10 of direct labor) and \$60 of indirect costs described in Section 263A(a)(2)(B) to produce the inventory, for a total cost of \$100.
- Assume all of the direct and indirect costs incurred by FX to produce the inventory are paid or accrued (directly or indirectly) to a person which is not a related party of USP.
- USP sold all of the inventory it purchased from FX during the year so all of the costs capitalized to inventory during the year were recovered as COGS.



Implications

- \$40 of direct costs and \$60 of indirect costs would not be base erosion payments because all of the direct costs and indirect costs capitalizable under Section 263A were paid or accrued by FX to a US person or person not related to USP.
- However, unless an exception applies, \$50 (\$150 purchase price less \$100 of direct and indirect costs) would be a base erosion payment.
- As such, COGS used in computing MTI would be reduced by the \$50.

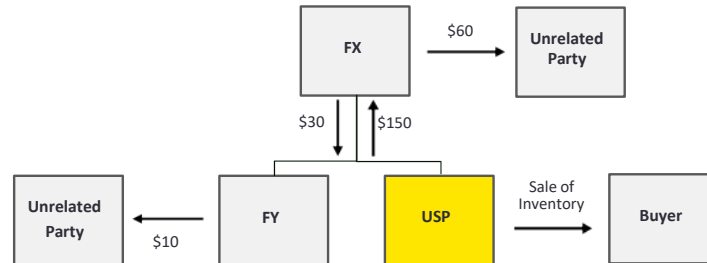


Section 59A: House Ways & Means proposed amendments

Base erosion basis adjustments with respect to COGS – Example 3

Assume the same facts as in the prior example except that FX also owns FY, a foreign related party.

- FX's costs to produce the inventory include \$30 of direct materials purchased from FY, \$10 of direct labor incurred by FX employees, and \$60 of indirect costs that would be capitalizable under Section 263A and were paid to a person unrelated to USP.
- Assume that FY incurs \$10 of direct and indirect costs paid to a person unrelated to USP to produce the inventory that FX buys for \$30 (i.e., \$20 markup/profit at FY).



Implications

- Only \$20 of the total direct costs incurred by FX would be excluded from the definition of a base erosion payment (\$10 of direct material cost from FY + \$10 of FX's direct labor cost).
- As such, assuming no exceptions apply, out of the \$150 paid from USP to FX, \$80 would be excluded from the definition of a base erosion payment (i.e., \$20 of direct costs + \$60 of indirect costs paid to a person unrelated to USP) and \$70 would be a base erosion payment that decreases COGS used to compute MTI (i.e., increase in MTI of \$70).



Biden Made in America Tax Plan

GILTI

- Reduce section 250 deduction to 25%
 - US effective tax rate of **21%** (assuming a corporate tax rate of 28%)
 - Foreign tax rate of **26.25%** generally required to avoid "residual" US tax (taking into account 80% FTC)
- Eliminate "net deemed tangible income return" based on 10% of QBAI
- Calculate GILTI on a country-by-country basis

Subpart F

- Repeal the Subpart F high-tax exception (and the corresponding cross-reference in section 951A)

Wyden Discussion Draft on International Tax Reform

GILTI

- Reduce section 250 deduction to [TBD (equal for GILTI and FDII)]
- Eliminate "net deemed tangible income return" based on 10% of QBAI
- Mandatory GILTI high-tax exclusion
 - "High-tax tested income" (and associated foreign taxes) are excluded from GILTI
 - Defined as tested income subject to an effective rate of foreign tax (taking into account any FTC "haircut") in excess of the US effective tax rate for GILTI
 - Effective rate of foreign tax is calculated based on each tested unit – and by aggregating all tested units that are tax residents of the same foreign country
 - A tested unit with a tested loss is treated as having high-tax tested income
 - "Tested unit" is (i) the CFC, (ii) an interest in a pass-through entity held by the CFC, and (iii) a branch of the CFC

Subpart F

- Mandatory Subpart F high-tax exclusion
 - Effective rate of foreign tax is calculated under the rules above (but separately for passive and general category income of a tested unit)

House Ways & Means Committee Proposal

GILTI

- Reduce section 250 deduction to 37.5%
 - US effective tax rate of **16.5625%** (assuming a corporate tax rate of 26.5%)
 - "Blended" section 250 deduction percentage for fiscal year corporations
 - Foreign tax rate of **17.434%** generally required to avoid "residual" US tax (taking into account 95% FTC)
- Reduce "net deemed tangible income return" to 5% of QBAI
- Calculate GILTI (including net CFC tested income, QBAI, and net deemed tangible income return) on a country-by-country basis
 - The aggregate items of all CFC taxable units that are tax residents of the same foreign country are combined
 - "CFC taxable unit" is (i) the CFC, (ii) an interest in a pass-through entity held by the CFC, and (iii) a branch of the CFC
- Taxable income limitation is repealed (section 250 deduction for GILTI can increase / create an NOL)
- Net CFC tested loss for a particular country carries over to the following taxable year
 - Note such CFC tested loss is treated as a "pre-change loss" for purposes of applying section 382

Subpart F

- Foreign base company sales income / foreign base company services income arise only if the required related person is US (i.e., a taxable unit that is tax resident of the US)

Build Back Better Act

GILTI (for tax years beginning after December 31, 2022)

- Reduce section 250 deduction to 28.5%
 - US effective tax rate of **15.015%** (assuming a corporate tax rate of 21%)
 - “Blended” section 250 deduction percentage for fiscal year corporations
 - Foreign tax rate of **15.805%** generally required to avoid “residual” US tax (taking into account 95% FTC)
- Reduce “net deemed tangible income return” to 5% of QBAI
- Calculate GILTI (including net CFC tested income, QBAI, and net deemed tangible income return) on a country-by-country basis
 - The aggregate items of all CFC taxable units that are tax residents of the same foreign country are combined
 - “CFC taxable unit” is (i) the CFC, (ii) an interest in a pass-through entity held by the CFC, and (iii) a branch of the CFC
- Taxable income limitation is repealed (section 250 deduction for GILTI can increase / create an NOL)
- Net CFC tested loss for a particular country carries over to the following taxable year
 - Note such CFC tested loss is treated as a “pre-change loss” for purposes of applying section 382

Subpart F

- Foreign base company sales income / foreign base company services income arise only if the required related person is US (i.e., a taxable unit that is tax resident of the US or a person subject to tax by reason of activities in the US)

GILTI Comparison Matrix

	Biden	Wyden	Ways & Means	Build Back Better Act
Section 250 Deduction	25%	TBD	37.5%	28.5%
US Effective Tax Rate on GILTI	21%	TBD	16.5625%	15.015%
FTC “Haircut”	20%	0%-20%	5%	5%
Foreign Tax Rate to Avoid “Residual” US Tax on GILTI	26.25%	TBD	17.434%	15.805%
QBAI	Eliminated	Eliminated	Reduced to 5%	Reduced to 5%
Country-by-Country Calculation of GILTI	Yes	Mandatory high-tax exclusion	Yes	Yes
CFC Tested Losses	No carryforward	Timing issues TBD	Carried forward	Carried Forward

Prior FTC/Expense Allocation Proposals

	Green Book	Wyden	Ways and Means Proposal
Section 904 Categories	<ul style="list-style-type: none"> CbC for GILTI and foreign branch categories No changes to general and passive 	<ul style="list-style-type: none"> No apparent change 	<ul style="list-style-type: none"> Eliminates foreign branch CbC for remaining categories (GILTI, general, and passive)
FTC Haircut	<ul style="list-style-type: none"> No "haircut" specified 	<ul style="list-style-type: none"> Continues to apply "haircut" to section 960(d) (GILTI) tax and expands "haircut" to foreign branch taxes and section 960(a) (subpart F inclusions) taxes. "Haircut" rate between 0 and 20%. 	<ul style="list-style-type: none"> Reduces "haircut" on section 960(d) (GILTI) taxes from 20% to 5% No "haircut" for section 960(a) (Sub F) taxes
FTC Carryback/forward	<ul style="list-style-type: none"> No apparent change 	<ul style="list-style-type: none"> No apparent change 	<ul style="list-style-type: none"> Eliminates carryback / reduces carryforward from 10 to 5 years for all FTCs, but expands to allow carryforward for GILTI foreign taxes
Other GILTI FTC proposals	<ul style="list-style-type: none"> Allows credit against US tax on GILTI for taxes paid by foreign parent under IIR 	<ul style="list-style-type: none"> Allows section 960(d) credits for tested loss CFCs if overall net CFC tested income Allows credit against US tax on GILTI for taxes paid by foreign parent under IIR 	<ul style="list-style-type: none"> Allows section 960(d) credits for tested loss CFCs (but based on per country inclusion percentage) Allows credit against US tax on GILTI for taxes paid by foreign parent under IIR
OFLs / SLLs	<ul style="list-style-type: none"> No apparent change 	<ul style="list-style-type: none"> No apparent change 	<ul style="list-style-type: none"> Apply SLL rules on a CbC basis SLLs reduce other section 904 categories before GILTI category
Expense Allocation	<ul style="list-style-type: none"> Eliminates section 904(b)(4) Expands section 265 to disallow deductions allocable to exempt (section 245A) or partially exempt (section 250) income 	<ul style="list-style-type: none"> Allocates US-based R&D and stewardship expenses to US source income only 	<ul style="list-style-type: none"> Repeals section 904(b)(4) and replaces with provision that allocates only section 250 deduction to GILTI category (and no US-level expenses) Treats section 245A income / assets as tax exempt

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Build Back Better Act: Key FTC/Expense Allocation Provisions (1 of 3)

- Section 904 Categories
 - Foreign branch category is eliminated (taxable years beg. after 12/31/22)
 - Section 904(d) applies on a country by country basis, looking at income attributable to "taxable units" (e.g., CFCs, passthroughs, branches) (taxable years beg. after 12/31/22)
 - Broad grant of regulatory authority to Treasury, among other things, to address hybrid entities and assign taxes and deductions as necessary/appropriate
- FTC carryforward/back
 - No FTC carryback, but 10-year FTC carryforward unchanged (taxes paid or accrued in taxable years beg. after 12/31/22)
 - GILTI FTCs carry forward 10 years generally, but carry forward for 5 years for taxable years beginning after 12/31/22 and before 1/1/31
- SLLs
 - SLL rules apply on a CbC basis and reduce other section 904 categories before GILTI category (taxable years beg. after 12/31/22)

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Build Back Better Act: Key FTC/Expense Allocation Provisions (2 of 3)

- Foreign Tax Redeterminations
 - Decision to credit/deduct taxes and/or change in amount/treatment of taxes affecting tax liability both trigger foreign tax redetermination (changes 60 days after enactment)
 - Relation back principle in section 905(c)(2) eliminated in favor of taking taxes into account when paid (starting 60 days after enactment)
- FTC Refund Statute of Limitation
 - Section 6511(d)(3)(A) is amended to replace “actually paid” with “paid (or deemed paid under section 960)” (taxable years beg. after 12/31/22)
- Expense allocation
 - Section 904(b)(4) is eliminated (taxable years beg. after 12/31/22)
 - GILTI is generally only allocated the section 250 deduction, but Treasury has the authority to determine that other deductions are allocable to GILTI, and any deductions that would have otherwise been allocable to GILTI are allocated to US source income (taxable years beg. after 12/31/22)

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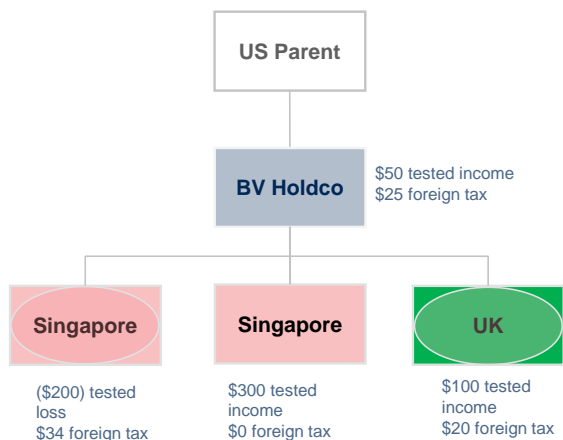
Build Back Better Act: Key FTC/Expense Allocation Provisions (3 of 3)

- GILTI FTCs
 - Reduces “haircut” on section 960(d) (GILTI) taxes from 20% to 5% (taxable years of CFCs beg. after 12/31/22 and taxable years of US shareholders in/with which those CFC years end)
 - Taxes attributable to tested losses potentially creditable (taxable years of CFCs beg. after 12/31/22 and taxable years of US shareholders in/with which those CFC years end)
- Section 898
 - Eliminates section 898(c)(2) deferral starting with first CFC taxable year after November 30, 2022
 - Aligns next CFC year with US shareholder year with a one month CFC taxable year
 - Treasury to issue regulations on allocating foreign taxes as necessary or appropriate

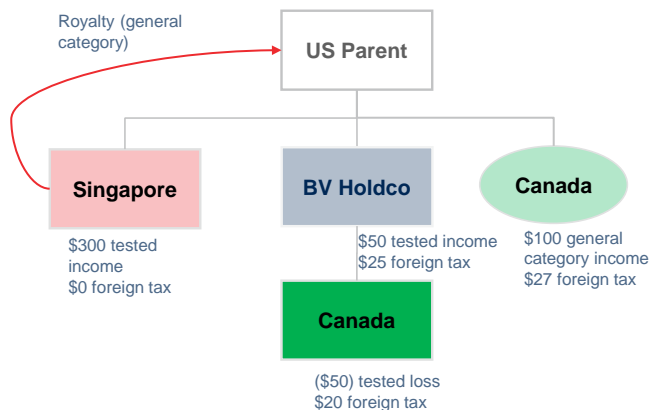
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CbC GILTI and Section 904

Scenario 1

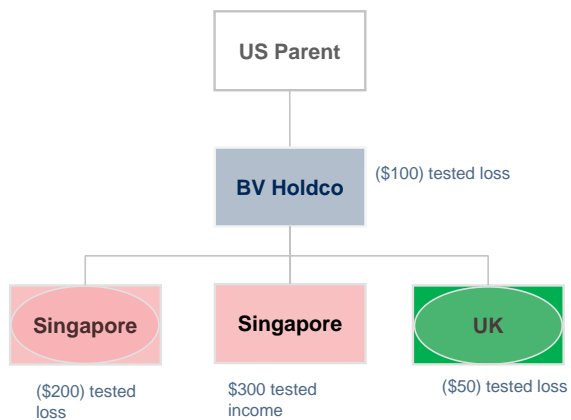


Scenario 2

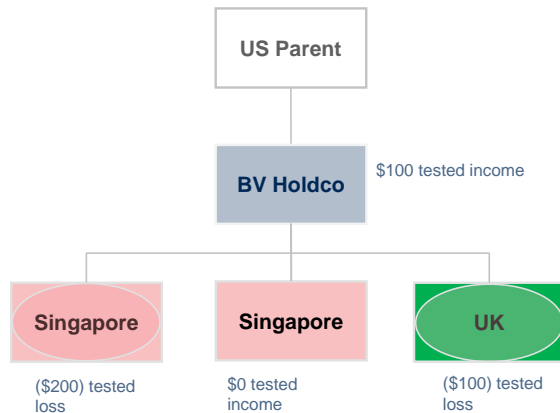


Tested Loss Carryovers

Year 1



Year 2



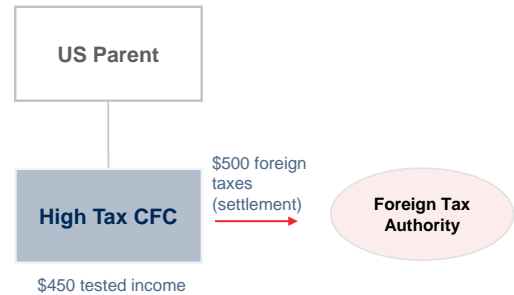
Section 898 and Section 905(c)(2)

Section 898



- High Tax CFC earns \$50 of income per month, and \$600 of income per year
- High Tax CFC's tax rate is 28%, and its taxes accrue on 7/31

Section 905



TJCA Lessons Learned

- ❖ Implementation Efforts
- ❖ Training
- ❖ Compliance Planning
- ❖ Communication



Implementation

- ❖ Guidance
- ❖ Forms and Instructions
- ❖ Retroactive legislation



Training

- ❖ Overview training
- ❖ New Hire Training
- ❖ Training LB&I agents
- ❖ CBA Deep dive training



Communication

- ❖ External Communication
 - National Outreach
 - Taxpayer Group
 - Public messaging



Compliance Planning

- ❖ Overview
- ❖ International Matrix
- ❖ Support to CAP teams
- ❖ Impact on TCJA Compliance Planning



TCJA Exam Work - Where Are We in LB&I?

- ❖ LB&I has only begun to examine the impact of TCJA on its filing population over the last year.
 - Exceptions: CAP, PFAs, and APA cases...started working TCJA issues earlier than general exam population
- ❖ In 2021, majority of returns under review by LB&I will be those reflecting changes brought about by TCJA
- ❖ Extensive TCJA training of all LB&I agents started in 2018 and continues to take place
 - More advanced/intense TCJA training has been delivered to CBA and others working International issues.
- ❖ LB&I is also considering the impact of the Coronavirus Aid, Relief, and Economic Security (CARES) Act

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LB&I TCJA Campaigns

- ❖ I.R.C. § 965 Campaign
- ❖ TCJA Implementation Campaign

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IRC § 965 Campaign

- ❖ This campaign is a current priority and focus for LB&I
- ❖ Campaign is managed by CBA
- ❖ Campaign goal is to promote compliance with IRC § 965 by analyzing
 - revenue raised by § 965
 - the various taxpayer populations that may present § 965 issues.
- ❖ Initial treatment stream included
 - identifying and reviewing the largest reported corporate § 965 inclusions
 - sampling for review other significant taxpayer populations in order to detect and address noncompliance



IRC § 965 Campaign (continued)

- ❖ Campaign started with 2017 returns but will generally require looking at both the 2017 and 2018 tax returns.
- ❖ Returns selected as part of the § 965 campaign will be risked and, if appropriate, examined for other material issues, especially issues related to TCJA planning.
- ❖ LB&I will continue to analyze additional information to refine campaign approach and case selection.
- ❖ Consistent with its approach to corporate returns, LB&I expanded the campaign to include non-corporate returns, especially pass-through entities, S-Corporations and insurance returns.



IRC § 965 Campaign (continued)

- ❖ Extensive Training/Support
- ❖ Forms
- ❖ Issues in Field
- ❖ Reg. Challenges



LB&I TCJA Implementation Campaign

- ❖ The goal of this campaign is to identify technical issues and better understand taxpayer behavior under the new law
- ❖ The treatment streams for this campaign may include examinations, soft letters, outreach, new and improved practice units and development of future issue-based campaigns



- ❖ Issues are worked like any other issue in examination
 - starting with utilizing risk analysis techniques and continuing with the case development, etc.
- ❖ Examiners and managers continue to have discretion over their cases within existing LB&I processes, procedures, and guidelines
- ❖ Other issues may be added to the cases selected for this campaign, when appropriate
- ❖ Assistance from Practice Networks and Counsel remain the same as with regular exam cases
- ❖ The TCJA Campaign will monitor issues more closely and share information learned throughout LB&I and the IRS