

US International Tax Updates & Highlights

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Agenda

Where are We Now?

Mandatory Deemed Repatriation (“Toll Charge”)

Global Intangible Low-Taxed Income (“GILTI”)

Foreign Tax Credits & New 904(d) Categories

Base Erosion Anti-Abuse Tax (“BEAT”)

Section 245A(e) / 267A Anti-Hybrid Rules

Q&A

Where are We Now?

And where are we going...

Government Guidance

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Final Section 965 Regulations

Proposed Section 951A GILTI Regulations

Proposed Foreign Tax Credit Regulations

Proposed Section 163(j) Regulations

Proposed Section 59A BEAT Regulations

Proposed Anti-Hybrid Regulations

Notice 2019-01 PTEP Rules



Future Guidance

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Section 250 FDII

Section 245A Participation Exemption

Finalize Proposed Regulations

Toll Charge

Toll Charge – In Short

Previously untaxed foreign earnings (accumulated post-1986 earnings) of certain “specified foreign corporations” (SFC) are taxed at preferential tax rates (15.5% for earnings represented by cash and 8% for non-cash earnings), with foreign tax credits similarly haircut on the inclusion.

- Deficits in E&P of certain SFCs can be used to offset the section 965 inclusion amount.
- Toll charge amount can be paid over 8 years per schedule (8% per year for first 5 years, 15% in sixth year, 20% in seventh year, and 25% in eighth year).

In August 2018, Treasury released proposed section 965 regulations. The final section 965 regulations were released on January 15, 2019 (and published in the federal register on February 5).

Toll Charge – Final Regulations

- Clarified the five-step ordering rule for E&P adjustment and interaction with foreign tax credit determination
- Retain anti-avoidance rules with modification to the double-counting relief rule
- New exemptions from cash position and single shareholder treatment for consolidated groups
- Changed pro rata share of E&P rule to account for toll charge year dispositions
- More optionality with respect to the basis adjustment election
- Additional guidance on installment elections and acceleration events

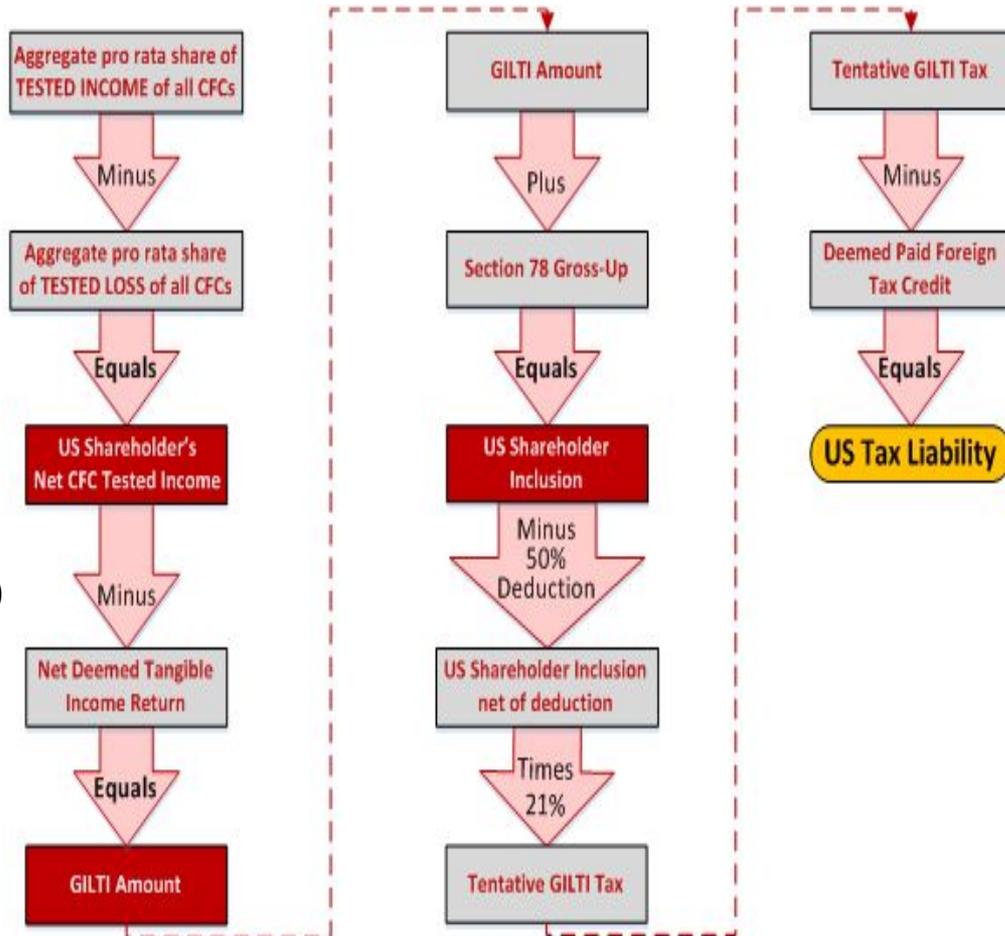
GILTI

GILTI – In Short

A U.S. shareholder of one or more CFC shall include in gross income its “**global intangible low-taxed income**” (“GILTI”) in a manner similar to subpart F income.

The effect of this rule is to subject a U.S. shareholder to a tax on the combined net income of its CFCs that

- (1) is not otherwise taxed in the U.S. on a current basis (*e.g.*, not ECI or subpart F) or specifically excluded (*e.g.*, related dividends) and
- (2) exceeds a fixed routine return on the CFC’s associated business assets..



GILTI – Proposed Regulations

The GILTI proposed regulations were released on September 13, 2018 and provide guidance on:

- Determination of a US shareholder's GILTI inclusion amount
- Tested income and tested loss computation
- QBAI determination
- Specified interest expense
- Application of section 951A to domestic partnerships
- Treatment of GILTI inclusion amounts and adjustment to E&P and basis for tested losses
- Applicability dates

Top Takeaways from GILTI Proposed Regulations

- New rules for determining a US shareholder's pro rata share of a CFC's tested income (includes anti-abuse rule)
- Treas. Reg. sec. 1.952-2 adopted to determine gross tested income and allocable deductions
- Gross tested income treated as a single item of income within a separate category of income for purposes of allocating and apportioning deductions (under section 954(b)(5) principles)
- Application of section 952(c) E&P limitation for subpart F income and recapture to gross tested income
- Anti-abuse rules with respect to 'specified tangible property' for determining QBAI and calculating tested income and tested loss
- Exceptions with respect to 'specified interest expense' for interest expense of certain CFCs
- Partners' GILTI inclusions are determined under a hybrid of 'aggregate' and 'entity' partnership approaches
- Basis adjustments are required in stock of CFCs with tested losses that reduce tested income of other CFCs
- Aggregate approach used to determine GILTI inclusions of consolidated group members

Foreign Tax Credits

Foreign Tax Credits – In Short

TCJA impact on FTCs for US corporate taxpayers:

- Repealed the indirect credit under section 902
- Amended the deemed-paid credit under section 960
- Introduced two new FTC limitation baskets under section 904
- Modified the sourcing rules related to inventory and interest expense

On November 28, 2018, Treasury and the IRS released proposed regulations under sections 78, 861, 901, 904, 954, 960, and 965

Foreign Tax Credits – Proposed Regulations

Deemed-paid credits

- Allocation of deemed paid taxes to section 960(a), (b), and (d) (and none on section 956 inclusions)
- CFC-level income groups/PTEP accounts

FTC baskets

- Definition of GILTI and foreign branch baskets
- No look-through to GILTI or branch baskets
- Modified definition of base and timing differences

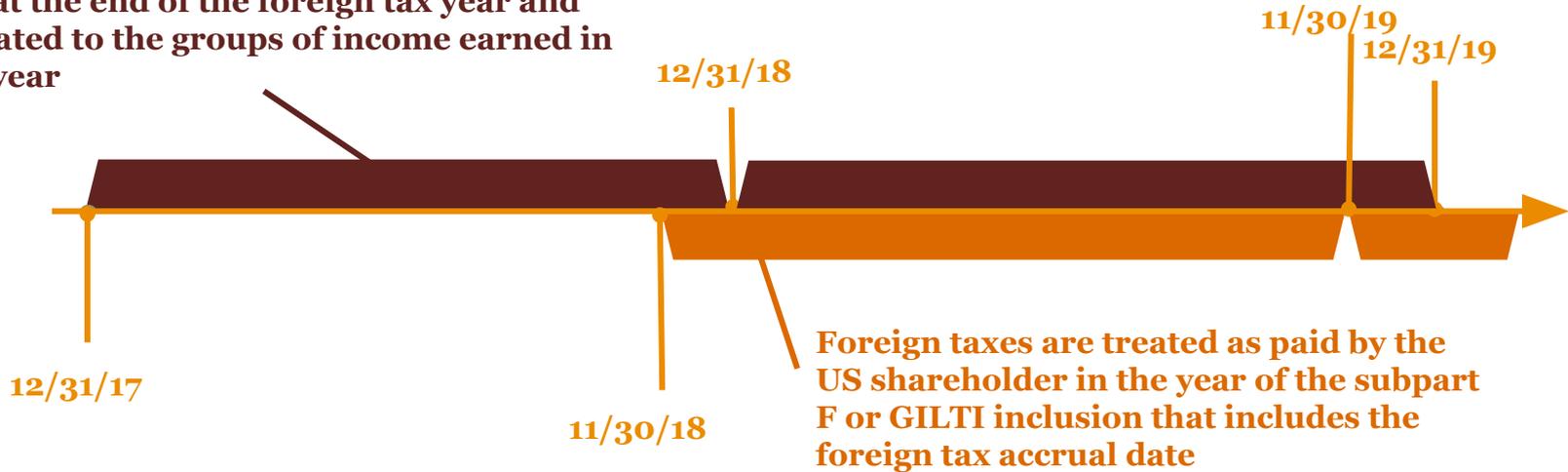
Expense apportionment

- Application to the GILTI basket, with exempt section 250 approach and section 904(b)(4)
- Specific changes for CFC netting and leveraged partnerships

FTC Proposed Regulations - Tax Year Mismatch

A calendar-year US shareholder with an 11/30 US year-end but 12/31 foreign year-end CFC - under the proposed regulations, taxes are not lost as a result of a foreign/US tax year-end mismatch.

Foreign taxes are treated as accrued by the CFC at the end of the foreign tax year and allocated to the groups of income earned in that year



Proposed Regulations - Section 960

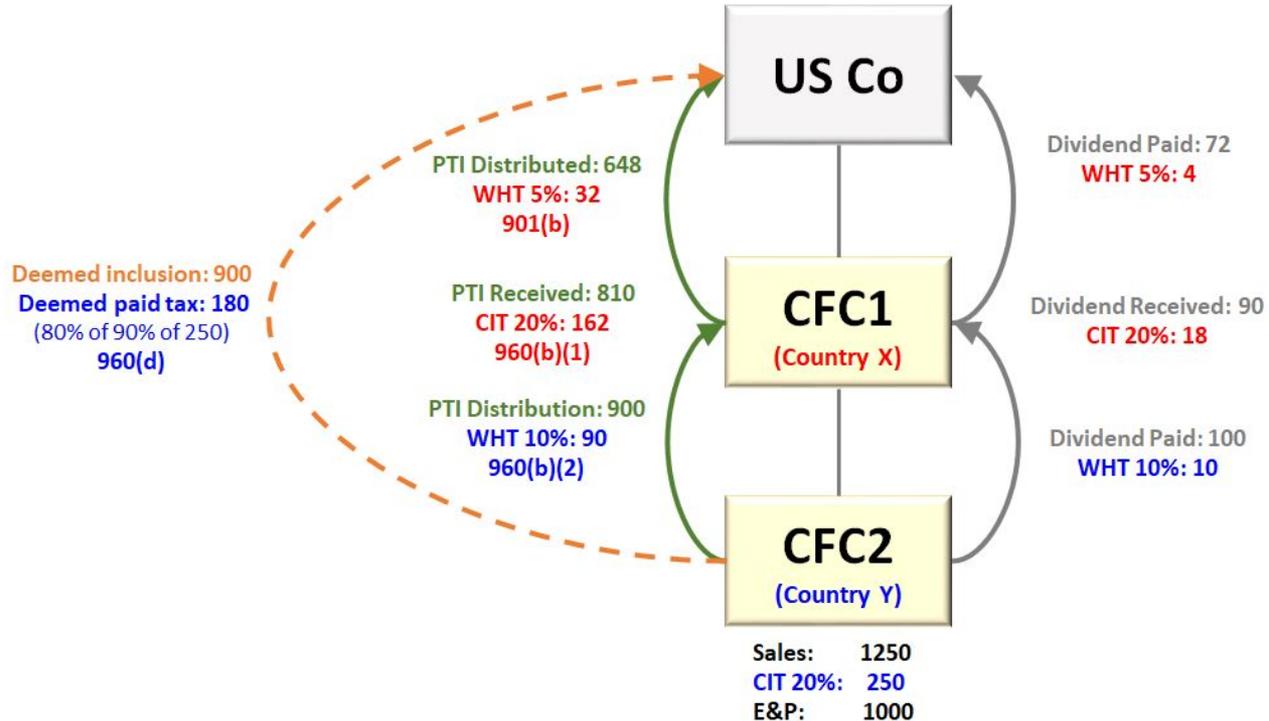
- Foreign income taxes paid or accrued by a foreign corporation are ‘properly attributable’ to subpart F or tested income only:
 - (1) if allocable and apportioned (by reference to foreign law) to subpart F or tested income
 - (2) if paid or accrued in the CFC’s US taxable year that includes subpart F or tested income, and
 - (3) in proportion to the CFC’s subpart F or tested income that is includible in a US shareholder’s gross income.
- No foreign income taxes deemed paid with respect to taxes properly attributable to the ‘residual income group’ (e.g., net deemed tangible income return, high-taxed subpart F income for which high-tax election is made, and base differences at the CFC level).
- No foreign income taxes are deemed paid with respect to a section 956 inclusion.

Notice 2019-01

- On December 14, 2018, the IRS issued Notice 2019-01, which outlines forthcoming PTEP regulations that Treasury intends to release due to the enactment of the 2017 Act.
- The forthcoming regulations will continue to prioritize the distribution of current-year PTEP over accumulated PTEP under Sections 316 and 959(c), for which the Notice prescribes new ordering rules:
 - i. Section 959(c)(1) PTEP related to Section 965(a) and (b) is distributed first
 - ii. Followed by remaining categories of Section 959(c)(1) PTEP, pro rata
 - iii. Thereafter, Section 959(c)(2) PTEP distributions are sourced to Section 965(a) E&P
 - iv. Then Section 965(b) E&P
 - v. Finally, Section 959(c)(2) PTEP unrelated to Section 965 (e.g., subpart F and GILTI PTEP) are distributed, pro rata.
- The forthcoming regulations will apply to tax years of US shareholders ending after December 14, 2018, and to taxable years of foreign corporations ending with or within such tax years of US shareholders.

Illustration of FTC Provisions

951A Deemed Inclusion: 900 Deemed paid taxes: 180	PTI Received (959 Exempt): 616 Paid/deemed paid taxes: 284	Dividend Received (245A DRD): 68 Credit Allowed: 0 (32 disallowed)
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BEAT

BEAT – In Short

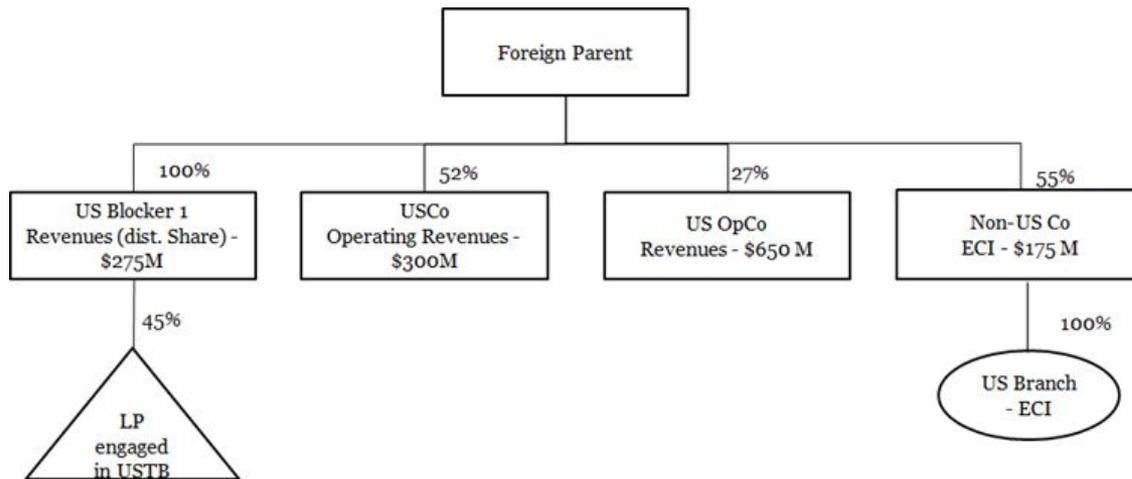
- **Essentially a minimum tax** which applies to US corps. with
 - At least \$500 million of average annual gross receipts over prior 3-year period, and
 - “Base erosion tax benefits” over 3% of total deductions (with adjustments).
- **“Base erosion tax benefits”:**
 - Deductions with respect to payments to related foreign persons,
 - Depreciation/amortization on property acquired from related foreign persons,
 - Insurance-related payments to related foreign persons, and
 - Payments to related expatriated entities that reduce gross receipts.

BEAT – Proposed Regulations

On December 13, 2018, Treasury and the IRS released proposed regulations under section 59A.

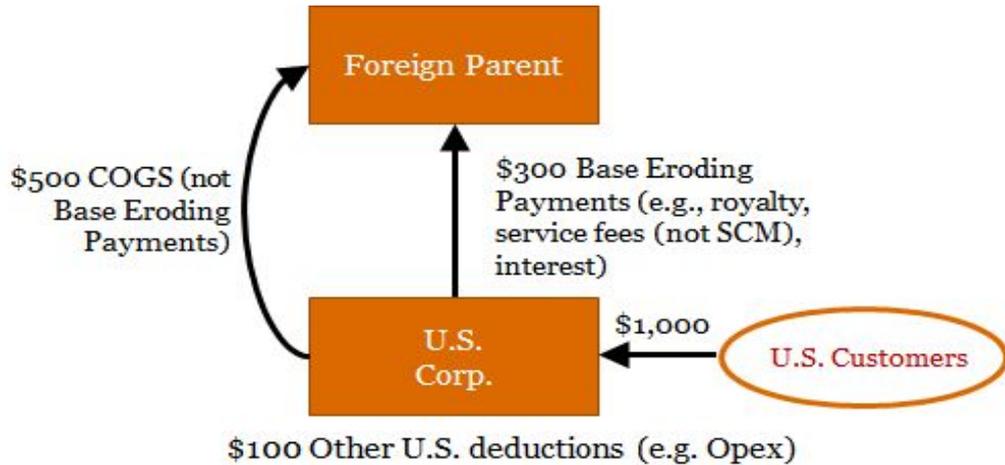
- The Proposed Regulations provide guidance related to the mechanics of determining, among other things, the applicable taxpayer status, a taxpayer's base erosion percentage, and a taxpayer's modified taxable income (MTI).
- The Proposed Regulations also address the application of section 59A to certain partnerships, banks, registered securities dealers, insurance companies, and consolidated groups.

BEAT – Aggregation Rule



Application of the aggregation rule: US Blocker 1 and USCo revenues, as well as the ECI earned by non-US Co are all aggregated for purposes of determining whether the minimum \$500M threshold is satisfied in assessing whether each of these entities is an ‘applicable taxpayer’ and therefore subject to the BEAT. Similarly, their base erosion percentages are also to be computed on an aggregate basis.

BEAT – Simplified Example



1. US Taxable Income: **\$100** ($\$1,000 - 500 - 100 - 300$)
2. US Regular Tax Liability (before BEAT): **\$21** (i.e., $21\% \times \$100$)
3. Deduction for Base Eroding Payments: **\$300**
4. Total Allowable Deductions: **\$400** (i.e., $\$100 + \300)
5. Base Erosion Percentage: **75%** (i.e., $\$300 / \400)
6. Modified Taxable Income: **\$400** (i.e., $\$100 + \300)
7. Base Erosion Tax Amount: **\$19** (i.e., $[10\% \times \$400] - \21)
8. Total US Tax Liability (after BEAT): **\$40** (i.e., $\$21 + \19)

GILTI & BEAT “Boomerang”

The GILTI boomerang can occur even if there is no U.S. tax on GILTI on a standalone basis (i.e., before BEAT) because excess FTCs offsetting GILTI income attract additional US federal tax liability under the BEAT calculation

	<u>Taxable Income</u>		<u>GILTI</u>		<u>BEAT</u>	
U.S. TI before GILTI					U.S. TI before GILTI	
GILTI	100		GILTI	500	GILTI	100
GILTI Gross-Up	200	→	GILTI Gross-Up	200	GILTI Gross-Up	200
Sec. 250	(350)	→	Sec. 250	(350)	Sec. 250	(350)
BEAT Payments	N/A		BEAT Payments	N/A	BEAT Payments	100
Taxable Income	450		Taxable Income	350	Taxable Income	550
U.S. Tax (21%)	94.5		U.S. Tax (21%)	73.5	BEAT (at 10%)	55
FTCs	(73.5)	←	GILTI FTC	(73.5)	Less U.S. Tax	(21)
U.S. Tax Liability	21		GILTI Tax	0	BEAT Liability	34

BEAT – Non Recognition Transactions

- An amount paid or accrued includes an amount paid or accrued using any form of consideration, including cash, property, stock, or the assumption of a liability.
- There are no exceptions for non-cash payments to a foreign related party that otherwise meets the definition of a base erosion payment (e.g., stock) in a non-recognition transaction. Examples of these transactions include a domestic corporation's acquisition of depreciable assets from a foreign related party in:
 - a section 351 exchange
 - a section 332 liquidation
 - a tax-free reorganization (section 368).
- However, a distribution of depreciable property a foreign related party under section 301 does not give rise to a base erosion payment because there is no consideration provided by the taxpayer to the foreign related party in exchange for the property.

BEAT – Coordination with Section 163(j)

- The proposed regulations provides coordination rules for interest deferred under section 163(j) and treatment of interest payments under section 59A.
- In the year that business interest expense (BIE) is paid or accrued it is classified as foreign related BIE, domestic related BIE, or unrelated BIE.
- For purposes of determining the base erosion tax benefit, there are ordering rules for determining the amount of deduction of BIE that is classified as paid to a foreign related party.
- Similar ordering rules apply to BIE carryforwards for which a deduction is permitted under section 163(j) in a later year.

Anti-Hybrid

Section 245A(e) - Proposed Regulations

- If a US shareholder receives a 'hybrid dividend':
 - Section 245A(a) DRD is disallowed for that dividend, and
 - the rules of section 245A(d) (disallowance of foreign tax credits and deductions) apply to the dividend.
- **Hybrid Dividend:** Amount received by a US shareholder from a CFC if a section 245A DRD would be allowed but for section 245A(e), and only to the extent of the sum of the US shareholder's 'hybrid deduction accounts' with respect to each share of stock of the CFC held by the US shareholder determined at the close of the CFC's taxable year.
 - **Hybrid Deduction Account:** A US shareholder potentially subject to section 245A due to ownership of a CFC must maintain a 'hybrid deduction account' with respect to each share of stock of the CFC held by the shareholder, which account reflects the amount of 'hybrid deductions' of the CFC allocated to the share.
- Special rules for tiered hybrid dividends

Section 267A - Proposed Regulations

- The proposed regulations were issued December 20, 2018.
- According to the proposed regulations, they provide the exclusive circumstances under which a deduction will be disallowed under section 267A.
- General mechanics:
 - The regulations only disallow deductions for specified payments made by specified parties to specified recipients.
 - Only apply to deduction/no inclusion (D/NI) scenarios.
 - Deduction only disallowed if it is in one of the following categories:
 - Disqualified hybrid amount;
 - Disqualified imported mismatch amount; or
 - Amounts subject to an anti-avoidance rule.

Section 267A - Proposed Regulations (cont.)

- Only payments by specified parties are subject to disallowance.
- 'Specified party': (i) a tax resident of the US; (ii) a CFC with at least one US shareholder that directly or indirectly owns at least 10% of its stock; or (iii) a US taxable branch.
 - 'Tax resident': an individual, corporation, or other entity liable to tax under the laws of a country as a resident.
 - 'US taxable branch': a trade or business carried on in the US by a tax resident of another country (or, if an income tax treaty applies, a US permanent establishment).
- In determining whether a specified payment is subject to disallowance, it must be determined whether a specified recipient has a D/NI outcome.
- 'Specified recipient': (i) any tax resident that derives a specified payment under its tax law; or (ii) any taxable branch to which a specified payment is attributable under its tax law

Q&A

Thank you

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