Partnership Tax: The Latest from Washington

David G. Shapiro (Moderator)
Saul Ewing LLP

Eric B. Sloan
Gibson, Dunn & Crutcher LLP

Jennifer L. Sabin
Gibson, Dunn & Crutcher LLP

Agenda

1. An Act to provide for reconciliation pursuant to title II of H. Con. Res. 14 ("2025 Act")
2. Priority Guidance Plan Update and Other Areas of Focus
3. Notable Guidance, Regulations, Cases, Rulings, and Transactions

2025 Act

2025 Act

- Passed Jul. 4, 2025.
- **§ 163(j)**
  - Reinstates more favorable EBITDA-based, rather than EBIT-based, limit.
  - Extends limit to business interest that is required to be capitalized.

2025 Act (*cont'd*)

- **§ 199A**
  - Made permanent!
  - Expands taxable income phase-in ranges ($100,000 to $150,000 for joint returns).
  - Indexes "threshold amount" (above which phase-in begins) to inflation.

2025 Act (*cont'd*)

- **§ 707(a)(2)**

~~Under regulations prescribed~~ Except as provided by the Secretary . . .

2025 Act (*cont'd*)

- **§ 7704** - expands industries that can operate in publicly traded partnerships.
- "Qualifying income" includes income from:
  - Qualifying hydrogen storage and transportation.
  - Electricity production from qualifying nuclear, hydropower, and geothermal facilities.
  - Carbon capture facilities, including electricity production from qualifying facilities with sufficient carbon capture.
  - Thermal energy from hydropower and geothermal facilities.

Priority Guidance Plan Update and Other Areas of Focus

Priority Guidance Plan Update

- Released Sept. 30, 2025.
- **§ 199A** - Regs under § 199A regarding deduction for qualified business income.
- **§ 267** - Final regs under § 267 regarding related party transactions and partnerships. Proposed regs were published on Nov. 27, 2023.

Priority Guidance Plan Update (*cont'd*)

- **Basis adjustments**
  - Guidance removing Reg § 1.6011-18 regarding related-party basis adjustment transactions as transactions of interest.
  - Notice announcing intention to publish proposed regulations published on May 5, 2025.

Priority Guidance Plan Update (*cont'd*)

- **More basis adjustments** - Regs under § 6050K regarding reporting of sales or exchanges of certain partnership interests. Published on Aug. 19, 2025.
- **BBA** - Regs under centralized partnership audit regime.

Other Areas of Focus

- **§ 897**
  - Proposed regs removing “look-through” rule for domestic C corporations holding REIT interests.
  - Proposed regs were published on Oct. 21, 2025.

Notable Guidance, Regulations, Cases, Rulings, and Transactions

Related-Party Basis Adjustments - Initial Guidance

- Published Jun. 17, 2024.
- Guidance had three elements:
  1. **Prop. Reg § 1.6011-18** - treating certain of these transactions as "transactions of interest."
  2. **Notice 2024-54** - describing to-be-issued regs that would retroactively eliminate benefit of these transactions.
  3. **Rev. Rul. 2014-14** - setting out IRS's position that economic substance doctrine applies to these transactions.

Related-Party Basis Adjustments - Notice 2025-23

- Published Apr. 17, 2025.
  1. **Prop. Reg § 1.6011-18** - treating certain of these transactions as "transactions of interest." **To be removed.**
  2. **Notice 2024-54** - describing to-be-issued regs that would retroactively eliminate benefit of these transactions. **Withdrawn.**
  3. **Rev. Rul. 2014-14** - setting out IRS's position that economic substance doctrine applies to these transactions. **TBD…**

CAMT

- Under § 55, “applicable corporations” subject to 15% corporate alternative minimum tax (CAMT) on adjusted financial statement income (AFSI), based on financial statement income (FSI).
- Under § 56A, AFSI of a partner in a partnership is adjusted to account only for the partner’s “distributive share” of the partnership’s AFSI.

CAMT - Proposed Regulations

- Published Sept. 13, 2024.
- **Bottom-up approach to AFSI** - partnership calculates AFSI and partners calculate and include their “distributive share amount” (four-step process).

CAMT - Proposed Regulations (*cont'd*)

- **Stringent Reporting Requirements**
  - Gave partners 30 days after end of partnership's tax year to request information necessary to calculate distributive share amount.
  - If partnership did not provide information, Prop. Reg. § 1.56A-5(h)(2) required partner to make "good-faith estimate" based on "whatever information it can reasonably obtain."

CAMT - Notice 2025-28

- Published Jul. 29, 2025.
- Two new elective approaches to AFSI:
  - **Top-down**
    - Partner uses FSI attributable to partnership investment to calculate its AFSI.
    - Available to partners that are not themselves partnerships.
  - **Taxable income**
    - Partner uses its distributive share of partnership's taxable income to calculate its AFSI.
    - Available only to certain partners meeting capital/profits interests and value thresholds.

CAMT - Notice 2025-28 (*cont'd*)

- For taxpayers not electing the top-down or taxable income approaches, simplifies bottom-up approach:
  - Instead of four-step process, partnership can use **"any reasonable method"** to determine partner's distributive share of FSI.
  - Instead of requesting information within 30 days *after* end of partnership's tax year, can request information 60 days *before* due date of filing of partnership's return (with extension).

Proposed PTEP Regulations

- Published Dec. 2, 2024.
- Subpart F and NCTI regimes require U.S. shareholders of controlled foreign corporations (CFCs) to include certain amounts in income.
- §§ 959 and 961 designed to prevent double taxation of taxpayers of amounts previously included under these regimes (previously taxed earnings and profits or PTEP).

Proposed PTEP Regulations (*cont'd*)

- Proposed regulations address partnership owning CFC—future guidance to address CFC owning partnership.
- For domestic partnerships, PTEP accounts tracked at partner level.
- For purposes of PTEP rules, distributions made by CFC to a partnership are treated as made to the partners in accordance with their distributive shares.

Proposed PTEP Regulations (*cont'd*)

- Provides partnerships with "derived basis" in CFC stock with respect to which a partner has included subpart F or NCTI income or received PTEP distributions.
  - Does not affect partnership's common basis.
  - "[I]ntended to operate in a manner similar to a basis adjustment under section 743(b)."

Proposed PTEP Regulations (*cont'd*)

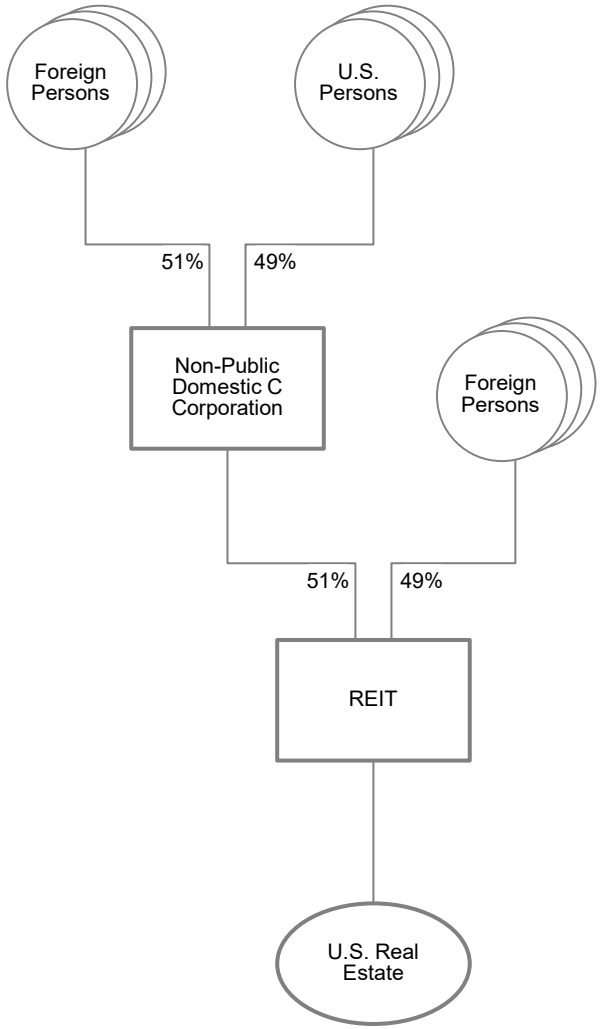
- PTEP accounts may be transferred by the acquisition of CFC stock but not through certain transactions, including issuance of interests or redemptive distributions by a partnership.

Proposed REIT Regulations

- § 897 requires foreign persons to pay tax on gain recognized from sale of a “United States real property interest” (USRPI).
- A USRPI includes interests in certain REITs, but not if the REITs are “domestically controlled.”
- A REIT is domestically controlled if less than 50 percent of the value of its stock is held “**directly or indirectly**” by “**foreign persons**” during a testing period.

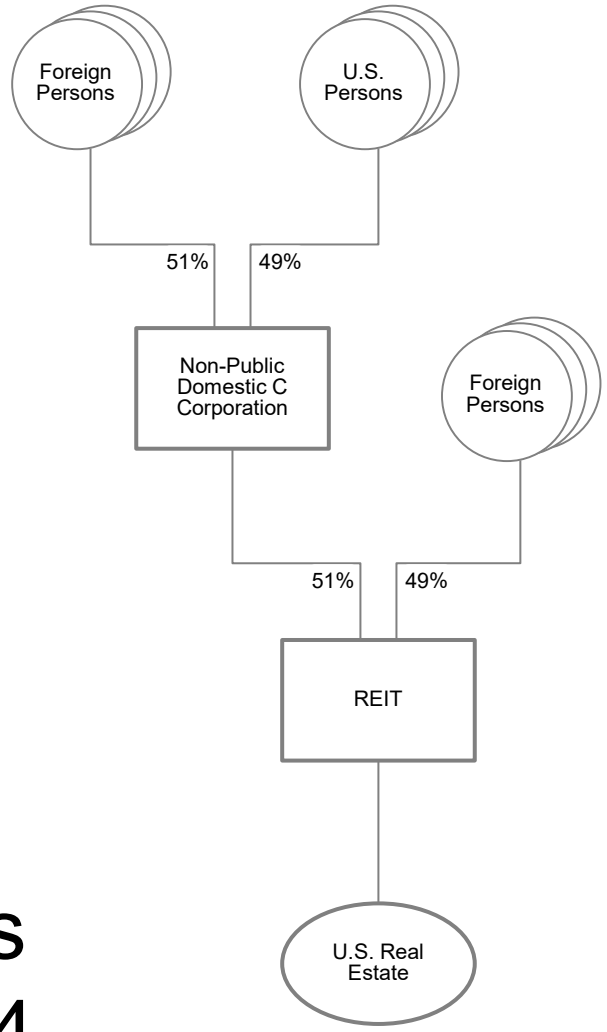
Proposed REIT Regulations

- What does “indirectly” mean?
- 2024 Final Regs look through non-public domestic C corporation if foreign persons own **more than 50 percent** of the value of its outstanding stock.



Proposed REIT Regulations

- New proposed regs **eliminate C corp look-through rule altogether**.
- Here, REIT is **not domestically controlled** because foreign persons own less than 50 percent of the value of the REIT.
- Taxpayers may elect to apply the new proposed regs to transactions occurring on or after April 25, 2024.



The SECA Saga Continues - § 1402(a)(13)

The term "net earnings from self-employment" means the gross income derived by an individual from any trade or business carried on by such individual, less the deductions allowed by this subtitle which are attributable to such trade or business, **plus his distributive share (whether or not distributed) of income or loss described in § 702(a)(8) from any trade or business carried on by a partnership of which he is a member**; except that in computing such gross income and deductions and such distributive share of partnership ordinary income or loss—

> (13) there shall be **excluded the distributive share of any item of income or loss of a limited partner, as such,** other than guaranteed payments described in § 707(c) to that partner for services actually rendered to or on behalf of the partnership to the extent that those payments are established to be in the nature of remuneration for those services;

§ 1402(a)(13) (*cont'd*)

- History: IRS victory in *Renkemeyer, Campbell & Weaver LLP v. Comm'r* in 2011.
  - Involved a limited liability partnership, not a limited partnership.

§ 1402(a)(13) (*cont'd*)

- *Soroban Capital Partners LP et al. v. Comm'r.*
  - Tax Court denied Soroban's motion for summary judgment and granted the government's motion for partial summary judgment on November 28, 2023.
  - Tax Court held that Soroban's limited partners do not qualify for the limited partner exception because they had "crucial and active" roles in Soroban's business on May 28, 2025.
  - Soroban appealed to the Second Circuit on August 29, 2025.

§ 1402(a)(13) (*cont'd*)

- *Sirius Solutions, L.L.L.P. v. Comm'r*.
  - Fifth Circuit heard oral arguments on February 6, 2025.
- *Denham Capital Management LP v. Comm'r*.
  - Denham filed appellate brief with the First Circuit on August 8, 2025.
- *Point72 Asset Management LP v. Comm'r*.
  - The government filed an answer to the taxpayer's petition on September 27, 2023.
  - Still pending at Tax Court.

§ 1402(a)(13) (*cont'd*)

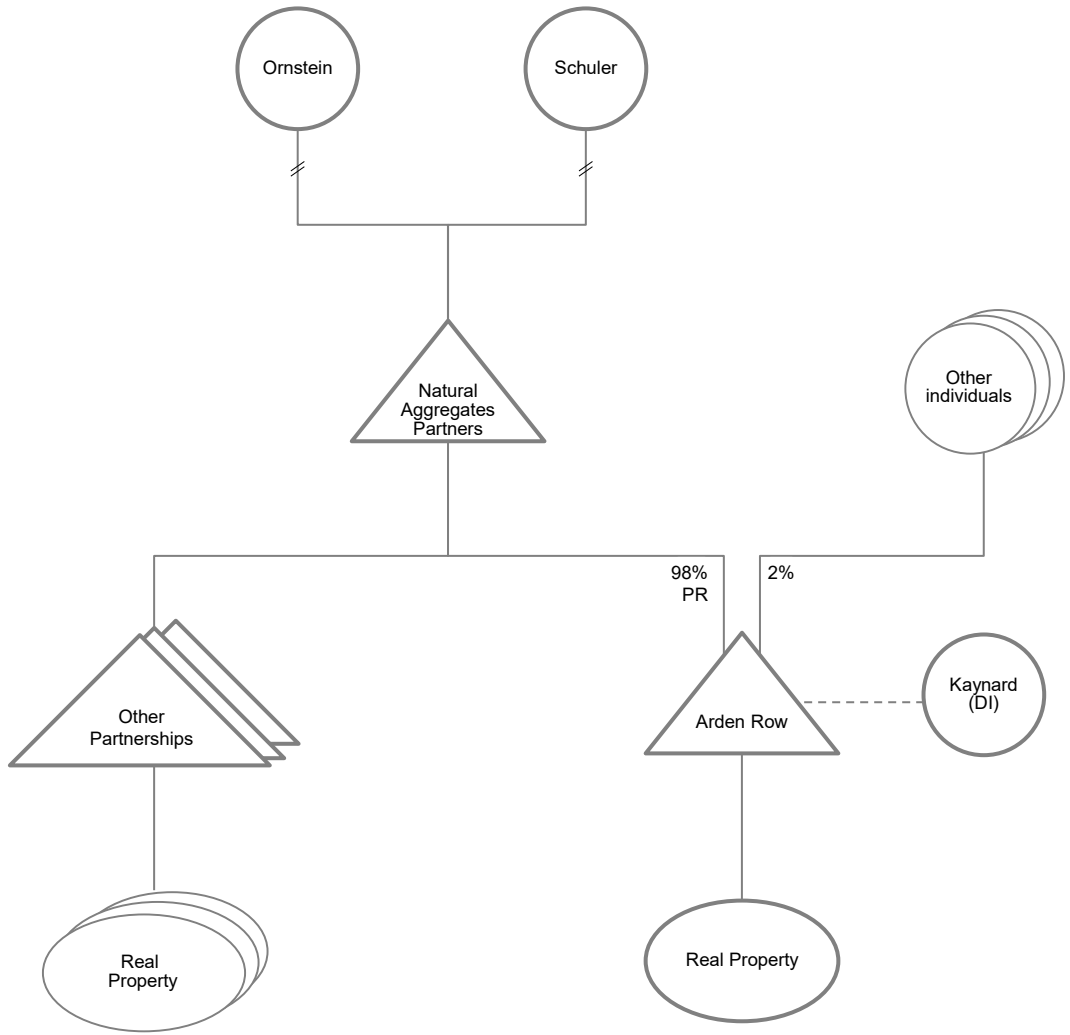
- *Riverstone Equity Partners LP v. Comm'r.*
  - The government filed an answer to the taxpayer's petition on December 23, 2024.
- *MKP Capital Management LP v. Comm'r.*
  - The government filed an answer to the taxpayer's petition on February 26, 2025.
- *Moon Capital Management LP v. Comm'r*.
  - The government filed an answer to the taxpayer's petition on April 2, 2025.

§ 1402(a)(13) (*cont'd*)

- *Atalaya Capital Management LP v. Comm'r.*
  - The government filed an answer to the taxpayer's petition on April 23, 2025.
- *MDRA GP LP v. Comm'r.*
  - MDRA filed its petition on September 19, 2025.

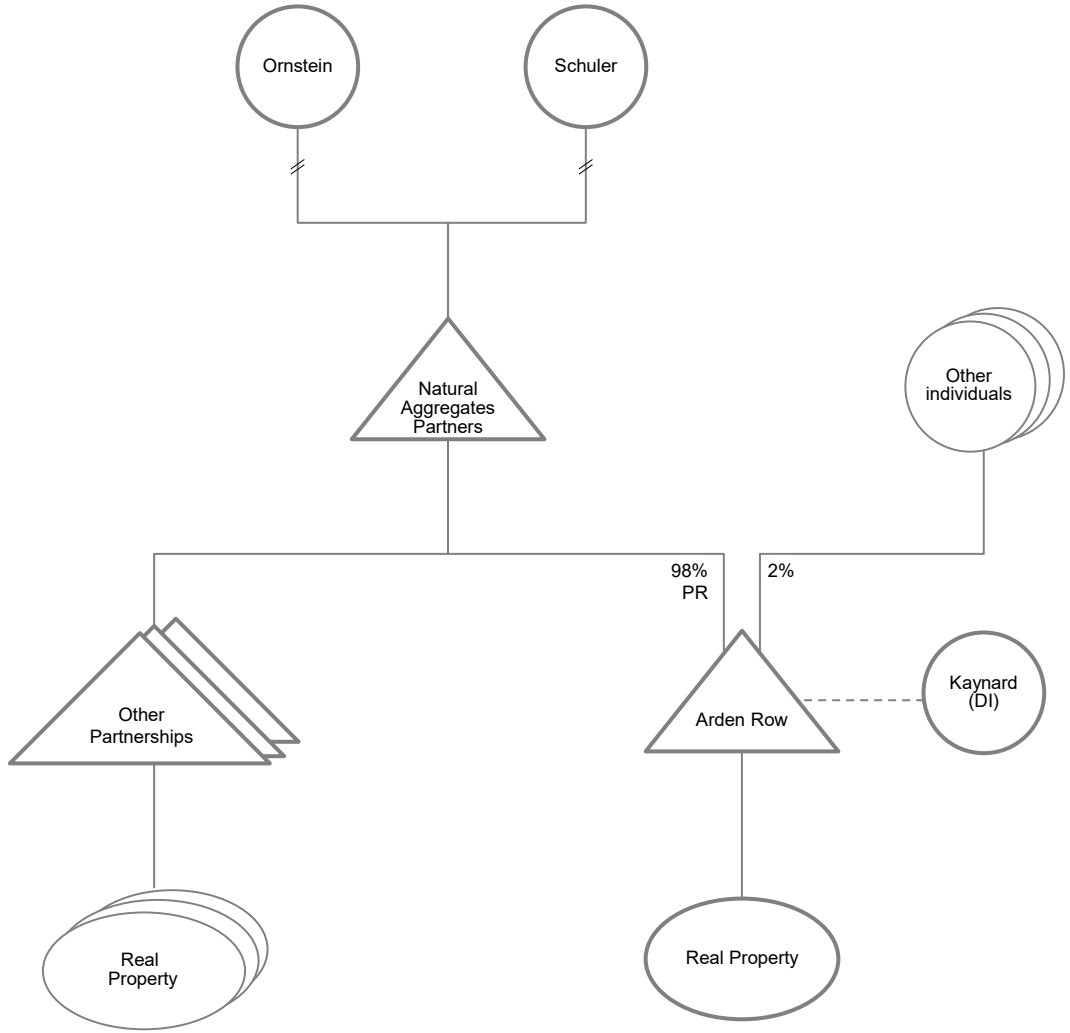
Arden Row Assets, LLC - §§ 6223 and 6241

- When is there a binding settlement agreement between a partnership and the IRS?
- Arden Row was one of eight partnerships owned by Natural Aggregates Partners (NAP) that claimed large conservation easement deductions.
- IRS audited Arden Row and sent letter offering a settlement to Arden Row's attorneys.
- Arden Row's attorneys spoke with Schuler, not the Designated Individual (DI), about the settlement letter.



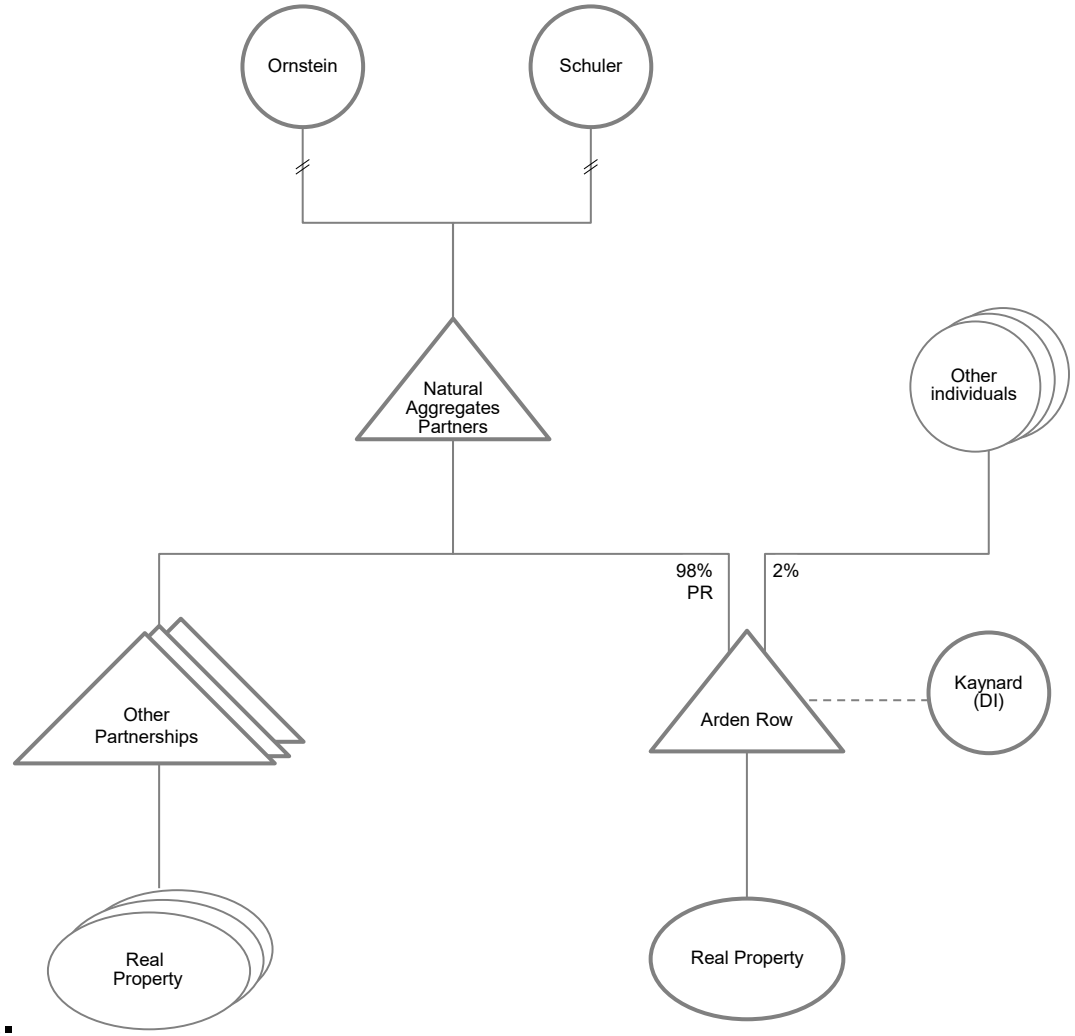
Arden Row Assets, LLC - §§ 6223 and 6241 (*cont'd*)

- Arden Row's attorneys told the IRS that they had "been instructed, on behalf of Petitioner [Arden Row], to accept the settlement proposal."
- IRS noticed that it miscalculated the allowable deduction in the settlement letter.
- When the IRS told Arden Row's attorneys, the attorneys replied that the taxpayer had accepted the IRS's offer, creating a binding settlement agreement.
- The IRS disagreed and Arden Row moved to enforce the "settlement."



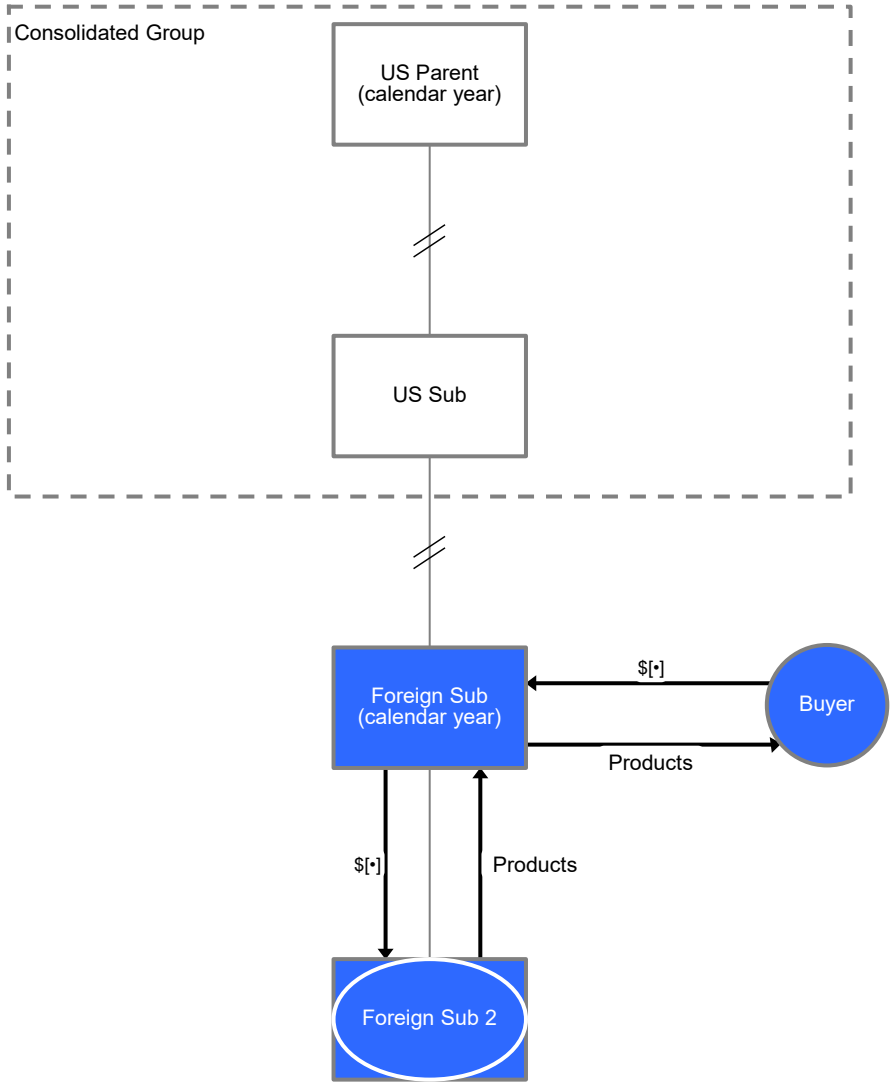
Arden Row Assets, LLC - §§ 6223 and 6241 (*cont'd*)

- Tax Court held no binding settlement agreement because DI did not authorize acceptance of the IRS's offer.
- DI has "sole authority" to bind partnership.
- "There are no statutory provisions under the BBA that expressly govern settlement agreements."
- "The BBA does not expressly permit individual partners to settle their tax liability attributable to partnership-related items."
- Therefore, NAP and Schuler had no right to settle their tax liabilities for partnership-related items from Arden Row under the BBA.



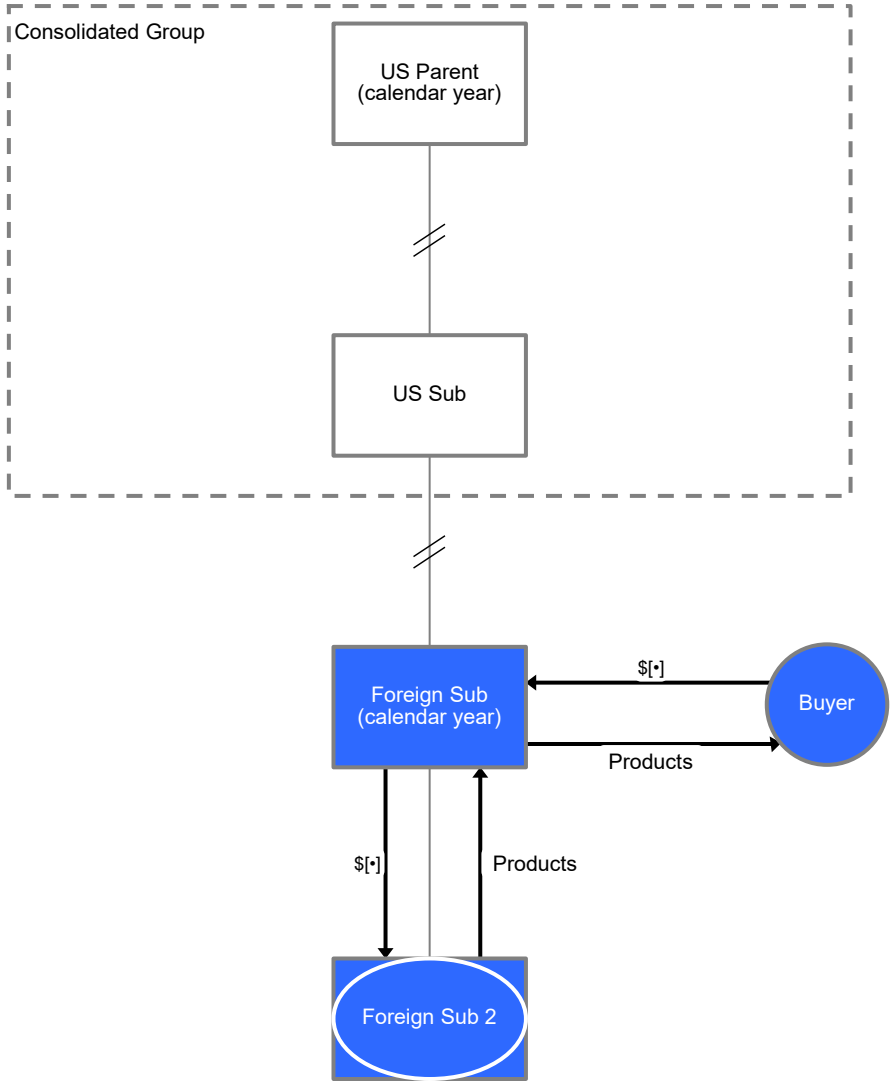
ILM 202501008 - § 269

- Foreign Sub purchases products from its wholly owned disregarded foreign subsidiary and sells those products to Buyer.
- Foreign Sub's income from selling the products would be included in its "net tested income" and subject to NCTI at the US Sub level.
- Can a check-the-box election (CTB) save the day?

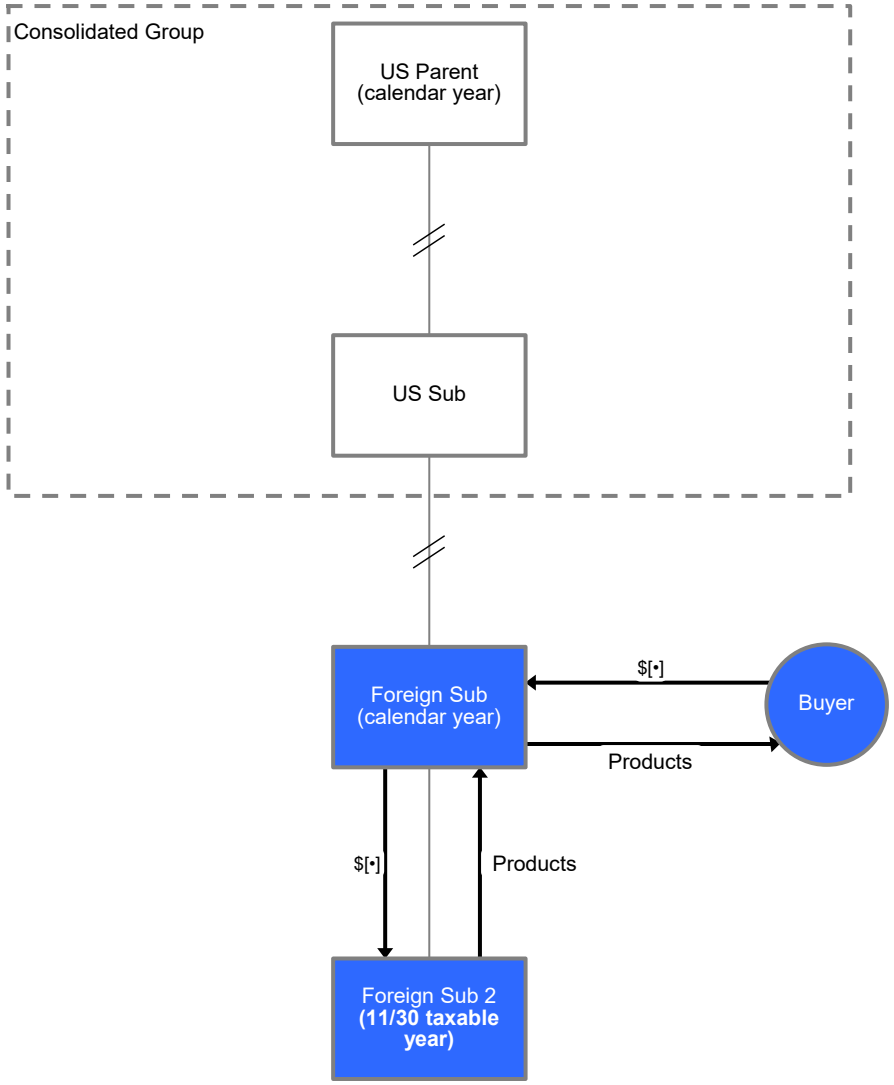


ILM 202501008 - § 269 (*cont'd*)

Option 1 - DRE

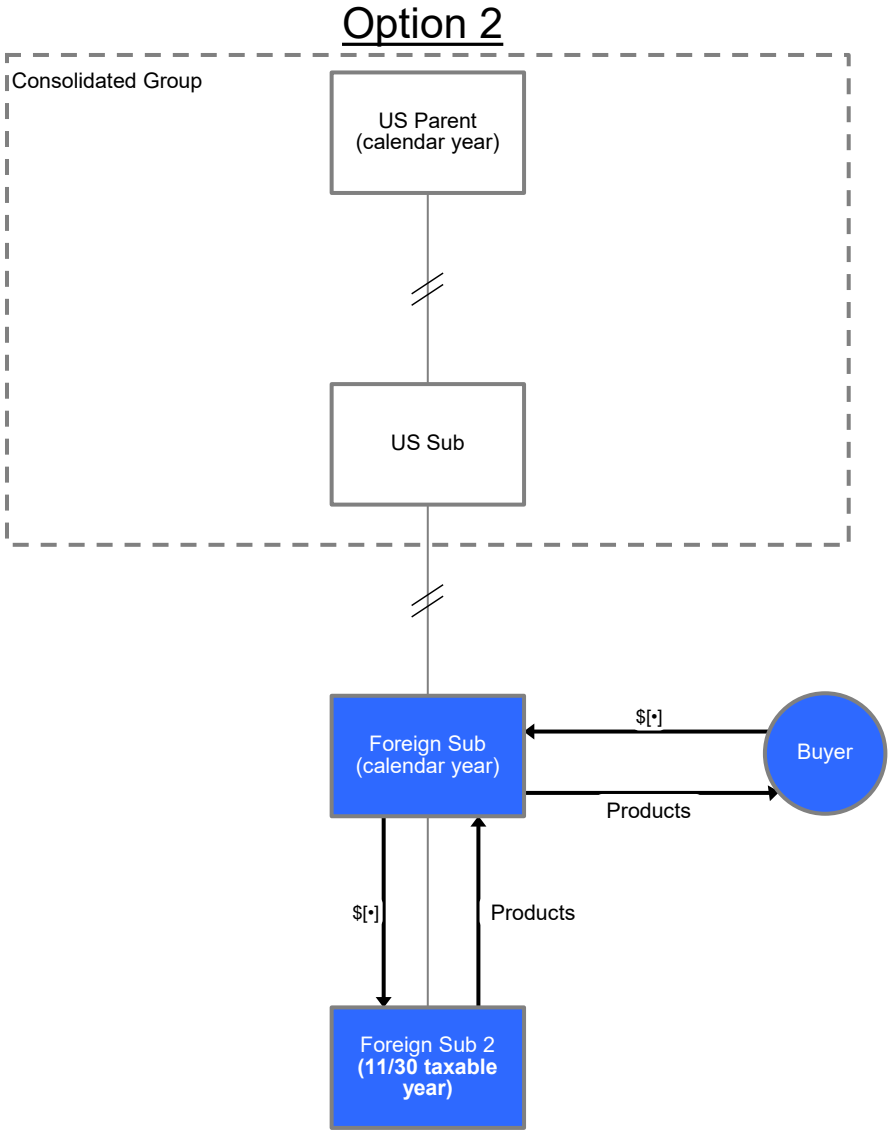


Option 2 - Corporation



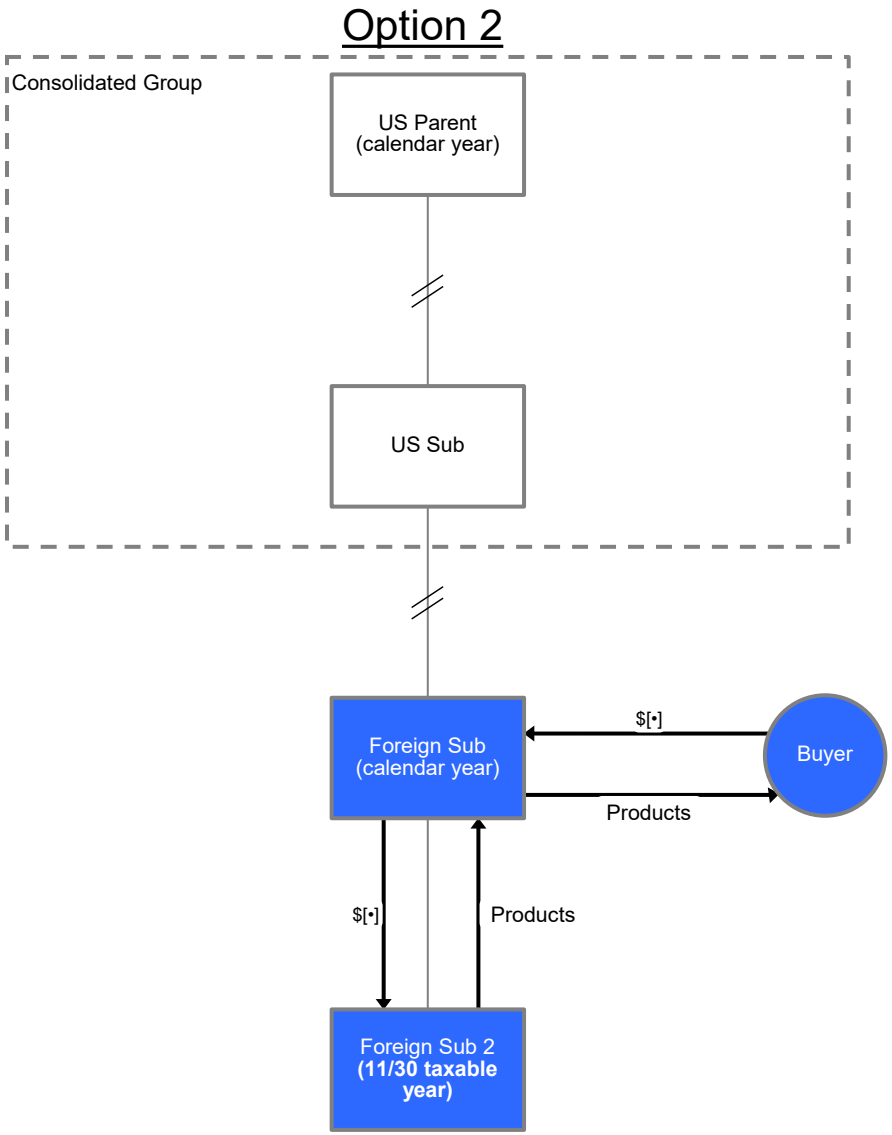
ILM 202501008 - § 269 (*cont'd*)

- In Option 2, Foreign Sub 2 makes a (1) CTB election to be classified as a corporation and (2) § 898(c)(2) election to cause its taxable year to end November 30, 2017 rather than December 31, 2018.
- NCTI (then GILTI) was effective for tax years of foreign corporations beginning **after** December 31, 2017.
- Taxpayer asserted that Foreign Sub 2's income was not included in US Sub's NCTI calculation, and a dividend from Foreign Sub 2 to Foreign Sub was excluded from subpart F because of § 956(c)(6).



ILM 202501008 - § 269 (*cont'd*)

- IRS concludes that § 269 applies to Foreign Sub 2's CTB election.



ILM 202501008 - § 269 (*cont'd*)

If—

(1) any person or persons acquire, directly or indirectly, control of a corporation . . . ["**Acquisition Requirement**"]

and the principal purpose for which such acquisition was made is **evasion or avoidance** of Federal income tax by securing the benefit of a deduction, credit, or **other allowance** which such person or corporation would not otherwise enjoy ["**Principal Purpose Requirement**"], then the Secretary may disallow such deduction, credit, or other allowance.

ILM 202501008 - § 269 (*cont'd*)

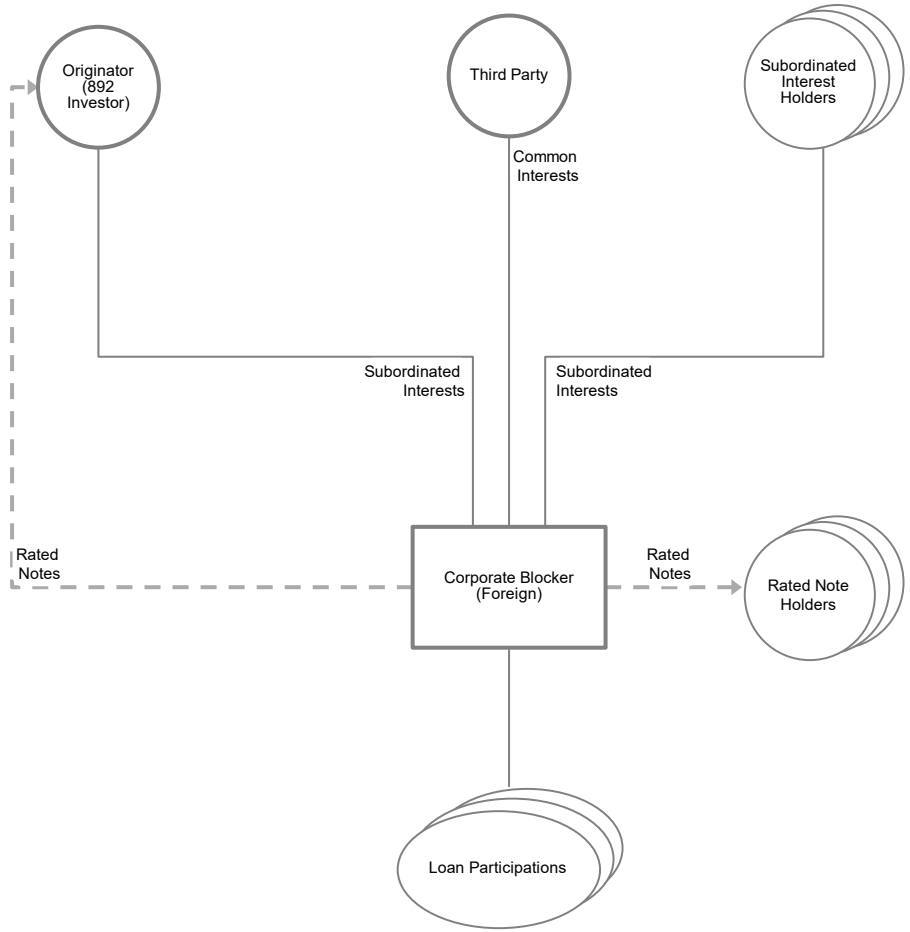
- IRS reasoned that Acquisition Requirement was met:
  - Change of classification from disregarded entity to corporation deemed contribution of entity's assets and liabilities to corporation in exchange for corporation's stock under Reg. § 301.7701-3(g)(1)(iv).
  - Tax treatment of a CTB election is determined under "all relevant provisions of the Internal Revenue Code and general principles of tax law, including the step transaction doctrine" under Reg. § 301.7701-3(g)(2)(i).

ILM 202501008 - § 269 (*cont'd*)

- IRS reasoned that Principal Purpose Requirement was met:
  - § 898(c)(2) election was an "allowance" within the meaning of § 269 because it allowed for the exclusion from NCTI.
  - The election was a "device" to reduce NCTI liability and therefore used for the "evasion or avoidance" of tax because the NCTI liability was permanently excluded from the NCTI base—example of "clear abuse."
  - Taxpayer provided no business purpose for CTB or 898(c)(2) election.

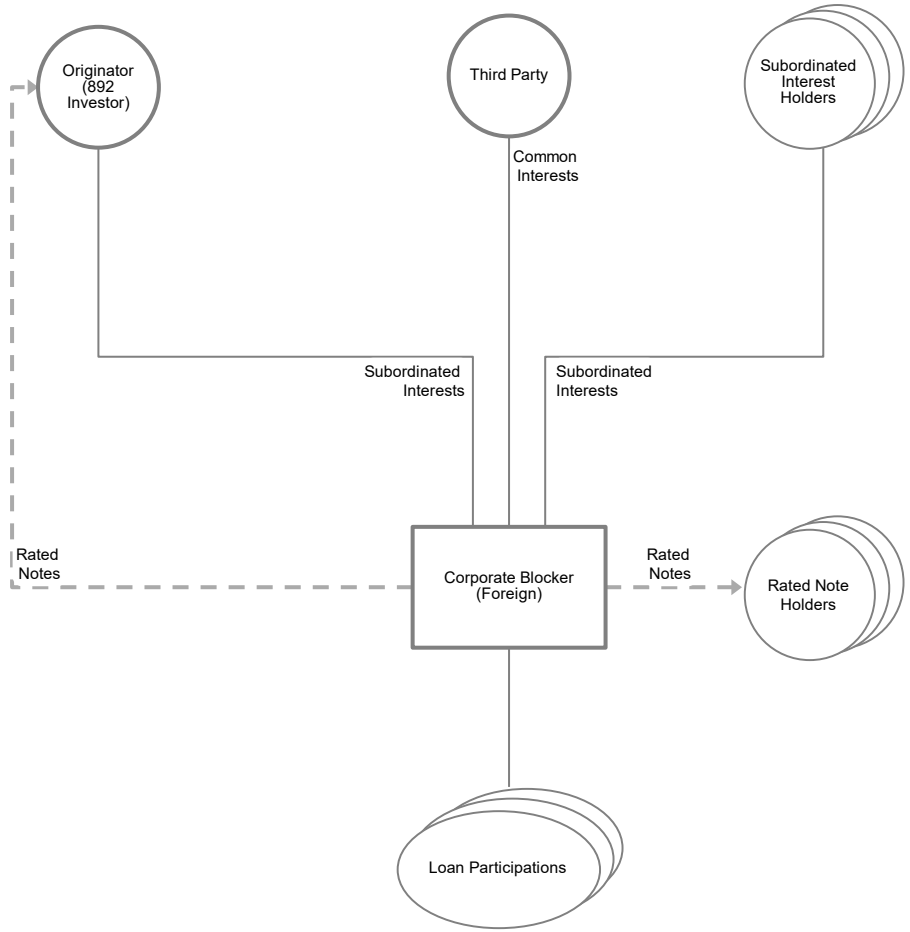
PLR 202536015 - §§ 864 and 882

- Originator originates loans and sells participations to third parties, funded by private investors.
- To expand access to capital, Originator forms Corporate Blocker, which:
  - purchases participations from Originator with funds raised by issuing certain rated notes, subordinated interests, and common interests, and
  - issues securities collateralized by the participations it purchases.



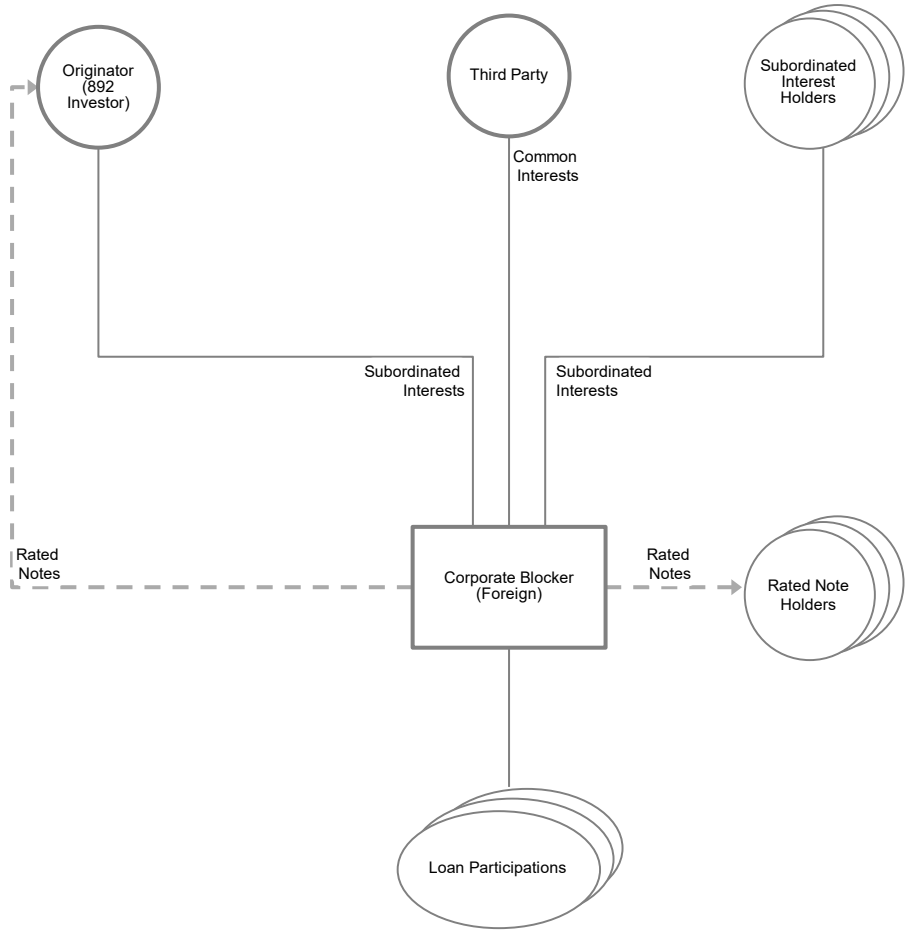
PLR 202536015 - §§ 864 and 882 (*cont'd*)

- Taxpayer's representations:
  - Income and gain from participations will be foreign-sourced.
  - Originator will extend loans in its own name and not hold itself out as making loans on behalf of Corporate Blocker.
  - Originator will act as servicer of loans.
  - Participation agreement provides that no action taken by Originator gives rise to a partnership with Corporate Blocker.
  - Originator is not obligated to modify loans in the best interests of Corporate Blocker or its investors.



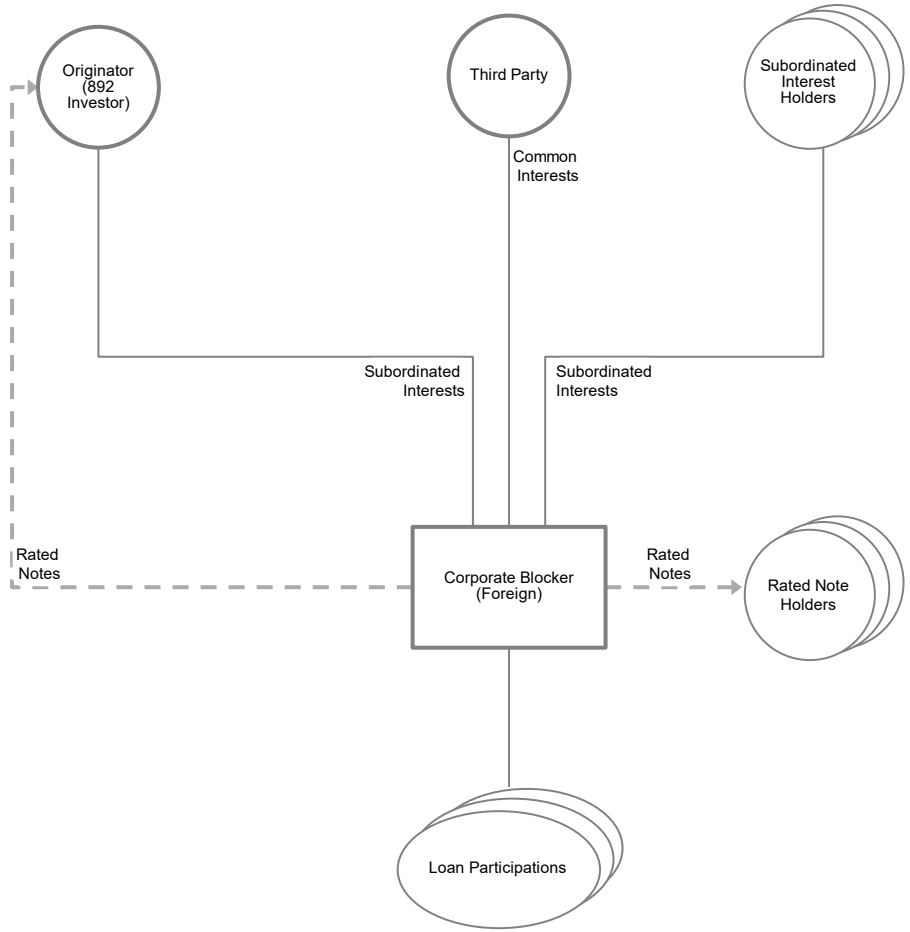
PLR 202536015 - §§ 864 and 882 (*cont'd*)

- Taxpayer's representations (*cont'd*):
  - Unless Originator's U.S. office was attributed to Corporate Blocker, Corporate Blocker did not have an office or fixed place of business within the U.S.
  - Originator will remain the lender of record for each loan and will retain a "substantial portion" of each loan for its own account.



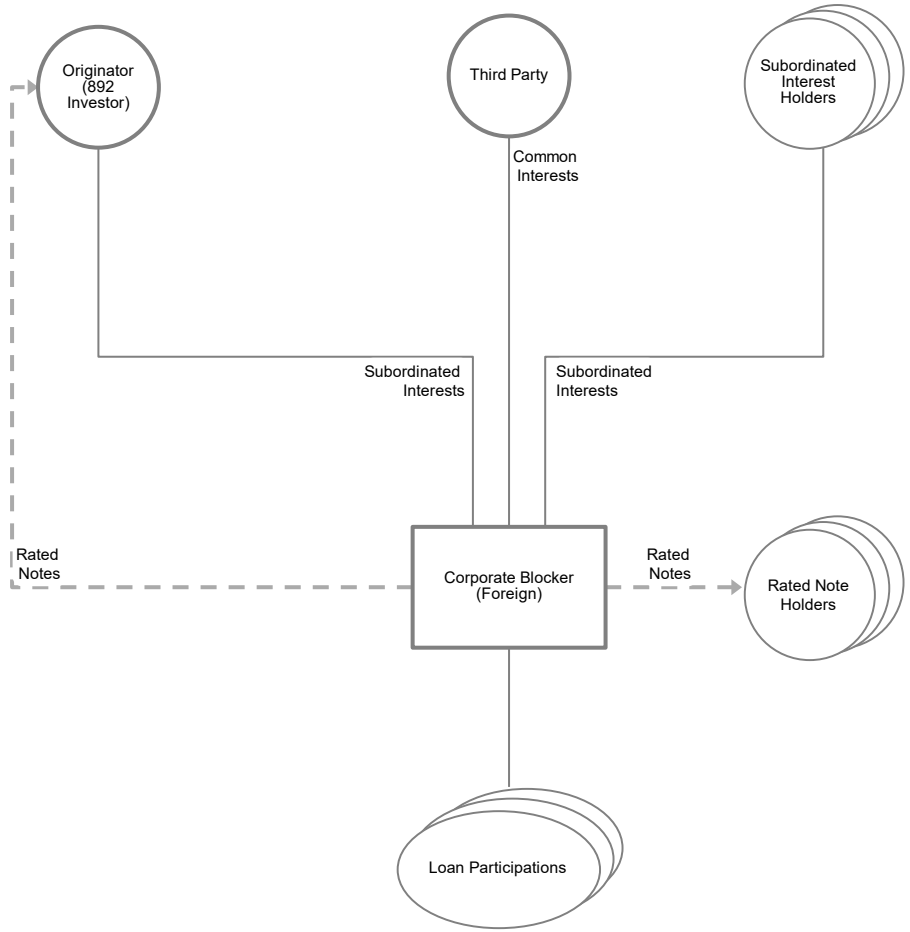
PLR 202536015 - §§ 864 and 882 (*cont'd*)

- IRS ruled that Corporate Blocker was **not** engaged in a U.S. trade or business, so that income and gain from loan participations would not be treated as ECI.



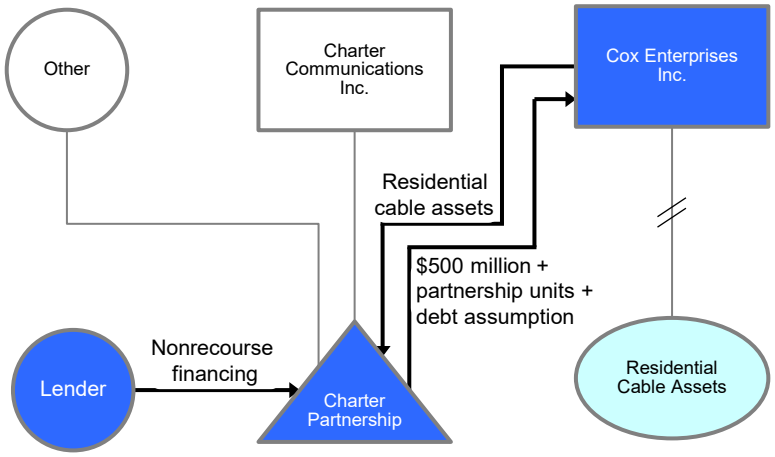
PLR 202536015 - §§ 864 and 882 (*cont'd*)

- IRS reasoned that:
  - Corporate Blocker "is a separately incorporated entity that merely allows Originator to finance loans made by it more efficiently."
  - Originator and Corporate Blocker "are legally independent of each other, other than Originator's ownership of certain equity interests in [Corporate Blocker], which is disregarded in testing independence."
  - Originator and Corporate Blocker are "economically independent of each other" as Originator is not "economically dependent on its retained ownership in" Corporate Blocker and Corporate Blocker has third-party financing.
  - Originator retained decision rights with respect to the loans, including the right to modify the loans even if not in the best interests of the participants.
  - Originator deals with the borrowers as a principal for its own account.



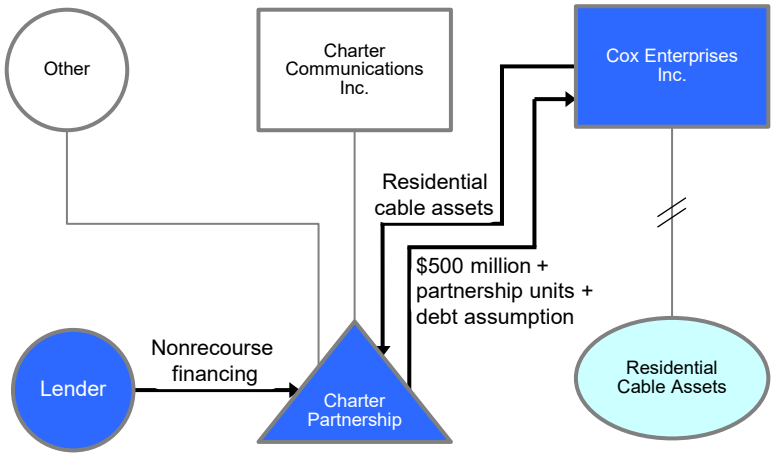
Charter-Cox Merger - § 707

- Charter Communications Inc. and Cox Enterprises Inc. announced agreement to combine businesses.
- As part of the combination, Cox is contributing its residential cable assets to Charter's operating partnership in exchange for $500 million cash, preferred and common units in the partnership (exchangeable into common units and Charter stock, respectively), and assumption of indebtedness.



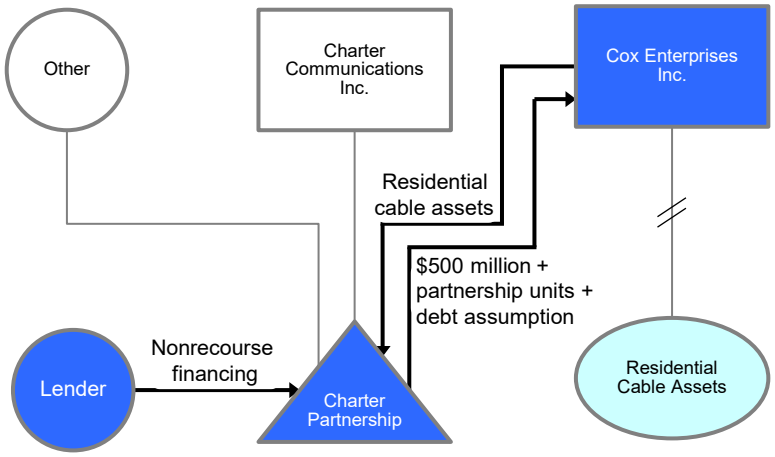
Charter-Cox Merger - § 707 (*cont'd*)

- Charter Partnership is funding part of the $500 million cash distribution with nonrecourse financing.
- Parties agree that, "for purposes of section 1.707-5(b)(1), the Cash Consideration paid by [Charter Partnership] . . . is allocable to the proceeds of such borrowing pursuant to section 1.163-8T and . . . the entirety of the borrowing is incurred and used for the purpose of making debt-financed transfers."



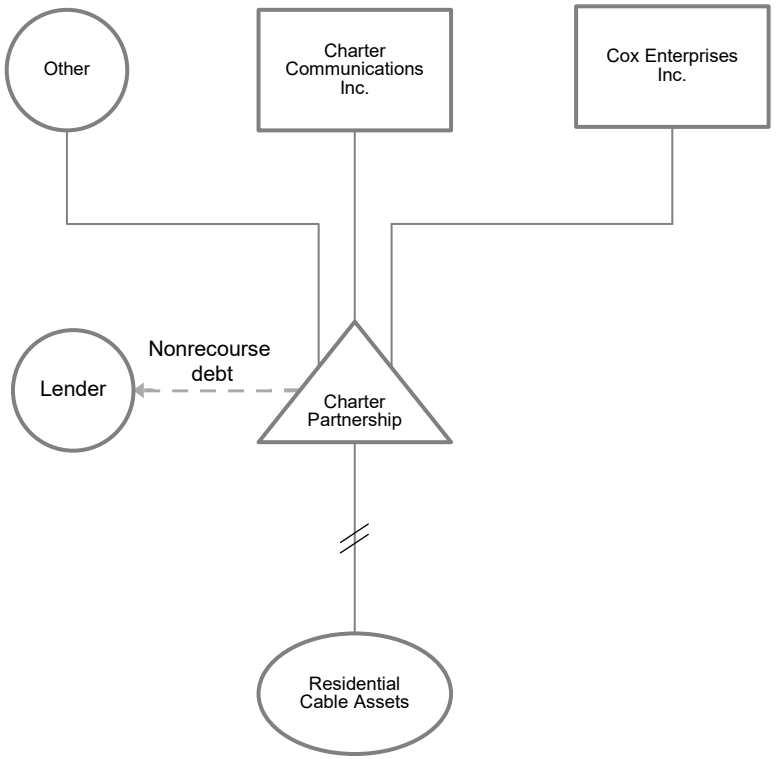
Charter-Cox Merger - § 707 (*cont'd*)

- Parties agree that, to the extent not treated as a debt-financed distribution, the payment will be treated "to the maximum extent permissible as a reimbursement of [Cox's] capital expenditures."
- Liability assumed by Charter Partnership "shall be treated as qualified liabilities to the maximum extent permitted by law."



Charter-Cox Merger - § 707 (*cont'd*)

- To the extent that partnership units are exchanged for Charter common stock, if there is a § 754 election in effect for the year that includes the transfer, Charter Partnership will adjust the basis of its assets with respect to the acquired interest under § 743(b).



Thank you

Moderator: David G. Shapiro
Firm: Saul Ewing LLP
Email: david.shapiro@saul.com

Panelist: Eric B. Sloan
Firm: Gibson Dunn & Crutcher LLP
Email: esloan@gibsondunn.com

Panelist: Jennifer L. Sabin
Firm: Gibson Dunn & Crutcher LLP
Email: jsabin@gibsondunn.com