International Tax Update

Stephen Olsen (Moderator)
Villanova University Charles Widger School of Law

Layla Asali
Miller & Chevalier

John Bates
Deloitte

Tracy Villecco
IRS Office of Associate Chief Counsel (International)

Agenda

- IRS Update
- OB3 International Tax Provisions
- Recent Cases in International Tax
- Other Developments

IRS Update: 2025-2026 Priority Guidance Plan

- Guidance under sections 951 and 951A, including pro rata share rules
- Regulations regarding reinstatement of section 958(b)(4) and new section 951B
- Regulations under section 59A regarding modifications to BEMTA
- Guidance under section 250 regarding FDDEI and NCTI
- Guidance under section 898(c), including allocation of foreign taxes after repeal of section 898(c)(2)
- Guidance under sections 250, 904, and 960 regarding expense allocation and apportionment
- Guidance under section 904 regarding source of income from sale of inventory through foreign branch

INTERNATIONAL TAX PROVISIONS OF THE ONE BIG BEAUTIFUL BILL ACT (OB3)

OB3 International Tax Provisions

	Present Law	OBBB Act
GILTI Rate	Through 2025: • 10.5% to 13.125% *(§250 deduction of 50%, §960(d) haircut of 20%)* Tax years beginning after 2025: • 13.125% to 16.4% *(§250 deduction of 37.5%, §960(d) haircut of 20%)*	• 12.6% to 14% *(§250 deduction of 40%, §960(d) haircut of 10%)* • Effective for tax years beginning after December 31, 2025
GILTI	• GILTI = excess of net CFC tested income ("NCTI") over net deemed tangible income return ("net DTIR," or "NDTIR") ○ NDTIR = 10% of QBAI reduced by certain interest expense	• NDTIR eliminated. As a result, taxpayer includes NCTI (rather than GILTI) in gross income. • Effective for tax years beginning after December 31, 2025

OB3 (cont'd)

	Present Law	OBBB Act
GILTI FTCs	• Numerator of GILTI FTC limitation ratio reduced by expenses that may not "directly relate" to such inclusion (*e.g.*, interest, stewardship) • 20% haircut for GILTI FTCs • No statutory haircut on FTCs for GILTI PTEP distributions • §951A inclusions are treated as subpart F inclusions for certain purposes, including §904(h)(1)	• FTC limitation ratio determined by allocating/apportioning to foreign-source NCTI inclusions (1) the §250 deduction attributable to a NCTI inclusion (including any foreign and state income taxes attributable to such NCTI inclusion) and (2) deductions *directly allocable* to NCTI inclusion. Further, provision states that no amount of interest or research and experimental expenditures is allocated/apportioned to a NCTI inclusion for FTC purposes. • Any deductions that would otherwise have been allocated/apportioned to a NCTI inclusion are allocated/apportioned to US-source income • NCTI inclusion FTC haircut reduced to 10% • 10% FTC haircut for foreign income taxes paid/accrued (or deemed paid/accrued) with respect to NCTI PTEP distributions (effective with respect to any PTEP distribution related to a NCTI inclusion after June 28, 2025) • §951A inclusions are treated as subpart F inclusions for certain purposes, including §904(h) • Except as noted above, effective for tax years beginning after December 31, 2025
FTCs	• Foreign income taxes attributable to base differences are allocated/apportioned to the foreign branch category • Certain dividends without adequate substantiation are treated as §951A category income • §78 gross-up applies to taxes deemed paid under §960(b) with respect to PTEP distributions	• Foreign income taxes attributable to base differences are allocated/apportioned to the general category • Certain dividends without adequate substantiation are treated as passive category income • §78 gross-up does not apply to taxes deemed paid under §960(b) with respect to PTEP distributions • Effective for tax years beginning after December 31, 2025

OB3 (cont'd)

	Present Law	OBBB Act
FDII	• FDII reduced by DTIR (10% of QBAI) Through 2025: • 13.125% corporate tax rate (*§250 deduction of 37.5%)* Tax years beginning after 2025: • 16.4% corporate tax rate (*§250 deduction of 21.875%)* • DEI is computed taking into account deductions (including taxes) properly allocable to the relevant gross income	• DTIR (10% of QBAI) offset eliminated. As a result, FDII is replaced with FDDEI in computing deduction. • Permanently modifies FDDEI "corporate tax rate" to 14% (*§250 deduction of 33.34%)* • For sales/dispositions (including deemed sales/dispositions) occurring after June 16, 2025, DEI excludes: o Income and gain from sale/disposition (including from a deemed sale/disposition or pursuant to §367(d)) of property of (1) intangible property as defined in §367(d)(4) and (2) any other property of a type that is subject to depreciation, amortization, or depletion by the seller o Eliminates proposed exclusion from DEI for passive income as defined in §904(d)(2)(H) in prior Senate proposal • Deductions allocated/apportioned to DEI limited to items properly allocable to the relevant gross income *other than* interest expense and research or experimental expenditures (compare prior Senate proposal which would limit deductions to those *directly related* to DEI) • Except as provided above, effective for tax years beginning after December 31, 2025

OB3 (cont'd)

	Present Law	OBBB Act

BEAT	• BEAT rate
	  o Through 2025: 10% (generally) or 11% (for banks and securities dealers)
	  o Tax years beginning after 2025: 12.5% (generally) or 13.5% (for banks and securities dealers)
	• BEAT liability is:
	  o Excess of (1) BEAT rate times modified taxable income, over (2) regular tax liability reduced by all credits other than certain of the components of the §38 credit
	  o For tax years beginning after 2025, regular tax liability reduced by *all* credits
		• Eliminates majority of proposed amendments to BEAT in prior Senate proposal
		• Permanently modifies BEAT rate to 10.5% (generally) or 11.5% (for banks and securities dealers)
		• Permanently retains pre-2026 treatment of tax credits in reducing regular tax liability (*e.g.*, R&D credit)
		• Effective for tax years beginning after December 31, 2025

Source Rules for Foreign Offices or Other Fixed Places of Business	• Income from the sale or exchange of inventory property produced by a taxpayer in the US is treated as US-source income under §863(b)	• Up to 50% of a US person's taxable income from sales of inventory (1) produced by the taxpayer in the US, (2) for use outside the US, and (3) sold outside the US which is attributable to an office or other fixed place of business in a foreign country will be treated as foreign-source taxable income for purposes of the FTC limitation, notwithstanding the general rule in §863(b) • Effective for tax years beginning after December 31, 2025

OB3 (cont'd)

	Present Law	OBBB Act
CFC Look-Through	• CFC look-through rule of §954(c)(6) applies to tax years of foreign corporations beginning before January 1, 2026	• §954(c)(6) extended permanently
One-Month Deferral Tax Years	• Specified foreign corporations may elect a tax year beginning 1 month earlier than the majority US shareholder year under §898(c)(2)	• Repeals 1-month deferral year election in §898(c)(2) • Transition rule ends foreign corporation's first tax year beginning after November 30, 2025, on the date the required year ends. Treasury to provide rules for allocating foreign taxes that accrue in the foreign corporation's first tax year beginning after November 30, 2025, and the succeeding taxable year between such tax years. • Effective for tax years of specified foreign corporations beginning after November 30, 2025 o Specified foreign corporation whose 1-month deferral year ends November 30 would have a short tax year beginning December 1, 2025, and ending December 31, 2025. Going forward, such specified foreign corporation would have a calendar US tax year.

OB3 (cont'd)

	Present Law	OBBB Act

Pro Rata Share Rules	• A US shareholder of a foreign corporation that is a CFC at any time during any tax year, and who owns stock in the foreign corporation on the last day in such year when the corporation is a CFC, includes in gross income the US shareholder's pro rata share of the foreign corporation's subpart F income for such year and, in general, the amount determined under §956 with respect to such shareholder for such year under §951(a)(2)(B)	• Requires US shareholder of a CFC who owns stock in the CFC during its tax year ("CFC year") to include US shareholder's pro rata share of the CFC's subpart F income and NCTI related to such CFC year
		  ○ Calculated based on subpart F attributable to the period (1) such shareholder owned the CFC stock, (2) such shareholder was a US shareholder, and (3) such corporation was a CFC
		  ○ §951(a)(2)(B) (reduction for distributions to other persons) removed, with a transition rule for distributions paid in the final year before the rule comes into effect
		• Requires US shareholders who own stock on the last day of the CFC year when the corporation is a CFC to include the §956 amount for that year
		• Effective for tax years beginning after December 31, 2025

Downward Attribution for CFC Status	• Former §958(b)(4) repealed as of last tax year of foreign corporation beginning before January 1, 2018
	  ○ <u>Note</u>: §958(b)(4) was a restriction on downward attribution of stock ownership when applying the constructive ownership rules for purposes outlined in §958(b) (*e.g.*, CFC status, US shareholder status)
		• Re-enacts §958(b)(4)
		• New §951B subjects "foreign controlled US shareholders" ("FCUSS") to income inclusions under §951 and §951A from "foreign controlled foreign corporations" ("FCFCs")
		  ○ FCUSS: A US person who would be considered a US shareholder of a foreign corporation if such person owned more than 50% of the stock of such foreign corporation and downward attribution from foreign persons applied
		  ○ FCFC: A foreign corporation (other than a CFC) that is more than 50% owned by at least one FCUSS. §958(a) and §958(b) (but excluding §958(b)(4)) apply for purposes of determining whether this ownership threshold is met.
		• Effective for tax years beginning after December 31, 2025
		• In general, the effective date of any amendment to the Code is applied by treating references to US shareholders as including references to FCUSSs and references to CFCs as including references to FCFCs

RECENT CASES IN INTERNATIONAL TAX

Medtronic, Inc. v. Commissioner

- 2022 Tax Court Decision (T.C. Memo 2022-84)
  - Issue: pricing of royalties paid to Medtronic US by its Puerto Rican affiliate for the license of intangible property required for the manufacture of medical devices
  - On initial remand from Eighth Circuit directing Tax Court to reconsider the CUT method, Tax Court rejected the IRS's CPM and taxpayer's CUT and adopted an "unspecified method" to allocate income between US IP holder and foreign licensee
  - Tax Court had initially adopted the taxpayer's CUT method with adjustments (TC Memo 2016-112)
- Eighth Circuit Decision (Sept. 3, 2025)
  - Tax Court's decision vacated and remanded a second time for further proceedings
  - Eighth Circuit rejected the use of the taxpayer's proposed CUT under the CUT method or the Tax Court's unspecified method
  - Tax Court is directed on remand to reconsider (1) the IRS's proposed CPM and (2) the realistic alternatives available to Medtronic US

3M Company v. United States

- 2023 Tax Court Decision (160 T.C. 50)
  - Issue: validity of the "blocked income" regulation, which provides that foreign legal restrictions are not taken into account in evaluating the price of a controlled transaction except in limited circumstances
  - Tax Court upheld the regulation, relying on *Chevron*
- Eighth Circuit Decision (Oct. 1., 2025)
  - Tax Court's decision was reversed
  - Relying on *Loper Bright*, Eighth Circuit held that the IRS could not rely on the blocked income regulation to tax a U.S. corporation on royalties it could not legally receive from its Brazilian subsidiary

Altria Group, Inc. v. United States

- Overview
  - Altria claimed a refund with respect to Subpart F income it took into income as a result of its 10.2 percent interest in Anheuser-Busch InBev (ABI)
  - As a result of the repeal of section 958(b)(4) in the 2017 TCJA, ABI foreign subsidiaries were considered CFCs, due to attribution of stock ownership to ABI's US subsidiary (constructive ownership). This was the case even though US shareholders (i.e., Altria) directly or indirectly owned only 10.2 percent of the stock of the foreign subsidiaries
  - Altria argued that it was not required to include Subpart F income with respect to these "accidental CFCs" because: US shareholders did not have actual control of the foreign corporation, the contrary result was absurd, and taxation violated the Fifth Amendment Due Process Clause
- District Court Decision, No.3:23-cv-00293 (E.D. Va. Sept. 29, 2025)
  - Rejected Altria's arguments, holding that the text of section 958 is plain and unambiguous and declining to "import an additional control requirement that is wholly absent from the statutory text itself."
  - Result did not "shock" common sense
  - Repeal of section 958(b)(4) was a reasonable policy choice that was not unconstitutionally arbitrary (citing the Supreme Court decision in *Moore v. United States* as "highly persuasive guidance" even though *Moore* did not address "accidental CFCs"
- OB3 reinstatement of section 958(b)(4) applies prospectively only

Perrigo v. United States

- Overview
  - Perrigo US contracted with Dexcel, an unrelated Israeli company that was developing an over-the-counter pharmaceuticals, to market those products in the US
  - Perrigo US assigned contract rights to a foreign related party, Perrigo Israel. Perrigo Israel subcontracted with Perrigo US to distribute the products
  - IRS allocated the income from the Dexcel contract to Perrigo US, asserting (1) assignment should be ignored under the economic substance and similar doctrines, and (2) payment for the assignment was less than arm's length
  - IRS also asserted penalties
- District Court Decision, No.1:17-cv-00737 (W.D. Mich. Sept. 25, 2025)
  - Court rejected application of economic substance and similar doctrines, finding that the assignment had genuine substance and was part of the company's business-motivated international expansion
  - Court rejected DCF method put forth by government's expert, particularly the reliance on ex post sales results, as inconsistent with the arm's length standard
  - Court adopted DCF method put forth by taxpayer's expert, with some modifications

Other Economic Substance Doctrine Litigation

- *Liberty Global Inc. v. United States*
  - Tenth Circuit is considering LGI's appeal of the 2023 District Court's holding that "[t]here is no threshold 'relevance' inquiry that precedes" the application of the two criteria for application of the economic substance doctrine of § 7701(o)
  - Briefing completed August 2024; oral argument held November 2024
- *Siemens USA Holdings, Inc. v. Commissioner*
  - Siemens US group sold CFC stock to two affiliates; gain resulted in a section 1248 dividend and section 245A DRD
  - IRS disallowed deductions under Treas. Reg. § 1.245A-5T regulations and asserted that preparatory transactions lacked economic substance under § 7701(o)
  - IRS asserted 40% penalty for nondisclosed noneconomic substance transaction
  - Trial scheduled in 2026

OTHER DEVELOPMENTS

Other Developments

- Pillar 2
- CAMT Foreign Tax Credits: Notice 2025-49
- Treaties and Branch Profits Tax of Reverse Hybrids: GLAM 2025-002
- Inbound F reorganizations and FIRPTA: Notice 2025-45

Thank you

Moderator:	Stephen Olsen	**Firm:**	Villanova University School of Law
		Email:	steve.olsen@law.villanova.edu
Panelist:	Layla Asali	**Firm:**	Miller & Chevalier
		Email:	lasali@milchev.com
Panelist:	John Bates	**Firm:**	Deloitte
		Email:	johnbates@deloitte.com
Panelist:	Tracy Villecco	**Firm:**	IRS Associate Chief Counsel (International)