When Profits Come Home: Repatriation and Taxation in the Post-OBBBA Era

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I. Introduction

The One Big Beautiful Bill Act[1] (OBBBA), signed into law on July 4, 2025, alters the repatriation landscape for U.S. multinationals including by changing the global intangible low-taxed income (GILTI) regime enacted under the Tax Cuts and Jobs Act of 2017[2] (TCJA) and revising key aspects of the foreign tax credit (FTC) rules relating to taxes paid on previously taxed earnings and profits (PTEP). The changes to the GILTI—now, net CFC tested income (NCTI)—rules will further increase the prevalence of PTEP in foreign subsidiaries, and correspondingly result in fewer controlled foreign corporation (CFC) earnings being eligible for the dividend-received deduction (DRD) under Code Sec. 245A.[3] The OBBBA also makes fundamental changes to the Subpart F *pro rata* share rules, which will affect the tax treatment of certain distributions from CFCs. In addition, recently issued regulations and other guidance from the U.S. Department of Treasury (Treasury) and the Internal Revenue Service (IRS) also will affect the taxation of distributions from foreign subsidiaries.

This article discusses these recent developments, focusing on the taxation of distributions by first-tier foreign subsidiaries directly to their U.S. corporate owners. The discussion begins with a review of the recent statutory (OBBBA) and regulatory changes relevant primarily to PTEP distributions from CFCs. Other OBBBA changes affecting the tax treatment of distributions from CFCs and non-controlled foreign subsidiaries are examined next. The article then closes with an examination of the impact of recent guidance on the corporate alternative minimum tax (CAMT) treatment of PTEP and non-PTEP distributions.

II. Changes Relevant to Distributions of PTEP

A. Overview of Taxation of PTEP Distributions

Code Sec. 959(a) excludes the distribution of PTEP by a CFC to its U.S. shareholder from the U.S. shareholder's gross income. When PTEP is distributed to a corporate U.S. shareholder, Code Sec. 960(b)(1) deems the

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shareholder to have paid the CFC-level foreign income taxes that are "properly attributable" to the distributed PTEP and have not been previously deemed-paid.[4] These deemed-paid taxes are generally allowable as FTCs under Code Sec. 901 (subject to normal shareholder-level FTC limitations).[5] To be clear, the deemed-paid taxes associated with the distribution of PTEP are distinct from the foreign income taxes (if any) that are deemed paid on the U.S. shareholder's Subpart F or GILTI (now, NCTI) inclusions that give rise to the PTEP.[6] In addition, "direct" foreign taxes paid by a U.S. shareholder on the distribution of PTEP are generally creditable under Code Sec. 901.[7] Before the OBBBA, taxes on distributions of PTEP resulting from NCTI inclusions ("Code Sec. 951A PTEP") were not subject to a haircut mirroring the 80% limitation ("20% haircut") on deemed-paid taxes on NCTI inclusions.[8]

Before the OBBBA, Code Sec. 78 treated foreign income taxes deemed to be paid by the domestic corporation under Code Secs. 960(a), (b), and (d) as a dividend received from the foreign corporation (commonly known as the "Code Sec. 78 gross-up") if the domestic corporation elected to claim a credit (rather than a deduction) for its foreign income taxes. Thus, the deemed-paid taxes on PTEP distributions (under Code Sec. 960(b)) gave rise to a Code Sec. 78 gross-up dividend.[9]

Although the distribution of PTEP is generally non-taxable (under Code Sec. 959(a)), the U.S. shareholder recognizes gain to the extent of the excess of the distribution over the U.S. shareholder's adjusted basis in the stock of the distributing CFC.[10] For purposes of determining the gain recognized by the U.S. shareholder under this rule (Code Sec. 961(b)(2)), taxpayers sometimes take the position that basis may be shifted from high-basis shares of CFC stock to low-basis shares so as not to have gain recognition where the aggregate PTEP distribution received by a U.S. shareholder does not exceed the shareholder's aggregate adjusted basis in the distributing CFC stock.[11] In addition, a U.S. shareholder may recognize foreign-currency gain or loss on a distribution of PTEP due to movements in exchange rates between the date of the inclusion that gave rise to the PTEP and the date of the distribution of the PTEP to the U.S. shareholder.[12]

B. Elimination of the Code Sec. 78 Gross-Up for PTEP Distributions

Before the OBBBA, the Code Sec. 78 gross-up for deemed-paid taxes on PTEP distributions typically gave rise to double taxation. This is illustrated in the following example.

Assume a domestic corporation (USP) owned a first-tier CFC (CFC1), which in turn owned a lower-tier CFC (CFC2). In Year 1, CFC2 earned USD 100x of net Subpart F income and paid no foreign income taxes. As a result, USP had a USD 100x Subpart F inclusion. Then, in Year 2, CFC2 distributed the USD 100x (which was PTEP) to CFC1, subject to a 10% foreign withholding tax (*i.e.*, USD 10x). CFC1 then distributed the remaining USD 90x of PTEP to USP, which brought up deemed-paid taxes of USD 10x under Code Sec. 960(b)(1). The pre-OBBBA version of Code Sec. 78 required USP to include the USD 10x as a Code Sec. 78 gross-up dividend. This resulted in a total inclusion of USD 110x even though CFC2 originally earned only USD 100x.

The OBBBA eliminates the Code Sec. 78 gross-up for deemed-paid taxes on PTEP distributions.[13] This change is effective for tax years beginning after December 31, 2025.[14] This change makes sense, as the rationale for the Code Sec. 78 gross-up is to prevent foreign taxes from giving rise to both (i) a deduction (at the CFC level against Subpart F or tested income), and (ii) a credit (at the U.S. shareholder level). Taxes on PTEP at the CFC level do not give rise to a CFC-level deduction against Subpart F or tested income, and therefore do not need to be reversed by Code Sec. 78 in the context of a Code Sec. 960(b) deemed-paid credit. This change had been proposed previously in the unenacted Tax Technical and Clerical Corrections Act of 2018, which included various technical corrections to the TCJA.[15]

C. New "Haircut" of FTCs on Distributions of PTEP

The OBBBA also introduced new Code Sec. 960(d)(4), which imposes a 90% limitation ("10% haircut") on foreign income taxes paid or accrued, or deemed paid under Code Sec. 960(b)(1), on Code Sec. 951A PTEP distributions.[16] Thus, the new 10% haircut applies to both direct and deemed-paid foreign income taxes.[17] The new haircut on the foreign income taxes on Code Sec. 951A PTEP distributions mirrors the existing haircut on foreign income taxes that are deemed paid on a Code Sec. 951A inclusion, which is also reduced from 20% to 10% under the OBBBA.[18] As noted above, before the OBBBA, no haircut applied to foreign income taxes on Code Sec. 951A PTEP distributions.

The effective date for the 10% haircut under new Code Sec. 960(d)(4) applies to "foreign income taxes paid or accrued (or deemed paid under [Code Sec.] 960(b)(1) …)

with respect to any amount *excluded from gross income under [Code Sec.] 959(a) ... by reason of an inclusion in gross income under [Code Sec.] 951A(a) ... after June 28, 2025*" (emphasis added).[19] In response to questions about the effective date, Treasury and the IRS announced in Notice 2025-77 that forthcoming proposed regulations would apply the haircut only to PTEP resulting from a Code Sec. 951A inclusion by a U.S. shareholder for a U.S. shareholder's tax year ending after June 28, 2025.[20] Thus, the haircut could apply to foreign tax on PTEP that resulted from tested income earned in a CFC's tax year that ended before June 28, 2025, if that CFC tax year ended within the U.S. shareholder's tax year that ended after June 28, 2025.[21]

Under Notice 2025-77, even the direct or deemed-paid foreign taxes on a PTEP distribution made before June 29, 2025 would be subject to the 10% haircut if the underlying Code Sec. 951A inclusion was in the U.S. shareholder's tax year ending after June 28, 2025.[22] Conversely, the 10% haircut would not apply to direct or deemed-paid foreign taxes on a PTEP distribution that is made after June 28, 2025 if the PTEP relates to a Code Sec. 951A inclusion from a U.S. shareholder's tax year ending before June 29, 2025 (even if those taxes are paid after June 28, 2025).

Notably, the effective date for the 10% haircut provision does not align with the effective date for the elimination of the Code Sec. 78 gross-up for deemed-paid taxes on PTEP distributions (discussed above in Part II.B).[23] As a result, there may be scenarios (for a Code Sec. 951A PTEP distribution made in a tax year beginning before January 1, 2026) in which a U.S. shareholder must apply the 10% haircut to the deemed-paid taxes even though the Code Sec. 78 gross-up for the full amount of deemed-paid taxes remains in effect. This misalignment could exacerbate an already negative outcome for taxpayers by further increasing the effective U.S. tax burden.[24] To partially address these outcomes, Treasury and the IRS could consider allowing taxpayers not to reduce basis in the stock of the distributing CFC to the extent of the Code Sec. 78 gross-up for deemed-paid taxes under Code Sec. 960(b)(1).[25]

D. Proposed PTEP Regulations Would Disallow "Basis Sharing"

Although Code Sec. 961(b)(2) was an original part of the Subpart F regime and its associated PTEP system,[26] new proposed regulations[27] could increase the occurrence of gain recognition under this section by preventing U.S. shareholders from shifting basis from high-basis shares to low-basis shares in the distributing CFC to offset an excess PTEP distribution with respect to the low-basis shares.[28]

Under the new proposed PTEP regulations, the U.S. shareholder would track the CFC's PTEP (in annual accounts and relating to a single Code Sec. 904 category) in an aggregated pooling fashion.[29] Thus, the U.S. shareholder's PTEP accounts would consist of an aggregate of the PTEP (for a single tax year and single Code Sec. 904 category) that arose from every share owned by that U.S. shareholder during a given tax year. Accordingly, the PTEP in each PTEP account would be available for distribution in respect of any one of the shares owned by the U.S. shareholder (as opposed to being available only for the specific shares that gave rise to the PTEP).[30] In contrast, the proposed PTEP regulations would provide that basis adjustments (for example, upon the distribution of PTEP under Code Sec. 961(b)) are specific to each share of stock,[31] and would not permit "basis sharing" among CFC shares when determining whether gain is recognized (under Code Sec. 961(b)(2)) on a specific share. Instead, gain on certain shares could arise under Code Sec. 961(b)(2) upon a distribution of PTEP even if the U.S. shareholder's aggregate basis in the CFC stock exceeds the PTEP distributed.[32]

The absence of "basis sharing" for Code Sec. 961(b)(2) gain determination purposes is a change from the previously withdrawn proposed PTEP regulations (which were issued in 2006).[33] In some cases, it contravenes the policy of Code Secs. 959 and 961, which is to prevent double taxation on repatriated PTEP "at the earliest possible time."[34] To better align the U.S. tax consequences of PTEP distributions with tax policy, Treasury and the IRS should consider other approaches that would allow some measure of aggregate basis recovery to avoid (or defer) gain recognition where the aggregate PTEP distribution does not exceed the shareholder's aggregate basis in the distributing CFC.[35]

III. Other Changes Affecting Treatment of Distributions from Foreign Subsidiaries

In this part, we examine other changes in the OBBBA that will affect the tax treatment of distributions from CFCs and non-CFCs, including (i) changes to the GILTI (now NCTI) regime that should further increase the prevalence of PTEP and thereby reduce the relevance of the Code Sec. 245A DRD to distributions from CFCs; (ii) changes to the Subpart F *pro rata* share rules that will affect the treatment of certain distributions from CFCs; (iii) technical corrections that were made to the FTC rules applicable to certain dividends from non-CFCs;[36] (iv) new Code Sec. 951B affecting the treatment of earnings of, and distributions from, certain specially defined non-CFCs; and (v) various other changes that may affect the treatment of distributions from CFCs.

A. Removal of NDTIR Exclusion

The OBBBA removed the exclusion for "net deemed tangible income return" (NDTIR)[37] from the calculation of the Code Sec. 951A inclusion, effective for tax years beginning after December 31, 2025.[38] As a result, the Code Sec. 951A inclusion will be based solely on NCTI, and the GILTI regime has been redesignated as the NCTI regime.[39] With the removal of the NDTIR exclusion, U.S. shareholders will generally have larger Code Sec. 951A inclusions, particularly where CFCs own significant tangible assets. This change will typically result in tested income of CFCs giving rise to proportionately larger amounts of PTEP, as the "inclusion percentage"[40] will now be less than 100% only to the extent tested losses of some CFCs are available to offset tested income of other CFCs. Given the growing predominance of PTEP, the overall proportion of distributions eligible for the Code Sec. 245A DRD is expected to decrease in post-OBBBA tax years.

B. Changes to Subpart F *Pro Rata* Share Rules

1. Change from "Last Relevant Day" Rule to "Any Day" Rule

Before the OBBBA, a U.S. shareholder's inclusion of Subpart F income and GILTI applied only to the U.S. shareholder that owned the CFC stock on the "last relevant day" (*i.e.*, the last day of the CFC's tax year on which it was a CFC).[41] Under this rule, a U.S. shareholder that disposed of stock in a CFC before the "last relevant day" did not have a Subpart F or GILTI inclusion with respect to that stock.[42] In addition, pre-disposition dividends (out of untaxed E&P) to the seller-U.S. shareholder from the transferred CFC generally qualified for the Code Sec. 245A DRD. Similarly, gain from the disposition of CFC stock treated as dividend income under Code Sec. 1248 generally qualified for the Code Sec. 245A DRD.[43]

In response to the interplay of the "last relevant day" rule and the post-TCJA application of the Code Sec. 245A DRD to the seller-U.S. shareholder's pre-disposition dividends (from the transferred CFC), Treasury issued the "extraordinary reduction" rules under Reg. §1.245A-5(e) after the TCJA was enacted.[44] As a result, a U.S. parent could be denied the Code Sec. 245A DRD for dividends (from untaxed E&P) received from its CFC (including gain treated as dividend income under Code Sec. 1248) in the tax year in which the U.S. parent disposed of a significant portion of its shares in the CFC.[45]

The OBBBA replaced the "last relevant day" rule with an "any day" rule for tax years beginning after December 31, 2025. Under this new rule, if a U.S. shareholder owns CFC stock on "any day" during the CFC tax year, then the U.S. shareholder's *pro rata* share of the CFC's Subpart F income or tested income will be the portion of that income attributable to (1) the CFC stock owned by the U.S. shareholder; and (2) any period of the CFC tax year when (a) the shareholder both owned the CFC stock and qualified as a U.S. shareholder, and (b) the foreign corporation was a CFC.[46] As a result of this change, there is no longer a risk of a U.S. shareholder disposing of its stock before the "last relevant day" to escape U.S. taxation. This would seemingly obviate the need for the extraordinary reduction regulations in post-OBBBA periods.

Under the "any day" rule, it is expected that any pre-disposition distributions that a U.S. parent receives from its CFC prior to disposing of some or all of its CFC stock will first be covered by current-year PTEP resulting from the U.S. parent's Subpart F and NCTI inclusions in the disposition year.[47] The incremental amount of current-year PTEP received would be roughly equivalent to the "extraordinary reduction amount" that would have resulted under the "last relevant day" rule, and that would have been included by the U.S. parent as a dividend not qualifying for the Code Sec. 245A DRD (under the extraordinary reduction rules).[48] Pre-disposition distributions from the transferred CFC are generally expected to qualify for the Code Sec. 245A DRD (subject to normal requirements) to the extent they exceed the available PTEP (both from the current year and prior years) and are sourced from nontaxed E&P.

2. Transition Rule for Dividends

Together with the change to the "any day" rule, the OBBBA introduced a transition rule for dividends.[49] The rule would generally apply to the last CFC tax years (ending on or after June 28, 2025) to which the "last relevant day" rule applies.[50] The transition rule effectively provides that a dividend paid by a CFC (including a dividend under Code Sec. 1248(a)) shall not be treated as a dividend for purposes of applying Code Sec. 951(a)(2)(B) (*i.e.*, the "dividend-to-another-person-reduction" rule) if the dividend does not increase a U.S. person's taxable income (including by reason of a DRD, an exclusion from gross income or an exclusion from Subpart F income). For example, assume (i) a U.S. parent receives a dividend from its CFC in March 2025 and sells its CFC stock to another U.S. shareholder in October 2025 (without any Code Sec. 1248 dividend resulting, for simplicity), (ii) the transferee-U.S. shareholder owns the transferred CFC stock on December 31, 2025 (*i.e.*, the "last relevant day"), and (iii) the U.S. parent and CFC have calendar tax years. Under the transition rule for dividends, the transferee-U.S. shareholder's Subpart F and GILTI inclusions (based on its ownership of the CFC on the "last relevant day") will not be diminished by virtue of the "dividend-to-another-person-reduction" rule *unless* the dividend increases the transferor-U.S. shareholder's taxable income (for example, because the Code Sec. 245A DRD is not allowed[51]).

The transition rule appears to address (among other issues) the interaction between Code Sec. 245A DRD (and the Code Sec. 954(c)(6) exception where the seller is a CFC) and the "last relevant day" rule, which is the same issue that is addressed in the extraordinary reduction rules (Reg. §§1.245A-5(e) and (f)). Consequently, clear rules are needed to address the interaction, including the order of application, of the transition rule and the extraordinary reduction rules (as the application of one rule would effectively supersede the application of the other). In Notice 2025-75, Treasury and the IRS stated that forthcoming proposed regulations would apply the extraordinary reduction rules and Code Sec. 245A (along with all other applicable Code sections and regulations) before applying the transition rule.[52] In addition, for transactions that close during the transition period, Treasury and the IRS stated that the closing of the year election under Reg. §1.245A-5(e)(3)(i)(A) would remain available. This clarification is especially welcome as the parties might have already agreed to make the election and relied on the seller taking into account the target-CFC's tested income and Subpart F income through the date of sale.

Notably, the scope of the transition rule is broader than that of the extraordinary reduction regulations. The extraordinary reduction regulations apply only to controlling Code Sec. 245A shareholders and distributions qualifying for either the Code Sec. 245A DRD or the Code Sec. 954(c)(6) exception from foreign personal holding company income. In contrast, the transition rule applies to U.S. shareholders regardless of whether they are controlling Code Sec. 245A shareholders, and to distributions that are non-taxable under other Code provisions as well (*e.g.*, a distribution qualifying for the Code Sec. 954(c)(3) exception from foreign personal holding company income).

C. Unsubstantiated Dividends from Non-CFCs

Under Code Sec. 904(d)(4)(C)(ii), dividends from non-controlled 10%-owned foreign corporations (so-called "10/50 corporations") have historically been characterized for FTC "basketing" purposes as income described in Code Sec. 904(d)(1)(A) if the taxpayer cannot substantiate the character of the dividends. Before the TCJA, former Code Sec. 904(d)(1)(A) described passive category income. Following the TCJA, Code Sec. 904(d)(1)(A) describes income in the Code Sec. 951A category, whereas passive category income is described in Code Sec. 904(d)(1)(C). As the TCJA did not make a conforming amendment to Code Sec. 904(d)(4)(C)(ii), a dividend whose character could not be substantiated was assigned to the Code Sec. 951A category rather than the passive category after the TCJA. The OBBBA corrected this result so that a dividend whose character cannot be substantiated will once again be assigned to the passive category for tax years beginning after December 31, 2025.[53]

The assignment of unsubstantiated dividends from 10/50 corporations to the passive category rather than the Code Sec. 951A category will generally not be consequential if the requirements for the Code Sec. 245A DRD are met since (i) the foreign taxes associated with the dividend would not be creditable,[54] and (ii) the dividends would be excluded from net income for Code Sec. 904 purposes,[55] regardless of the basket to which the dividends are assigned.

D. Effect of New Code Sec. 951B on Repatriation of Earnings

The OBBBA reinstates Code Sec. 958(b)(4), which had been eliminated under the TCJA. Code Sec. 958(b)(4) prevents the stock owned by a foreign person from being attributed to a U.S. person (generally, a domestic corporation) that is also owned by that foreign person for purposes of making certain determinations.[56] In other words, "downward attribution" from the foreign person to the U.S. person is not permitted. For example, if a foreign parent (FP) owns 100% of both a foreign corporation (FS) and a domestic corporation (USS), the reinstatement of Code Sec. 958(b)(4) means that USS would not be deemed to own the stock of FS that is owned by FP. Therefore, USS would not be a U.S. shareholder with respect to FS, and FS would not be a CFC.

To address the original intent behind the TCJA's elimination of Code Sec. 958(b)(4),[57] the OBBBA introduced a new regime for "foreign-controlled U.S. shareholders" (FCUSSs) with respect to "foreign-controlled foreign corporations" (FCFCs) under new Code Sec. 951B.[58] This new section more precisely targets the scenarios that were originally intended to be addressed by the TCJA's repeal of Code Sec. 958(b)(4).

Code Sec. 951B generally defines an FCUSS as a U.S. person who owns directly, indirectly, or constructively more than 50% of a foreign corporation (unlike the 10% ownership threshold for defining a U.S. shareholder of a CFC), with ownership determined as if downward attribution were permitted.[59] An FCFC is a foreign corporation, other than a CFC, in which at least one FCUSS owns directly, indirectly or constructively, more than 50% of the stock, also applied as if downward attribution were permitted.[60] For an FCUSS and FCFC, the Subpart F rules (other than Code Secs. 951A, 951(b) and 957) apply to the FCUSS with respect to its ownership in the FCFC by substituting references to a "U.S. shareholder" and a "CFC" in those rules with references to an FCUSS and an FCFC, respectively.[61] Code Sec. 951A applies to an FCUSS by treating each reference to a U.S. shareholder and a CFC in Code Sec. 951A as also including a reference to an FCUSS and FCFC, respectively.[62] Notwithstanding the status of a domestic corporation and a foreign corporation as an FCUSS and an FCFC, a Code Sec. 951B inclusion does not result except to the extent of the FCUSS's direct and indirect (as opposed to constructive) ownership of the FCFC.[63]

Subpart F and NCTI inclusions resulting from the application of Code Sec. 951B are generally subject to all the rules of Subpart F (including, *inter alia*, Code Secs. 959 and 960), and therefore should give rise to PTEP to the extent there are any Code Sec. 951B inclusions. As under the pre-OBBBA rules (when the FCUSS and FCFC would have been a U.S. shareholder and CFC, respectively), a portion of an FCFC's earnings will be PTEP (to the extent of the Subpart F and NCTI inclusions of the FCUSS), and the FCFC's other earnings will typically be eligible for the Code Sec. 245A DRD.

In view of the foregoing, the general PTEP mechanics should apply when earnings that were taxed under Code Sec. 951B are distributed by the FCFC to the FCUSS. Thus, taxes paid or deemed paid on PTEP distributed by the FCFC to the FCUSS should be subject to the same rules that apply to taxes on PTEP distributions by a CFC to a U.S. shareholder. Accordingly, under the OBBBA, an FCUSS should not be subject to a Code Sec. 78 gross-up for deemed-paid taxes on a PTEP distribution from an FCFC, and the new 10% haircut on foreign taxes paid or deemed paid on distributions of Code Sec. 951A PTEP should apply.[64] In addition, it would appear that the regular PTEP tracking rules would apply to PTEP arising under Code Sec. 951B (and thus the PTEP would be assigned to existing PTEP groups, rather than to a new Code Sec. 951B group). Where a pre-OBBBA CFC becomes an FCFC and thereafter makes a PTEP distribution, there is no indication that pre-OBBBA PTEP (other than Code Sec. 965 PTEP) would be distributed before the PTEP that arose under Code Sec. 951B.

Code Sec. 951B is effective for foreign corporations' tax years beginning after December 31, 2025, and, thus, for U.S. shareholders' tax years in which or with which the foreign corporations' tax years end.[65] For tax years beginning before January 1, 2026, Code Sec. 958(b)(4) would continue not to apply such that the FCFC would instead be considered an actual CFC (through downward attribution), and the Subpart F and GILTI inclusion rules would apply more directly (*i.e.*, without reference to new Code Sec. 951B), including to U.S. shareholders to which Code Sec. 951B would not apply.

E. Effects of Other OBBBA Changes on Distributions

The OBBBA repeals the ability to make a one-month deferral election for a CFC.[66] In conjunction with this repeal, a transition rule is provided under which, for example, a CFC with a November 30 year-end will have a one-month tax year for December 2025, before transitioning to a calendar tax year for 2026.[67] The resulting one-month tax year may limit the availability of current-year PTEP for a distribution made in December 2025. Therefore, a distribution in December 2025 from the CFC with the former November 30 year-end may result in a smaller portion coming from PTEP (assuming insufficient prior-year PTEP to cover the distribution)[68] and a larger portion either coming from untaxed E&P (potentially eligible for the Code Sec. 245A DRD) or constituting a non-dividend distribution.[69] Sourcing a smaller portion of the distribution from PTEP could also result in a reduced deemed-paid credit under Code Sec. 960(b)(1). According to Notice 2025-72, forthcoming proposed regulations under Code Sec. 898 would allocate any foreign income tax accruing during the one-month tax year and assigned to a PTEP group entirely to that one-month tax year[70] (and, therefore, that tax would potentially be available as a deemed-paid credit upon the distribution of PTEP during the one-month tax year).

The OBBBA also provides that interest expense and "research or experimental" (R&E) expenditures are not allocated and apportioned to the Code Sec. 951A category (for purposes of the Code Sec. 904 FTC limitation).[71] This change (particularly for interest expense) generally should result in more net income in the Code Sec. 951A category. Therefore, upon the distribution of PTEP to the U.S. parent, it is more likely that direct and deemed-paid foreign taxes on Code Sec. 951A PTEP will be creditable and not limited under Code Sec. 904.

For purposes of the Code Sec. 163(j) interest expense limitation, the OBBBA reinstates the add-back to "adjusted taxable income" of deductions for depreciation, amortization and depletion.[72] This change could result in larger interest deductions at the CFC level, which may decrease net income (including Subpart F income, tested income, and any other income) at the CFC level, thereby reducing the PTEP and non-PTEP available for distribution.

Finally, the reinstatement of immediate deductibility of domestic R&E expenditures (under Code Sec. 174A) may decrease tested income and Subpart F income for CFCs that incur these expenditures.[73] This change could reduce the PTEP available for distribution if the taxpayer chooses to deduct (rather than amortize) these CFC-level expenditures.

IV. Treatment of Distributions Under CAMT Proposed Regulations and CAMT Impact of OBBBA Changes

A. CAMT Background

A distribution by a CFC to its U.S. parent must also be considered in the context of the CAMT.[74] By way of background, the CAMT (which was enacted as part of the Inflation Reduction Act of 2022[75]) is, in general, a 15% minimum tax on the adjusted financial statement income (AFSI) of an "applicable corporation."[76] AFSI is generally calculated by making various adjustments to the net income or loss that is set forth on the relevant corporation's Applicable Financial Statement (AFS).[77]

Under Code Sec. 56A(c)(2)(C), if a corporation is not included on a taxpayer's U.S. consolidated return (*e.g.*, a CFC), the taxpayer's AFSI is determined with respect to the other corporation (the CFC) by taking into account only (i) dividends received from the other corporation (reduced to the extent provided in regulations or other guidance), and (ii) "other amounts which are includible in gross income or deductible as a loss" (other than amounts included under Code Sec. 951 or 951A, or other amounts as provided by the IRS) with respect to the other corporation. Under Code Sec. 56A(c)(3), a U.S. shareholder includes its *pro rata* share of its CFC's net income or loss set forth on the AFS (as adjusted under rules similar to those that apply in determining AFSI) ("adjusted net income or loss"), in determining the U.S. shareholder's AFSI. Code Sec. 56A(c)(15) authorizes Treasury to issue regulations or other guidance to provide adjustments to AFSI as necessary, including adjustments to prevent the omission or duplication of an item in AFSI.

B. Treatment of Distributions Under CAMT Proposed Regulations

Following the enactment of the CAMT, questions arose as to whether distributions from CFCs should be included in the U.S. parent's AFSI since the CFC's underlying income typically would have already been included in the U.S. parent's AFSI.[78] Proposed regulations issued on September 12, 2024[79] (the "CAMT Proposed Regulations") would provide specific guidance on those questions.[80]

For purposes of calculating the AFSI of a "CAMT entity"[81] (*e.g.*, the U.S. parent) that receives a distribution from a foreign corporation (whether a CFC or non-CFC), the CAMT Proposed Regulations would disregard the item of income that results from the distribution and is reflected in the CAMT entity's financial statement income (FSI), and instead follow the regular tax treatment.[82] As a result, the CAMT entity's AFSI would generally not reflect any inclusion of a PTEP distribution because the PTEP distribution would be excluded from the CAMT entity's gross income for regular tax purposes.[83]

The CAMT Proposed Regulations also would not include in AFSI any item resulting from the receipt of a non-PTEP dividend from a foreign corporation, assuming the dividend qualifies for the Code Sec. 245A DRD. Rather, under the same tax-for-book replacement rule mentioned previously, the CAMT Proposed Regulations would disregard the item of income (resulting from the dividend) that is reflected in the CAMT entity's FSI, and instead would include the items of income and deduction resulting from the dividend for regular tax purposes.[84] As a result, a domestic corporation (which is a CAMT entity) would not reflect any inclusion in AFSI for a non-PTEP dividend received from a foreign corporation to the extent the dividend qualifies for the Code Sec. 245A DRD.[85] On the other hand, if a non-PTEP dividend does not qualify for the Code Sec. 245A DRD,[86] then the dividend (as determined for regular tax purposes) would be included in AFSI without an offsetting deduction. This may result in double taxation as the underlying earnings generally would already have been included in the CAMT entity's AFSI under Code Sec. 56A(c)(3) assuming the distributor of the dividend is a CFC.[87]

Based on a recent change to the effective dates of the CAMT Proposed Regulations announced in Notice 2025-49,[88] the CAMT Proposed Regulations are generally not effective for tax years beginning before the publication of the corresponding final regulations.[89] However, a taxpayer may rely on any section of the proposed regulations (generally without having to adopt the other sections) for a tax year beginning before the corresponding final regulations are published if the taxpayer consistently follows that section in its entirety for that tax year and all subsequent tax years beginning before the corresponding final regulations are published.[90] Therefore, a taxpayer may apply Proposed Reg. §1.56A-4(c)(1) (which, as explained previously, disregards the item of income that is reflected in the CAMT entity's FSI, and instead follows the regular tax treatment) to exclude PTEP and non-PTEP distributions from AFSI.[91] Reliance on Proposed Reg. §1.56A-4, however, also requires that the taxpayer consistently follow Proposed Reg. §1.56A-8 (regarding AFSI adjustments for certain U.S. federal and foreign income taxes) and Proposed Reg. §1.59-4 (regarding the CAMT FTC).[92] Reliance on the CAMT FTC rules as articulated in Proposed Reg. §1.59-4, in turn, may be undesirable in certain cases.[93] Notwithstanding this, it is at least arguable that a taxpayer could take the position that distributions from CFCs sourced from untaxed earnings may be excluded from AFSI based on the anti-duplication principle of Code Sec. 56A(c)(15)(A), without having to rely on Proposed Reg. §§1.56A-4 and 1.59-4.[94] Moreover, it is arguable that PTEP distributions may be excluded from AFSI based on the "best reading" of the statutory language (and, therefore, without having to rely on Proposed Reg. §§1.56A-4 and 1.59-4).

C. Creditability of Foreign Tax on Non-PTEP Dividends

Under Code Sec. 245A(d), any foreign income tax imposed on a dividend that qualifies for the Code Sec. 245A DRD (*e.g.*, foreign withholding tax) is not creditable for regular tax purposes. This is apparently to prevent taxpayers from receiving a double benefit (*i.e.*, the benefit of an FTC for CFC earnings that are exempt from U.S. tax). A question arises, however, as to whether such foreign taxes should also be disallowed for CAMT FTC purposes. The CAMT Proposed Regulations, in fact, would treat taxes disallowed under Code Sec. 245A(d) as a category of non-eligible taxes for CAMT FTC purposes.[95] This is surprising, at least for dividends from *CFCs*, since no portion of a CFC's earnings is exempt income for CAMT purposes.[96] Moreover, there does not appear to be a clear statutory basis for excluding such taxes from the CAMT FTC so long as those taxes otherwise constitute foreign income taxes under Code Sec. 901.[97]

In apparent recognition of the foregoing, Notice 2025-49 announced that a taxpayer that relies on Proposed Reg. §1.59-4 (*i.e.*, the proposed CAMT FTC regulations) may treat foreign income taxes disallowed (for regular tax purposes) under Code Sec. 245A(d) as eligible for the CAMT FTC if the tax is paid or accrued by the taxpayer (a U.S. shareholder) for a dividend received (or treated as received for purposes of Code Sec. 245A) *from a CFC*.[98] In contrast, a tax disallowed under Code Sec. 245A(d) on a dividend from a *non-CFC* would remain ineligible for the CAMT FTC under Proposed Reg. §1.59-4.

Until corresponding final regulations are published, taxpayers are not required to rely on Proposed Reg. §1.59-4 unless they choose to rely on Proposed Reg. §1.56A-4 (AFSI adjustments and basis determinations with respect to foreign corporations) and/or Proposed Reg. §1.56A-6 (AFSI adjustments with respect to CFCs).[99] Arguably, if the taxpayer does not rely on Proposed Reg. §1.59-4, a tax disallowed under Code Sec. 245A(d) on a dividend from a CFC may still be eligible for the CAMT FTC since the CFC's underlying earnings are not exempt for CAMT purposes, and there does not appear to be a clear statutory basis for excluding these taxes from the CAMT FTC.[100]

D. Impact of OBBBA on CAMT Treatment of Distributions

1. Change to Code Sec. 78 Gross-Up

With the OBBBA's removal of the reference to Code Sec. 960(b) (regarding the credit for deemed-paid foreign taxes on PTEP distributions) from Code Sec. 78, deemed-paid taxes on PTEP distributions will no longer give rise to a dividend under Code Sec. 78 (effective for tax years beginning after December 31, 2025). This removal of deemed-paid taxes on PTEP distributions from the Code Sec. 78 gross-up should not affect the calculation of AFSI since the CAMT Proposed Regulations already would not include Code Sec. 78 dividends in AFSI.[101] The non-inclusion in AFSI of Code Sec. 78 dividends makes sense because the CFC's "adjusted net income or loss" is not reduced for the CFC's foreign income taxes.[102]

2. Haircut on Taxes on Code Sec. 951A PTEP

A question arises as to whether the OBBBA's imposition (under Code Sec. 960(d)(4)) of a 10% haircut on otherwise creditable foreign taxes paid or deemed paid on the distribution of Code Sec. 951A PTEP may affect the amount of the CAMT FTC. The author believes that it should not. This is consistent with the availability of the CFC's "eligible current year taxes"[103] for CAMT FTC purposes (subject to the 15% annual limit under Code Sec. 59(l)(1)(A)(ii)) without regard to the haircut on deemed-paid taxes on NCTI inclusions.[104] Indeed, it seems clear under the mechanics of the CAMT FTC rules in the CAMT Proposed Regulations that the reduction to deemed-paid taxes on an NCTI inclusion under Code Sec. 960(d)(1) (attributable to the "inclusion percentage" and the "80-percent limitation") should not cause a like percentage of those taxes to be disallowed for CAMT FTC purposes.[105] In addition, those regulations specifically provide that CAMT FTCs include the foreign taxes deemed paid by the applicable corporation under Reg. §1.960-3(b) (regarding foreign taxes deemed paid under Code Sec. 960(b)).[106] Like Code Sec. 960(b), Reg. §1.960-3(b) does not refer to the haircut under Code Sec. 960(d)(1).[107] Thus, all Code Sec. 960(b) deemed-paid taxes (unreduced by the 10% haircut) would appear to be allowed for CAMT FTC purposes. In addition, the various categories of non-creditable taxes (for CAMT FTC purposes) listed in the CAMT Proposed Regulations do not include any reference to taxes excluded from the regular FTC under any provision of Code Sec. 960.[108]

While future regulations could treat foreign taxes disallowed under Code Sec. 960(d)(4) as taxes that are not eligible for the CAMT FTC, that would be unexpected and inconsistent with the absence of a haircut (for CAMT FTC purposes) of any portion of a CFC's eligible current year taxes in the tested income group. Furthermore, recent notices on expected changes to the CAMT Proposed Regulations[109] did not indicate any plan to update the CAMT FTC regulations to reflect Code Sec. 960(d)(4).[110]

3. Distributions from FCFCs

The OBBBA's establishment of a limited CFC regime under Code Sec. 951B solely for FCUSSs of FCFCs raises questions regarding the treatment of distributions by an FCFC to an FCUSS for purposes of determining CAMT liability.[111]

To answer these questions, it is first noted that an FCFC, by definition, is not a CFC. Nonetheless, the tax-for-book-replacement rule (Proposed Reg. §1.56A-4(c)(1)) would apply to distributions by a foreign corporation to a CAMT entity regardless of whether the foreign corporation is a CFC. Thus, under the CAMT Proposed Regulations, it would appear that a distribution of PTEP by an FCFC to an FCUSS would be excluded from the FCUSS's (or other relevant CAMT entity's) AFSI due to the application of Code Sec. 959(a).[112] Whether the distribution of non-taxed E&P by an FCFC to an FCUSS may be excluded from AFSI would typically depend on whether the FCUSS is also a U.S. shareholder with respect to the FCFC. That is because the Code Sec. 245A DRD would not apply to a distribution by the FCFC to the FCUSS unless the FCUSS is also a U.S. shareholder with respect to the FCFC.[113] The FCUSS would typically be a U.S. shareholder if it owns, directly or indirectly, at least 10% of the stock (by vote or value) of the FCFC (which may or may not be the case).[114] If the distribution to the FCUSS does not qualify for the Code Sec. 245A DRD, the distribution would be included in the FCUSS's AFSI. But even if the distribution to the FCUSS qualifies for the Code Sec. 245A DRD and is therefore not included in AFSI, any foreign tax imposed on the distribution would be non-creditable for CAMT FTC purposes since the dividend would be received from a non-CFC.[115]

V. Conclusion

The OBBBA's changes to the U.S. international tax rules will alter the repatriation landscape mainly by increasing the prevalence of PTEP in foreign subsidiaries and by making the rules on PTEP-related taxes consistent with the overall Subpart F and FTC regimes. The changes to the treatment of PTEP taxes (*e.g.*, the elimination of the Code Sec. 78 gross-up and the imposition of the 10% haircut on Code Sec. 951A PTEP taxes) are largely sensible modifications that will bring greater coherence and consistency to the FTC treatment of taxes associated with CFC inclusions and PTEP. The changes, however, are subject to different effective dates that are not all aligned and raise certain issues.

Another OBBBA change—*i.e.*, the change from the Subpart F inclusion "last relevant day" rule to the "any day" rule—will significantly affect the treatment of pre-disposition distributions when a U.S. parent disposes of its CFC stock. Some taxpayers will also need to consider recent guidance on the CAMT rules (and their interaction with the OBBBA changes) in evaluating the consequences of distributing foreign earnings. Before the CAMT Proposed Regulations are finalized, taxpayers may make certain choices about which rules to apply. These choices could be quite consequential for the CAMT treatment of both PTEP and non-PTEP distributions, including with regard to the ability to claim CAMT FTCs for taxes that are disallowed for regular FTC purposes.

As regulations are expected to be issued with regard to various amendments in the OBBBA—including changes to Code Secs. 904, 960, and 898(c)—taxpayers and their advisors should stay tuned for further developments affecting the repatriation area.

ENDNOTES

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1 P.L. 119-21.

2 P.L. 115-97. The TCJA also included a one-time repatriation tax under Code Sec. 965. The GILTI regime along with the repatriation tax vastly increased the prevalence of previously taxed earnings and profits in foreign subsidiaries.

3 All section references are to the Internal Revenue Code, as amended (the "Code"), or related Treasury regulations, unless otherwise indicated.

4 Code Sec. 960(b)(1); Reg. §1.960-3(b). Note, however, that foreign income taxes attributable to PTEP in certain PTEP groups (including Code Sec. 245A(d) PTEP) are not eligible to be deemed paid under Code Sec. 960. *See* Reg. §1.245A(d)-1(a)(2). Code Sec. 245A(d) PTEP includes, *inter alia*, certain PTEP that arose under Code Sec. 959(e) (relating to Code Sec. 1248) and Code Sec. 245A(e)(2) (relating to hybrid dividends received by a CFC). *See* Reg. §1.245A(d)-1(c)(22). Similarly, no foreign tax credit or deduction is allowed for foreign income taxes paid by a corporate U.S. shareholder on the distribution of Code Sec. 245A(d) PTEP from a foreign corporation. *See* Reg. §1.245A(d)-1(a)(1). In addition, foreign taxes associated with distributions of Code Sec. 965 PTEP are generally subject to a foreign tax credit "haircut" under Code Sec. 965(g) and Reg. §1.965-5(c)(1)(i), resulting in the partial disallowance of credits.

5 The Code Sec. 904 category (foreign tax credit basket) of the deemed-paid taxes is based on the Code Sec. 904(d) category of the PTEP group from which the PTEP is distributed. *See* Reg. §1.960-3(b)(1).

6 *See* Code Secs. 960(a) and 960(d).

7 However, no foreign tax credit or deduction is allowed for foreign income taxes paid by a corporate U.S. shareholder on the distribution of Code Sec. 245A(d) PTEP from a foreign corporation. *See* note 4 *supra*.

8 *See* Code Sec. 960(d)(1).

9 Notably, the Code Sec. 78 gross-up on a GILTI (now, NCTI) inclusion was determined without regard to the 20% haircut on the deemed-paid taxes under Code Sec. 960(d)(1). Following the OBBBA, the Code Sec. 78 gross-up on a GILTI (or NCTI) inclusion continues to be determined without regard to the haircut, which decreases to 10% for tax years beginning after December 31, 2025. *See* Act Sec. 70312(c)(1) of P.L. 119-21.

10 Code Sec. 961(b)(2).

11 For example, assume a U.S. shareholder owns two shares in a CFC, one with a \$10x basis and one with a \$40x basis. The CFC distributes \$50x consisting entirely of PTEP to the U.S. shareholder (\$25x per share). Without aggregate basis recovery, \$15x of gain would be recognized on the first share and no gain would be recognized on the second share. With aggregate basis recovery (shifting \$15x of basis from the second share to the first share), no gain would be recognized.

12 *See* Code Sec. 986(c)(1).

13 This was done by deleting the reference to Code Sec. 960(b) in Code Sec. 78.

14 *See* Act Sec. 70312(c)(1) of P.L. 119-21.

15 *See* Section 4(ll)(1) of the Tax Technical and Clerical Corrections Act Discussion Draft.

16 *See* Act Sec. 70312(b) of P.L. 119-21.

17 Direct tax refers to foreign income tax that is imposed on the distribution of Code Sec. 951A PTEP by the CFC to the U.S. shareholder (*e.g.*, a withholding tax on the distribution by the CFC). Deemed-paid tax refers to foreign income tax that is allocated to the Code Sec. 951A PTEP tax pool at the CFC level and deemed-paid by the U.S. shareholder under Code Sec. 960(b)(1) upon the distribution of the Code Sec. 951A PTEP.

18 *See* Code Sec. 960(d)(1).

19 Act Sec. 70312(c)(2) of P.L. 119-21. This effective date is curious given that the reduction of the haircut (from 20% to 10%) under Code Sec. 960(d)(1) on the deemed-paid foreign income taxes associated with a Code Sec. 951A inclusion is effective only for tax years beginning after December 31, 2025. *See* Act Secs. 70312(a)(1) and 70312(c)(1) of P.L. 119-21.

20 Notice 2025-77, IRB 2025-52, Sec. 3.01(2) (Dec. 4, 2025).

21 To track PTEP that is subject to the 10% haircut, Notice 2025-77 provides that the "Code Sec. 951A PTEP group" and the "reclassified Code Sec. 951A PTEP group" will each be divided into two groups: (i) PTEP resulting from Code Sec. 951A inclusions in a U.S. shareholder's tax year ending on or before June 28, 2025, and (ii) PTEP resulting from Code Sec. 951A inclusions in a U.S. shareholder's tax year ending after June 28, 2025. *See* Notice 2025-77, IRB 2025-52, Sec. 3.01(3) and (5).

22 For example, only 90% of foreign tax on a Code Sec. 951A PTEP distribution would be creditable (subject to normal foreign tax credit limitations) under the following scenario: (i) USP is a calendar-year taxpayer and CFC1 has a November 30 tax year-end, (ii) there is an NCTI inclusion with respect to CFC1 for the CFC tax year ending November 30, 2025 (resulting in Code Sec. 951A PTEP in CFC1), and (iii) CFC1 made a distribution to USP on December 1, *2024*, that is sourced from that Code Sec. 951A

PTEP and is subject to foreign withholding tax. Note that the resulting credit would be taken into account in USP's 2024 tax year. Thus, the effective date could apparently result in the retroactive application of the new 10% haircut, even affecting the U.S. shareholder's 2024 tax return and tax liability.

23 As noted above, the elimination of the Code Sec. 78 gross-up for deemed-paid taxes under Code Sec. 960(b)(1) is effective for tax years beginning after December 31, 2025. *See* Act Sec. 70312(c)(1) of P.L. 119-21.

24 For example, assume USP owns CFC1 which, in turn, owns CFC2. In the tax year ending December 31, 2025, CFC2 earns USD 100x of tested income and pays no foreign income tax. In that same tax year, CFC2 distributes the USD 100x to CFC1, subject to 10% (*i.e.*, USD 10x) foreign withholding tax, and CFC1 distributes the remaining USD 90x to USP. (Assume further that CFC2 has no qualified business asset investment (QBAI) and no prior-year PTEP, and CFC1 has no other income and no prior-year PTEP.) As a result, USP will have a USD 100x GILTI inclusion and CFC2 will have distributed USD 100x of Code Sec. 951A PTEP to CFC1. CFC1 will then be treated as having distributed the remaining USD 90x of Code Sec. 951A PTEP to USP, which would bring up deemed-paid taxes of USD 10x under Code Sec. 960(b)(1). The deemed-paid credit, however, decreases to USD 9x by applying the 10% haircut under new Code Sec. 960(d)(4). Nonetheless, USP must include USD 10x as a Code Sec. 78 dividend (*i.e.*, phantom income) under the pre-OBBBA version of Code Sec. 78, unreduced by the haircut.

25 In a distribution of PTEP, adjusted basis in the stock of the distributing foreign corporation generally decreases by the aggregate of the distributed PTEP *and the associated foreign income taxes*. *See* Reg. §1.961-2(a)(1).

26 *See* P.L. 87-834.

27 89 FR 95,362 (published Dec. 2, 2024). The proposed PTEP regulations would generally apply to tax years of foreign corporations beginning on or after the date the proposed regulations are finalized and to tax years of persons for which such tax years of foreign corporations are relevant. *See, e.g.*, Proposed Reg. §§1.959-12(b) and 1.961-14(b). But note that an early application option is available under Proposed Reg. §1.959-12(d), once the regulations are finalized. The finalization of the proposed PTEP regulations did not appear in Treasury's 2025-2026 Priority Guidance Plan (released Sep. 30, 2025).

28 The new proposed PTEP regulations address various other complexities (many of which were introduced by the TCJA), and provide extensive rules that govern the PTEP system and are beyond the scope of this article.

29 *See* Proposed Reg. §1.959-2(b)(2)(i).

30 *See* Proposed Reg. §§1.959-2–4.

31 *See generally* Proposed Reg. §1.961-4. The preamble to the proposed PTEP regulations explains that adjusting the shareholder's basis in the CFC share-by-share is consistent with each item of property having separate basis under the Code. *See* Preamble to 2024 Proposed PTEP Regulations, 89 FR 95,362, 95,376 (2024) (Explanation of Provisions, Part III.A). Other commentators, however, have argued that this is not the only possible interpretation of the relevant statutory language in Code Sec. 961(b)(1). *See* NYSBA Tax Section Rpt. No. 1512, "Report on Proposed Regulations Regarding Previously Taxed Earnings and Profits," p. 28.

32 *See* the example in note 11 *supra*.

33 71 FR 51,155 (Aug. 29, 2006), *withdrawn*, 87 FR 63,981 (Oct. 21, 2022).

34 Preamble to 2006 Proposed PTEP Regulations, 71 FR 51,155, 51,159 (2006).

35 *See, e.g.*, the recommendation of the NYS Bar Association Tax Section to adopt the approach of the S corporation regulations for Code Sec. 961(b)(2) purposes, with certain limitations. *See* NYSBA Tax Section Rpt. No. 1512, *supra*, pp. 33–34. The S corporation regulations allow excess tax basis to be shifted from high-basis shares to low-basis shares where the *pro rata* amount of a distribution in respect of the S corporation shares exceeds the basis of some shares but not others. *See* Reg. §1.1367-1(c)(3).

36 *See* Code Sec. 904(d)(4)(C)(ii), as amended by the OBBBA (discussed in Part III.C).

37 NDTIR, with respect to a U.S. shareholder, is the excess of (i) 10% of the aggregate of the shareholder's *pro rata* share of the qualified business asset investment (QBAI) of each tested income CFC with respect to which the shareholder is a U.S. shareholder, over (ii) the U.S. shareholder's "specified interest expense" for the U.S. shareholder inclusion year. *See* Code Sec. 951A(b)(2); Reg. §1.951A-1(c)(3).

38 Code Sec. 951A (effective for tax years beginning after December 31, 2025). *See also* P.L. 119-21, §70323(a).

39 The determination of GILTI before the OBBBA could be expressed as follows:

GILTI = Net CFC Tested Income — [(10% × QBAI) — Specified Interest Expense].

Net CFC Tested Income (NCTI), in turn, is the excess of (i) the aggregate of the U.S. shareholder's *pro rata* share of the tested income of each tested-income CFC, over (ii) the aggregate of the U.S. shareholder's *pro rata* share of the tested loss of each tested-loss CFC. Reg. §1.951A-1(c)(2).

40 The "inclusion percentage" is the percentage of the U.S. shareholder's *pro rata* share of the CFCs' (positive) tested income that gives rise to a GILTI (or NCTI) inclusion. Only that portion of the (positive) tested income gives rise to PTEP. (The remaining tested income should generally give rise to earnings that may qualify for the Code Sec. 245A DRD upon distribution.) More precisely, the inclusion percentage equals the U.S. shareholder's GILTI (or NCTI) inclusion divided by its *pro rata* share of the tested income of the tested-income CFCs (*i.e.*, CFCs with net positive tested income). *See* Code Sec. 960(d)(2); Reg. §1.960-2(c)(2). A higher inclusion percentage generally results in a larger deemed-paid credit associated with a GILTI (or NCTI) inclusion. *See* Code Sec. 960(d)(1)(A).

41 *See* Code Secs. 951(a)(1) and 951A(e)(2), as in effect before the OBBBA.

42 If the buyer of the CFC stock was a U.S. shareholder (or a foreign corporation owned by a U.S. shareholder) and owned (directly or indirectly) that CFC stock on the last day of the CFC's tax year, then the buyer-U.S. shareholder would take into account the CFC's Subpart F and tested income (from the entire CFC tax year) attributable to the transferred stock. Under Code Sec. 951(a)(2)(B) (as effective before the OBBBA), however, the Subpart F and tested income taken into account by the buyer-U.S. shareholder was reduced for pre-disposition dividends paid to the prior shareholders of that CFC stock (regardless of whether those dividends qualified for the Code Sec. 245A DRD). As explained later, Treasury responded to the taxpayer-favorable interplay of the "last relevant day" rule (including the decrease in the buyer-U.S. shareholder's Subpart F and GILTI inclusions under Code Sec. 951(a)(2)(B)) and the Code Sec. 245A DRD, by issuing the "extraordinary reduction" regulations after the TCJA was enacted.

43 Code Sec. 1248(j).

44 The extraordinary reduction rules are implicated if the sale results in an "extraordinary reduction" with respect to a controlling Code Sec. 245A shareholder. An extraordinary reduction generally occurs if a controlling Code Sec. 245A shareholder transfers more than 10% (by value) of the CFC stock that the shareholder owned (directly or indirectly) at the beginning of the CFC tax year. *See* Reg. §1.245A-5(e)(2)(i)(A).

If an extraordinary reduction occurs, a Code Sec. 245A DRD is generally denied for a dividend by the CFC to the controlling Code Sec. 245A shareholder to the extent that (i) the controlling Code Sec. 245A shareholder would have included additional Subpart F income or taken into account additional tested income had the transfer or other reduction in ownership not occurred, and (ii) another U.S. shareholder after the transfer does not take these amounts into account. *See generally* Reg. §1.245A-5(e). The disqualified portion of the dividend is known as the "extraordinary reduction amount."

45 The extraordinary reduction rules do not apply, however, if the controlling Code Sec. 245A shareholder enters into a written, binding agreement (together with certain U.S. tax resident shareholders of the CFC) to close the CFC's tax year as of the end of the day on which the extraordinary reduction occurs. Reg. §1.245A-5(e)(3)(i).

46 *See* Code Sec. 951(a)(2), as amended by the OBBBA. The words "own," "owned" and "owns" in this sentence refer to direct or indirect ownership within the meaning of Code Sec.

958(a). For further background on the changes to the Subpart F *pro rata* share rules, *see* Joshua Ruland and Shane McCarrick, *Some Liked It Hot: Big, Beautiful Changes to the Pro Rata Share Rules*, 2025 TNTI 174-17 (Sep. 15, 2025).

[47] The receipt of mid-year distributions from current-year PTEP raises the issue of whether the corresponding stock basis arising under Code Sec. 961(a) is available to offset those distributions (and thereby avoid gain recognition under Code Sec. 961(b)(2) in the absence of other adjusted basis). (Reg. §1.961-1(a) provides that the basis increase under Code Sec. 961(a) occurs "as of the last day in the taxable year" of the foreign corporation on which it is a CFC.) The IRS Chief Counsel's Office has advised that these basis increases are taken into account to determine if gain is recognized under Code Sec. 961(b)(2). AM 2023-002 (Mar. 1, 2023); *see also* LTR 202304008 (Jan. 27, 2023). While these authorities do not constitute "reliance guidance," they are understood to reflect the IRS's current view of the issue and constitute "substantial authority" for penalty protection purposes. Furthermore, under the proposed PTEP regulations, PTEP resulting from Subpart F and GILTI inclusions (even if determined at the end of the tax year) are added to annual PTEP accounts at the beginning of the foreign corporation's tax year, and the timing of basis adjustments generally matches the timing of related adjustments to annual PTEP accounts. *See* Proposed Reg. §§1.959-3(f)(1) and 1.961-3(d).

[48] *See* note 44 *supra*.

[49] *See* Act Sec. 70354(c)(2) of P.L. 119-21.

[50] More specifically, the transition rule may apply only to dividends that were paid (or deemed paid) by the CFC either (1) on or before June 28, 2025, provided that the CFC's tax year included that date and the U.S. shareholder on the last relevant day did not own the stock of that CFC during the portion of the CFC's tax year on or before June 28, 2025, or (2) after June 28, 2025 (and before the CFC's first tax year beginning after December 31, 2025). *Id.*

[51] The Code Sec. 245A DRD could be disallowed for various reasons, for example, due to not satisfying the one-year holding period under Code Sec. 246(c) or the application of the extraordinary reduction rules under Reg. §1.245A-5(e).

[52] *See* Notice 2025-75, IRB 2025-52, Sec. 3.03(3)(d) (Dec. 4, 2025).

[53] Code Sec. 904(d)(4)(C)(ii), as amended by the OBBBA. *See* Act Sec. 70311(b)(2) of P.L. 119-21. This amendment was also previously proposed in the unenacted Tax Technical and Clerical Corrections Act of 2018. *See* Section 6(mm)(36) of the Tax Technical and Clerical Corrections Act Discussion Draft.

[54] *See* Code Sec. 245A(d) and its corresponding regulations.

[55] *See* Code Sec. 904(b)(4).

[56] *See* Act Sec. 70353(a) of P.L. 119-21.

[57] The Conference Report of the TCJA expressed concerns over transactions effectuating the "de-control" of a foreign subsidiary by taking advantage of Code Sec. 958(b)(4), despite continuous ownership of the subsidiary by U.S. shareholders. *See* H.R. Rep. No. 115-466 (2017).

[58] *See* Act Sec. 70353(b) of P.L. 119-21.

[59] *See* Code Sec. 951B(b).

[60] *See* Code Sec. 951B(c).

[61] *See* Code Sec. 951B(a)(1).

[62] *See* Code Sec. 951B(a)(2).

[63] *See* Code Secs. 951(a)(1) and 951A(e)(2).

[64] *See* Code Sec. 960(b)(4).

[65] *See* Act Sec. 70353(d) of P.L. 119-21.

[66] P.L. 119-21, §70352(a). Before the OBBBA, Code Sec. 898(c)(2) permitted a CFC to elect a tax year beginning one month earlier than the majority U.S. shareholder's tax year (*i.e.*, a November 30 year-end for the CFC if the majority U.S. shareholder was a calendar-year taxpayer).

[67] P.L. 119-21, §70352(c).

[68] A distribution from current E&P is sourced from current *and* prior year PTEP before being sourced from current-year untaxed E&P. *See* Code Sec. 959(c); Reg. §1.959-3(b).

[69] A non-dividend distribution would generally be subject to Code Sec. 301(c)(2) or (c)(3).

[70] Notice 2025-72, IRB 2025-51, 840, Sec. 3.05(1)(b) (Nov. 25, 2025). In contrast, foreign income taxes that accrue in the one-month tax year and are assigned to other income groups (such as a Subpart F income group) would be allocated between the one-month tax year and the subsequent tax year according to an "allocation percentage" (as specially defined in the notice). *See id.*, Sec. 3.05(1)(a). This could result, for example, in only one-twelfth of those taxes being allocated to the one-month tax year, with the remainder allocated to the subsequent tax year.

[71] Code Sec. 904(b)(5), as amended by the OBBBA. This change applies to tax years beginning after December 31, 2025. P.L. 119-21, §70311(c).

[72] P.L. 119-21, §70303(a) (amending Code Sec. 163(j)(8)(A)(v)).

[73] Code Sec. 174A is effective for tax years beginning after December 31, 2024. P.L. 119-21, §70302(e)(1). Domestic R&E expenditures are R&E expenditures paid or incurred by the taxpayer in connection with its trade or business, other than amounts attributable to foreign research. Code Sec. 174A(b).

[74] *See* Code Secs. 55(a) and 55(b)(2)(A).

[75] P.L. 117-169 (Aug. 16, 2022). The CAMT is effective for tax years beginning after December 31, 2022.

[76] *See* Code Secs. 55(a) and 55(b)(2)(A) (an "applicable corporation" is liable for the CAMT to the extent that its tentative minimum tax (which equals 15% of its AFSI less the CAMT foreign tax credit for the tax year) exceeds its regular US federal income tax liability plus its liability for the base erosion anti-abuse tax). An "applicable corporation" for a tax year is a corporation (other than an S corporation, a regulated investment company, or a real estate investment trust) that meets the Average Annual Adjusted Financial Statement Income ("Average Annual AFSI") test for at least one tax year (preceding the tax year in question) that ends after December 31, 2021. *See* Code Sec. 59(k)(1)(A). Generally, a corporation meets the Average Annual AFSI test for a given tax year if its Average Annual AFSI for the three-tax-year period ending with that tax year exceeds USD 1 billion. *See* Code Sec. 59(k)(1)(B).

[77] Code Sec. 56A(a).

[78] *See* Code Sec. 56A(c)(3). Thus, it would seem duplicative to include a dividend from the CFC in the U.S. parent's AFSI.

[79] REG-112129-23, 89 FR 75,062 (published Sep. 13, 2024).

[80] *See generally* Reg. §1.56A-4. But note the effective date considerations discussed later. Notice 2024-10 had previously provided favorable CAMT treatment for "Covered CFC Distributions," generally following the regular tax treatment of such distributions. *See* Notice 2024-10, IRB 2024-03, 406, Sec. 3.03 (Dec. 15, 2023). However, taxpayers can rely on Notice 2024-10 only for Covered CFC Distributions received on or before September 13, 2024 (the date the CAMT Proposed Regulations were published in the Federal Register).

[81] The term "CAMT entity" means any entity identified in Code Sec. 7701 and its regulations other than a disregarded entity. Proposed Reg. §1.56A-1(b)(8).

[82] Proposed Reg. §1.56A-4(c)(1). Similarly, under the CAMT Proposed Regulations, a CFC's adjusted net income or loss would not include an item of income reflected in the CFC's FSI resulting from its ownership of stock of another CFC. Proposed Reg. §1.56A-6(c)(2)(ii). Instead, a dividend from a foreign corporation would be excluded from the recipient CFC's adjusted net income or loss to the extent it is a "CAMT excluded dividend"—*i.e.,* a PTEP distribution (excluded under Code Sec. 959(b)), or a non-PTEP dividend that both (i) qualifies for the exception from foreign personal holding company income under Code Sec. 954(c)(3) or (c)(6), and (ii) is excluded from tested income on account of being a dividend from a related person. Proposed Reg. §§1.56A-6(c)(2)(iii)(B) and -6(d).

[83] *See* Code Sec. 959(a).

[84] Proposed Reg. §1.56A-4(c)(1).

[85] *See* Proposed Reg. §1.56A-4(h), Example 1.

[86] For example, a taxpayer could fail to satisfy the one-year holding period required to qualify for the Code Sec. 245A DRD. *See* Code Sec. 246(c)(5).

[87] The rules described in this paragraph would apply even to a distribution by a foreign corporation that is not a CFC (*i.e.*, a so-called "10/50 company"), although the example in the regulations only illustrates a dividend

received from a CFC. *See* Proposed Reg. §1.56A-4(h), Example 1.

88 Notice 2025-49, IRB 2025-44, 627 (Sep. 30, 2025).

89 Notice 2025-49, IRB 2025-44, 627, Sec. 3.02(1)(a).

90 *Id.*

91 Reliance on Proposed Reg. §1.56A-4 for the treatment of distributions also would require the taxpayer to apply the other provisions of Proposed Reg. §1.56A-4, which may involve certain tradeoffs. *See, e.g.*, Proposed Reg. §1.56A-4(c)(4).

92 Notice 2025-49, IRB 2025-44, 627, Sec. 3.02(1)(b)(i).

93 Proposed Reg. §1.59-4(b)(1) defines "eligible tax" for CAMT foreign tax credit (FTC) purposes as a foreign income tax, other than a foreign income tax for which a credit is disallowed or suspended under various provisions for regular tax purposes (including Code Sec. 901(m)). This treatment for disallowed or suspended taxes is debatable and may not necessarily be the position that a taxpayer would otherwise take for those taxes.

94 Regarding Code Sec. 56A(c)(15)(A), the "Blue Book" explained that "[t]he general principle here, as generally across the Code, is that items are not to be counted twice." *See* Staff of the Joint Comm. on Tax'n, General Explanation of Tax Legislation Enacted in the 117th Congress 172 fn. 773 (2023).

95 *See* Proposed Reg. §1.59-4(b)(1).

96 Rather, as noted previously, a domestic corporation's AFSI generally includes the U.S. parent's *pro rata* share of a CFC's adjusted net income or loss. Code Sec. 56A(c)(3). That amount is not limited to CFC income that is Subpart F income or tested income that gives rise to a Code Sec. 951A inclusion.

97 *See* Asali, Reaves, and James, *What Limitations Apply to the CAMT Foreign Tax Credit?,* Int'l Tax J. 50(3) (May–June 2024), Part III.C.2.a.

98 Notice 2025-49, IRB 2025-44, 627, Sec. 3.02(1)(b)(ii). While the CAMT Proposed Regulations are generally not effective until the publication of the final regulations, taxpayers may early adopt any section of the proposed regulations (generally without having to adopt the other sections) provided certain consistency requirements are satisfied. *See id.*, Sec. 3.02(1)(a).

99 Notice 2025-49, IRB 2025-44, 627, Sec. 3.02(1)(b)(i). As noted previously, reliance on Proposed Reg. §1.59-4 may be undesirable in certain instances. *See* note 93 *supra*.

100 In other words, the "best reading" of the statute (Code Sec. 59(l)) arguably is that a foreign tax disallowed under Code Sec. 245A(d) may nonetheless be eligible for the CAMT FTC. That reading is arguably supported by the change in Notice 2025-49 allowing those taxes to qualify for the CAMT FTC.

101 *See* Proposed Reg. §1.56A-4(c)(1)(ii).

102 *See* Preamble to CAMT Proposed Regulations, 89 FR 75,062, 75,066 (2024) (Explanation of Provisions, Part IV.B), and Proposed Reg. §§1.56A-8(b) and 1.56A-6(c)(1).

103 The term "eligible current year tax" means a current-year tax, other than a current-year tax for which a credit is disallowed or suspended at the CFC level (regardless of whether the credit is reduced or disallowed at the U.S. shareholder level). *See* Proposed Reg. §1.960-1(b)(5).

104 The statutory requirements for the inclusion of CFC-level taxes in the CAMT FTC would also support this conclusion. Under Code Sec. 59(l)(1)(A)(i), to be included in the CAMT FTC, CFC-level taxes must be foreign income taxes "within the meaning of [Code Sec.] 901" that are (i) taken into account on the CFC's AFS and (ii) paid or accrued (for Federal income tax purposes) by the CFC. The fact that the CFC-level taxes may not be deemed paid under Code Sec. 960 (*e.g.*, because of the 10% haircut) should not mean that the taxes do not meet the statutory requirements for being included in the CAMT FTC.

105 The CAMT Proposed Regulations would define the "applicable corporation's *pro rata* share of taxes of a CFC," effectively, as the sum of (1) the aggregate *pro rata* share of taxes under Code Sec. 960(b), and (2) the aggregate *pro rata* share of the CFC's eligible current-year taxes. *See* Proposed Reg. §1.59-4(d). That sum is then reduced by various categories of non-eligible taxes that are either disallowed or suspended at the U.S. shareholder level. *See* Proposed Reg. §1.59-4(b)(1) (defining "eligible tax"). The definition of the "applicable corporation's *pro rata* share of taxes of a CFC" specifically includes the CFC's eligible current-year taxes (as defined in Reg. §1.960-1(b)(5)) for the "tested income group" without mentioning any haircut. *See* Proposed Reg. §1.59-4(d)(3)(ii). Thus, it seems clear that no portion of eligible current-year taxes in the tested income group is disallowed for CAMT FTC purposes.

106 *See* Proposed Reg. §1.59-4(d)(2).

107 Relatedly, the provisions in Reg. §1.960-3(d) describing PTEP group taxes do not include any haircut for taxes on Code Sec. 951A PTEP.

108 *See* Proposed Reg. §1.59-4(b)(1).

109 *See* Notice 2025-28, IRB 2025-34, 316 (Jul. 29, 2025); Notice 2025-46, IRB 2025-43, 533 (Sep. 30, 2025); Notice 2025-49, IRB 2025-44, 627 (Sep. 30, 2025).

110 Treasury's 2025-2026 Priority Guidance Plan (released Sep. 30, 2025), however, includes on its list of projects "Guidance under Code Secs. 250, 904, 960 … and other foreign tax credit issues."

111 These questions would typically arise in the context of a foreign-parented multinational group that owns a domestic corporation (the FCUSS), and where the domestic corporation and the foreign parent share ownership in a foreign subsidiary (the FCFC), where more than 50% of the vote and value of the stock of the foreign subsidiary is owned by the foreign parent.

112 While the CAMT Proposed Regulations are generally not effective until the publication of the final regulations (*see* Notice 2025-49, IRB 2025-44, 627, Sec. 3.02(1)(a)), taxpayers may early adopt any section of the proposed regulations subject to certain consistency requirements.

113 Code Sec. 245A(b)(1). To qualify for the Code Sec. 245A DRD, the FCUSS would have to be a U.S. shareholder with respect to the FCFC and meet all the other requirements for the Code Sec. 245A DRD (*e.g.*, the one-year holding period requirement under Code Sec. 246(c)(1) and (5)).

114 Following the reinstatement of Code Sec. 958(b)(4) under the OBBBA, downward attribution of ownership of the FCFC from a foreign shareholder to the FCUSS will not be possible (other than for Code Sec. 951B purposes).

115 Notice 2025-49 (released after the OBBBA's enactment) allows taxpayers that rely on Proposed Reg. §1.59-4 to treat foreign income taxes disallowed under Code Sec. 245A(d) as eligible for the CAMT FTC if the tax is paid with respect to a dividend received *from a CFC*, but does not extend this relief to dividends received from a non-CFC (apparently including an FCFC).