

# International Tax Reform - Practical Impacts and Considerations

30 November 2017

# Agenda

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- ▶ Transition tax
- ▶ Territorial system
- ▶ Limitation on deductions of net interest
- ▶ Foreign high return amount / Global intangible low-taxed income
- ▶ Foreign-derived intangible income
- ▶ Anti-base erosion provisions
- ▶ Other items
  - ▶ Subpart F changes
  - ▶ Changes to the FTC Rules
  - ▶ Senate Finance proposals regarding:
    - ▶ hybrid arrangements
    - ▶ foreign-operated cruise vessels
    - ▶ foreign-operated airlines
    - ▶ repeal of DISC / IC-DISC regime
    - ▶ PFIC insurance exception

# Overview of House and Senate Finance Bills

## *Tax Cuts and Jobs Act*

	House	Senate Finance
<b>Dividend Exemption System</b>	100% PE on foreign source dividends paid to US corporations <ul style="list-style-type: none"><li>• Must own at least 10% of the stock of the foreign corporation</li><li>• Six month holding period</li></ul>	100% PE on foreign source dividends paid to US corporations <ul style="list-style-type: none"><li>• Must own at least 10% of the stock of the foreign corporation</li><li>• Twelve month holding period</li></ul>
<b>Transition Tax</b>	Transition tax on accumulated foreign earnings (tested on 2 November and 31 December, 2017, whichever greater): <ul style="list-style-type: none"><li>• 14% for earnings held in cash and cash equivalents</li><li>• 7% for all other earnings</li></ul> <p>Transition tax can be reduced by foreign tax credits, including foreign tax credit carryforwards</p>	Transition tax on accumulated foreign earnings (tested on 9 November 2017 and 31 December 2017, whichever is greater): <ul style="list-style-type: none"><li>• 10% for earnings held in cash and cash equivalents</li><li>• 5% for all other earnings</li></ul> <p>Transition tax can be reduced by foreign tax credits, including foreign tax credit carryforwards</p>

# Overview of House and Senate Finance Bills

## *Tax Cuts and Jobs Act*

	House	Senate Finance
<b>Base Eroding Payments</b>	<p>New 20% excise tax applies to specified payments (including COGS) made to related foreign corporations</p> <ul style="list-style-type: none"> <li>Specified payments do not include payments made for interest, certain commodities, services at cost and for payments subject to full US withholding tax (i.e., 30%)</li> </ul> <p>Foreign recipient could elect to treat payments as income effectively connected with a US trade or business, file US tax returns, and pay US corporate tax on a net basis (subject to a limited foreign tax credit)</p>	<p>US corporations subject to a new minimum tax (or base erosion anti-abuse tax (BEAT)):</p> <p>Compute minimum taxable income by disallowing certain deductible amounts paid or accrued to related foreign persons</p> <ul style="list-style-type: none"> <li>Does not include payments that are subject to full US withholding tax (i.e., 30%)</li> <li>Does not include COGS</li> </ul> <p>Minimum taxable income is subject to a 10% income tax rate</p> <p>US company must pay higher of new minimum tax or regular tax</p>
<b>Interest expense limitations</b>	<p>Lesser of:</p> <ul style="list-style-type: none"> <li>30% of adjusted taxable income (essentially, EBITDA)</li> <li>For worldwide groups: 110% of allocation of net third party interest expense to US corporation (allocated based on EBITDA)</li> </ul>	<p>Lesser of:</p> <ul style="list-style-type: none"> <li>30% of adjusted taxable income (essentially, EBIT)</li> <li>For worldwide groups: excess US debt determined by reference to 110 percent of the amount of debt that the US would hold if the US debt-to-equity ratio were proportionate to worldwide debt-to-equity ratio</li> </ul>

# Overview of House and Senate Finance Bills

## *Tax Cuts and Jobs Act*

	House	Senate Finance
<b>Anti-deferral rules – FHRA (House), GILTI (Senate)</b>	<p>Most existing Subpart F provisions are retained</p> <p>New rule (foreign high return amount tax):</p> <ul style="list-style-type: none"> <li>50% of the excess (if any) of (i) certain net items (e.g., excluding ECI and subpart F income) of all CFCs over (ii) a routine return on tangible assets of all CFCs subject to taxable income inclusion</li> <li>“Foreign tax credit allowed for 80% of foreign taxes properly attributable to the relevant items actually paid by CFCs (but gross-up for 100%)</li> </ul>	<p>Most existing Subpart F provisions are retained</p> <p>New rule (global intangible low-taxed income tax):</p> <ul style="list-style-type: none"> <li>100% of the aggregate profits of all CFCs, above a routine return on tangible assets, subject to a taxable income inclusion</li> <li>Foreign tax credit allowed for 80% of foreign taxes actually paid by CFCs</li> </ul> <p>A deduction is allowed to reduce the effective tax rate applied to this income</p>
<b>Intangible Property</b>	<p>Requires capitalization and amortization of research and development expenditures paid or incurred in tax years beginning after 2023</p>	<p>Allows for a reduced income tax rate for the deemed “foreign-derived” portion of the excess (if any) of (i) certain net items (e.g., excluding foreign branch income) over (ii) a routine return on tangible assets (essentially, a lower rate on export sales/services/intangible income)</p> <p>Allows for repatriation of intangible property to US tax free</p> <p>Requires capitalization and amortization of research and development expenditures paid or incurred in tax years beginning after 2025</p>

# Overview of House and Senate Finance Bills

## *Tax Cuts and Jobs Act*

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	House	Senate Finance
<b>CFC attribution rules</b>	<p>The ownership rules for determining CFC status are modified, potentially impacting:</p> <ul style="list-style-type: none"><li>• Sandwich structures (i.e., foreign parented groups with foreign subsidiaries held under the US group) where the US shareholder currently owns less than 50% of the foreign subsidiary; and</li><li>• Non-US groups with material US shareholders.</li></ul>	<p>The ownership rules for determining CFC status are modified, potentially impacting:</p> <ul style="list-style-type: none"><li>• Sandwich structures (i.e., foreign parented groups with foreign subsidiaries held under the US group) where the US shareholder currently owns less than 50% of the foreign subsidiary; and</li><li>• Non-US groups with material US shareholders.</li></ul>
<b>Anti-hybrid rules</b>		<p>Eliminates deductions for certain disqualified related party amounts paid or accrued to hybrid entities or in hybrid transactions</p>

# Appendix

Side-by-side of *Tax Cuts and Jobs Act*  
International Provisions (House and Senate  
Finance)

# Transition tax





# Transition tax

Provision	Senate Bill	House Bill
Definition of specified foreign corporation (SFC)	Any foreign corporation that is a CFC or a section 902 corporation as defined in section 909(d)(5) as applicable prior to the TCJA's enactment	► Any CFC or foreign corporation with a at least one 10% or greater domestic corporate shareholder (determined without regard to section 958(b)(4))
Measurement date	Greater of amount determined on November 9, 2017, or December 31, 2017	Greater of amount determined on November 2, 2017, or December 31, 2017
Accumulated post-1986 deferred foreign income	E&P accumulated in taxable years ending after December 31, 1986 during periods in which the foreign corporation had a 10% US corporate shareholder, but excluding effectively connected and previously-taxed E&P.	E&P accumulated in taxable years ending after December 31, 1986, regardless of US Shareholder ownership, but excluding effectively connected and previously-taxed E&P.

# Transition tax

Provision	Senate Bill	House Bill
E&P Deficits	<ul style="list-style-type: none"> <li>▶ E&amp;P deficits available to reduce the mandatory inclusion by US shareholder (no sharing)</li> <li>▶ Qualified deficits permitted</li> <li>▶ E&amp;P reduced by allocated deficits converts to PTI despite it not being taxed in the mandatory inclusion</li> <li>▶ Deficits used to reduce mandatory inclusion not available to offset future earnings</li> </ul>	Permits sharing of net E&P deficits at the consolidated group level; qualified deficits not permitted
Timing of inclusion	The last year of a SFC beginning before January 1, 2018, by increasing the SFC's subpart F income for that year	Same

# Transition tax

Provision	Senate Bill	House Bill
Tax rate	10% for earnings held in cash and other specified assets; and 5% for the balance	14% for earnings held in cash and other specified assets; and 7% for the balance
Payment plan	8-years – 8% of liability in yrs 1-5, 15% in yr 6, 20% in yr 7, 25% in yr 8	8 years in equal instalments
FTCs generated with mandatory inclusion	Same as House (JCT report appears to erroneously say such credits are not allowed)	FTCs triggered by mandatory inclusion are permitted but are reduced in proportion to the deduction allowed against the mandatory inclusion; section 78 gross-up required only for foreign taxes allowed as a credit

# Transition tax

Provision	Senate Bill	House Bill
Use of NOL carryover	NOL fully available; election to not use the NOLs to reduce the mandatory inclusion	NOLs fully available; no election to not use against the mandatory inclusion
Use of FTC carryovers	FTC carryforwards fully available	FTC carryforwards fully available
Recapture	Overall foreign loss (OFL)/foreign oil and gas loss (FOGL) recapture applies	Overall foreign loss (OFL)/foreign oil and gas loss (FOGL) recapture <b>does not</b> apply
Claw-back for Expatriated Entities	Full 35% tax applies to any US corporation that becomes an expatriated entity within 10 years of the date of enactment	No similar provision

# Transition tax

Provision	Senate Bill	House Bill
Cash	<ul style="list-style-type: none"> <li>▶ Cash based on the US Shareholders pro rata share on November 9, 2017 or the average of the two prior years ending before November 9, 2017</li> <li>▶ Cash means: cash, net accounts receivables, and the FMV of certain cash equivalents</li> <li>▶ Rules included to prevent double counting of net accounts and short term obligations but not equity in a publicly traded SFC</li> <li>▶ No exclusion for blocked cash within the meaning of section 964(b)</li> <li>▶ Anti-abuse rule applies if the principal purpose of any transaction was to reduce the aggregate foreign cash position</li> </ul>	<ul style="list-style-type: none"> <li>▶ Cash based on the US Shareholders pro rata share on November 2, 2017 using the average of three dates</li> <li>▶ Cash means: cash, net accounts receivables, and the FMV of certain cash equivalents</li> <li>▶ Rules included to prevent double counting of net accounts receivables, equity in a publicly traded SFC, and short term obligations</li> <li>▶ Exclusion for blocked cash within the meaning of section 964(b)</li> <li>▶ Anti-abuse rule applies if the principal purpose of any transaction was to reduce the aggregate foreign cash position</li> </ul>

# Territorial system



# Dividends received deduction

Provision	Senate Bill	House Bill
Deduction	100% deduction for foreign source portion of dividends from 10%-owned foreign corporations	100% deduction for foreign source portion of dividends from 10%-owned foreign corporations
Exceptions	100% deduction unavailable for “hybrid dividends”	None
Holding period	365 days during the 731-day period that begins on the date that is 365 days before the ex-dividend date (one year)	Holding period – 180 days during the 361-day period that begins on the date that is 180 days before the ex-dividend date (six months)
Credits and deductions for foreign taxes	No credit or deduction permitted for any foreign taxes paid or accrued with respect to a qualifying dividend	No credit or deduction permitted for any foreign taxes paid or accrued with respect to a qualifying dividend
Related expenses	Related expenses not taken into account for the FTC limitation	Related expenses not taken into account for the FTC limitation
Effective date	Effective for tax years of 10%-owned foreign corporations beginning after 31 December 2017 and for taxable years of US shareholders in which or with which such years end	Effective for distributions after 31 December 2017

# Foreign stock loss limitation

Provision	Senate Bill	House Bill
Basis reduction solely for determining loss on a stock sale	<ul style="list-style-type: none"><li>▶ The adjusted basis in the stock of a 10%-owned foreign corporation, is reduced (but not below zero) by any deductions claimed with respect to dividends on such stock under new section 245A</li><li>▶ No reduction required if basis reduced under Section 1059</li></ul>	<ul style="list-style-type: none"><li>▶ The adjusted basis in the stock of a 10%-owned foreign corporation, is reduced (but not below zero) by any deductions claimed with respect to dividends on such stock under new section 245A</li><li>▶ No reduction required if basis reduced under Section 1059</li></ul>
Effective date	Effective for dividends received in taxable years beginning after 31 December 2017	Effective for distributions made after 31 December 2017



# Interest expense apportionment - FMV

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Provision	Senate Bill	House Bill
Method of apportionment	FMV method repealed	No corresponding provision
Effective date	Effective for taxable years beginning after 31 December 2017	No corresponding provision

# Foreign branch loss recapture

Provision	Senate Bill	House Bill
Foreign branch loss recapture	A domestic corporation that transfer substantially all of the assets of a foreign branch to a 10%-owned foreign corporation, in which it is a US shareholder after the transfer, must include in gross income the “transferred loss amount”	A domestic corporation that transfer substantially all of the assets of a foreign branch to a 10%-owned foreign corporation, in which it is a US shareholder after the transfer, must include in gross income the “transferred loss amount”
Limitation	Inclusion cannot exceed amount of all 100% dividend deductions claimed for the tax year; excess carried over to next year	No limitation
Transferred loss amount	<p>Transferred loss amount – Excess (if any) of:</p> <ul style="list-style-type: none"> <li>▶ Branch losses for which a deduction was allowed, over the sum of branch taxable income after the loss is incurred after 31 December 2017 through close of the year of transfer and gain recognized under OFL recapture on the transfer</li> <li>▶ Reduced by gain recognized other than due to OFL recapture</li> </ul>	Same
Sourcing	US source	Inclusion and gain recognized under Section 367(a)(3)(C) treated as US source
Effective date	Effective for transfers after 31 December 2017	Effective for transfers after 31 December 2017

# Repeal of Section 367(a)(3): Active Trade or Business Exception

Provision	Senate Bill	House Bill
Repeal of section 367(a)(3)	Would repeal Section 367(a)(3)'s active trade or business exception for outbound transfers of certain appreciated property to foreign corporations.	No provision
Effective date	Applicable to transfers after December 31, 2017.	N/A

# Interest expense limitation – Section 163(j)



# Interest expense limitation – Section 163(j)

Provision	Senate Bill	House Bill
Limitation on net business interest expense	30% of adjusted taxable income.	30% of adjusted taxable income.
Definition of adjusted taxable income	<p>Taxable income computed without regard to business interest income or expense, the 17.4% deduction for certain pass-through income, and net operating losses (<u>EBIT</u>).</p> <p>Generally results in a lower limitation than HW&amp;M proposal (i.e., more interest being disallowed).</p>	<p>Taxable income computed without regard to business interest income or expense, net operating losses, and depreciation, amortization, and depletion (<u>EBITDA</u>).</p>
Carryforward of disallowed interest paid or accrued	Interest amounts disallowed would be carried forward indefinitely.	Interest amounts disallowed carried forward to the succeeding five taxable years on a first-in, first-out basis.
Small business exception	Exempts businesses with average gross receipts of \$15 million or less.	Exempts businesses with average gross receipts of \$25 million or less.

# Interest expense limitation – Section 163(j)

Provision	Senate Bill	House Bill
Exceptions	Does not apply to certain regulated public utilities, and electric cooperatives. At the taxpayer's election, does not apply to real property development, redevelopment, construction, reconstruction, acquisition, conversion, rental, operation, management, leasing or brokerage trade or business.	Does not apply to certain regulated public utilities, floor plan financing, and real property trade or business (as defined by section 469(c)(7)(C)).
Application to partnerships	Limitation applies at the partnership level, and any deduction for business interest is taken into account in determining the nonseparately stated taxable income or loss of the partnership. Special rules provided for determining adjusted taxable income of each partner to prevent double counting, and allows for additional interest deduction by partner in case of excess amount of unused adjusted taxable income limitation of the partnership. Similar rules to apply with respect to S corporations.	Same as SFC proposal.

# Interest expense limitation – Section 163(j)

Provision	Senate Bill	House Bill
Sections 381 and 382 considerations	Any carryforward of disallowed business interest is an item taken into account in the case of certain corporate acquisitions described in section 381 and is subject to limitation under section 382.	Same as SFC proposal.
Treatment of consolidated group	Applies at the consolidated tax return filing level for group of affiliated corporations filing a consolidated tax return.	According to JCT explanation, provision applies at the consolidated tax return filing level. However, current legislative text is silent on the issue.
Effective	Effective for taxable years beginning after December 31, 2017.	Same as SFC proposal.

# Interest expense limitation – Section 163(n)





# Interest expense limitation – Section 163(n)

Provision	Senate Bill	House Bill
Domestic corporations subject to the provision	<p>Any domestic corporation that is a member of a worldwide affiliated group (“WG”).</p> <p>WG is an affiliated group under section 1504 (using ownership threshold of more than 50%, and the restriction on the inclusion of a foreign corporation is disregarded).</p>	<p>Any domestic corporation that is a member of an international financial reporting group (“IFRG”).</p> <p>IFRG is group that: (1) includes at least one foreign corporation engaged in a US trade or business or at least one domestic and one foreign corporation; (2) prepares consolidated financial statements; and (3) has average annual gross receipts of more than \$100 million.</p>
Limitation on interest paid or accrued	<p>Reduces interest paid or accrued by amount of net interest expense multiplied by “debt-to-equity differential percentage” of the WG.</p> <p>Debt-to-equity differential percentage is percentage which the “excess domestic indebtedness” of the group bears to the total indebtedness of the domestic corporations which are members of the group. All US members of the WG treated as one member when determining whether group has excess domestic indebtedness.</p> <p>Excess domestic indebtedness is amount by which the total indebtedness of the US members exceeds 110% of the total indebtedness those members would hold if their total indebtedness to total equity ratio were proportionate to the ratio of total indebtedness to total equity of the WG.</p>	<p>Limits interest paid or accrued to: (1) 110% of net interest expense multiplied by “allowable percentage”; and (2) interest income.</p> <p>Allowable percentage is the ratio of the domestic corporation’s “allocable share” of the IFRG’s reported net interest expense over the domestic corporation’s reported net interest expense.</p> <p>Domestic corporation’s allocable share of IFRG’s reported net interest expense is the domestic corporation’s EBITDA as a percentage of the IFRG’s EBITDA.</p>

# Interest expense limitation – Section 163(n)

Provision	Senate Bill	House Bill
Source for computations	<p>Amount of total assets and indebtedness of the WG and domestic group appear to be determined according to tax principles as no express provision states the source for those determinations.</p> <p>Intragroup debt and equity interests disregarded for computing total assets and total indebtedness of WG.</p> <p>Assets of the domestic corporations which are members of the WG determined by disregarding any interest held in any foreign corporation which is a member of the group.</p>	<p>EBITDA and interest income and expense amounts of IFRG as reported in consolidated financial statements (prepared in accordance with GAAP, IFRS, or other comparable method as identified by Treasury/IRS), and such amounts of the domestic corporation reported in the books and records used in the preparation of consolidated financial statements.</p>
Treatment of US group members	<p>Members of the same affiliated group (within the meaning of section 1504(a) using ownership threshold of more than 50%) treated as one taxpayer.</p>	<p>Members of any group that file (or are required to file) a consolidated return treated as a single corporation.</p>

# Interest expense limitation – Section 163(n)

Provision	Senate Bill	House Bill
Application to partnerships	Regulatory authority granted to provide rules for the reallocation of shares of partnership indebtedness, or distributive shares of the partnership's interest income or expense.	Provides for provision to apply to partnerships in the same manner as provided by section 163(j) partnership rules (discussed above).
Coordination with section 163(j) limitation	Regulatory authority granted to provide rules for the coordination with the limitation under section 163(j).	Lower of the two limitations to be applied (i.e., the greater amount of interest to be disallowed).
Effective	Effective for taxable years beginning after December 31, 2017.	Same

# Global Intangible Low-Taxed Income (GILTI) and Foreign High Return Amounts (FHRA)



# Inclusions for GILTI and FHRA

Provision	Senate Bill (GILTI)	House Bill (FHRA)
§951A Inclusion	Global Intangible Low-Taxed Income (GILTI) plus section 78 gross-up	50% of the sum of Foreign High Return Amount (FHRA) plus section 78 gross-up
Calculation	<p>The excess, if any, of a US shareholder's:</p> <ul style="list-style-type: none"> <li>• Net CFC tested income, over</li> <li>• Its net deemed tangible income return</li> </ul>	<p>The excess, if any, of:</p> <ul style="list-style-type: none"> <li>• the US shareholder's net CFC tested income, over</li> <li>• the excess, if any, of: <ul style="list-style-type: none"> <li>• 7% + short-term AFR of the aggregate of the US shareholder's pro rata shares of QBAI of its CFCs, over</li> <li>• any interest expense taken into account in determining net CFC tested income</li> </ul> </li> </ul>
Net CFC Tested Income	<p>The excess, if any, of:</p> <ul style="list-style-type: none"> <li>• the aggregate of the US shareholder's pro rata share of any tested income of each CFC, over</li> <li>• the aggregate of the US shareholder's pro rata share of any tested loss of each CFC</li> </ul>	<p>The excess, if any, of:</p> <ul style="list-style-type: none"> <li>• the aggregate of the US shareholder's pro rata share of any tested income of each CFC, over</li> <li>• the aggregate of the US shareholder's pro rata share of any tested loss of each CFC</li> </ul>

# Inclusions for GILTI and FHRA (continued)

Provision	Senate Bill (GILTI)	House Bill (FHRA)
Tested Income (Tested Loss)	<p>Excess, if any, of:</p> <ul style="list-style-type: none"> <li>gross income other than certain excluded income (below) over</li> <li>deductions (including taxes) properly allocable to such gross income under rules similar to the rules of 954(b)(5)</li> </ul> <p>(Tested loss, vice versa)</p>	<p>Excess, if any, of:</p> <ul style="list-style-type: none"> <li>gross income other than certain excluded income (below) over</li> <li>deductions (including taxes) properly allocable to such gross income under rules similar to the rules of 954(b)(5)</li> </ul> <p>(Tested loss, vice versa)</p>
Excluded Income	<ul style="list-style-type: none"> <li>ECI;</li> <li>any gross income taken into account in determining subpart F income;</li> <li>any gross income excluded from foreign base company income or insurance income by reason of 954(b)(4);</li> <li>any related-party (954(d)(3)) dividend; and</li> <li>any foreign oil and gas extraction income and foreign oil related income</li> </ul>	<ul style="list-style-type: none"> <li>ECI;</li> <li>any gross income taken into account in determining subpart F income;</li> <li>any gross income excluded from foreign base company income or insurance income under 954(b)(4);</li> <li>any related-party (954(d)(3)) dividend;</li> <li>any amount excluded from FPHCI under 954(c)(6) to the extent it does not reduce another US shareholder's FHRA;</li> <li>any gross income excluded from FPHCI under the dealer, active insurance, or active financing exceptions;</li> <li>any gross income excluded from insurance income under 953(a)(2); and</li> <li>any commodities gross income</li> </ul>

# Inclusions for GILTI and FHRA (continued)

Provision	Senate Bill (GILTI)	House Bill (FHRA)
QBAI (Qualified Business Asset Investment)	Aggregate of the quarterly average of the CFCs' adjusted bases in tangible property used by the CFC in a trade or business, of a type for which a deduction is generally allowable under Section 167 and that is used in production of tested income	Aggregate of the CFCs' year-end adjusted bases in tangible property used by the CFC in a trade or business, of a type for which a deduction is allowed under Section 168 and that is used in production of tested income or tested loss
Deemed-Paid Foreign Tax Credit for US Corporations	80% of the product of: <ul style="list-style-type: none"> <li>the US corporation's <ul style="list-style-type: none"> <li>GILTI inclusion, divided by</li> <li>the aggregate of its pro rata share of tested income, and</li> </ul> </li> <li>the aggregate foreign income taxes paid or accrued that are properly attributable to tested income taken into account by the US corporation</li> </ul>	80% of the product of: <ul style="list-style-type: none"> <li>the US corporation's <ul style="list-style-type: none"> <li>FHRA inclusion, divided by</li> <li>the aggregate of its pro rata share of tested income, and</li> </ul> </li> <li>the aggregate foreign income taxes paid or accrued that are properly attributable to tested income or loss</li> </ul>
§78 gross up	GILTI inclusion increased by 100% of the deemed-paid foreign income taxes	FHRA inclusion increased by 100% of the deemed-paid foreign income taxes
§904 limitations	Separate basket for non-passive GILTI inclusion; no carryovers	Separate basket for FHRA inclusion; no carryovers
Effective date	Applies to taxable years of foreign corporations beginning after December 31, 2017	Applies to taxable years of foreign corporations beginning after December 31, 2017

# Deduction for FDII / inbound IP distributions





# Deduction Allowable Against FDII & GILTI

Provision	Senate Bill	House Bill
Deduction allowable for FDII and GILTI	37.5% of foreign-derived intangible income (FDII) plus 50% of GILTI (deduction base not to exceed net taxable income)	No similar provision
Foreign-Derived Intangible Income	FDII / deemed intangible income = foreign-derived deduction eligible income / deduction eligible income	
Deduction Eligible Income	<p>The excess, if any, of:</p> <ul style="list-style-type: none"> <li>the US corporation's gross income, other than: <ul style="list-style-type: none"> <li>its subpart F income inclusion,</li> <li>its GILTI inclusion,</li> <li>any dividends received from a CFC with respect to which it is a US shareholder,</li> <li>any financial services income (as defined in section 904(d)(2)(D)) not deducted</li> <li>any domestic oil and gas income, and</li> <li>any foreign branch income, over</li> </ul> </li> <li>deductions (including taxes) properly allocable to such gross income</li> </ul>	

# Deduction Allowable Against FDII & GILTI (continued)

Provision	Senate Bill	House Bill
Foreign-Derived Deduction Eligible Income	Any deduction eligible income derived in connection with (generally): <ul style="list-style-type: none"><li>• property sold/leased/disposed of to any non-US person that is for use/consumption/disposition outside of the United States, or</li><li>• services provided to a person or with respect to property located outside of the United States</li></ul> 'Sold', 'sells', and 'sale' includes any lease, license, exchange or other disposition	No similar provision
Deemed Intangible Income	The excess, if any, of: <ul style="list-style-type: none"><li>• the US corporation's deduction eligible income, over</li><li>• its deemed tangible income return (i.e., 10% of the US corporation's QBAI, defined similarly)</li></ul>	

# Inbound IP distributions

Provision	Senate Bill	House Bill
Certain IP Distributions from CFCs to Corporate US Shareholders	<ul style="list-style-type: none"><li>• 936(h)(3)(B) intangible property and 197(e)(3)(B) computer software held by a CFC on the date of enactment</li><li>• Distribution to a corporate US shareholder within the first three taxable years of the CFC beginning after December 31, 2017</li><li>• FMV of IP at distribution is treated as not exceeding the adjusted basis immediately before distribution</li><li>• If the distribution would not constitute a dividend, adjusted basis in the CFC stock would be increased by the amount otherwise includible in gross income</li><li>• Carryover basis in the IP to the US shareholder, reduced by any such increase</li></ul>	No similar provision



# Anti-base erosion provisions



# Base Erosion Minimum Tax and Excise Tax

Provision	Senate Bill Base Erosion Minimum Tax	House Bill Excise Tax or ECI Election
Applicability	<ul style="list-style-type: none"> <li>Imposed on a corporation (other than RIC, REIT or S-corporation) that has average annual gross receipts of at least \$500mm for three-year period ending with preceding taxable year and a base erosion percentage of at least 4%</li> <li>Base erosion percentage for a taxable year equals the aggregate amount of base erosion benefits divided by the aggregate amount of all allowable deductions.</li> </ul>	Imposed on a corporation that is a member of an IFRG (group of entities if, for year in which specified amount is paid, group prepares consolidated financial statements and average annual aggregate payment amounts of such group for a three-year reporting period exceeds \$100mm).
Tax Rate	<p>The base erosion minimum tax amount equals the excess of 10% of the taxpayer's modified taxable income over an amount equal to its regular tax liability reduced (but not below zero) by the excess (if any) of credits allowed under Chapter 1 over the credit allowed under §38 (general business credits) allocable to the research credit.</p> <ul style="list-style-type: none"> <li>Tax rate increased to 12.5% after 2025 and regular tax liability is reduced by an amount equal to <i>all</i> credits allowed under Chapter 1.</li> </ul> <p>Modified taxable income is computed by adding back certain deductible payments.</p>	Gross basis excise tax equal to the highest corporate statutory rate, but see ECI election below

# Base Erosion Minimum Tax and Excise Tax

Provision	Senate Bill	House Bill
Base Erosion Payments	<ul style="list-style-type: none"> <li>Any amount paid or accrued to a foreign related party with respect to which a deduction is allowable, including any amount paid or accrued for property of a character subject to the allowance of depreciation or amortization.</li> <li>Broad grant of regulatory authority to issue rules addressing the use of unrelated persons, conduit transactions, or other intermediaries, or transactions or arrangements designed to avoid the provision.</li> </ul>	Payments to a related foreign corporation that are deductible, includible in costs of goods sold, or includible in the basis of a depreciable or amortizable asset, with certain exceptions
ECI Election	N/A	<ul style="list-style-type: none"> <li>The foreign recipient can elect to treat the payments as ECI and be subject to tax on a net basis under §882 (ECI election)</li> <li>Can create section 884 branch profits tax liability.</li> <li>If ECI Election is made deemed expense amount allowable</li> <li>Foreign tax credit allowed under §906 (without regard to the limitation placed by §906(b)(1)) equal to 80% of foreign income taxes paid or accrued by the foreign corporation making the ECI election.</li> </ul>
Effective Dates	Amounts paid or accrued in taxable years beginning after December 31, 2017.	Amounts paid or accrued after December 31, 2018.

# Base Erosion Minimum Tax and Excise Tax

	Senate Bill	House Bill
Applicability to certain payments		
Interest Expense	Included	Specifically excluded
COGS	Generally excluded except for amounts paid to a surrogate foreign corporation (where status obtained after November 9, 2017) or a member its expanded affiliated group, that result in a “reduction of the gross receipts of the taxpayer”	Included.
Service fees	May be excluded if paid or incurred for services meeting requirements for services cost method under Section 482.	May be excluded if paid or incurred for services meeting requirements for services cost method under Section 482.
FDAP Income	Amounts taxed under §881 are excluded in proportion to the rate of tax that applied to 30%	Amounts taxed under §881 are excluded in proportion to the rate of tax that applied to 30%
Commodity		Certain commodity transactions excluded.

# Other items





# Changes to Subpart F



# Changes to Subpart F

Provision	Senate Bill	House Bill
Section 958(b)(4) repealed	<ul style="list-style-type: none"><li>▶ Section 958(b)(4) would be repealed, which currently prevents downward attribution of stock from a foreign person to US person</li><li>▶ Effective for the last taxable year of a foreign corporation beginning before January 1, 2018 and all subsequent years</li></ul>	<ul style="list-style-type: none"><li>▶ Section 958(b)(4) would be repealed, which currently prevents downward attribution of stock from foreign person to US person</li><li>▶ Effective for tax years of foreign corporations beginning after December 31, 2017</li></ul>
Expansion of US shareholder definition	<ul style="list-style-type: none"><li>▶ Expands the definition of US shareholder to include US persons that own 10% or more value of the stock in a foreign corporation</li><li>▶ Effective for the last taxable year of a foreign corporation beginning before January 1, 2018 and all subsequent years</li></ul>	<ul style="list-style-type: none"><li>▶ No provision</li></ul>

# Changes to Subpart F

Provision	Senate Bill	House Bill
Elimination of 30-day rule	<ul style="list-style-type: none"><li>▶ Repeals current rule requiring a Subpart F income inclusion only if the foreign corporation is a CFC for an uninterrupted 30-day period in that tax year</li><li>▶ Effective for tax years of foreign corporations beginning after December 31, 2017</li></ul>	Same
Look-through made permanent	Section 954(c)(6) made permanent	Same

# Changes to Subpart F

Provision	Senate Bill	House Bill
Other Subpart F changes	<ul style="list-style-type: none"><li>▶ Eliminates section 955 rules on previously excluded FBC Shipping Income</li><li>▶ Eliminates FBC Oil Related Income category of subpart F income.</li><li>▶ The \$1 million de minimis threshold adjusted for inflation.</li><li>▶ Effective for tax years of foreign corporations beginning after December 31, 2017</li></ul>	<ul style="list-style-type: none"><li>▶ Same</li></ul>

# Investments in US Property

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Provision	Senate Bill	House Bill
Section 956	Repealed for domestic corporations, including for CFCs held through a domestic partnership	Repealed for domestic corporations, including for CFCs held through a domestic partnership
Effective date	Effective for tax years of foreign corporations beginning after December 31, 2017	Effective for tax years of foreign corporations beginning after December 31, 2017

# Sale of lower-tier CFC by upper-tier CFC

Provision	Senate Bill	House Bill
Subpart F treatment	Foreign source portion of gain on sale of lower-tier CFC by upper-tier that is treated as a dividend under Section 964(e)(1) included in subpart F income but entitled to 100% deduction at the US shareholder	No corresponding provision
Holding period	Upper-tier CFC must have held stock in lower-tier CFC for a year or more	No corresponding provision
Earnings and profits	Earnings and profits are not reduced for a loss on the sale of a lower-tier CFC by an upper-tier CFC	No corresponding provision
Effective date	Effective for taxable years of CFCs beginning after 31 December 2017	No corresponding provision

# CFC to CFC hybrid dividends

Provision	Senate Bill	House Bill
Subpart F income	If a CFC receives a hybrid dividend from any other CFC, and a domestic corporation is a US shareholder with respect to both such CFCs, the hybrid dividend is treated as subpart F income of the recipient CFC for the tax year in which the dividend is received	No corresponding provision
Effective date	Effective for taxable years of CFCs beginning after 31 December 2017 and for taxable years of US shareholders in which or with which such tax years end	No corresponding provision

# Foreign tax credits and income sourcing





# Foreign tax credits

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Provision	Senate Bill	House Bill
Repeal of 902 [no difference]	Repeals 902	Repeals 902
Modification of 960	<ul style="list-style-type: none"><li>• Subpart F inclusions give rise to deemed-paid foreign income taxes for taxes “properly attributable” to included items</li><li>• Similar rule for distributions from previously-taxed E&amp;P (including taxes paid/accrued with respect to CFC-to-CFC distributions)</li></ul>	<ul style="list-style-type: none"><li>• Same</li></ul>
Foreign Branch Income - 904	Adds separate basket for non-passive foreign branch income.	No corresponding provision

# Income sourcing

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Provision	Senate Bill	House Bill
Worldwide Expense Allocation - 864(f)	Accelerates “effective date” of Section 864(f) worldwide expense allocation election to taxable years beginning after 2017 (from 2020)	No corresponding provision
Apportionment of Income from Section 863(b) Sales - 863(b)(2)	Income from “Section 863(b) Sales” apportioned solely on the basis of the production activities with respect to the inventory sold.	Same

# Senate proposal to deny deductions in connection with certain hybrid arrangements



# Senate proposal to deny deductions in connection with certain hybrid arrangements

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Provision	Senate Bill
	Proposal would deny a deduction for any disqualified related party amount paid or accrued pursuant to a hybrid transaction or by, or to, a hybrid entity.
Disqualified related party amount	Any <b>interest</b> or <b>royalty</b> paid or accrued to a related party to the extent that (1) there is no corresponding inclusion to the related party under the tax law of the country where the related party is resident for tax purposes; or (2) the related party is allowed a deduction with respect to the amount under the tax law of the residence country.
Exception	Does not include any payment to the extent that the payment is included in the gross income of a U.S. shareholder under section 951(a).  Definition of “related party” references the section 954(d)(3) rules.

Senate proposal only, no similar proposal from the House

# Senate proposal to deny deductions in connection with certain hybrid arrangements

Provision	Senate Bill
Hybrid transaction	Any transaction, series of transactions, agreement, or instrument one or more payments with respect to which are treated as interest or royalties for federal income tax purposes, and which are not so treated under the tax law of the residence country of the recipient (or the country where the recipient is subject to tax)
Hybrid entity	Any entity that is either (1) treated as fiscally transparent for federal income tax purposes but is not so treated in the country where the entity is resident for tax purposes or is subject to tax; or (2) treated as fiscally transparent for purposes of the tax law of the country where the entity is resident for tax purposes or is subject to tax, but is not so treated for purposes of federal income tax.
Effective date	The proposal would be effective for taxable years beginning after December 31, 2017.

Senate proposal only, no similar proposal from the House

# Senate proposal to deny deductions in connection with certain hybrid arrangements

Provision	Senate Bill
Broad regulatory authority	<p>Proposal would grant Treasury broad regulatory authority to issue guidance as may be necessary or appropriate to carry out the purposes of the proposal, including providing guidance that would:</p> <ol style="list-style-type: none"><li>1) deny deductions for conduit arrangements involving a hybrid transaction or hybrid entity;</li><li>2) provide rules for foreign branches;</li><li>3) provide rules for “certain structured transactions;</li><li>4) deny deductions for certain payments that would, due to a preferential tax regime in the recipient’s country, result in a reduction of 25% or more in that country’s generally applicable statutory tax rate;</li><li>5) deny deductions claimed for an interest or royalty payment if such payment is subject to a participation exemption system or other system that provides for the exclusion of a substantial portion of such amount;</li><li>6) provide rules for determining the tax residence of a foreign entity; and</li><li>7) provide exceptions to the general rule set forth in the Senate proposal.</li></ol>

Senate proposal only, no similar proposal from the House

# Senate proposal to tax as ECI certain income earned by foreign-operated cruise vessels



# Senate proposal to tax as ECI certain income earned by foreign-operated cruise vessels

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Provision	Senate Bill
	Proposal would create new “passenger cruise gross income” category, a portion of which would be taxed as ECI and ineligible for exemptions under sections 872 and 883.
Passenger cruise gross income	Broadly defined as all income from operation of a commercial vessel on a covered voyage, if a certain percentage of passengers embark and/or disembark in a US port. Includes amounts related to on- or off-board passenger activities, and income from agreements with services or sales providers.
Amounts subject to tax as ECI	Determined based on time the vessel spends in US territorial waters, or, if greater, under the general rules for determining amount of income effectively connected with a USTB.
Effective date	Taxable years beginning after December 31, 2017.

Senate proposal only, no similar proposal from the House



# Senate proposal to narrow the exemption provided to foreign-operated airlines



# Senate proposal to narrow the exemption provided to foreign-operated airlines

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Provision	Senate Bill
	Proposal would modify the reciprocal exemption under section 883 for income derived by a foreign corporation from the international operation of an aircraft.
Denial of section 883 exemption in certain circumstances	Exemption would not apply if:  (1) The foreign corporation operating the aircraft is headquartered in a country that does not have an income tax treaty with the United States; and  (2) The foreign country has fewer than two arrivals and departures from major US-headquartered airline carriers per week.
Effective date	Taxable years beginning after December 31, 2017.

Senate proposal only, no similar proposal from the House

# Senate proposal to repeal DISC regime



# Senate proposal to repeal DISC regime

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Provision	Senate Bill
	Proposal would repeal domestic international sales corporation (DISC) and interest charge domestic international sales corporation (IC-DISC) regimes.
Termination of election	Proposal would terminate a corporate DISC or IC-DISC election in effect for the corporation's last taxable year beginning in 2018, and would prohibit any new DISC or IC-DISC elections.
Transition rule	If a DISC or IC-DISC election is terminated, shareholders will be deemed to have received a distribution under section 995(b)(2) in the first taxable year for which the termination is effective. Any such deemed distribution (and any actual distribution after termination paid out of accumulated DISC income) will be ineligible for the preferential rate under section 1(h)(11).
Effective date	Taxable years beginning after December 31, 2018.

Senate proposal only, no similar proposal from the House

# Senate proposal to modify insurance exception to PFIC rules



# Senate proposal to modify insurance exception to PFIC rules

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Provision	Senate Bill
	Proposal would replace current standard for determining whether income is derived in the active conduct of an insurance business and thus falls within the exception to the definition of passive income for purposes of the PFIC rules.
Would replace the “predominantly engaged” test with a test that measures insurance liabilities of the corporation relative to its total assets.	<p>Applicable insurance liabilities must constitute more than 25% of the corporation’s total assets as reported on its financial statement for the last year ending with or within the taxable year. Applicable insurance liabilities include loss and loss adjustment expenses, and certain reserves such as loss reserves for property and casualty, life, and health insurance contracts and annuity contracts. Deficiency, contingency or unearned premium reserves are not considered applicable insurance liabilities.</p> <p>If a corporation does not meet the 25% test, a shareholder may still elect to treat it as a qualifying insurance company if its applicable insurance liabilities are at least 10% of its total assets, and if its failure to meet the 25% threshold is due to specified circumstances involving its insurance business.</p>
Effective date	Taxable years beginning after December 31, 2017.

Senate proposal only, no similar proposal from the House