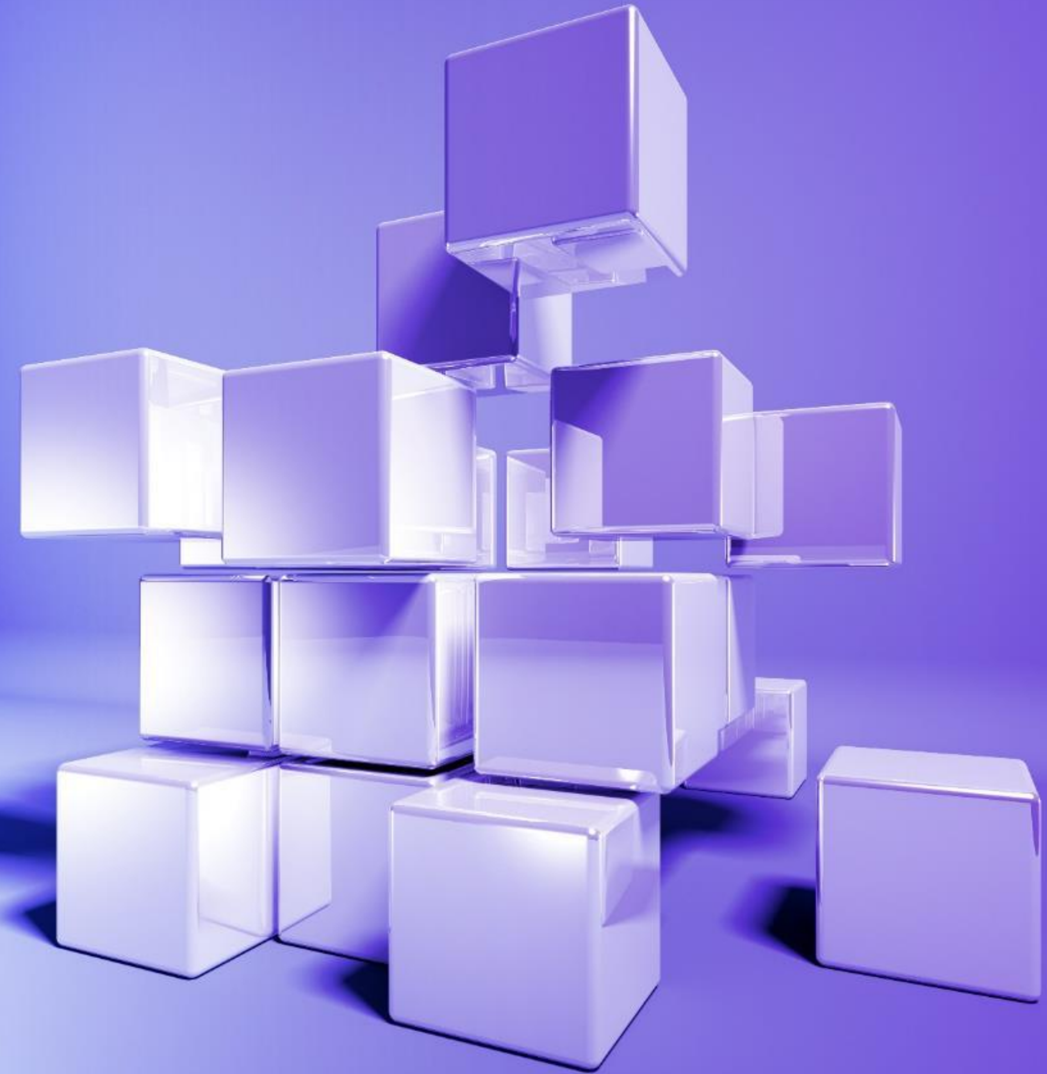
KPMG quarterly tax webcast for Regulated Investment Companies (RICs)



August 22, 2023

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Agenda

11:00	Introduction
11:02	Foreign Tax Credit Regulations and Practicalities for Capital Gain Taxes
11:30	State and Local Tax Nexus for Fund Managers
12:00	US Tax Reporting for Foreign Investments
12:25	Closing, Q&A

Speakers

Quyen Huynh

Principal, WNT – International Tax

KPMG LLP (US)

George Burns

Principal, Tax

SALT – Asset Management

KPMG LLP (US)

Aaron Shafer

Managing Director, Tax

SALT – NYFS
KPMG LLP (US)

Michael Steilen

Managing Director, International Tax
KPMG LLP (US)

Deirdre Fortune

National Tax Leader – Public Investment Management

KPMG LLP (US)

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01

FTC regulations and practicalities

Quyen Huynh

2022 Final foreign tax credit regulations and application to RICs

Changes to creditable foreign taxes – Sections 901 and 903

FTC creditability – basics

- Section 901 generally provides that only income, war profits, and excess profits taxes (collectively "income taxes") may qualify for the foreign tax credit. The tax must be a levy that is not a payment for a specific economic benefit and the predominant character of the tax must be an income tax in the U.S. sense
- Section 903 generally provides that a tax in lieu of a generally imposed income tax may be creditable

2022 Final FTC regulations

- Significant changes were made in the 2022 Final FTC regulations published on January 4, 2022, that interpreted sections 901 and 903 to substantially limit the scope of foreign taxes that would be creditable
  - **Attribution requirement:** foreign jurisdiction imposing the tax should have "sufficient nexus to the taxpayer's activities or investment of capital or other assets that give rise to the income base on which the foreign tax is imposed." See preamble to final regulations
    - U.S. tax principles (as opposed to foreign law and principles) should control the determination of whether a tax is an income tax
  - In lieu of taxes require that there is a generally imposed net income tax to which the income would otherwise be subject as well as that the attribution requirement is/would be satisfied, including for a covered withholding tax

The 2022 Final FTC regulations resulted in non-creditability of foreign taxes in a number of jurisdictions, including taxes imposed on nonresidents on gains from the disposition of stock/shares in a foreign company

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Creditability of foreign taxes under an income tax treaty

Foreign taxes that would not be creditable under the 2022 Final FTC Regulations *may* nonetheless be creditable under the relief from double taxation article of a US income tax treaty (see Reg. § 1.901-2(a)(1)(iii))

- The relevant foreign tax must be treated as an income tax under the treaty
- The foreign tax must be paid or accrued by an eligible US resident or citizen that elects to claim the benefit
- Some treaties may contain a “resourcing” provision that treats income that is otherwise US source income (e.g., stock gains recognized by a US resident, such as a RIC) as foreign source, subject to limitations under the Internal Revenue Code
    - Code provisions such as sections 865(h) and 904(d)(6) may require separate “basketing” of resourced income and associated taxes for FTC limitation purposes
- Reporting of treaty-based return positions on IRS Form 8833 is generally required under section 6114

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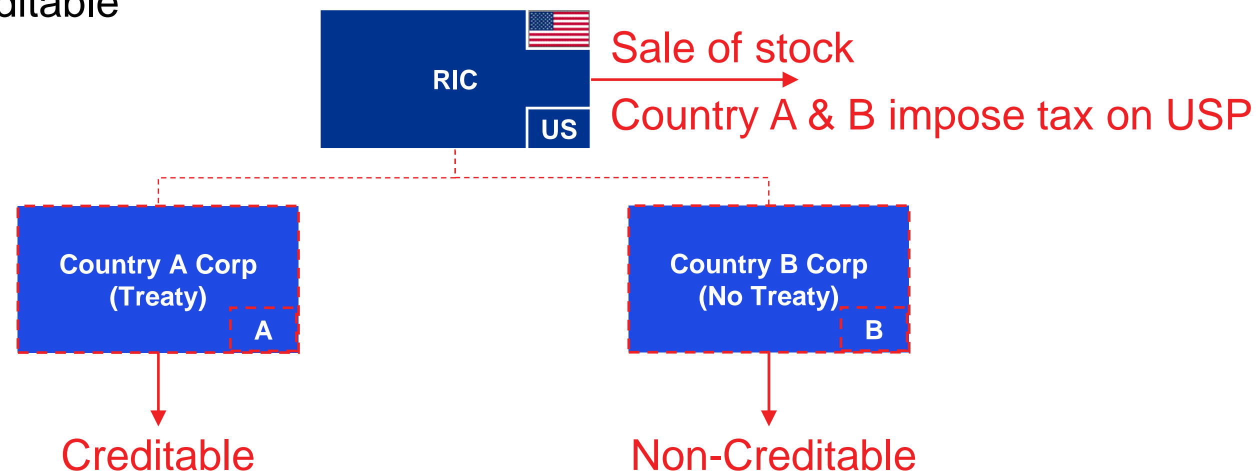
Interaction of 2022 Final FTC regulations with tax treaties

Example:

- Countries A and B impose nonresident capital gains taxes on sales of corporate stock and those taxes do not satisfy the attribution requirement; the Country A and Country B taxes therefore would not creditable under the final regulations
- US has an income tax treaty in effect with Country A, but not Country B. The US-Country A treaty treats the tax imposed on the gain as an income tax, and USP elects to credit the taxes pursuant to the double taxation article of the treaty
- Under the final regulations, Country A taxes would be creditable (subject to applicable limitations); Country B taxes would not be creditable



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Temporary relief from 2022 FTC Final Regs under Notice 2023-55

Notice 2023-55

Temporary relief under Notice 2023-55 issued on July 21, 2023 (“Relief Notice”)

- The IRS issued the Relief Notice announcing temporary relief for taxpayers determining whether a foreign tax is eligible for a foreign tax credit under sections 901 and 903
- Specifically, taxpayers may elect to determine whether a tax is creditable by applying:
  - Former § 1.901-2(a) and (b), before it was amended by the 2022 FTC final regulations, but subject to a modification to the non-confiscatory gross basis tax rule as described in the relief notice
  - Existing § 1.903-1 without the attribution requirement

Impact of the Relief Notice

- As a result of the relief notice, creditability will be determined under the pre-2022 FTC regulations (“old regs”) for calendar years 2022 and 2023 (for calendar year taxpayers) and fiscal year 2023 (for fiscal year taxpayers), usually resulting in increased amount of creditable taxes
- There is still opportunity for tax returns that are yet to be filed for calendar year 2022 to reflect the creditability position under the old regs
- Important to note that creditability of taxes cannot be assumed and will still need to be analyzed under the old regs. Special care needed for digital services tax
- Particularly beneficial for NRCGTs for which no treaty relief available (e.g., LatAm)

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Applicability dates

2022 Final FTC Regulation Applicability Dates

- Taxes paid or accrued in tax years beginning on or after December 28, 2021
- Note that 11/30 year-end CFCs were not subject to the 2022 Final FTC regs until years beginning December 1, 2022

Definition of “Relief Period” in Notice 2023-55

- For **calendar year taxpayers** the relief period applies from January 1, 2022, through December 31, 2023 (i.e., TY22 and TY23)
- For **fiscal year taxpayers** the relief period applies for tax years beginning after January 1, 2022, and ending before December 31, 2023
  - Unless a taxpayer has a short year, the relief period will only include the fiscal year ending in 2023
  - E.g., a 6/30 YE taxpayer would be expected to apply the full 2022 Final FTC Regulations to its year beginning July 1, 2023
  - The Notice indicates that the Government is considering whether to provide additional temporary relief and the Government has indicated informally that it intends to extend the Notice’s relief period for another year

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Section 853 considerations

Overview

Section 853 election

- Subject to various requirements, a RIC whose assets predominantly consist of foreign stock and securities can make an election pursuant to which its shareholders are treated as paying their share of creditable foreign income taxes; shareholders may elect to credit or deduct those taxes

If the section 853 election is made:

- Each RIC shareholder includes in gross income:
  - Its proportionate share of foreign income taxes paid by the RIC, and
  - RIC dividend income received
- For purposes of applying the foreign tax credit, the shareholder treats as foreign source gross income (i) its proportionate share of the foreign income taxes paid by the RIC and (ii) the portion of any dividend paid by the RIC that represents income from foreign sources
- No deduction or credit is allowed to the RIC with respect to such foreign taxes, although the RIC can claim a dividends-paid deduction with respect to the foreign taxes

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Effect of 2022 Final FTC Regulations (if applicable)

Taxes failing to satisfy the attribution requirement

- If a RIC pays foreign taxes that are not creditable under the 2022 Final FTC Regulations*, such taxes cannot be treated under section 853 as paid by RIC shareholders unless they are creditable under an applicable income tax treaty
  - Nonresident capital gains taxes will in most cases fail to satisfy the attribution requirement
  - Less commonly, some dividend and interest withholding taxes will fail to satisfy the attribution requirement

  *** But see Notice 2023-55 discussion for temporary relief**

If the RIC is eligible under an applicable income tax treaty to credit foreign taxes paid to a foreign country and chooses to do so:

- Such taxes generally can be treated as paid by RIC shareholders under section 853
- The RIC may be able to treat income that is taxed in such foreign country as foreign source income under an applicable treaty for purposes of characterizing RIC dividends
- It does not appear that separate treaty basketing of any such resourced income is required at the RIC shareholder level

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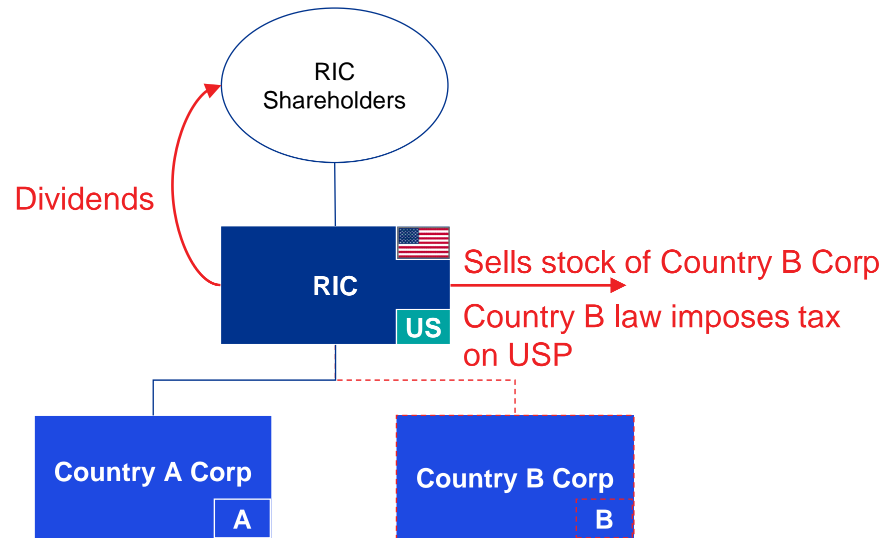
Nonresident capital gains tax – application of final regulations



Assumptions:

- Final regulations apply (assumes Notice does not apply)
- RIC sells Country B Corp, recognizes gain for US and Country B tax purposes, and incurs Country B tax on the gain. RIC's only other income consists of foreign source dividends
- Country B tax on the gain does not satisfy the Final Regulations' attribution requirement
- US and Country B have an income tax treaty in effect that treats Country B tax on the gain as an income tax and provides for resourcing of gross income of US residents that is subject to Country B tax
  - Note that treaty provisions vary and must be examined carefully for applicability
- RIC elects to credit the tax pursuant to the treaty and to resource income, and makes the section 853 election

Analysis:

- RIC elects to treat the Country B tax as a creditable tax under the treaty and under the treaty resourcing rule treats its otherwise US source capital gain as income from Country B sources
  - If the RIC itself claimed a credit for the taxes, the RIC's foreign tax credit limitation would apply separately to income resourced by reason of the US-Country B tax treaty. See Section 865(h); Reg. § 1.904-4(k)(2)

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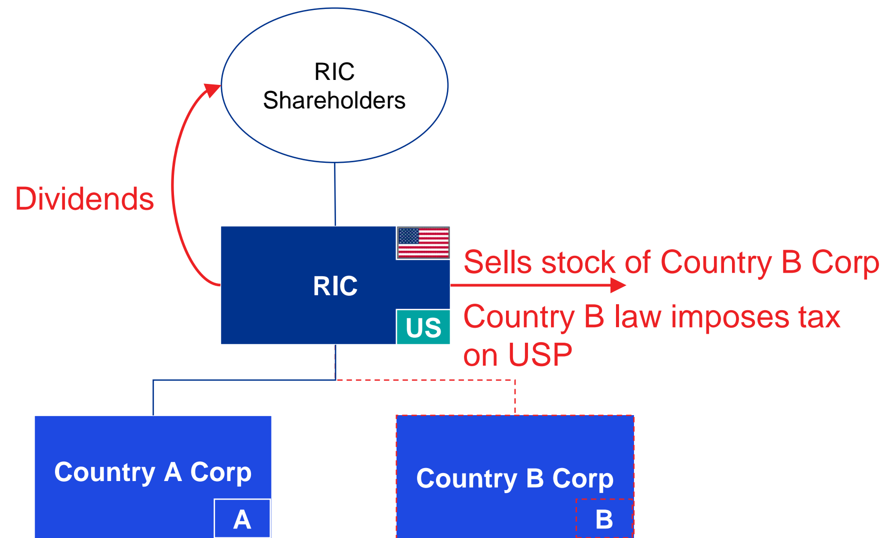
Nonresident capital gains tax



Analysis (continued):

- RIC shareholders are deemed to pay a proportionate share of Country B capital gains tax
- Additionally, RIC shareholders include in their gross income (i) such taxes and (ii) RIC dividends
  - Such income inclusions are expected to be foreign source income in the passive basket
  - Notably, RIC shareholders' gross income is foreign source pursuant to § 853(b)(2). The US-Country B tax treaty does not apply to the RIC shareholders' gross income, and thus it appears that neither § 865(h) nor § 904(d)(6) assigns such income to a special treaty basket for FTC limitation purposes

Additional considerations:

- RIC may need to meet a Limitation on Benefits provision (if applicable) under the treaty to claim benefits.
- Form 8833 treaty-based disclosure needs to be filed
- If the Notice applies, it may not be necessary to rely on the treaty to claim a credit for the Country B capital gains tax but it may still be advantageous to elect to apply the treaty's resourcing provision

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02

State and Local Tax Nexus for fund managers

George Burns and Aaron Shafer

Revenue actions: Reducing the tax burden on in-state actors

Mandatory Single-Sales Factor for General Corporate Income Tax Purposes

2000	2008	2022 tax year	
Connecticut	Connecticut	Alabama	Michigan
Illinois	Georgia	Arkansas	Minnesota
Iowa	Illinois	California	Mississippi
Mississippi	Iowa	Colorado	Missouri
Nebraska	Maine	Connecticut	Nebraska
Texas	Michigan	Delaware	New Hampshire (new)
	Mississippi	District of Columbia	New Jersey
	Nebraska	Georgia	New York
	New York	Idaho (new)	New York City
	Oregon	Illinois	North Carolina
	Texas	Indiana	Oregon
	Wisconsin	Iowa	Pennsylvania
		Kentucky	Rhode Island
		Louisiana	South Carolina
		Maine	Texas
		Maryland	Vermont (2023)
			West Virginia (new)
			Wisconsin

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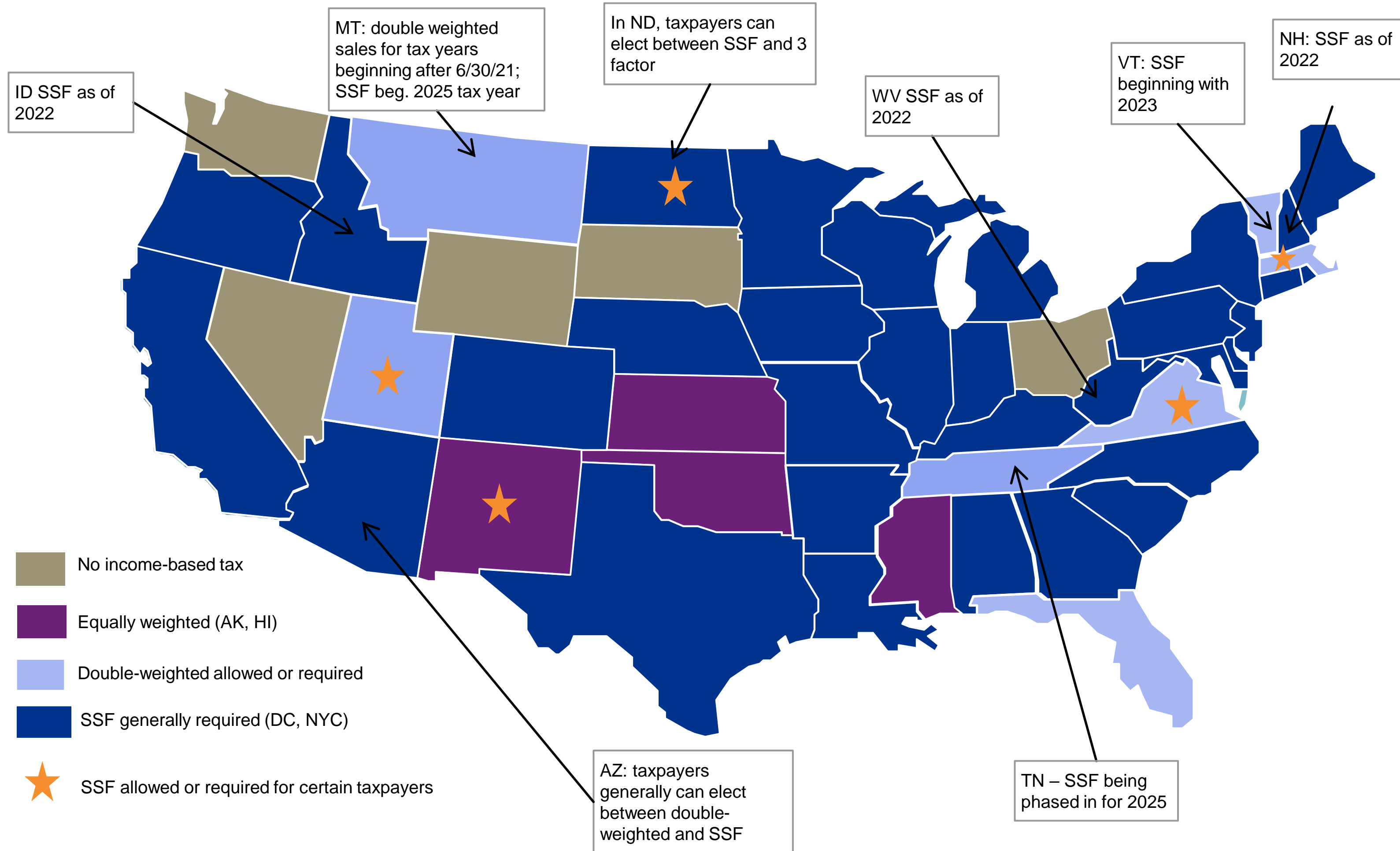
Sales factor: Weighting



NOTE: Based upon general sourcing rules.

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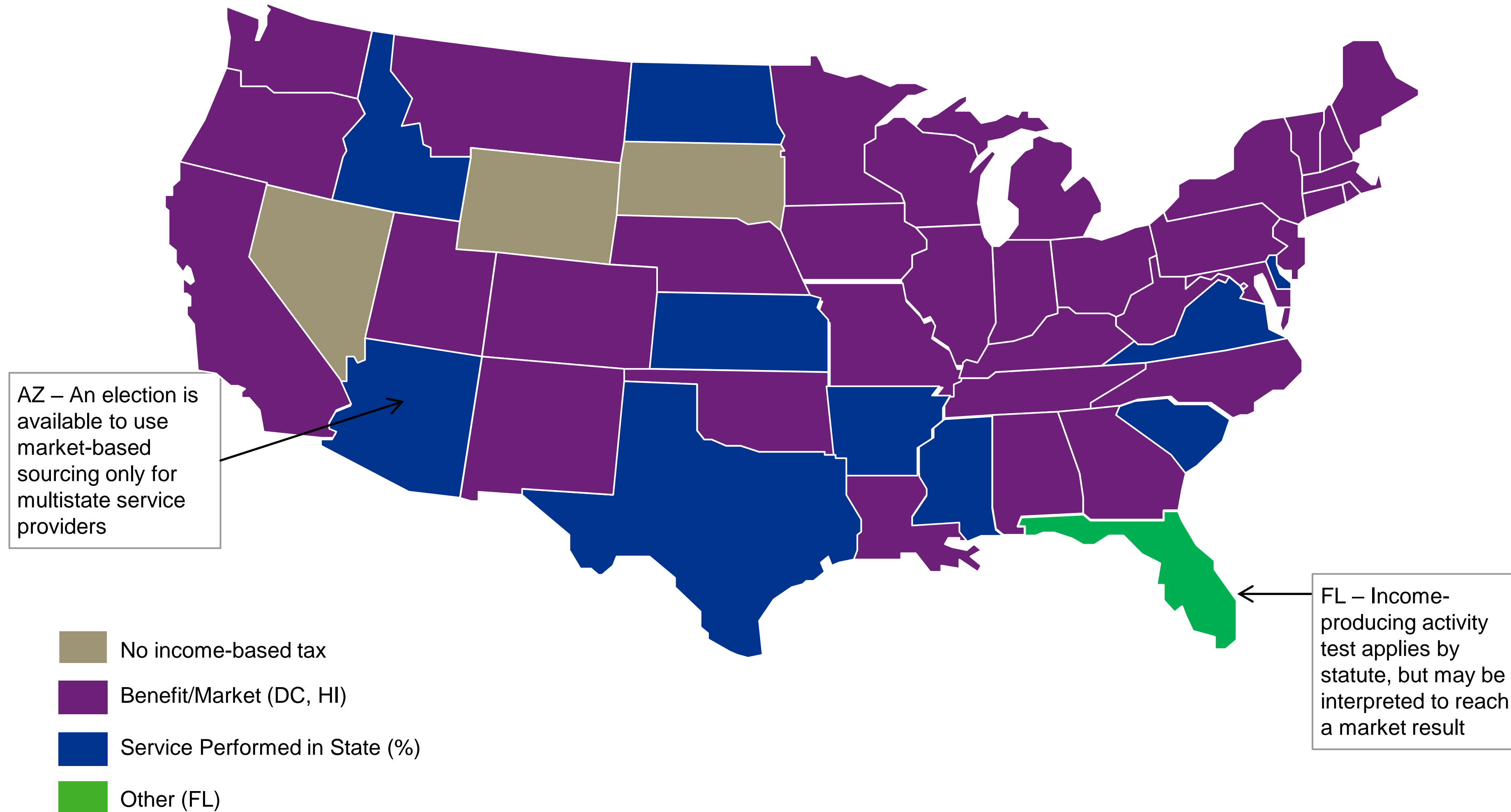
Sales factor: Market-based sourcing for services



NOTE: Different sourcing rules may apply to non-service income and to non-corporate taxpayers

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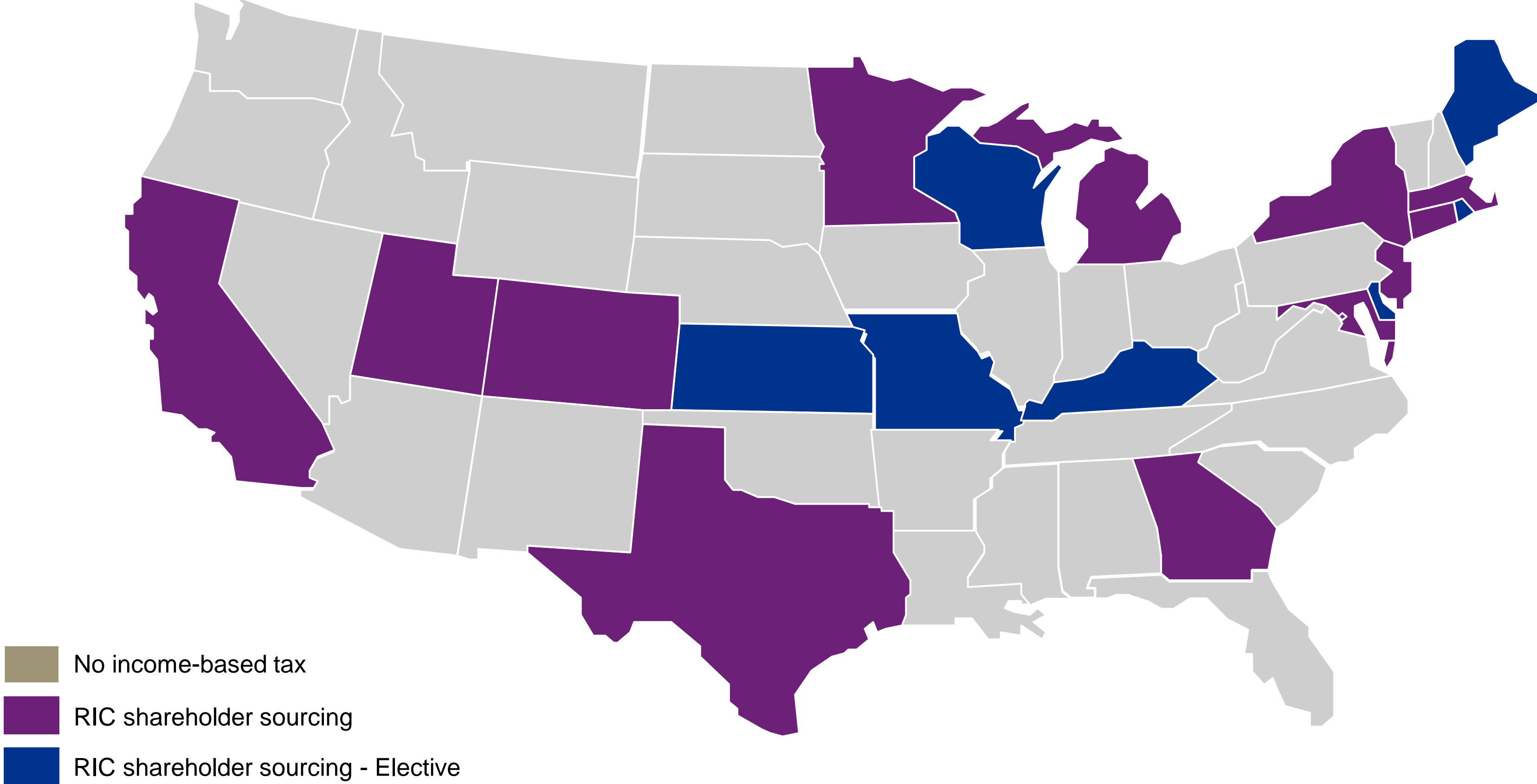
Sales factor: Market-based sourcing for RICs



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Economic Nexus & Market-Based Sourcing

- Physical Presence: In *Quill v. North Dakota* (1992), the U.S. Supreme Court held that a state cannot require a business to collect use tax from in-state customers if the business has no physical presence in the state

- Economic Nexus: In *Wayfair v. South Dakota* (2018), the U.S. Supreme Court overturned the physical presence requirement of *Quill* and held that nexus may be asserted on foreign taxpayers that meet economic thresholds based on their in-state receipts or activity.

- Although *Wayfair* was a sales tax collection case, subsequent to the decision many states have adopted a variation of economic nexus on income and franchise taxes in order to expand their tax base by asserting nexus on out-of-state taxpayers.

- Market-based sourcing can be used to determine whether the economic nexus threshold has been met.

- As a result, taxpayers that have not changed their activities and do not have a physical presence in many states, may find themselves subject to tax in new jurisdictions.

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California Sourcing Rules – Reg. 25137-14

- California Code Regulation (CCR) Section 25137-14 provides special rules for apportionment of income of mutual fund service provides.
  - CCR Section 25137-14 addresses the sourcing of asset management fees received from “regulated investment companies” (“RICs”)—generally mutual funds and other similar funds. That regulation provides that the “purchaser” of the asset manager’s services are the RIC’s investors, not the RIC itself.
  - The regulation also provides that the benefit of the asset manager’s services is received by the RIC’s investors in their own domiciles, not the domicile of the fund or the asset manager.
  - The fees received by an asset manager of a RIC are sourced to California to the extent those fees are attributable to California-domiciled investors in the RIC, based on the shareholder ratio of California investors.

Recent Developments: *Janus Capital Group, Inc. v. Franchise Tax Board*

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California Sourcing Rules – Janus Capital Group, Inc. v. FTB

- In 2018, Janus filed a claim for refund with the Franchise Tax Board (FTB) for tax years 2013-2016, asserting that apportioning the overall business income under CCR Section 25137-14 resulted in overstating its California-source income.
- Janus is an investment management company headquartered in the state of Colorado. It provides management, administration, distribution services to mutual funds and other institutions.
- As a mutual fund service provider, Janus filed its California returns using the sourcing methods prescribed by CCR Sections 25136-2(h)(3) and 25137-14. The taxpayer asserted that these special rules are inconsistent with the statutory method of apportionment prescribed by the applicable statute.
- The refund claims were formally denied by the Franchise Tax Board and the taxpayer appealed to the California Office of Tax Appeals (OTA).
- On April 19, 2023, the OTA held a hearing in Sacramento.

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California Sourcing Rules – Janus Capital Group, Inc. v. FTB

This case raised several issues:

- Whether FTB's Regulation Section 25137-14 is invalid under California's Administrative Procedure Act
- Whether Janus' request that OTA invalidate this section is properly before the OTA.
- Alternatively, whether Janus is entitled to compute its California business income by including a property factor and payroll factor.
- Whether FTB is required to show distortion prior to applying Regulation Section 25137-14 and whether Janus is entitled to relief.

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New York States – Proposed Corporate Regulations

- On August 9, 2023, the New York Department of Taxation and Finance published the comprehensive Article 9-A corporate franchise tax regulations in the New York State Register. In doing so, the Department has started the process under the State Administrative Procedure Act of formally adopting these regulations, which have been in draft form for over a year.
- These regulations implement New York's substantially reformed corporate and bank tax laws that have generally been in effect since tax years beginning on or after January 1, 2015.
- Under the sourcing rules, there is a hierarchy that must be applied to determine a customer's location. The first step in the hierarchy is to look to the location where the customer receives the benefit of the service.
- While the general rule sources service receipts to customer location, specific statutory provisions address various types of service receipts. Per the Department's summary of the changes to the Article 9-A regulations, post-reform, there are over 50 categories of receipts and income addressed in the statutory apportionment provisions. The regulations do not address each category but, per the Department, provides guidance "where needed." For each category of receipts addressed in the regulations, there are numerous illustrative examples.

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New York States – Proposed Corporate Regulations

- New York law provides specific rules for management services provided to a RIC (i.e., shareholder sourcing), but is silent with respect to sourcing asset management fees generally.
- The regulations provide a hierarchy to determine where the benefit of a service is received if services are provided to a “passive investment customer” as opposed to an individual customer or a business customer.
- A “passive investment customer” is defined as “an entity, such as a company or corporation (other than a publicly traded corporation), limited partnership, general partnership, limited liability company, limited liability partnership, or trust, that pools capital from passive investors for the purpose of trading or making investments in stocks, bonds, securities, commodities, loans, or other financial assets, but that does not otherwise conduct a trade or business. Passive investment customer does not include an investment company as defined in section 210-A(5)(d).”

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New York States – Proposed Corporate Regulations

- The proposed regulations adopt a "look-through" approach for "passive investment customers". The benefit of management, distribution, and administration services provided to a passive investment customer is presumed to be received at the location of the investors in such passive investment customer.
- The location of an individual investor or beneficial owner is its billing address; the location of a non-individual is its principal place of business.
- Management, distribution and administration services provided to a passive investment customer are apportioned to New York in proportion to the average value of the interests in the passive investment customer held by the passive investment customer's investors and beneficial owners located in New York.
- If a corporation cannot determine the location under the general rule, the benefit of management, distribution, and administration services provided to a passive investment customer is presumed to be received at the location where the contract for such services is managed by the passive investment customer.

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03

US tax reporting for foreign investments

Michael Steilen

Failure to file certain international information returns

- Taxpayers and tax practitioners must be careful that they comply with their cross-border transaction information reporting requirements
- Failure to furnish information required under these sections (6038 [Forms 5471, 8865 & 8858], 6038A [Form 5472], 6038B [Form 926], 6038D [Form 8938], 6046 [Form 5471], 6046A [Form 8865], or 6048 [Form 3520]) may have the following consequences:
  - Penalty under relevant code section for failure to furnish information (e.g., $10,000 for each Form 5471 or $25,000 for each Form 5472)
  - 40% penalty under section 6662 for any understatement of tax
  - Extension of statute of limitations on entire return until required information is furnished to IRS (section 6501(c)(8))
    - Form 8621 (PFICs) subject to statute extension but no specific penalty applies

Recent Developments: *Alon Farhy v. Commissioner*, 160 T.C. No. 6 (April 3, 2023)

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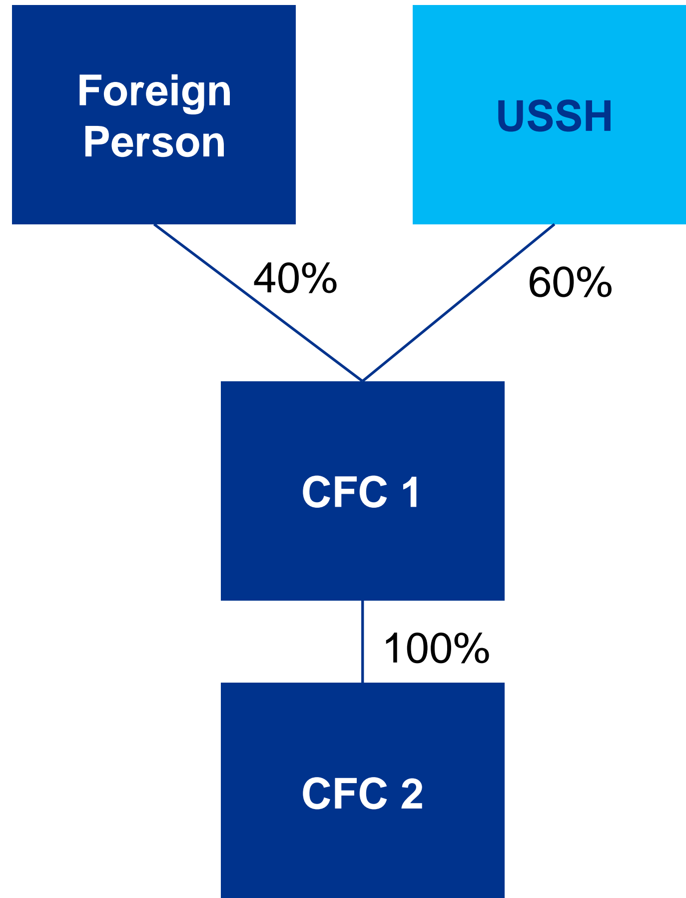
Controlled foreign corporations



Controlled Foreign Corporations (CFCs)

- A foreign entity treated as a corporation for US tax purposes is a CFC if **more than 50%** of the **value or voting power** is owned by "US Shareholders" (USSH)
- A USSH is a US person that owns at least 10% of the value or voting power of a CFC
- Broad constructive ownership rules apply in determining CFC and USSH
- USSHs can have CFC inclusions:
  - **Subpart F inclusion**, based on the CFC's "subpart F income"
  - **GILTI inclusion**, based on all of its CFCs' "CFC tested items", including tested income/tested loss
  - **Section 956 inclusion**, based on "US property" held by the CFC
- USSHs that have a CFC inclusion have previously taxed earnings and profits (PTEP) for the inclusion

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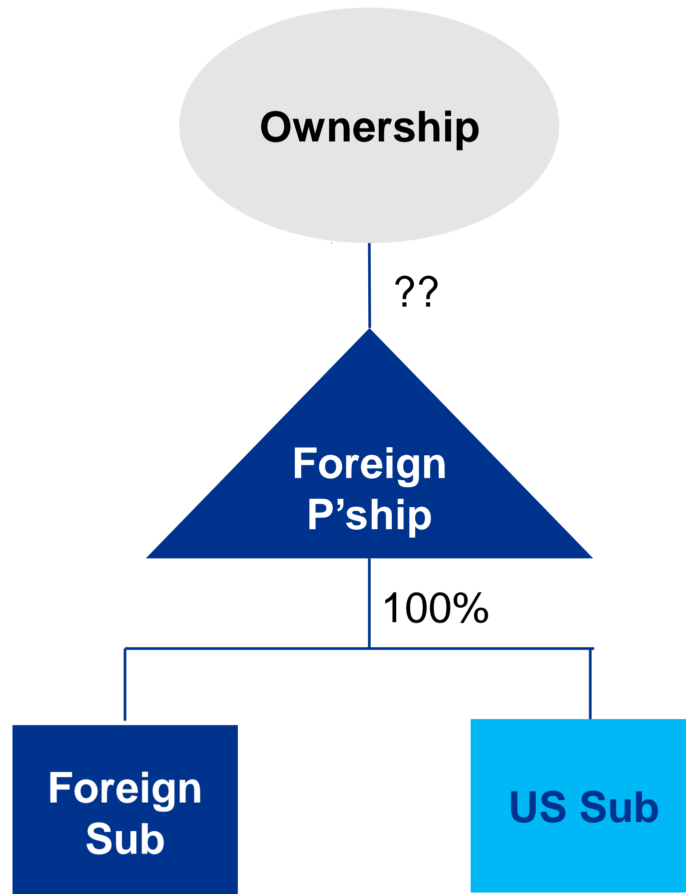
Example 1

CFC and USSH determination – Downward attribution



One of the constructive ownership rules provides for downward attribution from foreign entities

- Under the downward attribution rules:
  - Stock owned by a shareholder that owns **at least 50% of the value** of a coporation is treated as owned by the corporation; and
  - A partnership (or trust or estate) is treated as owning the stock owned by its partner (or beneficiary)
- Example:
  - Stock owned by Foreign P'ship (a shareholder that owns at least 50% of US Sub) is treated as owned by US Sub
  - Thus, US Sub is treated as owning 100% of Foreign Sub
    - Foreign Sub is a CFC
    - US Sub is a USSH
    - If there is a (direct or indirect) US partner in Foreign P'ship that owns at least 10% of the vote or value of Foreign Sub, then the US partner is a USSH of Foreign Sub
  - What if Foreign P'ship owned only 45% of US Sub?

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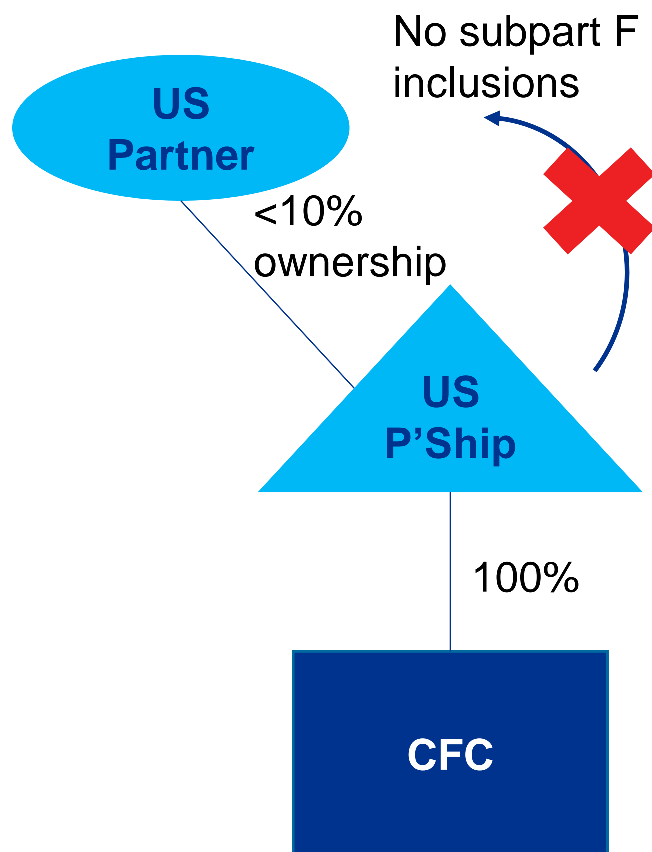
Section 958 final regulations



Final Regulations published on January 25, 2022

- Regulations finalize 2019 proposed regulations under section 958 on **aggregate treatment** of domestic partnerships for subpart F and section 956 purposes
  - Applicable for tax years of foreign corporations **beginning on or after** January 25, 2022
  - Final rules can be early adopted for tax years beginning after December 31, 2017, subject to a consistency requirement
- Aggregate treatment also applies for PTEP and basis purposes; additional guidance on PTEP and basis to be provided in future regulations
- Aggregate treatment **does not** apply for US Shareholder, CFC, US property, and controlling domestic shareholder determinations, and for section 1248 purposes

*Unless otherwise noted, "domestic partnership" includes an S corporation, and "partner" includes an S corporation shareholder

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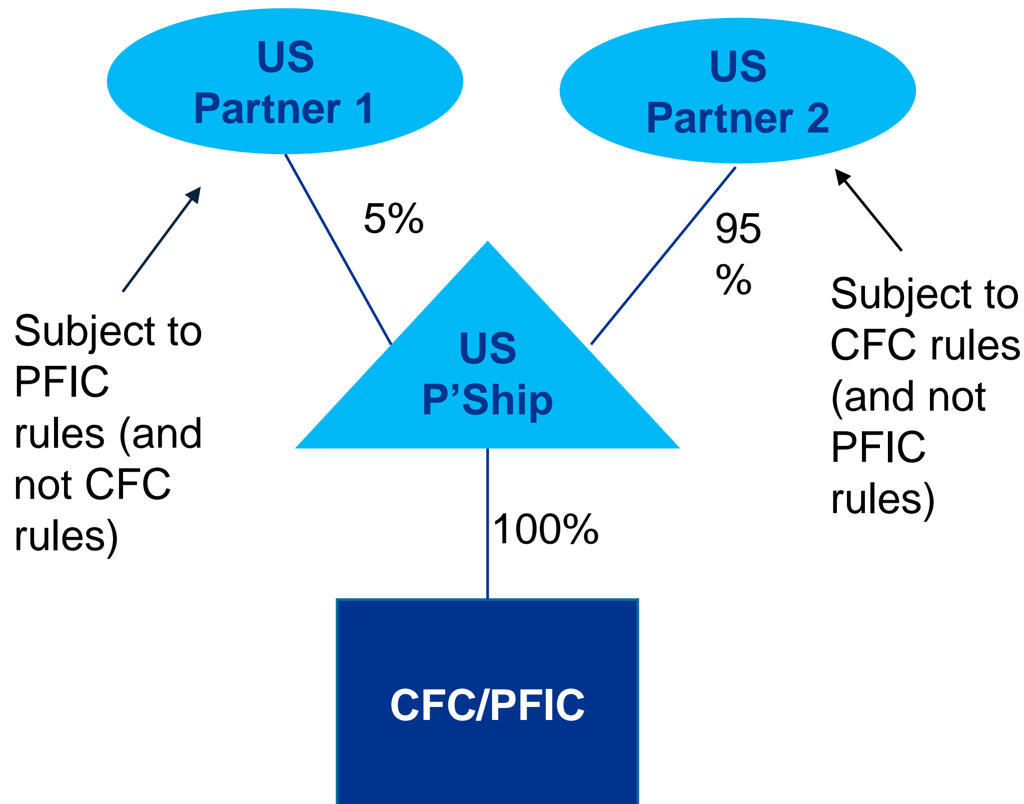
CFC/PFIC overlap rule



CFC/PFIC Overlap Rule

- A foreign corporation can be both a CFC and a passive foreign investment company (PFIC)
- In general, a USSH of a foreign corporation that is both a CFC and a PFIC is subject to tax only under the CFC rule
- As a result of the aggregate approach in the section 958 final regulations, the CFC/PFIC overlap rule would apply only to partners of a domestic partnership that are USSH (taking into account stock owned through the partnership and outside the partnership)
- Example:
  - US Partner 1 is subject to the PFIC rules (and not the CFC rules) because US Partner 1 is not a USSH of CFC/PFIC
  - US Partner 2 is subject to the CFC rules (and not the PFIC rules) because US Partner 2 is a USSH of CFC/PFIC

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Schedule K-2, part VI

Information on partners' subpart F, GILTI, and section 956 inclusions

Part VI Information on Partners' Section 951(a)(1) and Section 951A Inclusions

a Separate category (enter code—see instructions)

b If U.S. source, complete as a separate Part VI by separate category and check box ▶ ☐

	(a) Name of CFC	(b) EIN or reference ID number	(c) Ending of CFC tax year	(d) Partners' share of CFC items through their ownership in the partnership ("aggregate share")	(e) Aggregate share of subpart F income	(f) Aggregate section 951(a)(1)(B) inclusion	(g) Tested income
A							
B							
C							
D							
E							
F							
G							
H							
I							
J							
K							
1	Partnership total (sum for all CFCs) ▶						

	(h) Tested loss	(i) Aggregate share of tested income	(j) Aggregate share of tested loss	(k) Aggregate share of Qualified Business Asset Investment (QBAI)	(l) Aggregate share of the tested loss QBAI amount	(m) Aggregate share of tested interest income	(n) Aggregate share of tested interest expense
A							
B							
C							

- **Who Must File**: In general, partnerships that own (under section 958) stock in a CFC, unless the partnership owns the CFC stock solely under the downward attribution rules
- **Exception**: Part VI of the K-2 does not need to be completed for a CFC if the partnership knows that it does not have any direct or indirect partners that are "US Shareholders" of the CFC required to have CFC inclusions
  - Similar exception applies at the partner level for the K-3
- If a partnership is required to complete Part VI, the partnership must assume that each partner in the partnership is a "US Shareholder" of the CFC for purposes of completing the K-2
- **Extra Reporting**: If a partner's share of subpart F income or CFC tested items is not determined based on its "aggregate share" (reported in column (d)), for example, due to special allocations, then a statement must be attached explaining the partner's share through its ownership in the partnership of the CFC's subpart F income and CFC tested items

Note: based on 2022 draft Instructions

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Schedule K-3, Part VI, Information on Partner's Subpart F, Section 956, and GILTI Inclusions

Part VI **Information on Partner's Section 951(a)(1) and Section 951A Inclusions**

a Separate category (enter code)

b If box is checked, this is completed with respect to U.S. source income ▶ ☐

	(a) Name of CFC	(b) EIN or reference ID number	(c) Ending of CFC tax year	(d) Partner's share of CFC items through its ownership in the partnership	(e) Partner's share of subpart F income	(f) Partner's section 951(a)(1)(B) inclusion	(g) Tested income
A							
B							
C							
D							
E							
F							
G							
H							
I							
J							
K							
1	**Partner's total** (sum for all CFCs) ▶						

Report Subpart F inclusion in column (e)

Report section 956 inclusion in column (f)

	(h) Tested loss	(i) Partner's share of tested income	(j) Partner's share of tested loss	(k) Partner's share of Qualified Business Asset Investment (QBAI)	(l) Partner's share of the tested loss QBAI amount	(m) Partner's share of tested interest income	(n) Partner's share of tested interest expense
A							
B							
C							
D							
E							

Report CFC items for GILTI inclusions in columns (g) through (n)

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General summary of the three PFIC taxing regimes

QEF Election

- A QEF election can be made for the PFIC by the appropriate US owner, which can be a US partnership
- A QEF election can be made only if the PFIC provides an annual information statement
- The appropriate US owner includes in income as a QEF inclusion its pro rata share of the PFIC's annual E&P
- The appropriate US owner generally treats the QEF inclusion as long-term capital gain to the extent of the PFIC's net capital gain
- The appropriate US owner's basis in the PFIC is increased by the amounts QEF inclusions and is decreased by PTEP distributions

Mark-to-Market Election

- A MTM election can be made by the appropriate US owner, which can be a US partnership
- The election generally only can be made if the PFIC stock is publicly traded
- The appropriate US person includes in income MTM inclusions or MTM deductions generally based on the FMV of the PFIC
- The MTM inclusions are treated as ordinary income and MTM deductions are treated as ordinary loss
- The appropriate US owner's basis in the PFIC is increased by MTM inclusions and decreased by MTM deductions

Section 1291 Excess Distribution Regime

- No election
- Partnerships are not subject to section 1291
- A US owner of a PFIC (other than a partnership) is subject to section 1291 on certain distributions from the PFIC or gains on the disposition of the PFIC
- Analysis may be required to determine the extent to which a distribution is an "excess distribution"

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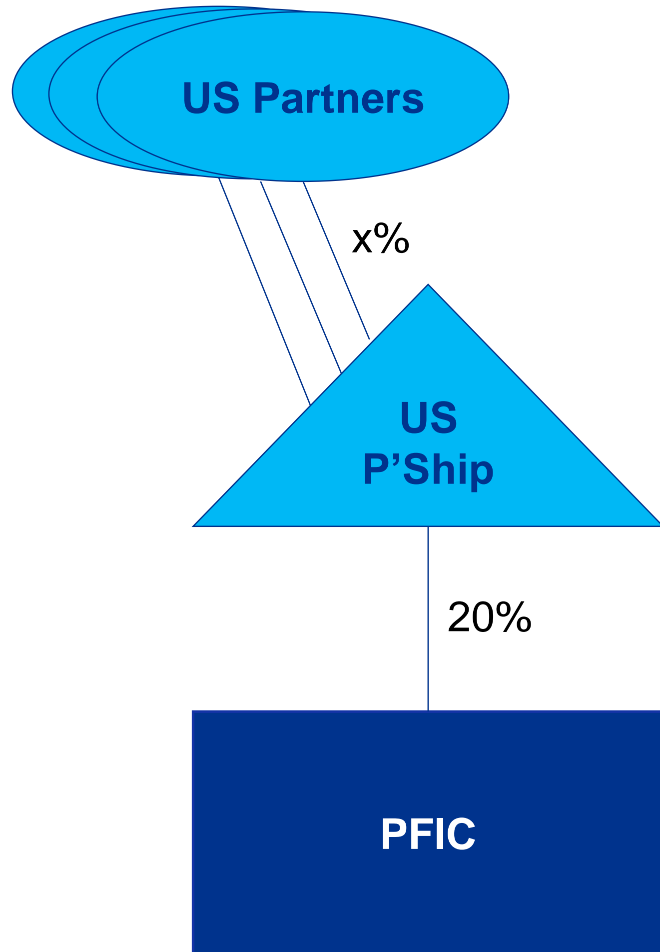
Forms 1065 and 8865



Form 1065 and Form 8865

- US partnerships
  - Report QEF inclusions and MTM inclusions/deductions on Form 1065
  - Report partner's share of QEF inclusions and MTM inclusions/deductions on Schedule K-1 to Form 1065:
    - QEF inclusion LTCG: line 9a
    - QEF inclusion ordinary: line 11i
    - MTM inclusion: line 11i
    - MTM deduction: line 11i
  - Report section 1291 information on Schedules K-2 and K-3 to Form 1065
    - Additional information may need to be attached to Schedule K-3 if partner makes a purging election
  - Footnotes: In certain situations footnotes are to attached to either Schedule K-1 or K-3
- Foreign partnerships: schedules K2 and K3 to Form 8865 to report QEF, MTM, and section 1291 information to partners

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Part VII

Part VII Information To Complete Form 8621

Section 1—General Information on Passive Foreign Investment Company (PFIC), Qualified Electing Fund (QEF), or Qualifying Insurance Corporation (QIC)

General Information

(a) Name of PFIC	(b) EIN or reference ID number	(c) Address of PFIC	(d) Beginning of PFIC tax year	(e) Ending of PFIC tax year

(f) Descrip... class of ...

Part VII Information To Complete Form 8621 *(continued)*

Section 2—Additional Information on PFIC or QEF

General Information		QEF Information		Mark-to-Market Information		Section 1291 and Other Information		
(a) Name of PFIC	(b) EIN or reference ID number	(c) Ordinary earnings	(d) Net capital gain	(e) Fair market value of PFIC shares at beginning of tax year	(f) Fair market value of PFIC shares at end of tax year	(g) Dates PFIC shares were acquired	(h) Amount of cash and fair market value of property distributed by PFIC during the current tax year (if applicable)	(i) Dates of distribution

Section 1291 and Other Information

(j) Total creditable foreign taxes attributable to distribution by PFIC	(k) Total distributions from PFIC in preceding 3 tax years	(l) Dates PFIC shares disposed of during tax year (if applicable)	(m) Amount realized on disposition of PFIC shares	(n) Tax basis of PFIC shares on dates of disposition	(o) Gain (loss) on disposition of PFIC shares

Purpose: Information for partners to complete Form 8621 and determine income inclusions for PFICs

- Who Must File: In general, any partnership that directly or indirectly owns a PFIC
- Exceptions: Part VII does not need to be completed by a foreign or domestic partnership if:
  - The partnership knows that none of its direct or indirect partners are US persons; or
  - The partnership knows that all of its direct or indirect US partners are: (i) not subject to the PFIC rules under the CFC/PFIC overlap rule; (ii) tax-exempt entities not subject to the PFIC rules; or (iii) pass-through entities with no indirect US taxable partners
  - The partnership MTM the PFIC stock under a code provision other than the PFIC MTM provisions
- Exception: A **domestic** partnership does not have to report a PFIC in Part VII if the partnership has made either a pedigreed QEF election or MTM election for the PFIC and filed Form 8621 for the PFIC, or made a qualifying insurance company ("QIC") election for the PFIC.
- Exception: A **foreign** partnership does not have to provide QEF information for a PFIC if it knows none of its partners have made or intend to make a QEF election for the PFIC

Note: based on 2022 draft Instructions

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"Return of US persons with respect to certain foreign partnerships"

- Who has to file Form 8865
  - US Persons who control a foreign partnership (>50% of capital, profits, or losses)
  - US Persons who own >10% when a group of >10% US Persons totals greater than 50% ownership
  - US Persons who own >10% and contribute property or US Persons who contribute > $100K
  - Certain acquisitions and dispositions of partnership interests including changes in proportional interest

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"Return by a US transferor of property to a foreign corporation"

- Form 926 generally is used to report certain transfers of tangible or intangible property to a foreign corporation ("FC"), as required by § 6038B
  - Substantial penalties may be assessed for failure to file this form (10% of FMV of property transferred, generally capped at $100K)
- Who has to file Form 926?
  - US citizen, resident, domestic corporation, or domestic estate or trust must complete to report certain transfers of property to a FC during the tax year
  - Common reporting scenarios include $100K of cash to a foreign corporation over a 12 month period and scenarios where the transferor owns 10% of the voting stock of the foreign corporation.
  - A US partner(s) of a partnership when the partnership contributes property to a FC during the tax year
  - Domestic liquidating corporations owned by a foreign corporation

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Transfers of partnership interests and ECI

The TCJA added two provisions governing ECI resulting from the sale or exchange of a partnership interest:

- Section 864(c)(8)
  - Imposed a hypothetical liquidation test for when the sale or exchange of a partnership interest will generate ECI.
  - Applies to both direct and indirect ownership.
- Section 1446(f)
  - Imposed a 10% withholding obligation of the amount realized in a disposition of a partnership interest that would generate ECI under section 864(c)(8).
    - The amount realized includes any liabilities relieved in the transfer.
  - Also imposed a secondary withholding requirement on the partnership on future distributions to the transferee.

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The player will now refresh to display an exit survey. Please complete this survey and click the Submit button.

If you met the CPE requirements, you will receive your certificate at the email address you entered when logging in in approximately two weeks.