

International Aspects Of Tax Cuts and Jobs Act (2017)



--Deduction for Foreign Derived Intangible Income (FDII)--

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Deductions for:
Foreign Derived Intangible Income
(FCII)
and
Global Intangible Low-Taxed Income (GILTI)
Effective for Tax Years Beginning after 12/31/17

– PL 115-97, §250(a)(1) and (3)

Deduction of Foreign Derived Intangible Income (FDII) and Global Intangible Low-Taxed Income (GILTI) (Cont)

Domestic corporation is generally allowed a deduction of the sum of:
37.5%* of FDII (Effective rate of 13.125%)
+
50%** of GILTI under Section 78 gross up (Effective rate of 10.5%)

* For years beginning after 12/31/25, the percentage for FDII is 21.875% (Effective rate of 16.40625%)

** For years beginning after 12/31/25, the percentage for GILTI is 37.5% (Effective rate of 13.125%)

§250(a)(1) and (3)

Deduction of Foreign Derived Intangible Income (FDII) and Global Intangible Low-Taxed Income (GILTI) (Cont)

Purposes of §250 Deductions:

- Minimize role of U.S. taxation in the decision of a domestic corporation to serve foreign markets directly or through a CFC. Senate Report at page 376
- Produce comparable tax rate on income earned from serving foreign markets regardless of where earned.
- Reduce or eliminate tax incentive to maintain, locate or move intangible income abroad.
- Protect U.S. tax base against base erosion by the new participation exemption. (§245A) and GILTI deduction.

Need for Regulatory Guidance under §250

- Coordination of §250 taxable income limitation for FDII and GILTI
- Computation of components of FDII: QBAI, DEI and FDDEI
- Allocation of expenses
- Treatment of military sales under Arms Control Act
- GILTI Deduction under §962 election
- Ordering rules for deducting business interest expense and NOL
- Guidance on documentation of: person not a U.S. person, foreign use property not located within the United States and persons not located within the United States

Deduction for FDII and GILTI (Cont)

Section 250 deduction for a domestic corporation for any year =

.375 (FDII – Reduction)

+

.50 (GILTI – Reduction)

“Domestic corporation” does not include regulated investment company (§851), real estate investment trust (§856) or S corporation (§1361).

Treas. Reg. §1.250(a)-1(c)(1).

§250(a)(2)

Deduction for FDII and GILTI (Cont)

Taxable Income Limitation:

$FDII + GILTI \leq \text{Taxable Income of Domestic Corp. w/o regard to } \S 250 \text{ deduction}$
 ≥ 0

$\S 250(a)(2)(A)(i)$

Deduction for FDII and GILTI (Cont)

$$\text{Excess} = (\text{FDII} + \text{GILTI}) - (\text{Taxable Income of Domestic Corp.})$$
$$> 0$$

§250(a)(2)(A)(i)

Deduction for FDII and GILTI (Cont)

Reduction
for FDII = Excess (FDII / FDII + GILTI)

Reduction
for GILTI = Excess – Reduction for FDII

§250(a)(2)(B)

Deduction for FDII

$$\text{FDII} = \left(\text{Deemed Intangible Income (DII)} \right) * \left(\frac{\text{Foreign Derived Deduction Eligible Income (FDDEI)}}{\text{Deduction Eligible Income (DEI)}} \right)$$

§250(b)(1)

Deduction for FDII (Cont)

Deemed Intangible Income (DII) =

“Deduction
Eligible Income”
(DEI)

-

“Deemed Tangible
Income Return”
(DTIR)

§250(b)(2)(A)

Deduction for FDII (Cont)

Deemed Tangible Income Return (DTIR) =

$$.10 \left(\begin{array}{c} \text{Qualified} \\ \text{Business} \\ \text{Investment} \\ \text{(QBI)} \end{array} \right)$$

§250(b)(2)(B)

Deduction for FDII (Cont)

Qualified Business Asset Investment (QBAI)

$$= \frac{1}{4} \sum_{t=1}^4 \text{Adjusted bases of "Specified Tangible Property" used in t or b}$$

1 of the domestic corp. for which deduction is allowed under §167 using the alternative depreciation system of §168(g)

§250(b)(2)(B), 951A(d)

Deduction for FDII (Cont)

Specified Tangible Property (STP)
is tangible property (or portion thereof*) used in production of
“deduction eligible income”

*Adjusted Basis of “Dual Use Property” (DUP) =

tangible property X $\frac{\text{deduction eligible income wrt the property}}{\text{total gross income wrt the property}}$

250(b)(2)(B), 951A(d)(2)(B)

Deduction for FDII (Cont)

Deduction Eligible Income (DEI) wrt any domestic corp =

$$\left. \begin{array}{l} \text{Gross Income --} \\ \text{-I. Inclusions under §951(a)*} \\ \text{II. GILTI inclusions under §951A*} \\ \text{III. Financial services under §904(d)(2)(D)} \\ \text{IV. Div from CFC of the domestic corp*} \\ \text{V. Domestic oil \& gas extraction} \\ \text{VI. Foreign Branch (§904(d)(2)(J)} \end{array} \right\} - \text{Allocable deductions including taxes}$$

*Includes Section 78 gross up amounts.

§250(b)(3)

Deduction for FDII (Cont)

Foreign Derived
Deduction Eligible
Income (FDDEI)

=

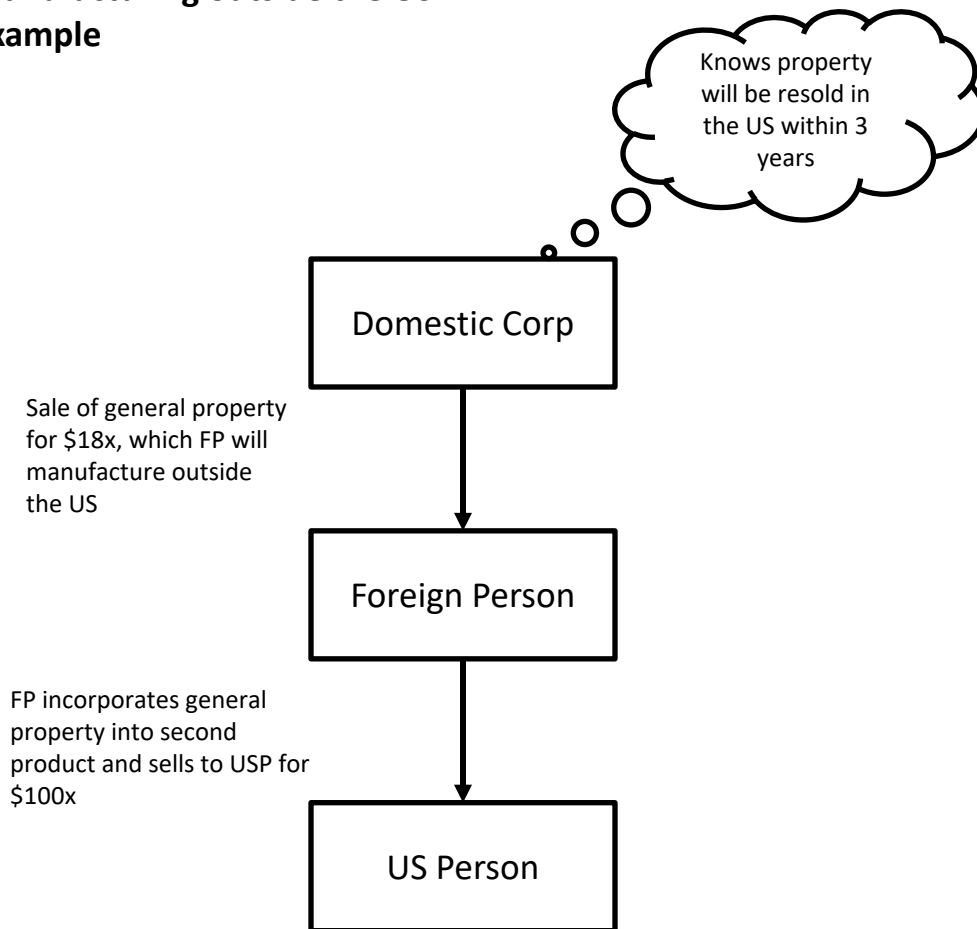
Subset of DEI consisting of the
following elements:

- 1) Property sold by TP to any person who is “not a U.S. person” for “foreign use”
- 2) Services provided by TP to any person or wrt property “located outside U.S.”

§250(b)(4)

Manufacturing outside the US

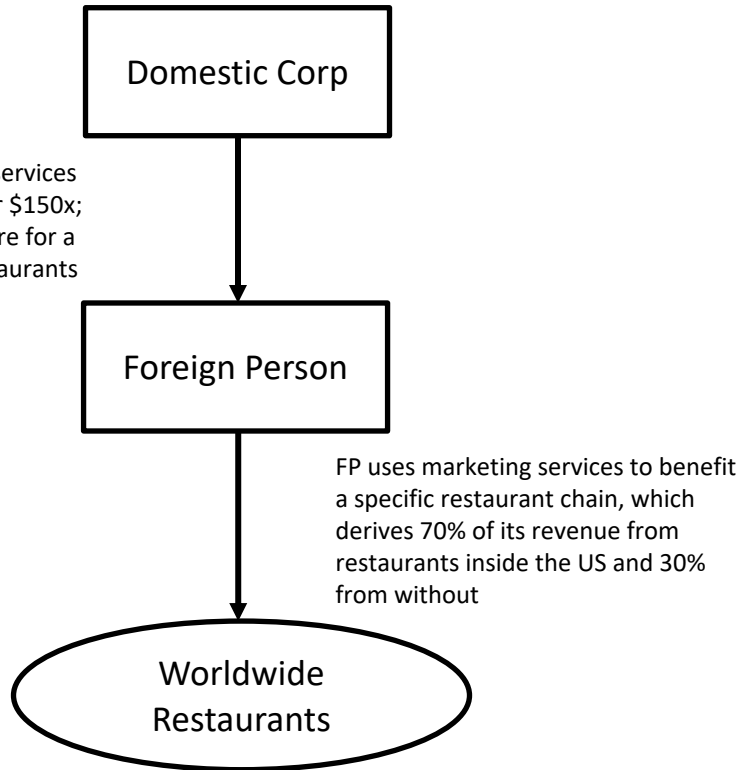
Example



- No domestic use prior to manufacture into second product
- Manufacture into second product occurs outside US
- FMV of general property does not exceed 20% of the FMV of the second product, making the general property a “component”
- Sale is a FDDEI Sale
- If price of general property was \$25x, it would not be a component unless it was subject to a physical and material change in the process of incorporation; thus, because of DC’s knowledge, no FDDEI Sale

FDDEI Services

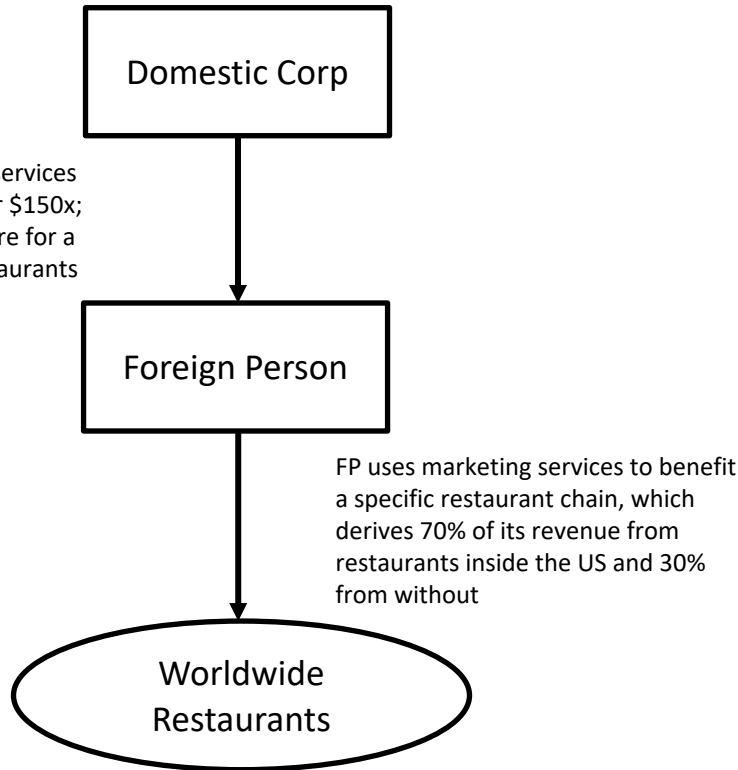
Provides marketing services to FP in exchange for \$150x; marketing services are for a specific chain of restaurants operated by FP



- Across all chains, 50% of FP's revenue is from restaurants outside the US and 50% from within the US (as determined from publicly available information)
- Because DC provides a service that provides a benefit to FP's operations in specific locations, and reliable information about the specific locations of the operations is available, DC must use that information to make determination.
- Percentage of gross income is reasonable method
- Thus \$45x ($.30 * 150x$) is an FDDEI Service

FDDEI Services

Provides marketing services to FP in exchange for \$150x; marketing services are for a specific chain of restaurants operated by FP



- In prior example, if the benefit conferred by DC benefited all of FP's operations, then DC can use 50-50 allocation
- In prior example, if DC cannot obtain reliable information about the specific chain of restaurants it benefits, then permissible to use public information and utilize 50-50 allocation

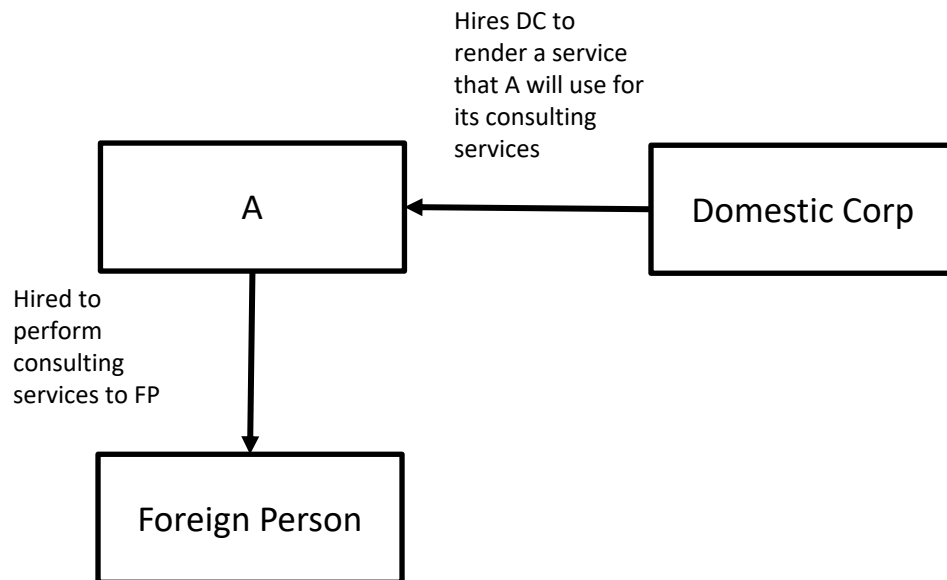
Deduction for FDII (Cont)

Property and Services Provided to Domestic Intermediaries

- 1) Property sold to another party (other than related party) for mfg or other “modification” w/in U.S. is not treated as sold for “foreign use”
- 2) Services provided to another party (other than related party) “located w/in U.S.” are not treated as provided to a person wrt property “not located w/in U.S.”

§250(b)(4)(B)(i)

Intermediary FDDEI Services



- DC's provision of a service to A is not a FDDEI Service
- A's provision of the consulting service to R likely is a FDDEI Service

Deduction for FDII (Cont)

Related Party Transaction – Sale of Property

Property sold to a “related party” not a U.S. person is treated as “foreign use” if:

the property is ultimately sold by a related party or

used by a related party in connection with property sold or provision of services to another person who is an unrelated party and not a U.S. person and the property is for foreign use.

§250(b)(5)(C)(i)

Deduction for FDII (Cont)

Related Party Transaction – Service

Services provided to a related party not located in U.S. are treated as provided to a person or wrt to property not located in U.S. if:

the service is not “substantially similar” to services provided by the related party to persons located in U.S.

§250(b)(5)(C)(ii)

Deduction for FDII (Cont)

Related party is a member of an “affiliated group” defined in §1504(a) with more than 50 percent linkages and without regarding exception for insurance companies or foreign corporations

§250(b)(4)(D)

FDII in a Nutshell

Amt of FDII Deduction: .375 FDII for TYs beg after 12/31/17 and before 1/1/26
§250(a)(1)(A)

§250 Deduction = .375 FDII + .50 (GILTI + Sec. 78 gross up attributable to GILTI)
§250(a)(1)

Amt of FDII Deduction for Tys beg after 12/31/2025: .21875 FDII
1.250(b)-1(b)(3)

FDII in a Nutshell (Cont)

Taxable Income Limitation:

§250 deduction \leq taxable income w/o §250 deduction

§1.250(a)-1(b)(2), §250(a)(2)

§250(a)(2) amt = (GILTI + FDII) – Taxable Income

(w/o §250 deduction but w regard to §163(j) and §172(a)

and ≥ 0

§1.250(a)-1(c)(4)

FDII in a Nutshell (Cont)

Reduction:

$$\frac{\text{Reduction in FDII}}{\text{\$250(a)(2) amt}} = \frac{\text{FDII}}{\text{FDII} + \text{GILTI}}$$

$$\text{Reduction in FDII} = \text{\$250(a)(2) amt} \times (\text{FDII} / \text{FDII} + \text{GILTI})$$

$$\text{Reduction in GILTI} = \text{\$250(a)(2) amt} - \text{Reduction in FDII}$$

§1.250(b)-1(b)(3)
§250(a)(2)(B)

FDII in a Nutshell (Cont)

Set of Basic Equations (14):

(1) (2)

A) $FDII = DII * FDR$

(1) (3) (4)

B) $DII = DEI - DTIR$

(3) (5) (6)

C) $DEI = \text{Gross DEI} - \text{PADs}$

(4) (7)

D) $\text{Gross DEI} = \text{Gross Income} - \text{Excluded Items ("EIs")}$

FDII in a Nutshell (Cont)

(7)

$$\text{E) EI} = \Sigma \left[\begin{array}{l} \text{Subpart F Inclusions} \\ 951(a)(1) \end{array} + \begin{array}{l} \text{GILTI} \\ 951A \end{array} + \begin{array}{l} \text{Financial Services Income} \\ 904(d)(2)(D) \end{array} + \text{Dividends from CFC} \right. \\ \left. + \begin{array}{l} \text{Foreign Branch Income} \\ 904(d)(2)(J) \end{array} + \begin{array}{l} \text{Domestic OGI} \\ 907(c)(1) \end{array} \right]$$

(4)

(8)

$$\text{F) DTIR} = .10(\text{QBAI})$$

(8)

4

(9)

$$\text{G) QBAI} = \frac{1}{4} \Sigma \text{ AB of STP (ADS) to Produce DEI}$$

1

FDII in a Nutshell (Cont)

(2) (10) (3)

H) $FDR = FDDEI/DEI$

(10) (11)

I) $FDDEI = \text{Gross FDDEI} - \text{PADs}$

(11)

J) $\text{Gross FDDEI} = \text{GI from FDDEI Sales} + \text{GI from FDDEI Services}$

(12) (5) (10)

K) $\text{Gross non-FDII} = \text{Gross DEI} - \text{Gross FDDEI}$

(5) (10) (12)

L) $\text{Gross DEI} = \text{Gross FDDEI} + \text{Gross Non-FDDEI}$

M) $(\text{FDII} + \text{GILTI (including gross up)}) - \text{Taxable Income w/o } \S 250 \text{ deduction} = \text{Excess}$

N) $\text{Reduction in FDII} = \text{Excess (FDII / FDII + GILTI)}$

§1.250(b)-1(b)

FDII in a Nutshell (Cont)

Key to Acronyms:

FDII – Foreign Derived Intangible Income

1) DII – Deemed Intangible Income

2) FDR – Foreign Derived Ratio

3) DEI – Deduction Eligible Income

4) DTIR – Deemed Tangible Income Return

5) Gross DEI – Gross Deduction Eligible Income

6) PADs – Properly Allocable Deductions

7) EIs – Excluded Items

8) QBAI – Qualified Business Asset Investment

9) STP – Specified Tangible Property

10) FDDEI – Foreign Derived Deduction Eligible Income

11) Gross FDDEI – Gross Foreign Derived Deduction Eligible Income

12) Gross Non-FDDEI – Gross Non Foreign Derived Deduction Eligible Income

Definitions from the Regulations

Definitions from the Regulations

(c)(2) Deduction Eligible Income (DEI)

Excess of Gross DEI over Properly Allocated Deductions (PADs)

≥ 0

(c)(3) Deemed Intangible Income (DII)

Excess of DEI over Deemed Tangible Income Return (DTIR)

§1.250(b)-1(c)

Definitions from the Regulations (Cont)

(c)(12) Foreign Derived Deduction Eligible Income (FDDEI)
= Gross FDDEI – Properly Allocable Deductions (PADs FDDEI)

(c)(13) Foreign Derived Ratio (FDR)
= FDDEI/DEI
 $1 \geq \text{FDR} \geq 0$

§1.250(b)-1(c)

Definitions from the Regulations (Cont)

(c)(14) Gross DEI

= Gross Income Excluding:

- i. Am't included as Subpart F Income §921(a)(1)
- ii. GILTI §951A (def. 1.250(a)-1(c)(3))
- iii. Financial Services Income §904(d)(2)(D), §1.904-4(e)(1)(iii)
- iv. Dividends from CFC
- v. Domestic OGI
- vi. Foreign Branch Income

§1.250(b)-1(c)

Definitions from the Regulations (Cont)

(c)(15) Gross FDEI
= Gross Income from FDDEI Transactions

(c)(16) Gross Non-FDEI
= Gross DEI – Gross FDDEI

§1.250(b)-1(c)

Definitions from the Regulations (Cont)

- (c)(17)(i) Modified Affiliated Group (MAG)
Affiliated Group defined in §1504(a)
using more than 50% rather than at least 80%
- (c)(17)(ii) Noncorporate Entities (e.g. partnerships) “controlled” by one or more members of a MAG or that “controls” any member is treated as a member of the MAG
- (c)(17)(iii) “Control” is defined by reference to §954(d)4)

§1.250(b)-1(c)

COGS and Apportionment of Deductions

COGS and Apportionment of Deductions

For purposes of computing “gross DEI” or “gross FDDEI” (gross income), COGS should be attributed to gross receipts “under any reasonable method”.

COGS with respect to a particular product may not be segregated into component costs and then the component costs attributed disproportionately to gross receipts excluded from gross DEI or gross FDDEI.

- §1.250(b)-1(d)(1)

COGS and Apportionment of Deductions (Cont)

(d)(2)(i)

Deductions properly allocable (PADs) to gross DEI or gross FDDEI.

Treat §250(b) (FDII) as an operative section described in §1.861-8(f).

Treat gross FDDEI and gross non-FDDEI as separate statutory groupings.

Treat items of gross income excluded from gross DEI as a residual group.

Apply allocation and apportionment rules of §1.861-8-14T and -17 without taking into account the “exclusive apportionment” rules under which 50% of deduction for R and E are apportioned to grouping where R and E activities were performed.

§1.250(b)-1(d)

Determination of Interrelated Deductions to be Allocated

Limitation of business interest deduction of 30 percent of “adjusted taxable income” is determined under §1.163(j)-1(b)(37)(ii) w/o regard to NOL deduction but with regard to the “tentative §250 deduction”.

“Tentative §250 deduction” for §163(j) limitation purposes is determined w/o regard to: §163(j) limitation on business interest, NOL deduction, and taxable income limitation of §250(a)(2).

Amt of NOL limited to 80 percent of “taxable income” is determined without regard to §250 deduction but with regard to §163(j) limitation on business interest.

Final §250 deduction is determined with respect to: interest expense limited by §163(j), NOL deduction as limited but w/o regard to the §250 deduction

§1.250(b)-1(d)(2)(ii)

Examples - §1.250(a) – 1(f)

Ex 1 – Taxable Income Limitation

DC

FDII = 100
GILTI = 300
Tax Inc w/o §250 = 300

Analysis:

- 1) Compute §250(a)(2) amt (Excess)
= (GILTI + FDII) – Tax Inc w/o §250
= (100 + 300) – 300
= 100

Examples - §1.250(a) – 1(f) (Cont)

Analysis:

2) Compute reduction in FDII
= §250(a)(2) amt * [FDII/(FDII + GILTI)]
= 100 X [100/(100+300)]
= 25
Reduced FDII = 100 – 25

3) Compute reduction in GILTI
= §250(a)(2) amt – reduction in FDII
= 100 – 25 = 75
Reduced GILTI = 300 – 75 = 225

See Part IV, Form 8993

Example 2 - §1.250(a) – 1(f)

Domestic Corporation DC: Deductions Limited by Taxable Income

Facts:

Gross DEI	300
Gross FDDEI	300
NOL	130
Business interest expense	100

Example 2 - §1.250(a) – 1(f) (Cont)

Assumptions:

No other gross income not reflected in gross DEI (no excluded items)

No interest expense carry forward

No other allowable deductions

No QBAI

No GILTI

No floorplan interest

No business income

Example 2 - §1.250(a) – 1(f) (Cont)

Analysis:

- A) Calculate “tentative §250 deduction” for purposes of applying §163(j)

To apply §163(j), the amount of the §250(a)(1) deduction is computed w/o regard to §163(j), §172 and reduction in GILTI and FDII under taxable income limitation.

§1.163(j)-1(b)(37) and §1.250(b)-1(d)(2)(ii)

Example 2 - §1.250(a) – 1(f) (Cont)

$$\begin{aligned} \text{DEI} &= \text{Gross DEI} - \text{properly allocable deductions} \\ &= 300 - 100 \\ &= \mathbf{200} \end{aligned} \qquad \text{§1.250(b)-1(c)(2)}$$

$$\begin{aligned} \text{FDDEI} &= \text{Gross FDDEI} - \text{properly allocable deductions} \\ &= 300 - 100 \\ &= \mathbf{200} \end{aligned} \qquad \text{§1.250(b)-1(c)(13)}$$

$$\text{FDR} = \text{FDDEI} / \text{DEI} = 200/200 = 1$$

Example 2 - §1.250(a) – 1(f) (Cont)

$$\begin{aligned}\text{Foreign derived ratio (FDR)} &= \text{FDDEI/DEI} \\ &= 200/200 = \mathbf{1}\end{aligned}$$

$$\begin{aligned}\text{DII} &= \text{DEI} - (.10 \text{ QBAI}) \\ &\quad \text{DTIR} \\ &= \mathbf{200}\end{aligned}$$

$$\begin{aligned}\text{FDII} &= \text{FDR} * \text{DII} \\ &= 1 * 200\end{aligned}$$

$$\begin{aligned}\text{Tentative} \\ \text{§250 Deduction} &= .375 * \text{FDII} && \text{§1.250(b)(13)} \\ &= .375 * 200 \\ &= \mathbf{75} && \text{§ 250(b)(1)}\end{aligned}$$

Example 2 - §1.250(a) – 1(f) (Cont)

B) **Calculation of disallowance under §163(j)**

The interest deduction allowed under §163(j) is determined with regard to the tentative §250 deduction but without regard to §172(a).

§163(j)(8)(A)(iii)

Example 2 - §1.250(a) – 1(f) (Cont)

B) Calculation of disallowance under §163(j) (Cont)

Deduction for business interest = .30(adjusted taxable income) + business income + floor plan financing interest
§163(j)(1)

Adjusted taxable income = taxable income + business interest expense
business interest income
NOL
depreciation and amortization
§250(b)(8)(A)

Example 2 - §1.250(a) – 1(f) (Cont)

B) Calculation of disallowance under §163(j) (Cont)

Adjusted
Taxable
Income = gross income – tentative §250 deduction
= 300 – 75
225

Allowable
Deduction = .30 (adjusted taxable income)
Allowable
deduction
for business
interest = .30 (225)
67.5

Deduction
for business
interest = < [business interest expense or limit]
= < [100 or 67.5]
67.5

Example 2 - §1.250(a) – 1(f) (Cont)

C) Calculation of NOL under §172(a)

NOL is computed taking into account §163(j) but without regard to §250(a).

§1.250(b)-1(d)(2)(ii)

$$\begin{aligned} \text{Limit NOL} &= \text{Gross income} - \text{\$163(j) deduction} \\ &= 300 - 67.5 \end{aligned}$$

$$\begin{aligned} \text{Limit NOL} &= .80 \text{ taxable income} \\ &= .80 (300 - 67.5) \\ &= \mathbf{186} \end{aligned}$$

Example 2 - §1.250(a) – 1(f) (Cont)

C) Calculation of NOL under §172(a) (Cont)

Actual NOL = 130
Allowable NOL = Lesser of [Actual NOL or .80 Taxable
Income]
Allowable NOL = < [130 or 186]
NOL Deduction = **130**

Example 2 - §1.250(a) – 1(f) (Cont)

D) Calculation of FDII

FDII is determined after taking into account deductions allowed under §§163(j) and 172(a).

$$\begin{aligned} \text{Allowable deductions} &= \quad \quad \quad \text{\$163(j) + \$172(a)} \\ &= \quad \quad \quad 67.5 \quad + \quad 130 \\ &= \quad \quad \quad \mathbf{197.5} \\ & \quad \quad \quad \text{1.250(b)-1(d)(2)(ii)} \end{aligned}$$

Example 2 - §1.250(a) – 1(f) (Cont)

D) Calculation of FDII (Cont)

$$\begin{aligned} \text{DEI} &= \text{Gross DEI - properly allocable deductions} \\ &= 300 - 197.5 \\ &= \mathbf{102.5} \end{aligned}$$

1.250(b)-1(c)(2)

$$\begin{aligned} \text{FDDEI} &= \text{Gross FDDEI – properly allocable} \\ &\quad \text{deduction} \\ &= 300 - 197.5 \\ &= \mathbf{102.5} \end{aligned}$$

1.250(b)-1(c)(12)

Example 2 - §1.250(a) – 1(f) (Cont)

D) Calculation of FDII (Cont)

$$\begin{aligned} \text{DII} &= \text{DEI} - \text{DTIR} \\ &= 102.5 \end{aligned} \qquad \text{250(b)(2)(A) and (B)}$$
$$\begin{aligned} \text{FDII} &= \text{FDR} * \text{DII} \\ &= 1 * 102.5 \\ &= \mathbf{102.5} \end{aligned}$$

Example 2 - §1.250(a) – 1(f) (Cont)

E) **Calculation of §250 deduction**

Deduction under §250 is determined after taking into account the taxable income limitation which is applied taking into account the §163(j) and §172(a) deductions.

Example 2 - §1.250(a) – 1(f) (Cont)

E) Calculation of §250 deduction (Cont)

Taxable income = gross income – (interest + NOL)

$$\begin{aligned}\text{Taxable income} &= 300 - (67.5 + 130) \\ &= \mathbf{102.5}\end{aligned}$$

Excess = FDII – Taxable income

$$= 102.5 - 102.5$$

$$\geq 0$$

$$= 0$$

No reduction in FDII

250(a)(2)

Example 2 - §1.250(a) – 1(f) (Cont)

E) Calculation of §250 deduction (Cont)

$$\begin{aligned}\text{Section 250(a)(1) deduction} &= .375 * \text{FDII} \\ &= .375 * 102.5 \\ &= \mathbf{38.44}\end{aligned}$$

Anti Avoidance Rule for Certain Transfers - §1.250(b)-2(h)(1)

Transactional Requirement:

A domestic corp is treated as owning certain transferred property for a “specified period” for determination of DTIR purposes if:

- 1) the domestic corp transfers STP to a “related party” with “a principal purpose” of decreasing the amount of DTP within the “disqualified period”, and
- 2) either the domestic corp or a “FDII eligible related party” leases the “same or substantially the same property” from any “specified related party”.

The “specified period” of ownership of the transferred property is the later of the beginning of the term of lease or date of transfer until the earlier of the end of the lease or the recovery period of the property.

Anti Avoidance Rules (Cont)

Deemed Satisfaction of Transactional Requirement:

Structured arrangements with unrelated party (transfers to or leases from) are treated as transfers to or leases from a related party. §1.250(b)-2(h)(2)

Structured arrangement exists if either:

- 1) the reduction in DTIR of the domestic operation is a “material factor” in the pricing of the arrangement with the unrelated transferee, or
- 2) the reduction in the DTIR of the domestic operation is a “principal purpose” of the arrangement based on “all the facts and circumstances.”

Anti Avoidance Rules (Cont)

A Principle Purpose:

Facts and circumstances that indicate a principal purpose include:

- A) Marketing of the arrangement as tax advantageous where some or all of the tax advantage derives from the reduction in DTIR;
- B) Primarily marketing of the arrangement to domestic corporations that earn FDII;
- C) Features that alter the terms of the arrangement in the event a reduction in DTIR is no longer relevant; or
- D) Below market return absent the tax effects or benefits resulting from a reduction in DTIR.

1.250(b)-2(h)(2)

Anti Avoidance Rules (Cont)

Per Se Rule:

A transfer of property to a “specified related party” (including a deemed specified related party) followed by a lease of the same or substantially similar property by the domestic corporation (or FDII eligible related party) from a specified related party (or deemed specified related party) made within a six month period is per se treated as occurring pursuant to a principal purpose of decreasing the DTIR of the domestic corporation.

1.250(b)-2(h)(3)

Anti Avoidance Rule (Cont)

Key Definitions for Transactional Requirement:

- i) “Disqualified period” is the period beginning one year before the date of transfer and ending the earliest of the end of the recovery period or one year after the date of the transfer.

- ii) “FDII eligible related party” is a member of the same consolidated group as the corporation or a partnership at least 80% of the interests of which are owned by the domestic corporation or one or more members of the consolidated group.

1.250(b)-2(h)(3)

Anti Avoidance Rule (Cont)

Key Definitions for Transactional Requirement (cont):

iii) “Specified related party” is a related party (defined in §1.250(b)-1(c)(19)) other than an FDII eligible related party.

iv) “Transfer” is any disposition, exchange, contribution or distribution of property.

A transfer of an interest in a partnership is treated as a transfer of the assets of the partnership.

Termination of a lease of property treated as owned by the leasee is on the termination (or lapse) of the lease treated as a transfer by the leasee.

1.250(b)-2(h)(3)

Components of FDDEI Transactions

Transactions with Multiple Elements - §1.250(b) – 2(e)

A Transaction with multiple elements (sales and services components) is classified according to its overall predominate character.

Treatment of Certain Loss Transactions - §1.250(b) – 2(f)

Deemed FDDEI Transaction:

If a seller or renderer does not satisfy the documentation requirement with respect to property sold to a foreign person for foreign use or “general services” provided to a person located outside the United States and the seller or renderer knows or has reason to know the status of customer, the transaction is deemed to be an “FDDEI transaction” in situations where not so treating the transaction would otherwise increase the FDDEI of the seller or renderer.

The determination of the effect of loss transactions on FDDEI is done transaction by transaction.

FDDEI Transactions - §1.250(b) – 3

Definitions: 1.250(b)-3(b)

- (5) “Recipient” is the person that purchases the property or services from the “seller” or “renderer”.
- (6) “Renderer” is the person that provides a service to a “recipient”.

FDDEI Transactions - §1.250(b) – 3 (Cont)

Definitions: 1.250(b)-3(b) – (Cont)

- (8) “Seller” is the person that sells property to a “recipient”.
- (7) Sale is any sale, license, exchange or disposition of property.

FDDEI Transactions - §1.250(b) – 3 (Cont)

Definitions: 1.250(b)-3(b) – (Cont)

- (3) “General property” is any property other than
- i) intangible property;
 - ii) security (as defined in §475(c)(2); or
 - iii) commodity (defined in §475(e)(2)(B) through (D).

FDDEI Transactions - §1.250(b) – 3 (Cont)

Definitions: 1.250(b)-3(b) – (Cont)

- (4) Intangible property is property defined in §367(c)(4), apparently property listed in §936(h)(3)(B):
- i. patent, invention, formula, process, design, pattern or knowhow;
 - ii. copyright, literary, musical or artistic composition;
 - iii. trademark, trade name, or brand name;
 - iv. franchise, license, or contract;
 - v. method, program, system, procedure, campaign, survey, study, forecast, estimate, customer list, or technical data;
 - vi. any goodwill, going concern value, or workforce in place (including its composition and terms and conditions (contractual or otherwise) of its employment); or
 - vii. any other item the value or potential value of which is not attributable to tangible property or the services of any individual.

FDDEI Transactions - §1.250(b) – 3 (Cont)

Definitions: 1.250(b)-3(b) – (Cont)

- (1) “FDII filing date” is the date the seller or renderer is required to file an income tax return in the taxable year in which the gross income from the sale or provision is included in gross income of the seller or renderer.

FDDEI Transactions - §1.250(b) (Cont)

“International transportation property” is aircraft, railroad rolling stock, vessels, motor vehicles or similar mode of transportation and is capable of travelling internationally.

1.250(b)-4(d)(2)(ii)(C)

FDDEI Transactions - §1.250(b) (Cont)

Summary of Types of Property

Potentially eligible for FDDEI Sale of Property

General Property

Intangible Property

1.250(b)-4(b)

Ineligible for FDDEI Sale of Property

Security Defined in §475(c)(2)

Commodity defined in §475(e)(2)(B) through (D)

FDDEI Transactions - §1.250(b) – 3 (Cont)

Foreign Military Sales: 1.250(b)-3(c)

“Foreign military sales” are sales of property or services to the United States (or instrumentality thereof) under 22 U.S.C. 271 et seq. where the United States purchases the property for resale or on-service, “on commercial terms”, to foreign government agency or instrumentality thereof, and the contract between the seller or renderer and the United States so provides.

FDDEI Transactions - §1.250(b) – 3 (Cont)

Reliability of Documentation: 1.250(b)-3(d)

Documentation is “reliable” if:

- 1) As of the “FDII filing date”, the seller or renderer does not know or does not have reason to know the documentation is unreliable or incorrect, i.e. its knowledge of all relevant facts or statements in the documentation is such that a reasonably prudent person in the position of seller or renderer would question the accuracy or reliability of the documentation;

FDDEI Transactions - §1.250(b) – 3 (Cont)

Reliability of Documentation: 1.250(b)-3(d) (Cont)

Documentation is “reliable” if:

- 2) Documentation is obtained by the seller or renderer by the “FDII filing date” and;
- 3) Documentation is obtained no earlier than one year before the date of the sale or service.

FDDEI Sales - §1.250(b) – 4(b)

Definition of FDEI sale:

Except for a sale to a related party, FDEI sale means a sale of “general property” or “intangible property” to a “foreign person” for “foreign use”.

Definition of Foreign Person - §1.250(b) – 4(c)(i)

A recipient is a “foreign person” only if:

- 1) the seller establishes the status of the recipient by obtaining documentation that meets the reliability requirements and
- 2) as of the FDII filing date, the seller does not know or have reason to know that the recipient is not a “foreign person.”

Definition of Foreign Person - §1.250(b) – 4(c)(i) (Cont)

Seller establishes the status of a recipient as a “foreign person” by obtaining one or more of the following types of documentation:

- A) Written statement of the recipient that the recipient is a foreign person;

- B) If the recipient is an entity, documentation establishes that the entity is organized or created under the laws of a foreign jurisdiction;

Definition of Foreign Person - §1.250(b) – 4(c)(i) (Cont)

- C) If the recipient is an individual, any valid identification issued by a foreign government (or agency) typically used for identification purposes;
- D) Documents filed with a government (or agency or instrumentality thereof) that reflects the foreign jurisdiction of organization or residence of the entity; or
- E) Any other forms of documentation presented in forms, instructions or other guidance.

Special Rule for Small Businesses - §1.250(b) – 4(c)(ii)(A)

If the seller receives less than \$10,000,000 in gross receipts, seller may establish the status of any recipient as a foreign person for a taxable year by the shipping address outside the United States.

Special Rule for Small Transactions - §1.250(b) – 4(c)(ii)(B)

If a seller receives less than \$5,000 in gross receipts in a taxable year from a recipient, seller may establish its status of the recipient as a foreign person by the shipping address outside the United States.

Foreign Use for General Property - §1.250(b) – 4(d)

Sale of “general property” is for “foreign use” only if:

- 1) Seller establishes that the property is for “foreign use” by obtaining documentation or the foreign use that meets the “reliability requirements” as of the “FDII filing date” and
- 2) Seller does not know or have reason to know the property is not for a “foreign use”.

§1.250(b)-4(d)(1)

Determination of Foreign Use - §1.250(b) – 4(d)(2)

Except for transportation property, the sale of “general property” is for “foreign use” if:

- A) Property is not subject to “domestic use” within 3 years of the date of delivery, or
- B) Property is subject to manufacture, assembly or other processing outside the U.S. before being subject to “domestic use”.

§1.250(b)-4(d)(2)(i)

Determination of Domestic Use - §1.250(b) – 4(d)(2)(ii)

Except for transportation property, “general property” is subject to domestic use if:

- A) Property is subject to any use, consumption or disposition within the United States, or
- B) Property is subject to manufacture, assembly or other processing within the United States.

Determination of Manufacture, Assembly or Other Processing - §1.250(b) – 4(d)(2)(iii)

In general, “general property” is subject to “manufacture, assembly or other processing” only if the property is “physically or materially changed” or “incorporated as a component into a second product.”

Determination of Manufacture, Assembly or Other Processing - §1.250(b) – 4(d)(2)(iii)

General property is not considered subject to physical or material change if it is subject only to “minor assembly, packaging or labeling.”

General property is treated as a component incorporated into a second product only if the FMV of the component delivered to the recipient constitutes no more than 20% of the FMV of the second product when completed.

Foreign Use of Transportation Property

Transportation property is for a foreign use only if during a 3 year period from date of delivery:

- 1) the property is located outside the United States more than 50% of the time, and
- 2) more than 50% of the miles transited were outside the United States.

Transportation property is deemed to be within the United States at all times during which the property is engaged in transport between two points within the United States except for “uninterrupted international air transportation.” §4262(c)(3)

1.250(b)-4(d)(2)(ii)(C)

Documentation of Foreign Use of General Property – §1.250(b) – 4(d)(3)(i)

Except for “small businesses” or “small transactions”, a seller establishes that “general property” (or a portion of a class of fungible general property) is for “foreign use” if the seller obtains one or more of the following types of documentation.

With respect to the sale:

- A) Written statement from the recipient (or related party of the recipient) that provides use or intended use of the recipient to a “foreign use”;

Documentation of Foreign Use of General Property –
§1.250(b) – 4(d)(3)(i) (Cont)

- B) binding contract between seller and recipient that provides the use or intended use of the recipient is foreign use;
- C) except for “international transportation property”, documentation of shipment of “general property” to location outside the United States e.g. copy of export bill of lading, certificate of lading by customs office in country of delivery issued by carrier which delivered the property;

Documentation of Foreign Use of General Property –
§1.250(b) – 4(d)(3)(i) (Cont)

- D) Any other form of documentation prescribed in forms, instructions, or other guidance.

Special Rules of Documentation – Small Businesses:
§1.250(b) – 4(d)(3)(ii)(A)

Small Businesses:

If the seller receives less than \$10,000,000 in gross receipts in the prior taxable year, foreign use of the sale of “general property” is established by a shipping address of the recipient outside the United States.

Special Rules of Documentation – Small Transactions:
§1.250(b) – 4(d)(3)(ii)(B)

Small Transactions:

If the seller receives less than \$5,000 in gross receipts from a recipient, foreign use of the sale of “general property” is established by a shipping address of the recipient outside the United States.

Sales of “Fungible Mass” of “General Property”
§1.250(b) – 4(d)(3)(iii)

Fungible Mass:

Where sales of multiple items of “general property” of a fungible nature cannot reasonably be specifically traced to a location or use, alternatives to documentation are available based on:

- marketing research
- statistical sampling
- economic modeling
- similar methods

If seller establishes 90% or more is foreign use, entire fungible mass is foreign use.

If less than 10% is foreign use, none of the fungible mass is foreign use.

Foreign Use of Intangible Property
§1.250(b) – 4(e)(1)

Foreign Use of Intangible Property:

A sale of “intangible property” is for “foreign use” if:

- 1) seller obtains documentation that meets the reliability requirement as of the FDII filing date;
- 2) seller does not know or have reason to know that the portion of the sale documented as foreign use is not for a foreign use.

Determination of Foreign Use of Intangible Property §1.250(b) – 4(e)(2)(i)

Within and Without United States:

A sale of intangible property rights providing for exploitation w/l and w/o the United States is for foreign use in proportion to revenue generated w/o the United States to total revenues from the sale.

Intangible property used in the development, manufacture, sale or distribution of a product is treated as exploited at the location of the end user.

Sales of Intangible Property for Periodic Payments
§1.250(b) – 4(e)(2)(i)(ii)

Periodic Payments:

In case of sale of intangible property to a foreign person for periodic payments, foreign use is determined on an annual basis based on actual revenue earned by the recipient in the year in which the payment is received.

Documentation of Foreign Use of Intangible Property §1.250(b) – 4(e)(3)(i)

Documentation:

Foreign use of “intangible property” is established by one or more of the following types of documentation:

- A) Written statement from recipient providing amount of annual revenue from sales or sublicense of the intangible property or sales of products with respect to which the intangible property is used outside the United States and total amount worldwide;

Documentation of Foreign Use of Intangible Property (Cont)
§1.250(b) – 4(e)(3)(i)

- B) Binding contract for sale of intangible property to be exploited solely outside the United States;
- C) Audited financial statement or annual reports of recipient stating the annual revenue earned within and without the United States from the sale of products with respect to which the intangible property was used;

Documentation of Foreign Use of Intangible Property (Cont)
§1.250(b) – 4(e)(3)(i)

- D) Any statements or documents used by seller and recipient to determine the payment due for exploitation of IP if the statement provides reliable data on revenue earned within and without the United States; or
- E) Any other forms of documents presented in forms, instructions or other guidance.

Certain Sales to Foreign Unrelated Parties
§1.250(b) – 4(e)(3)(ii)

Use of Reasonable Projections:

In circumstances where seller is unable to obtain documentation without undue burden, seller may determine foreign use through reasonable projections of amount and location of revenue reasonably expected from the exploitation of the IP.

Documentation for Sales of IP for Lump Sum
§1.250(b) – 4(e)(3)(iii)

Lump Sum:

Foreign use for IP sold for a lump sum is established through documentation containing reasonable projections of amount and location of revenue seller would have reasonably expected from the exploitation of the IP.

The projections must be consistent with the financial data and projections used by the seller to determine the price charged to the foreign recipient.

FDDEI Services §1.250(b) – 5(b)

“FDDEI service” with respect to a person or property outside the United States is the provision of:

- 1) “General service” to a consumer located outside the United States;
- 2) “General service” to a business recipient located outside the United States;
- 3) “Proximate service” to a recipient located outside the United States;
- 4) “Property service” with respect to tangible property located outside the United States; and
- 5) “Transportation service” to a recipient or with respect to property located outside the United States.

Definitions Relating to FDDEI Services

§1.250(b) – 5(c)

- 2) “Business recipient” is a recipient other than a consumer.
- 3) “Consumer” is a recipient who is an individual purchasing a “general service” for personal use.
- 4) “General service” means any service other than a “proximate service” or “transportation service”.
- 5) “Property service” is a service other than a “transportation service” provided with respect to tangible property but only if substantially all (>80%) of the service is performed at or near the location of the property and results in the “physical manipulation” of the property e.g. assembly, maintenance or repair.

Definitions Relating to FDDEI Services (Cont)

§1.250(b) – 5(c)

- 6) Proximate service is a service, other than a property service or transportation service, provided to a recipient but only if substantially all (>80%) of the service is performed in the physical presence of the recipient or in the case of a business recipient, the employees.

- 7) Transportation service is a service to transport a person or property using aircraft, railroad, vessel, motor vehicle or similar mode.

General Services Provided to Consumers
Located Outside the United States - §1.250(b) – 5(d)(1)

A “general service” is provided to a “consumer” “located” outside the United States only if the renderer obtains documentation that meets the “reliability requirements” as of the FDII filing date and the renderer does not know or have reason to know the consumer is “located” within the United States.

The consumer is located where the consumer resides at the time the service is provided.

Documentation of Location of Consumer
§1.250(b) – 5(d)(3)(i)

A renderer establishes the location of consumer outside the United States by one or more of the following types of documentation:

- A) Written statement of consumer that he/she resides outside the United States at the time the service is provided;
- B) Any valid ID issued by a foreign government (or agency) typically used for identification;
- C) Any other documentation prescribed in instructions or other guidance.

Special Rules for Small Businesses
§1.250(b) – 5(d)(3)(ii)(A)

Small Businesses:

A renderer that receives less than \$10,000,000 in gross receipts during the prior taxable year establishes location of consumer outside the United States by the billing addresses of the consumer.

Special Rules for Small Transactions §1.250(b) – 5(d)(3)(ii)(B)

Small Transactions:

A renderer that receives less than \$5,000 in gross receipts during the taxable year from a consumer establishes the location of the consumer outside the United States by the billing address of the consumer.

General Services Provided for Business Recipients §1.250(b) – 5(e)(1)

A “general service” is provided to a “business recipient” located outside the United States only if:

- 1) the renderer provides documentation that meets the reliability requirements as of the FDII filing date; and
- 2) the renderer does not know or have reason to know that the portion of the service documented as provided to a recipient outside the United States is provided to a business located within the United States.

Location of Business Recipient
§1.250(b) – 5(e)(2)(i)

Location Determined by Allocation of Gross Income:

A business recipient is located outside the United States to the extent gross income of the renderer is allocated to the operations of the business recipient outside the United States.

Determination of Business Operations that Benefit from a Service §1.250(b) – 5(e)(2)(i)(A)

Services Benefiting Operations in Several Locations

If the renderer provides services that benefit operations of the business recipient in several locations, gross income of the renderer is allocated (under any method that is reasonable) to operations outside the United States of the recipient to the extent benefit of the service is conferred to operations outside the United States.

For reasonable methods, see Treas. Reg. §1.482-9(k) describing factors including total service costs, assets, sales, compensation, space used and time spent and general practices.

A business recipient is treated as having operations in any location where it maintains an office or other fixed place of business.

Determination of Business Operations that Benefit from a Service
(Cont)

§1.250(b) – 5(e)(2)(i)(A)

Ratable Allocation in Absence of Reliable Information:

If the renderer is unable to obtain reliable information regarding the specific location of the operations of the recipient to which benefit is conferred or service does not confer a benefit to a specific location but to all locations, gross income of the renderer is allocated ratably among the operations of the recipient.

Documentation of Location of Business Recipient of Service §1.250(b) – 5(e)(3)(ii)

A renderer establishes that a business recipient is located outside the United States and the allocation of income among locations by one or more of the following types of documentation:

- A) Written statement that specifies the locations of the operations of the business recipient that benefits from the service;
- B) Binding contract that specifies the location of the operation of the recipient that benefits;

Documentation of Location of Business Recipient (Cont)
§1.250(b) – 5(e)(3)(ii)

- C) Documentation obtained in the ordinary course of provision of the service that specifies the locations of the operations of the recipient that benefits;
- D) Publically available information that establishes the location of the operations of the recipient;
- E) Any other forms of documentation prescribed in forms, instructions or other guidance.

Special Rule for Small Businesses

§1.250(b) – 5(e)(3)(ii)(A)

A renderer that receives less than \$10,000,000 in gross receipts in a prior taxable year establishes that a business recipient of service is located outside the United States by the billing address of the recipient outside the United States.

Special Rule for Small Transactions

§1.250(b) – 5(e)(3)(ii)(B)

A renderer that receives less than \$5,000 in gross receipts from services provided to a business recipient in the taxable year establishes the location outside the United States by the billing address of the recipient outside the United States.

Location of Proximate Service §1.250(b) – 5(f)

A “proximate service” is provided to a recipient located outside the United States if the service is performed (in presence of recipient of consumer employees of business recipient) outside the United States.

In case of a “proximate service” performed partly within and partly without the United States, the location is apportioned by time the renderer spends providing the service within and without the United States.

Location of Property Service §1.250(b) – 5(g)

A “property service “is treated as provided with respect to tangible property located outside the United States only if the property is located outside the United States during the duration of the service.

Location of Transportation Services §1.250(b) – 5(h)

A transportation service is provided to a recipient or with respect to property located outside the United States only if both the origin and destination of the service are outside the United States.

If either the origin or destination is outside the United States, but not both, 50% of the service is treated as located outside the United States.

Related Party Transactions

§1.250(b) – 6

Definitions

1.250(b)-6(b)(1) through (5)

- 1) “Foreign related party” is a foreign person that is a related party of the seller.
- 2) “Foreign unrelated party” is a foreign person that is not a related party of the seller.
- 3) “Related party sale” is a sale of general property to a “foreign related party.”

Related Party Transactions (Cont)

§1.250(b) – 6

- 4) Related party service is a provision of general service to business recipient that is a related party of the renderer.

- 5) Unrelated party transaction with respect to property purchased in a related party sale from a seller means:
 - i) Sale of property by a foreign related party to a foreign unrelated party with respect to seller;

Unrelated Party Transactions (Cont)

§1.250(b) – 6(b)(5)

- ii) Sale of property by a foreign related party to a foreign unrelated party with respect to seller if the property sold in the related party sale is a component of the property sold to the foreign unrelated party;
- iii) Sale of property by a foreign related party to a foreign unrelated party with respect to seller if the property sold in the related party sale is used in connection with the property sold to foreign unrelated party; and

Unrelated Party Transactions (Cont)

§1.250(b) – 6(b)(5)

- iv) Provision of service by foreign related party to foreign unrelated party with respect to seller if the property is sold in the related party sale was used in connection with the service.

Related Party Sale §1.250(b) – 6(c)(1)

A related party sale (other than a sale of intangible property) is a FDDEI sale if:

- i) Unrelated transaction occurs with respect to the property purchased in the related party sale on or before the FDII filing date (or if after the FDII filing date by an amended return filed within the period of limitation), or

Related Party Sale (Cont)

§1.250(b) – 6(c)(1)

- ii) As of the FDII filing date, the seller in the related party sale reasonably expects that one or more unrelated party transactions will occur with respect to the property purchased in the related party sale and more than 80% of revenue earned by the foreign related party with respect to the property will be earned from unrelated party transactions.

Treatment of Foreign Related Party as Seller or Renderer §1.250(b) – 6(c)(2)

For transactional qualification purposes, the foreign related party is treated as the seller or renderer.

In case of an unrelated party transaction, the seller in the related party sale must obtain the required documentation.

Treatment of Transactions between Foreign Related Parties §1.250(b) – 6(c)(3)

In the case of transactions between foreign related parties, all are treated as a single foreign related party.

Related Party Services §1.250(b) – 6(d)(1)

Not Substantially Similar:

Generally, a related party service is a FDDEI service only if the related party service is not “substantially similar” to a service provided by the related party to a person located within the United States.

Related Party Services (Cont)

§1.250(b) – 6(d)(1)

If the (< 60% or more price) exception applies, the amount of gross income from the related party service attributed to FDDEI is:

$$\begin{array}{l} \text{Gross income} \\ \text{from related} \\ \text{party service} \end{array} \quad \times \quad \begin{array}{l} \text{sum of benefits conferred} \\ \text{by related party} \\ \text{service not in United States} \\ \hline \text{sum of all benefits} \\ \text{conferred by the related} \\ \text{party service} \end{array}$$

The above apportionment rule applies only to a general service provided to a business recipient.

Substantially Similar Services §1.250(b) – 6(d)(2)

A related party service is “substantially similar” to service provided by the related party to persons located within the United States if either:

- i) 60% or more of the benefits are conferred by the related party service on persons located within the United States, or
- ii) 60% or more of the price paid by persons located within the United States for the service provided by the related party is attributable to the related party service.

Location of Recipient of Services Provided by Related Party §1.250(b) – 6(d)(3)

Location of consumer or business recipient with respect to related party service is the same as for unrelated party service.

Documentation Requirements

- §1.250(b) – 3(d): Reliability of documentation
 - To be reliable, must meet each of the following:
 - As of the FDII filing date (date the return is due for the transaction), the taxpayer does not know and does not have reason to know that the documentation is unreliable or incorrect
 - The documentation is obtained by the taxpayer by the FDII filing date
 - The documentation is obtained no earlier than one year before the date of the sale or service

Documentation Requirements

	FDEEI Sales		
	Foreign person	Foreign use (General Property)	Foreign use (IP)
Documentation Requirement	Written statement by recipient	Written statement from the recipient	Written statement from the recipient stating revenue generated from exploitation both
	For entities, documentation that entity is established outside the United States	A binding contract between the parties providing foreign use	A binding contract stating exploitation can only be outside the US
	For individuals, valid ID issued by a foreign government	Documentation of shipment of the general property to a location outside the US	Audited financial statements
	Documents filed with a government that provide foreign jurisdiction	Any other forms prescribed by the Secretary	Statements or documents used by seller and recipient used to determine payments due from sales within and without the US
	Any other forms prescribed by the Secretary	For small businesses only (less than \$10M in gross receipts during prior taxable year) can establish foreign use if seller's shipping address for the recipient is outside the US	Any other forms prescribed by the Secretary
	For small businesses only (less than \$10M in gross receipts during prior taxable year) can establish foreign recipient by seller's shipping address for the recipient	For small transactions (less than \$5k in gross receipts from a recipient) can establish if the seller's shipping address for recipient is outside the US	
	For small transactions (less than \$5k in gross receipts from a recipient) can establish foreign recipient by the seller's shipping address for the recipient		

Documentation Requirements

	FDEEI Services		
	General Services to Consumers	General Services to Business Recipient	Property, Transportation and Proximate Services (Consumer or Business Recipient)
Documentation Requirement	Written statement by the consumer	Written statement by the business recipient	Not specified in the regulations;
	Valid ID issued by a foreign government	a binding contract that specifies the locations of the operations of the business recipient that benefit from the service	
	Any other forms prescribed by the Secretary	Documentation obtained in the ordinary course of the provision of services that specifies	
	For small businesses only (less than \$10M in gross receipts during prior taxable year) can establish foreign recipient by seller's billing address for the recipient	Publicly available information	
	For small transactions (less than \$5k in gross receipts from a recipient) can establish foreign recipient by the seller's billing address for the recipient	Any other forms prescribed by the Secretary	
		For small businesses only (less than \$10M in gross receipts during prior taxable year) can establish foreign recipient by seller's billing address for the recipient	
		For small transactions (less than \$5k in gross receipts from a recipient) can establish foreign recipient by the seller's billing address for the recipient	

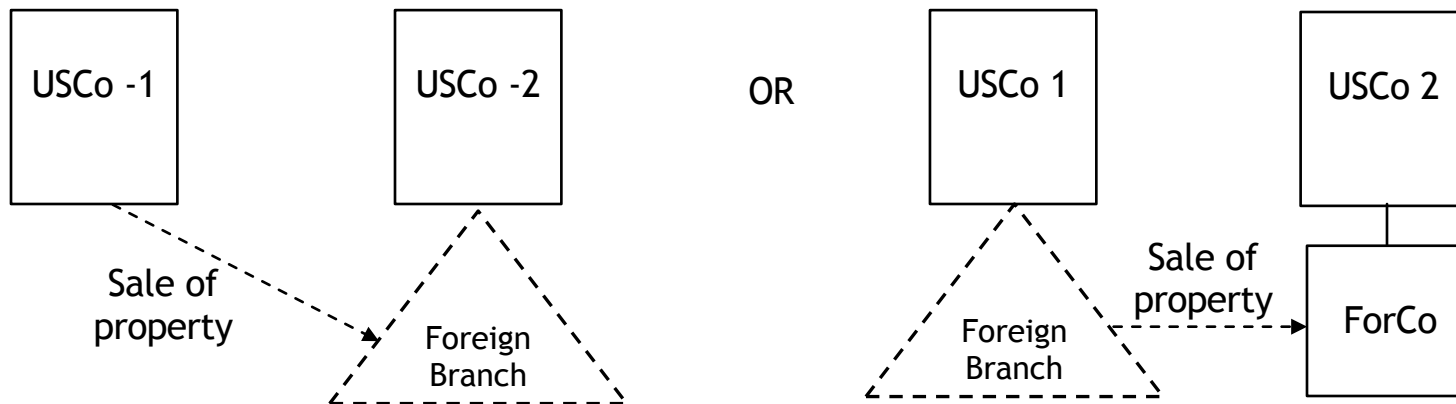
-Fact Patterns-

Deduction for FDII

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Fact Pattern 1 -

Sales to Foreign Branch of U.S. Corporation

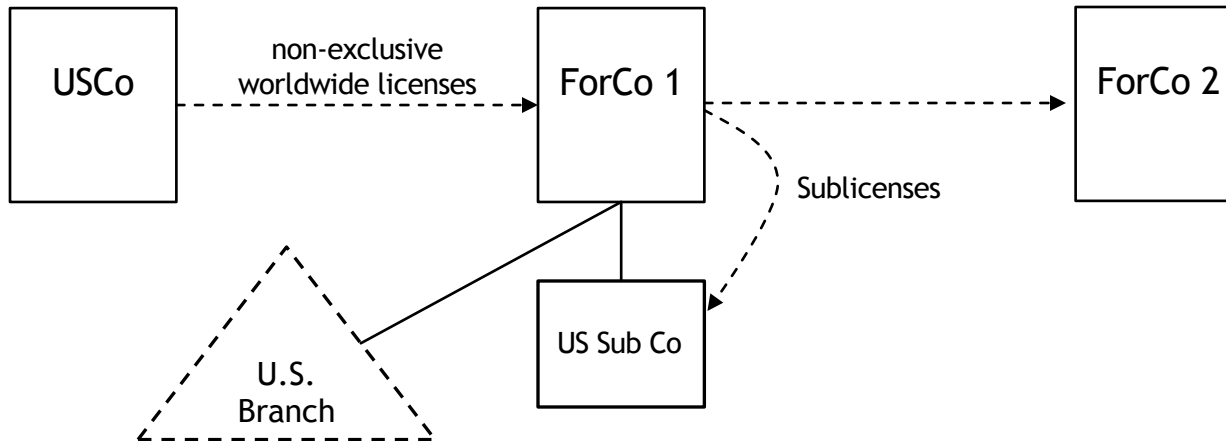


FDDEI is DEI from sale of property to person that is not a U.S. person for foreign use. §250(b)(4)(A) and (b)(5)(A) and §7701(a)(30)

Gross income attributed to foreign branch of seller is excluded from DEI. § 250(b)(3)(A)(i)(VI)

Fact Pattern 2 -

License to Foreign Corporation for Sublicense to U.S. Subsidiary



License is a sale of intangible property.
§250(b)(5)(E).

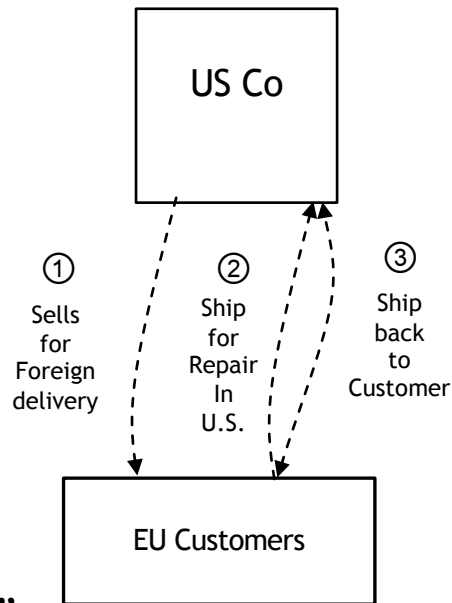
IP must be for foreign use.
§250(b)(4)(A)(ii) and (5)(A).

§ 250(b)(4)(A) and (b)(5)(A) and (E)

Fact Pattern 3 -

Repair Services for Foreign Customers

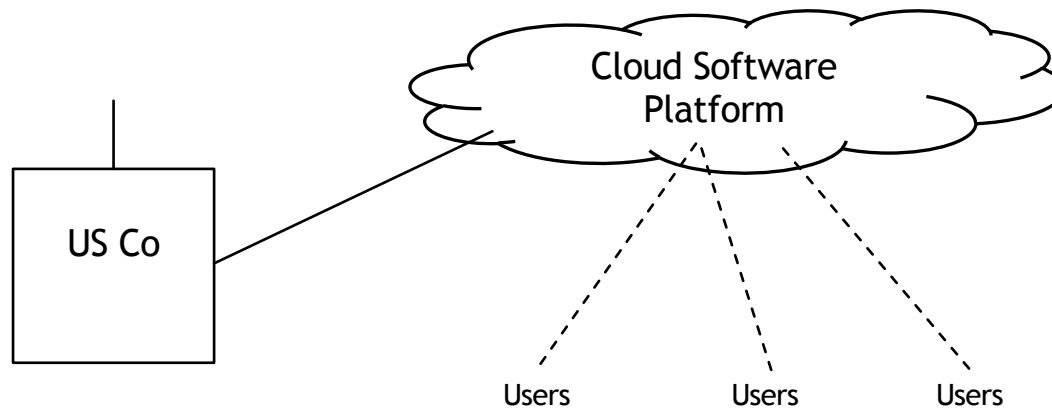
The service is a “property service” i.e. performed at or near location of property. §1.250(b)-5(e).
Service is not an “FDDEI service” because property is not located outside the United States. §1.250(b)-5(b).



§ 250(b)(4)(B) and (b)(5)(A)

Fact Pattern 4 -

Cloud Services (SaaS) For Customers Worldwide



SaaS is a “general service” to a consumer or business recipient that must be located outside the United States. Consumer is located at his/her residence. 1.250(b)-5(d)(1).

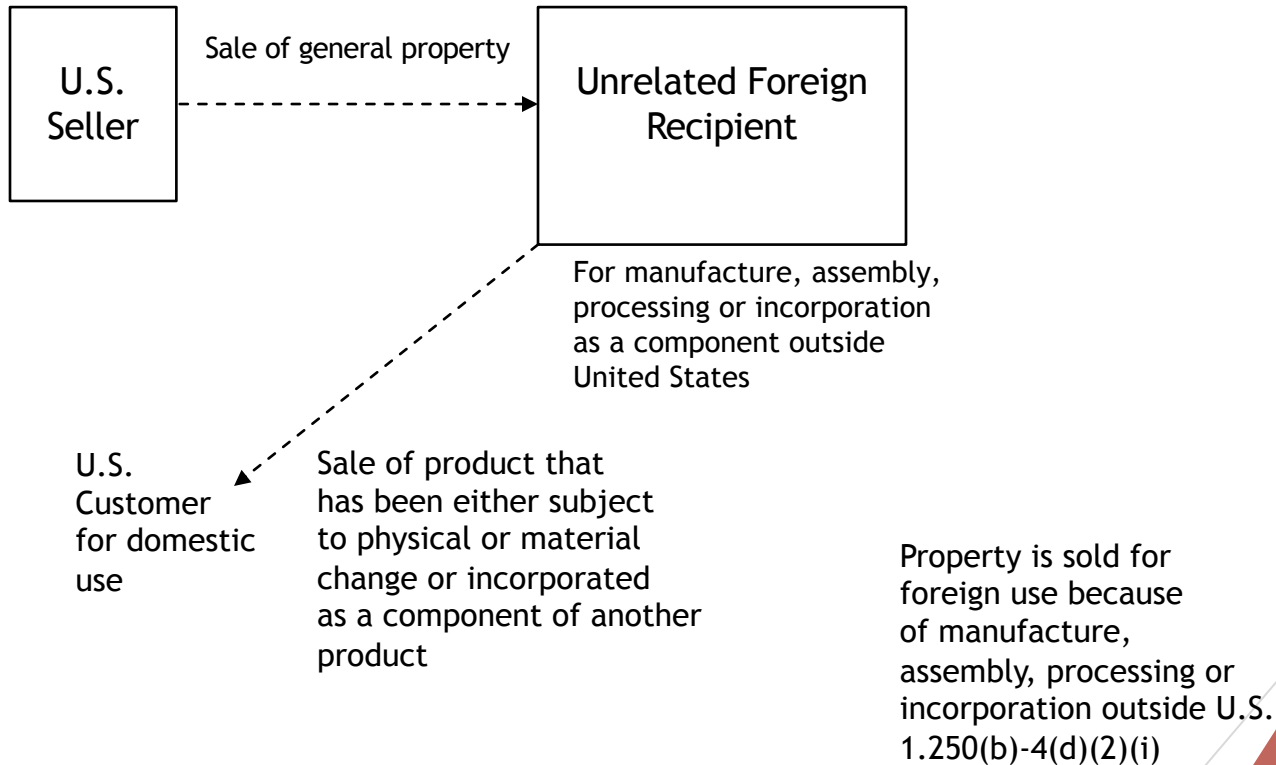
Business recipient is located outside the United States to extent gross income is allocated to business operations.

1.250(b)-5(e)(2)(i).

§ 250(b)(4)(B)

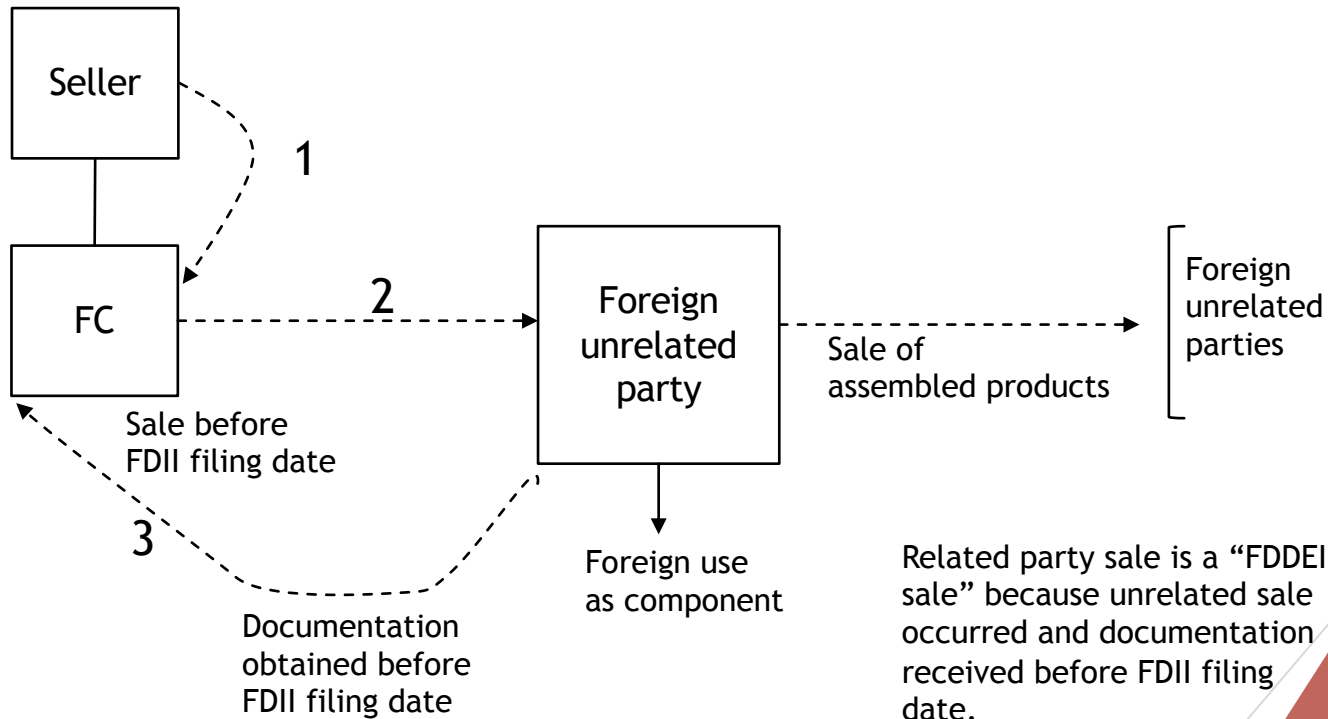
Fact Pattern 5 -

Round Trip Transaction



Fact Pattern 6 -

Related Party Sale



Related party sale is a “FDDEI sale” because unrelated sale occurred and documentation received before FDII filing date.

1.250(b)-6(c)(1)and(2)
1.250(b)-6(b)(5)(ii)

Example - §1.250(b) – 1(d)(3)

Assumed facts for example:

- A) DC is a domestic corporation
DC is not a member of a consolidated group
- B) All sales and services are to persons that are not related parties
- C) All sales and services to foreign persons qualify as FDDEI transactions

Example 1 - §1.250(b) – 1(d)(3)

Allocation and Apportionment of Deductions

Facts:

- DC manufactures products A and B in U.S.
- DC sells products A and B and provides services associated with products A and B.
- QBAI 1,000
- Business interest expense 300
- Business assets (tax book value) 2,500*
- Supportive deductions (G & A) 840

DC has no other sources of gross income in addition to those from sale and services described above.

Example 1 - §1.250(b) – 1(d)(3) – (Cont)

	Product A	Product B	Services	Total	
1	GR from U.S. Persons	200	800	100	1,100
2	GR from foreign persons	200	800	100	1,100
3	Total GR	400	1,600	200	2,200
4	COGS from U.S. persons	100	200	NA	300
5	COGS from foreign persons	100	200	NA	300
6	Total COGS	200	400	NA	600
7	Gross Income	200	1,600	200	1,600
8	Tax Book value of assets used	500*	500*	1,500*	2,500*

*50/50 split between gross FDDEI and gross non-FDDEI

Example 1 - §1.250(b) – 1(d)(3) (Cont)

Analysis:

i) Determination of gross FDDEI and gross non-FDDEI

DC has no items of gross income excluded from DEI i.e. no excluded items of gross income.

§250(b)(3)(A)(i)(I) through (VI)

Example 1 - §1.250(b) – 1(d)(3) (Cont)

$$\begin{aligned}\text{Gross DEI} &= \text{Total Gross Receipts} - \text{Total COGS} \\ &= 2,200 - 600 \\ &= \mathbf{1,600}\end{aligned}$$

$$\begin{aligned}\text{Gross FDDEI} &= \text{GR from foreign persons} - \text{CGS from} \\ &\quad \text{foreign persons} \\ &= 1,100 - 300 \\ &= \mathbf{800}\end{aligned}$$

Example 1 - §1.250(b) – 1(d)(3) (Cont)

ii) Determination of FDDEI

$$\text{FDDEI} = \text{gross FDDEI} - \text{PADs}$$

Interest apportionment: asset (tax book value) method

$$\begin{array}{l} \text{Business Interest} \\ \text{Deduction} \end{array} = \frac{\underline{1,250}}{2,500} * 300$$

$$\text{Attributable to Gross FDDEI} = \mathbf{150}$$

Example 1 - §1.250(b) – 1(d)(3) (Cont)

ii) Determination of FDDEI (Cont)

Apportionment of Supportive deductions: gross FDDEI

$$\begin{aligned}\text{Supportive deduction} &= 840 * [(1,600-800)/1,600] \\ &= \mathbf{420}\end{aligned}$$

$$\text{PADs} = 150 + 420$$

$$= \mathbf{570}$$

$$\text{FDDEI} = \text{Gross FDDEI} - \text{PADs}$$

$$\text{FDDEI} = 800 - 570$$

$$= \mathbf{230}$$

Example 1 - §1.250(b) – 1(d)(3) (Cont)

iii) Determination of deemed intangible income (DII)

$$\text{DII} = \text{DEI} - .10(\text{QBI})$$

$$\text{DEI} = \text{gross DEI} - \text{interest expense} - \text{supportive deductions}$$

$$\text{DEI} = 1,600 - 300 - 840$$

$$= \mathbf{460}$$

Example 1 - §1.250(b) – 1(d)(3) (Cont)

iii) Determination of deemed intangible income (DII) (Cont)

$$\text{DTIR} = .10 (\text{QBAI})$$

$$= .10 (1,000)$$

$$= \mathbf{100}$$

$$\text{DII} = \text{DEI} - \text{DTIR}$$

$$\text{DII} = 460 - 100$$

$$= \mathbf{360}$$

Example 1 - §1.250(b) – 1(d)(3) (Cont)

iv) Determination of FDII

$$\text{FDII} = \text{DII} * \text{Foreign Derived Ratio}$$

$$\text{FDR} = \text{FDDEI/DEI}$$

$$= 230/430 = .5$$

$$\text{FDII} = 360 * .5$$

$$= \mathbf{180}$$

$$\text{FDII Deduction} = .375 * \text{FDII}$$

$$= .375 * 180$$

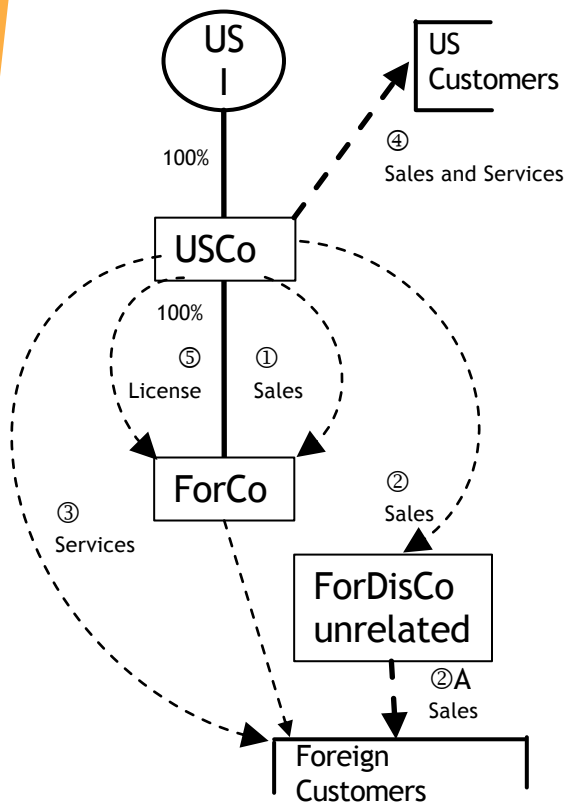
$$= \mathbf{67.5}$$

Illustrations

Illustration: C Corporation Claiming FDII Deduction

Facts:

Y/E 12/31/18



Gross Income:	1500
Sales and Services Worldwide	1100
Subpart F income	100
GILTI	300
Deductions allocated to sales and services	<100>
NOL from prior years	<900>
① Sales to ForCo for assembly and resale	100
② Sales to unrelated foreign distributor for resale in EU	285
③ Services to EU Customers of Foreign Distributor	110
⑤ License fees for software provided to ForCo	55
④ Domestic sales and services	<u>550</u>
 Gross Income Sales and Services	1100
Adjusted tax basis of tangible property of USCo under ADS	500
Unadjusted tax basis of tangible property	1200
W-2 wages reported	750
Business interest	0

Illustration:

Analysis (cont.)

Deduction for Foreign Derived Intangible Income (FDII) before Taxable Income Limitation:

Deduction for FDII = .375 (foreign-derived intangible income)

$$\begin{aligned} \text{Deduction} &= .375 \times 475 \\ &= \underline{178} \end{aligned}$$

§ 250(a)(i)(A)

Illustration:

Analysis:

Foreign - Derived Intangible Income (FDII)

$$\text{FDII} = \text{Deemed Intangible Income} \times \frac{\text{Foreign-Derived Deduction Eligible Income}}{\text{Deduction Eligible Income}}$$
$$= 950 \times 500 / 1,000 = 475$$

§ 250(b)(i)

Illustration:

Analysis (cont.):

Deemed Intangible Income (DII)

= Deduction eligible income - Deemed tangible income return (DTIR)

$$1,000 - 50 = 950$$

§ 250(b)(2)(A)

Illustration:

Analysis (cont.):

Deduction Eligible Income (DEI)

Gross income	1,500
Less:	
Subpart F income	<100>
GILTI	<300>
Deductions	<u><100></u>
Deduction Eligible Income (DEI)	1,000

§ 250(b)(3)(A)

Illustration:

Analysis (cont.):

Deemed Tangible Income Return (DTIR)

$$= .10 * \text{QBAI}$$

$$\text{DTIR} = .10 * 500 = \mathbf{50}$$

§ 250(b)(2)(B)

Illustration:

Analysis (cont.):

Foreign - Derived Deduction Eligible Income (FDDE)

Property Sold to Foreign Persons	
To ForCo (parts)	100
To ForCo (software rts)	55
To Unrelated Distributor (parts)	285
Services provided to persons wrt property not located in U.S.	<u>110</u> 550
Less: Deductions $550/1,100 \times 100$	<u>< 50 ></u> 500

§ 250(b)(4) and (5)

Illustration:

Analysis (cont.):

Limitation on business interest is determined with regard to “tentative \$250 deduction” but without regard to NOL deduction

Gross income	1,500	
Deductions allocated to sales and services	(100)	
GILTI deduction (.50 * 300)	(150)	
FDII deduction (.375 * 475)	<u>(178)</u>	
Adjusted taxable income for §163(j) limitation purposes	1,072	
	<u>*.30</u>	
Limit on business interest		<u>322</u>
Business interest paid or accrued		<u>0</u>

Illustration:

Analysis (cont.):

Limitation on NOL determined without regard to \$250 deduction but with regard to business interest deduction limitation of §163(j) if applicable

Taxable income limitation on NOL deduction:

Gross income	1,500
Deductions allocated to sales and services	<u>(100)</u>
	1,400
	<u>*.80</u>
Limitation on NOL deduction	<u>1,120</u>
NOL carry forward	<u>900</u>
Lesser of NOL carry forward or taxable income limitation	<u>900</u>

Illustration:

Analysis (cont.):

Determination of Taxable Income and Corporation Tax

1,500	Gross income
<100>	Deductions allocated to sales and services
<96.8>	GILTI deduction: $300 - 106.4 = 193.6 * .50 = 96.8$
<114.9>	FDII deduction: $475 - 168.6 = 306.4 * .375 = 114.9$
<u>1,183.3</u>	Taxable Income before NOL
<900>	NOL < 900 or $[\.80 * 1,400]$
<u>288.3</u>	$80 * 1,400 = 1,120$
<u>* .21</u>	Taxable Income
60.5	Corporation tax

§ 250(a)(2)

Illustration:

Analysis (cont.):

Taxable income for taxable income limitation purposes: [§250(a)(2)]

= Gross income - expenses other than §250 deduction - NOL as limited
= 1,500 - 100 - 900
= 500

FDII + GILTI \leq taxable income
475 + 300 > 500
Excess = (475 + 300) - 500
= 275

Reduction FDII = 275 * [475 / (475 + 300)] = 168.6
Reduction GILTI = 275 - 168.6 = 106.4

*Used in Form 8993

§ 250(a)(2)

Illustration:

Analysis (cont.): Determination of Individual Shareholder Level Tax

288.3	Taxable income
96.8	GILTI deduction
114.9	FDII deduction
900	NOL
<hr/>	
1,400	Taxable income before NOL
<900>	Current earnings and profits
<hr/>	
500	Amount of distribution to shareholder
.238	
<hr/>	
119	Individual shareholder level tax
60.5	Corporation tax
<hr/>	
179.5	Total tax burden on distributed earnings to ultimate shareholder

**Section 250 Deduction for Foreign-Derived Intangible Income (FDII)
and Global Intangible Low-Taxed Income (GILTI)**

OMB No. 1545-0123

▶ Go to www.irs.gov/Form8993 for instructions and the latest information.

Attachment
Sequence No. **933**

Name of person filing this return

Identifying number

Part I Determining Deduction Eligible Income (DEI) (see instructions)			
1	Gross Income		1
2	Exclusions		
a	Income included under section 951(a)(1)	2a	
b	Income included under section 951A (from Form 8992, Part II, line 3)	2b	
c	Financial Services Income	2c	
d	CFC Dividends	2d	
e	Domestic Oil and Gas Extraction Income	2e	
f	Foreign Branch Income	2f	
3	Total Exclusions (add lines 2a through 2f)		3
4	Gross Income less Total Exclusions (subtract line 3 from line 1)		4
5	Deductions properly allocable to the amount on line 4		5
6	Deduction Eligible Income (DEI) (subtract line 5 from line 4)		6
Part II Determining Deemed Intangible Income (DII) (see instructions)			
1	DEI (from Part I, line 6, above)		1
2	Deemed Tangible Income Return (10% of QBAI)		2
3	Deemed Intangible Income (DII) (subtract line 2 from line 1)		3
Part III Determining Foreign Derived Ratio (see instructions)			
1a	DEI derived from sales, leases, exchanges, or other dispositions (but not licenses) of property to a foreign person for a foreign use (see instructions)	1a	
b	DEI derived from a license of property to a foreign person for a foreign use (see instructions)	1b	
c	DEI derived from services provided to a person or with respect to property located outside of the United States (see instructions)	1c	
2	Foreign Derived Deduction Eligible Income (FDDEI) (add lines 1a through 1c)		2
3	Deduction Eligible Income (DEI) (from Part I, line 6, above)		3
4	Foreign Derived Ratio (FDDEI / DEI) (divide line 2 by line 3)		4
Part IV Determining FDII and/or GILTI Deduction (see instructions)			
1	Deemed Intangible Income (DII) (from Part II, line 3)		1
2	Foreign Derived Ratio (from Part III, line 4)		2
3a	FDII (multiply line 1 by line 2)	3a	
b	Global Intangible Low-Taxed Income (GILTI) Inclusion (see instructions for line 3b)	3b	
3c	Total FDII and GILTI (add lines 3a and 3b)	3c	
4	Taxable Income (see instructions for line 4)		4
5	Excess FDII and GILTI over Taxable Income (subtract line 4 from line 3c). If zero or less, enter -0- here and on lines 6 and 7.		5
6	FDII Reduction (divide line 3a by line 3c; multiply by line 5)		6
7	GILTI Reduction (subtract line 6 from line 5)		7
8	FDII Deduction (see instructions for line 8). (Enter here and on Form 1120, Schedule C; see instructions for information on other tax forms)		8
9	GILTI Deduction (see instructions for line 9). (Enter here and on Form 1120, Schedule C; see instructions for information on other tax forms)		9

For Paperwork Reduction Act Notice, see separate instructions.

Cat. No. 37817J

Form **8993** (12-2018)

Computation of FDII

Using the Set of Basic Equations to Complete Form 8993:

Part I – Determining Deduction Eligible Income DEI

Equation D: Gross Income – Excluded Items = Gross DEI

Line 1 Line 2 a through f Line 4

Equation C: Gross DEI – PADs = DEI

Line 4 Line 5 Line 6

Part II – Determining Deemed Intangible Income (DII)

Equation B: DEI – DTIR = DII

Line 6 Equations
 F & G

Equation F: DTIR = $\frac{.10}{4}$ (QBAI)

Equation G: QBAI = $\frac{1}{4} \sum_{1}^{n}$ AB of STP (ADS) to Produce DEI

Computation of FDII

Using the Set of Basic Equations to Complete Form 8993:
Part III – Determining the Foreign Derived Ratio (FDR)

Equation H: $FDR = FDDEI/DEI$

Line 4 Eq.I Part 1, Line 6 to Line 3

Equation I: $FDDEI = \text{Gross FDDEI} - \text{PADs}$

Line 2 Eq. J

Equation J: $\text{Gross FDDEI} = \text{GI from FDDEI Sales} + \text{GI from FDDEI Services}$

Lines 1(a) through (c) required Equation C to be applied for each type of gross DEI

Computation of FDII

Using the Set of Basic Equations to Complete Form 8993:
Part IV – Determining FDII Deduction

$$\text{Equation A: DII} * \text{FDR} = \text{FDII}$$

Part II Part III Lines 1, 2, 3(a)

Line 3 Line 4

Lines 4 – 7 Compute reduction in GILTI and FDII
if taxable income limit is exceeded

$$\text{Equation M: Excess} = (\text{GILTI} + \text{FDII}) - \text{Taxable Income}$$

Line 5

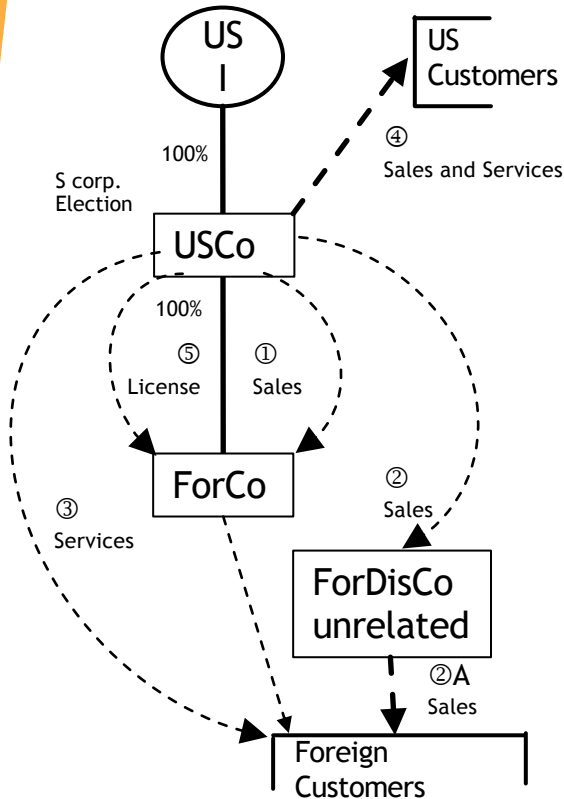
$$\text{Equation N: Reduction} = \text{Excess} * (\text{FDII} / \text{FDII} + \text{GILTI})$$

in FDII
Line 6

Illustration: S Corporation Claiming FDII Deduction for 20 Percent of Qualified Business Income

Facts:

Y/E 12/31/18



Gross Income:	1500
Sales and Services Worldwide	1100
Subpart F income	100
GILTI	300
Deductions allocated to sales and services	<100>
NOL from prior years	<900>
① Sales to ForCo for assembly and resale	100
② Sales to unrelated foreign distributor for resale in EU	285
③ Services to EU Customers of Foreign Distributor	110
⑤ License fees for software provided to ForCo	55
④ Domestic sales and services	<u>550</u>
 Gross Income Sales and Services	1100
Adjusted tax basis of tangible property of USCo under ADS	500
Unadjusted tax basis of tangible property	1200
W-2 wages reported	750
Business interest	0

Illustration:

Analysis:

Computation of “qualified business income”: §199A(c)

1,500	Gross income
<100>	Subpart F
<300>	GILTI
<hr/>	
1,100	
<100>	Deductions attributed to sales and services
<hr/>	
1,000	Qualified business Income

Illustration:

Analysis (Cont):

Computation of “qualified business income”: §199A(b)

$\langle [.20 \text{ (qualified business income) or } > | .50 \text{ w-2 wages or } (.25 \text{ w-2 wages} + .025 \text{ UQP}) |]$

$\langle [.20 (1,000) \text{ or } > | .50 (750) \text{ or } (.25 (750) + .025 * 1,200) |]$

$\langle [200 \text{ or } > | 375 \text{ or } (187.50 + 30) |]$

$\langle [200 \text{ or } 375]$

200 = Combined qualified business income

Illustration:

Analysis:

Computation of §199A Deduction: §199A(a)(1)

§199A deduction = $\min\left(\text{combined qualified business income amount or } .20(\text{taxable income} - \text{net capital gain})\right)$

Calculation of taxable income for limitation purposes:

1,500	gross income
<100>	Deductions attributable to sales and services
<900>	NOL from prior years
<hr/>	
500	Taxable income before §199A deduction

$$\begin{aligned}\text{\$199A deduction} &= \min\left(200 \text{ or } .20(500)\right) \\ &= \min\left(200 \text{ or } 100\right) \\ &= 100\end{aligned}$$

Illustration:

Analysis (cont):

Calculation of taxable income of shareholder:

500	Taxable income before §199A deduction
<u><100></u>	§199A deduction
400	Taxable income
<u>*.37</u>	
148	Tax at shareholder level

Comments on Illustrations:

	FDII/Corporation	Qualified Business Income/S Corp
Taxable income before special deductions:	500	500
Tax at corp level:	60.5	0
Comments:	FDII deduction of .375 of 306.4 for effective rate of 13.125%	QBI deduction of lesser of 200 or 100
	GILTI deduction of .50 of 193.6 for effective rate of 10.5%	
	Residual income subject to 21% corp rate	
	Effective rate at corp level $60.5/500$ = 12.1%	
Tax at shareholder level:	Additional tax on distribution of 500 Total tax burden	<u>148</u> 148
	Combined effective rate $60.5 + 119/500$ = 35.9%	Effective rate at shareholder level $148/500$ = 29.6%
	Difference	6.3 percentage pts

Illustration:

Comments on Illustration (cont): Pre TCAJA:

Individual shareholder of C corp:

$$\begin{array}{r}
 500 \\
 *.35 \\
 \hline
 175 \\
 500 \\
 <175> \\
 \hline
 325 \\
 *.238 \\
 \hline
 77.35 \\
 \hline
 252.35
 \end{array}$$

Effective rate $252.35/500$
=.51%

Difference

Passthrough:

$$\begin{array}{r}
 500 \\
 *.396 \\
 \hline
 198 \\
 \\
 \\
 \\
 \\
 \hline
 198
 \end{array}$$

Effective rate $198/500$
=39.6%

11.4 percentage pts

Illustration:

Comments on Illustration (cont):

If no special deductions at corp level, difference on effective rates:

$$\begin{array}{r} 500 \\ \underline{.21} \\ 105 \end{array}$$

$$\begin{array}{r} 500 \\ \underline{<105>} \\ 395 \\ \underline{.238} \\ 199 \end{array}$$

Effective rate $199/500 = 39.8 - 29.6 = 10.2$ percentage pts

General Planning Concepts for FDII Users:

Maximize Gross DEI

- Repatriate foreign branch

Minimize Deductions Allocated to Gross DEI

Minimize Exclude items of Gross Income

- Subpart F income

- GILTI

Qualify (Document) All Gross FDDEI

Minimize QBAI

- Leasing of Assets

Passthrough Domestic Entities

- Incorporate export division

Durability of FDII

- 1) Phase down from 37.5% to 21.875% in taxable years beginning after December 31, 2005
- 2) Election results in 2020
- 3) Public reaction if individual cuts are not extended in 2025
- 4) Budget deficit pressure if GDP fails to grow at 3% plus
- 5) WTO proceeding holds provision to be a tax subsidy
- 6) Designation as harmful tax practice by OECD or EU

Case Studies

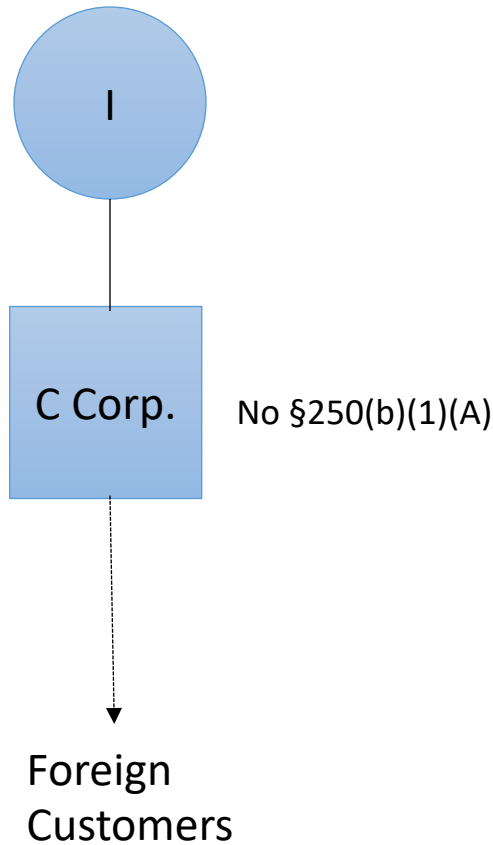
Alternative Structures for U.S. Based Exporters

Assumptions Used in Calculations

California Personal Income Tax Rate	11%
Federal Personal Dividend Tax Rate	23.8%
Federal Personal Ordinary Income Tax Rate	31%

Comparative Case Studies: U.S. Based Exporter

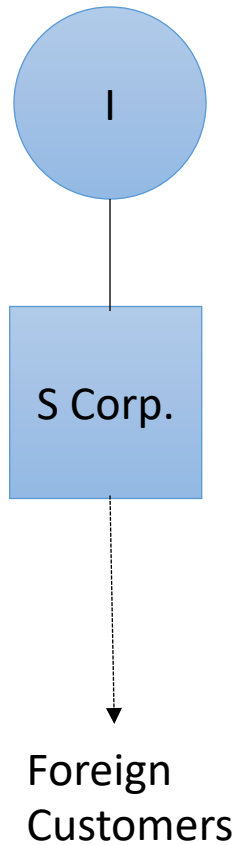
A)



100		
<u>.0884</u>		
	8.84 Cal. Corp.] 27.98
91.16		
<u>.21</u>		
	19.14 Fed. Corp.	
72.01		
<u>.11</u>		
	7.92 Cal. Div.] 25.06
72.02		
<u>.238</u>		
	<u>17.14</u> Fed. Div.	
	53.04	

Comparative Case Studies: U.S. Based Exporter

B)



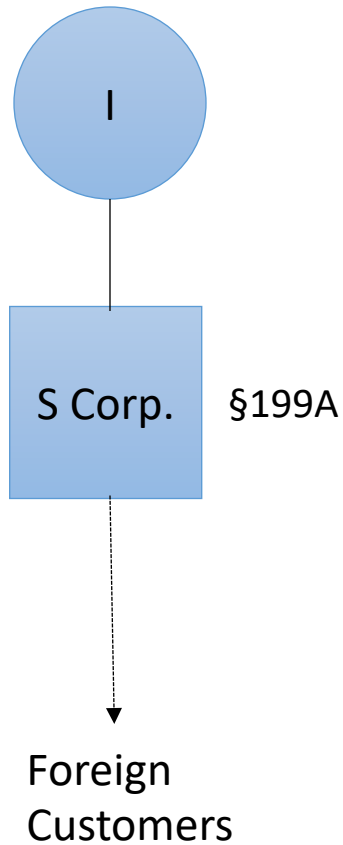
100
.015
 1.5 Cal. S Corp.

100
.11
 11 Cal. SH

98.5
.31
 30.54 Fed. SH
43.04

Comparative Case Studies: U.S. Based Exporter

c)



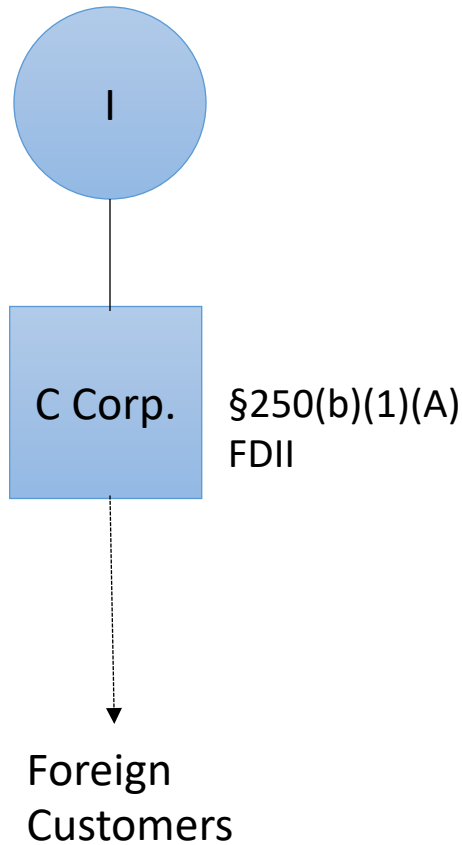
100
.015
 1.5 Cal. S Corp.

100
.11
 11 Cal. SH

100
 (1.5)
(19.7)
 78.8
X .31
 24.43 Fed. SH
39.93

Comparative Case Studies: U.S. Based Exporter

D)



100
.0884

8.84 Cal. Corp.

100.00
(8.84)
(34.19) FDII
56.97
X .21

11.96 Fed. Corp.

20.8

100.00
(8.84)
(11.96)
79.2
x.11

8.71 Cal. Div.

79.2
X .238

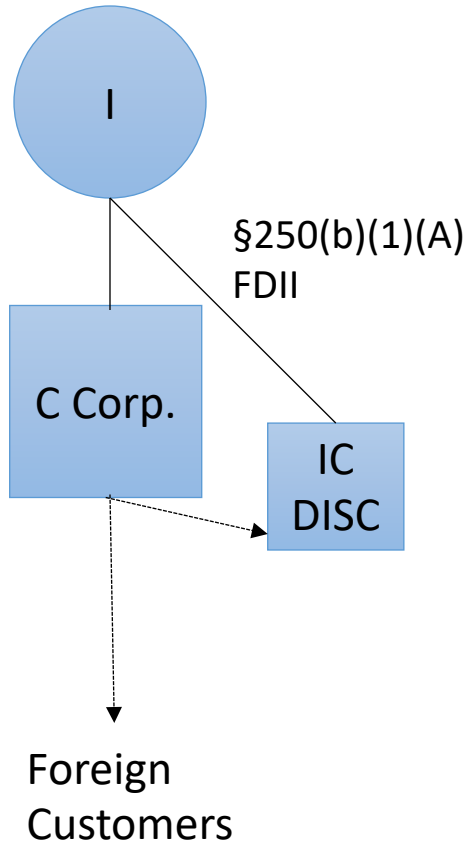
18.85 Fed. Div.

27.56

48.36

Comparative Case Studies: U.S. Based Exporter

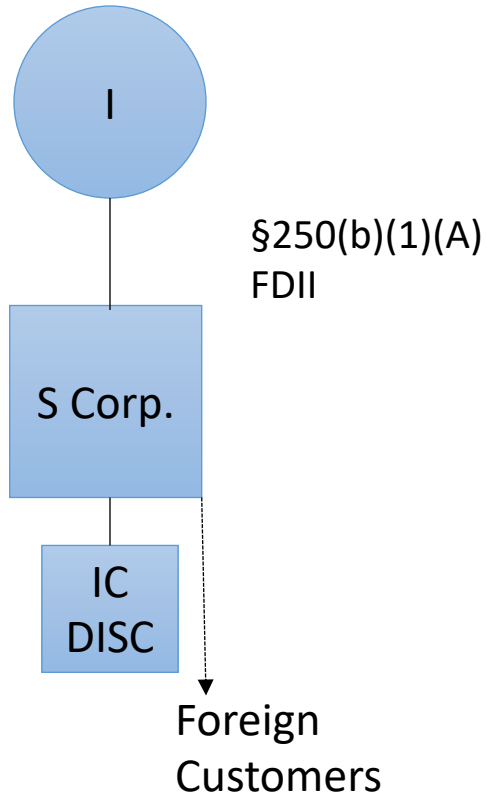
E)



100	
<u>X.0884</u>	8.84 Cal. Corp.
100.00	
(8.84)	
<u>(45.58)</u>	Disc Comm. Ded.
45.58	
<u>X .21</u>	9.57 Fed. Corp.
100.00	
(8.84)	
<u>(9.57)</u>	
81.59	
<u>x.11</u>	8.98 Cal. SH
45.58	
<u>X .238</u>	
100.00	10.85 Disc Div.
(8.84)	
<u>(45.58)</u>	Disc Comm.
(9.57)	
<u>36.01</u>	
X .238	
	<u>8.57</u> Fed. SH
	46.81

Comparative Case Studies: U.S. Based Exporter

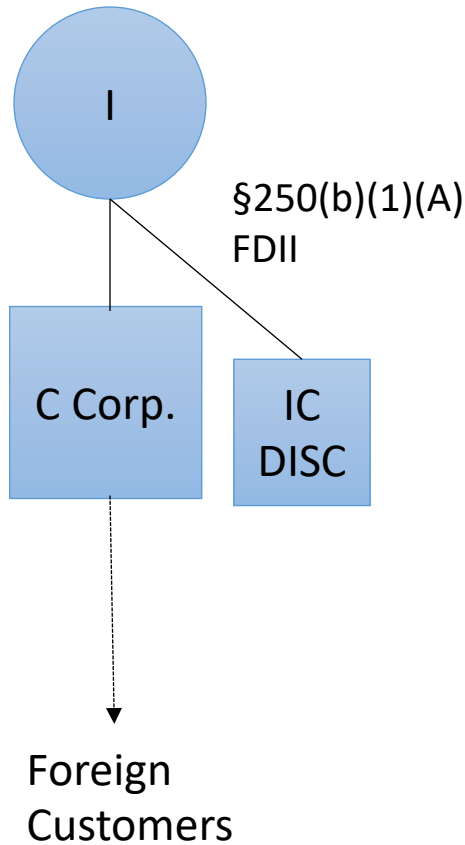
F)



100	
<u>X .015</u>	1.50 Cal. S Corp.
100.00	
<u>X .11</u>	11 Cal. SH
100.00	
<u>(1.50)</u>	
98.5	
<u>(49.25)</u>	Disc Comm. Ded.
49.25	
<u>X .31</u>	15.27 Fed. S. Corp.
49.25	Disc Div.
<u>X .238</u>	11.72 Fed. Disc Div.
	39.49

Comparative Case Studies: U.S. Based Exporter

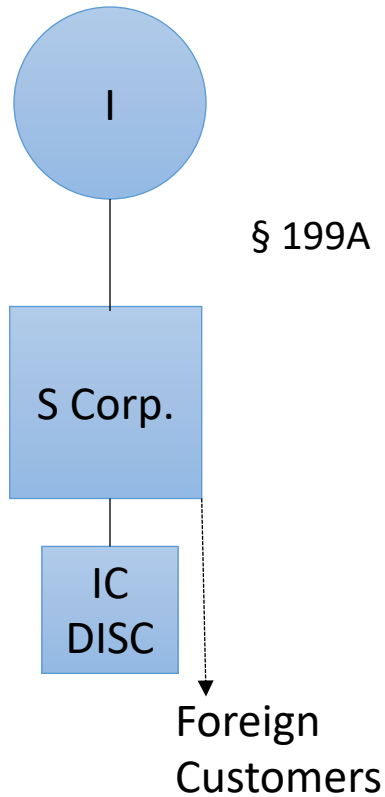
G)



100	
<u>X.0884</u>	8.84 Cal. Corp.
100.00	
<u>(8.84)</u>	
91.16	
<u>(45.58)</u>	Disc Comm. Ded.
45.58	
<u>(17.09)</u>	FDII Ded.
28.49	
<u>X .21</u>	5.98 Fed. Corp. Tax
100	
<u>(8.84)</u>	
<u>(5.98)</u>	
85.18	
<u>x.11</u>	9.37 Cal. SH
45.58	
<u>(5.98)</u>	
39.6	
<u>X .238</u>	9.42 Fed. SH
45.58	
<u>X .238</u>	
36.01	
<u>X .238</u>	<u>10.85</u> DISC Div
	44.46

Comparative Case Studies: U.S. Based Exporter

H)



100	
<u>.015</u>	
	1.50 Cal. S Corp.
100.00	
<u>X .11</u>	
	11 Cal. SH
100.00	
<u>(1.50)</u>	
98.5	
<u>(49.25)</u>	Disc Comm. Ded.
49.25	
<u>(9.85)</u>	QBI Ded.
39.4	
<u>X .31</u>	
	12.21 Fed. SH
49.25	
<u>X .238</u>	
	<u>11.72</u> Disc Div.
	36.43



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William K. Norman is a Partner of the Southern California tax law firm of Ord & Norman. Mr. Norman is a Certified Specialist in Taxation Law. He is admitted to practice law in the states of California and Wyoming. He has been practicing tax law for over 40 years including experience as tax staff of a big four accounting firm and tax manager of a major publicly traded corporation. In his current practice, he focuses on the counseling of clients on business transactions, joint ventures, cross border trade and investments, international tax compliance and disclosures, and personal wealth transfer planning. Many of his client engagements involve sophisticated choice of entity issues (including use of LLC's, civil law foundations, IC DISCs, statutory trusts, foreign companies and joint ventures) and development of complex cross border restructuring plans. His clients include privately held companies and high net worth individuals especially members of multinational families. Mr. Norman received an A.B. degree in Economics from the University of California at Berkeley in 1962, a J.D. degree from the University of California in 1965 and an LL.M (in Taxation) degree from New York University in 1970. He also attended the Graduate School of Business of the University of California at Berkeley and the Stern Graduate School of Business of New York University. For over 35 years, he has lectured as a Senior Adjunct Professor on international taxation subjects at Golden Gate University. He is the co-editor of a three volume work published by the American Bar Association entitled Practical International Estate Planning. He is the co-developer of materials for CEB courses for estate planners. He is the author of published articles on international tax planning and related topics. In June of 2008, he was presented the Dana Latham Award for outstanding contributions to the field of tax law by the Taxation Section of the Los Angeles Bar Association.

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