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"Technical Corrections" and Other Revisions to the 2017 Tax Revision (P.L. 115-97)

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SUMMARY

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April 8, 2021

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"Technical Corrections" and Other Revisions to the 2017 Tax Revision (P.L. 115-97)

Congress has been discussing "technical corrections" to the 2017 tax revision (commonly known as the "Tax Cuts and Jobs Act," or TCJA; P.L. 115-97) since shortly after the act's passage on December 22, 2017. On January 2, 2019, Representative Brady released the Tax Technical and Clerical Corrections Act Discussion Draft. Although no formal definition of a technical correction exists, some understand technical corrections to be provisions that are generally noncontroversial changes to the text of already enacted tax legislation to ensure that the law as enacted is consistent with Congress's original intent. What some might consider a true "technical correction" would also not affect revenue. The Joint Committee on Taxation (JCT) also discussed technical corrections in its 2018 "blue book" explanation of the law.

Some legislative changes concerning the TCJA address provisions not included in the technical corrections draft. For example, shortly after the passage of the TCJA, a change relating to the treatment of farmer's cooperatives was enacted, referred to as the "grain glitch." Because this change preceded the discussion draft, it was not included and might not have been included in any case. Several other legislative changes are also not in the discussion draft and might be considered policy changes, and some subsequent legislative revisions address items in the discussion draft.

Numerous regulatory changes have also addressed provisions in the discussion draft. For example, the regulations clarified that plaintiff's attorney fees could be deducted in sexual harassment suits.

Two issues—interest deduction for travel trailers and campers and the Social Security number requirement for child tax credit for the Amish—have received some attention but have not been addressed with legislation or regulation, and they are not in the discussion draft.

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Introduction

Congress has been discussing "technical corrections" to the 2017 tax revision (commonly known as the "Tax Cuts and Jobs Act," or TCJA; P.L. 115-97) since shortly after the act's passage on December 22, 2017. It is sometimes unclear, however, what is strictly a "technical correction." This report discusses provisions that have been widely discussed as "technical corrections" to the 2017 tax revision or as other unintended or unexpected consequences of the act that might fall outside the scope of what would be considered by most to be a "technical correction." Some of these provisions have already been addressed by legislative or regulatory changes.

Although no formal definition of a technical correction exists, some understand technical corrections to be provisions that are generally noncontroversial changes to the text of already enacted tax legislation to ensure that the law as enacted is consistent with Congress's original intent. What some might consider a true "technical correction" would also not affect revenue.[1] The Joint Committee on Taxation (JCT) also discussed technical corrections in its 2018 "blue book" explanation of the law.[2]

On January 2, 2019, Representative Brady released the Tax Technical and Clerical Corrections Act Discussion Draft.[3] The discussion draft includes technical corrections that had been developed as of the release date, but acknowledges additional technical corrections may be identified in the future.

Shortly after the passage of the TCJA, a change relating to the treatment of farmer's cooperatives was enacted, referred to as the "grain glitch" (see discussion below).This action was taken before the discussion draft was developed; thus it was not in the draft and might not have been included because it could be viewed as a policy change.

This report's first section summarizes provisions that have already been addressed by legislative or regulatory actions. The second section explains the remaining provisions in the discussion draft other than the international provisions. The third section discusses technical corrections to the international provisions, beginning with a brief overview of the change in the international tax regime and noting where issues have been addressed in the regulations. The final section discusses some issues that have not been addressed and were not included in the discussion draft, but that have been raised as concerns.

Provisions Already Enacted or Addressed in Regulations

Some TCJA provisions have already been revised. For example, the "grain glitch" was enacted before the technical corrections draft. Some provisions were policy changes not in the draft and

[1] See Ernst and Young, Observations on Former Chairman Brady's Technical Corrections Draft Legislation, January 19, 2019, https://taxnews.ey.com/news/2019-0247-observations-on-former-chairman-bradys-technical-corrections-draft-legislation.

[2] Joint Committee on Taxation (JCT), General Explanation of P.L. 115-97, December 2018, JCS-1-18, https://www.jct.gov/CMSPages/GetFile.aspx?guid=7c87c9f5-1cb8-4202-a1ca-b608a04c741b.

[3] The discussion draft is available at https://republicans-waysandmeansforms.house.gov/uploadedfiles/tax_technical_and_clerical_corrections_act_discussion_draft.pdf. The JCT released a technical explanation of the draft bill, Tax and Technical Corrections, JCX-1-19, January 2, 2019, https://www.jct.gov/publications.html?func=startdown&id=5154.

others were in the draft. Some issues have also been addressed in regulations. This section first covers legislative changes and then covers regulatory changes.

Provisions Addressed by Legislative Changes Not in the Discussion Draft

Numerous provisions that raised concerns were addressed in subsequent legislation and were not in the discussion draft.

The "Grain Glitch" and Other Revisions

Shortly after the TCJA was enacted, an issue arose termed the "grain glitch." This issue was not considered a technical correction, although it led to unintended consequences, and it was resolved before the technical corrections discussion draft was released. The TCJA allowed a 20% deduction from net income for pass-through businesses (i.e., partnerships, proprietorships, and smaller Subchapter S corporations that elect to be taxed under the individual rather than the corporate tax), scheduled to expire after 2025. It also allowed that same deduction for dividends paid from agricultural cooperatives. The idea behind this rule was to maintain a benefit that had been allowed under a preexisting provision that was repealed—the domestic production activities deduction, which allowed a 9% deduction from table income limited to 50% of wages. A cooperative could pass this deduction to their patrons (the participants in the cooperative).

As enacted in the TCJA, the rule allowed farmers who sold to cooperatives to receive a 20% deduction for gross rather than net income. It made selling to cooperatives much more attractive than to other businesses and potentially created a loophole that could be exploited by other taxpayers.

The grain glitch was addressed in a compromise in the Consolidated Appropriations Act of 2018, P.L. 115-141. It allowed farmers to take a 20% deduction of net income that was reduced by the lesser of 9% of net income or 50% of wages paid. The cooperative could also pass on a deduction equal to the lesser of 9% of income or 50% of wages paid. The deduction for patrons depended on the circumstances (size of wages and whether the deduction was passed through). In some circumstances, the deduction remained at 20% (with the reduction for the farmer offset by the pass-through of the cooperative), but the deduction would range from 11% (a farmer with high wages paid that received no pass-through) to 29% (for a farmer with no wages and a full pass-through of 9%).

This revision resulted in a federal revenue gain, during the years fully in effect, of $13 million to $15 million.[4]

The "Kiddie" Tax and Military Survivors

The "kiddie tax" was first enacted in 1986. It was designed to prevent wealthy parents from reducing their income taxes by transferring assets to their children, who would be taxed at lower rates. Prior to the TCJA, this income was taxed at the higher of the child's tax rate or the parent's rate (the latter calculated by adding the child's income to the parents and calculating the change in tax). The TCJA required the child's taxes to be calculated at the higher rates that applied to

[4] JCT, Estimated Budget Effects of the Revenue Provisions Contained in the House Amendment to the Senate Amendment to H.R. 1625 (Rules Committee Print 115-66), JCX-7-18, March 22, 2018, https://www.jct.gov/publications.html?func=startdown&id=5065.

estates and trusts rather than adding the income to the parent's income. As a result of this provision, some military families owed higher taxes on survivor benefits, an issue that received widespread attention. This provision was scheduled to expire after 2020.[5]

The technical corrections discussion draft made some limited clarifying changes to this provision. The entire provision, however, was repealed retroactively in Setting Every Community Up for Retirement Enhancement (SECURE) Act, enacted as Division O of the Further Consolidated Appropriations Act, 2020, P.L. 116-94. This revision resulted in a federal revenue loss of $470 million for FY2020-FY2029.[6]

Taxation of Fringe Benefits to Nonprofits

The TCJA generally disallowed deductions for certain employee fringe benefits. Because for-profit businesses were no longer allowed to deduct these expenses as a result of other changes in the TCJA, in an effort to create parity, tax-exempt organizations were required to add the value of these employee fringe benefits to their unrelated business taxable income (UBTI). Increasing UBTI by the amount of fringe benefits effectively required tax-exempt entities to pay the 21% corporate tax rate on the value of these benefits as provided. For some organizations that did not previously file Form 990s, particularly churches, this change could require that information returns be filed. This provision became popularly known as the "church parking tax."

The Taxpayer Certainty and Disaster Tax Relief Act, enacted as Division Q of the Further Consolidated Appropriations Act, 2020, P.L. 116-94, repealed the church parking tax. This change resulted in a federal revenue loss of $1,870 million for FY2020-FY2029.[7]

Taxation of Grants to Cooperatives

Capital contributions are not taxable to firms and, under pre-TCJA law, grants from governments and civic organizations were considered contributions to capital. The TCJA made these grants taxable by no longer considering them capital contributions, but rather income. This change was to discourage competition by states and localities to attract business with subsidies. This change interacted with a provision requiring tax-exempt 501(c)(12) cooperative telephone and electric companies (including rural electric cooperatives) to receive 85% of revenues from members (who consume their services), causing some cooperatives to lose tax-exempt status if they accepted grants. Of particular concern was that this change would interfere with grants to extend broadband access to rural areas.

The Taxpayer Certainty and Disaster Tax Relief Act, enacted as Division Q of the Further Consolidated Appropriations Act, 2020, P.L. 116-94, revised the contributions to capital provision so it would not affect the tax exempt status of cooperatives. This change resulted in a federal revenue loss of $34 million for FY2020-FY2029.[8]

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[5] See CRS Insight IN11112, *The Kiddie Tax and Military Survivors' Benefits*, by Sean Lowry and Kristy N. Kamarck.

[6] JCT, Estimated Budget Effects Of The Revenue Provisions Contained In The House Amendment To The Senate Amendment To H.R. 1865, The Further Consolidated Appropriations Act, 2020, JCX-54R-19, December 17, 2019, https://www.jct.gov/publications.html?func=startdown&id=5237 (hereinafter, JCT, Estimated Budget Effects of the Revenue Provisions, 2019).

[7] JCT, Estimated Budget Effects of the Revenue Provisions, 2019.

[8] JCT, Estimated Budget Effects of the Revenue Provisions, 2019.

Issues in the Discussion Draft Addressed in Legislation

Some provisions of concern were addressed in subsequent legislation and were in the discussion draft.

Depreciation of Qualified Improvement Property (the "Retail Glitch")

Prior to the TCJA, the cost of certain categories of nonresidential real property could be deducted over 15 years rather than the 39 years that generally applied to nonresidential buildings. This shorter depreciation period also qualified such investments for bonus depreciation, which at that time allowed 50% of most equipment costs to be deducted immediately. Eligible improvements included leasehold, restaurant, and retail improvements. Businesses could also elect a longer depreciation period under the alternative depreciation system (ADS).

The TCJA increased bonus depreciation to 100% (also called expensing) through 2022, phased out by 20% a year over five years. In revising the law, the bill inadvertently omitted the 15-year write-off period for qualified improvement property, also making the investments ineligible for the 100% immediate deduction.[9] These properties became subject to the 39-year period and a 40-year ADS period. The ADS period is important to real estate businesses because they can elect out of the interest deduction limits provided elsewhere in the act by using ADS depreciation methods.

Representative Brady's discussion draft also would have made a technical correction to this "retail glitch," providing for the 15-year period (20 years under ADS) and thus eligible for bonus depreciation. The Coronavirus Aid, Relief, and Economic Security (CARES) Act, P.L. 116-136, retroactively restored the 15-year life and eligibility for bonus depreciation.

Net Operating Loss Deduction

Prior to the TCJA, net operating losses (NOLs) could be carried back two years and forward 20 years to offset taxable income. The TCJA modified this rule to allow no carrybacks and indefinite carryforwards; it also limited the NOL deduction to 80% of taxable income.

The CARES Act allowed a five-year carryback and eliminated the 80% of taxable income limitation for 2018-2020. The CARES Act also made several technical corrections to the NOL provisions first proposed in the Brady discussion draft. The first technical correction related to the NOL changes ensured that the NOL carryforward and carryback modifications adopted in the tax legislation (which eliminated the preexisting two-year carryback and restricted the loss offset to 80% of TCJA) would be effective for NOLs arising in tax years beginning after December 31, 2017 (and not tax years ending after December 31, 2017). This rule allowed firms (called fiscal year firms) with tax years spanning 2017-2018 to use the prior law rules allowing a two-year carryback and full offset against taxable income.

A second technical correction changed in the CARES Act addresses the 80% of taxable income limitation (suspended for 2018-2020, but continuing in 2021 and after) by clarifying that pre-2018 loss carryforwards would fully offset taxable income, with the 80% limit applying to remaining taxable income for offsetting loss carryforwards from 2018 and after.

[9] See CRS In Focus IF11187, *Tax Depreciation of Qualified Improvement Property: Current Status and Legislative History*, by Gary Guenther for further discussion.

A third technical correction, also addressed, provided that, once the 80% of taxable income limit is restored, that limit would be applied to income before the deduction for certain other provisions enacted in TCJA: the 20% deduction for pass-through business,[10] the deduction for global international low-taxed intangible income (GILTI), and the deduction for foreign derived intangible income (FDII).[11] This latter change increases the size of income against which the 80% limit applies.

Limit on Losses of Noncorporate Businesses

Under law prior to the TCJA, business losses could be used to offset nonbusiness income. The TCJA limited the amount of business losses that could offset other income to $500,000 for a joint return and $250,000 for other returns. Losses in excess of the amounts are termed *excess business losses*.

The CARES Act suspended this limit for 2018-2020. After 2020, the CARES Act made several technical corrections proposed in the technical corrections draft. It coordinated language to clarify that these disallowed losses become NOLs and that the deductions taken into account do not include the 20% pass-through deduction. It also clarifies that income and deductions from the business relating to being an employee are not taken into account in determining excess business losses. It clarifies that net capital gain income is limited to the lesser of total net gain or net gain from business in determining the excess business loss.

Issues Addressed by Regulation

Some issues of concern were addressed in tax regulations. Tax regulations may be more likely to be challenged in court, especially if they are not taxpayer friendly; thus regulatory corrections do not have the same force as legislative changes.

The 20% Deduction for Pass-Through Businesses

The TCJA introduced a 20% income deduction for pass-through businesses taxed under the individual rather than the corporate tax (i.e., sole proprietors, partnerships, and Subchapter S corporations that elect to be treated as pass-throughs).[12] This deduction is sometimes referred to as the Section 199A deduction after the code section that provides it. The deduction also applied to dividends from real estate investment trusts (REITs) that invest primarily in real estate and pass on earnings through deductible dividends. Most of the revisions in this area relate to the treatment of REIT and PTP (publically traded partnership) incomes.

Most of the discussion draft corrections appear to have been addressed in the final regulations.[13] These include indicating that investment income offset by investment interest is not eligible for the deduction, that deductible amounts cannot be negative, that the deduction is allowable for the

[10] See CRS In Focus IF11122, *Section 199A Deduction for Pass-through Business Income: An Overview*, by Gary Guenther for further discussion.

[11] See CRS Insight IN11314, *Interaction of International Tax Provisions with Business Provisions in the CARES Act*, by Jane G. Gravelle and CRS Report R45186, *Issues in International Corporate Taxation: The 2017 Revision (P.L. 115-97)*, by Jane G. Gravelle and Donald J. Marples for a discussion of low-taxed intangible income (GILTI) and foreign derived intangible income (FDII).

[12] See CRS In Focus IF11122, *Section 199A Deduction for Pass-through Business Income: An Overview*, by Gary Guenther.

[13] T.D. 9847, Qualified Business Income Deduction, February 8 2019, https://s3.amazonaws.com/public-inspection.federalregister.gov/2019-01025.pdf.

alternative minimum tax, and that the production activities deduction (formerly allowed by Section 199A for 2017) cannot be taken for amounts eligible for the pass-through deduction when a firm's fiscal year is not a calendar year.

The technical corrections draft also proposed that a qualified REIT dividend must meet the standards of a qualified dividend, which requires the stock to have been held at least 45 days before the dividend is paid and not be involved in other arrangements such as short sales. The final regulations required a 45-day holding period for REIT dividends but did not make that a period prior to the dividend payment.

One technical correction has not entirely been resolved: whether a dividend from a regulated investment company (RIC) can be eligible for the deduction if derived from REIT or PTP. Proposed regulations have indicated that such REIT derived dividends would be eligible but has asked for commentary given the many complexities that arise with PTPs.[14] The final regulations did not include PTP.[15]

Retention of Gross Income Amounts for Non-Child Dependents

To qualify as a dependent, non-child dependents must have gross income less than the personal exemption. The TCJA temporarily reduced the personal exemption to zero. This correction changed the threshold back to what would otherwise have been the personal exemption ($4,140 indexed for inflation). The Internal Revenue Service issued a notice that indicated the personal exemption amount would be retained for determining non-child dependents.[16]

Deduction for Attorney's Fees of Plaintiffs in Sexual Harassment or Abuse Cases

Questions were raised about whether a TCJA provision that disallowed a deduction for attorney's fees relating to settlement or payment for sexual harassment or abuse cases would also not be deductible by plaintiffs. The IRS issued a statement that the restriction would not apply to plaintiffs.[17]

Reduced Rate of Excise Tax on Certain Wines

TCJA temporarily reduced the federal excise tax on certain wines. The issue was whether the wine credit for small domestic producers that was expanded to large producers on both domestic and sparkling wines would be transferred for wine in bond. The *Code of Federal Regulations* clarifies the issue.[18] Division EE of the Consolidated Appropriations Act, 2021 (P.L. 116-260) expanded and made permanent the temporary reduction.

[14] REG-134652-18, February 8, 2019, https://www.irs.gov/pub/irs-drop/REG-134652-18.pdf.

[15] Regulations issued on June 20, 2020, REG-134652-18, https://www.federalregister.gov/documents/2020/06/25/2020-11832/qualified-business-income-deduction.

[16] See IRS Notice 2018-70, Guidance on Qualifying Relative and the Exemption Amount, https://www.irs.gov/irb/2018-38_IRB#NOT-2018-70.

[17] See Internal Revenue Service, Section 162(q) FAQ, https://www.irs.gov/newsroom/section-162q-faq.

[18] 27 C.F.R. §24.278, Tax Credit for Certain Small Domestic Producers, https://www.law.cornell.edu/cfr/text/27/24.278.

Temporary 100% Expensing for Certain Business Assets

The TCJA excludes property with floor plan indebtedness that increases the limit on the interest deduction. The technical correction addressed by the regulations clarifies that the provision applies to property placed in service in taxable years beginning after December 31, 2017.[19]

Limitation on Deduction for Interest

The regulations address the interrelationship of the restriction on interest deductions under Section 163(j), which disallows net interest payments in excess of 30% of adjusted taxable income with the limitations under the at-risk rule and the passive activity loss rules. The regulations clarify that the general limit on interest deductions applies before the at-risk rules and the passive activity loss rules.[20]

Limitation on Deduction for Fringe Benefits

The TCJA disallowed deductions for transportation fringe benefits and certain recreation expenses, which are not normally included in employee income. The technical correction addressed by the regulations clarifies that this treatment will not apply to transportation fringe benefits if these benefits are already treated as compensation.[21]

Three-Year Holding Period for Long-Term Gains for Sales of Partnership Interests in Investment Partnerships

The TCJA required a three-year rather than a one-year holding period for treatment of sale of partnership interest in an investment firm as long-term capital gains subject to lower rates. This provision is related to concerns about carried interest (treating what is essentially compensation as capital gains). The rules applied to sales by related parties (e.g., other family members of controlled businesses) and the technical correction addressed by the regulations specifies what these related parties are by identifying particular code sections.[22]

Opportunity Zones

The TCJA provided for deferral or exclusion of capital gains income for investment in an opportunity fund. The technical correction clarified that the gain was a capital gain. This issue was addressed in the final regulations, which determined only capital gains qualified.[23]

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[19] See TD 9874, Additional First Year Depreciation Deduction, September 24, 2019, https://www.irs.gov/pub/irs-drop/td-9874.pdf.

[20] See regulations on Limitation on Deduction for Business Interest Expense at https://www.federalregister.gov/documents/2020/09/14/2020-16531/limitation-on-deduction-for-business-intereSeest-expense.

[21] See Treasury Decision, TD 9939, Qualified Transportation Fringe, Transportation and Commuting Expenses under Section 274, June 23, 2020, https://www.irs.gov/pub/irs-drop/td-9939.pdf.

[22] Addressed by regulations, see TD 9945, Guidance Under Section 1061, https://www.irs.gov/pub/irs-drop/td-9945.pdf.

[23] See final regulations, Investing in Qualified Opportunity Zones, January 13, 2020, https://www.federalregister.gov/documents/2020/01/13/2019-27846/investing-in-qualified-opportunity-funds.

International Provisions

Some aspects of international provisions, which are quite complex and difficult to explain without an outline of the international rules, have been incorporated in regulations, whereas others have not. See discussion in the text.

Provisions in the January 2019 Discussion Draft Not Yet Addressed (Other Than International)

This section discusses the provisions in the discussion draft. It divides them into categories according to the TCJA's outline and CRS Report R45092, which provides a side-by-side comparison.[24] The section also notes where these provisions have received significant attention and in those cases where they are discussed in other CRS reports.

Individual Tax Reform

The individual tax provisions were generally temporary and are scheduled to expire after 2025. The following changes refer to those provisions as currently in force.

Tax Bracket Rounding Rule for Head of Household Returns

When adjusting for inflation, tax brackets are rounded up to the next $50 ($25 for married couples filing separately). The TCJA inadvertently included head of household returns in the same category as married filing separately for this rounding convention. The revision would provide for $50 rounding increment for head of household rate brackets.

Tax Identification Number for Dependent and Child Tax Credits

The TCJA requires that a taxpayer must provide the Social Security number (SSN) for any child claimed for the child tax credit. The TCJA also enacted a new temporary credit for non-child-tax-credit-eligible dependents. The IRS refers to the credit as the "credit for other dependents." This credit is equal to $500 per non-child-credit-eligible dependent.

The provision clarifies that in order for a taxpayer to receive the "credit for other dependents," the taxpayer must provide a tax identification number (TIN), which is generally an SSN or an individual taxpayer identification number (ITIN). It also clarifies that for the purposes of claiming the child credit or credit for other dependents, the applicable TIN must be issued *on or before* the due date for filing the return (current law states *before*).

Charitable Contribution Limits

Under prior law, cash contributions to charities were limited to 50% of adjusted gross income (AGI) and cash contributions to private foundations were limited to 30% of AGI. Property contributions were limited to 30% of AGI for charities and 20% of AGI for private foundations. Taxpayers could deduct combinations (e.g., 30% to private foundations and 20% to charities, for a total of 50%). In increasing the limit to 60%, the revision requires that all of the 60%

[24] CRS Report R45092, *The 2017 Tax Revision (P.L. 115-97): Comparison to 2017 Tax Law*, coordinated by Molly F. Sherlock and Donald J. Marples.

contribution be entirely in cash to charities. The correction would allow the 60% limit for cash contributions to apply after taking into account noncash contributions.

Death or Disability Income Exclusion for Student Loans

TCJA allowed student loans discharged due to death or disability of the student to be exempt from income, and hence not subject to taxation. The correction expands this exclusion to include parent's loans (Parents Plus) that are discharged because of the student's death or disability.

State and Local Tax Deduction

The TCJA imposed a limit of $10,000 on itemized deductions of state and local taxes. The provision clarifies that the ceiling cannot be avoided by prepaying income taxes.[25] Such a rule already appears in the law, but the correction changes the section reference to be more explicit.

Bicycle Commuting Expenses

The TCJA eliminated the provision that allowed reimbursements (which are paid to the employee) for bicycle commuting expenses to be excluded from employee income but continued to allow employers to deduct expenses. This treatment is slightly different from other fringe benefits in which the TCJA disallowed employer deductions while continuing to exclude transportation fringe benefits (which are often provided in kind, such as parking). The change in the discussion draft moves the exclusion from a subsection of the tax code defining transportation fringes to the section defining fringe benefits in general.

Corporate Alternative Minimum Tax

Prior law imposed an alternative minimum tax, or AMT (a lower rate on a broader base) on corporations. Any AMT in excess of regular tax could be carried over to offset regular tax in years when the minimum tax was smaller than the regular tax. This carryover was allowed to reflect the influence of timing provisions in the two tax bases, especially with respect to depreciation. The TCJA repealed the corporate AMT, and it allowed for a refund of unused AMT credit carryovers in the years 2018 through 2021, in a schedule set out in the TCJA. Uncertainty exists about whether this schedule will be affected by credit limitations in other sections of the tax code, which govern the carryover of tax attributes with a change in ownership or an acquisition (Sections 383 and 381 of the tax code). The provision clarifies that these tax sections will not affect the AMT schedule.

Business-Related Provisions in General

Improvements to Nonresidential Real Property Under Section 179

Under the TCJA, certain improvements to nonresidential real property (roofs, heating, ventilation, and air-conditioning property; fire protection and fire alarm systems; and security systems) can be expensed, up to dollar limits as part of a general provision under Section 179 that allows

[25] See CRS Report R46246, *The SALT Cap: Overview and Analysis*, by Grant A. Driessen and Joseph S. Hughes for a discussion of the cap.

expensing of certain depreciable assets.[26] The provision clarifies that the improvement must be made by the taxpayer.

Temporary 100% Expensing for Certain Assets

Prior to the TCJA, certain investments—primarily equipment—were eligible for bonus depreciation, which allowed half of the investment to be expensed (deducted immediately rather than depreciated over time); this provision was scheduled to be phased out after 2019. The TCJA allowed for 100% expensing for assets placed into service after September 27, 2017, and through 2020, which was thereafter phased out over five years by 20% per year.

Taxpayers were allowed a transition rule to elect the 50% expensing allowance for assets for the taxpayer's first taxable year ending after September 27, 2017. The technical correction would add that this provision applies only for assets placed in service by taxpayers with the first taxable year ending after that date and beginning before January 1, 2018. Technical corrections would also correct the law regarding effective dates to indicate that temporary expensing applies to assets acquired before September 28, 2017, and placed into service after September 27, 2017; the current language refers to assets acquired and placed into service after September 27, 2017.

Applicable Recovery Period for Real Property

The CARES Act corrected the "retail glitch," restoring the treatment of qualified improvement property to 15 years and eligible for expensing.

The discussion draft also clarifies that for taxpayers in the real estate industry who have elected to avoid the limits on interest deductions (allowed under other provisions of the TCJA bill) if they use an alternative slower method of depreciation (the alternative depreciation system, or ADS), the ADS (under a change of use provision) will be used for qualified improvement property placed into service before 2018.

Research and Experimental Expenditures

Currently, research and experimental (R&E) expenditures covering salaries and other costs (but not depreciable assets) are expensed, although, as an investment, theoretically they should be capitalized and written off over their useful life. This provision has long existed in the tax code both to simplify tax administration and encourage R&E. The TCJA provided that for taxable years beginning after December 31, 2021, the costs would be deducted over five years.

These expenditures constituted a preference under the AMT, which required them to be deducted over 10 years. The AMT was repealed for corporations, but maintained for individuals (although exemptions were increased so that it applies to fewer taxpayers). This change eliminates R&E from the list of preferences. The tax code also allowed taxpayers to elect to write off certain items otherwise expensed over 10 years under the regular tax rules, which would make the treatment of research expenses the same as under the AMT. This revision removes R&E expenses from this list. Basically, all of these changes create a uniform treatment of R&E expenditures.

The correction also revises rules for uniform capitalization of certain overhead costs to remove the reference to R&E expenditures.

[26] See CRS In Focus IF10723, *P.L. 115-97, the 2017 Tax Revision, and Small Business Taxation*, by Gary Guenther and CRS Report RL32254, *Small Business Tax Benefits: Current Law and Arguments For and Against Them*, by Gary Guenther for further discussion of Section 179.

Limitation on the Deduction of Interest

The TCJA provided limits on the deduction of interest that, in contrast to prior law, applies to all interest (not just related party interest) and all businesses (not just corporations). The interest deduction (net of business interest income) limit is 30% of a taxpayer's adjusted income before interest and taxes (and temporarily before depreciation deductions). Disallowed interest (excess interest) can be carried forward to offset taxable income in the future when the interest limit is not reached. The extension to unincorporated businesses that are taxed under the individual income tax creates some complications for partnerships and with other interest restrictions in the tax code.

The interest limit is applied to the partnership (not the individual partners) but the carryforward is applied at the partner level (that is because partnership allocations can shift over time). Thus, any excess interest or "excess taxable income" (when 30% of adjusted income exceeds interest) is passed on to the partners who then apply carryforwards. The technical correction provides clarification to ensure against double counting at the partnership and partner level by clarifying that business interest income cannot be counted for both the partners and the partnership but also that any business interest income not used by the partnership may be passed down to the partners. It also clarifies that disallowed business interest may offset excess taxable income and business interest income allocated to the partner but not other income of the partner. It also clarifies that the offset against excess taxable income of the partner will not be reduced because the partner has negative adjusted taxable income before considering the excess taxable income. Finally, it provides rules for allocating the partners' shares of disallowed business interest, excess table income, and excess business income.

Limitation on Deduction for Fringe Benefits

The TCJA disallowed deductions for transportation fringe benefits and certain recreation expenses, which are not normally included in employee income. The correction clarifies language consistent with congressional intent that the exception for business meetings is to disallow a deduction for entertainment but not for 50% of meals.

Three-Year Holding Period for Long-Term Gains for Sales of Partnership Interests in Investment Partnerships

The TCJA required a three-year rather than a one-year holding period for treatment of sale of partnership interest in an investment firm as long-term capital gains subject to lower rates. This provision is related to concerns about carried interest (treating what is essentially compensation as capital gains). The rules applied to sales by related parties (e.g., other family members of controlled businesses) and the technical correction specifies what these related parties are by identifying particular code sections.

Employer Credit for Paid Family and Medical Leave

The TCJA act provided for an employer credit for paid family and medical leave, set to expire in 2019, subsequently extended to 2020 by the Further Consolidated Appropriations Act, 2020 (P.L. 116-94) and through 2025 by the Consolidated Appropriations Act, 2021 (P.L. 116-260). This provision makes a technical change to treat members of an aggregated group as a single employer rather than a single taxpayer. It also adds a provision that allows an employer in an aggregated group to receive the credit if they have a written leave policy that meets criteria for claiming the credit, even if other employers in the aggregated group do not have a written leave policy. The

leave benefit must be nondiscriminatory, taking into account all employees of employers considered as a single employer.

Insurance Provisions

Several technical corrections to the treatment of insurance companies are summarized briefly below.

Net Operating Losses of Life Insurance Companies

This provision replaces obsolete references to the prior law term "losses from operations" with "net operating losses" and corrects cross references.

Repeal of Small Life Insurance Company Deduction

The act repealed the small life insurance company deduction. This provision clarifies that a repealed, prior-law rule to determine taxable income and a prior limitation on losses from noninsurance groups in consolidating income applies.

Computation of Life Insurance Reserves

This provision corrects an incorrect reference in the tax code relating to the interest rate for computing life insurance tax reserves.

Percentages for the Capitalization of Policy Acquisition Expenses

Certain shares of policy acquisition costs were capitalized and deducted over a period of time; both the share and the time period were increased. This provision clarifies the treatment of costs under a transition rule for a pre-2018 year.

Modification of Discounting Rules for Property and Casualty Insurance Companies

Property and casualty insurance companies can deduct additions to reserves for estimated losses, discounted over a period of three years after the loss or 10 years with a possibility of five additional years depending on the line of business. The TCJA increases the 10-year period for determining the addition to reserves by up to 14 years. The technical correction applies this extension to reinsurance and international businesses.

Modification of Treatment of S Corporations Conversions to C Corporations

S corporations (that elect to be taxed as flow-through entities rather than regular C corporations) have an accumulated adjustments account that tracks undistributed profits to shareholders that have been taxed similar to an earnings and profits account for C corporations that tracks undistributed profits. Distributions in the post-transition period (generally a year) are generally tax free up to the amount already taxed and reduce the stock's basis. Distributions from a C corporation are treated as taxable dividends up to the amount of earnings and profits. When an S corporation converts to a C corporation, there is a post-transition period (usually a year) where the more favorable Subchapter S distribution treatment is used. The act provided a two-year-transition period where distributions partly benefit from the more favorable Subchapter S distribution based on the share of accumulated adjustment account amounts and earnings and part of the more favorable treatment for Subchapter S distributions. The technical correction clarifies

that C corporations can opt out of this treatment and that the Secretary of the Treasury can prescribe rules for allocating between the accumulated adjustment account and earnings and profits.

Excise Tax on Excess Tax-Exempt Organization Executive Compensation

Limits apply to the amount that can be deducted for certain highly paid executives (which reduce after-tax income by the tax rate times the excess compensation). The act imposed a 21% excise tax on nonprofits' excess executive compensation, including state and local governments. The technical change clarifies that the provision also applies to state colleges and universities. (Without it, salaries of many highly paid sports teams' coaches who earn over $1 million are exempt).

Opportunity Zones

The TCJA provided for deferral or exclusion of capital gains income for investment in an opportunity fund. The technical correction corrects a clerical error that repeats a phrase in the definition of opportunity zone business property. This issue was addressed in the final regulations, which determined only capital gains qualified.[27]

International Provisions

Because of the complex nature of tax corrections to the new international regime and their potentially limited interest by readers, the technical corrections, some of which have been addressed in regulations, can be more easily explained by beginning with a basic outline of the change in the international regime.[28]

Prior to the 2017 changes, earnings of foreign-related corporations were taxed only when income was paid to the U.S. shareholder as a dividend, so that taxes were deferred, perhaps indefinitely, with one exception. That exception was for income of controlled foreign corporations (CFCs) that was easily shifted to avoid tax, including certain passive income (such as interest) as well as foreign base company income (i.e., earnings of sales and services subsidiaries in which the good or service was neither produced or consumed in that country). CFCs are foreign incorporated firms where U.S. shareholders owning 10% of the shares owned together more than 50% of the shares. This current taxation of income, called Subpart F income (after the code section that governs CFCs) applied to CFCs'10% shareholders. Income from branches as well as income normally deducted in the foreign country (i.e., interest, rents, and royalties) was taxed currently. Ways to avoid Subpart F include the high-tax kick-out rule (Subpart F does not apply if the country's tax rate is 90% of the U.S. rate), the same-country exception (when the payments are between firms in the same country), and the look-through rules (which codify and expand a provision called check-the-box, which allows CFCs to disregard the separate incorporation of related foreign subsidiaries for the purpose of U.S. law, even if they were regarded as separate entities by foreign countries).

The U.S. shareholder was allowed a credit for foreign taxes paid, but the credit was limited to U.S. tax on foreign-source income. For example, income is grossed up by the foreign taxes paid

[27] See final regulations on Investing in Qualified Opportunity Zones, January 13, 2020, https://www.federalregister.gov/documents/2020/01/13/2019-27846/investing-in-qualified-opportunity-funds.

[28] For a more detailed discussion of the international tax regime and how it changed in 2017, see CRS Report R45186, *Issues in International Corporate Taxation: The 2017 Revision (P.L. 115-97)*, by Jane G. Gravelle and Donald J. Marples.

to put income on a pretax basis because of applying the limit. The limit applied separately within two baskets: a passive basket and an active basket. Within each basket foreign taxes could be cross-credited so that taxes in excess of U.S. income tax due in one country could offset U.S. taxes on low-tax countries. Unused excess foreign tax credits could be carried back one year and forward 10 years.

Under the new regime, dividends paid by foreign firms are exempt (through a dividend received deduction) if a U.S. corporate shareholder owns at least 10% of the foreign firm. The new law retains the Subpart F income rules and treatment of branch and other pass-through income.[29] In addition, the new law imposes a tax on some of the CFCs' remaining profits under the tax on global intangible low-taxed income (GILTI), which is imposed after exclusion of a deemed return on tangible assets and a deduction from the remainder.

U.S. owners are allowed a credit for foreign taxes paid, although the credit for GILTI income is limited to 80% of foreign taxes. The law also creates two additional baskets, one for branch income and one for GILTI. Foreign tax credits associated with GILTI cannot be carried backward or forward.

The tax revision also expands the scope of CFCs by adopting so called downward attribution rules that trace ownership through a U.S. firm's stock holdings in subsidiaries (directly and indirectly) and through a foreign shareholder of the U.S. firm and its foreign subsidiaries.

The 2017 tax revision, in transiting from a tax on income from foreign corporations triggered by dividend payments (except for Subpart F) to a system that excluded dividends and imposed tax on GILTI regardless of dividends also included a lower tax on the accumulated unrepatriated post-1986 income from previous years, which can be paid in installments over eight years. The rate is 8% (15.5% for assets held in cash).

Another feature of the international tax system that can affect effective tax rates is the deduction for foreign-derived intangible income (FDII), which is designed to provide a similar benefit for the domestic holding of intangible assets as occurs for foreign-source income under GILTI. The tax deductions for GILTI and FDII are limited to taxable income.

The technical corrections often refer to the following code sections (note that Sections 951 through 965 all fall into Subpart F):

- Section 78 provides for a gross up of foreign taxes (i.e., adding back taxes to foreign-source income to measure pretax income) for Subpart F and GILTI.
- Section 245A provides for the dividend deduction.
- Section 250 provides for deductions under GILTI and FDII, which is currently 50% for GILTI (after reducing income by the 10% deemed return on tangible assets) and 37.5% for FDII.
- Section 901 provides for a foreign tax credit.
- Section 904 provides for limits on the foreign tax credit.
- Section 907 provides a separate restriction of credits of foreign oil extraction income to prevent high taxes (that might be considered royalties) from offsetting tax on other income.
- Section 951 provides for income inclusion of Subpart F income.

[29] For a more detailed discussion of the international tax regime and how it changed in 2017, see CRS Report R45186, *Issues in International Corporate Taxation: The 2017 Revision (P.L. 115-97)*, by Jane G. Gravelle and Donald J. Marples.

- Section 951A provides for income inclusion of GILTI (for many purposes GILTI income is treated the same as Subpart F income included in Section 951).
- Section 958 provides for stock attribution rules for determining CFC status.
- Section 959 provides for exclusion from gross income of previously taxed profits.
- Section 960 provides for a deemed paid foreign tax credit for Subpart F and GLTI.
- Section 961 provides for adjustments to the basis of stock in CFCs.
- Section 964 is a set of miscellaneous provisions relating to Subpart F income.
- Section 965 provides for the treatment of unrepatriated post-1986 accumulated income upon transition to the new system.

Dividend Received Deduction

Several technical corrections relate to the dividend received deduction.

First, the provision applies to tax years ending after December 31, 2017. For taxpayers whose fiscal year is not a calendar year and would have had distributions in 2017, a correction specifies that the dividend will not change adjusted current earnings for purposes of the alternative minimum tax (which was repealed for tax years beginning after December 21, 2017).

Second, the provision clarifies that hybrid dividends (those that are disallowed a deduction because they receive a deduction or other tax benefit from a foreign country) are also treated as hybrid dividends if received from one foreign-owned CFC by another foreign-owned CFC if the CFC paying the dividend received a deduction or other benefit from the foreign country. This provision has been clarified in regulations.[30]

Third, the provision addresses tiered foreign corporations (i.e., the foreign corporation has its own subsidiaries organized in a foreign country) to clarify that if the foreign subsidiary receives a dividend from a lower-level subsidiary, the U.S. shareholder will receive a dividend deduction for any amount included in taxable income under Subpart F.

Fourth, there are fairly complicated pro rata rules determining whether and how much Subpart F income a U.S. shareholder includes in taxable incomes, including if owned only on the last day for the foreign corporation's taxable year, modified by the share of the year a foreign corporation is a CFC and the share of ownership in that foreign corporation. That combined share is reduced to the extent dividends are paid to another U.S. shareholder up to the amount of Subpart F income. The correction modifies the treatment for U.S. shareholders who do not hold stock on the last day by allocating Subpart F income to the extent the U.S. shareholder received a distribution that would give rise to a dividend deduction or a dividend paid by a lower tier or received a dividend that would not be Subpart F income (because of the high-tax kick-out rule, the same-country exception or the look-through rule).

[30] See Rules Regarding Certain Hybrid Arrangements, April 8, 2020, https://www.federalregister.gov/documents/2020/04/08/2020-05924/rules-regarding-certain-hybrid-arrangements. For the regulations, see Cornell Law School, Special Rules for Hybrid Dividends, https://www.law.cornell.edu/cfr/text/26/1.245A(e)-1.

Special Rules Relating to Sales or Transfers Involving 10%-Owned Foreign Corporations

If a CFC sells or exchanges stock in another foreign corporation, the gain is treated as a dividend and the technical correction clarifies that this income will be eligible for a dividend deduction unless it is a hybrid dividend. This change is in the regulations.[31]

Treatment of Deferred Foreign Income Under the Transition Tax

Several technical corrections are proposed and several are addressed in the regulations for Section 965,[32] or in other notices.

First, if a foreign corporation has a loss, it can offset earnings from other foreign corporations but its earnings and profits are increased by those amounts. The transition tax applies to earnings and profits in taxable years beginning before January 1, 2018. The act also repeals deemed foreign tax credits (i.e., credits allowed for foreign taxes paid based on dividends as a portion of earnings) for taxable years beginning after December 31, 2017. For taxpayers who do not use a calendar year, the transition tax can apply at the same time the deemed credit is in place. This technical correction provides that the increase in earnings and profits for corporations with a deficit does not apply for purposes of the deemed credit. This provision was addressed in the Section 965 regulations.

Second, the provision clarifies that an individual shareholder will take the deduction that lowers the tax rate on prior earnings not as an itemized deduction, but as an above the line deduction determining adjusted gross income.[33]

Third, the provision clarifies that foreign taxes on earnings that are excluded because they are offset with deficits from other CFCs will not be allowed as foreign tax credits. This provision is addressed in the 965 regulations.[34]

Fourth, the provision clarifies that net tax liability for the transition tax is the liability above the amount that would otherwise occur and without regard to any income, deductions, or credits associated with dividends from corporations with deferred earnings; it also clarifies that the net tax liability that can be spread over installments does not include the AMT.

Fifth, a correction allows refunds when taxpayers overpay installments, rather than crediting the overpayment to the remaining amount and not allowing a credit until the tax is overpaid on the entire transition amount taxpayers are allowed a current refund.[35]

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[31] See Treasury Decision TD 9934, Coordination of Extraordinary Disposition and Disqualified Basis Rules, https://www.irs.gov/pub/irs-drop/td-9934.pdf.

[32] See Regulations Regarding the Transition Tax Under Section 965 and Related Provisions, February 5, 2019, https://www.federalregister.gov/documents/2019/02/05/2019-00265/regulations-regarding-the-transition-tax-under-section-965-and-related-provisions.

[33] This intent is reflected in IRS instructions, see https://www.irs.gov/newsroom/questions-and-answers-about-reporting-related-to-section-965-on-2017-tax-returns, under Q2, in the link to Appendix Q&A2; in Treasury Notice 2018-26 at https://www.irs.gov/pub/irs-drop/n-18-26.pdf; and in the regulations.

[34] FedEx has sued to overturn this regulation. See Alex M. Parker, "FedEx Sues Over $89 Million TCJA Transition Tax Dispute," Law 360, November 3, 2020, https://www.law360.com/articles/1325320/fedex-sues-over-89-million-tcja-transition-tax-dispute.

[35] The IRS has taken the position that refunds are not allowed. Office of Chief Counsel, Internal Revenue Service Memorandum on Overpayments and I.R.C. §965(h), August 2, 2018, https://www.irs.gov/pub/lanoa/

Sixth, the law provides that shareholders have six years to determine the size of the tax liability under the transition tax. This provision clarifies that the rule also applies to partnerships even though there are other parts of the tax code allowing adjustments over shorter periods of time.[36]

Seventh, real estate investment trusts are allowed to defer the exclusion over eight years. The correction, which arises from a clerical error in cross references, would prevent these firms from also electing the eight-year-installment period. This provision is addressed in the 965 regulations.

Eighth, the provision clarifies the treatment of operating losses. Taxpayers may elect to defer net operating loss carryforwards so that they can offset income taxed at the full rate rather than the lower rate under the transition tax. This provision clarifies that the rule also applies to expenses generating current losses. This provision is addressed in the 965 regulations.

Ninth, the provision strikes an erroneous cross reference.

Tenth, the provision provides that extraordinary earnings and profits (dispositions made outside of the ordinary to related persons) made after December 21, 2017, by firms not using a calendar year would be treated as 965 inclusions for corporate taxpayers.

Current Year Inclusion of GILTI

This section has several technical corrections.

First, the provision clarifies that the carryback and carryover rules for foreign oil and gas taxes do not apply to GILTI. There is a separate limit on the foreign tax credit for foreign oil and gas extraction income to prevent these taxes (which may be high because they are in the nature of royalties) from offsetting U.S. taxes on other income. The tax code section that imposes this additional layer of restrictions (Section 907) also provides for a one-year carryback and a 10-year carry forward for foreign oil related income (which includes foreign oil and gas extraction income). Foreign oil and gas extraction income is excluded from GILTI, which has no carryback or carryforward of foreign tax credits. This provision clarifies that the foreign oil related income carryback and carryforward rules do not apply to GILTI.

Second, the provision clarifies that when allocating dual tangible property (used for GILTI and other purposes), which is based on the share of gross income, it does not deduct interest from the measure of GILTI gross income.[37]

Third, the provision moves the grant of regulatory authority relating to the use of tax avoidance devices from a subsection relating to tangible property to a new section with broader coverage.

Fourth, the provision clarifies that the rule allowing the foreign tax credit limit to increase when distributions are made out of previously taxed income applies to GILTI.[38]

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pmta_2018_16.pdf.

[36] See IRS Office of Chief Counsel, Internal Revenue Service Memorandum, The Period of Limitations for Adjustments Related to Section 965 for Partnerships, May 26, 2020, https://www.irs.gov/pub/lanoa/pmta-2020-08.pdf for a discussion of rules of different time periods applying to partnerships.

[37] This provision has been addressed in the regulations on GILTI, Guidance under Sections 951A and 954 Regarding Income Subject to a High Rate of Foreign Tax, https://s3.amazonaws.com/public-inspection.federalregister.gov/2020-15351.pdf.

[38] In Section 960 regulations, Overview, Definitions, and Computational Rules for Determining Foreign Income Taxes Deemed Paid Under Section 960(a), (b), and (d), https://www.law.cornell.edu/cfr/text/26/1.960-1 (hereinafter Section 960 regulations).

Fifth, the provision clarifies that 80% of foreign taxes paid on distributions of income previously taxed can be credited and that the remainder is not deductible.[39]

Sixth, the provision clarifies that certain rules in determining reductions of basis due to distributions are generally applicable and that gain may be recognized upon a distribution of previously taxed earnings by a lower tier to an upper tier CFC in which the distribution exceeds the upper tier's basis in the stock of the lower tier.

Taxable Income Limitation to Deduction for FDII and GILTI

This section clarifies that the taxable income limit accounts for the gross up of foreign taxes in addition to FDII and GILTI and that the deduction cannot become negative.

It also adds to the list of incomes excluded in allowing the deduction certain income, including foreign personal holding company income (PFIC), qualified electing funds (which are treated as flow through income) and extraterritorial income (related to transition amounts from a prior export subsidy regime).

The provision also clarifies that the taxable income limit for oil and gas production is calculated without regard to the Section 250 deduction.

Modification of Stock Attribution ("Downward Attribution") Rules

The constructive ownership rules for purposes of determining 10% U.S. shareholders, whether a corporation is a CFC and whether parties satisfy certain relatedness tests, were expanded in the 2017 tax revision. Specifically, the new law treats stock owned by a foreign person as attributable to a U.S. entity owned by the foreign person (so-called downward attribution). As a result, stock owned by a foreign person may generally be attributed to (1) a U.S. corporation, 10% of the value of the stock of which is owned, directly or indirectly, by the foreign person; (2) a U.S. partnership in which the foreign person is a partner; and (3) certain U.S. trusts if the foreign person is a beneficiary or, in certain circumstances, a grantor or a substantial owner.

The downward attribution rule was originally conceived to deal with inversions. In an inversion, without downward attribution, a subsidiary of the original U.S. parent could lose CFC status if it sold enough stock to the new foreign parent so the U.S. parent no longer had majority ownership. With downward attribution, the ownership of stock by the new foreign parent in the CFC is attributed to the U.S. parent, so that the subsidiary continues its CFC status, making it subject to any tax rules that apply to CFCs (such as Subpart F and repatriation taxes under the old law, and Subpart F and GILTI under the new law). The technical correction would limit the scope of that provision to 50% ownership for corporations. This provision was included in an earlier draft of the CARES Act considered by the Senate, but it was not in the final enacted version.[40]

Modification of Definition of U.S. Shareholder

This provision modifies the definition of U.S. shareholder for GILTI to include 10% of value as well as 10% of vote.

[39] Section 960 regulations.

[40] Although some administrative and minor relief in certain situations was granted, the regulations did not include this change.

Repeal of Section 902, Indirect Foreign Tax Credits, and Determination of Section 960, Credit on a Current Year Basis

First, the provision clarifies that foreign tax credits taken because of a withholding tax and do not result in an additional gross up.

Second, the gross up of a dividend for foreign taxes is not eligible for the dividend received deduction. This rule applies to taxable years beginning after December 31, 2017 and the dividend deduction is available for distributions after December 31, 2017. Taxpayers who are not calendar year taxpayers would have distributions that fall in fiscal years beginning after December 31, 2017, and this provision clarifies that the gross up for these amounts is not eligible.[41]

Third, the provision clarifies that for the foreign tax credit limit, the gross up of income for foreign taxes paid, including the gross up for GILTI, will be assigned to the basket where the foreign taxes are allocated.[42]

Fourth, the provision clarifies that financial services income is not a passive category income, but it can be treated as general, GILTI, or branch income.[43]

Fifth, the provision amends Section 953 of the tax code relating to foreign insurance income to allow a deemed-paid credit relating to GILTI income under the expanded definition of U.S. shareholder.

Sixth, the provision clarifies that the expanded stock attribution rules will apply to the foreign tax credit as it applies to income included under Subpart F.

Other Possible "Fixes" and Technical Corrections

Two other issues arose that were not in the technical corrections draft but are considered to be unintentional effects of the act and perhaps can be addressed only through legislation.

Interest Deduction Limits for Floor Plan Financing of Travel Trailers and Campers

Not included in Representative Brady's discussion draft is the Travel Trailer and Camper Tax Parity Act (S. 1543/H.R. 4349). This bill would have modified the tax code to ensure that the floor plan financing exception to the limits on interest deductions includes the financing of specific trailers and campers that are not self-propelled.

[41] This provision is in the regulations, see TD 9866, Guidance Related to Section 951A (Global Intangible Low-Taxed Income) and Certain Guidance Related to Foreign Tax Credits, June 21, 2019, https://www.federalregister.gov/documents/2019/06/21/2019-12437/guidance-related-to-section-951a-global-intangible-low-taxed-income-and-certain-guidance-related-to.

[42] This provision is in the regulations for Section 904 (Limitation on the Foreign Tax Credit), TD 9882, December 2, 2019, https://www.irs.gov/pub/irs-drop/td-9882.pdf.

[43] Also in TD 9866, Guidance Related to Section 951A (Global Intangible Low-Taxed Income) and Certain Guidance Related to Foreign Tax Credits, June 21, 2019, https://www.federalregister.gov/documents/2019/06/21/2019-12437/guidance-related-to-section-951a-global-intangible-low-taxed-income-and-certain-guidance-related-to.

Social Security Numbers and the Child Credit for the Amish

Some have concerns with respect to how the Social Security number (SSN) requirement for claiming the Child Tax Credit affects populations such as the Amish who do not have SSNs.

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