The background of the slide is a photograph of the United States Capitol building in Washington, D.C. The building is a large, white, neoclassical structure with a prominent dome. The sky is a clear, bright blue. In the foreground, there are green trees and a field of red flowers. The text is overlaid on the left side of the image.

Casualty Actuarial Society Spring Meeting

Survey of Recent Tax Developments – U.S. Tax Reform and the Property & Casualty Insurance Industry

Jean Baxley

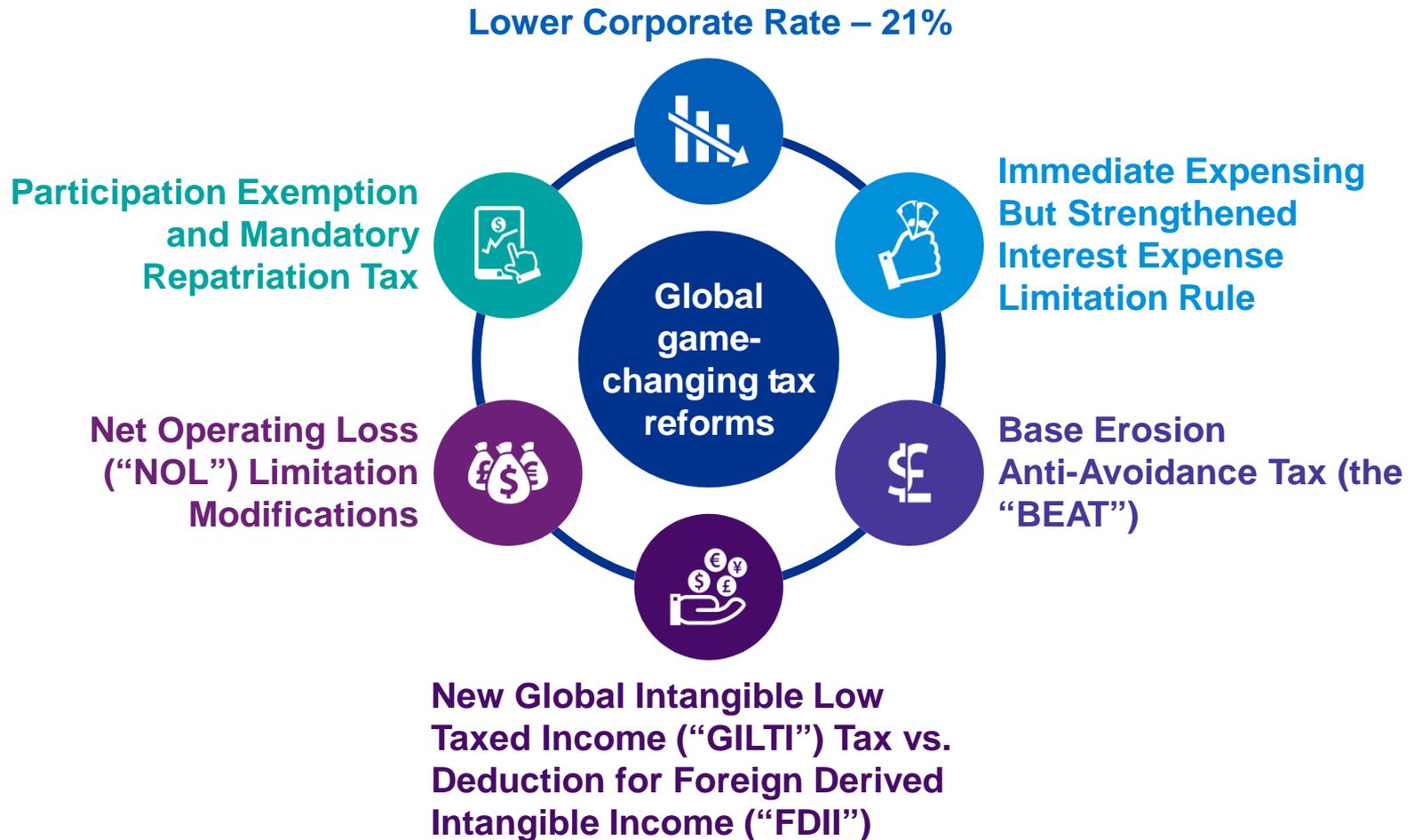
David Jones

Stuart Katz

New Orleans
May 21, 2019

Tax Cuts and Jobs Act ("TCJA") Overview

Cornerstone Provisions of U.S. Tax Reform



TCJA Provisions

Key Domestic Business Provisions

Provision	H.R. 1
Corporate rate	21%, effective for taxable years beginning after 12/31/17. Special rules for fiscal year filers.
Individual owners of passthroughs and proprietorships	<p>Create a 20% deduction to be taken against “qualified business income”; numerous limitations apply; service businesses generally excluded with special rules for taxpayers with taxable income below \$157,500 (single) or \$315,000 (joint).</p> <p>Deduction expires after December 31, 2025</p>
Carried interest	Three-year holding period for long-term capital gain (LTCG) in the case of certain partnership interests received for services.
Cost recovery	100% expensing for investments in depreciable property other than real property or certain utility property and certain businesses with floor plan indebtedness; applies to both new and used property; applies to investments after September 27, 2017 and before January 1, 2023; phase-out 2023 – 2026.
Real property cost recovery	No general provision. Includes special rules for certain leasehold, restaurant, retail and residential rental property.

Key Domestic Business Provisions (continued)

Provision	H.R. 1
Interest expense	Disallow net business interest deductions in excess of 30% of “adjusted taxable income”; adjusted taxable income generally is EBITDA from 2018-2021 and EBIT thereafter; would not apply to certain small businesses, real estate businesses, utilities, and floor plan indebtedness; disallowed interest carried forward indefinitely.
Net operating losses (NOLs)	Limited to 80% of taxable income (for losses arising in tax years beginning after 2017); generally no carrybacks; indefinite carryforward.
Corporate AMT	Repeal corporate AMT; credit carryforwards partially refundable in years 2019, 2020 and 2021; fully refundable by 2022.
Research activities	No changes to research credit; Sec. 174 costs generally amortized over 60 months beginning in 2022.
Like-kind exchange	Nonrecognition is eliminated for exchanges of property other than real property.
Selected revenue raisers/Other	Repeal Sec. 199 beginning 2018. Other deductions and preferences limited or eliminated. Narrows Historic Rehab credit, and Rare Disease credit.

Property and casualty insurance provisions

Provision	Conference agreement
Loss Reserve Discounting	Increases discount rate to corporate bond yield. Payment pattern extended to 24 years. Repeals company experience election. Transition rule: Impact on reserves for pre-2018 contracts is spread over 8 years.
Proration of Dividends Received Deduction and Tax Exempt Interest	Nonlife companies entitled to 75% of the benefit of tax exempt interest and the dividends received deduction. Proration percentage automatically adjusts based on changes in the corporate tax rate.
Net Operating Loss	Retain prior law. NOLs may be carried back two years and forward 20 years to offset 100% of taxable income.
S. 847 Special Estimated Payments	Repealed.

Modification of discounting rules

Effective date – Taxable years beginning after Dec. 31, 2017		
Prior law	TCJA	Application
<ul style="list-style-type: none"> — To take into account the time value of money, discounting of unpaid losses was required; P&C loss reserves for each LOB were required to be discounted — Discounted reserves were calculated using a prescribed interest rate which was based on the applicable Federal mid-term rate (“mid-term AFR”) — An election was provided permitting a taxpayer to use its own historical loss payment pattern with respect to all lines of business 	<ul style="list-style-type: none"> — Discounted reserves are calculated using a prescribed interest rate determined by Treasury based on the corporate bond yield curve (a yield curve that reflects the average, for the preceding 60-month period, of monthly yields on investment grade corporate bonds) — The bill repeals the prior law election that permitted a taxpayer to use its own historical loss payment pattern 	<ul style="list-style-type: none"> — The change in the prescribed interest rate is expected to have the impact of lower discount factors which would create lower deductible tax reserves (higher taxable income) — Transitional rule exists to recalculate Dec. 31, 2017 reserves under TCJA provisions; adjustment is spread over eight taxable years beginning in 2018

Proposed Regulations under section 846

- Proposed regulations promulgated in late 2018 were intended to provide additional guidance:
 - Change of interest maturity range: The maturity benchmark was significantly extended from 3.5-9 years to .5-17 years.
 - Repeal of “composite” method: Alternative guidance allows companies to discount AYs 0-9 as normal and then include all older reserves in an older “composite” bucket. The proposed regulations call for the repeal of this method.
 - Alignment of discount rates for LRD and S&S.

Proposed Regulations under section 846

The IRS subsequently published Rev. Proc. 2019-06, which provided provisional discount rates for tax year 2018.

Some uncertainty remains as 2018 tax return season approaches.

- Interest rate: Many in industry argue the maturity window should be shortened to better mirror the investments held to backstop P&C reserves. Current guidance also indicates that the same discount factors will apply to 2017, 2018, and future periods, suggesting the rates may be acting as a placeholder until a more comprehensive approach is finalized.
- Composite method: Industry commenters argued against the repeal of the composite method, citing the difficulty of obtaining data for older accident years from “legacy systems.” **The Rev. Proc. included composite factors despite the repeal in the proposed regs.**
- Reinsurance and International: As drafted, TCJA requires reinsurance and international LOBs to be discounted as short-tail lines, even though they are classified as long-tail lines in Schedule P. Treatment in the Rev. Proc. indicates IRS believes a technical correction is required.
- Rev. Proc. 2019-06 provides guidance for companies to follow in the event that revised discount factors are promulgated after the release of final treasury regulations, indicating at least some likelihood that additional rule changes are being contemplated by Treasury.

Loss Reserve Discounting, 2017 TCJA Transition

-2017 Schedule P loss reserves will be used to calculate the TCJA transition adjustment as of 1/1/2018.

-First, the reserves will be multiplied by the historical discount factors of IRS Revenue Procedures released from 2007-2017 (a process already undertaken as part of the 2017 tax return calculation).

-Next, these same reserves will be multiplied by factors promulgated by the IRS in Rev. Proc. 2019-06 calculated under TCJA principles. The difference between the two discount balances will be spread into income over 8 years.

Modification of proration rules

Effective date – Taxable years beginning after Dec. 31, 2017		
Prior law	TCJA	Application
<ul style="list-style-type: none"> — In calculating the deductible amount of the reserve for losses incurred, this amount was reduced by 15% of: <ul style="list-style-type: none"> – Tax-exempt interest and – Deductible portion of dividends received — Proration rule reflects the fact that reserves are generally funded in part from tax-exempt interest, from deductible dividends and other untaxed amounts 	<ul style="list-style-type: none"> — The bill replaces the 15% reduction under present law with a reduction equal to 5.25% divided by the top corporate tax rate — With a top corporate tax rate of 21% for 2018 and thereafter, the percentage reduction is 25% — The proration percentage will be automatically adjusted in the future if the top corporate rate is changed 	<ul style="list-style-type: none"> — Tax calculation templates (tax provision, tax return, tax estimates, etc.) have to be updated for change in percentages beginning Jan. 1, 2018 — The bill ensures the reduction to the deduction of the reserve for losses remains at 5.25%

Special estimated tax payments

Effective date – Taxable years beginning after Dec. 31, 2017		
Prior law	TCJA	Application
<ul style="list-style-type: none"> — Additional deduction was allowed for insurance companies not to exceed the excess of: <ul style="list-style-type: none"> – The amount of undiscounted unpaid losses over – The amount of the related discounted unpaid losses — Special loss discount account had to be established and maintained — Special estimated tax payments had to be made 	<ul style="list-style-type: none"> — The bill repeals section 847 	<ul style="list-style-type: none"> — Balance of an existing account is included in income of the taxpayer for the first taxable year beginning after 2017 — Amount of existing special estimated tax payments are applied against the amount of additional tax attributable to this inclusion — Special estimated tax payments in excess are treated as estimated payments under section 6655

Life insurance provisions

Provision	Conference agreement
<p>Life Insurance Reserves</p>	<p>Deduction for life insurance reserves = 92.81% of reserve required by NAIC at the time the reserve is determined.</p> <p>Tax reserves cannot be less than the contract's cash surrender value or greater than the statutory reserve.</p> <p>Transition rule: Impact on reserves for pre-2018 contracts is spread over 8 years</p>
<p>Treatment of Reserve Calculation Changes</p>	<p>Prior law had a 10 year spread.</p> <p>Under revision, generally one-year spread for reserve increases and four-year spread for reserve decreases.</p> <p>Generally conforms to tax accounting method change rules.</p> <p>Rev. Proc. 2019-10 provides additional guidance</p>
<p>Proration of Dividends Received Deduction and Tax Exempt Interest</p>	<p>Life companies entitled to 70% of the benefit of tax exempt interest and the dividends received deduction.</p>
<p>Tax Deferred Acquisition Costs</p>	<p>Capitalize expenses and amortize expenses over 15 years.</p> <p>Capitalization amount generally based on premiums (2.09% Annuity; 2.45% Group Life; 9.2% other specified contracts)</p>

Life insurance provisions (continued)

Provision	Conference agreement
Operations Loss Deduction	<p>Conform OLD to general section 172 net operating loss deduction.</p> <p>Generally, \$0 carryback and unlimited carryover subject to an annual cap of 80% of taxable income starting in 2018.</p> <p>Pre-2018 OLD carryovers are grandfathered.</p>
Small Life Co. Deduction	<p>Repealed.</p>
Policyholder Surplus Account	<p>Any remaining amounts taken into income over 8 years.</p>

Net operating losses

Effective date – Taxable years beginning after Dec. 31, 2017

Prior law	TCJA	Application
<ul style="list-style-type: none"> — In general, an NOL could be carried back two years and carried forward 20 years to offset taxable income in such years — Life insurance companies had a three year carryback and 15 year carryforward — Extended carryback periods were allowed for NOLs attributable to certain casualty and disaster losses 	<ul style="list-style-type: none"> — Generally no carryback period and indefinite carryforward period — The provision limits the NOL deduction to 80% of taxable income (determined without regard to the deduction) 	<ul style="list-style-type: none"> — Taxpayers should ensure no carryback potential for losses arising in open tax years — Valuation allowances may still need to be considered for financial reporting purposes for NOLs — Tracking of NOLs will be extremely important

Net operating losses of non-life insurance companies

<ul style="list-style-type: none"> — Two year carryback and 20 year carryforward 	<ul style="list-style-type: none"> — Two year carryback and 20 year carryforward — No limitation on NOL deduction 	<ul style="list-style-type: none"> — May create complexities with mixed group consolidated returns
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Some Provisions Change Over Time

- Significant delegation to Treasury
- Dynamic provisions
 - Interest Expense → shift from EBITDA to EBIT in 2022
 - R&E Amortization → begins in 2022
 - BEAT → rates increase in 2026
 - Section 250 deductions (GILTI/FDII) → decrease in 2026
 - Expensing → 100% through 2022, phases out through 2026
 - Mandatory Repatriation → payable over 8 years
 - And many individual provisions sunset by 2026



Other Tax Issues

Captives

- IRS continues to challenge micro-captives
 - Significant “wins” in Tax Court
 - *Avrahami*
 - *Reserve Mechanical*
 - *Szygy*
 - However, taxpayers continue to prevail in recent cases in the general captive context (*Rent-a-Center*, *Securitas*).
 - The section 831(b) cases are not taxpayer-favorable, but should not overshadow the taxpayer-favorable analysis in the general captive context.
- Role of actuaries in captive planning and administration
 - Loss studies
 - Premiums and pricing
 - Documenting risk transfer

Taxation of Section 831(b) Captives

- **An 831(b) captive may elect to be taxed only on its investment income.**
 - Premiums are not included in income
 - Losses incurred and insurance expenses are not deductible
- **Qualifications**
 - Limitations on net/direct premiums written:
 - YE 12/31/2016 and before: \$1,200,000
 - TYB 1/1/2017 and after: \$2,250,000 (Rev. Proc. 2016-55)
 - After 12/31/2017, limit annually increased for inflation
- Diversification requirements:
 1. No more than 20% of written premiums attributable to one policyholder; or
 2. No person can hold (directly or indirectly) an interest in the captive that is more than 2% higher than the interest he/she owns in the business being insured
 - Intended to limit wealth transfer structures

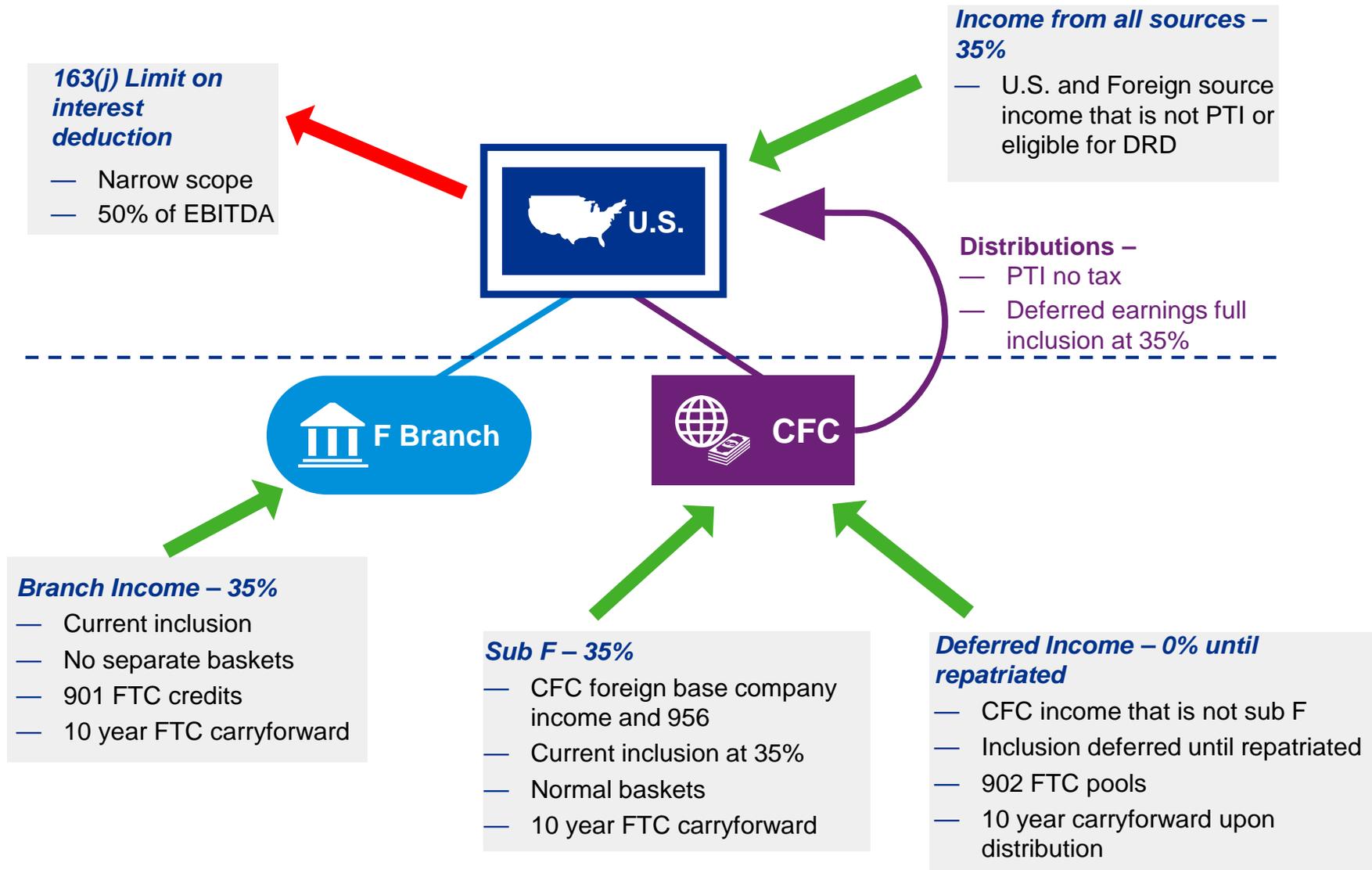
Taxation of Section 831(b) Captives

- **831(b) Captive Campaign – announced January 31, 2017**
 - The micro-captive campaign addresses transactions described in Transactions of Interest as described in Notice 2016-66,
 - A taxpayer attempts to reduce aggregate taxable income using contracts treated as insurance contracts and a related company that the parties treat as a captive insurance company
 - Each entity that the parties treat as an insured entity under the contracts claims deductions for insurance premiums. The manner in which the contracts are interpreted, administered and applied is inconsistent with arm's length transactions and sound business purposes
 - LB&I has developed a training strategy for this campaign. The treatment stream for this campaign will be issue-based examinations
 - Parties involved may have reporting requirements



International Tax

Overview of Old International Tax Framework



Overview of New International Tax Framework

BEAT Section 59A

- Imposes additional tax
- Based on limiting deductibility of deductible payments to foreign persons

Other Income – 21%

- U.S. and Foreign source income that is not FDII or GILTI or eligible for DRDs

FDII – 13.125%

- Income from sale, leases, licenses, and dispositions of property to foreign person for foreign use
- Income from services to person outside the US

163(j) Limit on interest deduction

- Related and unrelated party debt
- 30% of EBITDA (EBIT in 2022)

Distributions –

- PTI
- Participation Exemption (section 245A)
- Subject to tax if hybrids or inverted companies



Branch Income – 21%

- Current inclusion
- Separate basket
- 10 year carryforward
- Cannot get FDII

Sub F – 21%

- Foreign base company income and 956
- Current inclusion at 21%
- General and passive baskets
- 10 year FTC carryforward
- 163(j) limits

Exempt Income – 0%

- FOGEI
- 10% QBAI
- High Tax sub F income (elective)

GILTI – 10.5% (13.125%)

- CFC income that is not exempt or sub F
- Current inclusion with 50% deduction
- 80% FTC (haircut)
- Separate basket
- No FTC carryforward
- 163(j) limits

Transition to Territorial System – Mandatory Repatriation – Section 965

- One time tax imposed on certain United States Shareholders (“USSHs”) of Specified Foreign Corporations (“SFCs”)
 - Treats pro rata share of Accumulated Post-86 Deferred Foreign Income as Subpart F income
 - Reduced rates implemented via a deduction against the inclusion
 - 15.5% effective rate (55.7% deduction) on cash & equivalents
 - 8% effective rate (77.1% deduction) on non-cash
 - Election to pay over 8 years (back-loaded)
 - Inclusion for the last taxable year of the SFC that begins before 1/1/18

- **Post Inclusion Year Matters**
 - Overpayments apply first to 965 deferral
 - IRS audit activity and support
 - Acceleration Events and Transfer Agreements
 - Amendments / Adjustments to 2017 initial return as a reaction to Final Regulations
 - But no refund of overpayment of 965 installment amount

Foreign Subsidiary Taxation with New GILTI Minimum Foreign Tax Regime

Three Categories of CFC Income

- **Exempt Income**
 - Foreign Oil and Gas Extraction Income
 - Routine return (10% of Qualified Business Asset Investment) for non-subpart F income
 - Sub F Income Qualifying for high tax kickout (90% of U.S. tax rate = 19%)
- **Sub F (Full US Taxation at 21%)**
 - Current subpart F income rules with some modifications
 - Highly mobile and/or passive CFC income
 - Non-exempt Insurance Income
- **GILTI (Minimum Tax at 10.5%, but . . .)**
 - Very broadly, GILTI is the excess of the U.S. shareholder's share of each CFC's non-subpart F / non-ECI income over a 10% return on tangible depreciable property
 - Reduced rate is implemented via a 50% deduction limited by net taxable income (reduced to 37.5% in 2026)
 - FTC's: 80% haircut (increases effective minimum tax rate to 13.125%), new separate basket, no carryforwards or carrybacks
 - Allocation of expenses reduces availability of FTCs, creating likelihood of U.S. tax on GILTI income even if subject to foreign taxes at rate in excess of 13.125%



Foreign Derived Intangible Income (FDII) Regime

FDII - Overview

- Provides reduced effective tax rate with respect to a defined category of “foreign derived” income of U.S. corporate shareholders
- The lower rate is realized via deduction from qualified income
 - **37.5% allowable deduction** for TYBA 12/31/17 to 12/31/25 (resulting in an **ETR of 13.125%** on qualified income)
 - **21.875% allowable deduction** for TYBA 12/31/2025 (resulting in an **ETR of 16.406%** on qualified income)
- **Qualifying Income**
 - **Excludes Financial Services Income (but financial services entities may nonetheless benefit)**
 - Sales to foreign persons and for foreign use
 - Exchanges with, or other dispositions to foreign persons and for foreign use
 - Leases and Licenses to foreign persons and for foreign use
 - Services to foreign person, or with respect to property located outside the US

7 Ways to Make a Non-U.S. Dollar

	Offshore					Onshore	
	Dividend (245A)	Sub F	GILTI	Foreign branch	Section 956	FDII	Non-FDII
Effective rates (%)	0	21	10.5	21	21	13.125	21
Foreign tax credits (%)	None	100%	80%	100%	100%	100%	100%
FTC Carryforward	None	10-yrs	None	10-yrs	10-yrs	10-yrs	10-yrs
Other	Creates exempt income/ partially exempt asset Rare	General or Passive Basket	Separate Basket	Separate Basket	Converts Exempt Income Multiple year FTCs?	Most income U.S. source – no FTCs	Most income U.S. source – no FTCs Avoid/get in FDII

Base Erosion Anti- Abuse Tax (BEAT) Regime

Overview of the BEAT (Section 59A)

- **Applicable Taxpayer**
 - Corporation other than RIC, REIT, or S Corp
 - Average annual gross receipts (over 3 year period) \geq \$500 million
 - Base erosion percentage of at least 3% (2% for certain financials)
 - Aggregation rules apply
- **Additional minimum tax imposed on U.S. companies having certain deductible 'base erosion payments' made to related foreign companies (Slightly higher rates for certain financials)**
 - Tax years beginning in 2018 at a **5% rate**
 - Tax years in 2019- 2025 at a **10% rate**
 - Tax years beginning after 12/31/2025, **12.5% rate**
- **Minimum tax liability:**
 - Excess of 10% (or other rate) of the U.S. company's "modified taxable income" ("MTI") over its regular U.S. tax liability reduced by certain allowable credits (but not R&D and certain other credits)
- **MTI is taxable income plus certain "base erosion payments" and NOLs attributed to such payments**

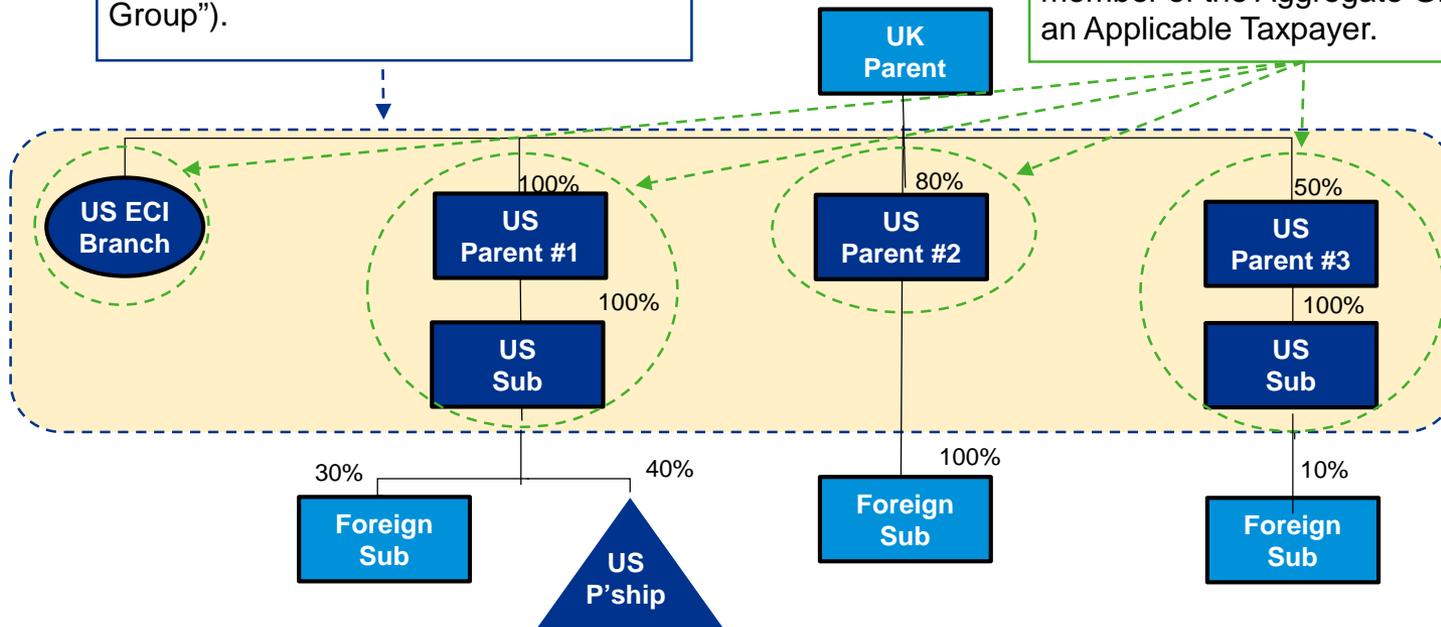
Applicable Taxpayer – Base Erosion Percentage

- To be an applicable taxpayer, must have a BEPct of at least 3% (2% for certain financials)
- BEPct =
$$\frac{\text{Base Erosion Tax Benefit (BETB)}}{\text{all deductions (excluding 172 , 245A, or 250) plus BETB for Reinsurance}}$$
- BETB = deductions (or reinsurance consideration) attributable to base eroding payments

Aggregation Rule for Applicable Taxpayer— Example

All members of the same (at least 50%) controlled group are treated as one taxpayer to determine if the group is subject to BEAT (an “Aggregate Group”).

The regulations apply the Base Erosion Percentage test and Gross Receipts test at the Aggregate Group level; if an Aggregate Group meets both of these tests, each member of the Aggregate Group is an Applicable Taxpayer.



Base Eroding Payment – Deductible Payments

- Deductible payments made to foreign related parties
- Excludes
 - COGS (except for newly inverted companies) & other payments that reduce gross receipts
 - Payments subject to U.S. Withholding Tax (pro-rated for purposes of MTI if a reduced rate of withholding, not prorated for purposes of BEPct)
 - Payments eligible for the SCM method (without regard to business judgment rule)
- Includes
 - **Premiums or other consideration paid or accrued for reinsurance taken into account under 803(a)(1)(B) or 832(b)(4)(A), notwithstanding that such amounts are reductions to gross receipts rather than deductions against gross income**
 - **Claims / Benefits (For a P&C company, to the extent a deduction and not a reduction of gross income) (note: comments requested by Treasury)**
 - Interest (note: interest disallowed under 163(j) allocated to unrelated payments first)
 - Payments for acquisition of property that gives rise to a depreciation and amortization deduction (note that the relevant deduction is the depreciation or amortization, not the payment)
 - Payments for services

Base Eroding Payment – Foreign Related Party

- 25% owner of the taxpayer
- Anyone in a section 267(b) or section 707(b)(1) relation to the taxpayer or a 25% owner (generally 50% control standard)
- Any person related under section 482 (e.g., acting in concert)
- First 2 rules apply section 318 constructive ownership, using 10% for purposes of section 318(a)(2)(C) (attribution from corporations to shareholders)

BEAT Example (continued)

Assumptions for US Group (USG)

- USG average gross receipts for 2016 thru 2019 \geq \$500M
- USG 2019 Taxable Income = \$100M
- \$5M tax credits (\$3M are R&D credits)
- USG foreign related party payments:
 - \$50 million interest paid to Parent (\$5M limited under new 163(j))
 - \$70 million royalties to WW IP Co
 - \$5 million shared services fees that qualify the SCM method (no mark-up)
 - \$10 million service payments to CFC (not SCM eligible)
- USG all expenses = \$400M
- Assume Parent and WW IP Co are US tax treaty eligible and no US Group depreciation / amortization deductions in connection to property acquired from post-2017 related-party transactions

BEAT Calculation

Step 1: calculate BEPct

deductions attributable to base eroding payments

All Deductions

$$\frac{45+70+10}{400} \geq 3\%$$

Step 2: Determine your floor:

regular tax liability (21% X TI) - tax credits (excluding R&D)

$$\$21\text{M} - (\$5\text{M} - \$3\text{M}) = \$19\text{M}$$

Step 3: Determine MTI:

Taxable income + Base Erosion Tax Benefits

$$\$100\text{M} + \$125\text{M} = \$225\text{M}$$

Step 4: Determine BEAT Liability

10%(MTI) – Floor = Base erosion min tax amount

$$10\%(\$225\text{M}) - \$19\text{M} = \$3.5\text{M}$$

Step 5: Overall Tax Liability

regular tax liability (with credits) + BEAT Liability

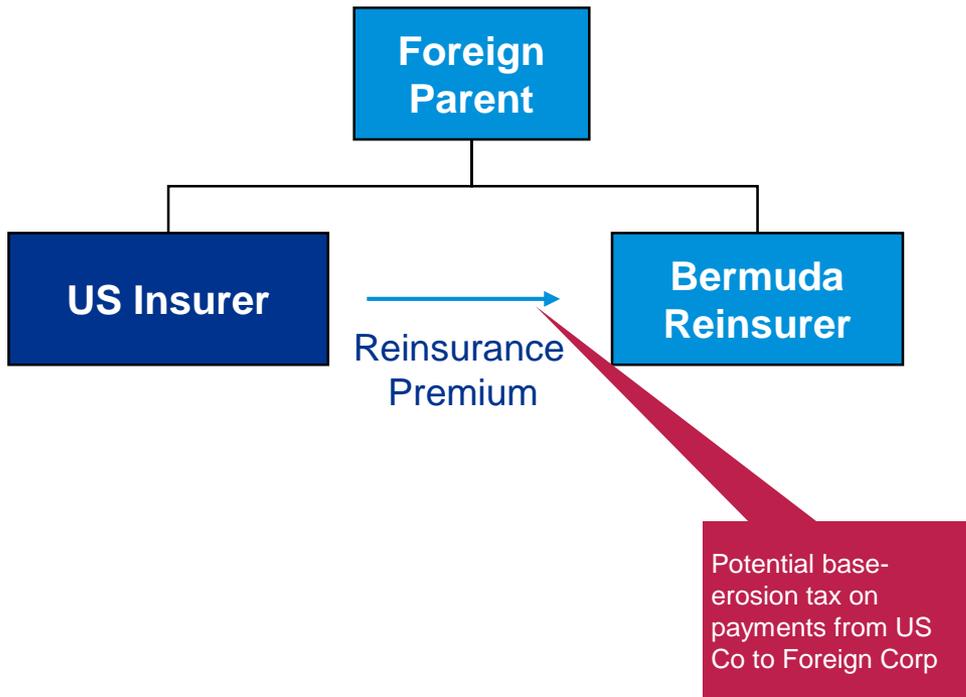
$$\$16\text{M} + \$3.5\text{M} = \$19.5\text{M}$$

SCM Exception

- SCM exception is available for otherwise SCM-eligible payments that meet the requirements of the SCM exception even if a mark-up is charged
 - No requirement to segregate the mark-up in a separate account
 - Mark-up portion still constitutes a base erosion payment
- Taxpayer must maintain adequate books and records to verify payment amount and related costs

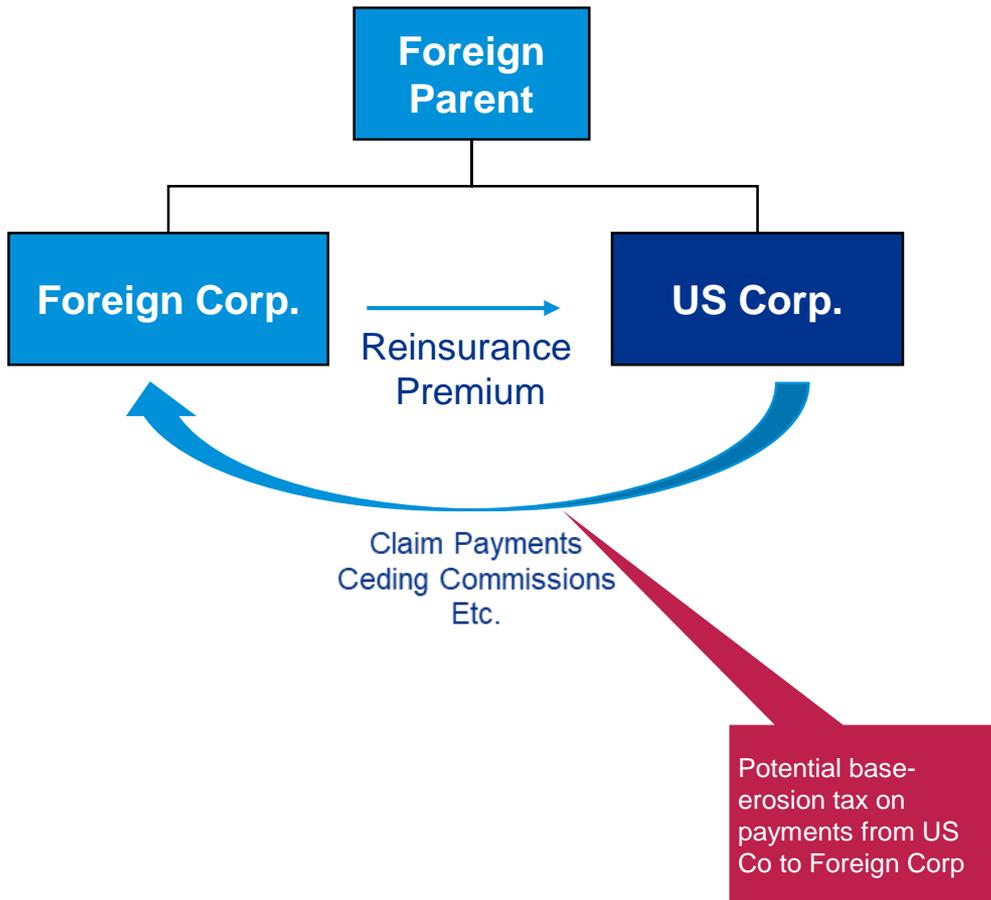
BEAT and Insurance Companies

BEAT – Quota Share



- Reinsurance Premium is a Base Erosion Payment
- Additional reinsurance consideration, such as investment income due to reinsurer under modco or funds withheld is likely also a Base Erosion Payment
- The IRS has requested comments in formulating final regulations as to whether there should be any netting when considering reinsurance agreements that are settled net. For example, for a modco arrangement, is the initial reserve netted against the premium? Is the net investment income netted against modco reserve adjustments?

BEAT – Quota Share, US Reinsurer



- Where a foreign company cedes risks to a U.S. company, are claims and other payments to the foreign company base erosion payments giving rise to a base erosion tax benefit?
- Can claim payments be treated as reductions to gross income (§832(b)(3)) and therefore not base erosion payments under §59A(d)(1)?
- Is there a policy argument to say that no outbound flows are subject to BEAT because §59A should be encouraging inbound reinsurance?
- Treasury has suggested it is considering the issue.

Insurance Company Exception to PFIC Status

Insurance Company Exception to PFIC Status

- The TCJA revised section 1297(b) to provide that income derived in the active conduct of an insurance business would be treated as not passive income only if earned by a qualifying insurance corporation (“QIC”). A QIC means, with respect to any taxable year, a foreign corporation:
 - Which would be subject to tax [as an insurance company] under subchapter L if such corporation were a US domestic corporation, and
 - The applicable insurance liabilities of which constitute more than 25 percent of its total assets, determined on the basis of liabilities and assets as reported on the corporation’s applicable financial statement.
 - A 10% test may apply in lieu of the 25% test if the failure to meet the 25% test is due solely to runoff-related or rating-related circumstances.
- “Applicable insurance liabilities” means, with respect to any life or property and casualty insurance business,
 - Loss and loss adjustment expenses, and
 - Reserves (other than deficiency, contingency, or unearned premium reserves) for life and health insurance risks and life and health insurance claims with respect to contracts providing coverage for mortality and morbidity risks.

Insurance Company Exception to PFIC Status

- “Applicable financial statement” means a statement for financial reporting purposes which:
 - Is made on the basis of generally accepted accounting principles,
 - Is made on the basis of IFRS, but only if there is no statement made on the basis of GAAP, or
 - Is the annual statement which is required to be filed with the applicable insurance regulatory body, but only if there is no statement made on the basis of GAAP or IFRS.

Non-TCJA International Insurance Items

Non-TCJA International Insurance Items

- Elections under IRC section 953(d)
 - Company must qualify as an “insurance company”
 - Revenue Procedure 2003-47 provides election roadmap
 - Horizon/pipeline for elections
- Federal Excise Tax
 - IRS Audit Guide being updated
 - Pricing for reinsurance



Appendix

TCJA Treasury Regulations

Purple font – issued guidance
Green and bold font – final guidance

Provision	Status and Expected Publication*
965 Repatriation tax	<p>Proposed regulations – August 2018 [83 Fed. Reg. 39514 (08/09/2018)]</p> <p>Final reporting Form 965 – December 2018 [Final Form 965]</p> <p>Final instructions Form 965 – January 2019 [Final instructions Form 965]</p> <p>Final regulations – January 2019 [84 Fed. Reg. 1838 (02/05/2019)]</p> <p>Corrections to final regulations – April 2019 [84 Fed. Reg. 14260 (04/10/2019)] and [84 Fed. Reg. 14261 (04/10/2019)]</p>
199A Passthrough deduction	<p>Proposed regulations – August 2018 [83 Fed. Reg. 40884 (08/16/2018)]</p> <p>Final regulations – January 2019 [84 Fed. Reg. 2952 (02/08/2019)]</p> <p>Corrections to final regulations – April 2019 [84 Fed. Reg. 15954 (04/17/2019)] and [84 Fed. Reg. 15953 (04/17/2019)]</p>
199A RIC-REIT	<p>Limited Guidance – January 2019 [Notice 2019-07]</p> <p>Proposed regulations – January 2019 [84 Fed. Reg. 3015 (02/08/2019)]</p>
168(k) Capital expensing	<p>Proposed regulations – August 2018 [83 Fed. Reg. 39292 (08/08/2018)]</p> <p>Revenue procedure – December 2018 [Rev. Proc. 2019-08]</p>
162(m)	<p>Limited guidance – Notice 2018-68 [Notice 2018-68]</p> <p>Proposed regulations – expected in June 2019</p>
SALT deduction limitations	<p>Proposed regulations – August 2018 [83 Fed. Reg. 43563 (08/27/2018)]</p> <p>Final regulations – March 2019 [with OIRA since 3/22/2019]</p>

TCJA Treasury Regulations

Purple font – issued guidance
Green and bold font – final guidance

Provision	Status and Expected Publication*
GILTI	<p>Proposed regulations – September 2018 [83 Fed. Reg. 51072 (10/10/2018)]</p> <p>Final reporting Form 8992 – January 2019 [Final Form 8992]</p> <p>Final instructions Form 8992 – January 2019 [Final instructions Form 8992]</p>
163(j) Business interest deduction limitation	<p>Limited guidance – Notice 2018-28 [Notice 2018-28]</p> <p>Proposed regulations - November 2018 [83 Fed. Reg. 67490 (12/28/2018)]</p> <p>Final reporting Form 8990 – December 2018 [Final reporting Form 8990]</p> <p>Final instructions Form 8990 - December 2018 [Final instructions Form 8990]</p>
Section 956	<p>Proposed regulations – November 2018 [83 Fed. Reg. 55324 (11/05/2018)]</p>
FTC/Expense allocation	<p>Proposed regulations – November 2018 [83 Fed. Reg. 63200 (12/07/2018)]</p> <p>Correction to proposed regulations – March 2019 [84 Fed. Reg. 8050 (03/06/2019)]</p>
BEAT	<p>Proposed regulations - December 2018 [83 Fed. Reg. 65956 (12/21/2018)]</p> <p>Final reporting Form 8991 – February 2019 [Final reporting Form 8991]</p> <p>Final instructions Form 8991 – February 2019 [Final instructions Form 8991]</p>

TCJA Treasury Regulations

Purple font – issued guidance
Green and bold font – final guidance

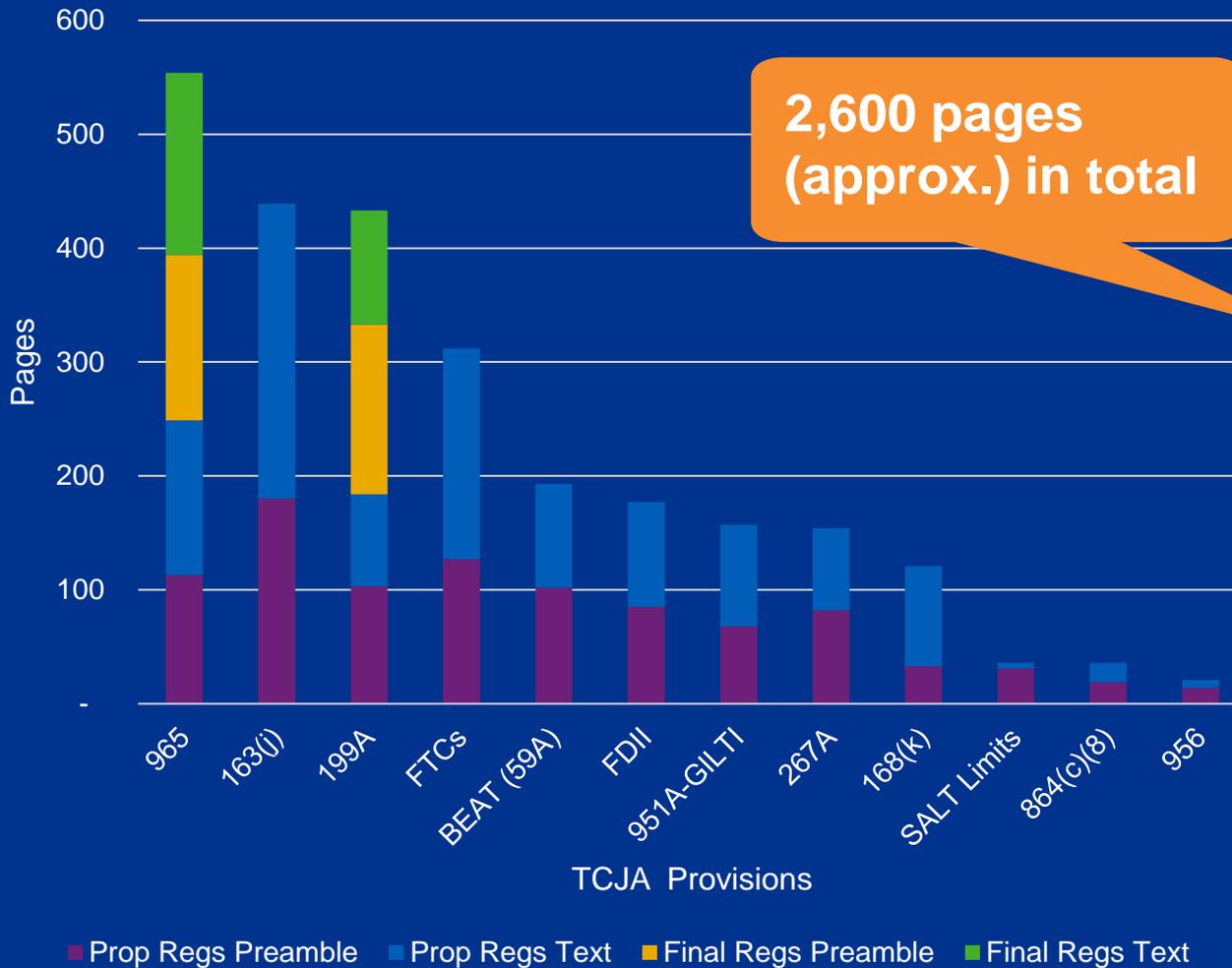
Provision	Status and Expected Publication*
Hybrids – 245A(e)/267A	Proposed regulations - December 2018 [83 Fed. Reg. 67612 (12/28/2018)]
245A Dividends Received Deduction	Proposed Regulations – expected by summer 2019
Section 864(c)(8) - Sales of U.S. Trade or Business Partnership Interests	Proposed regulations – December 2018 [83 Fed. Reg. 66647 (12/27/2018)]
FDII/Section 250 deduction	Final reporting Form 8993 – December 2018 [Final reporting Form 8993] Final instructions Form 8993 – January 2019 [Final instructions Form 8993] Proposed regulations – March 2019 [84 Fed. Reg. 8188 (03/06/2019)] Corrections to proposed regulations – April 2019 [84 Fed. Reg. 14634 (04/11/2019)]
PTI – Sections 959 and 961	Limited guidance -- Notice 2019-01 [Notice 2019-01] Proposed regulations – expected late summer/early fall 2019
Joint Committee on Taxation’s “Bluebook”	Joint Committee on Taxation’s “Bluebook” – December 2018 [General Explanation of Public Law 115–97]

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Volume of TCJA Regulations



Page count is based on the version posted on the IRS website (not Federal Register).

Thank You

The information in these slides is not intended to be “written advice concerning one or more Federal tax matters” subject to the requirements of section 10.37(a)(2) of Treasury Department Circular 230.

The information contained herein is of a general nature and based on authorities that are subject to change. Applicability of the information to specific situations should be determined through consultation with your tax adviser.