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TAX WARS, OB3 – REVENGE OF THE 45TH:

INTERNATIONAL TAX PROVISIONS OF THE ONE BIG BEAUTIFUL BILL (OB3)

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OB3 - INTERNATIONAL TAX PROVISIONS

- 1. Changes to the Foreign-Derived Intangible Income (FDII) rules and the deduction available under IRC §250.**
- 2. Changes to the global intangible low taxed income (GILTI) regime under IRC §951A.**
- 3. Expansion of the subpart F and GILTI rules to “foreign controlled U.S. shareholders” of “foreign controlled foreign corporations” under new IRC §951B.**
- 4. Changes to the taxation of U.S. shareholders with subpart F income from a controlled foreign corporation (CFC) owned for part of the tax year.**
- 5. Changes to the Base Erosion and Anti-Abuse Tax (BEAT) and other Code Sections.**

FDII RULES & THE IRC §250 DEDUCTION

§250 Deduction (Pre OB3).

- **Effect.** Provides a 37.5% deduction on certain types of corporate income: income that is either deemed to come from intangible sources or certain services income, so long as either type of income is paid from sources outside the U.S. In 2025, **effective tax rate on corporate FDII is 13.125%.**
- **Sunset.** Beginning in 2026, the deduction would have been reduced to 21.875%, resulting in an **effective corporate tax rate of 16.406%.**

FDII RULES & THE IRC §250 DEDUCTION

Eligibility (Pre OB3). To calculate the amount of FDII to which the deduction applies, corporations must first determine:

- **Deduction Eligible Income (“DEI”).** DEI is essentially gross income from intangibles and services, excluding certain exceptions and less applicable deductions.
- **Deemed Intangible Income (“DII”).** $DII = DEI - 10\% \text{ of the corporation's Qualified Business Asset Investment (QBAI)}$.

FDII RULES & THE IRC §250 DEDUCTION

Formula (Pre OB3). A corporation's FDII is calculate by multiplying the DII of the corporation by the "Foreign Derived Ratio." The Foreign Derived Ratio = Foreign-Derived DEI ("FDDEI") over DEI.

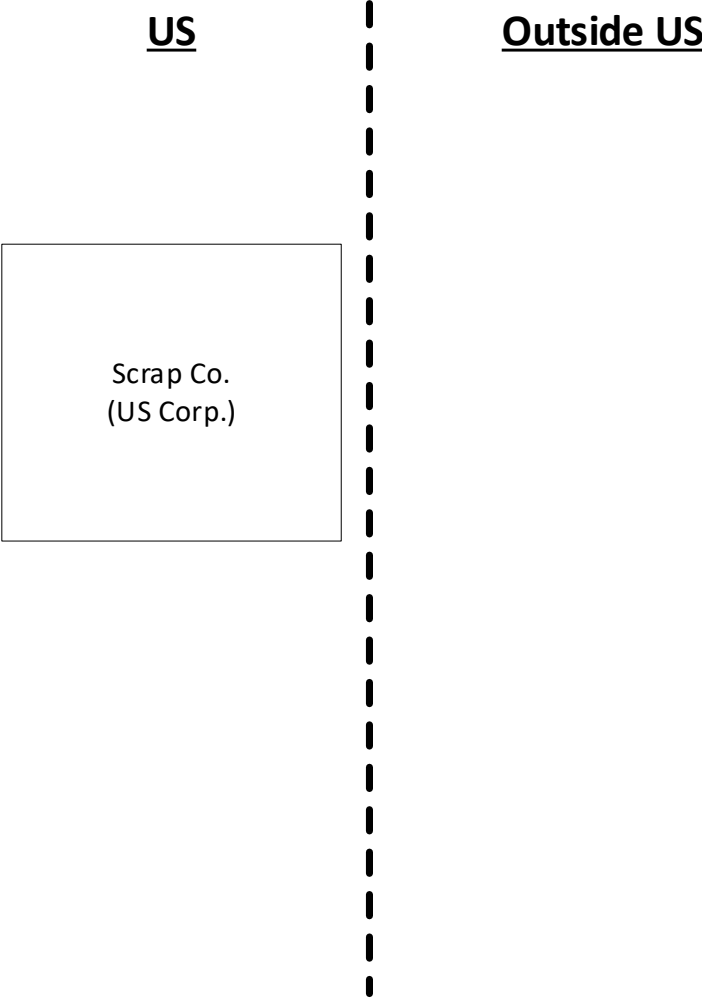
$$FDII = \left(\begin{array}{c} \textit{Deemed} \\ \textit{Intangible} \\ \textit{Income} \end{array} \right) \times \left(\begin{array}{c} \textit{Foreign} \\ \textit{Derived} \\ \textit{Ratio} \end{array} \right)$$

FDII RULES & THE IRC §250 DEDUCTION

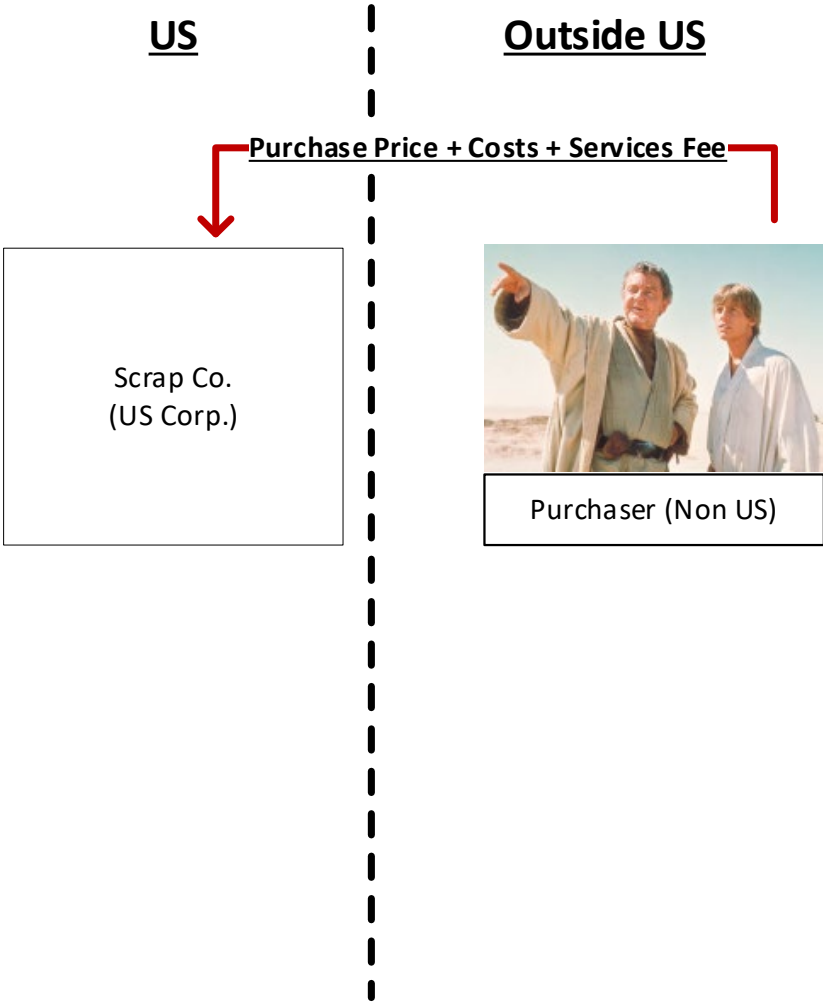
§250 Deduction (Post OB3). OB3 creates a permanent 33.34% deduction, resulting in a **14% effective corporate tax rate**.

- **FDII = FDDEI.** OB3 eliminates the need to reduce DEI by 10% of QBAI. As a result, all FDDEI is now eligible for the §250 Deduction.
- **Changes to DEI.** OB3 adds additional exceptions to the definition of DEI:
 - **Sale of an Intangible.** Excludes any income/ gain from the disposition of intangible property after June 16, 2025.
 - **Sale of Depreciable Assets.** Excludes any income/ gain from the disposition of property subject to depreciation or depletion after June 16, 2025

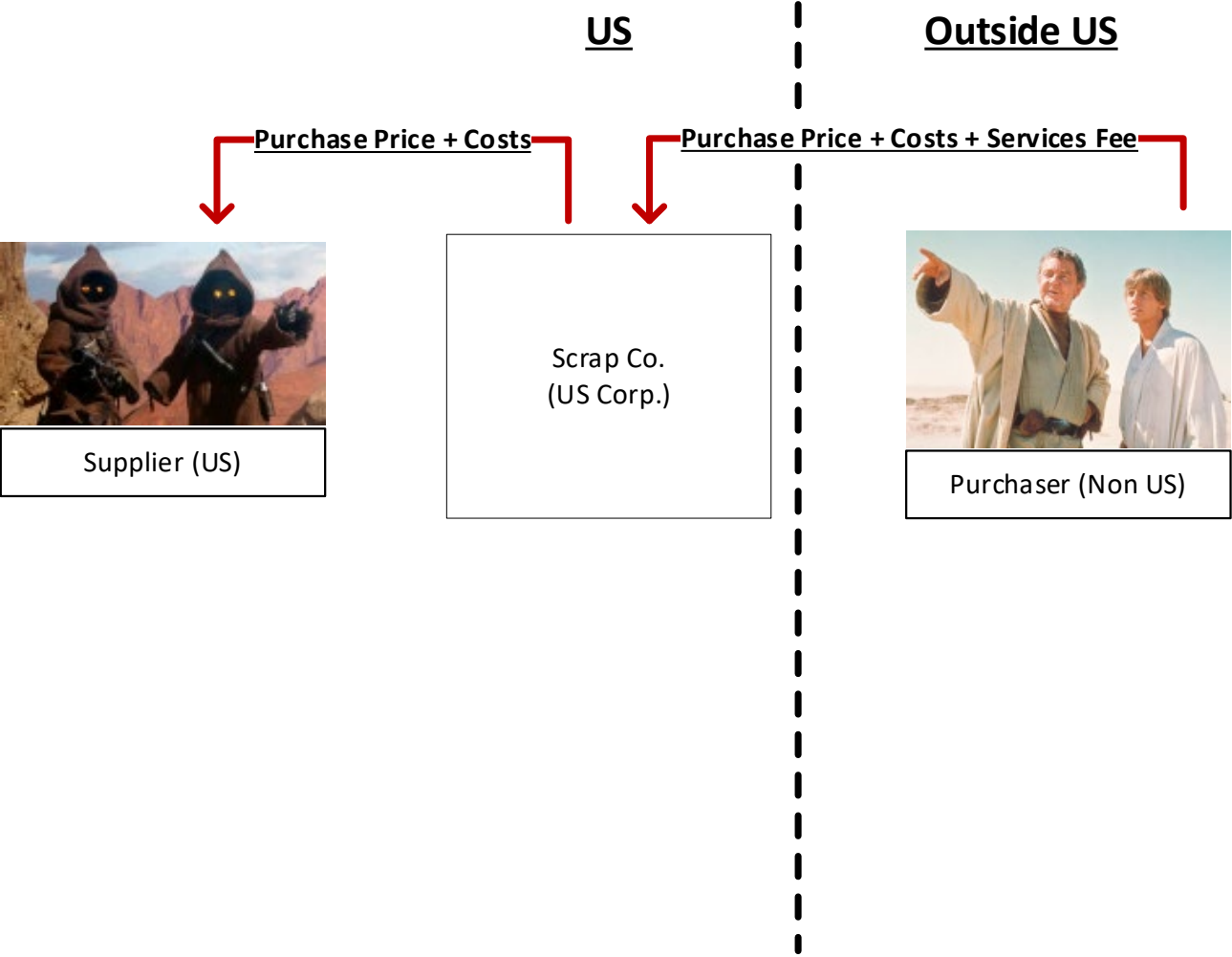
EXAMPLE 1



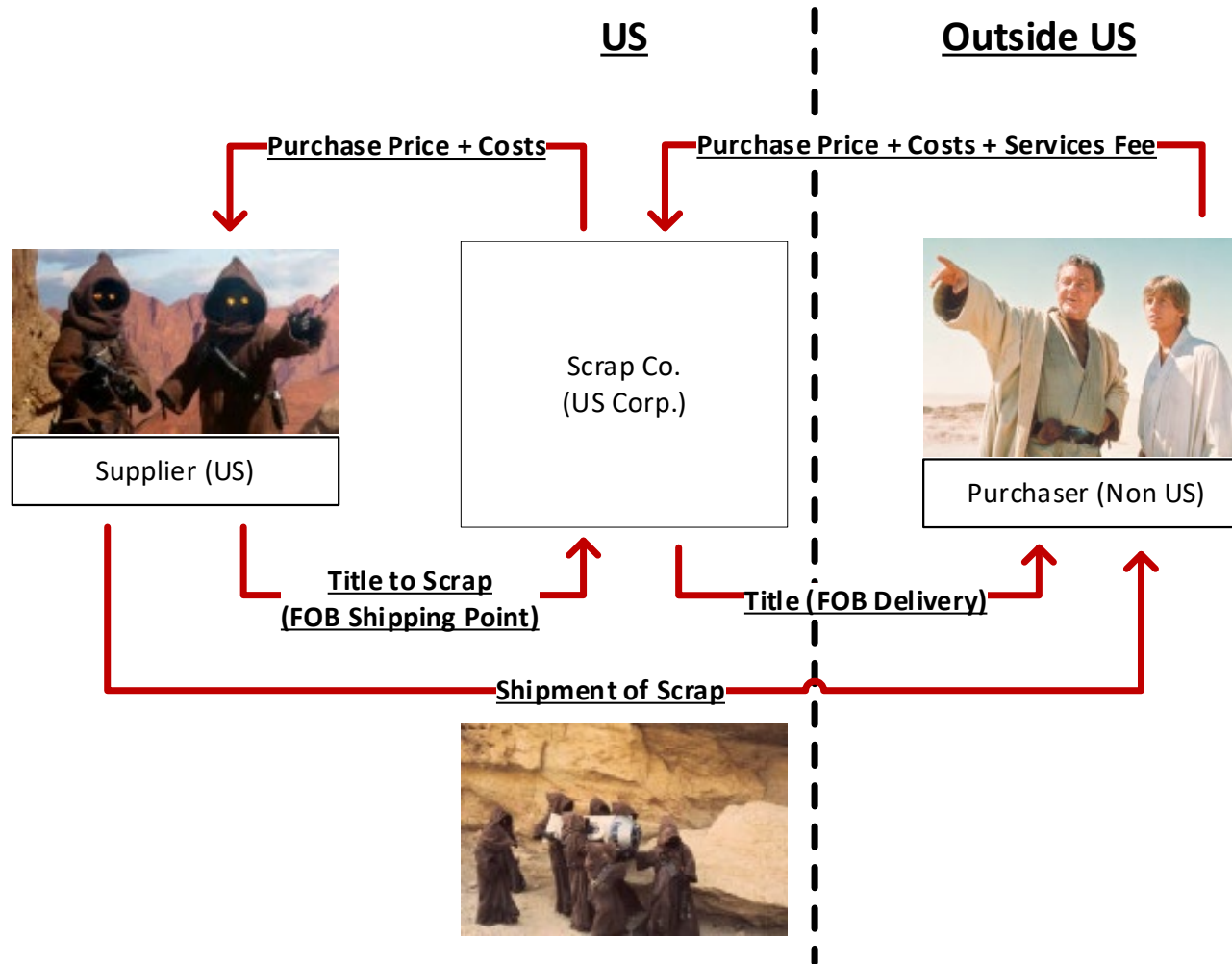
EXAMPLE 1



EXAMPLE 1



EXAMPLE 1



Scrap Co. uses an advanced broker bot in its business. Broker bot is a depreciable asset under IRC §167.



- In 2026, Scrap Co. will not need to reduce its FDDEI by 10% of its QBAI in broker bot and other depreciable assets.
- If Scrap Co. sells broker bot or broker bot's software or other associated IP to Purchaser after 6/15/2025, gain from the sale will not be FDDEI.
- Income for services benefiting Purchaser's offices outside the US will continue to be FDDEI (effective tax rate of 14% in 2026).

CHANGES TO GILTI UNDER IRC §951A

§951A Tax (Pre OB3). The GILTI rules under §951A impose a minimum U.S. tax on certain foreign earnings of CFCs, subjecting U.S. shareholders to current taxation on their share of a CFC's GILTI.

- **GILTI Formula:**

$$GILTI = \left(\begin{array}{c} \text{Net CFC} \\ \text{Tested Income} \end{array} \right) - \left(\begin{array}{c} \text{Net Deemed Tangible} \\ \text{Income Return} \end{array} \right)$$

CHANGES TO GILTI UNDER IRC §951A

- **Net CFC Tested Income.** Combined tested income and tested loss for all of U.S. shareholder's CFCs. A CFC's tested income is its gross income excluding the following six categories:
 - **ECI.** U.S. source income effectively connected to a U.S. trade or business.
 - **Sub F Income.** Income taken into account to determine the CFC's subpart F income.
 - **High-tax Sub F Income.** Gross income excluded from subpart F income by reason of the subpart F high-tax exclusion in §954(b)(4): foreign corporate income tax must be more than 18.9% (i.e., 90% of the 21%).
 - **High-tax GILTI Election.** U.S. shareholders may elect to exclude CFC income that would not be subpart F income so long as it is subject to greater than 18.9% foreign income tax.
 - **Related party dividends.** Dividends received from certain related companies under §954(d)(3) are excluded from subpart F income and GILTI.
 - **Oil & Gas Income.** §907(c)(1) foreign oil and gas extraction income.

CHANGES TO GILTI UNDER IRC §951A

- **Net Deemed Tangible Income Return (NDTIR).** A U.S. shareholder's net deemed tangible income return is the excess (if any) of:
 - **DTIR.** 10% of the shareholder's pro rata share of each tested income CFC's QBAI **over**
 - **Specified Interest Expense.** Specified interest expense equals tested interest expense reduced by tested interest income.

CHANGES TO GILTI UNDER IRC §951A

§951A Tax (Post OB3). Beginning in 2026, NDTIR will be removed from the calculation. Accordingly, GILTI has been renamed “Net CFC Tested Income,” as the §951A Tax will be applied to U.S. shareholders’ Net CFC Tested Income for the tax year.

- **Effective Rate.** The new §951A effective tax rate for corporations or individuals making a §962 election would be as follows:

GILTI	2025 Rates	OB3 Rates
Corporate/ Tax Rate §962	21%	21%
§250(a) Deduction Percentage	50%	40%
GILTI Effective Rate	10.5%	12.6%

CHANGES TO GILTI UNDER IRC §951A

- **GILTI Foreign Tax Credit (FTC) Changes.** U.S. Shareholders are subject to the FTC limitation rules under §904. All foreign-source taxable income must be allocated to separate tax-credit limitation categories under §904, including the §951A income category.
 - **§951A Limitation Post OB3.** Beginning in 2026, the §951A FTC limitation will increase for certain taxpayers because expenses allocable to foreign-source income in the §951A category will now be limited to: (1) the 40% §250(a) deduction for §951A income and (2) any other deduction that is “directly allocable” to GILTI.
 - **Deductions Allocated to U.S. Source Income.** No amount of interest expense or research and experimental expenditures will be allocable to §951A category income. Deductions otherwise allocable to the §951A category are allocated to U.S.-source income, resulting in a higher GILTI FTC limitation.

CHANGES TO GILTI UNDER IRC §951A

- **§960(d) Deemed Paid FTC Limit.** Currently, GILTI foreign tax credits are subject to a 20% “haircut” under §960(d). Only 80% of the foreign taxes deemed paid on GILTI can be claimed as FTCs. No residual U.S. tax would be owed on income subject to at least a 13.125% foreign tax rate (the pre-2026 10.5% GILTI rate divided by the §960(d) 80% FTC limit).
- **§960(d) FTC Limit Post OB3.** Beginning in 2026, the final legislation reduces the FTC haircut under §960(d) to 10%, making 90% of the foreign taxes deemed paid on §951A income eligible for FTCs. No residual U.S. tax would be owed on income subject to at least a 14% foreign tax rate (the post-2025 12.6% GILTI effective rate divided by 90%).

EXAMPLE 2 (PRE OB3)

- **100x GILTI Inclusion**
(Net Tested Income less NDTIR)
- **7.27x deemed paid FTC**
(80% §962(d) FTC limit)
- **53.64x §250(a) deduction**
(50% under current law)
- **11.26x 951A Tax**
(21% US income tax on 53.64x)
- **3.99x effective 951A tax**
(10.5x base tax less deemed paid FTC)

US



100%

Outside US

Droid Corp.
(Non US)

- **110x CFC Tested Income**
(domestic droid sales)
- **10x NDTIR**
(10% of QBAI from depreciable manufacturing equipment, less specified interest expense)
- **10x foreign income tax**
(< 10% tax not sufficient for high tax exception)

EXAMPLE 2 (POST OB3)

- **110x §951A Inclusion**
(Net Tested Income)
- **9x deemed paid FTC**
(90% §962(d) FTC limit)
- **47.6x §250(a) deduction**
(40% in 2026)
- **13.1x §951A Tax**
(21% US income tax on 62.4x)
- **4.1x effective 951A tax**
(13.9x base tax less deemed paid FTC)

US

Trade Federation LLC
(US C corp)

100%

Outside US

Droid Corp.
(Non US)

- **110x CFC Tested Income**
(domestic droid sales)
- **0x NDTIR**
(No reduction in 951A income under
for 10% of QBAI from depreciable
manufacturing equipment, less
specified interest expense)
- **10x foreign income tax**
(< 10% tax not sufficient for high tax
exception)

IRC §951B - SUBPART F AND GILTI TAX ON “FOREIGN CONTROLLED” U.S. SHAREHOLDERS AND FOREIGN CORPORATIONS

New §951B. §951B expands the types of corporate structures required to recognize subpart F and GILTI to now include entities referred to as “foreign controlled U.S. shareholders” and extends the subpart F and GILTI rules to entities considered to be “foreign controlled foreign corporations.” Treasury is authorized to issue new regulations to carry out the purposes of §951B, including expanding compliance reporting requirements for future tax years.

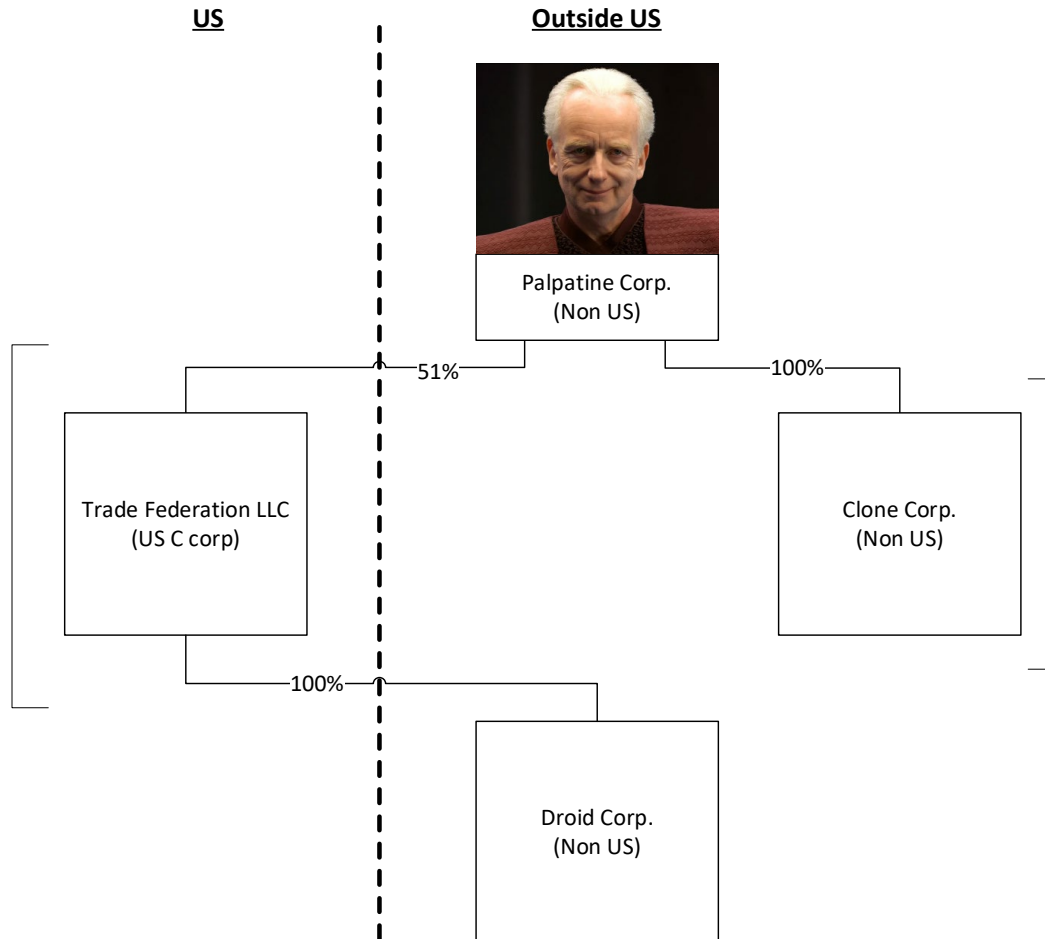
- **Foreign Controlled U.S. Shareholders.** A U.S. person would be classified as a foreign controlled U.S. shareholder subject to the subpart F and GILTI rules to the extent that person would be considered to own more than 50% of a foreign corporation due to attribution from non-U.S. persons under the §958 attribution rules (but including §318(a)(3) attribution from foreign partners, beneficiaries and majority shareholders to their partnerships, estates and corporations).

IRC §951B - SUBPART F AND GILTI TAX ON “FOREIGN CONTROLLED” U.S. SHAREHOLDERS AND FOREIGN CORPORATIONS

- **Foreign Controlled Foreign Corporations.** A foreign controlled foreign corporation is a foreign corporation that is not a controlled foreign corporation under §957, but which would be a controlled foreign corporation if Code Sec. 957(a) were modified by the following rules:
 - **(i)** Substitute “foreign-controlled U.S. shareholders” for “U.S. shareholders” and
 - **(ii)** Apply Code Sec. 958(b) without regard to §958(b)(4), which would otherwise turn off the Section §318(a)(3) attribution from foreign partners, beneficiaries and majority shareholders to their partnerships, estates and corporation.

EXAMPLE 3

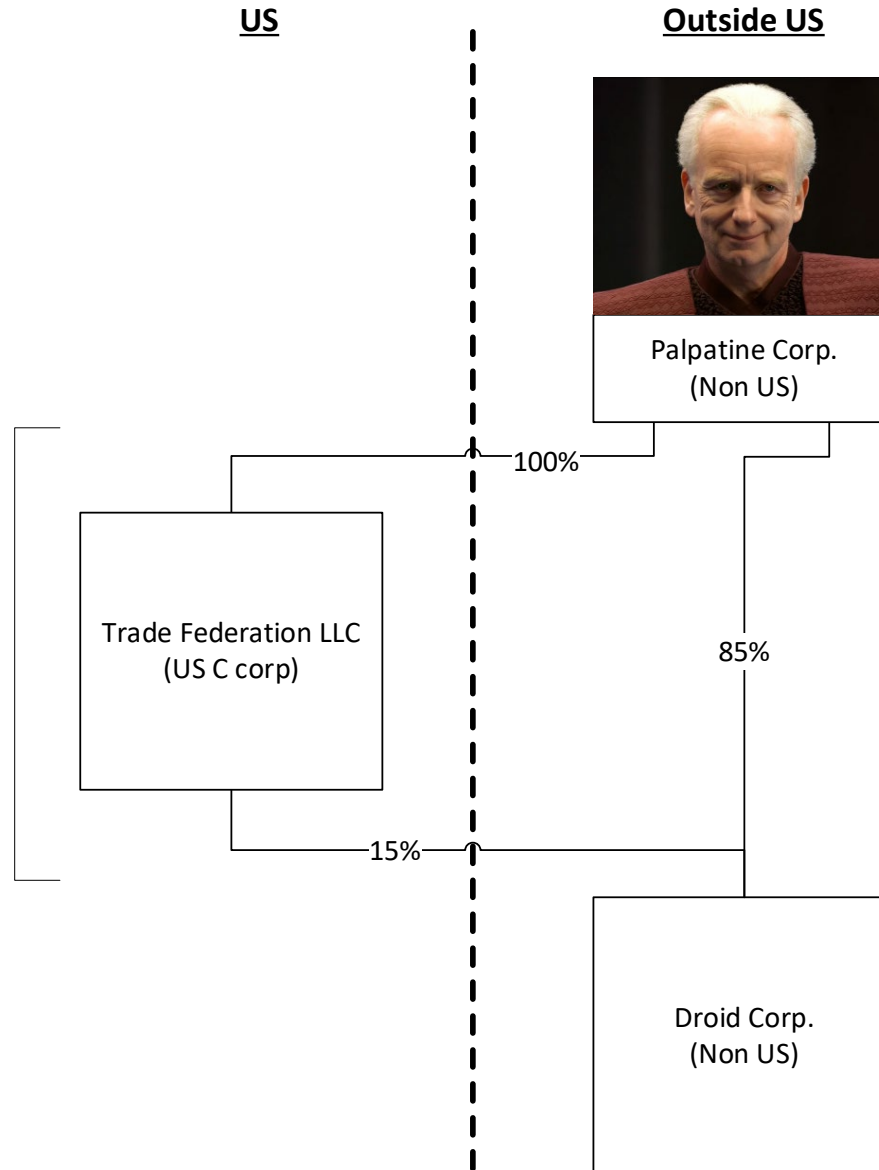
- **§958(b) (Ref. §318).** If a shareholder owns 50% or more in value of the stock in a corporation, the corporation is deemed to own all stock held by the shareholder.
- **§958(b)(4).** U.S. corporations are not attributed stock of a shareholder who is not a U.S. person.
- **§951B(b).** Trade Federation LLC constructively owns 50% or more of Clone Corp. via Palpatine Corp. under §318. §958(b)(4) is shut off and Trade Federation LLC is a “foreign controlled US Shareholder” potentially subject to subpart F and 951A tax.



- **§951B(c).** Because Clone Corp is more than 50% owned by a foreign controlled U.S. shareholder, Clone Corp. is a foreign controlled foreign corporation.

EXAMPLE 4

- **§958(b) (Ref. §318).** If a shareholder owns 50% or more in value of the stock in a corporation, the corporation is deemed to own all stock held by the shareholder.
- **§958(b)(4).** U.S. corporations are not attributed stock of a shareholder who is not a U.S. person.
- **§951B(b).** Trade Federation LLC constructively owns 50% or more of Droid Corp. via Palpatine Corp. under §318. §958(b)(4) is shut off and Trade Federation LLC is a “foreign controlled US Shareholder” potentially subject to subpart F and 951A tax.



- **§951B(c).** Because Droid Corp is more than 50% owned by a foreign controlled U.S. shareholder (Trade Federation LLC) resulting from 958(b)(4) being turned off for purposes of 951B, Droid Corp. is a foreign controlled foreign corporation.

SUBPART F INCOME FROM PARTIAL-YEAR CFCS

§951(a) Subpart F Income. Currently, only U.S. shareholders holding shares in a CFC on the last day of the U.S. CFC's tax year must include their pro rata share of said CFC's Subpart F income for the year.

§951(a) (Post OB3). Beginning in 2026, any U.S. shareholder that held shares in a CFC on any day during the CFC's tax year must include its pro rata share of the CFC's subpart F income (including GILTI) in the shareholder's gross income.

Subpart F Inclusion Year. Subpart F income is included for U.S. shareholder's taxable year which includes the last day on which the U.S. shareholder owns stock in the controlled foreign corporation during the CFC's taxable year.

OB3 CHANGES TO BEAT AND OTHER CODE PROVISIONS

BEAT Rate Pre OB3. The BEAT, originally enacted by the TCJA in 2017, created a formulaic, incremental tax that only applied to certain large foreign and domestic corporations that operate in the U.S. and make significant foreign related party payments: corporations with (1) Average annual gross receipts of \$500 million or more for the three preceding tax years (gross receipts test); and (2) a base erosion percentage (BE%) for the tax year in excess of the applicable threshold (BE% test).

- **“Base Erosion Minimum Tax Amount” (BEMTA).** Any amount due under the BEAT is in addition to regularly owed U.S. corporate income tax and is referred to as the BEMTA. Currently the BEMTA is calculated via the following formula:

$$BEMTA = \left(\text{BEAT Rate} \times \text{Modified Taxable Income} \right) - \left(\text{Adjusted Regular Tax Liability} \right)$$

OB3 CHANGES TO BEAT AND OTHER CODE PROVISIONS

BEAT Rate Pre OB3. The BEAT, originally enacted by the TCJA in 2017, created a formulaic, incremental tax that only applied to certain large foreign and domestic corporations that operate in the U.S. and make significant foreign related party payments: corporations with (1) Average annual gross receipts of \$500 million or more for the three preceding tax years (gross receipts test); and (2) a base erosion percentage (BE%) for the tax year in excess of the applicable threshold (BE% test).

- **“Base Erosion Minimum Tax Amount” (BEMTA).** Any amount due under the BEAT is in addition to regularly owed U.S. corporate income tax and is referred to as the BEMTA. Currently the BEMTA is calculated via the following formula:

$$BEMTA = \left(\frac{BEAT}{Rate} \times \frac{Modified}{Taxable Income} \right) - \left(\frac{Adjusted Regular}{Tax Liability} \right)$$

- **OB3 Modification of BEAT Rate.** The BEAT rate was scheduled to go from 10% to 12.5% under prior law, but OB3 creates a permanent BEAT rate of 10.5% starting in 2016.

OB3 CHANGES TO BEAT AND OTHER CODE PROVISIONS

Permanent Extension of §954(c)(6) Related Party Dividend Rule. §954(c)(6) provides that dividends, interest, rents, and royalties received or accrued by a CFC from another CFC are not treated as foreign personal holding company income (taxable subpart F income for the year). Instead, once can "look through" to the underlying income of the payor CFC is subpart F income.

Restoration of §958(b)(4). Previously removed by the 2017 TCJA, this Section will be restored beginning in 2026. §958(b)(4) prevents downward attribution of stock ownership from foreign persons to U.S. persons. This rule prevents U.S. entities with minority constructive interests in foreign corporations from being classified as U.S. shareholders. However, new §951B prevents this outcome for majority owners.

§904(b)(6) Inventory Sourcing Rules. OB3 changes the inventory sourcing rule solely for purposes of the foreign tax credit. Certain inventory income that is otherwise subject to allocation on the basis of production activities, will instead be treated as foreign-source income if a U.S. person maintains an office or other fixed place of business overseas, and the inventory income is attributable to such office or place of business. However, at most, 50% of the income on inventory sale will be foreign sourced.



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THANK YOU