Repatriation Analysis, PTEP and Tax Basis
Webinar
December 3, 2020
Before We Get Started:

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- Lines are muted
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- Please use the question or chat feature to ask a question
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• Close down other programs
• Copies of today’s slides will be available upon request
Repatriation Analysis + PTEP and Tax Basis Discussion Topics

• Dividends and Distribution Ordering Rules
  • IRC 301 and 316
• Foreign Earnings and Profits (“E&P”) vs. Taxable Income
• Subpart F, GILTI and Deemed Paid Foreign Tax Credits
• Previously Taxed E&P (“PTEP”) Classes and Categories
• ASC 740 – Tax Provision Aspects
• CFC Stock Basis and E&P Bump
  • Treas. Reg. Section 1.861-13 Characterization
  • GILTI High-Tax Exclusion Impact
• VantagePoint™ Case Study
Distributions of Property (IRC §301)

• Distributions of property by a corporation to a shareholder with respect to its stock are treated as:

1. Dividends
2. Reduction in adjusted basis
3. Gain - after the adjusted basis of the stock has been reduced to zero

The distribution amount is determined based on fair market value (less liabilities received) of the property received.
§316 What is a Dividend?

Dividend Definition – any distribution of property made by a corporation to its shareholders –

1. out of its earnings and profits accumulated after February 28, 1913, or
2. out of its earnings and profits of the taxable year (computed as of the close of the year without diminution for distributions made during the taxable year).
Example 1

- Corporation C has $26,000 of earnings and profits (E&P) as of the end of the taxable year pays a dividend to its sole shareholder A of $30,000 during the tax year.

- A first has dividend income of $26,000,
- then A reduces its basis in the stock of C by $4,000. If A’s basis in C stock is less than $4,000, A would have a taxable gain to the extent of any distribution in excess of A’s basis.
Example 2

- Corporation C
- E&P as of 12/31/2018: -$200,000
- 2019 E&P: $100,000 (all earning in Q4)
- 2019 Quarterly distributions to shareholders of $100,000

- Treatment: All $100,000 is considered a dividend in 2019, since the 2019 E&P was $100,000.
Example 3

- Corporation C
- E&P as of 12/31/2018: $200,000
- 2019 E&P: -$100,000
- 2019 Quarterly distributions to shareholders of $100,000

- Treatment: All $100,000 is considered a dividend in 2019 (despite having a loss in 2019), since total E&P as of 12/31/2019 was $100,000.
<table>
<thead>
<tr>
<th>Feature</th>
<th>Subpart F</th>
<th>GILTI</th>
</tr>
</thead>
<tbody>
<tr>
<td>Based on Net Income</td>
<td>CFC</td>
<td>USSH</td>
</tr>
<tr>
<td>De Minimis/Full Inclusion</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>High-tax Exception/Exclusion</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Limited by Earnings and Profits</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Limited by 10% of Qualified Business Asset Investment</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Section 78 Gross Up</td>
<td>100%</td>
<td>100%</td>
</tr>
<tr>
<td>Deemed Paid FTC</td>
<td>100%</td>
<td>80%</td>
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<tr>
<td>Separate FTC Limitation Basket</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Foreign Source Income</td>
<td>100%</td>
<td>50%</td>
</tr>
<tr>
<td>Carryover of Excess Foreign Tax Credits</td>
<td>1/10</td>
<td>None</td>
</tr>
</tbody>
</table>
IRC Section 965 Transition Tax

• (a) – Deferred foreign income treated as subpart F income
• (b) – Reduction for specified foreign deficit corporations
• (c) – Participation exemption
  • 15.5% equivalent tax rate on cash
  • 8% equivalent tax rate on the excess amount
  • Together this blended rate = exclusion or “haircut” percentage applicable to subsequent withholding tax credits and foreign exchange gains and losses on distribution of Section 965(a) PTEP amounts

• Two separate IRS LB&I Compliance Campaigns
  • Corporate and Individual
S.959 – Allocation of Distributions Foreign E&P

• Distributions of previously taxed income are excluded from gross when distribute to (a) U.S. persons or (b) controlled foreign corporations

• Distribution ordering rules are LIFO – reference S.316 but fully depleting the following categories in order
  • 959(c)(1) – Investments in U.S. Property
  • 959(c)(2) – Subpart F, GILTI and Section 965 Transition Tax
  • 959(c)(3) – Other E&P now 245A (not PTEP)

• Treas. Reg. 1.959-3 – Subs first then own within each class

• S.965 PTEP priority – but within the class only!
Section 960(a) – Subpart F Deemed Paid Credit

- Available to domestic corporations and non-corporate U.S. shareholders making a §962 election

- Section 960(a) – Deemed paid foreign tax credit = CFC foreign income taxes “properly attributable” to any item of income included in the gross income of a domestic corporation under §951(a)(1)

- Properly attributable = Domestic corporation’s “proportionate share” of current year CFC foreign taxes allocated and apportioned to a subpart F income group – Reg. §1.960-2(b)(2)
Section 960(a) – Subpart F Deemed Paid Credit

• Proportionate share – Reg. §1.960-2(b)(3)
  • Numerator is the portion of domestic corporation’s subpart F inclusion attributable to a subpart F income group
  • Denominator is the total CFC net income in the subpart F income group
  • Qualified deficit offset that reduces subpart F under §952(c)(1)(B) is not factored into denominator but is reflected in the numerator
  • Numerator and denominator are reduced for current year E&P limit and chain deficit reductions to subpart F under §§ 952(c)(1)(A) and (C)
  • Recharacterized subpart F under §952(c)(2) (i.e., recapture of a prior year’s current E&P limit reduction) is not included in numerator or denominator – thus no §960(a) deemed paid credit allowed for taxes on recharacterized subpart F income
Section 960(d) – GILTI Deemed Paid Credit

• Available to domestic corporations and non-corporate U.S. shareholders making a §962 election

• Section 960(d) – Deemed paid foreign tax credit = 80% of the product of the domestic corporation’s GILTI inclusion percentage multiplied by the aggregate CFC tested foreign income taxes from all CFCs

• Inclusion percentage = Domestic corporation’s GILTI inclusion amount divided by the aggregate net CFC tested income from all CFCs having net CFC tested income (i.e., denominator not reduced by CFC tested losses)
Types of PTEP Accounts – Reg. §1.960-3(c)(2)

• Section 959(c)(1) PTEP
  1. Section 965(a) PTEP that has been reclassified as §959(c)(1)(A) PTEP
  2. Section 965(b) PTEP that has been reclassified as §959(c)(1)(A) PTEP
  3. General section 959(c)(1) PTEP
     A. Section 951(a)(1)(B) PTEP – Section 956 inclusions
     B. Section 951(a)(1)(A) PTEP that has been reclassified as §959(c)(1)(A) PTEP
     C. Section 959(c)(1)(B) Excess Passive Asset PTEP
  4. Section 951A PTEP that has been reclassified as §959(c)(1)(A) PTEP
  5. Section 245A(d) PTEP that has been reclassified as §959(c)(1)(A) PTEP
     A. Section 245A(e)(2) PTEP that has been reclassified as §959(c)(1)(A) PTEP
     B. Section 959(e) PTEP that has been reclassified as §959(c)(1)(A) PTEP
     C. Section 964(e)(4) PTEP that has been reclassified as §959(c)(1)(A) PTEP
Types of PTEP Accounts – Reg. §1.960-3(c)(2)

• Section 959(c)(2) PTEP
  6. Section 965(a) PTEP
  7. Section 965(b) PTEP
  8. Section 951A PTEP - GILTI
  9. Section 245A(d) PTEP – Foreign tax credit not allowed
     A. Section 245A(e)(2) PTEP – Hybrid Dividend Subpart F Income
     B. Section 959(e) PTEP – Section 1248 Dividend
     C. Section 964(e)(4) PTEP – Subpart F for equivalent of a §1248 dividend recognized from higher-tier CFC sale of lower-tier CFC stock
  10. Section 951(a)(1)(A) PTEP – All other Subpart F
PTEP Account Maintenance – Prop. Reg. §1.959-3(b)

• PTEP accounts must be maintained on a shareholder-by-shareholder basis both in functional currency and in U.S. dollar basis – Form 5471, Schedule P

• PTEP accounts must also be maintained at the CFC level to extent possible as an aggregate of all known U.S. shareholder PTEP accounts in functional currency – Form 5471, Schedule J

• PTEP ordering rules must be applied on a separate shareholder-by-shareholder basis
  • PTEP can only be distributed to the shareholder who recognized the income or to a successor-in-interest
Distribution Ordering Rules – IRS Notice 2019-01

1. Section 301(c)
   a. § 301(c)(1) – Distribution of current or accumulated E&P
   b. § 301(c)(2) – Return of capital – to extent of basis
   c. § 301(c)(3) – Capital gain – distribution in excess of basis

2. Section 959(c)
   a. § 959(c)(1)(A) – Section 956 PTEP
   b. § 959(c)(1)(B) – Section 956A Excess Passive Asset PTEP
   c. § 959(c)(2) – Subpart F PTEP
   d. § 959(c)(3) – Non-PTEP E&P (Taxable Dividend)
3. IRS Notice 2019-01, Section 3.02
   a. § 965(a) PTEP
   b. § 965(b) PTEP
   c. All other PTEP

4. Section 316(a)
   a. § 316(a)(2) – Current E&P
   b. § 316(a)(1) – Accumulated E&P on a last-in-first-out basis

5. Section 962(d)
   a. Reg. §1.962-3(b)(3) – Non-962 PTEP
   b. Reg. §1.962-3(b)(1)(i) – Excludable Section 962 E&P
   c. Reg. §1.962-3(b)(1)(ii) – Taxable Section 962 E&P (Taxable Dividend)
The 3 §962 steps apply to each §316(a) LIFO layer
Q&A Break
• (1) Affiliated group treated as a single corporation
• (2) Gross income and FMV methods not allowed
• (3) Tax exempt asset are not considered
  • (however – do not forget about IRC S.904(b)(4))
• (4) Basis of 10% non-affiliated stock adjusted for E&P changes
  • Lower tier stock is included
  • Coordination with subpart F PTI/PTEP rules
• 1.861-9(j) – Modified gross income method for CFCs
• 1.861-13 – CFC stock characterization rules
Additional Taxes on PTEP Distributions - Section 960(b)

- Section 960(b)(1) any foreign corporation’s income taxes on PTEP distributions that have not been deemed paid by U.S. corporation in the current or prior taxable years
- Section 960(b)(2) for tiered CFCs, CFC receiving the PTEP distribution is deemed to have paid the payor CFC’s foreign income taxes on PTEP distribution that have not been deemed paid by U.S. corporation in the current or prior taxable years
- Additional taxes on PTEP distributions result from withholding taxes and any foreign taxes on PTEP distributions (1.861-20 examples 4 and 5 on allocating/apportioning foreign taxes)
Excess Limitation Account (ELA) under Section 960(c)

- Taxpayer receives PTEP distributions and pays or deemed to have paid, or accrues taxes to foreign country or possession of U.S.
- FTC limitation is increased by the lesser of amount of taxes or the amount in excess limitation account at the beginning of the taxable year
- Excess limitation account is increased by the excess of FTC limitation on the Section 951(a) inclusion over taxes associated with such inclusion
- ELA is reduced by FTC limitation used in the bullet point 2
1.861-13 – Characterization of CFC Stock

• Based on the income earned by the CFC when ultimately included in the U.S. shareholder’s income

• Under the modified gross income approach prescribed by 1.861-9(j) this includes all lower tier corporations based on ownership percentages
  • Gross income net of interest expense
  • Excluding subpart F income for apportioning interest expense only

• Tested income is split based on the GILTI inclusion percentage

• If the GILTI high-tax exclusion is elected, asset characterization shifts between 951A and 245A with 904(b)(4) implications
New Rules for Stewardship – 1.861-8(e)(4)(ii) and (h)

- “Duplicative activities” or “shareholder activities” not resulting in a direct benefit to the subsidiary
- Allocation – definitely related and allocable to dividends received or to be received or included under sections 78, 301, 951, 951A, 1291, 1293, and 1296
- Apportionment – value of the stock of a foreign corporation is determined in the same manner as interest expense apportionment and the same asset characterization rules apply
- Effective for taxable years beginning after 12/31/2019
ASC 740 – Income Tax Provision

- Deferred Income Tax - Reversal of Outside Basis Differences
  - GAAP basis includes all earnings
  - Tax basis only includes PTEP
- Measurement considerations
  - S. 245A vs. PTEP
  - Withholding Taxes
- FX gains and losses – OCI Account
- S. 965 Haircut percentage
Integrated VantagePoint™ Case Study Analysis
Wrap-Up and Q&A

• Current clients and licensees
• Initial assessment using your latest e-file
• VantagePoint demo
• Survey
• Thank you!
We appreciate the opportunity to spend time with you today and hope you found the presentation interesting and informative.

For additional questions, please contact:

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With over 30 years of industry experience, Mark has helped many of the country’s most successful enterprises implement all aspects of international taxation. A hallmark of Mark’s career has been leveraging technology to improve tax department performance.

Prior to founding Forte International Tax, Mark held leadership positions at PwC, Ernst & Young, and CliftonLarsonAllen. Mark leads the firm on its mission of achieving global tax minimization through process efficiency.
Lester has over 30 years of public accounting and industry experience in automating international tax planning, compliance, and audit processes. Lester led the development of international tax software and quantitative modeling at PwC from 1985 to 1994 and at Ernst & Young from 1996 to 2009.

On the corporate side, he managed tax automation and process improvements internally at GE. He currently leads the VantagePoint software development team and also assists clients in analyzing the tax impact of acquisitions, dispositions, and restructuring.
Chris is a member of BKD’s International Tax Services division. He has provided public accounting services since 2001 and has experience in international tax planning and compliance for multinational companies in areas such as foreign tax credits, subpart F, withholding taxes and income tax treaties. He focuses on international tax planning and compliance for domestic and foreign corporations.

He is a member of the American Institute of CPAs and Indiana CPA Society.

Chris is a frequent speaker about international tax matters at Praxity, AISBL and other conferences. He has written articles on such topics as passive foreign investment companies, the *Foreign Account Tax Compliance Act* and foreign bank account reporting.

He is a 1999 graduate of Bob Jones University, Greenville, South Carolina, with a B.S. degree in accounting, and a 2001 graduate of Indiana University, Bloomington, with an M.Acc. degree with a taxation emphasis.
Marilyn R. Jankowski has over 30 years of experience as an international tax practitioner. Marilyn has extensive experience working in the tax departments of several large multinational corporations including Baker Hughes and Emerson Electric.

Marilyn’s areas of focus include tax provision, international tax planning and compliance. She has been with Forte International Tax for more than 10 years where she has gained significant experience assisting multinational companies in implementation and training of VantagePoint software and developing process improvement strategies.
Scott has more than 30 years of experience in the tax field. He joined Forte in 2012 to assist in their export incentives as a Director. He works on international tax consulting projects, including foreign tax credit, GILTI, FDII, expense apportionment and IC-DISC. He also serves as software support for third party licensees of the VantagePoint software system.

Prior to working at Forte, Scott was an Executive Director at EY serving international tax clients ranging from the middle market to the Fortune 100 for 11 years. He consulted on export incentives (ETI and IC-DISC), foreign tax credit, and expense apportionment projects. He has also worked at KPMG in their International Tax Services group and at R. R. Donnelley & Sons Company in their internal tax department.

Scott is a CPA in Illinois and has a bachelor’s degree from the University of Illinois at Urbana-Champaign and a Masters in Taxation from DePaul University.
Jeffrey is an implementation Manager with Forte. He has worked with several multinational corporations across the United States.

Prior to working at Forte, Jeffrey had extensive software development experiences, including using .Net languages to write desktop applications, websites and services. Jeffrey is skilled at converting client ideas into algorithms and code and knowledgeable about storing and manipulating various types of financial data.

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