**Feedback for REG-104464-18: Deduction for Foreign-Derived Intangible Income and Global Intangible Low-Taxed Income as of 5/1/2019**

| PROPOSED REGS SECTION NUMBER | SECTION TITLE | ISSUE | RECOMMENDATION | ADDITIONAL EXPLANATION /QUERIES |
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| **Prop. Regs. §1.250(b)-1(c)[1]** | **Definitions** | Expansion of the definition of "foreign branch income" | Remove the change to the definition of "foreign branch income" (as initially defined under Prop. Regs. §1.904-4(f)(2)(iv)). The modified definition includes income and gain from the sale of a foreign disregarded entity or partnership interest. | The proposed change is inconsistent with the proposed regulation defining foreign branch income under §904, which we generally support. The modified definition under the proposed §250 regulations creates a class of income that is neither DEI for purposes of §250 nor foreign branch income for purposes of §904. This contradicts §250(b)(3)(A)(i)(VI), which cross references the definition of foreign branch income in §904(d)(2)(J) without modification. |
| **Prop. Regs. §1.250(b)-1(d)** | **Treatment of cost of goods sold and allocation and apportionment of deductions** | Allocation and apportionment of expenses incurred pre-FDII implementation | Clarify that taxpayers are not required to apportion net operating losses (NOLs) incurred prior to the effective date of the FDII regulations. | It is unclear whether taxpayers are required to apportion NOLs incurred prior to the effective date of FDII regulations to FDII. Clarification could be similar to Regs. §1.199-4(c)(2)(ii) ("A deduction under §172 for a net operating loss is not allocated or apportioned to DPGR or gross income attributable to DPGR"). |
| | | Expense allocation & apportionment of research & experimentation expenses | Pending a more general review of Regs. §1.861-17 in light of recent changes in law, and in the interest of administrative convenience, we recommend two changes to the regulations to better conform the results under the FDII rules to those under the GILTI rules and to provide the taxpayer with additional flexibility. First, given the intended approximate parity between FDII and GILTI, we recommend giving taxpayers the right to elect to use exclusive apportionment for | As proposed, taxpayers must allocate research and experimentation (R&E) against DEI and FDDEI and correspondingly to global intangible low-taxed income (GILTI) (for purposes of §904) under the rules of Regs. §1.861-17. However, exclusive apportionment would not apply in the case of DEI and |

[1] Unless otherwise noted, all section references are to the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

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| | | | FDII purposes so as to better conform the results under the FDII rules to those under the GILTI rules.<br><br>Second, we request that consideration be given to allowing the election to allocate R&E under either the sales or gross income method on an annual basis. Alternatively, we at least request extending Prop. Regs. §1.861-17(e)(3) to a second year beginning after December 31, 2017. With many of the relevant regulations being in a proposed status, providing a non-binding election for at least one additional year will better enable taxpayers to understand and comply with the new system, and better assess the impact of the election in light of the many changes to the foreign tax credit rules, the introduction of §250, and other relevant changes. | FDDEI. We understand that Regs. §1.861-17 is under more general review.<br><br>The allocation of R&E expenses to GILTI (for purposes of §904) or to FDDEI may discourage taxpayers from performing R&E and retaining IP in the United States or, from transferring IP rights back to the United States. By reducing the potential FDII deduction and also reducing any potential foreign tax credit (FTC) associated with foreign/GILTI income, taxpayers that hold IP rights in the US may be incentivized to increase R&E activities offshore, which runs counter to the policy intent of the provision. Moreover, it is unclear why Treasury decided to turn off exclusive apportionment for FDII, which results in more U.S.-performed R&D being apportioned to FDDEI, reducing the FDII deduction.<br><br>Under Regs. §1.861-17, taxpayers may use either the sales method or gross income method, but must use an elected method consistently for five years before changing to another method. For tax years beginning after December 31, 2017, Prop. Regs. §1.861-17(e)(3) provides taxpayers a one-time ability to change apportionment method without regard to the five-year restriction. However, this one-time change of method constitutes a binding election to use the chosen method for |

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| | | | | a five-year period. Given that the foreign tax credit regulations are still pending, and that the proposed section 250 regulations are unlikely to be finalized until late 2019, it seems reasonable to allow taxpayers the opportunity for an annual election (that is consistent with the method the taxpayer elects under §904) and at a minimum another year to better assess the impact of the new rules before requiring that they commit to a method for a five-year period. |
| **Prop. Regs. §1.250(b)-3(b)** | **Definitions** | Domestic partnerships | If seller/renderer has a greater than 10% ownership interest in the recipient domestic partnership, Treasury should permit aggregate treatment of the partnership for this limited purpose. | The proposed regulations allow domestic corporate partners to claim the FDII deduction for distributive share of qualifying partnership activity (aggregate treatment). However, the proposed regulations do not permit sales or services rendered to a domestic partnership to qualify because a domestic partnership is not a foreign person. See Prop. Regs. §1.250(b)-3(b)(10) and the request for comment on page 20 of the Preamble.<br><br>In certain industries, customers request teaming arrangements that require bidders to form a single domestic bidding entity that will govern the relationship between the members of the team, but most of the work is performed by the partners, under subcontract from the partnership. But for the requirement to form a joint bidding entity, the activity would otherwise qualify. |

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| | | Exclusion of commodities (income/loss from the use of derivative instruments) from the definition of "general property" | Treat qualified hedging transactions, as defined in §1221(b)(2)(A)(i), with respect to commodities described in §475(e)(2)(A) as "general property." For federal income tax purposes the tax characteristics of qualified hedging transactions are generally the same as the underlying physical transaction so treating the physical and derivative components as an integrated transaction for FDDEI purposes would be consistent with the economic reality of the transaction.<br><br>This could be accomplished by simply extending the definition included under Prop. Regs. §1.250(b)-3(b)(3)(iii) to state:<br><br>(3) General Property. The term general property means any property other than—<br>(i) Intangible property;<br>(ii) A security (as defined in section 475(c)(2)); or<br>(iii) A commodity (as defined in section 475(e)(2)(B) through (D)**, *excluding hedging transactions as defined in section 1221(b)(2)(A)(i) with respect to a commodity as defined in section 475(e)(2)(A)).*** | |
| **Prop. Regs. §1.250(b)-3(c)** | **Foreign military sales (FMS)** | Documentation to establish foreign use | If a taxpayer documents that a sale of property or a provision of a service is a foreign military sale (as defined in Prop. Regs. §1.250(b)-3(c)), then the sale of property or provision of service should be presumed to have occurred for foreign use. | In general, defense articles/services that are sold/rendered to foreign governments may not be utilized in the United States. Defense contractors should be entitled to presume foreign use, unless the contractor knows or has reason to know that the foreign government is authorized to utilize the property/service in the United States (e.g., if aircraft is specially |

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| | | | | authorized to be used for an extended period in United States for training). |
| | | Documentation to establish a sale is a foreign military sale (FMS) (i.e., made pursuant to the Arms Export Control Act) | Provide that a taxpayer can establish that a transaction is a foreign military sale through documentation that is collected in the ordinary course of the taxpayer's trade or business subject to the reliability requirements set forth in Prop. Regs. §1.250(b)-3(d)(1) and (2).<br><br>If a list of acceptable documents is provided in the final regulations, such list should be non-exclusive. Examples of acceptable documents may include (1) contracts referencing a FMS case identifier and (2) records submitted to the Department of State relating to the exemption of FMS transactions from export license requirements. | |
| **Prop. Regs. §1.250(b)-3(d)** | **Reliability of documentation** | Compliance burden; multi-year contracts, etc. | Strike subsection (d)(3) (one-year requirement) because it is overly burdensome, would increase the cost of compliance, and renders ineffective some of the forms of permissible documentation listed in the proposed regulations.<br><br>As an alternate, amend Prop. Regs. §1.250(b)-3(d)(3) to read: "The documentation required under the following sections is obtained no earlier than one year before the date of the sale or service:<br>(i) §1.250(b)-4(c)(2)(i)(A), (C), (D);<br>(ii) §1.250(b)-4(d)(3)(i)(A), (C);<br>(iii) §1.250(b)-4(e)(3)(i)(A), (C), (D);<br>(iv) §1.250(b)-5(d)(3)(i)(A); and<br>(v) §1.250(b)-5(e)(3)(i)(A), (D)." | Taxpayers have multi-year contracts; obtaining documentation no earlier than one year before the date of the sale or service is overly restrictive and burdensome to the business, particularly because subsection (d)(1) already imposes a requirement to update documentation if the taxpayer knows or has reason to know that current documentation is unreliable or incorrect. Compliance with the one-year requirement as written could unintentionally alter the economics of contracts between unrelated parties (i.e., by requiring regular re-negotiation) and create a competitive disadvantage for U.S. companies competing with foreign sellers or service |

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| | | | As an additional alternate, amend Prop. Regs. §1.250(b)-3(d)(3) to read: "The documentation is obtained or verified for continued accuracy no earlier than one year before the date of the sale or service." | providers that can more easily enter into long-term contracts.<br><br>Prop. Regs. §1.250(b)-4(c)(2)(B) permits the use of documentation that establishes that an entity is organized or created under the laws of a foreign jurisdiction to show that a sale is to a foreign person. Articles of incorporation and other forms of documentation permissible under this subsection are not re-created on an annual basis. If the one-year rule stands, such forms of documentation could not be used. This result seems unintended. |
| | | Documentation requirements & extension of transition period | For administrative ease, consideration should be given to extending the transition period for the documentation requirements rules to take effect and determining the extent to which, if any, such rules prove deficient or problematic in practice once taxpayers and the IRS have some experience complying with or administering the rules. Identifying and potentially implementing new documentation requirements will take time, particularly for business models with longer-term contracts; lengthening the transition period to at least five years would provide greater certainty in the near term, accommodate different business models and ease the ability to get new compliance systems or contract provisions in place if necessary. Providing a longer transition period would allow taxpayers a sufficient amount of time to develop and improve internal administrative systems as well as enhance the stability of the new system. | The proposed regulations currently provide a transition period that allows taxpayers to demonstrate that property or services have been provided to a foreign person for foreign use using "any reasonable documentation maintained in the ordinary course of business". This type of approach allows a taxpayer to use existing business documents (e.g., commercial invoices, purchase orders, packing slips, bills of lading, etc.) without the creation of unnecessary recordkeeping. The transition period only covers tax years beginning before March 6, 2019; following this period, taxpayers are required to create and maintain additional documentation that may not be necessary or accessible in the ordinary course of business, or to obtain information from foreign counterparties that may be reluctant to |

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| | | | | provide information for U.S. tax purposes. Several of the items listed in Prop. Regs. §1.250(b)-4(c)(2) and (d)(3) and Prop. Regs. §1.250(b)-5(d)(3) and (e)(3) would not be created or available to a taxpayer in the ordinary course of business, and may not be readily provided by the foreign recipient. Additionally, for taxpayers with longer contract cycles, certain documentation (such as a binding contract) may not contain the information required under the proposed regulations, and re-negotiation of contracts or materials required to be provided by the counterparty in the course of business may not be possible from a commercial perspective. |
| **Prop. Regs. §1.250(b)-4(c)** | **Foreign person** | Reliability of Documentation | Provide a non-exhaustive list of acceptable documentation. For instance, provide that acceptable documentation could include, but should not be limited to:<br>• Items currently enumerated in the regulation;<br>• Documentation collected in the ordinary course of the taxpayer's trade or business; and<br>• The shipping location of the recipient for all taxpayers regardless of size. | The taxpayer is already subject to reliability requirements.<br><br>Further, the proposed regulations allow sellers with less than $10,000,000 in gross receipts in the prior taxable year, or less than $5,000 in gross receipts from a single recipient during the taxable year to rely on the shipping address of the recipient to document the foreign person and foreign use requirements. This documentation requirement is not given to larger taxpayers creating an additional administrative burden to obtain more specific documentation from the recipient such as written statements. |

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| | | | | Finally, foreign persons have no incentive to provide this information if the same product can be sourced outside of the United States. This creates a competitive disadvantage of U.S. companies competing with foreign sellers. The documentation requirement increases the cost of doing business for both parties. U.S. businesses may forgo the deduction in lieu of creating customer facing obstacles. |
| **Prop. Regs. §1.250(b)-4(d)** | **Foreign use for general property** | Reliability of Documentation | See comment above under Prop. Regs. §1.250(b)-4(c) which relates to documentation of foreign person status. Our recommendation is to adopt similar rules for purposes of foreign use for general property. | |
| | | Determination of foreign use: three-year rule | Remove this requirement and replace with anti-abuse rules to detect if a foreign person that exports goods to the U.S. are simply churning the property in order for a U.S. taxpayer to take advantage of the FDII deduction. | Taxpayers cannot reliably and practically trace the use of a product sold to a foreign person for three years to ensure that the product is not re-imported into the United States. As under (b)-4(c) above, the foreign recipient has no incentive to provide the information required and, thus, creates a competitive disadvantage for U.S. companies competing with foreign sellers. |
| | | Determination of foreign use: sales to foreign persons | As a general rule, for general property sold to an unrelated party, the regulations should incorporate a rebuttable presumption test. By using documentation created in the ordinary course of business (such as the items listed above), a taxpayer must be able to show reasonable documentation regarding the sale to persons outside the United States. The regulations may build off of place-of-use rules that appear | The sale of general property is for a foreign use if the property is subject to manufacture, assembly, or other processing outside the United States. To qualify as manufactured, assembled or processed, general property must meet one of two tests: (1) it is "subject to a physical and material change," or (2) it is |

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| | | | elsewhere in existing regulations so that general property which is sold to an unrelated foreign person shall be presumed to have been sold for use, consumption, or disposition in the country of destination of the property sold unless the taxpayer knows, or has reason to know, that the general property will be used in the United States [Regs. §1.864-6(b)(3)(ii)(a); Regs. §1.971-1(b)(1)(i); Regs. §1.956-2(b)(1)(iv)]. | incorporated into another product as a component. This standard appears to incorporate elements from the standards in the regulations under former §199 and the regulations under §954. In each of those contexts, the taxpayer is testing whether activities it conducts itself constitute manufacturing, assembly, or other processing. In the case of §250, a taxpayer may not know for certain, or be able to demonstrate, the extent of physical or material change, to the property being sold to an unrelated party; or the extent to which the property being sold is incorporated into a different product. Accordingly, a rebuttable presumption is appropriate. |
| | | Determination of foreign use: definition of "physical & material change" | For sales to unrelated parties, language to further define a "physical and material change" should be added to account for the fact that the taxpayer may not know the extent to which the property sold will be materially changed. In particular, rules should provide that this test be satisfied where the general property is subject to processing or assembly activities that are substantial in nature and generally considered to constitute the manufacture or production of property that is different than the property which was purchased. This language is similar to the language in the regulations under §954. [Regs. §1.954-3(a)(4)(iii)]. This language could be illustrated by the following example.<br><br>Example: U.S. Corporation, Corporation A, manufactures computer chips. The chips are sold to an unrelated foreign | The sale of general property is for a foreign use if the property is subject to manufacture, assembly, or other processing outside the United States. To qualify as manufactured, assembled or processed, general property must meet one of two tests: (1) it is "subject to a physical and material change," or (2) it is incorporated into another product as a component. This first test appears to incorporate elements from the standards in the regulations under former §199 and the regulations under §954 that are reasonable in those contexts because the taxpayer is testing activities it conducts itself and therefore will have direct information regarding the extent of |

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| | | | party, Corporation B, incorporated under the laws of foreign country X. Corporation B manufactures computers, tablets and other computer accessories. Corporation B will incorporate the chips purchased from Corporation A in its manufacturing process. Company B's manufacturing process is substantial in nature and is generally considered to constitute the manufacture or production of computers, tablets and other computer accessories. The chips are not the same product as the computers, tablets and other computer accessories. The chips purchased from Corporation A have been subject to a physical and material change. Thus, they qualify as manufactured, assembled or processed outside the United States. | physical and material change to property. In the case of §250, a taxpayer may not know for certain, or be able to demonstrate, the extent of physical or material change to the property being sold to an unrelated party. The recommendation is based on another element in the §954 regulations that is more suitable to the §250 context. |
| | | Determination of foreign use: 20% fair market value (FMV) test for components | Rules should provide a safe harbor or methodology for the determination of the FMV of the completed product. In many cases, a seller of components would have no access to or actual knowledge of which finished product(s) incorporate such components – much less the FMV of such product(s). The regulations could provide, for example, that a taxpayer who is not able to determine the final product(s) in which the component is used may be able to establish that it qualifies as a component (valued at no more than 20% of the ultimate selling price of the finished product) through publicly available data, market research or other similar methods. This language is consistent with the methods to establish foreign use for "fungible mass" in Prop. Regs. §1.250(b)-4(d)(3)(iii). As it is not feasible that a buyer will share (or even possibly know) this type of information at the time of purchase for certain types of products, a simplified method should be provided in the final regulations. | The sale of general property is for a foreign use if the property is subject to manufacture, assembly, or other processing outside the United States. To qualify as manufactured, assembled or processed, general property must meet one of two tests: (1) it is "subject to a physical and material change," or (2) it is incorporated into another product as a component. For the second test, to be considered a component, the FMV of the general property sold must be no more than 20% of the FMV of the second product upon completion. For purposes of this rule, the proposed regulations provide that if the taxpayer sells multiple items of property that are incorporated into the second product, then all of the property sold by the seller is treated as a single item of property. We note that this |

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| | | | In addition, in the case of a taxpayer that sells multiple items of property that may be incorporated into products, rules should provide that the components be treated as separate component items if the seller can establish that a determination of the destination of the component is not feasible based on facts and circumstances. As discussed above, if the seller has no knowledge of which component(s) may be incorporated into the second product(s), it would not be possible to aggregate the components for testing purposes. Moreover, the policy underlying the aggregation rule – to ensure that taxpayers cannot avoid the component rule by disaggregating sales of otherwise integrated components – is not implicated to the extent the taxpayer has no knowledge of which components may be incorporated into which second products.<br><br><u>Example</u>: Corporation A, incorporated under the laws of the United States, manufactures and sells computer chips. The chips are shipped to and billed to Corporation B, incorporated under the laws of foreign country X. Corporation B manufactures various types and models of computers that use the chips purchased from Corporation A. Upon the sale of chips to Corporation B, Corporation A has no knowledge of which types or models of computers that Corporation B will manufacture using the chips. The fair market value of the computers could vary greatly by model. However, based on market research or other publicly available data (such as Corporation B's revenue), Corporation A estimates that the chips sold to Corporation B constitute less than 20% percent of the fair market value of the computers into which they are incorporated. Thus, the chips are deemed to be components | standard appears to incorporate elements from the standards in the regulations under former §199 and the regulations under §954. In each of those contexts, the taxpayer is testing whether activities it conducts itself constitute manufacturing, assembly, or other processing. Accordingly, the taxpayer will have direct information regarding the extent of physical and material change to property. In the case of §250, a taxpayer may not know for certain, or be able to demonstrate, that this test is met. |

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| | | | and qualify as manufactured, assembled or processed outside the United States. | |
| **Prop. Regs. §1.250(b)-4(e)** | **Foreign use for intangible property** | Lack of manufacturing rule for foreign use of intangible property | In the determination of foreign use for intangible property, include a manufacturing rule similar to that applicable to the transfer of general use property. | With respect to general property, Prop. Regs. §1.250(b)-4(d)(2)(i)(B) provides that the "manufacture, assembly or other processing outside the United States before the property is subject to a domestic use" will constitute foreign use (the "**manufacturing rule**"). The proposed regulations do not include a similar manufacturing rule for intangible property, creating a disadvantage to companies who produce intangible property (such as software programs) instead of physical goods.<br><br>From a policy standpoint, the manufacturing rule appropriately provides that only property which goes through material change outside the United States before it is subject to domestic is considered to be for a foreign use. Both general property and intangible property are capable of undergoing material change and are similar in this regard. Consequently, general property and intangible property should be treated similarly in the determination of foreign use.<br><br>Consider an example where the production of intangible property originates in the United States and is then transferred to a foreign person for significant production processes |

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| | | | | outside of the United States. Similar to the production of general property, the foreign production activities that result in a material change to the intangible property should constitute foreign use. A manufacturing rule for intangible property is needed to achieve parity across industries between production of general property and intangible property.<br><br>Furthermore, without a manufacturing rule for intangible property, companies would be incentivized to move all of their production of intangible property offshore. This defeats the objective of FDII, which is to "help neutralize the role that tax considerations play when a domestic corporation chooses the location of intangible income attributable to foreign market activities" (see Part I of the preamble of the proposed §250 regulations). |
| | | OEM royalties | Clarify that foreign use for intangibles used outside the United States mirrors the foreign use test for general property, including intangibles used in manufacturing or used in products manufactured outside the United States. | There should not be a difference in treatment between tangible and intangible property used in manufacturing or used in products manufactured outside the United States. In the tangible property context, it appears that the analysis ends with the location of the manufacturing. However, claiming a FDII benefit for intangibles used in manufacturing or used in property manufactured outside the United States requires looking through to the ultimate user of the manufactured product. We believe intangible property used in |

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| | | | | manufacturing or used in products manufactured outside the United States should be considered sold for a foreign use. |
| | | Reliability of Documentation | See comment above under Prop. Regs. §1.250(b)-4(c). | |
| **Prop. Regs. §1.250(b)-5(b)** | **Definition of FDDEI service** | Property services | Provide an exception for services related to property manufactured or assembled in the United States (i.e. toll manufacturing) owned by a foreign person and where the final product is for a foreign use. Under this exception, services would be general services rather than property services. | The proposed regulations classify property services according to the location where the property is physically located when the service occur. This does not consider who the owner of the property is and where the property will ultimately be used. Further, this penalizes a seller for a services arrangement (toll manufacturing) versus a sales arrangement (contract manufacturing) in this circumstance when the final outcome is the same – property is manufactured in the United States for a foreign person for foreign use. |
| **Prop. Regs. §1.250(b)-5(d)** | **General services provided to consumers** | Compliance burden | Rather than limiting taxpayers to a finite list of acceptable documentation, broaden to allow taxpayers to support the status of the recipient as a foreign person using documentation that is collected in the ordinary course of the taxpayer's trade or business; caveat that the list is a non-exhaustive list of acceptable documentation. | The taxpayer is already subject to reliability requirements. |
| | | Definition of foreign operations | Clarify the definition of foreign operations. For instance,<br>(1) Treasury could define foreign operations as a residual: the gross income remaining after identifying any operations not attributable to a customer's office or other fixed place of business in the US. This would | The proposed regulations allow taxpayers to allocate "general services" performed in the US for the benefit of the customer's foreign operations. However, the proposed regulations only allocate general services to foreign |

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| | | | invert the rule in Prop. Regs. §1.250(b)-5(e)(2)(i).<br><br>(2) Alternatively, Treasury should clarify that outer space, the ocean, and international airspace may represent foreign locations of the business recipient, to which the renderer is providing services. | operations if the customer has a "location where [the customer] maintains an office or other fixed place of business." Prop. Regs. §1.250(b)-5(e)(2)(ii). This permanent establishment approach may not capture services performed with respect to a customer's operations in outer space, the ocean, or international airspace and is not justified by the statutory text, which only requires the customer or property to be located outside the United States. |
| **Prop. Regs. §1.250(b)-5(e)** | **General services provided to business recipients** | Location of business recipient's operations | Add the following sentence at the end of current Prop. Regs. § 1.250(b)-5(e)(2)(i): "The location of residence, incorporation, or formation of a business recipient is not relevant to determining the location of the recipient's operations that benefit from a service." | This incorporates language from the preamble in order to clarify the application of the regulations. |
| | | | Add a new sentence to the end of Prop. Regs. §1.250(b)-5(e)(2)(ii) as follows: "In a transaction other than a related party service, as defined in §1.250(b)-6(b)(4), if the renderer is unable to obtain reliable information regarding the specific | Prop. Regs. §1.250(b)-5(e)(2)(i)(B), which is much appreciated by taxpayers, allows general business service renderers to allocate the benefits conferred using any reasonable |

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| | | | locations where a business recipient maintains an office or other fixed place of business, the renderer may treat the jurisdictions where the business recipient reports earning revenue as the locations of the business recipient for purposes of Prop. Reg. §1.250(b)-5(e)(2)(i)(B)." | method, including the revenue, profits, or assets of the business recipient. In third-party transactions, service renderers may have difficulty in obtaining documentation—either directly from the business recipient or through public information, such as SEC filings—that allocates revenue or profits by the recipient's offices or fixed places of business as opposed to by the locations where revenue is earned by the recipient. This recommendation therefore allows, as an alternate in an unrelated-party transaction, the service renderer to make an allocation based on the jurisdictions in which the unrelated business recipient earns revenue. |
| | | Documentation requirements are unduly burdensome | Provide a non-exhaustive list of acceptable documentation, and provide that the documentation need only show the allocation of expected benefits between the recipient's U.S. operations and non-U.S. operations (rather than each specific location). (See also comment above to Prop. Regs. §1.250(b)-5(d) for consumer services.) | The taxpayer is already subject to reliability requirements.<br><br>As currently drafted, the regulations could imply that a breakout of each specific location that benefits from the services is necessary. This level of detail may be a burdensome request of foreign counterparties (and a request with which they may not be willing to comply) and may be more detailed than the information provided by those counterparties in publicly available information. |
| **Prop. Regs. §1.250(b)-5(g)** | **Property services** | Exception for property that is located in the United States temporarily solely for purposes | Clarify that services performed with respect to property temporarily returned to the United States for repair or maintenance, and then re-exported for foreign use, should qualify as FDDEI property services. | The location of property should be based on its ordinary place of use. This is consistent with the statutory structure and legislative purpose of FDII. The current proposed rule would undermine intended neutrality between serving |

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| | | of the performance of certain services, such as maintenance or repairs | | foreign markets from U.S. entities or foreign entities. The proposed rule also places strain on the distinction between property and services; a taxpayer offering maintenance services frequently will not know whether it will repair a given part (service) or replace that part (sale) until after the part has been imported and evaluated. |
| **Prop. Regs. §1.250(b)-6(c)** | **Related party sales** | | Eliminate the requirement that the unrelated party sale must occur by the FDII filing date. Alternatively, allow taxpayers to elect to take the FDII benefit in the year the sale occurs rather than having to amend a tax return for a prior year.<br><br>If the unrelated party sale occurs meeting all requirements, the timing of the sale from the foreign related party to the unrelated foreign party should not create an administrative burden on taxpayers and match the reporting of the related gross DEI. | The proposed regulations require the unrelated party sale to occur on or before the FDII filing date to potentially qualify as FDDEI income. If not met, the gross income is still included in gross DEI and the only way to remedy the situation once the unrelated party sale occurs is to file an amended return for the taxable year. This creates an administrative burden on the taxpayer. |
| **Prop. Regs. §1.250(b)-6(d)** | **Related party services** | Clarification of application of benefits and price tests | Insert new sentence at the end of Prop. Regs. §1.250(b)-6(d)(3) to read: "The benefits conferred by the related party service to persons located in the United States, and the price paid for the related party service by persons located in the United States, are allocated based on the locations of the business recipient that benefit from the services provided by the related party." | Example 2 in Prop. Regs. §1.250(b)-6(d)(4)(ii)(B) assumes that the price paid by a business recipient located in the United States reflects a proportional allocation of the total price paid by the recipient, and that such price is allocated to the related party service in the same proportion. This is a reasonable assumption and should be explicitly adopted in the regulations. Requiring a taxpayer to prove the portion of the price attributable to the related party service in another manner would present serious administrability concerns. |