Feedback for REG-105495-19[1] (Proposed Foreign Tax Credit Rules)

PROPOSED REGS SECTION NUMBER	SECTION TITLE	ISSUE	RECOMMENDATION	ADDITIONAL EXPLANATION /QUERIES
Prop. Regs. §1.861-8	**Computation of taxable income from sources within the United States and from other sources and activities**			
Prop. Regs. §1.861-8(e)	**Allocation and apportionment of certain deductions**	Apportionment of stewardship expenses under Prop Regs. §1.861-8(e)(4)(ii)(C)	Include a direct allocation or other reasonable method to allocate and apportion stewardship expenses. Consistent with pre-TCJA rules, the Chamber recommends not limiting stewardship expense apportionment to the asset method used for interest expense. Clarify existing Regs. §1.861-14T(c)(1) with respect to apportioning stewardship expense on an asset method to include stock of a U.S. affiliate in the apportionment base. Stewardship expenses should not be solely apportioned to CFC stock.	There is not a clear policy reason for providing a specific allocation method on stock of foreign subsidiaries only. Not all taxpayers operate in the same manner and thus different methods allow taxpayers to apply their facts and circumstances to utilize the most relevant method to their business or business lines. Stewardship is not fungible and is therefore not similar to interest expense in this regard. For these reasons, a direct allocation or other reasonable method as provided in existing regulations should still be permitted with respect to stewardship expense. Regs. §1.861-14T(c)(1) states, in part, that "in the application of an asset method of apportionment, stock in affiliated corporations shall not be taken into account." This language indicates that stock of a U.S. affiliate is disregarded when apportioning expense (other than interest expense) on an asset method, which would result in all stewardship expense be apportioned to the stock of foreign subsidiaries if the proposed regulations as currently drafted are finalized. This is inappropriate as stewardship expenses are incurred with respect to U.S. affiliates and any apportionment method for

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

PROPOSED REGS SECTION NUMBER	SECTION TITLE	ISSUE	RECOMMENDATION	ADDITIONAL EXPLANATION /QUERIES
				stewardship expenses must permit some of the expense be apportioned to U.S. source income.
			Prop. Regs. §1.861-8(e)(4)(ii) requires the apportionment of expenses based on relative values of stock assets (i.e. based on Regs. §1.861-9T). Stewardship expenses are factually different from interest expense, so applying the methodology of Regs. §1.861-9T is not appropriate from a policy standpoint. In contrast to interest expense, stewardship expenses are not fungible. The relationship of stewardship expenses to business activities is a factual inquiry, and the Chamber believes taxpayers should be permitted to select methods for allocating and apportioning stewardship expenses that more closely align the factual relationship between the expense and the income as provided by Regs. §1.861-8(a)(2).	

PROPOSED REGS SECTION NUMBER	SECTION TITLE	ISSUE	RECOMMENDATION	ADDITIONAL EXPLANATION /QUERIES
			The Chamber does not believe substantive changes to the definition of stewardship expenses is necessary. Providing for other reasonable methods (reflecting facts and circumstances) to apportion stewardship expenses, as recommended above, should help mitigate any concerns.	Comments are solicited on definitions of stewardship expense, and the preamble acknowledges the difficulty distinguishing stewardship expenses from “supportive” or “duplicative” activities.
		Sourcing of damages awards, pre-judgement interest, and settlement payments	The Chamber recommends that the damages, pre-judgment interest, and settlement payments related to corporate malfeasance should be sourced to the income earned in the jurisdiction where the alleged malfeasance occurred.	The general principle for allocating and apportioning expenses is to allocate the expense based on its factual relationship to the income classes. Prop. Regs. §1.861-8(e)(5) requires damages, pre-judgment interest, and settlement payments related to corporate malfeasance by a corporation to be apportioned to all classes of gross income based on the relative value of the corporation’s assets in all groupings. The methodology in the proposed regulation assumes a claim for corporate malfeasance impacts all categories of gross income, but this is not the case. The negative publicity associated with the corporate malfeasance most directly impacts income in the jurisdiction where the malfeasance occurs. Treasury and IRS used similar logic to the recommendation above in the context of industrial accidents. Under the same proposed regulations (Prop. Regs. §1.861-8(e)(5)), such expenses are allocated to the class of gross income produced by the assets involved in the event and, if necessary, apportioned based on the relative value of the assets. There is little difference between negligent employees responsible for industrial accidents and malfeasant employees responsible for deceiving investors, yet the sourcing methodologies in the proposed regulations are significantly dissimilar.

PROPOSED REGS SECTION NUMBER	SECTION TITLE	ISSUE	RECOMMENDATION	ADDITIONAL EXPLANATION /QUERIES
Prop. Regs. §1.861-8(g)	**General examples**	Prop. Regs. §1.861-8(g)(18), *Ex. 18*: Allocation of stewardship expenses	As discussed above, stewardship expenses (i.e., oversight activities) relate to both U.S. and foreign subsidiaries. As such these expenses should be apportioned to both U.S. and foreign source income, notwithstanding the fact that dividends from U.S. affiliated companies are eliminated under §243(a)(3).	Clarity is needed on whether stewardship activity in the example relates to both the affiliated U.S. corporation and its CFCs. The example is clear, however, that all stewardship expense is allocated to foreign source income and none of it against U.S. source. Accordingly, there is an overallocation of stewardship expenses to the foreign categories of income (e.g., §951A, §245A, Subpart F, etc.) if expenses incurred in relation to the U.S. business are entirely allocated to foreign categories of income. As discussed above, this result is inappropriate. For example, USP has two subsidiaries, US Sub and CFC, which are both in the same line of business. At the consolidated financial level, USP has $1000 of global revenue, $500 from US Sub and $500 from CFC. The stock value of CFC is assigned to the following categories: $100 in general, non-§245A, $350 in §951A, and $50 in general, §245A. In addition, USP incurs $100 of expenses related to oversight activities that would be considered stewardship activities. Under the proposed regulations it seems that $100 of stewardship expense would be entirely allocated to the CFC and none to the US Sub because US Sub's dividends would be eligible for the dividends received deduction under §243(a)(3). This results in an overallocation of $50 of oversight expenses to foreign income, and as such, a decrease to the foreign tax credit limitation in each of the General Basket and the GILTI basket and an increase to USP's overall tax liability. However, oversight activities relate to both US Sub and CFC and it is inequitable that expenses relating to such activities should entirely be allocated to CFC and not US Sub.

PROPOSED REGS SECTION NUMBER	SECTION TITLE	ISSUE	RECOMMENDATION	ADDITIONAL EXPLANATION /QUERIES
				Further, assuming that US Sub engages in a different line of business than CFC and oversight activities relate to both US Sub and CFC, then it is reasonable that some of the expenses associated with the oversight activities should be allocated to US Sub and CFC first. The regulations should provide an example to clarify this situation.
Prop. Regs. §1.861–17	**Allocation and apportionment of research and experimental expenditures**	The R&E allocation and apportionment rules in these proposed regulations will undermine the neutralizing effect of Foreign-Derived Intangible Income (FDII) for U.S. multinationals with intangibles located in the United States.	Consider an alternative methodology when finalizing Prop. Regs. §1.861–17 for apportioning R&E to FDII income (e.g., utilizing gross income method for apportioning R&E for FDII purposes). Also see below regarding exclusive apportionment.	According to the explanation to the proposed §250 regulations, "the result of the section 250 deduction for both [Global Intangible Low-Taxed Income] GILTI and FDII is to help neutralize the role that tax considerations play when a domestic corporation chooses the location of intangible income attributable to foreign-market activity, that is, whether to earn such income through its U.S. based operations or through its CFCs." However, the neutralizing effect of FDII is undermined through the application of the proposed rules. Apportionment based on gross receipts rather than gross income significantly limits or eliminates the FDII benefit in the case of a U.S. based company with most of its intangibles and associated R&E located in the United States, and that derives foreign source royalty income from both related and unrelated parties. As a result, the proposed R&E regulations do not provide an incentive to U.S. based companies to locate intangibles in the United States to generate foreign source income and is contrary to the intent of §250 enacted by Congress. Further, although the proposed rules offer some relief in the form of a higher foreign tax credit limitation in the GILTI foreign tax credit limitation basket by eliminating R&E expenses apportioned to such basket, the regulations reduce the foreign tax credit limitation in the general basket for certain taxpayers. This, in turn, reduces such taxpayers' ability to utilize

PROPOSED REGS SECTION NUMBER	SECTION TITLE	ISSUE	RECOMMENDATION	ADDITIONAL EXPLANATION /QUERIES
				foreign tax credits and without significantly restructuring its U.S. operations, a taxpayer may never be able to utilize such credits, which penalizes taxpayers who choose to locate their intangibles in the United States rather than offshore.
		Contract Research	The Chamber believes contract research performed in the United States may be connected with a U.S.-based multinational's trade or business and, in such circumstances, may be properly deductible under §174 rather than §162. Regardless of whether such research expense is deductible under §162 or §174, the expenses incurred in performing research under a contract should be first allocated to payments received that are directly related to the research contract, such as service gross income, and then allocated and apportioned as described in the proposed regulation. Such allocation is consistent with the §162 approach outlined in the preamble and ensures the research expense is allocated to all of the types of income to which it relates.	
Prop. Regs. §1.861–17(b)	**Allocation**	Optional gross income method	The final regulations should retain the optional gross income method.	The optional gross income method of allocation and apportionment may align more closely with a taxpayer's business and should continue to be a valid method going forward. Taxpayers should be provided the option to use

PROPOSED REGS SECTION NUMBER	SECTION TITLE	ISSUE	RECOMMENDATION	ADDITIONAL EXPLANATION /QUERIES
				alternative methodologies under the existing Regs. §1.861-17 so long as those methodologies are reasonable and applied consistently for all operative Code sections. As proposed, the existing gross income method would be eliminated in allocating and apportioning R&E expenses. Instead, gross receipts from sales of products or service (i.e. the sales method) is the only available and mandatory method.
Prop. Regs. §1.861–17(c)	**Exclusive apportionment**		Reinstate the 50% exclusive apportionment rule for FDII purposes and expand the regulatory language to reference market destination when identifying statutory groupings of income for FDII purposes.	As proposed, the exclusive apportionment has limited application only when §904 is the operative section. However, in calculating the FDII deduction, the proposed §250 regulations provide that Regs. §1.861-17 shall apply without the exclusive apportionment rule. This mechanical discrimination may result in an over-allocation of R&E expenses to FDDEI and fail to properly measure the income derived from conducting R&E activities in the United States in the service of foreign markets. As previously studied by the U.S. Treasury, the greater value of research and development is in the "place of performance." As such, allocating or apportioning R&E to sales or services rendered outside the United States does not follow the economics of the transactions or the intent of the FDII legislation. Exclusive apportionment was introduced in the §904 context to recognize the economic reality that for taxpayers that perform a preponderance of their R&D in the United States, their foreign income should not be fully burdened with the R&E expense. Removing this same logic and methodology from the FDII calculations is not in line with the data showing the value of R&E resides where it is performed and there is a technology lag in "exporting" such R&E.

PROPOSED REGS SECTION NUMBER	SECTION TITLE	ISSUE	RECOMMENDATION	ADDITIONAL EXPLANATION /QUERIES
Prop. Regs. §1.861–17(d)	**Apportionment based on gross receipts from sales of products or services**	Non-rebuttable position on the license, sale or transfer of IP	Modify the non-rebuttable position that "the taxpayer is presumed to expect to license, sell, or transfer to the uncontrolled party all future intangible property related to the same SIC code" to: (1) rather than application to *all*, the rule under the existing regs should be applied that "Past experience … shall be considered in determining reasonable expectations" and (2) any presumption applied is a rebuttable presumption. The same rule should apply for the license, sale, or transfer of intangible property to either uncontrolled or controlled parties.	Prop. Regs. §1.861-17(d)(3)(i) provides: "If the taxpayer has previously licensed, sold, or transferred intangible property related to a SIC code category to an uncontrolled party, the taxpayer is *presumed* to expect to license, sell, or transfer to that uncontrolled party *all* future intangible property related to the same SIC code." (Emphasis added.) This is a change from the prior regs that provided that "Past experience … shall be considered in determining reasonable expectations." The above governs transactions with uncontrolled parties. A similar rule for controlled parties is in Prop. Regs. §1.861-17(d)(4)(i) and should be modified in the same way.
Prop. Regs. §1.861–20	**Allocation and apportionment of foreign income taxes**			
Prop. Regs. §1.861–20(d)	**Assigning items of foreign gross income to the statutory and residual groupings**	Disallowance of FTCs related to foreign income derived by a branch in connection with a payment by that	Foreign taxes imposed on owner to branch payments should be allocated to the residual basket only when those payments would be treated as base differences under Prop. Regs. §1.861-20(d)(2)(ii)(B) if the branch payee were instead a regarded	U.S. multinationals routinely conduct foreign business operations in branch form for reasons not related to U.S. tax. Those branches often provide services, license IP, or rent property to their U.S. tax owner, and the resulting payments to the branch are subject to foreign tax. The proposed regulations effectively disallow U.S. tax credits for that foreign tax expense. Those taxes would potentially be creditable if the foreign business were

PROPOSED REGS SECTION NUMBER	SECTION TITLE	ISSUE	RECOMMENDATION	ADDITIONAL EXPLANATION /QUERIES
		branch's U.S. tax CFC owner to the branch	entity. The principles of Prop. Regs. §1.861-20(d)(2)(i) should apply for this determination. The exception for payments in exchange for property in Prop. Regs. §1.861-20(d)(3)(ii)(B) should also include service payments. Treasury should clarify that Prop. Regs. §1.861-20(d)(3)(ii)(B) applies only in the unusual circumstance when the owner-payor does not have sufficient business activities to constitute a foreign branch under Prop. Regs. §1.904-4(f)(3), and otherwise treat such payments as made between two foreign branches and subject to Prop. Regs. §1.861-20(d)(2)(i).	conducted in corporate form, or if the payor weren't the branch's U.S. tax owner. U.S. tax rules should not arbitrarily discriminate against foreign branch operations. Further, this proposed rule incentivizes arbitrary, tax-driven structuring to avoid the rule. Finally, as proposed, this significantly increases the potential for double taxation of U.S. multinationals conducting foreign business in branch form and interferes with the ability of U.S. multinationals to compete with similarly situated non-U.S. businesses. The regulations also do not discuss what happens when there are payments between DREs with the same CFC owner. Those payments should similarly not be assigned to the residual grouping.
		Payments from the foreign branch to the foreign branch owner should not be characterized by asset values	The foreign branch activity that gave rise to the income out of which the subsequent payment to the branch owner is made should be the basis for characterization, rather than tax book value of assets.	Where a DRE has more than one income stream, the asset values may distort the character of the payment to the branch owner. For example, DRE sells Product A and Product B. Product A creates Sub F of 100 and Product B creates tested income of 300. The tax book value of the assets used to generate the Sub F is 900, and the tax book value of the assets used to generate the tested income is 100. Under the proposed rule, a disregarded payment to the CFC owner is deemed to be made out of the DREs after-tax income in the same ratio as the tax book value of its assets. In this case, that would mean taxes associated with that payment would be 90% attributable

PROPOSED REGS SECTION NUMBER	SECTION TITLE	ISSUE	RECOMMENDATION	ADDITIONAL EXPLANATION /QUERIES
				to Sub F even though the Sub F type income accounts for only 25% of the income earned.
		Base Difference and Return of Capital	The proposed FTC regulations should treat return of basis distributions for partnerships and corporations the same as taxes paid on distributions from a disregarded entity to its regarded owner i.e., as timing differences. For CFCs, the U.S. shareholders should treat the taxes as "current year taxes" on partnership or corporate return of capital distributions and allocate the taxes to the various categories of income based on the types of income earned by the distributing partnership or corporation.	The proposed FTC regulations currently treat these distributions as "base differences" assigning them to the residual category. By contrast, the prior proposed FTC regulations had narrowly defined base differences and the final regulations should do so as well. The proposed FTC regulations treat withholding taxes on the payment of -- and income taxes on the receipt of -- distributions from a disregarded entity to its regarded owner as timing differences. Similar treatment should be provided for distributions between regarded entities, i.e., a partnership to its partner and a corporation to its shareholder. Further, as the partners increase their basis in the partnership interest by the income earned by the partnership and reduce such basis to the extent distributions are made by the partnership, this seems closely analogous to the timing difference in respect of income earned by a disregarded entity.
Prop. Regs. §1.861–20(g)	**Examples**	Disregarded transfer of appreciated property	Regulations should permit companies to engage in post-acquisition restructuring to transfer appreciated assets to the United States following acquisitions and permit taxpayers to fully credit its foreign tax payments. Regs. §1.904-4(f)(2)(vi)(D)(3) provided favorable rules when IP is involved in a transitory ownership situation. Treasury should consider adopting simplified rules to allocate the	Post-acquisition restructuring is often performed to better align a multinational's legal structure with its commercial operations, in many cases this includes the inbounding of appreciated property. However, the proposed regulations (Prop. Regs. §1.861-20(d)(3)(ii)(A)) would require a U.S. taxpayer to allocate withholding taxes imposed on the transfer of assets based on the tax book value of assets owned by a foreign disregarded entity of a U.S. parent. *(Prop. Regs.* §1.861-20 (g)(11), *Ex. 10))* Such allocation creates complexity and uncertainty in post- acquisition integrations and provide a significant disincentive to move business assets back to the United States.

PROPOSED REGS SECTION NUMBER	SECTION TITLE	ISSUE	RECOMMENDATION	ADDITIONAL EXPLANATION /QUERIES
			withholding taxes to the same category of the business assets distributed as long as the business assets are used in ordinary course of business. Taxpayers should not be required to apportion the withholding taxes pro-rata based on tax book value of assets owned by a foreign branch.	
Prop. Regs. §1.904–4(e)	**Financial services income**	Definition of financial services entity	Modify Prop. Regs. §1.904-4(e)(2)(i) so the definition of a financial services entity would include foreign insurance companies. This could be achieved by modifying Prop. Regs. §1.904-4(e)(2)(i)(A)(2) to include two financial services definitions (for banking and insurance) and the insurance definition to provide: "(2) It is a domestic corporation that is subject to Federal income tax under subchapter L, or a foreign corporation which would be subject to tax under subchapter L if such corporation were a domestic corporation and is subject to regulation as an insurance (or reinsurance) company in its jurisdiction of organization."	Prop. Regs. §1.904-4(e)(2)(i)(A)(2) currently excludes a foreign insurance company that has any excess investments under §954(i) and excludes certain reinsurers. Foreign capital requirements are different from U.S. requirements and often cause some income of foreign insurance companies to exceed the amount that would be treated as derived in the active conduct of an insurance business under §954(i). In the case that the entity has excess foreign personal holding company income, there is no opportunity for abuse, since any excess income is included at the shareholder under Subpart F. Also, it is unwarranted to exclude valid reinsurers from the definition of financial services income.
		Definition of financial services group	The definition of a financial services group currently excludes insurance companies. Modify Prop. Regs. §1.904-4(e)(2)(ii) so	Section 904(d)(2)(C)(ii) states that a "'financial services group' means any affiliated group (as defined in section 1504(a) without regard to paragraphs (2) and (3) of section 1504(b)) which is predominantly engaged in the active

PROPOSED REGS SECTION NUMBER	SECTION TITLE	ISSUE	RECOMMENDATION	ADDITIONAL EXPLANATION /QUERIES
			the definition of a financial services group includes insurance companies as follows: "For purposes of this paragraph (e)(2)(ii), a financial services group means an affiliated group as defined in section 1504(a) (but determined without regard to paragraphs (2) or (3) of section 1504(b)) if the affiliated group as a whole for the year derives more than 70 percent of its gross income from income described in paragraph (e)(1)(ii)."	conduct of…insurance…business." The proposed regulations omission of insurance from the definition of financial services group directly contradicts this statutory language. Further, the preamble notes "The Treasury Department and IRS agree that a substantial and genuinely active financial services group should be included in the definition of an FSE." And, "Finally, in 2004, a definition of financial services group was added in section 904(d)(2)(C)(ii) which was based on the definition of an affiliated group under section 1504(a) but expanded to include insurance companies and foreign corporations. While the current regulations already include foreign corporations as part of an affiliated group, proposed §1.904-4(e)(2)(ii) conforms the definition of an affiliated group to also include insurance companies referenced in section 1504(b)(2)." It appears clear that the definition of a financial services group is intended to include insurance companies and this is consistent with the statutory language in §904(d)(2)(C)(ii). However, there is a cross-reference requirement in Prop. Regs. §1.904-4(e)(2)(ii) that the affiliated group as a whole meets the requirements of §954(h)(2)(B)(i). This section is specific only to banking and lending and therefore currently excludes insurance companies.
			The proposed changed to the definition of financial services income in §904(d)(2)(C) should be withdrawn.	Treasury should not ignore the historical development of the definition of financial services income in §904(d)(2)(C) only to create consistency with a different code section (§904(h)) that was fashioned to address different policy concerns.

PROPOSED REGS SECTION NUMBER	SECTION TITLE	ISSUE	RECOMMENDATION	ADDITIONAL EXPLANATION /QUERIES
			Given taxpayers have relied on current Regs. §1.904-4(e) for more than 30 years, if Treasury decides to make any changes to Regs. §1.904-4(e), those changes should only be effective for tax years beginning on or after the date the *final* regulations are published in the federal register. If the proposed change is not withdrawn, grandfathering of qualified deficits created prior to the effective date of the definitional change should be provided.	The proposed regulation aligns the definitions of financial services entity in §904 with certain definitions in §§954(h), 1297(b)(2)(B), and 953. One of the policy reasons for the proposed regulation is to "promote simplification." Particularly as it applies to a banking, financing, or similar business, the change to Regs. §1.904-4(e) does not promote simplification. It replaces a long-standing objective test whereby if more than 80% of a CFCs gross income relates to 24 specified categories (current Regs. §1.904-4(e)(2)(i)) the CFC is clearly a FSE, with a facts-and-circumstances test that hinges on whether the CFC's income is derived directly from the active and regular conduct of a lending or finance business, a subjective and ambiguous test. As a result, the proposed regulation creates more ambiguity as to whether a CFC is a financial services entity, which will increase uncertainty for both taxpayers and the IRS. This is not simplification. Also, consistency with §954(h) is not achieved or warranted. Congress imposed additional qualifications to §954(h), like the substantial activity and local country activities tests, which it did not impose on §904. Treasury rightly does not propose to adopt those qualifications for §904, but without them the two sections differ enough that the companies qualifying for each section are not consistent. Sections 904 and 954 were developed at different times and reflect different policy objectives. The current list of 24 categories of income in the §904 regulations derives primarily from the legislative history of the enacting statute, and the legislative history of subsequent modifications to §904 and the enactment of §954(h) do not reflect an intent to change the financial services tests reflected in the current regulations.

PROPOSED REGS SECTION NUMBER	SECTION TITLE	ISSUE	RECOMMENDATION	ADDITIONAL EXPLANATION /QUERIES
				The proposed change in definition may impact qualified deficits carryforwards under §952 because future income may not be of the same type that created the qualified deficit in the past. Therefore, Treasury should allow for a grandfathering rule for qualified deficit carryforwards that arose before the change in definition and the income is the same type but for the change in definition.
Prop. Regs. §1.905–3	**Adjustments to U.S. tax liability and to current earnings and profits as a result of a foreign tax redetermination.**	Simplification of redetermination process for foreign tax credits	For tax determinations below a threshold level (e.g., 10% of foreign taxes as originally accrued), Treasury should allow the redetermination to be applied to current year taxes in the year of redetermination.	Proposed regulations require a redetermination of U.S. shareholder's U.S. tax liabilities when there is a redetermination of foreign taxes with respect to a controlled foreign corporation (CFC), including tax law changes in various jurisdictions. With the increased complexity of the international taxation and subsequent changes in foreign tax laws, the frequency of redeterminations of foreign taxes will continue to increase. Consequently, the U.S. taxpayer's compliance and administrative burdens are even more challenging. Additionally, the penalties for failure to provide notice of the redeterminations on such a complicated process are significant. This process as it is currently proposed could result in not only numerous federal amended returns, but also associated amended state income tax returns. The administrative burden and cost related to these efforts could be significant. The accuracy of U.S. tax liability would not be jeopardized, especially since Prop. Regs. §1.905-4 (b)(4)(iii) has already asked the taxpayer to verify the information under penalty of perjury. Treasury should adopt a threshold, similar to Temp. Regs. §1.905-3T(d)(3)(ii), which provides a redetermination is only required if the effect of the redetermination reduces the domestic corporation's deemed foreign taxes paid by 10% or more. This will ensure that the significant cost and

PROPOSED REGS SECTION NUMBER	SECTION TITLE	ISSUE	RECOMMENDATION	ADDITIONAL EXPLANATION /QUERIES
				administrative burden of filing amended and state returns will only be needed in the event of a significant change in foreign taxes.
Prop. Regs. §1.905–4	**Notification of foreign tax redetermination**	Notification via amended return would be overly burdensome for taxpayers	Taxpayers under exam should be permitted to provide adjustments related to foreign tax redeterminations directly to exam team.	More taxpayers under the jurisdiction of the LB&I division should be allowed to provide notice of foreign tax redetermination directly to their examiner and avoid filing an amended return. Specifically, the scope under Prop. Regs. §1.905-4(b)(4) should be broadened. For example, remove the condition under Prop. Regs. §1.905-4(b)(4) for alternative notification requirements in instances where the foreign tax redetermination results in a downward adjustment to the amount of foreign income taxes.
Prop. Regs. §1.905–5	**Foreign tax redeterminations of foreign corporations that relate to taxable years of the foreign corporation beginning before January 1, 2018**	Redetermination process for the use of foreign tax credits in the §965 area	Given the increased complexity of the U.S. tax and global tax environment, Treasury should consider simplifying the redetermination process for the use of foreign tax credits in the §965 area. Treasury should consider permitting the taxpayer to apply a redetermination below a certain threshold to current year taxes (taking into account the §965 haircut) versus requiring the taxpayer to amend the past federal and state tax filings. The accuracy of U.S. tax liability would not be jeopardized especially if the proposed regulations required the taxpayer to verify the information under penalty of perjury.	The 2019 proposed regulations require a redetermination of post-1986 undistributed earnings and profits any time there is a redetermination of foreign taxes with respect to a CFC for any taxable year before 2018. The 2017 TCJA imposed a one-time transition tax on such earnings under §965, according to which only partial foreign tax credits were available to offset the U.S. taxpayers' §965 liabilities. The penalties for failure to notify and incorporate the impact of any foreign tax redeterminations are severe. Furthermore, taxpayers have already made multiple installment payments based on prior Treasury proposed and final regulations issued earlier than this.
Prop. Regs. §1.960–1	**Overview, definitions, and computational**			

PROPOSED REGS SECTION NUMBER	SECTION TITLE	ISSUE	RECOMMENDATION	ADDITIONAL EXPLANATION /QUERIES
	rules for determining foreign income taxes deemed paid under §960(a), (b), and (d)			
Prop. Regs. §1.960–1(d)	**Computing income in a section 904 category and an income group within a section 904 category**	Application of rule to branch to branch payments	Prop. Regs. §1.860-20(d)(3)(ii)(B) allocates disregarded payments made by a foreign branch owner to a foreign branch to the residual category. When §960 is the operative section, the result is a disallowance of foreign tax credits. The proposed regulations in §960 are ambiguous about the breadth of this rule, which can be overly punitive to taxpayers, given the result is a disallowance of foreign tax credits. The Chamber recommends the changes highlighted in bold and italics to the fifth sentence of Prop. Regs. §1.960-1(d)(3)(ii)(A): "Foreign gross income attributable to a base difference, or resulting from the receipt of a disregarded payment made ***by a foreign branch owner*** to a foreign branch ***that is in the nature of a capital contribution***, is assigned to the residual	

PROPOSED REGS SECTION NUMBER	SECTION TITLE	ISSUE	RECOMMENDATION	ADDITIONAL EXPLANATION /QUERIES
			income grouping under Sec. 1.861-20(d)(2)(ii)(B)…" The language proposed will reduce ambiguity and align the text of the sentence with the cross reference to Prop. Regs. §1.861-20(d)(2)(ii)(B).	