Feedback for REG-106013-19 (Proposed Hybrid Regulations)

PROPOSED REGS SECTION NUMBER	SECTION TITLE	ISSUE	RECOMMENDATION	ADDITIONAL EXPLANATION /QUERIES
Prop. Regs. §1.245A(e)–1[1]	**Special rules for hybrid dividends**			
Prop. Regs. §1.245A(e)–1(d)	**Hybrid deduction accounts (HDA)**	When reducing the HDA by the amount of Sub F and GILTI inclusions, use the full §904 limitation percentage, not the §11(b) rate.	While the Chamber agrees with the intent of Prop. Regs. §1.245A(e)-1(d)(4)(i)(B)(1) and (2) (to provide rules to reduce an HDA by Sub F and GILTI inclusions), we are concerned with the application of the foreign tax credit (FTC) component in -1(d)(4)(ii)(A)(2) and -1(d)(4)(ii)(B)(3). Taxpayers should apply the §904 FTC pro-rata percentage limitation rather than the §11(b) rate. For this purpose, the phrase "§904 FTC pro-rata percentage limitation" would be defined as the foreign tax credits allowable on the return divided by the foreign tax credits available prior to the application of §904. E.g., there would be a separate §904 FTC pro-rata percentage limitation for both GILTI and Subpart F.	The proposed rules overstate the FTC that is actually taken into account for Sub F and GILTI, and thus understates the actual tax paid in the United States on Sub F and GILTI. The HDA is therefore overstated by the amount of the overstated FTC. This issue occurs as the proposed rule applies the §11(b) rate, and thereby assumes that no portion of the FTC is limited by §904 or §861. To address this issue, the rule should allow the taxpayer to apply the §904 pro-rata percentage limitation rather than the §11(b) rate.

[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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	Hybrid deduction accounts (HDA)	Clarify that an HDA cannot be adjusted by a negative reduction (in other words, a positive adjustment)	Adjust the language in Prop. Regs. §1.245A(e)-1(d)(4)(ii)(A) and (B) so that a negative reduction (i.e., an addition) to an HDA is not made when an item of subpart F income or tested income is taxed in the foreign jurisdiction at a rate higher than 21% and 13.125% respectively.	Prop. Regs. §1.245A(e)-1(d)(4)(ii)(A) and (B) can provide for a **negative reduction** (double negative used on purpose as the language of the proposed regulations only provides for a reduction to, and not an increase to, the HDA) when an item of subpart F income or tested income is taxed in the foreign jurisdiction at a rate higher than 21% and 13.125% respectively. Such negative reduction *could* have the effect, without further limiting / clarifying language in the final regulations, of increasing an HDA when foreign taxes exceed the US tax rate on subpart F or GILTI. This seems to be an unintended result and an oversight in drafting.
	Hybrid deduction accounts (HDA)	Take the §250 deduction into account as adjusted for §250(a)(2) for purposes of the adjusted GILTI inclusion	The proposed rules provide adjustments to the HDA for GILTI inclusions. However, Prop. Regs. §1.245A(e)-1(d)(4)(ii)(B)(2) operates by the "adjusted GILTI inclusion" appling "the percentage described in section 250(a)(1)(B)." However, the proposed rules should also consider any adjustment to the §250(a)(1)(B) percentage by application of §250(a)(2).	The "adjusted GILTI inclusion" is haircut by the §250 deduction provided for in §250(a)(1)(B) and is not adjusted for the taxable income limitation in §250(a)(2). Such application could result in income taxed at a rate of 21% or utilization of a tax attribute at 21% while only providing for a reduction in the HDA at an effective rate of 10.5% prior to the consideration of applicable foreign taxes.
	Hybrid deduction accounts (HDA)	Clarify how §245A DRD applies to the adjusted Sub F inclusion	Prop. Regs. §1.245A(e)-1(d)(4)(i)(B)(1) provide adjustments to the HDA for Sub F inclusions. However, it is not clear whether Sub F for this purpose includes a deemed inclusion for the sale or exchange of a lower tier CFC under §964(e)(4)(A)(i) and for which a §245A DRD is taken under §964(e)(4)(A)(iii). Please clarify that Sub F for this purpose does not	Does an "adjusted subpart F inclusion" include a deemed Sub F inclusion arising from the sale of a lower-tier CFC (§964(e)(4)(A)(i)) and for which a §245A DRD is taken? The result in the proposed rules appears to be that the §245A DRD does not affect the amount of the adjusted subpart F inclusion, but this seems inconsistent given that an adjusted GILTI inclusion would be haircut by the §250 deduction percentage.

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			include Sub F for which a §245A DRD is taken.	