Lingering FTC Issues: Navigating the Rules Addressing the Creditability of Foreign Taxes and the FTC Limitation

2023 U.S. Cross-Border Tax Conference

June 5–7, 2023

Lead through Complexity

Notices

The following information is not intended to be "written advice concerning one or more Federal tax matters" subject to the requirements of section 10.37(a)(2) of Treasury Department Circular 230.

The information contained herein is of a general nature and based on authorities that are subject to change. Applicability of the information to specific situations should be determined through consultation with your tax adviser.

Presenters

Britt Haxton

Principal, International Tax

Bob Wilkerson

Principal, Washington National Tax

Quyen Huynh

Principal, Washington National Tax

Scott Dole

Tax Director, Ecolab

Agenda

01 Update on the creditability of foreign income taxes

02 Basketing of foreign income taxes

03 Treaty Resourcing

01

Update on the creditability of foreign income taxes

U.S. Foreign Tax Credit (FTC) Considerations: Section 901 taxes

After Final FTC Regs, Section 901 credit available to a foreign levy (including "deemed paid" levy under Section 960 (GILTI and Subpart F inclusions)) if it is:

- A "tax", defined as a ***compulsory payment*** pursuant to the foreign county's taxing authority
- **Not a "soak-up tax"**, i.e., tax liability not dependent on availability of FTCs in the US
- A ***net income tax***, i.e., meets the "net gain" requirement, which (as modified by Final Regulations) is satisfied if the following requirements are satisfied:

Realization	Gross Receipts	Cost Recovery	Attribution Requirements
• Imposed at / subsequent to realization events • Tax imposed on pre-realization events sometimes permitted.	• Imposed on actual gross receipts rather than fictitious receipts or capital • Deemed gross receipts from deemed realization events sometimes permitted.	• Computed by reducing gross receipts to permit recovery of "substantially all" (*Safe Harbors*) of the significant costs • Limitations on deductions for significant expenses permissible if based on principles consistent with those underlying disallowances under the Code	• May include worldwide gross receipts of residents • Allocation of income, gain, deductions, losses to or from resident w.r.t. related party transactions is determined under the arm's length principles, without considering any destination-based criterion as a significant factor.

Changes to Brazil's Transfer Pricing System and impact on creditability

Historical rules:

- **Specific methods used (no ALP—concerns with attribution requirement?)**
  - Designed for tangible transactions
  - Fixed margins required by law
  - Taxpayer can select any method
  - Lack of TNMM and Profit Split
  - Comparability purposes
- **Disallowance of deductions (concerns with cost recovery requirement?)**
  - Applies to specific related party transactions
  - Automatic/non-discretionary disallowance

Provisional Measure (PM):

- **Transition to ALP**
  - Consistency with OECD Guidelines in terms of scope and pricing Adoption of Cost Contribution Arrangement concepts
  - Examination of foreign tested parties allowed
  - Methodologies
- **Removal of automatic deduction disallowance rules**
  - To be replaced by anti-abuse provisions

If adopted, would be mandatory for taxable years beginning January 1, 2024.

Taxpayers may make an irrevocable election to apply new rules for taxable years beginning January 1, 2023. Election may be made between September 1-30, 2023.

Issues for consideration on the election in 2023

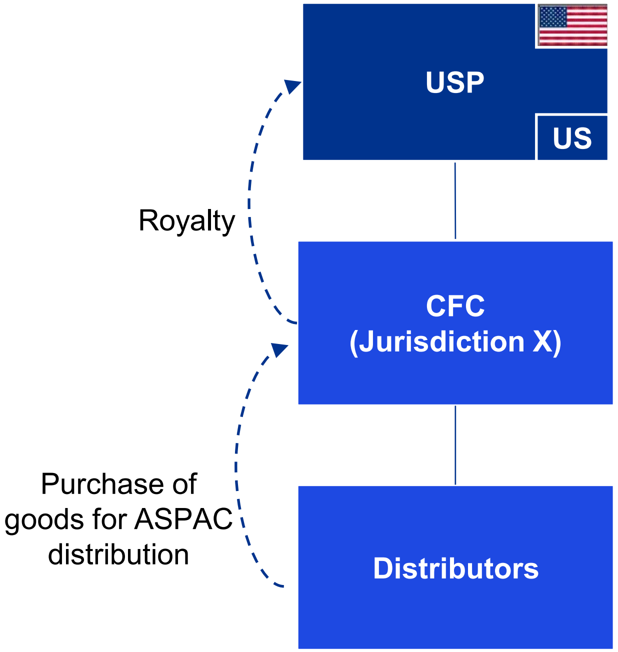
- **2023 Election Year**
  - Various technical issues surrounding treatment under single levy versus two levies
  - An important point/issue is if Brazilian tax is higher or lower by opting into new regime – if a taxpayer pays more tax than is required as a result of the new law, the non-compulsory amount would not be creditable
  - An analysis will need to be performed before September to understand if a taxpayer electing the new rules expects Brazil tax to be higher or lower than the historical rules
  - Noncompulsory payment issues associated with the election?
- **2024 Mandatory Adoption**
  - Concerns with attribution given closer alignment with US Section 482 and OECD Guidelines?
  - Concerns with cost recovery?
- **Other issues (across all years)**
  - Royalty sourcing – use of single country license exception
  - Services – different sourcing / creditability issues

Single Country License (SCL) exception

Special relief for royalty WHTs

- “Place of use or right to use” in the U.S. vs. Residence of payor or location of registration in many other jurisdictions
- Proposed FTC regulations introduced the “single-country license” exception:
  - License should limit the use of the IP to the territory of the country imposing the tax.
  - Portion of the royalty WHT may satisfy if underlying agreement delineates the portion related to in-country use (whether via a specified amount or a formula).
  - License agreements to be provided within 30 days of request and must generally be executed no later than the date of royalty payment.
    - Grace period provided until 180 days after the Proposed FTC regs are finalized and filed with the federal register to execute amended agreements to satisfy single country license exception (**Notice 2023-31**).

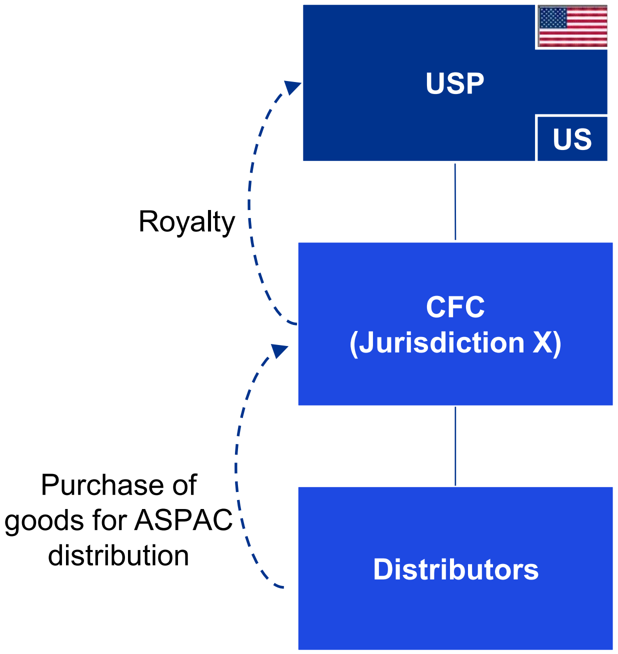
Example – Separately Stated Portion



- Jurisdiction X imposes a 20% withholding tax on royalties paid to non-residents because the royalty is paid by a resident of Jurisdiction X.
- There is no income tax treaty between the U.S. and Jurisdiction X.

- **Facts:**
  - CFC enters into a written agreement (the "Agreement") with USP for the right to use USP's IP in the ASPAC region.
  - USP's IP includes all of the rights to make and sell products, including product and process patents, manufacturing know how, and trademarks.
  - CFC manufactures the products in Jurisdiction X using the IP. CFC sells finished goods to customers in Jurisdiction X and to distributors to sell the products throughout the rest of the ASPAC region.
- **Discussion:**
  - Approach: separately value the rights to manufacture vs. the rights to sell. The rights to manufacture are likely used in Jurisdiction X and the rights to sell are likely used in the countries where the products are ultimately sold.
  - IP used in the manufacturing process (e.g., manufacturing knowhow) is likely used in Jurisdiction X.
  - Marketing IP (e.g., trademark and brand IP) is likely used at the place of sale (i.e., throughout the ASPAC region).
  - Product IP (e.g., IP related to the design of the product or specific features of the product) may be used partly at the location of manufacturing and partly at the location of sale, depending on the facts.

Example – Separately Stated Portion (cont'd)



- Jurisdiction X imposes a 20% withholding tax on royalties paid to non-residents because the royalty is paid by a resident of Jurisdiction X.
- There is no income tax treaty between the U.S. and Jurisdiction X.

- **Product IP (e.g., IP related to the design of the product or specific features of the product) may be used partly at the location of manufacturing and partly at the location of sale, depending on the facts.**
  - Facts indicating a higher value in manufacturing activities:

    Manufactured goods are non-branded goods, components, or commodities

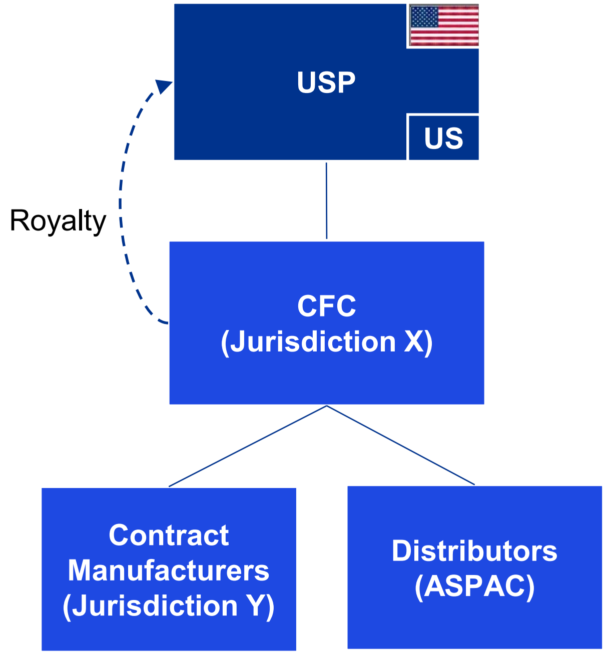
    The quality or price of manufacturing is of particular importance
  - Facts indicating a higher value in selling activities:

    Manufactured goods are branded goods

    The design of the product is a market differentiator

    The effectiveness of the product (e.g., pharma products) is a market differentiator

Example – IP Hub



- Jurisdiction X imposes a 10% withholding tax on royalties paid to non-residents because the royalty is paid by a resident of Jurisdiction X.
- There is no income tax treaty between the U.S. and Jurisdiction X.

- **Facts:**
  - CFC enters into a written agreement (the "Agreement") with USP for the right to use USP's IP in the ASPAC region.
  - USP's IP includes all of the rights to make and sell products, including product and process patents, manufacturing know how, and trademarks.
  - CFC hires Contract Manufacturers in Jurisdiction Y to manufacture the products.
  - CFC sells finished goods to Distributors in ASPAC.
  - CFC gives the Contract Manufacturers and Distributors a royalty-free right to use the IP.
- **Discussion:**
  - Economically, most of the profit resulting from making and selling the products using the IP will be earned in Jurisdiction X.
  - However, use of a royalty (unlike a service fee) does not depend on where the licensee conducts activities, but rather where the IP is exploited.
  - Because no manufacturing or selling activities occur in Jurisdiction X, is the IP "used" in Jurisdiction X?

02

Basketing of foreign income taxes

Allocation and apportionment of foreign income taxes

General rule of Reg. § 1.861-20(c): a foreign income tax is allocated and apportioned to the statutory and residual groupings that include the items of foreign gross income (FGI) included in the base on which the tax is imposed.

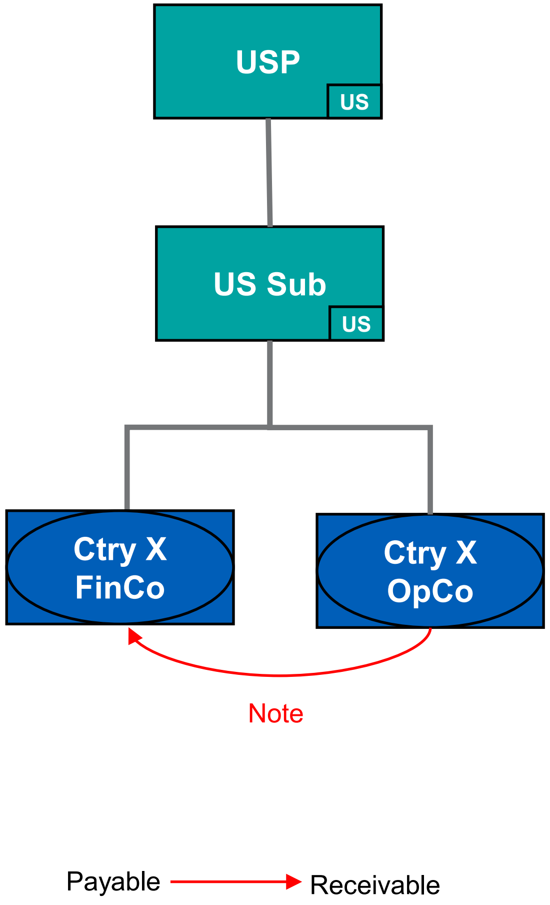
- **Step 1**: FGI determined under foreign law but characterized under U.S. law
  - FGI characterized based on "corresponding U.S. item" if one exists
  - Otherwise, special rules are applied to characterize FGI, including detailed rules for disregarded payments, corporate and partnership distributions, and various timing differences

— **Step 2**: allocate and apportion foreign law deductions to FGI, generally based on foreign law

— **Step 3:** allocate and apportion foreign income tax by reference to foreign taxable income

The rules characterizing FGI are prescriptive and turn on the nature of the transaction or event giving rise to the FGI and its U.S. tax characterization. The same transaction, as viewed from a foreign law perspective, can be characterized differently based on, e.g., whether it is regarded or disregarded for U.S. tax purposes. The use of foreign law elections or grouping rules (such as group relief and consolidation) can also affect the application of Reg. § 1.861-20.

Foreign branch basket taxes



Background

— USP group has excess foreign branch basket credits and Opco, a disregarded entity (DRE), generates high-taxed foreign branch basket income. Opco's assets generate only foreign branch basket income. USP has excess general basket limitation and the capacity to credit additional general basket foreign income taxes. The USP affiliated group's interest expense is allocated and apportioned 75% to U.S. general, 10% to GILTI, and 15% to foreign branch.

— FinCo, a DRE, is also tax resident in Ctry X and provides debt financing to Opco pursuant to a Note.

— The interest expense with respect to the Note is deductible by OpCo for Ctry X tax purposes and includible in Ctry X taxable income of Finco.

U.S. tax considerations

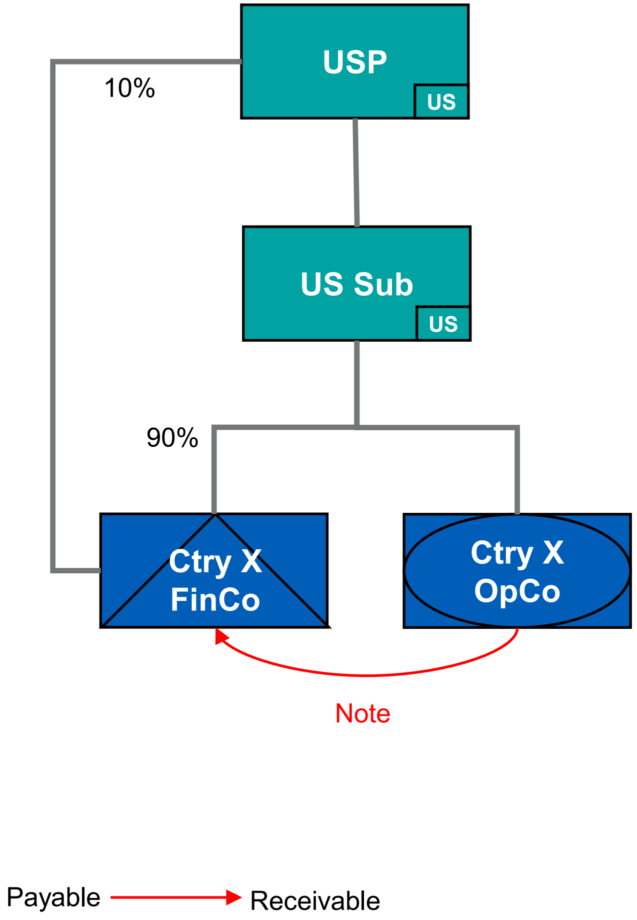
— Foreign branch tax paid by Opco is reduced due to interest expense deductions, and Finco's tax is increased.

— Disregarded interest paid by Opco to Finco has no effect on USP group's overall foreign branch income. *See* Reg. § 1.904-4(f)(2)(vi)(C)(1).

— Interest incurred by a taxable unit of a U.S. taxpayer is not a reattribution payment for purposes of Reg. § 1.861-20(d)(3). Finco's FGI from the interest payment is therefore characterized as a remittance under Reg. § 1.861-20(d)(3)(v).

  - Under Reg. § 1.861-20(d)(3)(v)(C)(1), the asset method applies to characterize Finco's FGI based on the assets of Opco, as characterized under Reg. § 1.861-9(g).
  - Because Opco's assets generate only foreign branch income, Finco's FGI is characterized as foreign branch income and its taxes are assigned to the foreign branch category.
  - The financing arrangement therefore has no effect on the USP group's foreign branch basket taxable income or the amount of Ctry X taxes assigned to the foreign branch basket.

Optimizing the basketing of foreign taxes



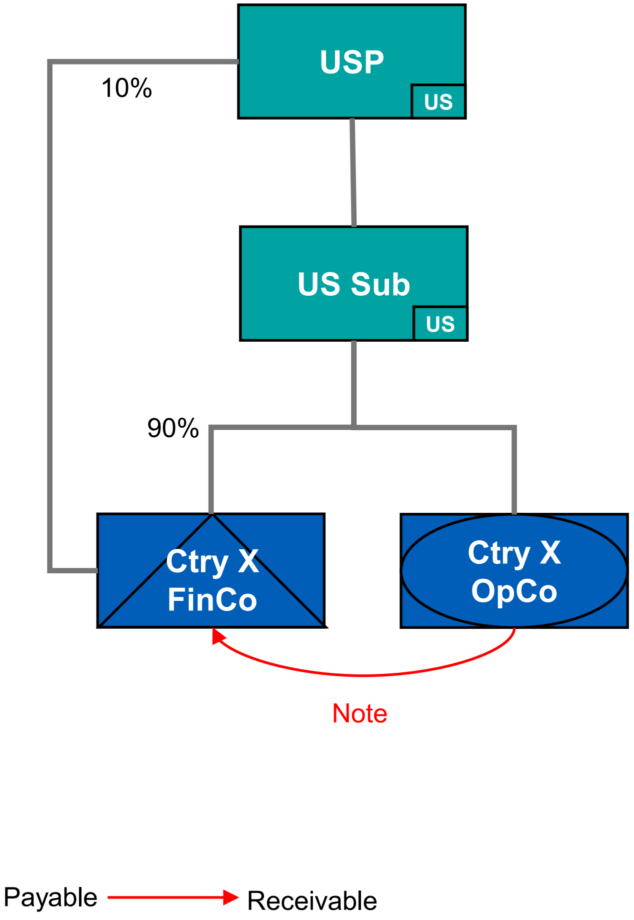
Alternative financing structure

- The facts are as described above, except that Ctry X Finco has two members and is classified as a partnership for U.S. tax purposes.
  - Interest income received by Finco is taxable in Finco's hands, and USP and US Sub take into account their distributive shares of interest income and Ctry X taxes.
  - US Sub claims a deduction for interest expense on the Note.

US tax considerations

- The Note is an "upstream partnership loan" that is subject to Reg. § 1.861-9(e)(9) (the "UPL rules").
- The interest income earned by FinCo is upstream partnership interest income, and US Sub's interest expense with respect to the Note is a matching expense amount. Reg. § 1.861-9(e)(9)(v)(B).
- Under a matching rule, USP's and USS Sub's distributive shares of interest income on the Note are characterized in the same statutory and residual groupings (for FTC basketing purposes) to which US Sub's interest expense is apportioned based on the affiliated group's apportionment fractions. Thus, the USP group experiences no increase or decrease in its foreign source income with respect to any basket as a result of the Note.
  - USP and US Sub do not take the Note into account as an asset for interest expense apportionment purposes. Reg. §§ 1.861-9 (e)(9)(i) and (vi)(B)(2) Example 2.

Optimizing the basketing of foreign taxes



U.S. tax considerations

— Under the UPL rules, USP and US Sub assign their distributive shares of interest income on the Note 75% to the general basket, 10% to the GILTI basket, and 15% to the foreign branch basket.

- Finco's interest income from the Note is the FGI that is subject to Ctry X tax. Finco's interest income is also recognized for U.S. tax purposes and therefore there is a corresponding U.S. item. Reg. § 1.861-20(b)(2). The characterization of the FGI under Reg. § 1.861-20(d)(1), however, is not entirely clear.
- Under one interpretation, the corresponding U.S. item – Finco's interest – would be characterized based on the character of USP's and US Sub's distributive shares of such income after application of the UPL rules. Under this view, the tax would be characterized as 75% general, 10% GILTI, and 15% foreign branch basket.
- Alternatively, Reg. § 1.904-6(e)(4) provides that a partner's distributive share of foreign taxes is generally characterized at the partnership level and could be read to require that Finco's taxes be characterized based on the character of the interest in FinCo's hands before applying the UPL rules. In that case, the interest income would likely be viewed as passive category income in Finco's hands, and the taxes would initially be assigned to the passive category. In most cases, the application of the "high-tax kick-out" of section 904(d)(2)(F) and Reg. § 1.904-4(c) would result in 100 percent of the taxes being reassigned to the general category.

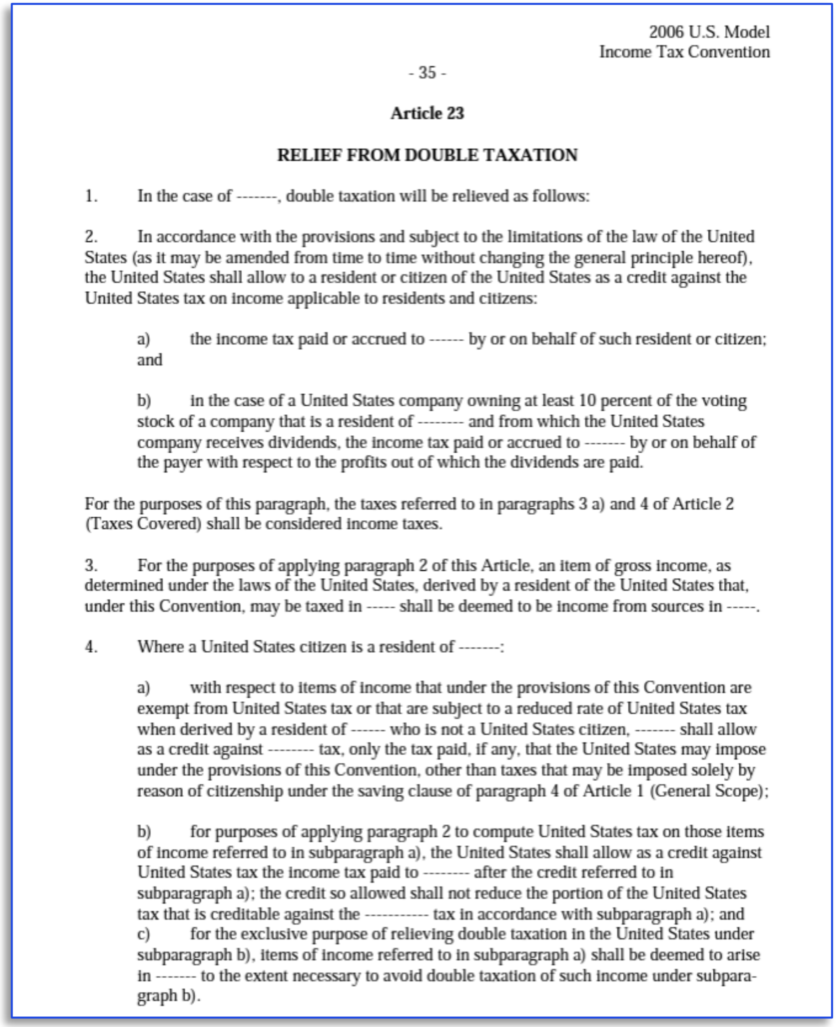
— The lending arrangement has no effect on the USP group's foreign source income in any category, but results in Ctry X taxes being assigned in large part to a more favorable basket.

03
Treaty Resourcing

Source of income and the foreign tax credit

- Under section 904, foreign income taxes are creditable only against the U.S. federal income tax (“**USFIT**”) on foreign source income
- Taxpayers often earn income that is subject to foreign income tax but treated as income from U.S. sources for FTC purposes, either under general Code source rules or under special rules (*e.g.*, section 904(h)) that apply solely for FTC purposes. Common examples include:
  - Subpart F income attributable to interest on CFC loans to U.S. shareholders and other U.S. borrowers
  - Subpart F and GILTI inclusions from operating earnings that are U.S. source
  - Interest received by a U.S. shareholder from a CFC that earns U.S. source income
  - Income earned through foreign disregarded entities or foreign branches of U.S. taxpayers
- Taxpayers with sufficient low-taxed foreign source income in the relevant FTC basket can credit foreign taxes imposed on U.S. source income against the U.S. tax on that other foreign source income
  - For those that do not, an applicable income tax treaty may provide for “resourcing” of the otherwise U.S. source income

Treaty source rules generally



2006 U.S. Model
Income Tax Convention

- 35 -

Article 23

RELIEF FROM DOUBLE TAXATION

1. In the case of -------, double taxation will be relieved as follows:

2. In accordance with the provisions and subject to the limitations of the law of the United States (as it may be amended from time to time without changing the general principle hereof), the United States shall allow to a resident or citizen of the United States as a credit against the United States tax on income applicable to residents and citizens:

a) the income tax paid or accrued to ------ by or on behalf of such resident or citizen; and

b) in the case of a United States company owning at least 10 percent of the voting stock of a company that is a resident of -------- and from which the United States company receives dividends, the income tax paid or accrued to ------- by or on behalf of the payer with respect to the profits out of which the dividends are paid.

For the purposes of this paragraph, the taxes referred to in paragraphs 3 a) and 4 of Article 2 (Taxes Covered) shall be considered income taxes.

3. For the purposes of applying paragraph 2 of this Article, an item of gross income, as determined under the laws of the United States, derived by a resident of the United States that, under this Convention, may be taxed in ----- shall be deemed to be income from sources in -----.

4. Where a United States citizen is a resident of -------:

a) with respect to items of income that under the provisions of this Convention are exempt from United States tax or that are subject to a reduced rate of United States tax when derived by a resident of ------ who is not a United States citizen, ------- shall allow as a credit against -------- tax, only the tax paid, if any, that the United States may impose under the provisions of this Convention, other than taxes that may be imposed solely by reason of citizenship under the saving clause of paragraph 4 of Article 1 (General Scope);

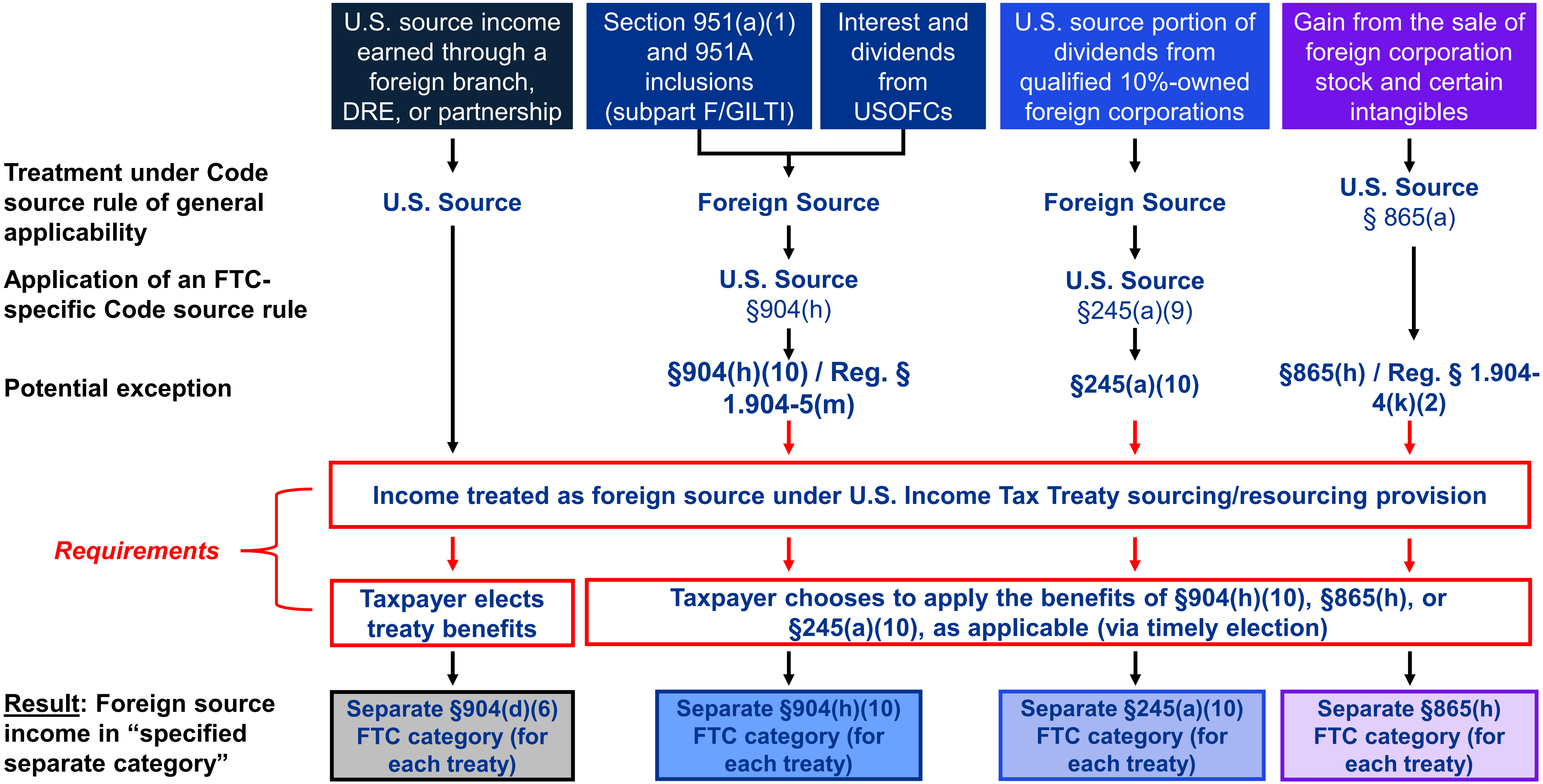
b) for purposes of applying paragraph 2 to compute United States tax on those items of income referred to in subparagraph a), the United States shall allow as a credit against United States tax the income tax paid to -------- after the credit referred to in subparagraph a); the credit so allowed shall not reduce the portion of the United States tax that is creditable against the ---------- tax in accordance with subparagraph a); and
c) for the exclusive purpose of relieving double taxation in the United States under subparagraph b), items of income referred to in subparagraph a) shall be deemed to arise in ------- to the extent necessary to avoid double taxation of such income under subparagraph b).

United States Model Income Tax Convention of November 15, 2006

All U.S. income tax treaties include a "Relief from Double Taxation" article whereby the U.S. generally agrees to provide U.S. residents an FTC for specified taxes paid to the foreign jurisdiction

- Many treaties also include a resourcing provision that applies for purposes of claiming the FTC allowed by the relevant treaty
  - Typically included in the Relief from Double Taxation article and applicable for purposes of providing a credit for specified taxes
  - May incorporate specific treaty source provisions by reference
  - Usually operates as an exception to the saving clause
- Note that some significant U.S. tax treaties do not have broad resourcing rules that apply to corporations, such as:
  - U.S.-Netherlands Tax Treaty
  - U.S.-France Tax Treaty

Code source and basketing rules for FTC purposes



U.S. source income earned through a foreign branch, DRE, or partnership

Section 951(a)(1) and 951A inclusions (subpart F/GILTI)

Interest and dividends from USOFCs

U.S. source portion of dividends from qualified 10%-owned foreign corporations

Gain from the sale of foreign corporation stock and certain intangibles

Treatment under Code source rule of general applicability

U.S. Source

Foreign Source

Foreign Source

U.S. Source
§ 865(a)

Application of an FTC-specific Code source rule

U.S. Source
§904(h)

U.S. Source
§245(a)(9)

Potential exception

§904(h)(10) / Reg. § 1.904-5(m)

§245(a)(10)

§865(h) / Reg. § 1.904-4(k)(2)

Requirements

Income treated as foreign source under U.S. Income Tax Treaty sourcing/resourcing provision

Taxpayer elects treaty benefits

Taxpayer chooses to apply the benefits of §904(h)(10), §865(h), or §245(a)(10), as applicable (via timely election)

Result: Foreign source income in “specified separate category”

Separate §904(d)(6) FTC category (for each treaty)

Separate §904(h)(10) FTC category (for each treaty)

Separate §245(a)(10) FTC category (for each treaty)

Separate §865(h) FTC category (for each treaty)

Consolidated return intercompany transactions and treaties

- Reg. § 1.1502-13 provides rules regarding the treatment of items of income, gain, deduction, and loss from transactions between U.S. consolidated group members for purposes of determining the group's consolidated taxable income (the "**intercompany transaction rules**").
- The intercompany transaction rules are intended to clearly reflect the taxable income (and tax liability) of the consolidated group by preventing intercompany transactions from creating, accelerating, or deferring consolidated taxable income (or consolidated tax liability). *See* Reg. § 1.1502-13(a)(1).
- A key component of the intercompany transaction rules is the "matching rule" under which an intercompany item's attributes, initially determined on a separate company basis, are redetermined to the extent necessary to produce the same effect on consolidated taxable income as if the members were divisions of a single corporation. *See* Reg. § 1.1502-13(c).
  - The attributes of an item should include source and basket.

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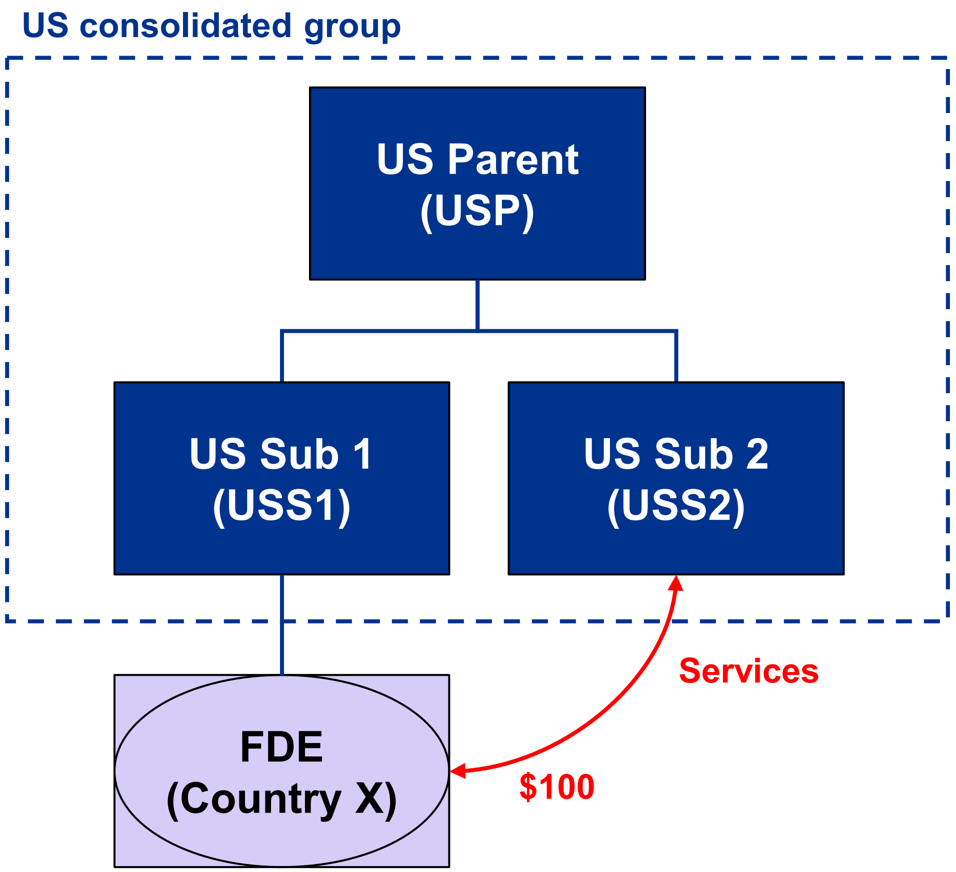
Intercompany transactions and treaties (cont'd)

- When the intercompany transaction regulations were originally proposed in 1994, commentators expressed concern that the rules would be inconsistent with the U.S.'s obligation under U.S. income tax treaties to treat income that may be taxed by the treaty partner as derived from foreign sources.
- In the preamble to the final regulations, Treasury and the IRS responded that:

> *"…the regulations will generally be consistent with any source rules contained in U.S. income tax treaties. To the extent, however, that a U.S. income tax treaty provides benefits to a taxpayer, these regulations do not prevent a taxpayer from claiming those benefits." T.D. 8597, 60 Fed. Reg. 36671, at 36674.*

- The preamble does not, however, specifically identify the mechanism for reconciling the consolidated return rules with the application of treaty resourcing provisions, and no authority specifically addresses the interaction of the intercompany transaction rules with treaty resourcing rules. But see PLR 199918047 (May 7, 1999).

Intercompany service example



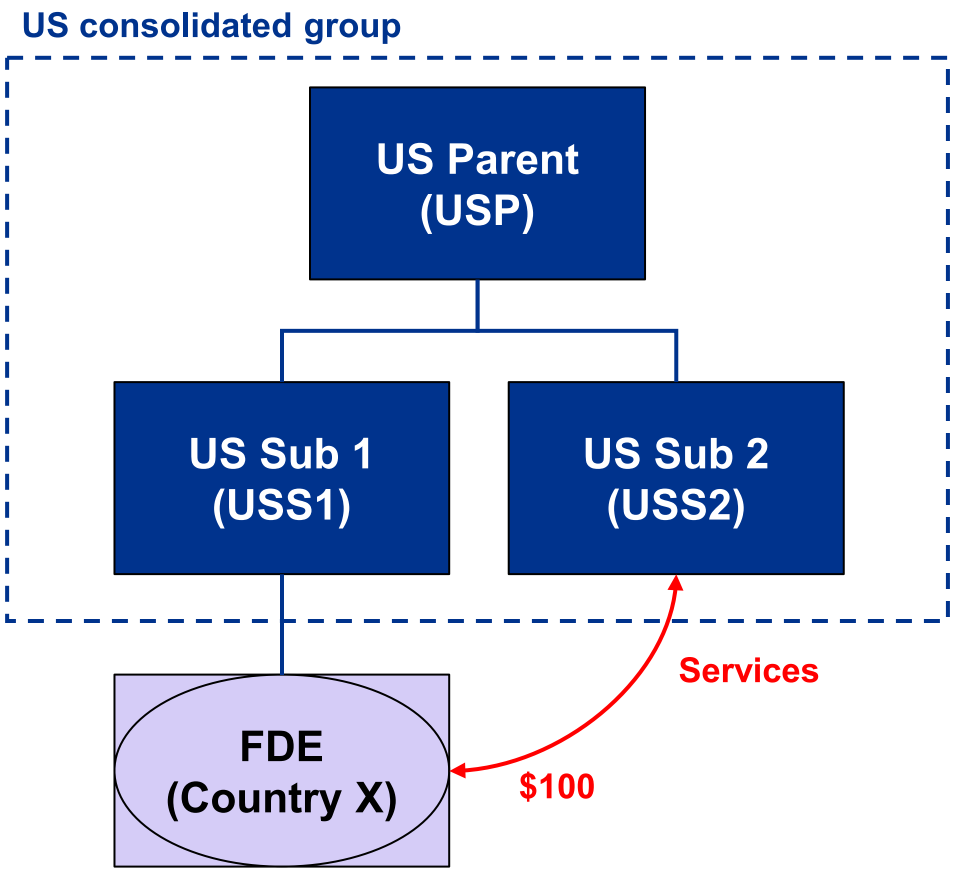
Facts

- USP is the common parent of a U.S. consolidated group that includes USS1 and USS2.
- FDE is organized as a corporation under the laws of, and tax resident in, Country X, but is treated as a disregarded entity for USFIT purposes.
- USS2 makes a $100 payment to FDE for services performed in Country X that is currently deductible for USFIT purposes.
- The U.S. and Country X have in force a treaty (the "**US-Country X Tax Treaty**") that is identical to the 2006 U.S. Model Income Tax Convention (the "**2006 US Model**").

Assumptions

- USS2 allocates and apportions the deduction for the $100 service payment to U.S. source general category income under the principles of Reg. § 1.861-8.
- FDE is a foreign branch within the meaning of Reg. §1.904-4(f)(3)(vii) and the $100 service fee is reflected on its books and records.
- Country X corporate income tax imposed on FDE's $100 of service fee income is a creditable foreign tax.
- For purposes of applying the U.S.-Country X Tax Treaty:
  - The U.S. would view FDE's activities as creating a permanent establishment (**"PE")** in Country X
  - USS1 is a "qualified resident" under Art. 22(2) (Limitation on Benefits)

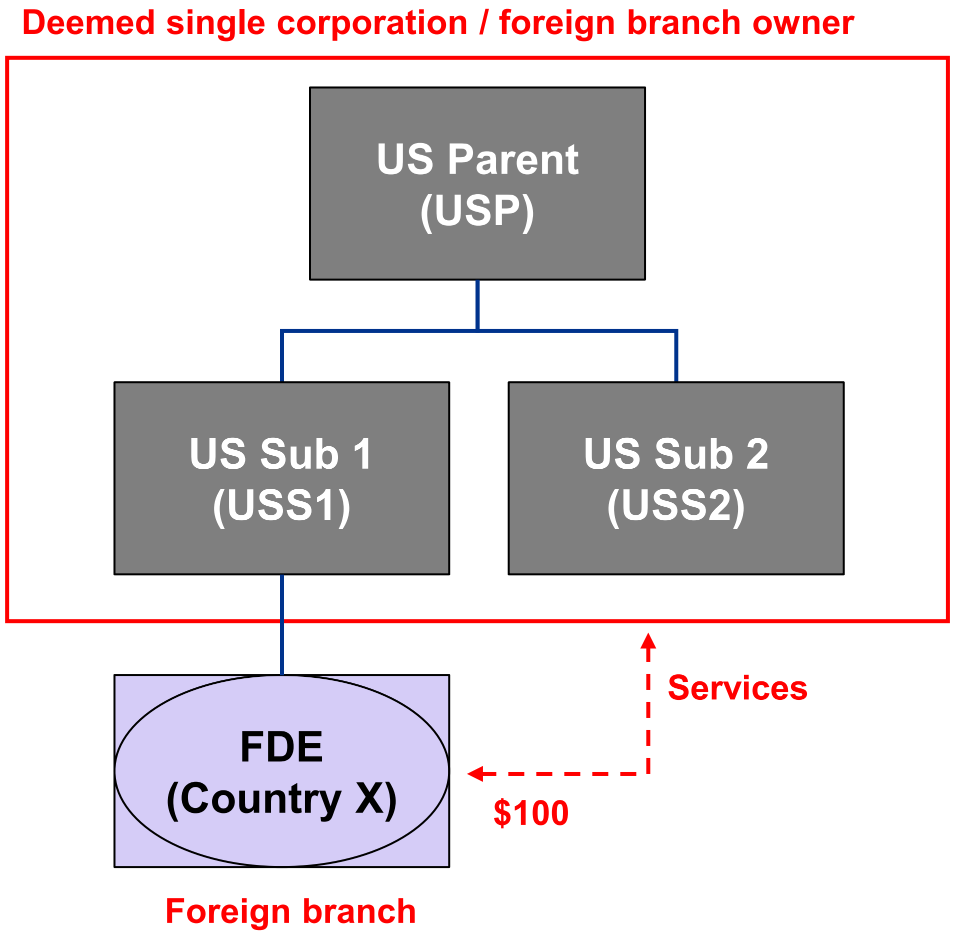
Intercompany service example (cont'd)



Consolidated Return Intercompany Transaction Rules (Reg. § 1.1502-13)

- USS2's $100 payment to USS1/FDE is an intercompany transaction.
- Source and basket are initially determined on a separate entity basis
  - Compensation for personal services performed outside the U.S. would be foreign source income under section 862(a)(3)
  - The services income is reflected on FDE's separate set of books and records so would be foreign branch category income of USS1
- "Matching Rule": The separately determined "attributes" (which include source and basket) of USS1's income and USS2's corresponding deduction must be redetermined to be consistent with treating the transaction as one between divisions of a single corporation. *See* Reg. § 1.1502-13(c)(1)(i).
  - Under a general rule, the attributes of USS2's intercompany item control the attributes of USS1's intercompany item to the extent they offset, unless the results are inconsistent with single corporation treatment, in which case the attributes must be redetermined in a manner consistent with single corporation treatment. *See* Reg. § 1.1502-13(c)(4)(i)(A), (B).
  - Redetermination is not required for attributes of a member's intercompany item that are permitted under the Code or regulations by reason of that member's "special status." *See* Reg. § 1.1502-13(c)(5).

Intercompany service example (cont'd)



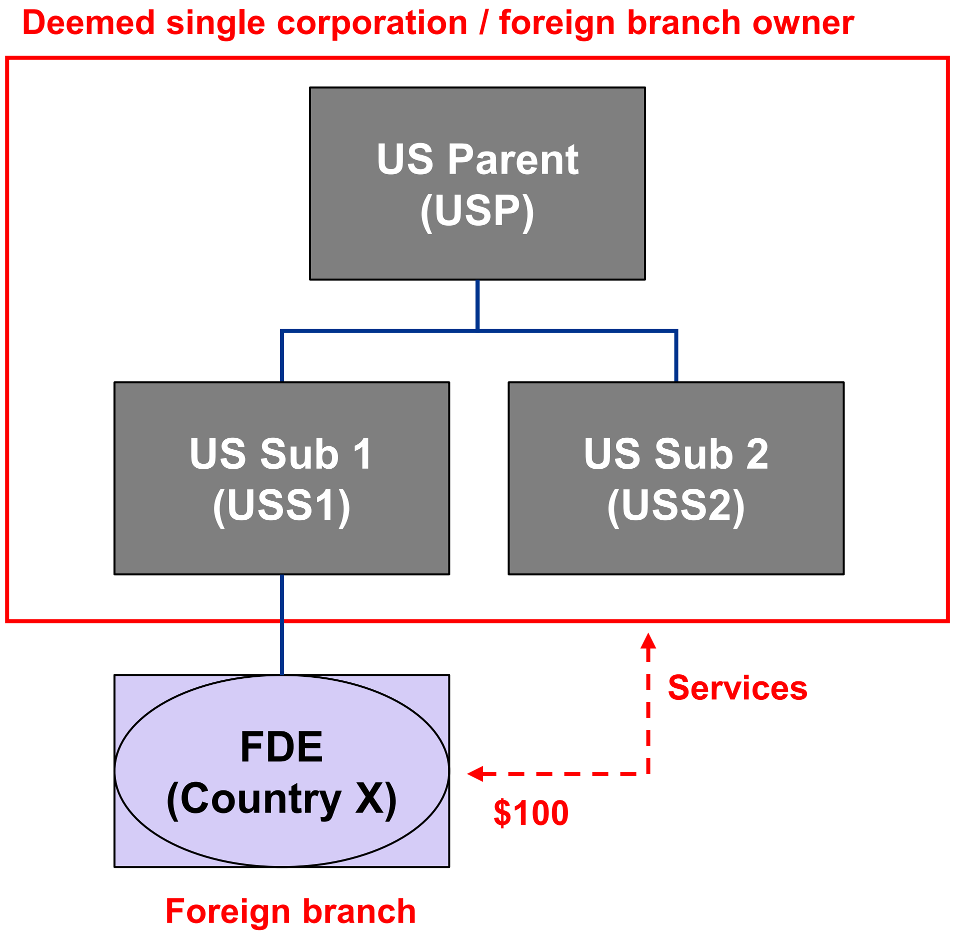
USS1 and USS2 as divisions of a single corporation under the Matching Rule

- Under the general matching rule, the attributes of USS2's intercompany item (i.e., $100 deduction) would control the attributes of USS1's intercompany item (i.e., $100 services income), and USS1's $100 of services income would be treated as U.S. source general category income.
- This result would be inconsistent with treating USS1 and USS2 as divisions of a single corporation, where the $100 service fee would be treated as a disregarded payment from the "deemed single corporation" ("**DSC**") that is the foreign branch owner to its foreign branch, implicating the special rules for disregarded payments involving foreign branches in Reg. § 1.904-4(f)(3)(vi) (the "**DRT**" rules). *See* Reg. § 1.904-4(f)(4)(xv) Example 15.

Hypothetical Application of the DRT Rules

- DSC's U.S. source general category gross income would be adjusted downward, and FDE's U.S. source foreign branch category income would be adjusted upward, by $100. *See* Reg. § 1.904-4(f)(2)(vi)(A). The DRT rules do not change the source of any item.
- In other words, USS1's $100 of foreign source branch category income would be redetermined to be $100 of U.S. source branch category income, unless the U.S.-Country X Tax Treaty's resourcing provision applies.

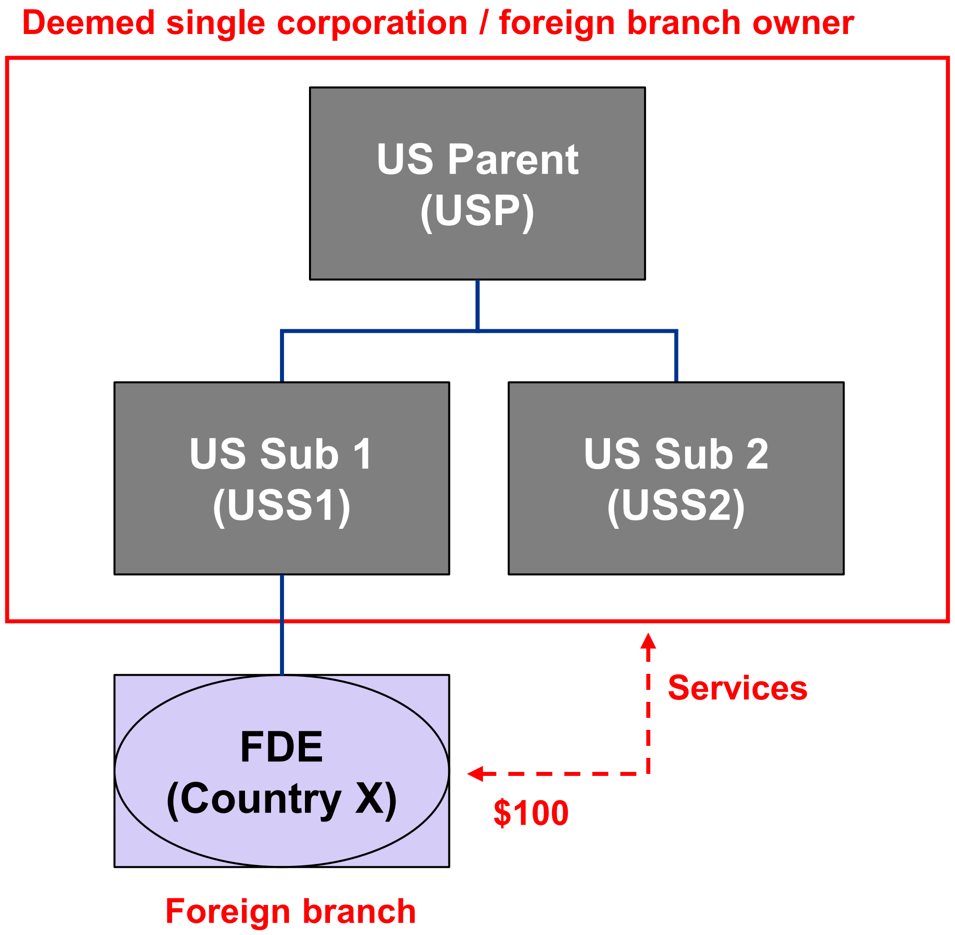
Intercompany service example (cont'd)


Deemed single corporation / foreign branch owner
US Parent (USP)
US Sub 1 (USS1)
US Sub 2 (USS2)
FDE (Country X)
Services
$100
Foreign branch

Treaty resourcing of services income

- Art. 23(3) provides for the resourcing of “an item of gross income, as determined under the laws of the United States, derived by a resident of the United States” that, “under this Convention, may be taxed” in Country X.
- FDE’s income “may be taxed” by Country X based on FDE’s residence in Country X under the “saving clause” of Art. 1(4) and is derived by USS1 under Article 1(6).
  - Alternatively, if Country X did not assert residence-based taxation under Art. 1(4), the service fee income would be profits attributable to a PE in Country X “derived by” USS1, and thus within Country X’s right to tax under Art. 7(1).

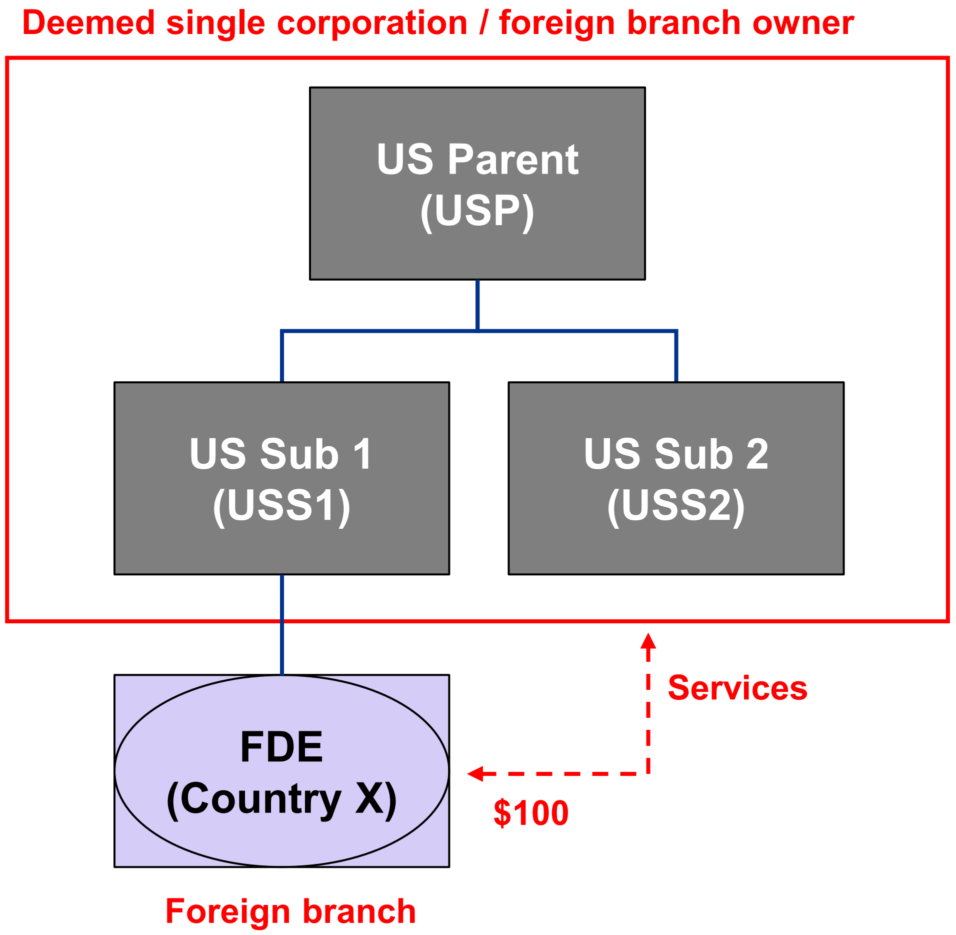
Intercompany service example (cont'd)


Deemed single corporation / foreign branch owner
US Parent (USP)
US Sub 1 (USS1)
US Sub 2 (USS2)
FDE (Country X)
Services
$100
Foreign branch

Arguments for application of treaty resourcing rule to intercompany income item

- (1) The treaty resourcing rule, which is clearly intended to override domestic law, applies after the general matching rule is applied to treat USS1's income as U.S. source.
- (2) Reg. § 1.1502-13(c)(4)(i)(B) provides an exception to the general matching rule to the extent its application is inconsistent with the DSC construct. Under the DSC construct, the service fee would be a disregarded payment by the DSC to FDE, a Country X PE of the DSC. Country X would have the right under Article 1(4) and/or Article 7 to tax the DSC's profits attributable to the PE. Because resourcing would be available under the DSC construct, USS1's services income is treated as foreign source under the treaty resourcing rule.
- (3) USS1 has "special status" under Reg. § 1.1502-13(c)(5) based on its eligibility as a qualified resident to resource the services income under the U.S.-Country X Tax Treaty.

Intercompany service example (cont'd)


Deemed single corporation / foreign branch owner
US Parent (USP)
US Sub 1 (USS1)
US Sub 2 (USS2)
Services
FDE (Country X)
$100
Foreign branch

Result of treaty resourcing:

- $100 U.S. source services income can be treated as foreign source pursuant to the U.S.-Country X Tax Treaty resourcing provision; compliance with section 6114 reporting (Form 8833) required
- Separate treaty basket ("specified separate category") for Country X foreign branch category income under section 904(d)(6) and Reg. §§ 1.904-4(k)(1) and (m)
  - Any excess credits for the specified separate category can be carried over under section 904(c) but may only be utilized within the specified separate category for Country X foreign branch category income
- Note that special issues may arise if the services constitute R&D that is subject to capitalization under current law section 174

2023 U.S. Cross-Border Tax Conference

Q&A

Thank you!

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