Response to Notice 2026-23 (Recommendations on Items to be Included on the 2026-2027 Priority Guidance Plan)

Alliance for Competitive Taxation

May 29, 2026

Contents

Contents *(cont'd)*

I. Introduction

The Alliance for Competitive Taxation ("ACT") is a coalition of leading American companies from a wide range of industries that supports a globally competitive corporate tax system. A list of ACT member companies is included in Section IV of this submission.

This submission responds to Notice 2026-23, in which the Department of the Treasury and the Internal Revenue Service requested recommendations for items to be included on the 2026–2027 Priority Guidance Plan. ACT appreciates recognition by Treasury and IRS of the importance of taxpayer input in identifying guidance projects that would promote sound tax administration, reduce controversy, and lessen compliance burdens.

ACT's highest priority recommendations are discussed in section II (OB3 implementation) and Section III (regulatory reform). Additional recommendations are included in Appendix A (OB3 implementation) and Appendix B (regulatory reform). The recommendations in this submission are intended to promote administrability, reduce complexity, minimize double taxation, and ensure that Treasury guidance aligns with Congressional intent and sound tax policy.

Throughout this submission, references to the "Act" or "OB3" are references to the "One Big Beautiful Bill" Act, P.L. 119-21.

Thank you for your consideration of these recommendations. ACT representatives would be happy to discuss any of these recommendations at your convenience.

II. Priority OB3 Guidance Issues

II. a. NCTI Expense Allocation (General)

OB3 Provision:

- The Act in Section 70311(a)(5)(C) amends Section 904(b) to reduce "net CFC tested income" ("NCTI"), solely for purposes of the Section 904(a) limitation on the foreign tax credit in the NCTI basket, by only "directly allocable" expenses.

Issues:

- The statute does not define a standard for expenses that are "directly allocable" to NCTI.
- Absent a clear standard, taxpayers and the IRS may take inconsistent positions regarding the allocation of expenses against tested income, leading to uncertainty and controversy.

Recommendations:

- Guidance should define "directly allocable" for NCTI purposes as only the NCTI portion of the Section 250 deduction and taxes (e.g., state and local taxes) related to NCTI. Any amounts that would have been apportioned to GILTI/NCTI under prior law but are not directly allocable to NCTI should instead be allocated to U.S. source income.
- In particular, stewardship expenses, which current Treasury regulations describe as "definitely related and allocable to dividends received or amounts included..." under Section 951A, should not be treated as "directly allocable" to NCTI.
- In addition, consistent with the statutory text, the statutory changes to Section 904(b) should apply "solely" for purposes of determining the foreign tax credit (FTC) limitation for the NCTI category. Accordingly, expenses that are allocated pursuant to this provision should not create or increase a taxpayer's overall domestic loss ("ODL") for purposes of the limitation applicable to other FTC categories.*

* Expenses that would have been apportioned to NCTI should, consistent with the statutory revisions, be apportioned to domestic income. To the extent that this apportionment creates or increases an ODL, however, the ODL should not affect the other Section 904(d) categories, because Congress mandated that the revisions are intended to apply "solely" for purposes of determining the taxpayer's FTC limitation in the NCTI category.

II. b. FDDEI Expense Allocation

OB3 Provision:

- In Section 70321, the Act amends Section 250 to include a new rule that specifically excludes research and experimentation ("R&E") and interest expense from being allocated against foreign-derived deduction eligible income ("FDDEI"). The statute provides that other "properly allocable expenses" are allocable against deduction eligible income ("DEI") (and thus against FDDEI).

Issues:

- It is unclear whether stewardship, selling, general, and administrative ("SG&A"), and other expenses not directly allocable to DEI and FDDEI are "properly allocable" to such income or should be treated as non-allocable/residual amounts. Absent clear rules, taxpayers will face uncertainty, potentially producing disparate FDDEI outcomes across similarly situated taxpayers.

Recommendations:

- Guidance should define "properly allocable" for Section 250 purposes. Such guidance should align with Congressional intent to increase the incentive for taxpayers to own valuable business assets that relate to foreign markets in the United States. Accordingly, the allocation of domestic expenses against FDDEI should be limited.
- Examples of costs that should be considered as not "properly allocable" to DEI should include costs that relate to periods prior to the development or production of the property or performance of the services that results in deduction eligible income, including pension costs, environmental remediation costs, litigation settlements and similar items.

II. c. NCTI Expense Allocation (ODLs and Section 986(c))

OB3 Provision:

- The Act did not amend the Section 904(g) overall domestic loss (ODL) rules or the Section 986(c) currency loss rules applicable to distributions of PTEP. However, for purposes of applying Section 904 to the NCTI basket, the Act in Section 70311(a)(5)(C) provides that deductions should only be allocated and apportioned against NCTI to the extent they are "directly allocable" to NCTI.

Issues:

- Current Treasury regulations generally provide that ODLs are apportioned to (and thus reduce) the separate limitation categories ("baskets"), including NCTI, on a proportionate basis.
- Treasury regulations also provide that Section 986(c) currency losses will be allocated to NCTI if the prior income inclusion was attributable to NCTI. Congress requires losses to have the same *source* as the associated income inclusion, but Section 986(c) does not require losses to be in the same foreign tax credit basket as the associated income inclusion.
- Neither ODLs nor Section 986(c) currency losses are "directly allocable" to NCTI, and current regulations thus fail to reflect Congressional intent as reflected in OB3.

Recommendations:

- Consistent with Congressional intent in limiting the deductions allocable to NCTI for foreign tax credit (FTC) limitation purposes to only "directly allocable" deductions, guidance should provide taxpayers with an election* to permit ODLs to be allocated against NCTI only to the extent that the taxpayer has insufficient income in the other foreign tax credit baskets to "absorb" the ODL. Further, regulations should provide that Section 986(c) losses are only allocated against NCTI to the extent the taxpayer has insufficient foreign source income in the other baskets to absorb the Section 986(c) loss.

* Allocating ODLs to NCTI "last" will be beneficial to many taxpayers and aligned with Congressional intent. For taxpayers with excess limit in the NCTI basket and excess credits in other baskets, however, this allocation methodology could be punitive. Accordingly, ACT recommends an elective approach, with appropriate safeguards to prevent abuse.

III. Priority Regulatory Reform Guidance Issues

III. a. BEAT

Issue

- As currently interpreted and administered, the BEAT can often operate at apparent cross purposes to other Congressional enactments, preventing taxpayers from availing themselves of Congressionally intended benefits, subjecting taxpayers to double taxation, or requiring taxpayers to waive legitimate, Congressionally intended deductions to avoid or mitigate BEAT liability.
- The existing approach also encourages inefficient restructuring and operational changes that are not motivated by, and do not reflect, underlying economic activity.

Next Steps:

- ACT has convened a working group of members to develop more detailed recommendations with respect to the BEAT.
- Recommendations are likely to include, among other possible items, expanding the ability of taxpayers to "net" related payments among affiliates for purposes of determining the taxpayer's base erosion payments, as well as recognizing that certain payments subject to U.S. tax (e.g., certain payments treated as subpart F income) should not be treated as base erosion payments.
- We will submit additional, more detailed recommendations with respect to the BEAT as a follow-up to this submission.

III. b. Foreign Tax Credit Regulations

Introduction:

- The post-2022 foreign tax credit regulations, which represent a significant departure from a longstanding regime that taxpayers could readily understand and apply, have introduced substantial complexity and uncertainty, including changes to the jurisdictional nexus, net gain, and cost-recovery requirements that are difficult to apply and can deny creditability for routine foreign income taxes, increasing the risk of double taxation.
- Notices allowing temporary or indefinite reliance on pre-2022 regulations have created a patchwork of temporary relief rather than a stable, administrable regime, introducing needless uncertainty to tax compliance and financial reporting.
- The Treas. Reg. Section 1.904-4 foreign branch basket rules rely on extensive reattribution and disregarded-transaction constructs that diverge from branch books and records, distorting income classifications and contributing to stranded credits.

III. b. Foreign Tax Credit Regulations (cont'd)

1. Jurisdictional Nexus

Issues:

- For nearly four decades, the foreign tax credit regulations applied a "predominant character" standard to determine whether a foreign levy was creditable income tax in the U.S. sense. This standard comprised three criteria: realization, gross receipts, and net income.
- The 2022 final regulations (T.D. 9959) replaced that framework with rigid, U.S. focused criteria not supported by statute, most notably:
  - An "attribution" (jurisdictional nexus) condition, embedded in the net gain test under Treas. Regs. Section 1.901-2(b)(5), which requires that a creditable tax is determined based on the application of U.S. law principles with respect to the source of income that is subject to foreign tax.
  - A tightened "cost recovery" standard in Treas. Reg. Section 1.901-2(b)(3)-(4), which restricts creditability when local policy disallowances or expense caps prevent recovery of certain costs.
- The regime is impractical to administer and unsupported by the text of Section 901 or any grant of regulatory authority. Taxpayers are required to analyze entire foreign tax systems including hypothetical applications of attribution and cost-recovery, resulting in significant compliance burdens and uncertainty as well as increasing the likelihood of double taxation on foreign income.
- In response to taxpayer concerns, Treasury indefinitely suspended the application of these portions of the regulations by Notice 2023-80.

Recommendations:

- Withdraw the 2022 amendments to Treas. Reg. Section 1.901-2 that added the attribution condition and tightened cost-recovery and reinstate the 1983 "predominant character" framework.
- Restore the three-part net gain test as it existed pre-2022 consisting of realization, gross receipts, and net income, which will allow recovery of significant costs and capital expenditures without requiring conformity to the U.S. expense recovery rules.
- Retain the clarification in Notice 2023-80 regarding the "non-duplication" requirement, which clarifies that an "in lieu of" tax is creditable if it is imposed in substitution of an otherwise applicable net income tax (and need not replace all net income taxes imposed by a jurisdiction).

III. b. Foreign Tax Credit Regulations

2. Branch Basket Classification

Issues:

- The foreign branch category regulations in Treas. Reg. Section 1.904-4(f) determine foreign branch category income through extensive reattribution and disregarded-transaction rules, rather than the branch's books and records, producing outcomes that diverge from the income earned by the branch's operations.
- Coupled with the Treas. Reg. Section 1.861-20 allocation regime, the branch rules drive circular calculations and volatility by moving both income and foreign taxes across units and categories in ways that do not track the foreign tax base or the taxpayer's financial reporting.
- The compliance burden is disproportionate to any policy benefit since taxpayers must build systems to track internal flows, determine arm's length amounts for disregarded charges, maintain reattribution assets, and reconcile multiple groupings, none of which are required by local law or reflected in branch books and records.

Recommendations:

- Remove the existing Treas. Reg. Section 1.904-4 branch basket regulations and reissue them, applying another reasonable method (e.g., relying on the taxpayer's "books and records") (i.e., income should be assigned to the branch basket based on whether such income is included in the books and records of the foreign QBU, with minimal, principles-based adjustments).
- Applying such a "books and records" approach will generally produce the closest approximation to the income of a QBU that is subject to foreign tax, which should be the foundation for determining the amount of income that is in the branch basket.
- Regulations should adopt a principles-based approach to the treatment of disregarded payments, based on the following: (i) net deductible payments from a branch to the home office will reduce the amount of income on the branch's books and records; (ii) payments from the home office to a branch will also be reflected on the branch's books and records; and (iii) disregarded payments in the aggregate will not affect the source or character of the taxpayer's overall income.
- Regulations should remove the reattribution rule for transfers of intangible property from a foreign branch to its U.S. owner, as it is wholly lacking in statutory support and discourages onshoring of IP held by foreign branches.

III. c. Section 987 Regulations

Issues:

- ACT appreciates Treasury's and the IRS's efforts in Notice 2026-17 to simplify the section 987 regulatory framework, including the proposed CFC Election, modifications to the loss suspension and recognition grouping rules, and the proposed equity and basis pool methodology based on the 1991 proposed regulations.
- Notwithstanding these proposed simplifications, the current Section 987 regime remains excessively complex and administratively burdensome in some respects.
- In addition, several aspects of the current rules — including the loss-to-the-extent-of-gain rule, recognition grouping requirements, and certain anti-abuse provisions — are overly restrictive, unsupported by the statutory framework, and inconsistent with the intended simplification objectives of Notice 2026-17.
- ACT has separately provided detailed comments on Notice 2026-17, and we encourage Treasury to prioritize further simplification of the section 987 rules as part of the priority guidance plan.

III. d. Section 245A Regulations

Issues:

- The Tax Cuts and Jobs Act ("TCJA") added section 245A, which provides for a dividends received deduction (DRD) on dividends paid by a specified 10% owned foreign corporation to a domestic corporation. The statutory text of the TCJA did not explicitly provide for the application of the section 245A DRD to dividends paid to a controlled foreign corporation (CFC) that is owned by an otherwise qualifying domestic corporation.
- Footnote 1486 of the TCJA Conference Report indicates, however, that a CFC should be treated as a domestic corporation for purposes of applying section 245A to dividends received by the CFC, consistent with Treas. Reg. Section 1.952-2.
- Despite this clear directive from Congress, Treasury has not issued regulations confirming the application of Section 245A at the CFC level. Further, the IRS released a Chief Counsel Memorandum in 2024 (CCA 202436010) that asserts that CFCs are not permitted to claim a Section 245A DRD.

Recommendations:

- Clarify in regulatory guidance, consistent with the directive from Congress in the TCJA conference report, that if a CFC receives a dividend from another CFC or a specified 10% owned foreign corporation, such dividend shall be treated for purposes of applying section 245A in the same manner as if the dividend was received by a domestic corporation directly from such foreign corporation.

III. e. FTC Redeterminations (Section 905(c))

Issues:

- The Section 905(c) final regulations require taxpayers to amend each affected prior year and furnish multiple notices when foreign taxes previously claimed are later adjusted. This transaction-by-transaction, year-by-year approach applies regardless of materiality.
- As a result, routine events, including assessments, refunds, currency movements, withholding true-ups, and audit settlements can trigger repeated amended returns and duplicative disclosures. The approach of the regulations can also cause cascading attribute changes (e.g., baskets, Section 904 limitation, Section 951A and related PTEP and E&P), often requiring amended information returns. E-file schema limits for older years can force paper filings, further straining administrative capacity.
- The result is a continuous, low-value compliance cycle that consumes resources for both taxpayers and the IRS.

Recommendations/Next Steps:

- Replace the amended-return/notice model with a simple, risk-focused reporting framework, relying on the authority provided in Treas. Reg. Section 1.905-4(b)(3) to include further simplification.

- ACT has convened a working group to develop recommendations for administrative simplifications in several areas, including Section 905(c). We will provide a follow-up submission with more detailed recommendations.

III. f. CAMT Proposed Regulations

Issues: Purchase Accounting and Push Down Accounting

- Proposed Treas. Reg. Section 1.56A-4(d)(4) disregards any purchase accounting and/or push down accounting adjustments, as applicable, arising from a CAMT entity's acquisition of the stock of a foreign corporation in determination of the foreign corporation's CAMT basis in its assets. Similarly, Proposed Treas. Reg. Section 1.56A-18(c)(3) provides a similar rule with respect to an acquisition of the stock of a domestic corporation (together with Proposed Treas. Reg. Section 1.56A-4(d)(4), the "Purchase/Push Down Accounting Rule").
- In addition, Notice 2025-46 provides a similar rule that purchase accounting and push down accounting are generally disregarded for purposes of determining CAMT basis and adjusted financial statement income ("AFSI") for a CAMT entity when it acquires stock of a domestic corporation.

Recommendations:

- Treasury and the IRS should eliminate the Purchase / Push Down Accounting Rule.

IV. ACT Member Companies

3M
Abbott Laboratories
ADP
American Express Company
Bank of America Corp.
Baker Hughes
The Boeing Company
Boston Scientific Corp.
Carrier Global Corp.
Caterpillar Inc.
Chevron Corporation
Cisco Systems, Inc.
The Coca-Cola Company
Corteva Inc.
Danaher Corporation
Dell Technologies, Inc.
The Dow Chemical Company
DuPont
Eli Lilly and Company
Emerson Electric Co.
Exxon Mobil Corporation
GE Aerospace
GE Vernova Inc.
General Mills Inc.
Google, Inc.
The Home Depot Inc.
Honeywell International Inc.
IBM Corporation
Johnson & Johnson
Johnson Controls, Inc.
JPMorgan Chase & Co.
Kenvue Inc.
Kimberly-Clark
MasterCard Inc.
McCormick & Company, Inc.
Morgan Stanley
Oracle Corporation
Otis Worldwide Corp.
PepsiCo, Inc.
Procter & Gamble Co.
Prudential Financial Inc.
RTX Corporation
S&P Global Inc.
State Street Corporation
Texas Instruments, Inc.
United Parcel Service, Inc.
Verizon Communications Inc.
Walmart Inc.
The Walt Disney Company

Appendices

Appendix A.
Additional OB3 Guidance Issues

A. 1. FDDEI - Sales or Other Dispositions of Depreciable Property

OB3 Provision:

- The Act in Section 70322 amends Section 250(b)(3)(A)(i)(VII) to exclude from Deduction Eligible Income ("DEI") any income or gain from the sale or other disposition of intangible property and property that is subject to depreciation, amortization, or depletion by the seller. Notice 2025-78 confirms that this exclusion applies to gain from the sale of depreciable property even where the property has been fully depreciated and subsequently sold for foreign use.

Issues:

- The current interpretation can produce harsh and distortive results where previously depreciated property is later materially remanufactured, refurbished, or transformed and sold to unrelated foreign customers. In such cases, the rules may deny FDDEI treatment for economic gain attributable to new investment, value creation, and foreign-market activity.
- The existing approach also creates inconsistencies between the treatment of remanufactured property and newly manufactured inventory, notwithstanding that both may reflect substantial domestic manufacturing activity and foreign-market expansion.

A. 1. FDDEI - Sales or Other Dispositions of Depreciable Property (cont'd)

Recommendations:

- As ACT has previously recommended, Treasury should provide a targeted change-in-use exception permitting FDDEI treatment for property that has been materially remanufactured, refurbished, or transformed and subsequently held for sale to unrelated foreign persons.
- Treasury should also adopt a depreciation recapture-based approach under which only the portion of gain attributable to prior depreciation is excluded from FDDEI, while gain in excess of prior depreciation remains eligible for FDDEI treatment.
- Such rules would better align the statute with economic reality, preserve the policy objectives of the FDDEI regime, and reduce unintended distortions while maintaining appropriate anti-abuse protections.

A. 2. Section 904(b)(6) "Attributable to" a Foreign Office or Fixed Place of Business

OB3 Provision:

- The Act in Section 70313 adds Section 904(b)(6), which generally provides that a portion of a taxpayer's income from the sale of inventory property produced in the United States and sold outside the United States shall be treated as foreign source income if the taxpayer maintains an office or fixed place of business outside the United States to which the income from the sale is attributable. The provision is "capped" at 50% of the taxpayer's income from the sale of inventory produced in the U.S. and sold outside the U.S.

Issues:

- The statutory text provides that the relevant income shall be treated as foreign source income to the extent attributable to a foreign office or fixed place of business, "determined under rules similar to the rules of section 864(c)(5);" however, it is not entirely clear how to apply the principles of section 864(c)(5) in this context. In addition, while the statute provides that a portion of the income is foreign source, it is silent with respect to the basketing of such income, and existing Treasury regulations are unclear as to the appropriate basketing of such income.

Recommendations:

- Issue regulations confirming: (1) if a foreign office materially participates in the sale of inventory that is produced in the United States and sold outside the United States, all of the taxpayer's income from the sale of that inventory is attributable to the foreign office (consistent with the principles of section 864(c)(5)); (2) the 50% "cap," consistent with the statutory text, is based on *all* of the taxpayer's income from the sale of inventory that is produced in the U.S. and sold outside the U.S. (including inventory that is not sold through a foreign office or fixed place of business); and (3) the income from the sale of inventory that is treated as foreign source under Section 904(b)(6) is assigned to the foreign branch basket to the extent it is recorded on the books of the foreign office, with any residual being assigned to the general basket.

A. 3. Section 174

a. "Double Capitalization" Issues

OB3 Provision:

- In Section 70302, the Act created Section 174A, which allows a current deduction for domestic research or experimental (R&E) expenditures, while retaining Section 174 amortization (15 years) for foreign R&E expenditures.

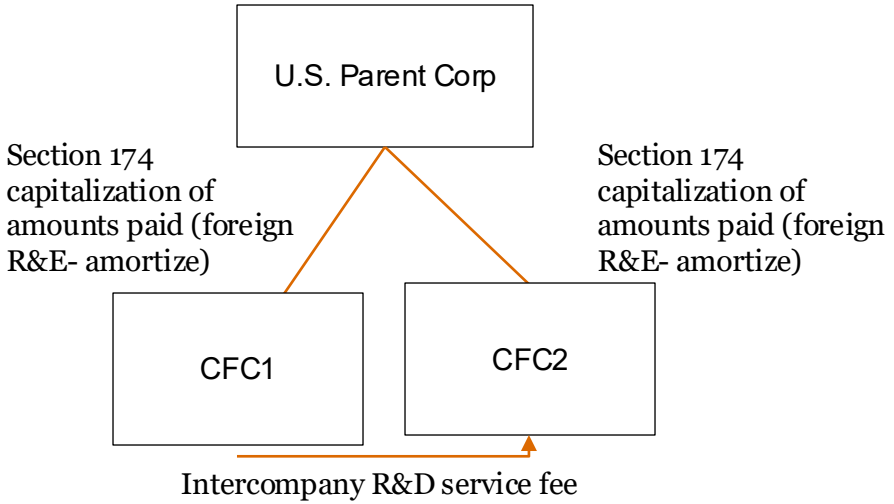
Issues:

- In certain fact patterns (see example), taxpayers within the same controlled group may face the potential for "double capitalization" of foreign-performed R&E activities.

Recommendations:

- Guidance should provide that when R&D is performed outside the U.S. that the foreign-performed R&E costs are not capitalized by both the R&E recipient and R&E provider.
- Guidance should further provide/clarify that the elimination of the double capitalization issue is not intended to change the prior-law treatment of expenses as R&E expenses for other purposes of the Code (e.g., sections 41 and 59(e)).

Example:



If CFC1 owns rights to develop and exploit intangible property in EMEA and pays a non-U.S. R&E lab ("CFC2") to perform R&E, then both CFC1's payment and CFC2's expenses could be subject to capitalization under Section 174.

A. 3. Section 174A

b. Amortization Commencement and Election

OB3 Provision:

- New Section 174A(c)(1)(B) provides an amortization election for certain domestic research or experimental expenditures, with the amortization period beginning in the month the taxpayer first realizes benefits from the expenditures (default 60 months).

Issues:

- The "benefits-realized" start date (amortization begins in the month the taxpayer first realizes benefits) creates administrative complexity for applying the election and is disadvantageous for long-cycle R&D industries where benefits can arise many years after costs are incurred—often longer than the default 60-month period.

Recommendations:

- Guidance should provide that the election is applied in a manner similar to Section 59(e), permitting taxpayers to elect a safe harbor, fixed amortization period of 5–9 years (analogous to the optional 10-year amortization concept of Section 59(e)) and begin amortization with the taxable year in which the expenditures are made.

Appendix B.
Additional Regulatory Reform Guidance Issues

B. 1. Foreign Tax Credit Regulations – FTC Tax Allocation

Issues:

- The current Treas. Reg. Section 1.861-20 rules for allocating and apportioning foreign income taxes to the Section 904 separate categories replaced the prior, principles-based approach of former Treas. Reg. Section 1.904-6. The current 1.861-20 rules add significant complexity without increasing certainty for taxpayers or the IRS as a result of the use of highly prescriptive tracing and deeming rules that are not grounded in practical administrability.
- Under Treas. Reg. Section 1.861-20, taxpayers must assign taxes by "taxable unit" and to statutory/residual groupings using elaborate constructs including disregarded payment and reattribution regimes, creation of reattribution assets, base and timing difference rules, and special branch mechanics that require granular, transaction-level mapping of foreign law to U.S. groupings.
- The prior Treas. Reg. Section 1.904-6 regulations, which were originally issued in 1988, governed the allocation and apportionment of foreign taxes for over 30 years without significant change and provided a set of administrable guidelines which taxpayers and the IRS could readily apply to the overwhelming majority of common fact patterns.

Recommendations:

- Withdraw the current Treas. Reg. Section 1.861-20 allocation/apportionment rules and reinstate the principles of former Treas. Reg. Section 1.904-6 to assign foreign taxes to the items of gross income and the Treas. Reg. Section 904(d) separate category on which the tax is imposed under foreign law using a principles-based, administrable rule that requires taxpayers to match foreign taxes to the income on which the foreign tax is imposed.

B. 2. DCL / DPL Regulations

Issues:

- The most recent proposed dual consolidated loss ("DCL") regulations under Section 1503(d) extend beyond the statute's limited anti-duplication purpose and can permanently deny domestic use of losses even where no foreign use occurs.
- The disregarded payment loss ("DPL") rules, introduced as part of this regulatory package and finalized in January 2025, have no support in the text or legislative history of Section 1503(d).
- The regulations impose a significant compliance and systems burden: extensive tracing of "disregarded payments," multiyear tracking and certifications, and modeling foreign tax effects that are often not reasonably obtainable.
- In Notice 2025-44, Treasury announced its intention to withdraw the final DPL rules. ACT strongly supports Notice 2025-44.
- However, the Notice does not withdraw the final "anti-avoidance" rule that was included in the January 2025 regulations. As described in the preamble to the final regulations, this rule is intended to prevent taxpayers from achieving "double deduction" outcomes that are not otherwise within the scope of the DCL rules. The Notice also requests comments on "whether, and if so, how disregarded payments should be taken into account" for purposes of DCL rules.

B. 2. DCL / DPL Regulations (cont'd)

Recommendations:

- ACT supports the removal of the DPL regulations and the extension of the transition relief with respect to the interaction of the DCL rules with the Pillar 2 rules.
- ACT further recommends the withdrawal of the DCL anti-avoidance rule that was included in the January 2025 final regulations. This rule creates needless uncertainty for taxpayers, is wholly without support in the text or legislative history of Section 1503(d), (there is no grant of authority to Treasury in Section 1503(d) or elsewhere to police "double deduction" outcomes not described in Section 1503(d)) and will often result in taxpayers paying additional foreign tax, contrary to the interests of the United States.
- ACT also recommends that future guidance provide as follows: (I) disregarded payments are not taken into account under any circumstances under the DCL rules (there is no statutory support for taking items into account under the DCL rules that are not taken into account in the determination of income for U.S. tax purposes); (II) the proposed DCL regulations issued in August 2024 should be removed, particularly the rules limiting the treatment of inclusions on stock for purposes of determining a DCL (there is no statutory support for this limitation); and (III) the "all or nothing" principle of the DCL regulations should be modified in the case of taxes imposed under Pillar 2 (including qualified domestic minimum top-up taxes ("QDMTTs")) to provide that a "foreign use" does not occur if a loss is taken into account in a Pillar 2 tax computation if the inclusion of that loss does not result in any change in the taxpayer's tax liability under the Pillar 2 tax (taxpayers should have the burden of proof with respect to this determination). Items (II) and (III) were included in ACT's prior comment letter on the proposed DCL/DPL regulations.

B. 3. Proposed PTEP Regulations

Issues:

- The proposed previously taxed earnings and profits ("PTEP") regulations create significant complexity and tracking burdens, including numerous PTEP “groups” by year, basket, and transaction type that are difficult to maintain across restructurings and audits.
- Ordering and coordination rules (e.g., Section 959(c) tiers, Section 961(a)/(b) basis adjustments, extraordinary reduction/disposition provisions) are overly complex and technical and will lead to controversy.
- Interactions with other regimes (e.g., Section 951A, subpart F, Section 245A, FTC baskets, consolidated return rules, Section 986(c)) add complexity and can strand attributes or create timing/basket mismatches.
- Application of the regulations will also result in significant double taxation (e.g., inability to share basis across Section 961 ownership units or consolidated group members), which contributes to complexity and is contrary to Congressional intent.
- In their current form, the regulations will operate more as a trap for the unwary unless taxpayers scrupulously follow a set of detailed tracking and recordkeeping requirements that serve no broader policy objective in an international tax system that subjects virtually every dollar of foreign earnings to current taxation.
- For many taxpayers, the overall effect will be either double taxation, a continuation of the "lockout effect" on repatriations of controlled foreign corporations (“CFC”) earnings, or some combination of both, contrary to Congressional intent.
- Virtually all developed countries have adopted some form of dividend exemption system, and many countries have also adopted rules that subject some foreign earnings to current taxation. None of these countries have adopted dividend repatriation rules that are remotely as complex as the proposed PTEP regulations (which, despite the complexity, do not provide guidance in several areas, including treatment of reorganizations, redemptions, and Section 304 transactions).

B. 3. Proposed PTEP Regulations (cont'd)

Recommendations:

- Reissue the proposed PTEP regulations in a simplified form that materially reduces complexity and tracking burden and better aligns with Congressional intent to eliminate double taxation on distributions of PTEP.
- In reissuing, prioritize fewer PTEP categories; simplified ordering; streamlined Section 961 basis adjustments; simplified Section 986(c) FX mechanics; no granular tracing; practical rules for reorganizations and dispositions; clear safe harbors; materiality thresholds; and transition relief.
- Regulations should eliminate CFC-level tracking of PTEP attributes and revert to U.S. shareholder-level tracking (only).

B. 4. Section 163(j) Regulations

Issues:

- The current regulations' application of Section 163(j) at the CFC level lacks clear statutory or legislative support and extends the regime beyond its intended scope for U.S. taxpayers.
- Entity-by-entity CFC computations impose significant compliance and systems burdens, including adjusted taxable income ("ATI") determinations under U.S. tax principles, tracking disallowed carryforwards, and extensive data collection and filings. The current compliance requirements associated with applying Section 163(j) to CFCs outweighs the intended benefit.
- Overlaps with foreign country interest-limitation rules can create double limitations, stranded disallowed interest, and difficult ordering and coordination issues.
- Interactions with NCTI, Subpart F, FTC rules, and Section 267A can produce timing and basket mismatches and amplify volatility without clear policy benefits.
- Information needed to compute Section 163(j) at each CFC is often not readily available without significant time and cost, especially in multi-tier, multi-jurisdictional structures.
- OB3 amended Section 163(j)(8)(A) to exclude amounts included in gross income under Section 951(a), 951A(a), and 78 from ATI. With these CFC inclusions removed from the shareholder's ATI, extending Section 163(j) to CFCs creates mismatches between the CFC level Section 163(j) limit and post-OB3 U.S. shareholder ATI and can produce nonsensical, punitive results (e.g., taxing a U.S. company twice on amounts that do not represent economic income).

Recommendations:

- Repeal the regulations requiring application of Section 163(j) at the CFC level, except to the extent that the CFC has effectively connected income ("ECI").

B. 5. Proposed Cloud-Transaction Sourcing Regulations

Issues:

- The proposed regulations replace the long-standing place-of-performance approach for services with a rigid, multi-factor formula (based on personnel, tangible property, and intangible property) that does not reliably reflect where cloud services are performed.
- The intangible-property factor, which is tethered to where research and development ("R&D") occurs, functions as a proxy for value rather than performance, penalizes U.S.-based R&D, and risks double taxation or nontaxation when foreign rules differ.
- Mechanical sourcing can trigger unexpected U.S. withholding and ECI exposure (e.g., incidental U.S. employee days), creating controversy and significant administrative burden for payors and payees.
- Design gaps (e.g., reseller models, consolidated groups and partnerships, zero-factor outcomes, rental expense treatment) introduce ambiguity and distortions.
- Year-to-year swings in the factors create volatility for payors and intermediaries, complicating compliance and financial reporting without clear policy benefits.

Recommendations:

- Withdraw the proposed regulations and retain a facts-and-circumstances, place-of-performance standard for sourcing cloud and similar services under existing Section 861–863 principles.

B. 6. CAMT Proposed Regulations

Issue 1: Specified Regulations

- Notice 2025-49 generally provides that taxpayers may rely on any section of the corporate alternative minimum tax ("CAMT") proposed regulations. However, Notice 2025-49 provides that a taxpayer may rely on Prop. Treas. Reg. Section 1.56A-4 (AFSI adjustments and basis determinations with respect to foreign corporations) or 1.56A-6 (AFSI adjustments with respect to CFCs) only if the taxpayer also consistently follows Prop. Treas. Reg. Section 1.56A-8 and 1.59-4. Prop. Treas. Reg. Section 1.56A-8 provides rules related to AFSI adjustments for certain foreign and Federal taxes and Prop. Treas. Reg. Section 1.59-4 provides rules with respect to the CAMT foreign tax credit.

Recommendations:

- Remove the requirement to follow Prop. Treas. Reg. sections 1.56A-8 and 1.59-4 when applying either Prop. Treas. Reg. Section 1.56A-4 or 1.56A-6.

Issue 2: CAMT foreign tax credit

- The CAMT proposed regulations severely limit the availability of a CAMT foreign tax credit ("FTC") by excluding foreign income tax for which a credit is disallowed or suspended for regular tax purposes under Sections 245A(d) and (e)(3), 901(e) and (f), 901(i) through (m), 907, 908, 909, 965(g), 999, and 6038(c) of the Code. Notice 2025-49 removed the application of Section 245A(d) but did not otherwise change these limitations. This proposed adoption of the regular tax FTC disallowance and suspension rules is contrary to the statutory framework and may inappropriately increase a taxpayer's CAMT liability.

B. 6. CAMT Proposed Regulations (cont'd)

Recommendations:

- Revise the CAMT proposed regulations to remove the proposed application of the remaining regular tax FTC disallowance and suspension rules to the CAMT FTC.

Issue 3: Rule Requiring Adjustments for Section 482 Principles

- Proposed Treas. Reg. Section 1.56A-26(d) provides that, for purposes of determining AFSI, if any item of income, expense, gain, or loss reflected in the FSI of the CAMT entity with respect to a controlled transaction or controlled transfer (as defined in Prop. Treas. Reg. Section 1.482–1(i)(8)) between two or more CAMT entities does not reflect the principles of Section 482 and the regulations under Section 482, then the CAMT entity must make appropriate adjustments to CAMT basis to reflect these principles (the "482 Rule"). For example, if one CAMT entity sold to another CAMT entity an asset in a controlled transaction in a non-arm's length transaction, the AFSI implications from the sale would be determined under arm's length standards, a tax concept and not a financial accounting concept.

Recommendations:

- Treasury and the IRS should eliminate the 482 Rule.

B. 6. CAMT Proposed Regulations (cont'd)

Issue 4: CAMT Stock-Based Compensation Adjustment

- The CAMT framework does not currently permit or require an adjustment for stock-based compensation in computing AFSI. Because financial reporting and tax recognition timing for stock-based awards differ materially, AFSI may not reflect the true economic cost or timing of these awards, resulting in volatility in the determination of CAMT liability.

Recommendations:

- ACT recommends that Treasury and the IRS provide guidance under Section 56A(c)(15) allowing taxpayers to adjust AFSI for stock-based compensation based on either:
  - The financial-statement fair-value expense recognized for the award, or
  - The tax-deductible amount determined under regular-tax principles.

Issue 5: Section 174/174A / CAMT Coordination

- Notice 2026-07 provides relief relating to TCJA Section 174 amortization for 2022–2024 tax years but does not address situations in which taxpayers elect to capitalize domestic research or experimental expenditures under Section 174A(c) or 59(e) beginning in 2025.
- As a result, differences between AFSI and regular tax treatment may continue to create distortions and mismatches for taxpayers making capitalization elections for research or experimental expenditures.

B. 6. CAMT Proposed Regulations (cont'd)

Recommendations:

- Treasury should consider whether similar relief is appropriate for taxpayers electing capitalization treatment under Section 174A(c) or 59(e) to maintain parity between AFSI and regular tax treatment.
- Treasury should also provide administrable rules addressing the interaction of CAMT and research or experimental expenditure capitalization elections to reduce unintended distortions and compliance burdens.

Issue 6: CAMT – Indirect CFC Dispositions

- The CAMT regulations do not explicitly address the treatment of dispositions of lower-tier CFCs by upper-tier CFCs, including transactions involving indirect ownership structures (e.g., a second-tier CFC selling a third-tier CFC).
- The absence of clear rules creates uncertainty regarding the application of the AFSI adjustment framework to indirectly owned CFCs and may produce inconsistent treatment and administrability concerns in common multinational structures.

Recommendations:

- Treasury should clarify that the AFSI adjustment framework under Prop. Treas. Reg. Section 1.56A-4(c)(1) and 1.56A-6 applies to indirectly owned CFCs, including dispositions involving lower-tier CFCs.
- Treasury should also provide administrable rules addressing the treatment of indirect CFC dispositions to reduce uncertainty and ensure consistent application of the CAMT regime across multinational group structures.

B. 6. CAMT Proposed Regulations (cont'd)

Issue 7: CAMT – FSNOL Adjustments Under Section 56A(d)

- Section 56A(d) permits taxpayers to reduce AFSI by financial statement net operating losses ("FSNOLs"). Notice 2025-46 announces that forthcoming proposed regulations will not include the limitations on the use of FSNOLs included in Prop. Treas. Reg. Section 1.56A-23(e). Under this approach, FSNOLs would not be limited.
- For regular tax purposes, section 382 limits a corporation's ability to use its historical Net Operating Losses (NOLs) and built-in losses to offset future taxable income after an "ownership change." The application of section 382 could result in a situation where NOLs for regular tax purposes are used in different tax years than related FSNOLs, which could arbitrarily trigger CAMT liability in tax years where NOL usage is higher than FSNOL usage purely due to the timing of use of these attributes.

Recommendations:

- Treasury should provide additional guidance regarding the computation and utilization of FSNOL adjustments under Section 56A(d). This guidance should limit the use of historical FSNOLs after an ownership change consistent with the limitations on the use of historical NOLs under section 382.
- Such guidance should ensure that there is parity between the use of FSNOLs and regular tax NOLs and limit situations where differences in the timing of these attributes could arbitrarily result in CAMT liability.

B. 7. Characterization of Payments from CFCs to U.S. Affiliates

Issues:

- Current rules governing the characterization of payments from controlled foreign corporations ("CFCs") to related U.S. affiliates do not appropriately reflect "look-thru" treatment for purposes of Section 904(d) and related international tax provisions, notwithstanding that Congress has not indicated an intent to shift away from the historic look-thru treatment that applied from 1986 until regulations adopted after the enactment of the Tax Cuts and Jobs Act (TCJA) in 2017.
- As a result, related-party payments are often characterized in a manner that differs from the character of the underlying earnings, activities, or tax attributes of the paying CFC, resulting in inappropriate foreign tax credit basket consequences (i.e., a mismatch between the basket of the foreign tax and the foreign earnings on which such tax was imposed).
- These outcomes increase complexity, create uncertainty for taxpayers, increase the risk of double taxation, and produce inconsistent treatment among similarly situated taxpayers, contrary to Congressional intent.

Recommendations:

- Treasury and the IRS should issue guidance clarifying the treatment and characterization of payments from CFCs to related U.S. affiliates, including the extent to which appropriate look-thru principles should apply for purposes of Section 904(d) and related provisions.
- Such guidance should address the interaction of these payments with the NCTI and foreign tax credit regimes and provide administrable rules that align the characterization of related-party payments with the underlying earnings, activities, and economic substance of the paying CFC.