TEXASLAW

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Overview of the U.S. International Tax System After the TCJA

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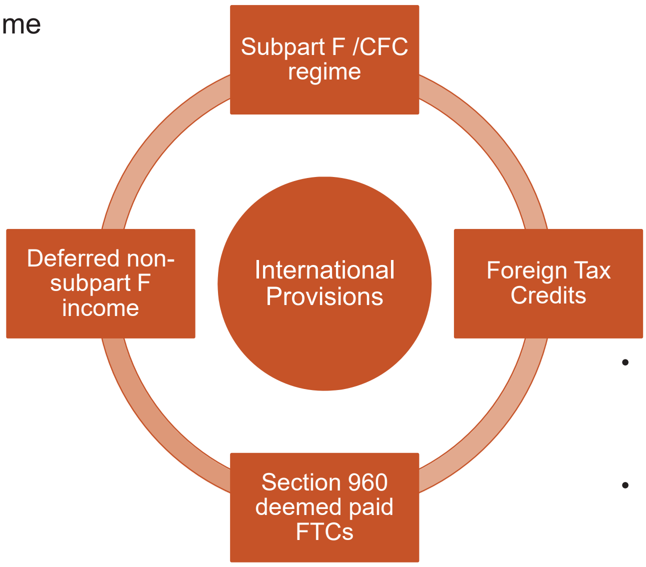
International Tax Provisions Before and After the TCJA

Building Blocks of the TCJA

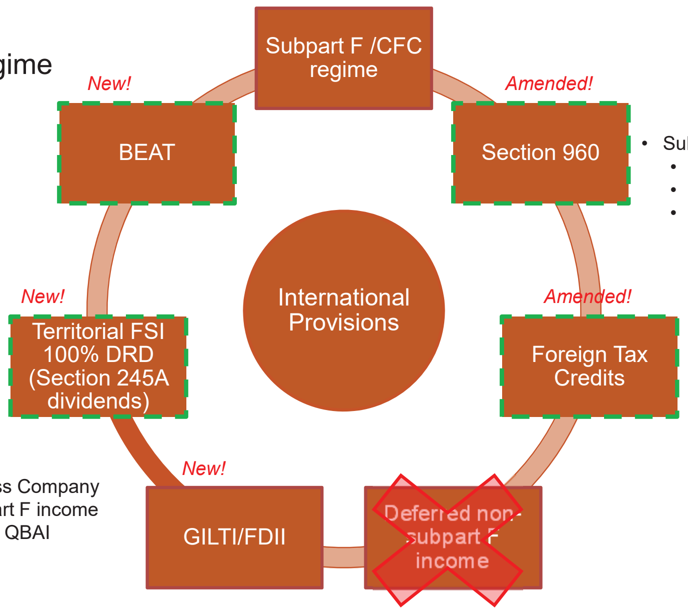
Pre-2018 Law Deferral Regime



- Limitations (baskets) at CFC Level:
  - General
  - Passive
- Section 902 deemed paid credits from lower tier CFC's
  - "Pooling" concept

Tax Cuts and Jobs Act

Post-2017 "Territorial" Regime



- Subpart F deemed paid credits:
  - PTEP
  - GILTI
  - Special rules for GIITI foreign taxes

- Applies to:
  - FOGEI
  - GILTI CFC Loss Company
  - High tax subpart F income
  - NDTIR or 10% QBAI

- New Limitations at US level:
  - Foreign Branch Income
  - GILTI
- Retains CFC Limitations:
  - General
  - Passive
- Section 902 Repealed
  - No longer "pooling,", i.e., aggregation of multiple years of foreign taxes paid by CFCs

International Provisions Introduction

- Centerpiece: Lower US corporate rate of 21% to compete with international rates
  - Examples: Ireland 12.5%; UK currently @ 18% and will decrease 1% per year until reaches 17% in 2020
- Impact of OECD BEPS Work
  - Base erosion provisions, i.e., the reduction in the amount of the base or amount upon which tax is imposed.
    - Deductible interest and royalties are base-eroding mechanisms
  - Anti-hybrid provisions that prevent deduction/no inclusion
- The big prize: Income from intangible property
  - Carrots and sticks to keep ownership of US developed intangibles (and the resulting income) in the United States

Worldwide v. Territorial Tax Systems

- In a pure worldwide system, taxpayers are taxed on all worldwide income
- In a pure territorial system, only income derived within the country's borders are subject to tax in that country
- In a modified territorial system, a dividends received deduction exempts foreign earned income from residence country tax when repatriated
- The US has traditionally been closer to a worldwide system
  - The US historically has imposed tax on worldwide income but has allowed foreign tax credits to prevent double taxation
  - Also, the US has allowed foreign subsidiaries of US corporations to defer certain profits from US tax until the income is "repatriated" to the parent company.
- Beginning in 2018, the US adopted the dividends received deduction system
  - Allows a 100% deduction for foreign source dividends
  - Other countries limit deduction to 95% to account for expenses attributable to the foreign income