



Presentation:

**US TAX REFORM: INTERNATIONAL TAX CHANGES
66TH ANNUAL TAXATION CONFERENCE**

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Agenda

- 1. Inbound Reform**
- 2. Subpart F Reform (GILTY!)**
- 3. FTC Reform**
- 4. Territorial Regime (100% Foreign DRD)**
- 5. §367(a) reform**
- 6. New Branch Loss Recapture Rules of §91**
- 7. Foreign Derived Intangible Income Regime**
- 8. Other Item: Section 863(b) Repeal**



1. Inbound: Base Erosion and Profit Shifting: Background

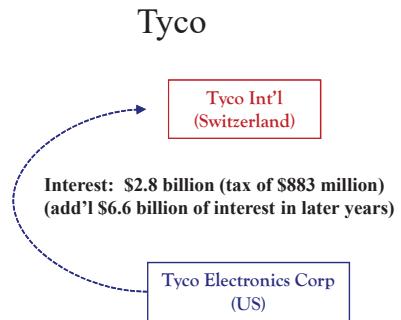
High Profile Re-Leveraging Transactions

Foreign Owned MNE Structure



IRS Conceded Case Before Trial

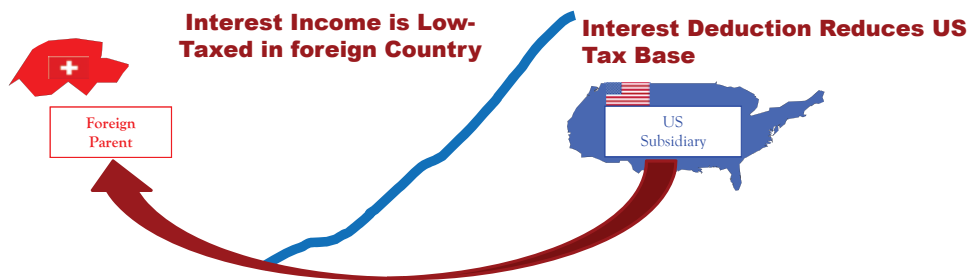
Inverted MNE Structure



Outcome: Tyco settled for ~\$220 million with another \$250 million in later years.



1. Inbound: Base Erosion and Profit Shifting: New §163(j)'s Disallowed Interest Definition



| | Old §163(j) | New §163(j) |
|-------------------------------------|------------------------|---------------------|
| General Applicability | Corporations Only | "All" Taxpayers |
| Debt-to-Equity Threshold | 1.5-to-1 Threshold | None |
| Related / Unrelated Interest | Related party interest | All interest |
| General Debt Limitation | 50% of taxable income | 30% ATI + Bus. Int. |
| Carryforward of Disallowed Interest | Yes | Yes |
| Carryforward of Excess Limitation | 3 years | None |



1. Inbound: Base Erosion and Profit Shifting: New §163(j)'s Disallowed Interest Definition

General Rule

Business Interest Expense is not deductible to the extent it exceeds the sum of:

- (a) the **business interest income** of such taxpayer for the taxable year and
- (b) 30% of the taxpayer's **adjusted taxable income** for the taxable year and
- (c) floor plan financing interest (relevant to auto dealers who sell on credit).

Business Interest Income is income allocable to a **business*** (**excludes** "investment income") and all interest includible in a C corporation's income.

Adjusted Taxable Income is taxable income without regard to:

- (a) any item of income/gain/loss/deduction not "allocable to" a **business***
- (b) any business interest expense or business interest income
- (c) section 172 net operating loss deduction
- (d) section 199A deduction, and
- (e) depreciation, amortization, and depletion (for tax years before 1/1/2022).

Note: ATI apparently includes any GILTI, Subpart F Income, §956 Inclusions & FDII deductions.

***Business** is a trade or business under case law but excludes (i) trade or business of an employee, (ii) electing real property business, (iii) electing farming business, (iv) certain utility business (electrical, water, sewage, gas & steam), and (v) small businesses that have gross receipts of \$25 million or less.

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1. Inbound: Base Erosion and Profit Shifting: New §163(j)'s Disallowed Interest Definition

Scope of Rule

§163(j) applies to all taxpayers except excluded "businesses". See previous slide.
Special rules for partnerships/S Corps//Consolidated Groups. See Notice 2018-28.

Corporations:

Business Interest Expense Limitation applies at a **consolidated group level**.
How will these rules apply to partnerships owned within consolidated groups?
Stay tuned.

Partnerships:

1. Business Interest Expense Limitation determined at **partnership level**.
2. Deductible business interest expense is accounted for in computing the **partner's share** of separately stated income/loss. Disallowed business interest (disallowed at partnership level) is carried forward at the **partner level** to succeeding taxable years and deductible by the **partner** only if the partner is allocated excess taxable income from that partnership in a future year.
3. Partnership ATI is excluded from the partner's separate ATI calculation for purposes of applying §163(j) on items outside partnership.

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"International Changes "