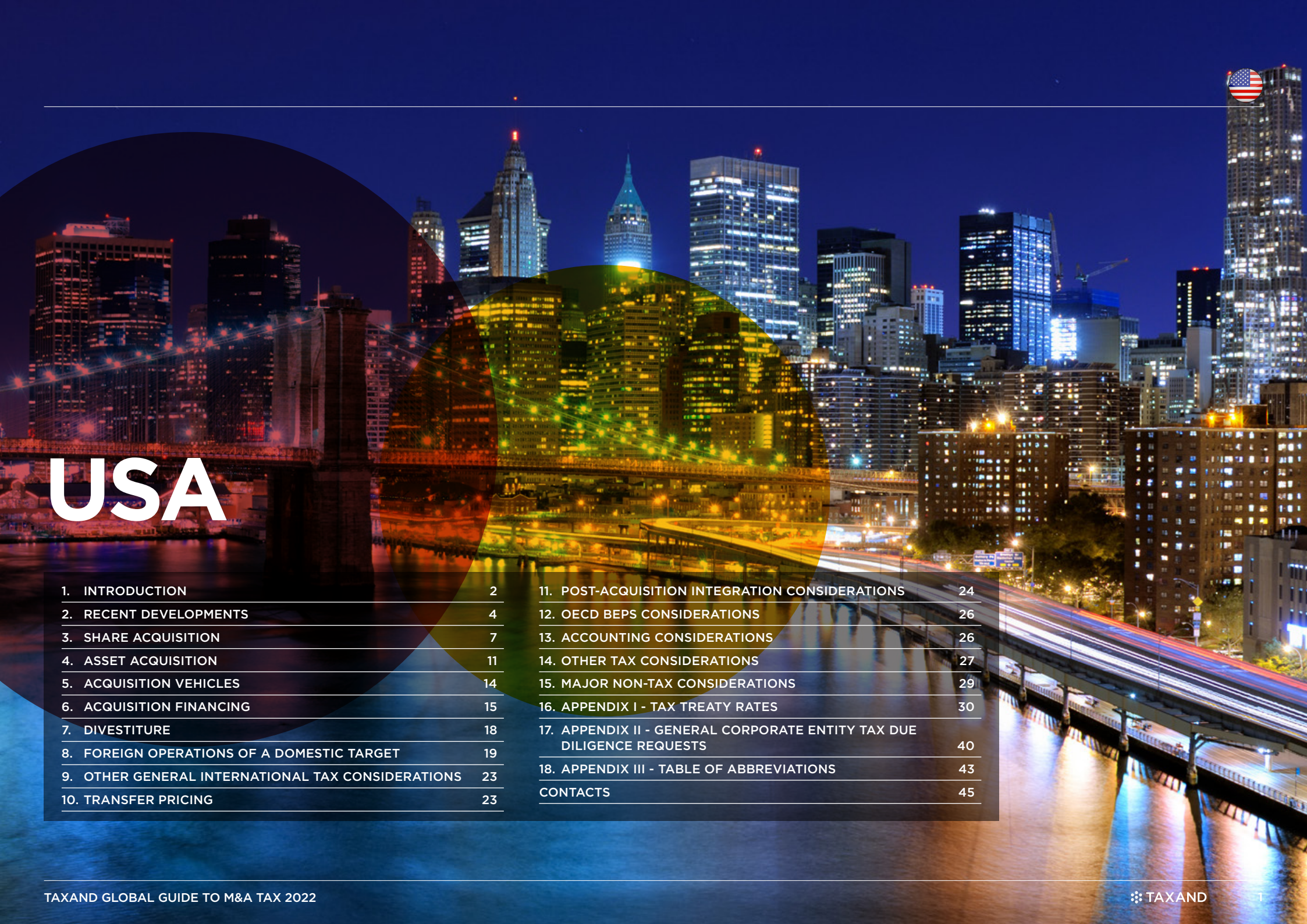

USA

1. INTRODUCTION

a. Forms of Legal Entity

The US makes multiple options available for legal structures for holding and business activities in the US. The laws of the state in which the legal entity is organised may provide different results than the general concepts described, below. Most commonly:

- Corporation

A corporation in the US may be either public or private and has legal aspects similar to other corporations around the globe, shareholders who typically have voting rights over major corporate decisions and do not usually have liability (by virtue of statutory law) for the corporation's actions, a board of directors which typically is responsible for management oversight of the corporation, and officers who are responsible for day to day management of the corporation. For tax purposes, most corporations are treated as taxpayers in their own right (so-called "C corporations") and their distributions of profits are generally taxable for their shareholders as dividends. However, some qualifying, closely held corporations (so-called "S corporations") with small shareholder bases and no foreign owners may elect to have their profits and losses taken into account for tax purposes directly by their shareholders. No legal distinction exists between these two tax classifications.

- Partnership

From a legal standpoint, a partnership is a hybrid between a legal entity and a contract between the partners, allowing the partners tremendous flexibility in arranging their legal relationships. Partnerships require at least two owners and come in several different varieties: (a) a general partnership, in which all the partners are liable legally for all acts of the partnership, (b) a limited partnership or "LP," which has at least one general partner who is liable legally for all acts of the partnership and at least one limited partner who can enjoy some measure of insulation against liability for acts of the partnership, and (c) a limited liability partnership ("LLP") which usually has no general partner and whose limited partners can enjoy some measure of insulation against liability for acts of the partnership. The level of liability protection for limited partners will vary by state. Partnerships may be managed directly by partners without any need for a board of directors, but partners who engage in such management can risk their limited liability in some states. Partnerships may elect to be taxed as if they were corporations, or their partners may be taxable on their shares of partnership taxable income (a so called "flow through entity"). Partnerships whose interests are widely held and/or traded publicly or privately may be at risk of being taxed as corporations by law regardless of election.

- Limited Liability Company ("LLC")

The LLC typically provides flexibility of governance and economic arrangement similar to a partnership along with limited liability (by virtue of statutory law) for owners (called "members"). As with partnerships, LLCs may elect to be taxed as if they were corporations or to flow their income and expenses through to their owners for tax purposes. As with partnerships, LLCs whose interests are widely held and/or traded publicly or privately may be at risk of being taxed as corporations by law regardless of election. Due to the flexible nature and relative newness of LLCs, (a) some countries do not extend tax treaty benefits to US LLCs, (b) other countries will treat them as "transparent," extending treaty benefits only to LLC members who qualify, and (c) still other countries will extend treaty benefits based on LLC classifications for US tax purposes.

- "Series"

The laws of some states permit LLCs (and, in some cases, partnerships) to conduct themselves as "series" companies. In such cases, the legal entity is able to segregate the assets and liabilities of each of its divisions for legal purposes into separate "series," much as if each series was a separate legal entity but without the need for a separate legal entity. In some cases, each series may elect whether to be taxed as a corporation or to permit its income to be taxed directly to its owner(s). US tax treaties have not yet addressed the treatment of series.

b. Taxes, Tax Rates

The US employs a "progressive" income tax system for individuals in which tax rates increase as a taxpayer's taxable income increases. Corporations are generally subject to a flat rate of tax on income. Individual US citizens and residents and corporations (or entities electing to be treated as corporations) formed in the US are subject to US income tax. Each state allocates or apportions a taxpayer's income based on the taxpayer's presence ("nexus") in the state and then subjects the resulting amount to state income tax. Further, some localities ("counties and cities") may levy their own taxes. State and local income taxes can range from 0-14% and are deductible for federal purposes (although deduction is very limited in the case of individuals).

Federal income tax rates are as follows:

- Individuals: 0-37% on earned income; 23.8% on capital gains.
- Corporations: 21% (corporations do not have a separate capital gain rate).

State rates: See above discussion for context; although the rates will differ based on the facts, the following are usually adequate for initial economic modelling:

- Individuals: 7-14%.
- Corporations: 5% (after taking the federal deduction into account).

Other common taxes include:

- State and/or local taxes on real and tangible personal property ownership (property tax rates and determination of taxable base vary by state and city);
- State and/or local taxes on sales of goods or services to consumers (sales for resale and irregular sales are generally exempt but may require some documentation; sales tax rates vary by state and city with combined rates ranging from 0% to 10.3%);
- Social contribution taxes based on employee wages (social security tax: 6.2% for employees and 6.2% for employers, applicable only for the first USD147,000 earned during the year for 2022; Medicare tax: 1.45% for employees and 1.45% for employers);
- Excise taxes on specific items (e.g. fuel, certain vehicles, air transportation, fishing/hunting equipment, alcohol, and tobacco); and
- Import duties on specific goods.

c. Common divergences between income shown on tax returns and local financial statements

Measurement of income for tax purposes regularly differs from measurement of income for financial purposes. From a US tax return perspective, Schedules M-1 and M-3 contain reconciliations of these items each year for corporate taxpayers, as well as for flow-through entities with more than one owner. Corporate taxpayers will also keep deferred tax asset or liability accounts that reconcile their book basis and their tax basis in any asset. The most common book to tax differences include:

- Tax depreciation/amortisation:
  - Arising from assets whose cost is recovered more quickly for tax than for book; and
  - Arising from any transactions in which the assets and liabilities were restated at fair value ("purchase," "business combination," or "fresh-start" accounting) for book purposes but not for tax (because no tax was paid in the transaction).
- Book allowances for doubtful accounts or slow-moving or obsolete inventories;
- Book accruals for compensation to be paid significantly beyond the end of the tax year;
- Items not fully deductible for US tax purposes (travel/entertainment or governmental penalties); and
- Valuation allowances for items that may not be deducted with tax benefit before they expire and reserves for tax positions that have less than a 50% chance of success.
- US corporations that receive dividends from US corporations outside the recipient's consolidated group may be entitled to deduct a significant portion of those dividends in calculating their taxable income (the "dividend-received deduction" or "DRD"). Dividends between members of the same consolidated group are exempt from federal tax.

2. RECENT DEVELOPMENTS

a. Final Foreign Tax Credit ("FTC") Regulations

On 28 December 2021, new US Treasury Regulations were adopted that apply to foreign taxes paid in taxable years beginning on or after 28 December 2021, that substantially revise the definition of a foreign tax that is creditable against US income tax liabilities.

Generally, section 901 allows a credit for foreign income, war profits and excess profits taxes. Section 903 provides that such taxes include a tax in lieu of a generally imposed foreign income, war profits or excess profits tax. The pre-existing regulations, issued in 1983, set forth rules for determining when foreign taxes qualify under sections 901 or 903. The prior final regulations treated a foreign levy as an income tax if (1) the foreign levy is a tax and (2) the predominant character of that tax is that of an income tax in the US sense. A tax generally has the predominant character of an income tax if it is calculated to reach net gain in the ordinary circumstances in which the tax applies.

The final regulations make several changes to modernise and clarify the regulations to address issues that have arisen because of changes in global taxation post-1983. In particular, the final regulations modify the net gain requirement to limit the role of the predominant character analysis in determining whether a tax meets each of the components of the net gain requirement. Those components are the realisation requirement, the gross receipts requirement, and the net income requirement (which under the regulations is now referred to as the "cost recovery requirement"). The final regulations also impose a fourth requirement, the "attribution requirement," that must be satisfied for a levy to qualify as a foreign income tax (which was referred to as the "jurisdictional nexus requirement" in the proposed regulations).

The "attribution requirement" provides that a tax is creditable only if arises from a base that has at least minimum connections with the taxing jurisdiction. It is intended to disallow a credit for certain novel taxes, such as digital services taxes, that depart from conventional jurisdictional norms. A creditable tax exists if one of the following is true regarding the gross receipts and costs that underlie the foreign tax base:

- Activities based attribution : They are reasonably attributable (look to functions, risks, assets, etc.) to the non-resident's activities within the foreign country imposing the tax. The foreign tax law may not use as a significant factor (i) the location of customers, users or other similar destination based criteria or (ii) the location of persons from whom the non-resident makes purchases in the foreign country.
- Source based attribution : Other than from sales or other dispositions of property (other than inventory), they:
  - Arise solely from sources within the foreign country imposing the tax; and
  - Are determined based on sourcing rules that are reasonably similar to those provided by US tax rules.
- Property Situs Attribution : They include only gains from the disposition of:
  - Real property located in the foreign country, or an interest in a resident corporation or other entity that owns such real property (similar to the US "FIRPTA" regime); or
  - Property that is part of the business property creating a taxable presence in the foreign country (including interests in a partnership or other pass-through entity attributable to that property; similar to US effectively connected income rules).

b. Final Subpart F Stock Ownership Determination Regulations

The US Department of Treasury and the IRS on 25 January 2022, published final regulations ("2022 Final Regulations") under section 958 on determining stock ownership for purposes of Subpart F, including global intangible low-taxed income ("GILTI") and proposed regulations regarding the treatment of domestic partnerships and S corporations that own stock of passive foreign investment companies ("PFICs") and their domestic partners and shareholders.

The 2022 Final Regulations finalise, with modifications, a portion of the previously proposed regulations ("2019 Proposed Regulations") issued on 21 June 2019 that generally treat domestic partnerships as aggregates of their partners for purposes of determining income inclusions under section 951. The 2022 Final Regulations apply to tax years of foreign corporations that begin on or after 25 January 2022, and to tax years of US persons in which or with which such tax years of foreign corporations end. A domestic partnership may apply the 2022 Final Regulations to tax years of a foreign corporation beginning after 31 December 2017, subject to certain requirements.

The proposed regulations ("2022 Proposed Regulations") provide guidance on the treatment of PFICs held by domestic partnerships and S corporations, as well as on other PFIC and Controlled Foreign Company ("CFC") related issues. The 2022 Proposed Regulations provide guidance regarding the determination of the controlling domestic shareholders of foreign corporations, the owner of a CFC or qualified electing fund ("QEF") that makes an election under section 1411, the treatment of S corporations with accumulated earnings and profits ("E&P") and the determination and inclusion of related person insurance income ("RPII"). The 2022 Proposed Regulations generally adopt an aggregate approach, requiring reporting, elections and inclusions at the partner or shareholder level rather than at the domestic partnership or S corporation level as previously has been the case. The 2022 Proposed Regulations generally apply for tax years of shareholders beginning on or after the date of the filing of these regulations as final in the Federal Register.

c. American Rescue Plan Act of 2021

In part as a response to the ongoing COVID-19 crisis, on 11 March 2021, President Biden signed into law the American Rescue Plan Act of 2021 (the "ARPA"). The ARPA, a USD1.9 trillion economic stimulus bill, provided several relief and funding measures for individuals, businesses and state governments that had been adversely impacted by the pandemic. Among the changes were some notable tax law changes summarised here.

i Certain excessive employee compensation

To prevent corporations from taking deductions on compensation that is deemed "excessive," there is a USD1 million limit on the deduction for annual compensation paid to a "covered employee." The ARPA expands the definition of who is considered to be a "covered employee."

For tax years beginning on or before 31 December 2017, a "covered employee" included the Chief Executive Officer ("CEO"), in addition to the three most highly compensated officers whose compensation was required to be reported to shareholders under Securities and Exchange Commission ("SEC") disclosure rules.

Beginning in 2018, the definition was expanded under the Tax Cuts and Jobs Act ("TCJA"), enacted on 22 December 2017, to include any individual who served as the CEO or Chief Financial Officer ("CFO") during the taxable year, in addition to the three most highly compensated individuals aside from the CEO and CFO during the taxable year. Additionally, the TCJA expanded the definition to include any individual who was a covered employee for any taxable year beginning after 31 December 2016.

Most recently, the ARPA expanded the number of covered employees for tax years that begin after 31 December 2026 and will include an additional "five highest compensated employees" beyond the CEO, CFO and the three highest paid executive officers already covered by existing law (i.e. the definition will apply to up to 10 individuals). This change is relevant for taxpayers undergoing a purchase or sale as large one off payments made in connection with a change in ownership may be subject to this excessive compensation rule.

ii Worldwide Interest Expense Allocation Repeal

The worldwide interest expense allocation election, provided by section 864(f), was repealed as part of the ARPA.

Originally enacted in 2004, the effective date of section 864(f) was delayed several times by legislation and the provision became effective for taxable years beginning after 31 December 2020. Section 864(f) allowed a "worldwide affiliated group" to make a one off irrevocable election to allocate the interest expense of each domestic corporation that is a member of the worldwide affiliated group (which includes 80% owned controlled foreign corporations) as if all members of such group were a single corporation. This is commonly referred to as allocation on a "worldwide basis." Where foreign corporations had at least a proportionate share of interest expense (based on relative asset basis), none of the US group's interest expense would be allocated against foreign source income.

Interest expense allocation is significant, because the FTC rules limit the amount of foreign income taxes that a taxpayer may claim as a credit against its US income tax based on the US tax imposed on the taxpayer's foreign source income on a category-by-category (or "basket") basis. As a result, greater allocation of interest expense to foreign source income reduces the FTC limitation.

By repealing section 864(f), Congress expects to raise significant tax revenue by generally lowering the FTC limitation for multinational taxpayers. The repeal is retroactive to taxable years beginning after 31 December 2020, which was the last scheduled effective date.

3. SHARE ACQUISITION

A buyer may purchase interests in certain entities and receive the same economic result as a purchase of assets. However, the purchase of interests in an entity treated as a corporation for tax purposes will generally not be treated as an asset purchase. Thus, US tax practitioners will usually distinguish between the former as an "entity acquisition treated as an asset purchase" and the latter as a "stock acquisition". Some taxable stock purchases may electively be treated as asset purchases as discussed below under "Purchase Agreement".

a. Tax Attributes

- Following a change in share ownership, complex US rules limit the post-acquisition use of US tax net operating loss, US tax credit carry forwards and US interest expense carry forwards.
  - At a high level, a change in stock ownership occurs when one or more 5% shareholders increase their ownership of the company's equity by at least 50 percentage points within any consecutive three year period.
  - In such a case, the corporation generally may deduct such items only to the extent of the equity value of the company's stock at the time of change multiplied by the "long-term tax-exempt rate" (1.63% as of March 2022). During the five years following the ownership change, the limitation becomes less restrictive if the company's US assets had a net built-in tax gain and more restrictive if the company's US assets had a net built-in tax loss. If thoughtfully managed in advance, a change in control in an insolvency (bankruptcy) proceeding may avoid these restrictions.
- Under prior law, a net operating loss ("NOL") arising in a taxable year could be carried back to the two preceding taxable years and forward to the 20 years following the loss year. A loss could fully offset taxable income in the year applied, though in some cases an alternative minimum tax ("AMT") could still result in tax liability.
- TCJA eliminated the ability to carry back NOLs but allows them to be carried forward without the prior law 20 year limitation. However, an NOL can now offset no more than 80% of taxable income, before considering the NOL deduction. TCJA repealed the AMT and allowed a credit for AMT previously paid to be claimed over a four year period.

b. Tax Grouping

- US corporations (that are not S corporations) tied together with 80% ownership of their voting rights and value have the option to "consolidate" and defer tax consequences of transactions between members so long as those members remain consolidated.

- The stock basis of a corporation that is a subsidiary within a US consolidated group will be increased by its US taxable income and decreased by its US taxable loss beginning on the date it joins the consolidated group. Thus, a consolidated group that has formed a US subsidiary may have no tax preference as to whether it sells the US subsidiary or the assets of the US subsidiary.
- A US S corporation that owns 100% of the stock of another corporation may elect to disregard the subsidiary as separate from the parent, effectively treating the subsidiary as a branch of the S corporation for tax purposes.
- Foreign companies and flow-through entities with more than one owner may not consolidate for US tax purposes, and, if interposed between two US corporations, prevent those corporations from consolidating with each other (unless the foreign entity is a disregarded entity for US purposes).

c. Tax Free Reorganisations:

- Entities taxed as corporations in the US are often able to achieve a combination or separation without incurring US tax on the entities or their owners so long as (among other things) the transaction is undertaken for non-tax reasons and pursuant to a plan, the consideration in the transaction is equity, and certain levels of pre-transaction business conduct and equity ownership are continued after the transaction.
- Although both combinations and separations of US corporations in a tax free manner require careful compliance with complex rules, tax free separations (spinoffs, split-offs, and split-ups) tend to be more difficult to achieve than combinations.
- The readjustment of a single corporation's capital structure (corporate recapitalisation exchanges involving stock or debt securities) can often be achieved tax free, but any unpaid interest or dividends in arrears on exchanged securities will typically be accelerated and should be carefully evaluated.
- A change in a corporation's organisational type and jurisdiction can usually be undertaken tax free so long as the change does not remove assets or entities from the taxing jurisdiction of the US.

d. Purchase Agreement

In the following circumstances, a stock acquisition may be treated as an asset acquisition for US tax purposes:

- 80% or more of a domestic target's stock is acquired by a purchaser or affiliated group of purchasers during a 12 month period, the target is either an S corporation or a member of a consolidated group of corporations, and the purchaser (and/or the seller, in some cases) elects; in this case, the seller will incur the economic liability for the tax on the deemed asset sale (depending on the facts, this is either known as a section 338(h)(10) or section 336(e)) election.
- Sometimes (usually because an existing owner wants to retain significant equity) the purchase of an S corporation cannot qualify for a section 338(h)(10) or section 336(e) election. In this case, the owners of an S corporation will often contribute their S corporation stock to a new S corporation, convert the old S corporation to an LLC and sell interests in the LLC to the buyer in a transaction treated as an asset purchase.

A domestic corporate acquiror of a target's stock (regardless of whether target is domestic or not) may make an election on similar facts as above without the seller's consent, in which case the buyer will incur the economic liability for the tax on the deemed asset sale (if the target is domestic) (this is known as a section 338(g) election).

- If the target of a section 338(g) transaction is a foreign corporation, the deemed asset sale can result technically in a different analysis for the seller's US tax consequences.

USA

- US owned buyers almost always prefer a section 338(g) transaction for a foreign corporation because the section 338(g) election eliminates the US tax history of the acquired foreign corporation, something which is very difficult to determine if the foreign corporation is not US owned.
- Sellers concerned about potential adverse tax effects from a unilateral 338(g) election by a buyer may protect themselves in the purchase agreement by prohibiting such an election or requiring buyer indemnification for any adverse consequences. Likewise, buyers interested in making such an election may wish to signal their intention early or ensure that the purchase agreement does not contain such seller protections.
- Any entity taxed as a corporation that has been consolidated with other corporations may be liable to the government for taxes of the consolidated group during the period it was consolidated. Most purchasers will seek representations regarding the entity's historical consolidations and seller indemnities for any tax resulting from any such consolidation.
- An S corporation and its owners enjoy the advantage of the corporation's profits being taxed only to the owners and not to the corporation, as well.
  - If a corporation claiming S corporation status failed to qualify or maintain its qualification as an S corporation, US tax law will treat the company as a C corporation taxable on its own profits. Buyers typically seek seller indemnification for this exposure, and, because the individual owners would be entitled to tax refunds in such a case, buyers may also seek rights to receive such tax refunds as partial security for the indemnity.
  - For S corporation shareholders, the sale of shares creates capital gain whereas the actual or elective sale of an S corporation's assets can create a blend of capital gain and ordinary income. A share purchase without a section 338(h)(10) election yields no step-up in the US tax basis of the target S corporation's assets, whereas an actual or elective purchase of the S corporation's assets will. Economic modelling is important to measure the benefit to the buyer of the step-up in an asset sale and the additional cost, if any, to the seller. If additional seller cost is present, the seller will often ask to be made whole.
- A buyer of interests in a partnership (or entity treated as a partnership for tax purposes) or disregarded entity should expect to achieve the same tax economics as if it had purchased a pro-rata share of that entity's assets. The mechanisms for achieving this can be extraordinarily complicated and require careful consideration.
- Because state merger laws typically permit a majority owner of an entity to "squeeze out" other owners and avoid protracted negotiations over sales of recalcitrant owners' interests, purchases of entities are often structured as mergers. In such transactions the purchaser sets up a merger company and merges that company into the target, with cash transferring directly from the merger company to the seller or sellers' representative. At closing, all former owners' interests are typically cancelled and converted into rights to receive cash. For tax purposes, the merger company is usually ignored entirely due to its intentionally transient existence. If the merger company borrows funds to complete the acquisition, that borrowing is treated as made by the target, so that proceeds distributed to selling shareholders are treated as received in a redemption of shares rather than a sale to the buyer.
- Large amounts of compensation that become payable to certain employees (usually management team members) upon a change in control of an entity taxed as a corporation for US tax purposes may constitute "golden parachute payments." These payments may be partially non-deductible to the corporation and may create a penalty tax to the recipient. Privately owned entities may typically avoid these provisions if the issue is identified and managed properly. In addition to seeking seller and/or target representations that the target and its subsidiaries are not party to any agreement governed by "section 280G," a buyer should understand whether any compensation agreements contain "gross-up" obligations that would require the entity to pay the recipient additional amounts to alleviate costs of the penalty tax.

- When a target entity treated as a corporation for tax purposes reports its taxes on the cash method of accounting (e.g. recognises income only when cash is received) and that target entity is acquired by an entity that reports its taxes on the accrual method of accounting (e.g. recognises income when it has the right to receive cash), the target entity generally will be required also to use the accrual method of accounting post-acquisition. Depending upon the form of the transaction, this may accelerate recognition for tax purposes of all of the target's rights to receive cash and obligations to make payments and any resulting tax consequence may be borne economically by the buyer. US tax rules permit an entity that changes its accounting methods detrimentally (for tax) in one year to pay the additional tax due over four tax periods. The net working capital provisions in a purchase agreement generally should make adjustments that shift the resulting tax consequence to the seller in these situations.
- A US or US owned buyer typically will ask for representations and warranties with respect to the legal types of entities being acquired directly or indirectly and their tax treatment for US tax purposes. As a general matter, US entities other than corporations will not be treated as corporations for US tax purposes unless certain elections are made, but foreign limited liability entities will almost always be treated as corporations for US tax purposes unless certain elections are made.
- Although there are exceptions, the income of a US flow-through entity is taxed to its owners, so that no pre-closing income tax liabilities are inherited by a buyer. However, non-income tax liabilities will typically remain and buyers will typically require related representations, warranties, and indemnities.
- Buyers typically ask that tax indemnities be treated separately from the rest of the deal indemnities and that such indemnities only lapse following some reasonable period after the tax authorities can no longer assess the taxes.
- If a share sale is treated electively as an asset sale, the purchase agreement should contain some agreement between the buyer and seller as to how the purchase price will be allocated among the assets for tax purposes. See discussion, below, regarding purchase price allocations in asset sales.

e. Transfer taxes on share transfers

- A buyer must withhold 15% of the purchase price of the shares of any US corporation the fair market value of whose assets is half or more attributable to US real property (so-called "FIRPTA" withholding); this 15% amount is remitted to the US government. Although land and buildings clearly constitute real property, other property permanently affixed to the ground and some building components can also constitute real property. Withholding tax can be avoided if the target corporation certifies in good faith that the fair market value of its real property is less than 50% of the value of its assets (and has been for the previous five years) or the seller certifies that it is a US person. Share transfer agreements typically condition closing on the provision of such certification.
- Some states impose a tax on the transfer of shares, either as a securities transfer tax (similar to a stamp tax) or on the same theory as FIRPTA, above. These are not universal, but the parties to a share transfer agreement should identify whether the risk of such tax exists, and it is to be borne. There is no "market" standard for this sharing.

Applicability of "purchase accounting" to a direct or indirect acquisition of shares: Under Financial Accounting Standards Board Accounting Standards Codification 805, a company must undertake business combination accounting (so called "purchase accounting") whenever an entity acquires direct or indirect control (>50%) of another entity. Purchase accounting effectively resets all the assets and liabilities of the company (and all of its subsidiaries that report their results in consolidation with the company) to fair market value for financial reporting purposes. Financial reporting does not affect the cash tax situation of the company but can affect the company's effective tax rate and the tax reporting (of deferred items, etc.) on its balance sheet. Purchasers should carefully consider the potential implications of purchase accounting with respect to possible post-acquisition reorganisations or other transactions.

f. Share Purchase Advantages

Share purchases, can avoid consent requirements with respect to transfers of contracts, licences, permits, etc. However, buyers should review contracts and licences to ensure they do not contain "change in control" consent rights.

Share purchases typically have the advantage of simplicity of execution, avoiding the necessity of transferring title to property owned by the company and potentially paying taxes on the transfers. They can also avoid resetting tax values to fair market value with respect to local property taxes.

In a transaction with significant time between signing the agreement and closing, some states permit an entity to finalise some of its tax exposures prior to acquisition by applying for and receiving "tax clearance certificates."

g. Share Purchase Disadvantages

- The target's tax basis in its assets remain unchanged.
- The target's liabilities, whether known or unknown, remain target's liabilities; although seller indemnities can help alleviate costs of such liabilities, indemnities (if available) typically are capped and expire.

4. ASSET ACQUISITION

a. General Comments

A taxable asset acquisition generally results in the recognition of gain or loss by the selling company, as well as at the owner level if the proceeds of the sale are distributed. Losses and credits may be used to offset the tax liability resulting from the sale, but do not carry over to the purchaser. The purchaser takes a cost basis (generally fair market value) in the acquired assets.

Existing income tax liabilities of the selling entity ordinarily do not carry over to the acquiror in an asset purchase. These liabilities remain with the seller unless there is a contractual agreement specifically providing otherwise. However, certain non-income tax liabilities (sales and use, payroll, and property) may be inherited by a buyer of the business assets.

b. Purchase Price Allocation

When assets, constituting a trade or business, are acquired in a taxable transaction, the parties to the transaction are required to allocate the purchase price among the assets using a residual method among seven classes of assets. The parties are bound by any agreed allocation of purchase price among the assets. To the extent the parties mutually agree to the allocation, a valuation of the assets is not necessary as a practical matter. If the parties have difficulty arriving at a mutually agreeable allocation, having an independent valuation performed may prove helpful.

c. Tax Attributes

Existing tax attributes, such as net operating losses, foreign tax credits, capital losses, as well as other attributes do not carry over to the purchaser in a taxable asset acquisition. While income tax liabilities generally remain behind with a seller in an asset sale, if there are significant tax attributes such as loss and credit carryovers, it may be beneficial and indeed preferred, for a seller to structure a transaction as an asset sale, if the tax on the transaction can be reduced or eliminated.

d. Tax Free Reorganisations

If an asset acquisition takes the form of a tax free reorganisation in which a substantial part of the consideration is paid in the form of stock of the acquiring company, the stock must constitute a significant part of the overall consideration, usually between 40% and 100%. The gain recognised by selling shareholders may be limited to the amount of non-stock consideration received and a gain or loss may not be recognised at the company level with respect to asset transfers. With respect to asset reorganisations between corporations wholly owned by a common parent, either directly or indirectly, cash and other non-stock consideration may be used as a significant percentage of the overall consideration, up to 100%. To the extent a gain is not recognised, exchanging shareholders receive a carryover basis in the shares they receive and the basis of the corporation's assets is not increased. A reorganisation may take the form either of a stock acquisition or an asset acquisition.

e. Purchase Agreement

In a number of states, a purchase of assets can subject the buyer to liability for the seller's taxes if seller fails to pay. The circumstances that give rise to this tax can vary, but buyers may wish to seek seller indemnification against such taxes or require a "tax clearance certificate" from the relevant state.

A purchase agreement for assets (or a sale of stock treated as an asset sale for tax purposes) should contain an agreement between buyer and seller as to how the purchase price (and any underlying debt assumed or deemed assumed) will be allocated to the assets for tax purposes. Non-corporate sellers are often incentivised to allocate the purchase price to intangible assets so as to minimise their ordinary gains, whereas buyers are incentivised to allocate the purchase price to tangible assets which permits much faster cost recovery for tax purposes. Buyer and seller are obligated to notify the government in the event they do not agree on the allocation. A typical scheme for allocation is for one party to propose an allocation, the other party to approve or challenge the allocation within a given period of time, the parties then negotiate in good faith to resolve their differences and then an independent firm is typically engaged to resolve any remaining differences (one party usually proposes two to three independent firms and the other party selects one of those firms). If a particular allocation is important to a party, the purchase agreement should provide for that particular allocation.

f. Depreciation and Amortisation

A major advantage of a taxable asset purchase is that, in the instance where the seller recognises gain, the buyer receives a corresponding step-up to fair market value in the basis of the acquired assets (including goodwill), generally resulting in increased future depreciation or amortisation deductions for the buyer. Intangible assets (including goodwill) acquired as part of a trade or business are amortised using the straight line method over a 15 year period. Intangible assets not acquired as part of a trade or business are generally amortised using a straight line basis over their estimated useful lives. Software not acquired as part of a trade or business may be amortised using the straight line method over 3 years.

Under the TCJA, the bonus depreciation rules expanded to provide for a 100% deduction for the cost of "qualified property." Qualified property generally includes tangible depreciable property with a class life of 20 years or less. Goodwill and other section 197 intangibles are not considered qualified property and as mentioned above, are still amortised over 15 years.

The new bonus depreciation rules apply to property placed in service or purchased after 27 September 2017 with a depreciation life of 20 years or less. Pre-existing depreciable assets would be recovered under current MACRS rules. Further, the new bonus depreciation rules include not only "original use property" but also "used" property to the extent a taxpayer acquires such property in an asset deal as well as deemed asset deals (such as section 338(h)(10), partnership/LLC acquisitions). These new rules will phase down the percentage of deduction for property acquired after 2022 to 80%, 60%, 40% and 20% annually from 2023 to 2026. MACRS should apply to the remaining depreciable basis.

A correction was made in the Coronavirus Aid, Relief, and Economic Security ("CARES") Act, enacted on 27 March 2020, which applies the same favourable bonus depreciation treatment for certain improvements to non-residential real estate ("qualified improvement property"), such as improvements to leased property, retroactive to 2018.

Pursuant to section 179, dealing with certain software and tangible property, taxpayers may elect to treat as a current deduction the cost of such assets acquired for use in the active conduct of a trade or business. Under the TCJA, the total deduction available under section 179 is generally USD1 million. This limitation, which is adjusted annually for inflation, is reduced dollar-for-dollar to the extent the total cost of section 179 property placed in service during the year exceeds USD2.5 million.

g. Transfer Taxes, VAT

Asset sales may result in significant taxes. Many states and local jurisdictions impose sales and use tax on asset transfers, though occasional or isolated sale exemptions often apply. Real property is generally subject to realty transfer or documentary stamp tax. The US does not impose a value added tax ("VAT"). It should also be noted that asset sales may give rise to both ordinary income and capital gain (taxed at a reduced rate for individuals). In the case of a disposition of the assets of a US business by a foreign person, the gain is ordinarily treated as effectively connected income subject to US tax. Under recent legislation, the sale of a partnership interest by a foreign person is treated as the sale of that person's share of the US business assets of the partnership.

h. Asset Purchase Advantages

In an asset acquisition, the tax basis of the assets is stepped up, or stepped down and the basis may be depreciated or amortised over a period of time for tax law purposes. If any of the assets acquired are "qualified property," the TCJA provides for the immediate expensing of the cost for such property.

Prior law allowed a 50% current deduction for certain investments in new depreciable property. The remaining cost of the property was recoverable through depreciation or amortisation. TCJA modified this "bonus" depreciation regime by allowing 100% of the cost of new or used property to be deducted immediately, as long as the property is purchased from an unrelated party. Eligible property includes tangible personal property with a recovery life of 20 years or less (which will include most tangible personal property) and certain software. The new bonus depreciation rules will provide a significant benefit to taxpayers engaging in asset acquisitions (or deemed asset acquisitions), because the portion of the purchase price allocable to eligible property will be deductible immediately by the purchaser. There is concern, however, about the interaction of this provision with the interest expense limitation that comes into effect in 2022. Bonus depreciation will reduce EBIT and therefore reduce the allowable deduction for interest.

The liabilities of a Target entity are not acquired as part of an actual asset purchase, unless otherwise agreed to in the purchase agreement. A person who acquires assets in a deemed purchase, such as a stock acquisition with a section 338 election, generally is deemed to assume the liabilities of the target. Certain non-income taxes may attach to the acquired assets.

In an asset acquisition, it is possible to acquire only the desired assets or pieces of a given business.

When acquiring assets, the buyer is able, through its existing affiliates or newly created entities, to acquire the desired assets in a favourable jurisdiction. For example, a buyer evaluating the assets of a Target with IP located in a high tax jurisdiction may decide to purchase the IP through a newly created entity in a low tax jurisdiction.

i. Asset Purchase Disadvantages

Tax attributes of a target remain behind in an asset purchase, (e.g. net operating losses, tax credits, capital losses).

A seller may demand a higher purchase price to compensate for paying a higher federal income tax rate for selling assets at ordinary rates as opposed to selling stock at preferential capital gains rates.

State and local transfer taxes may be implicated in the context of a transaction structured as an asset purchase.

In an asset purchase, assets will need to be retitled and new agreements put into place with existing customers of the acquired business, employees, and between affiliated entities interacting with one another.

5. ACQUISITION VEHICLES

a. General Comments

As discussed above, the US provides various forms of legal entities for purposes of an acquisition. In determining the optimal type of legal entity ("vehicle") to make an acquisition, an investor must weigh the facts and circumstances of its situation, including its existing legal entity structure, the jurisdictions of the target company and its subsidiaries, the jurisdictions and makeup of the ultimate investor base, and the desired legal and tax consequences of the acquisition.

b. Domestic Acquisition Vehicle

- LLC

  The ability of a domestic LLC to be treated electively as a flow-through entity or a corporation for federal tax purposes provides significant tax flexibility in an acquisition.

  The acquisition or disposition of the equity interests in a partnership or disregarded entity will generally be treated as the acquisition or disposition of the assets of the entity for US federal tax purposes.

- Partnership

  Because of the limited liability of members of a limited liability company, partnerships (in which at least one partner generally must be fully liable for the debts of the entity) are less commonly used. However, partnerships can be useful in the foreign context when a particular treaty grants specific rights to partners or partnerships that are clearer than or different from those granted to members or limited liability companies.

- S corporation

  Because of the limits on shareholders, discussed above, and the lack of flexibility with respect to stock arrangements, practitioners typically encounter S corporations only when a US individual or family owns a business of limited size. Most reasonably sophisticated investors will prefer to use an LLC or partnership if they wish to achieve flow-through tax treatment in the US.

- C corporations

  The global legal community and tax authorities typically understand US corporations quite well. Because the US taxes foreign owners of pass-through entities engaged in business in the US as if they engaged in that business directly, and treats corporations as taxpayers in their own rights, a US corporation is commonly interposed (as a "blocker") between (a) the taxable operations of a flow-through entity (otherwise owned by US taxable persons) and (b) tax-exempt or non-US investors; the recent reduction in the US corporate income tax rate to 21% has made this option even less costly. Considerable thought should be given to the appropriate type and jurisdiction of entity that owns the blocker's shares to minimise investor level taxes with respect to distributions, withholding taxes and share sales.

US investors acquiring the stock of a US corporation will usually organise a new US corporation for that purpose and cause the target to join the acquisition corporation in filing consolidated income tax returns. Corporate investors often prefer investing in corporate entities because of the partial deduction they enjoy with respect to dividends from such entities.

c. Partnerships and Joint Ventures

Business arrangements in which parties do not form a legal entity (i.e. agree on the arrangement via contract) are typically referred to as "joint ventures." If the parties to a joint venture share profits, the joint venture may be treated as a flow-through entity for federal tax purposes and subject the parties to tax in the US with respect to any business that is carried on in the US by the joint venture. Although joint ventures can provide significant commercial advantages and flexibility, these arrangements should be carefully understood and negotiated by all parties with the aid of a tax adviser well versed in US flow-through taxation and international tax.

d. Strategic vs Private Equity Buyers

Strategic acquirors who anticipate reinvestment of a target's earnings are more likely to select a corporate mode of business for the target, because the corporate tax rate is low and dividends, although subject to shareholder level tax, are unlikely in such cases. A private equity fund (or a strategic buyer who anticipates significant return of cash on investment) may be more likely to select a pass-through mode of business for the target, considering (a) the single layer of tax on current earnings, (b) the ability to pass cashflow to owners without incremental tax, and (c) the ability to increase basis in investment to the extent of reinvested, after-tax earnings. Obviously, these are general observations and ultimate strategy will depend on the investors' particular facts.

6. ACQUISITION FINANCING

a. General Comments

Cross border transfers of USD10,000 or more must be reported to the federal government; however, banks that move funds will automatically report such transfers.

"Know Your Customer" laws ("KYC" or "Customer Identification Programme") in the US can be complicated and can create delays in setting up US bank accounts, which can lead to delays in closing if the complexity is not properly anticipated.

US citizens or residents of any type are required to report to the federal government ("FBAR") any financial interest in or signature authority over accounts outside the US (>USD10,000 individually or in the aggregate). Penalties for failure to report can be significant.

b. Equity

An acquisition vehicle must generally be funded with a meaningful amount of equity. Otherwise, all or part of the debt financing may be recharacterised as equity. US tax law does not allow for a notional interest deduction on equity contributions. Distributions on equity are treated as profit distributions to the extent of available current or accumulated profits. See "Acquisition Vehicles" above for additional discussion.

c. Debt

As a general matter, the amount of debt used in any US acquisition should be determined by weighing:

- The potential for debt to be recharacterised as equity by federal authorities:
  - Common Law Recharacterisation: The following factors can be cited in support of treating an instrument as debt rather than equity for federal tax purposes and thus, allowing deduction of "interest": fixed maturity not overly long-dated, unconditional obligation to pay, defined interest rate, standard creditor rights upon default, lack of equity features (non-convertible, non-participating, non-voting, etc.), supported by borrower's projected cashflows, disparity between identities of stock and debt holders, reasonable debt-equity ratio for borrower's market, absence of management representation, lack of subordination, holder of debt acts like creditor after issuance, and purpose of debt is not for business start-up). Neither the presence nor absence of any one factor is determinative.
  - Debt issued after 4 April 2016 by a US corporation (or one of its pass-through entity subsidiaries) to a person who is related within a >80% chain of ownership but not a member of the issuer's US consolidated group may be recharacterised as equity if it is issued in:
    - A distribution; or
    - Exchange for stock or assets of another related party.

Although exceptions exist, primarily for short-term obligations and certain qualifying reorganisations, this recharacterisation will generally occur if the debt was issued with the purpose of funding these transactions or within 36 months of any such transaction, regardless of purpose.

- The tax deductibility of interest (see "Limitations on Interest Deductibility" below).
- The possibility that a related party who provides a guarantee that enables a thinly capitalised corporation to borrow amounts it could not have otherwise borrowed (rather than simply enabling it to obtain better terms) may be treated as the true borrower (the so-called "Plantation Patterns issue").
- In a related party context:
- Withholding taxes on interest and the benefits of extracting the principal amount from the borrower free of withholding tax (versus extracting the same amount in the form of dividends);
  - US penalty taxes on significant payments by a US corporation (or consolidated group) to foreign related parties; and
  - The amount of debt that would be respected as such under-state law; this can affect:
    - A creditor's ability to recover in any bankruptcy of the borrower; and
    - The ability of the borrower to make distributions.

Interest can include regular "coupon" interest (whether paid in cash or not), accruals of the difference between issue price and stated value ("original issue discount" or "OID"), amortisation of debt issuance costs, and other items that have a "time value of money" component.

i Limitations on Interest Deductibility

- Net interest deductions by US taxpayers are limited to 30% of adjusted taxable income ("ATI").
  - ATI consists of taxable income with addbacks for non-business income/losses, business interest income and expense, net operating loss deductions, and (for tax years beginning before 1 January 2022), depreciation, amortisation, and depletion.
  - This is often referred to in pre-2022 years as the "30% of EBITDA" limitation and, in post-2021 years, as the "30% of EBIT" limitation.
  - Additions to ATI from foreign subsidiaries are possible but limited, and, unlike the EU, the US does not provide for relief if the overall group's external gearing is higher than it is in the US.
  - Obviously, the effects of this limitation become more draconian as interest rates rise and/or business profits decrease.
  - Interest expense which has been limited may be carried forward indefinitely but is treated as if it was a net operating loss in the event of a change in control (See Share Acquisitions, Tax Attributes, above).
- Applicable High Yield Discount Obligations ("AHYDO") – If a corporation issues debt with significant OID and the debt matures more than five years after issuance, the accruals of OID expense by the borrower may be deferred (or disallowed) to the extent the yield exceeds the "applicable federal rate" plus 5%.
- Interest on debt issued by a corporation to acquire stock in another corporation or at least two-thirds of another corporation's assets by value may be non-deductible if the debt is subordinated to trade creditors and the borrower's (a) debt equity ratio exceeds 2:1 or (b) three year earnings are less than 3x the borrower's interest expense.
- The interest expense of a US corporation with foreign subsidiaries may reduce the utility of its foreign tax credits. Interest paid by a US corporation to related foreign parties (whether subsidiaries or not) may subject the US corporation to additional tax.
- Finally, the deduction for interest expense (like other expenses) incurred by a US person in respect of a related party will generally be deferred until such time as that related party takes the interest income into account for US tax purposes.

ii Debt Pushdown

Debt pushdowns in the US are fairly simple so long as a debt-equity recharacterisation is avoided. Standard pushdown in a taxable share purchase occurs as follows:

- Acquiror forms a US acquisition subsidiary and funds it with the desired level of debt and equity;
- Acquisition takes place by means of a merger of the acquisition subsidiary into the target, with the target surviving; this merger has the benefits of:
  - Low shareholder approval requirements and reduced exposure to complications arising from disaffected shareholders;
  - Legal simplicity; and
  - Ability to attach the acquisition debt directly to the assets of the target.

7. DIVESTITURE

a. In General

Divestitures generally take the form of taxable sales of business assets or shares of subsidiaries conducting the business to be divested. Non-taxable acquisitions of subsidiaries in exchange for shares of the acquiring company are possible, but rare in practice unless the shares received are immediately disposed of by the seller. Another non-taxable alternative is a corporate separation, often referred to as a spinoff, split off, or split-up.

b. Corporate Separations - Section 355

Section 355 deals with divisive transactions, such as spinoffs, split offs, and split-ups. Section 355 allows a corporation to distribute the stock of a subsidiary to shareholders without the recognition of income or gain by either the corporation or its shareholders. This favourable tax treatment can only be achieved by satisfying a number of stringent requirements.

The following is a summary of the requirements which must be satisfied in order to qualify for non-recognition treatment:

- Immediately before the distribution, the distributing corporation must control the corporation whose shares are being distributed (the "controlled corporation"). For this purpose, the term "control" means ownership of stock possessing at least 80% of the total combined voting power of all classes of stock entitled to vote and at least 80% of the total number of shares of all other classes of stock of the corporation.
- The distributing corporation must distribute all its stock and securities in the controlled corporation, or at least distribute enough stock to constitute control. If the distributing corporation retains any stock of the subsidiary, it must establish to the satisfaction of the IRS that the retention is not in pursuance of a plan having as one of its principal purposes the avoidance of federal income tax.
- Immediately after the distribution, with certain exceptions, both the distributing and controlled corporations must be engaged in the active conduct of a trade or business, and each active trade or business must have been actively conducted throughout the five year period ending on the date of the distribution.
- The transaction must not be used principally as a device for the (non-taxable) distribution of earnings and profits of the distributing corporation, the controlled corporation, or both.
- The distribution cannot transfer majority ownership of a disqualified investment corporation to a shareholder of the distributing corporation. In addition, neither the distributing corporation nor the controlled corporation can be a real estate investment trust. The terms "disqualified investment corporation" and "real estate investment trust" are defined elsewhere in the IRC.
- The distribution must not constitute a "disqualified distribution," defined as any distribution if, immediately after the distribution, any person holds disqualified stock in either the distributing or controlled corporation which constitutes a 50% or greater interest in such corporation. "Disqualified stock" is defined as any stock in the distributing or controlled corporation acquired by "purchase" during the five-year period ending on the date of the distribution, or stock received in a distribution to the extent the distribution is attributable to stock acquired by "purchase." If a distribution is characterised as a disqualified distribution, then the distributing corporation (but not its shareholders) will recognise gain on the distribution.

- The distribution must not be part of a plan or series of transactions pursuant to which one or more persons acquire directly or indirectly stock representing a 50% or greater interest in either the distributing corporation or controlled corporation (or their predecessors or successors). If one or more persons acquire stock representing a 50% or greater interest during the four year period beginning on the date which is two years before the date of distribution, a plan is presumed to exist "unless it is established that the distribution and the acquisition are not pursuant to a plan or series of related transactions". In such case, the distributing corporation will recognise gain on the distribution.
- The distribution must be undertaken pursuant to a valid corporate business purpose; and
- The regulatory and judicial requirements of (i) continuity of interest and (ii) continuity of business enterprise must also be satisfied.
- The business purpose requirement of section 355 is significantly more stringent than the business purpose test in other contexts. A corporate, rather than a shareholder, business purpose is required, and the taxpayer must be able to clearly demonstrate that the separation will provide a clear and measurable benefit to the businesses of the distributing and controlled corporations which is not related to federal income taxes. The regulations provide that a "corporate business purpose" is a real and substantial non-federal income tax purpose germane to the business of the distributing corporation, the controlled corporation, or the affiliated group to which the distributing corporation belongs. Moreover, the business purpose requirement is not satisfied if the stated corporate business purpose can be achieved through a non-taxable transaction that does not involve the distribution of the controlled corporation's stock and that is neither impracticable nor unduly expensive.

In general, the requirements outlined above must be satisfied based on all facts and circumstances and demonstrating that they are satisfied can be burdensome. Because the tax consequences of a failed section 355 distribution will almost always outweigh any benefit of the post-distribution structure, taxpayers are advised to undertake such transactions only with the assistance of a tax adviser. It is possible in some cases to obtain an advance ruling from the IRS that a proposed transaction qualifies for nonrecognition treatment under section 358.

8. FOREIGN OPERATIONS OF A DOMESTIC TARGET

a. Worldwide or territorial tax system

- The US historically has taxed the worldwide income of its citizens and residents, both corporations and individuals. Although the TCJA made major changes in the US taxation of foreign income, US persons are still generally subject to tax on their worldwide income. Some types of foreign income are, nevertheless, taxed more lightly now than they were before tax reform.
- Income from the sale or licensing of property for foreign use is subject to a reduced rate of tax under the Foreign Derived Intangible Income ("FDII") regime. This regime seeks to identify the return on intangible assets that are used in the production of property for sale or licensing abroad. That return is subject to tax at a reduced effective rate of 13.125%. The reduction in rate is achieved by allowing taxpayers a deduction equal to 37.5% of their FDII. FDII is calculated generally as the foreign sourced business income derived directly (rather than through controlled foreign subsidiaries or foreign branches) by a taxpayer, minus a deemed 10% return on a proportionate share of tangible assets. Income from CFCs and from foreign branches does not qualify for the FDII regime.

- Foreign branch income is taxed at full corporate rates. In addition, foreign income taxes paid with respect to foreign branch income may be credited only against the US tax attributable to the aggregate income of the taxpayer's foreign branches. New rules have been proposed for distinguishing between income generated by foreign branch operations, and by domestic operations in the same supply chain. These rules are predictably complex.

b. CFC Regime

The US defines a controlled foreign corporation as a foreign corporation that is more than 50% owned by "US shareholders," either by voting power or by value. A US shareholder is a US person who owns at least 10% of the value or voting power of the stock of the foreign corporation. Stock ownership can be direct or indirect and can be attributed to a US person from a related US or foreign person. If a foreign corporation is a CFC, generally its subsidiaries will also be CFCs.

Before the recent tax reform, US shareholders of a CFC were taxed currently only on its "Subpart F income" and on certain deemed distributions resulting from investments of CFC earnings in US property. Subpart F income includes primarily income of a passive or investment character, and income from certain related party transactions. Other income, especially income earned from the conduct of business in the CFC's home country, was not subject to current US tax and was generally taxed only when distributed to the shareholders as a dividend.

While largely retaining Subpart F, the TCJA introduced a new category of CFC income that is subject to current taxation in the hands of US shareholders. This is global intangible low-taxed income ("GILTI"). A US shareholder's GILTI inclusion is roughly equal to the aggregate net income of its CFCs (or its pro rata share of the income of CFCs that are not wholly owned), reduced by any Subpart F income and by a 10% implied return on tangible assets. Losses incurred by a CFC can be offset against the profits of other CFCs for this purpose. In many cases, nearly all CFC income is subject to current US tax in the hands of US shareholders under the GILTI regime. US shareholders that are corporations are allowed a deduction equal to 50% of their GILTI income (but not more than 50% of taxable income). Corporate US shareholders also may claim a foreign tax credit for 80% of the foreign tax paid by the CFC on its income that is taken into account in the GILTI calculation.

As discussed below, dividends paid by CFCs are generally no longer subject to tax in the hands of corporate US shareholders.

c. Foreign branches and partnerships

The US taxes foreign branch income on a current basis, including it in the taxable income of the domestic owner. A credit is allowed for foreign income taxes paid on branch income, subject to an aggregate limitation under which branch tax credits may only offset the US tax imposed on branch income. Transactions between a taxpayer and its branch, including contributions and remittances, are generally disregarded, but may be taken into account in measuring branch income. However, a branch must report its income in its functional currency, and remittances may give rise to exchange gain or loss. As mentioned above, branch income is excluded from the benefit of the FDII regime, and therefore is subject to taxation at the full corporate rate, before consideration of foreign tax credits.

Income derived from a foreign partnership is taxed in a manner similar to the taxation of branch income, and for many purposes a partnership interest is included in the definition of a branch. Partnerships, and entities treated as partnerships, are fiscally transparent. A partner is taxed on its distributive share of partnership income, whether or not distributed.

A foreign limited liability company or partnership can elect whether to be treated as a corporation or a partnership for US income tax purposes. A partnership for tax purposes can be formed (voluntarily or involuntarily) without the formation of a legal entity. Contractual joint ventures, for example, may be treated as partnerships if the parties intend to carry on business jointly and share profits and losses.

d. Cash Repatriation

Branch remittances are not taxable, except for possible exchange gain or loss as noted above. Dividends to a domestic corporation from a foreign corporation in which it owns an interest of 10% or more are effectively not taxed, as the recipient corporation is entitled to a deduction equal to the amount of the dividend that is paid from foreign earnings. No credit is allowed for foreign taxes attributable to the excluded dividend, or to the earnings of the foreign corporation from which the dividend is paid.

e. Transition Tax

As part of the transition to a new system of worldwide taxation, the TCJA imposed a one off tax on the accumulated earnings of foreign corporations in which US shareholders own an interest of 10% or more. This tax was imposed on US shareholders at the end of the last taxable year beginning before 2018. The tax rate was between 8% and 15.5%, depending on the amount of cash and cash equivalents held by the foreign corporations. The tax is electively payable over an eight-year period, with most of the payments due in the later years. This deferred tax liability is an exposure that should be considered during due diligence engagements.

f. Base Erosion and Anti-abuse Tax ("BEAT")

The BEAT imposes a minimum tax on large corporate taxpayers that make substantial deductible payments to related foreign persons. The tax is imposed at a rate of 10% (5% in 2018) on a base consisting of taxable income computed without regard to "base erosion payments". Base erosion payments include virtually all deductible payments made to foreign related parties. Combined with the reduced corporate income tax rate (21%) also included in the TCJA, the BEAT has the potential to reverse long-standing practices involving leveraged acquisitions and intangible licensing within multinational groups.

g. Global Intangible Low-Taxed Income ("GILTI")

As noted above, GILTI is a category of income taxed to the US shareholders of controlled foreign corporations ("CFCs"). GILTI sweeps nearly all CFC income that would not have been taxed currently under prior law into the taxable income of US shareholders. An elective exception applies to income that is subject to a relatively high rate of foreign tax. Instances of CFCs with large amounts of untaxed earnings accumulated over a period of years will now be rare. This substantially reduces the importance of rules that treat gain on the sale of CFC shares as a dividend, rather than capital gain, though those rules remain in effect. CFC income that has been included in the income of a US shareholder under GILTI becomes previously taxed income that can be distributed without further US tax.

h. Foreign Derived Intangible Income ("FDII")

FDII is a regime that provides for a reduced rate of tax on income derived by US taxpayers from the sale or licensing of property, or provision of services, to unrelated foreign users. This will primarily benefit exports of services and tangible and intangible property, and the benefit is not provided to income derived through a foreign branch.

i. Participation Exemption

As a companion to the GILTI provisions, Congress provided US corporations with a deduction equal to the amount of otherwise taxable dividends received from 10% owned foreign corporations. This largely removes the barrier to repatriation of foreign earnings that existed under prior law. It allows the tax free distribution of earnings even if those earnings have not been taxed as GILTI.

j. Foreign Tax Credits ("FTC")

The TCJA reduced the scope of foreign tax credit benefits, by eliminating indirect credits with respect to inbound dividends (which instead are now exempt from tax). The foreign tax credit is still significant, however, because credit is still available for foreign taxes that a domestic taxpayer pays directly (including withholding taxes and taxes on foreign branch income), as well as for taxes paid indirectly under the pass-through regimes of legacy subpart F and the new GILTI provisions.

The limitation is calculated to be the amount of US tax imposed on foreign income. However, certain types of foreign income are considered separately rather than included in the worldwide general limitation. Before TCJA, the principal separate limitation was applied to income considered passive and justified on the basis that such income was easily portable to low-tax jurisdictions. TCJA created two new categories of separate limitation income: GILTI and foreign branch income. The low rate of domestic tax on GILTI makes this separate category particularly significant. Moreover, GILTI credits are further restricted by a provision that disallows carryovers and carrybacks of taxes imposed on GILTI in excess of the current limitation.

k. Source of Manufacturing Income

Prior to TCJA, income from the manufacture and sale of personal property was generally considered to arise equally from manufacturing activity and sales activity, resulting in a 50:50 split of gross profit between the place of manufacture and the place of sale. For US manufacturers, this rule often provided a benefit because income from export sales was rarely taxed abroad, due to the effect of tax treaties and foreign laws that incorporated a permanent establishment concept in their jurisdictional rules. The resulting low- or un-taxed income could be used to average down the effective rate of foreign tax on the taxpayer's foreign income, expanding its foreign tax credit limitation. Conversely, the rule had little impact on foreign exporters of products to the US, because they could generally arrange their affairs in such a way that the sales income, though treated for US purposes as income from US sources, was exempt by treaty as not attributable to a permanent establishment in the US. TCJA changed the source rule applicable to income from sales of goods manufactured by the taxpayer. All the income from manufacturing and sale is now considered to arise at the place of manufacture. As a result, domestic exporters will have access to fewer foreign tax credits, while foreign exporters to the US will incur less risk of US taxation. Note however that income from the purchase and sale of inventory is still generally sourced at the place of sale, creating a difference in treatment between manufacturers and distributors.

l. CFC Investments in US Property

Section 956 taxes US shareholders of a CFC on earnings not otherwise subject to US tax on a current basis, to the extent the CFC holds certain kinds of US property (such as stock or obligations of a related US person). This provision was formerly a major obstacle to indirect repatriation of foreign profits. TCJA did not amend section 956 directly, but other provisions of TCJA deprived section 956 of most of its effect on corporate taxpayers. First, the participation exemption made it possible to repatriate untaxed foreign profits free of US tax. Second, GILTI substantially reduces the ability of taxpayers to accumulate low-taxed earnings in CFCs, by imposing tax on the US shareholders with respect to most CFC income. Recognising the diminished role of section 956 after TCJA, the IRS has announced that corporate US shareholders will not be subject to tax as a result of CFC investments in US property, to the extent the earnings of the CFC would have been eligible for the participation exemption if repatriated directly.

9. OTHER GENERAL INTERNATIONAL TAX CONSIDERATIONS

a. Special Rules for Real Property, including Shares of "Real Property-Rich" Corporations

The US taxes all gains recognised by foreign persons with respect to US real property. A US real property interest ("USRPI") includes any interest in real property located in the US, other than an interest solely as a creditor. Shares of a domestic corporation are also USRPI, if the fair market value of USRPI owned by the company equals at least half the value of its total assets. Thus, a foreign person is taxed on gain realised on the disposition of stock of a US real property holding corporation ("USRPHC"). Gain on sale of a partnership interest is also taxed to the extent the value of the partnership interest is attributable to real property assets. As indicated elsewhere, the US also taxes gain attributable to any assets of a trade or business conducted within the US.

Gain on the sale or exchange of a USRPI is taxed in the same manner as income from the conduct of a trade or business in the US. Gain realised on the exchange of a USRPI for other property in a transaction that would otherwise qualify for nonrecognition of gain will be recognised, unless the property received in exchange is also a USRPI.

A purchaser of a USRPI must generally withhold 15% of the purchase price, unless the seller provides a certificate that the seller is a US person. Stock of a domestic corporation is presumed to be a USRPI unless the corporation provides its certification that the stock is not a USRPI, or in other words, that the corporation's assets do not consist, and have not in the preceding five year period consisted, at least 50% of USRPI.

Net income derived from US real property used in a trade or business is taxable at regular corporate or individual rates, as the case may be. Rental income derived from real property held for investment, rather than used in a trade or business, to is subject to gross basis withholding tax of 30% unless a lower treaty rate applies. However, a foreign person may elect to be treated as engaged in a trade or business with respect to the investment property, in which event tax is imposed at regular rates on the net income from the property. Some treaties provide a similar election.

b. CbC and Other Reporting Regimes

The US requires CbC reporting by the US parent of a multinational enterprise with prior year group revenue of at least USD850 million.

The reporting company must file Form 8975 and Schedule A (Form 8975). A separate Schedule A is filed for each foreign jurisdiction in which the group has reportable activities. The forms are attached to the corporation's income tax return.

10. TRANSFER PRICING

Transfer pricing is a term used to describe intercompany pricing arrangements relating to transactions between related entities. The international standard for determining the appropriate transfer price is the arm's length principle. Under this principle, transactions between two related parties should produce results that do not differ from those that would have resulted from similar transactions between independent companies under similar circumstances. This principle is cited in the US transfer pricing rules (section 482 and the Treasury regulations thereunder). The section 482 regulations provide several methods to test whether a price meets the arm's length standard, but provide no strict priority of methods. Thus, no method invariably will be considered to be more reliable than another. Instead, every transaction reviewed under section 482 must be judged under the method that, under the facts and circumstances, provides the most reliable measure of an arm's length result. In addition, the type of transaction may also influence the method and in most cases, there will be a range of acceptable pricing under each method.

There are three stages in Mergers and Acquisitions where transfer pricing has an impact. The first phase, due diligence ("DD") is the time to understand the target company's transfer pricing policy and identify the transfer pricing risks and opportunities. Some common factors should be considered in assessing transfer pricing risks are:

- Significant intangibles – are the ownership and use of such resources aligned; and
- Are the functions and risks borne by each party as described in intercompany agreements different from the allocation of those functions and risks in practice.

DD is the phase when the risks of the company are identified and measured. During this phase, the DD scope may be limited to reviewing the high-quantity transactions and transactions that involve intangible property and potential tax havens.

The second phase is the optimisation of the business model. This is the phase where the transfer pricing policy of the merged company is integrated into that of the acquirer in order to maximise the shareholder value. This phase also involves other considerations like value chain optimisation, alignment of business with the transfer pricing policy, intangible property strategies, and cross border redeployment of functions and risks.

The third and the final phase involves standardising, centralising, and automating the statutory transfer pricing compliance requirements. This allows the merged company to also meet the global transfer pricing compliance requirements such as master file, local files and country-by-country reporting.

11. POST-ACQUISITION INTEGRATION CONSIDERATIONS

- Before the TCJA, post-acquisition integration of a US target company into a foreign based multinational enterprise was often focused on minimising the US tax base by moving foreign operations out from under the US structure, moving intangible assets up to the foreign parent or another non-US-controlled entity, and earnings stripping through payment of deductible interest and royalties by the US target.
- The TCJA attacked these fundamental post acquisition integration considerations on many fronts:
  - The reduction in the corporate tax rate from 35% to 21% greatly reduced the potential tax savings from earnings stripping or from moving income-producing assets and operations out of the US structure. In the case of an asset acquisition, generous cost recovery deductions further reduce the tax cost of US operations.
  - At the same time, the rate reduction reduced the tax cost of selling assets upstream or to a non-US sister company.
  - The incentive to move foreign subsidiaries "out from under" was further eroded by the imposition of a still lower rate of US tax on CFC earnings under the GILTI regime.
  - The stricter limitation of interest expense deductions to 30% of adjusted taxable income makes earnings stripping through debt financing more difficult.
  - For large MNE groups, the BEAT limits the benefits of earnings stripping through deductible payments. Smaller groups may still find this option attractive, however, as the FDII regime may result in greatly reduced tax costs associated with exporting intangible assets.

a. Use of Hybrid Entities

- The great flexibility afforded by the US "check-the-box" rules remains a useful tool for taxpayers, as it allows operations to be conducted through a limited liability entity without creating a separate taxpayer. Both domestic and foreign structures can make use of limited liability companies that are treated as partnerships or disregarded as separate entities for US tax purposes.
- A foreign owner that holds a direct interest in a US hybrid entity will be subject to US tax on income derived by the hybrid from the conduct of a trade or business in the US. To avoid this exposure, business operations should be held through an entity that is taxed by the US as a corporation. Such an entity may be a domestic corporation or a "reverse hybrid," a limited liability company or partnership entity that has elected to be fiscally opaque.
- The use of hybrid entities to create "nowhere" income, however, has been sharply curtailed both by the OECD BEPS initiative outside the US, and by domestic legislation included in the TCJA.
- New rules disallow a deduction for any "disqualified related party amount" that is paid or accrued by, or to, a hybrid entity, or in a hybrid transaction. A disqualified related party amount is interest or a royalty that is paid or accrued to a related foreign party that is not included in the related party's income under the law of its residence jurisdiction, or with respect to which the related party is allowed a deduction in that jurisdiction. The law grants the IRS broad regulatory authority to expand the scope of this provision.

b. Use of Hybrid Instruments

- Transactions that create payments that are treated as interest or royalties for US tax purposes, but not for purposes of the tax law in the recipient's country of residence, are now classified as hybrid transactions. Amounts paid or accrued under a hybrid transaction with a related party will be disallowed under the anti-hybrid legislation enacted in the TCJA.
- Payments under hybrid transactions with third parties, however, are not subject to disallowance under these rules.

c. Principal/Limited Risk Distribution or Similar Structures

In the past, limited risk distribution arrangements were used to limit the amount of taxable income arising in the US from imports of goods and services. The reduction in the corporate tax rate from 35% to 21% has reduced the need for such arrangements. However, they are still useful to foreign enterprises seeking to minimise their exposure to the US tax system. The change in the source rule for income from the sale of property manufactured by the taxpayer will also help by assigning the entire gross profit on sales of property manufactured by the taxpayer outside the US to the place of manufacture. However, income from the purchase of property outside the US and its sale within the US will still be assigned a US source. Distribution arrangements should be reviewed from a legal, tax, and transfer pricing standpoint to reduce audit risk.

d. Intellectual property

Contingent payments for the use of intellectual property in the US will be taxed as royalties, whether the licensing agreement otherwise constitutes a license or sale for tax or commercial purposes. Royalties are subject to tax of 30% of the gross amount, unless the royalties are part of the profit of a business conducted in the US. The gross basis tax is collected by withholding at the source and may be reduced or eliminated by treaty.

A licence agreement will be considered as a transfer of ownership of the intellectual property if the licensee obtains "all substantial rights" to the use of the property in the US for the life of the property. Conversely, a license to use intellectual property for limited purposes or in only part of the US cannot be treated as a sale.

Multinational groups differ in their approach to holding intellectual property. In some groups, IP ownership is centralised in an IP holding company, while in others, each local operating company owns the rights to IP in its jurisdiction. When a target company has valuable IP, it is often desirable to transfer ownership of non-US rights to the parent company or to a sister licensing company. Such a transfer must be made at an arm's length price, either in a lump sum or under a royalty arrangement. Generally, a cost-sharing agreement is entered into with regard to IP development, under which the US company bears the cost of developing the US rights (based on the share of future revenues expected to arise from US sources). Transfer pricing professionals should always be consulted when considering the integration of acquired IP into the purchaser's supply chain.

Before the TCJA was enacted, the US had no special tax regimes of interest to foreign acquiring companies. Tax reform introduced the GILTI and FDII provisions, which are described elsewhere in this report. Each of those regimes is designed to apply a reduced rate of US tax to a certain category of income derived from foreign sources.

12. OECD BEPS CONSIDERATIONS

The US did not sign the 2015 BEPS Multilateral Instrument and has preferred to adopt unilateral measures addressing base erosion and profit shifting. However, the US has joined the October 2021 Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy. The 2017 Tax Cuts and Jobs Act introduced a number of measures designed to reduce the incentives for US multinationals to engage in base erosion and profit shifting activities. These include the Base Erosion and Anti-Avoidance minimum tax, the GILTI regime of worldwide taxation, and the Foreign Derived Intangible Income rules. These are described elsewhere in this chapter. Whether and how the two pillars of the Statement will be implemented in the US remains to be seen at the time of writing.

13. ACCOUNTING CONSIDERATIONS

a. Combinations

In most M&A transactions, ASC 805-740 provides that deferred tax assets and liabilities should be established for the tax effect of the difference between (1) the fair market value of the acquired assets and (2) the tax basis in those assets. For US tax purposes, in a non-taxable transaction (e.g. stock acquisition with no Sec. 338 election), historical tax basis and tax attributes of the acquired entity carry over, resulting in a deferred tax balance sheet impact for all fair value financial statement adjustments made in purchase accounting (e.g. non-goodwill intangibles). Conversely, in a taxable (asset) transaction, the tax basis in the assets will be adjusted to fair value, generally resulting in little initial basis difference for book and tax purposes and hence minimal deferred tax balance sheet impacts.

Numerous other complexities arise when accounting for income taxes in business combinations. These include valuation allowance considerations for both the acquiror and target companies, revaluing deferred tax assets for tax attribute limitations resulting from the acquisition, accounting for income tax uncertainties arising in the transaction, jurisdictional tax reporting issues, reporting purchase agreement indemnifications, and treatment of goodwill basis differences.

b. Divestitures

The divestiture of a subsidiary, division, or business line may result in the need to account for the sale as a discontinued operation or prepare carve-out financial statements.

Under intraperiod allocation rules, the tax impacts of both the historical operations and the sale itself must be allocated between the retained (i.e. continuing) operations and the divested (i.e. discontinued) operations for all periods presented in the financial statements. A complicated result can occur where, for example, the continuing operations have pre-tax income and utilise losses from the discontinued operations or where tax attributes are utilised to offset discontinued operations income.

Where a new legal entity is created to effectuate a spinoff or sale, carve-out financial statements may be required. In this case, a tax provision is necessary to report the hypothetical tax position for assets and liabilities which may have existed across multiple legal entities and tax filings. Current and deferred taxes are often computed as if this entity had previously filed a stand-alone separate return, with allocations amongst entities to reimburse for tax payments made or tax attributes utilised on behalf of other the new and legacy entities.

14. OTHER TAX CONSIDERATIONS

a. Distributable Reserves:

In the US, three distinct regimes co-exist with respect to the ability of a company to make distributions. For legal purposes, corporations generally must deal with the concepts of paid-up capital and surplus. For accounting purposes, companies generally have to deal with the concepts of shares, additional paid-in capital ("APIC") and retained earnings ("R/E"). For tax purposes, companies generally must deal with tax basis and earnings and profits ("E&P"). Many persons treat the similar concepts as if they were the same, but caution is advisable (e.g. purchase accounting will eliminate retained earnings with no effect on the legal concepts or E&P; similarly, US purchase accounting will eliminate retained earnings of a foreign subsidiary for US GAAP purposes while a 338(g) transaction eliminates that subsidiary's E&P, but the subsidiary's ability to make a distribution from a local (non-US) tax, accounting, or legal perspective will remain unchanged).

From a US tax perspective, a corporate taxpayer is expected to maintain an E&P account which keeps track of its economic accretions and decrements on a tax-modified basis. Distributions to shareholders will be taxed to them as dividends (the corporation receives no deduction) to the extent made from E&P. Distributions in excess of a corporation's E&P are non-taxable to the extent of shareholders' tax basis in the stock and any distribution in excess of basis is taxed as capital gain.

b. Substance Requirements

Companies formed within the US are per se subject to US taxation, regardless of their activity.

Companies seeking application of a US income tax treaty to an entity organised or tax resident in another jurisdiction should ensure that the entity does not violate the limitation on benefits clause in that treaty; although each clause will differ, most such clauses require an entity to have substance in the other jurisdiction beyond simple tax residency.

c. Application of Regional Rules

The US is a member of the OECD and takes its suggestions into account but will often modify OECD suggestions for its own purposes.

States within the US are not parties to US treaties, but they do generally begin their calculation of state taxable income with the amount of taxable income reported to the federal government.

d. Tax Rulings and Clearances

The Internal Revenue Service ("IRS") issues private letter rulings ("PLRs") to taxpayers. The IRS regularly lists specific issues on which it will not issue a PLR, and the IRS generally will not issue a PLR with respect to any issue (a) with respect to which the IRS is working actively to issue regulations, (b) under audit or in litigation, (c) that is only part of a larger, integrated transaction, or (d) that is primarily factual in nature. The IRS is bound by PLRs it issues to taxpayers so long as the written request submitted by the taxpayer on which the PLR is premised fully and accurately described the proposed transaction and the transaction is carried out as described. A PLR may not be relied on as precedent by other taxpayers or IRS personnel.

e. US State Taxation

The US is composed of 50 separate states, as well as the federal district (District of Columbia). Each of those jurisdictions taxes various activities conducted within its borders. Ad valorem sales taxes and taxes on net income or gross receipts are major sources of revenue for the states and for cities and other governmental units below the state level. Significantly from an international standpoint, US income tax treaties do not provide any protection against the imposition of state income tax, or any other kind of state tax. Moreover, many states measure the income arising within their borders based on formulas that apportion income according to factors such as property, payroll, and sales. Thus, the sale of property to customers located in a state may give rise to state income or sales tax liabilities. However, in order to impose a tax on economic activity, a state must find that a taxpayer has a significant connection ("nexus") with the state. Nexus can be established by physical presence of property or personnel within the state. However, in 2018, the US Supreme Court held in South Dakota v. Wayfair, Inc. that jurisdiction to impose sales tax can be conferred on a state by economic factors (such as in-state sales) alone. As a result, foreign sellers who have no physical presence in the US, but who sell to US customers, may now be required to collect sales tax from their customers in states where their economic activity (sales) is significant. Whether jurisdiction based on economic presence will be extended to state income taxes is yet to be determined.

f. Coronavirus Aid, Relief, and Economic Security Act ("CARES Act")

On 27 March 2020, in response to the COVID-19 pandemic and its impact on the US economy, Congress enacted the CARES Act, which contains provisions aimed at providing taxpayers with short-term liquidity. The CARES Act includes several short-term tax provisions relevant to corporate taxpayers, including changes to the rules regarding net operating losses, relaxation of the limitation on interest deductions, and accelerating refunds for AMT credits, among others.

i Employment Tax Provisions

Eligible employers (except those receiving a Small Business Interruption Loan) are entitled to a refundable credit against Social Security taxes equal to 50% of the qualified wages of each employee if their operations are fully or partially suspended due to the impact of COVID-19, or if they suffered significant economic loss due to shutdowns. Qualified wages are limited to those paid after 12 March 2020 and before 1 January 2021 and the amount of qualified wages differs based on the employer's number of employees. The aggregate amount of wages is capped at USD10,000 per employee and is subject to certain reductions for other payroll credits.

In addition, eligible employers and self-employed individuals can defer the employer portion of Social Security and Medicare taxes due from the date of enactment of the CARES Act through the end of 2020 until the following future dates:

- 50% deferred until 31 December 2021.
- 50% deferred until 31 December 2022.

15. MAJOR NON-TAX CONSIDERATIONS

Compliance with the Hart-Scott-Rodino Act ("HSR" or US antitrust law) and similar laws in jurisdictions in which the target or its subsidiaries are active can require significant time and energy; if these laws are implicated, many buyers begin working on the necessary filings well in advance of any signing of an agreement. HSR can cause a transaction to change or fail, and the transactional results of possible permutations should be agreed by the parties as part of the purchase agreement.

Sellers and non-US buyers of US businesses should assess any necessary compliance with the requirements of the Committee on Foreign Investment in the US ("CFIUS") and the risk that CFIUS could cause the transaction to change or fail.

The details of post-acquisition management equity should be settled well before a purchase agreement is signed, as these details can raise a number of economic issues and tax issues (options, stock, profits interests, participation hurdles, vesting, legal type of issuer) for both the issuer and the holder.

The state whose law will govern the agreement may restrict the enforceability of certain contract terms (in particular, non-competition agreements) and affect the liability of officers and directors in the transaction. Governing law should be chosen carefully with the assistance of counsel.

16. APPENDIX I - TAX TREATY RATES

Jurisdiction	Dividends %	Interest %	Royalties %	Footnote
Argentina	D	D	D	
Armenia	D	D	0	
Aruba	D	D	D	
Australia	15	10	5	
Austria	5/15	0	0/10	[1] [2]
Azerbaijan	D	D	0	
Bangladesh	10/15	10	10	[3]
Barbados	5/15	12.5	12.5	[4]
Belarus	D	D	0	
Belgium	15	15	0	
Bulgaria	5/10	5	5	[5]
Canada	5/15	0	0/10	[6] [7]
Chile	D	D	D	
China	10	10	10	
Cyprus	5/15	0/10	0	[8] [9]
Czech Republic	5/15	0	0/10	[10] [11]
Denmark	5/15	0	0	[12]
Egypt	5/15	15	15	[13]
Estonia	5/15	10	5/10	[14] [15]
Finland	0/5/15	0	0	[16]
France	0/5/15	0	0	[17]
Georgia	D	D	0	
Germany	0/5/15	0	0	[18]
Greece	D	0/D	0/D	
Hungary	5/15	0	0	[19]
Iceland	5/15	0	0/5	[20] [21]
India	15/25	10/15	10/15	[22] [23] [24]
Indonesia	10/15	10	10	[25]

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote
Ireland	5/15	0	0	[26]
Israel	12.5/25	10/17.5	10/15	[27] [28] [29]
Italy	5/15	0/10	0/5/8	[30] [31] [32]
Jamaica	10/15	12.5	10	[33]
Japan	0/5/10	0/10	0	[34] [35]
Kazakhstan	5/15	10	10	[36]
Korea (ROK)	10/15	12	10/15	[37] [38]
Kyrgyzstan	D	D	0	
Latvia	5/15	10	5/10	[39] [40]
Lithuania	5/15	10	5/10	[41] [42]
Luxembourg	5/15	0	0	[43]
Malta	5/15	10	10	[44]
Mexico	0/5/10	0/4.9/10/15	10	[45] [46]
Moldova	D	D	0	
Morocco	10/15	15	10	[47]
Netherlands	0/5/15	0	0	[48]
Netherlands Antilles	D	D	D	
New Zealand	0/5/15	0/10	5	[49] [50]
Norway	15	0/10	0	[51]
Pakistan	15/D	D	0	[52]
Philippines	20/25	10/15	15	[53] [54]
Poland	5/15	0	10	[55]
Portugal	5/15	10	0/10	[56] [57]
Romania	10	10	10/15	[58]
Russia	5/10	0	0	[59]
Slovakia	5/15	0	0/10	[60] [61]
Slovenia	5/15	0/5	5	[62] [63]
South Africa	5/15	0	0	[64]
Spain	10/15	0/10	0/5/8/10	[65] [66] [67]

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote
Sri Lanka	15	10	5/10	[68]
Sweden	5/15	0	0	[69]
Switzerland	5/15	0	0	[70]
Tajikistan	D	D	0	
Thailand	10/15	10/15	5/18/15	[71] [72] [73]
Trinidad & Tobago	D	D	0/15	[74]
Tunisia	14/20	15	15	[75]
Turkey	15/20	10/15	5/10	[76] [77] [78]
Turkmenistan	D	D	0	
Ukraine	5/15	0	10	[79]
United Kingdom	0/5/15	0	0	[80]
Uzbekistan	D	D	0	
Venezuela	5/15	4.95/10	5/10	[81] [82] [83]
Vietnam	D	D	D	

Footnotes	
1	Dividends - Maximum rate of 15%. 15% applies if the beneficial owner of the dividends is a resident of the other Contracting State and the 5% rate does not apply. 5% rate applies if the beneficial owner is a resident of the other Contracting State and is a company which owns directly 10% of the voting stock of the company paying the dividends.
2	Royalties - Maximum rate of 10%. 10% rate applies if the royalties constitute consideration for the use of, or right to use, cinematograph films, tapes, or other means of reproduction used for radio or television broadcasting. 0% rate applies if the 10% rate does not apply.
3	Dividends - Maximum rate of 15%. 10% rate applies if the beneficial owner is a resident of the other Contracting State and is a company which owns, directly or indirectly, at least 10% of the voting stock of the company paying dividends. 15% rate applies if the beneficial owner is a resident of the other Contracting State and the 10% rate does not apply. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed by both Contracting States.
4	Dividends - Maximum rate of 15%. 5% rate applies if the beneficial owner is a resident of the other Contracting State and is a company which owns at least 10% of the voting stock of the company paying the dividends. 15% rate applies if the beneficial owner is a resident of the other Contracting State and the 5% rate does not apply.
5	Dividends - Maximum rate of 10%. 5% rate applies if the beneficial owner is a company that directly owns at least 10% of the voting stock of the company paying the dividends. 10% rate applies if the 5% rate does not apply.
6	Dividends - The 5% rate applies to dividends paid to a company that holds at least 10% of the voting stock of the distributing company.

Footnotes	
7	Royalties - The 0% rate applies to royalties on certain cultural works (e.g. literary, dramatic, musical or artistic work), as well as to payments for the use of, or the right to use, computer software, patents and information concerning industrial, commercial and scientific experience; otherwise, the rate is 10%.
8	Dividends - Maximum rate of 15%. 5% rate applies if the recipient is a corporation that owns at least 10% of the outstanding shares of the paying corporation and not more than 25% of the gross income of the paying corporation for such prior taxable year (if any) consists of interest or dividends. 15% applies when the 5% rate does not apply.
9	Interest - Maximum rate of 10%. 0% rate applies if the resident paying the interest is a Cypriot corporation which derives 50% or more of its total gross income from one or more permanent establishments which such corporation has in the US.
10	Dividends - Maximum rate of 15%. 15% applies if the beneficial owner of the dividends is a resident of the other Contracting State and the 5% rate does not apply. 5% rate applies if the beneficial owner is a resident of the other Contracting State and is a company which owns directly 10% of the voting stock of the company paying the dividends.
11	Royalties - Maximum rate of 10%. 10% rate applies if the royalties constitute consideration for the use of, or right to use, cinematograph films, tapes, or other means of reproduction used for radio or television broadcasting. 0% rate applies if the 10% rate does not apply.
12	Dividends - Maximum rate of 15%. 15% applies if the beneficial owner of the dividends is a resident of the other Contracting State and the 5% rate does not apply. 5% rate applies if the beneficial owner is a resident of the other Contracting State and is a company which owns directly 10% of the voting stock of the company paying the dividends.
13	Dividends - Maximum rate of 15%. 5% rate applies if the recipient is a corporation that owns at least 10% of the outstanding shares of the paying corporation and not more than 25% of the gross income of the paying corporation for such prior taxable year (if any) consists of interest or dividends. 15% applies when the 5% rate does not apply.
14	Dividends - Maximum rate of 15%. 15% applies if the beneficial owner of the dividends is a resident of the other Contracting State and the 5% rate does not apply. 5% rate applies if the beneficial owner is a resident of the other Contracting State and is a company which owns directly 10% of the voting stock of the company paying the dividends.
15	Royalties - Maximum rate of 10%. 5% rate applies if the royalties paid were for the use of industrial, commercial, or scientific equipment. 10% rate applies if the 5% rate does not apply.
16	Dividends - Maximum rate of 15%. Reduced rate of 5% applies if the beneficial owner is a company which owns at least 10% of the voting stock of the company paying the dividends. Reduced rate of 0% rate applies if the beneficial owner is a company that is a resident has owned, directly or indirectly, shares representing 80% of the voting power of the company paying the dividends for a 12-month period ending on the date on which entitlement to the dividend is determined and meets certain other requirements.
17	Dividends - Maximum rate of 15%. Reduced rate of 5% applies if the recipient company owns directly at least 10% of the voting power in the company paying the dividends, if such company is a resident of the US, or, directly or indirectly, at least 10% of the capital of the company paying the dividends if such company is a resident of France. Reduced rate of 0% applies if the recipient company has owned, directly or indirectly through one or more residents of either France or the US, shares representing 80% or more of the voting power of the company paying the dividends in the case of the US, or 80% or more of the capital of the company paying the dividends in the case of France, for a 12-month period ending on the date on which entitlement to the dividends is determined, and satisfies certain clauses set forth in Article 30 of the treaty (Limitation on Benefits of the Convention).

Footnotes	
18	Dividends - Maximum rate of 15%. Reduced rate of 5% applies if the beneficial owner is a company that holds directly at least 10% of the voting shares of the company paying the dividends. Reduced rate of 0% applies if the beneficial owner is a company that has owned directly shares representing 80% of the voting power in the company paying the dividends for a 12-month period ending on the date entitlement to the dividends is determined and certain other requirements are met.
19	Dividends - Maximum rate of 15%. Reduced rate of 5% applies if the beneficial owner is a company which owns, directly or indirectly, at least 10% of the voting stock of the company paying the dividend.
20	Dividend - Maximum rate of 15%. Reduced rate of 5% applies when the recipient is a corporation that owns at least 10% of the voting stock of the paying corporation during the part of the paying corporation's taxable year which precedes the date of the dividend and not more than 25% of the gross income of the paying corporation for the prior taxable year consists of interest or dividends.
21	Royalties - The 0% rate applies, unless the royalty relates to copyrights of motion picture films or tapes used for radio or television broadcasting.
22	Dividends - Maximum rate of 25%. Reduced rate of 15% applies if the beneficial owner is a company which owns at least 10% of the voting stock of the company paying the dividends.
23	Interest - Maximum rate of 15%. Reduced rate of 10% applies if the interest is paid on a loan granted by a bank carrying on a bona fide banking business or by a similar financial institution, including insurance companies.
24	Royalty - Maximum rate of 15%. Reduced rate of 10% applies to royalties related to the use or right to use any industrial, commercial, or scientific equipment.
25	Dividends - Maximum rate of 15%. Reduced rate of 10% applies if the beneficial owner is a company which owns at least 25% ownership interest in the company paying the dividends.
26	Dividends - Maximum rate of 15%. Reduced rate of 5% applies if the beneficial owner is a company that owns at least 10% of the voting stock of the company paying the dividend.
27	Dividends - Maximum rate of 25%. Reduced rate of 12.5% applies if the recipient is a corporation that owns at least 10% of the voting stock of the paying corporation and not more than 25% of the gross income of the paying corporation consists of interest or dividends.
28	Interest - Maximum rate of 17.5%. Reduced rate of 10% if the interest is derived from a loan of whatever kind granted by a bank, savings institution, insurance company, or the like.
29	Royalty - Maximum rate of 15% applies to industrial royalties. Reduced rate of 10% applies to copyright and film royalties.
30	Dividends - Maximum rate of 15%. Reduced rate of 5% applies if the beneficial owner is a company that has owned at least 25% of the voting stock of the paying company a 12 month period ending on the date the dividend is declared.
31	Interest - Maximum rate of 10%. Reduced rate of 0% applies if - (1) the interest is beneficially owned by a resident that holds, directly or indirectly, less than 25% of the capital of the one paying the interest; (2) the interest is paid with respect to debt obligations guaranteed or insured by a qualified government entity and is beneficially owned by a resident; (3) the interest is paid or accrued with respect to a sale on credit of goods, merchandise, or services provided; or (3) the interest is paid or accrued in connection with the sale on credit or industrial, commercial, or scientific equipment.

Footnotes	
32	Royalty - Maximum rate of 8%. Reduced rate of 5% applies if the royalties are for the use of, or right to use, computer software or industrial, commercial, or scientific equipment. Reduced rate of 0% applies if royalties are for the use of, or right to use, a copyright of literary, artistic, or scientific work; unless such royalty is for computer software, motion pictures, films, tapes, or other means of reproduction used for radio or television broadcasting.
33	Dividends - Maximum rate of 15%. Reduced rate of 10% applies if the beneficial owner is a company, other than a partnership, which owns, directly or indirectly, 10% of the voting stock of the company paying the dividend.
34	Dividends - Maximum rate of 10%. Reduced rate of 5% applies if the beneficial owner is a company that owns, directly or indirectly, at least 10% of the voting stock of the company paying the dividends on the date on which entitlement to the dividend was determined. Reduced rate of 0% applies if the beneficial owner of the dividends is a company that has owned, directly or indirectly, more than 50% of the voting stock of the company paying the dividends for the 12-month period ending on the date on which the entitlement to the dividend was determined.
35	Interest - Maximum rate of 10%. Reduced rate of 0% applies if - (1) the interest is beneficially owned by the one country, an authority of the country, or any institution owned by the country; (2) the interest is guaranteed, insured or indirectly financed by the government of one country, an authority of the country, or any institution owned by the country; (3) the interest is beneficially owned by a resident that is either a bank, insurance company, registered securities dealer; (4) the interest is beneficially owned by a pension fund, provided that such interest is not derived from carrying on business, directly or indirectly, by the pension fund; or (5) the interest is beneficially owned by a resident and paid with respect to indebtedness arisen as a part of a sale on credit of equipment or merchandise.
36	Dividends - Maximum rate of 15%. Reduced rate of 5% applies if the beneficial owner is a company which owns at least 10% of the voting stock of the company paying the dividends.
37	Dividends - Maximum rate of 15%. Reduced rate of 10% if the recipient is a corporation of which, during part of the paying corporation's taxable year which precedes the payment of the dividend and the entire prior taxable year, at least 10% of the voting stock of the paying corporation was owned by the recipient and not more than 25% of the gross income of such prior taxable year of the paying corporation consists of interest or dividends.
38	Royalties - Maximum rate of 15%. Reduced rate of 10% applies to royalties derived from copyrights, or rights to produce or reproduced any literary, dramatic, musical, or artistic work and the rights to use motion picture films including films and tapes used for radio or television broadcasting.
39	Dividends - Maximum rate of 15%. Reduced rate of 5% applies if the beneficial owner is a company which holds directly at least 10% of the voting shares of the company paying the dividends.
40	Royalties - Maximum rate of 10%. Reduced rate of 5% applies to royalties paid for the use of industrial, commercial, or scientific equipment.
41	Dividends - Maximum rate of 15%. Reduced rate of 5% applies if the beneficial owner is a company which directly holds at least 10% of the voting shares of the company paying the dividends.
42	Royalties - Maximum rate of 10%. Reduced rate of 5% applies if the royalty is paid for the use of industrial, commercial, or scientific equipment.
43	Dividends - Maximum rate of 15%. Reduced rate of 5% applies to dividends paid to a company that owns directly at least 10% of the voting shares of the payer company; otherwise, the rate is 15%.
44	Dividends - Maximum rate of 15%. Reduced rate of 5% applies if the beneficial owner is a company that owns directly at least 10% of the voting stock of the company paying the dividends.

Footnotes	
45	Dividends - Maximum rate of 10%. Reduced rate of 5% applies if the beneficial owner is a company which owns directly at least 10% of the voting stock of the company paying the dividends. Reduced rate of 0% applies if (i) the beneficial owner is a trust, company, or other organisation constituted and operated exclusively to administer or provide benefits under one or more plans established to provide pension, retirement or other employee benefits and its income is generally exempt from tax in the country of which it is a resident, provided that such dividends are not derived from the carrying on of a business, directly or indirectly, by such trust, company or organisation, or (ii) is a company that has owned shares representing 80% or more of the voting stock of the company paying the dividends for a 12-month period ending on the date the dividend is declared, and satisfies certain other conditions.
46	Interest - Maximum rate of 15%. Reduced rate of 4.9% applies to interest derived from (i) loans granted by banks, including investment banks and savings banks, and insurance companies, and (ii) bonds or securities that are regularly and substantially traded on a recognised securities market. Reduced rate of 10% applies to interest paid by banks (except where the 4.9% rate applies) or interest paid by the purchaser of machinery and equipment to a beneficial owner that is the seller of the machinery and equipment in connection with a sale on credit. Reduced rate of 0% applies if the beneficial owner is a trust, company, or other organisation constituted and operated exclusively to administer or provide benefits under one or more plans established to provide pension, retirement or other employee benefits and its income is generally exempt from tax in the country of which it is a resident.
47	Dividends - Maximum rate of 15%. Reduced rate of 10% applies if the recipient is a corporation in which at least 10% of the voting shares of the paying corporation was owned by the recipient corporation during the part of the paying corporation's taxable year which precedes the date of the payment of the dividend and not more than 25% of the gross income of the paying corporation for such prior taxable year consists of interest or dividends.
48	Dividends - Maximum rate of 15%. Reduced rate of 5% applies if the beneficial owner is a company which holds directly at least 10% of the voting power of the company paying the dividends. Reduced rate of 0% applies if the beneficial owner of the dividends is a company that has owned directly shares representing 80% of the voting power in the company paying the dividends for a 12-month period ending on the date the dividend was declared and meets certain other requirements.
49	Dividends - Maximum rate of 15%. Reduced rate of 5% applies if the beneficial owner is a company that owns at least 10% of the voting power of the company paying the dividends. Reduced rate of 0% applies if the beneficial owner is a company that is a resident that has owned, directly or indirectly, shares representing 80% of the voting power in the company paying the dividend for a 12-month period ending on the date on which entitlement to the dividends is determined, and certain other requirements are met.
50	Interest - Maximum rate of 10%. Reduced rate of 0% applies if the interest is - (1) beneficially owned by one country or an instrumentality of that country which is not subject to tax on income by that country; (2) beneficially owned by a resident with respect to a debt obligation guaranteed or insured by that country or an instrumentality of that country which is not subject to tax on its income by that country; or (3) beneficially owned by a bank or an enterprise substantially deriving its gross income from the active and regular conduct of a lending or finance business involving transaction with unrelated parties.
51	Dividends - Maximum rate of 15%. 10% rate applies if the recipient is a corporation that owns at least 10% of the outstanding shares of the paying corporation and not more than 25% of the gross income of the paying corporation for such prior taxable year (if any) consists of interest or dividends. 15% applies when the 10% rate does not apply. Can be taxed by both Contracting States.
52	Dividends - Maximum Rate of 15%. Domestic rates apply unless the company receiving dividends lacks both permanent establishment in the US and controls more than 50% of the voting power in the company paying the dividend.

Footnotes	
53	Dividends - Maximum rate of 25%. 20% rate applies when the dividends are paid to a corporation that owns at least 10% of the voting stock of the paying corporation during the taxable year prior to the payment.
54	Interest - 15% maximum rate. A 10% rate applies if the debt relates to publicly issued debt from bonds.
55	Dividends - Maximum rate of 15%. 15% applies if the beneficial owner of the dividends is a resident of the other Contracting State and the 5% rate does not apply. 5% rate applies if the beneficial owner is a resident of the other Contracting State and is a company which owns directly 10% of the voting stock of the company paying the dividends.
56	Dividends - Maximum rate of 15%. 5% rate applies if the recipient is a company which holds at least 25% of the voting shares of the company paying the dividends for two years without interruption.
57	Royalties - Maximum rate is 10%. If the royalties are received as consideration for the use of, or the right to use, containers in international traffic, the royalties shall be taxable only in the Contracting State of which the recipient is a resident, so it some cases, the rate may be 0%.
58	Royalties - Maximum rate of 15% applies for Industrial royalties where are defined as royalty payments of any kind made as consideration for the use of, or the right to use, patents, designs, models, plans, secret processes, or formulae, trademarks, or other like property or rights, or for knowledge, experience, or skill. Otherwise, 10% rate applies for cultural royalties which are payments of any kind made as consideration for the use of, or the right to use, copyrights of literary, artistic, or scientific works, including copyrights of motion picture films or films or tapes used for radio or television broadcasting.
59	Dividends - Maximum rate of 10%. 5% rate applies if the beneficial owner is a company that directly owns at least 10% of the voting stock of the company paying the dividends. 10% rate applies if the 5% rate does not apply.
60	Dividends - Maximum rate of 15%. 5% rate applies if the recipient is a company which holds at least 25% of the voting shares of the company paying the dividends for two years without interruption.
61	Royalties - Maximum rate of 15% applies for Industrial royalties where are defined as royalty payments of any kind made as consideration for the use of, or the right to use, patents, designs, models, plans, secret processes, or formulae, trademarks, or other like property or rights, or for knowledge, experience, or skill. Otherwise, 10% rate applies for cultural royalties which are payments of any kind made as consideration for the use of, or the right to use, copyrights of literary, artistic, or scientific works, including copyrights of motion picture films or films or tapes used for radio or television broadcasting.
62	Dividends - Maximum rate of 15%. 5% applies if the beneficial owner is a company which owns at least 25% of the voting stock or statutory capital of the company paying the dividends.
63	Interest - Generally 5%, unless the interest payment recipient meets one of the following three factors - 1) the beneficial owner is qualified governmental entity that does not control the person paying the interest, 2) the interest is paid or accrued with respect to debt obligations guaranteed or insured by a qualified governmental entity of that other Contracting State; or 3) the interest is paid or accrued with respect to a deferred payment for personal property (movable property) or services. If one of the three factors are met, the applicable rate is 0%.
64	Dividends - Maximum rate of 15%. 15% applies if the beneficial owner of the dividends is a resident of the other Contracting State and the 5% rate does not apply. 5% rate applies if the beneficial owner is a resident of the other Contracting State and is a company which owns directly 10% of the voting stock of the company paying the dividends.
65	Dividend - Maximum rate of 15%. 10% rate applies if the recipient is a company which holds at least 25% of the voting shares of the company paying the dividend.

Footnotes	
66	Interest - Maximum rate is 10%. 0% rate can apply if the interest is from long-term loans (five or more years) granted by banks or other financial institutions and/or interest paid in connection with the sale on credit of any industrial, commercial, or scientific equipment.
67	Royalties - Maximum rate of 10%. 0% rate applies to royalties received in consideration for the use of, or the right to use, containers in international trade and traffic. The 5% rate applies for the use of, or the right to use, any copyrights of literary, dramatic, musical, or artistic work, and the 8% rate applies to royalties received in consideration for the use of, or the right to use, cinematographic films, or films, tapes, and other means of transmission or reproduction of image or sound, and of the gross amount of royalties for the use of, or the right to use, industrial, commercial, or scientific equipment, and for any copyright of scientific work.
68	Royalties - Maximum rate of 10%. 5% rate applies in the case of rentals for the use of tangible personal property.
69	Dividends - Maximum rate of 15%. 15% applies if the beneficial owner of the dividends is a resident of the other Contracting State and the 5% rate does not apply. 5% rate applies if the beneficial owner is a resident of the other Contracting State and is a company which owns directly 10% of the voting stock of the company paying the dividends.
70	Dividends - Maximum rate of 15%. 15% applies if the beneficial owner of the dividends is a resident of the other Contracting State and the 5% rate does not apply. 5% rate applies if the beneficial owner is a resident of the other Contracting State and is a company which owns directly 10% of the voting stock of the company paying the dividends.
71	Dividends - Maximum rate of 15%. 10% rate applies if the beneficial owner is a resident of the other Contracting State and is a company which owns, directly or indirectly, at least 10% of the voting stock of the company paying dividends.
72	Interest - 15% is the maximum rate. 10% rate will apply to interest payments due to financial loans or sales of equipment, merchandise, or services.
73	Royalties - 15% is the maximum rate. A rate of 5% applies for royalties paid for the use of literary, artistic, or scientific copyrights. A rate of 8% applies to royalties paid for the use of or the right to use industrial, commercial or scientific equipment.
74	Royalties - Maximum rate of 15%. If the royalties are derived from the use of a literary, dramatic, musical, or artistic copyright, a rate of 0% applies.
75	Dividends - Maximum rate of 20%. 14% rate applies if the beneficial owner is a resident of the other Contracting State and is a company (other than a partnership) which owns directly at least 25% of the share capital of the company paying dividends. 20% rate applies if the beneficial owner of the dividends is a resident of the other Contracting State and the 14% rule does not apply.
76	Dividends - Maximum rate of 20%. 15% rate applies of the beneficial owner of the dividends is a resident of the other Contracting State and if the beneficial owner is a company which owns at least 10% of the voting stock of the company paying dividends. 20% rate applies if the beneficial owner of the dividends is a resident of the other Contracting State and the 15% rate doesn't apply.
77	Interest - Maximum rate of 15%. 10% rate applies if the interest is derived from a loan of whatever kind is granted by a financial institution (bank, insurance, etc.). 15% rate applies if the 10% rate does not apply.
78	Royalties - Maximum rate of 10%. 5% rate applies if the royalties is a consideration for the use or sale of any copyright of literary, artistic, or scientific work including motion pictures and works on film, tape, or other means of reproduction in connection with radio or television broadcasting, any patent, trademark, design/model, concerning industrial, commercial, or scientific experience. 10% rate applies if the 5% rate does not apply.
79	Dividends - Maximum rate of 15%. 5% rate applies if the beneficial owner is a company that owns at least 10% of the voting stock if a resident of Ukraine and 20% of the voting stock if not a resident of Ukraine.

Footnotes	
80	Dividends - Maximum rate of 15%. Reduced rate of 5% applies if the beneficial owner is a company that owns shares representing directly or indirectly at least 10% of the voting power of the company paying the dividends. Reduced rate of 0% applies if the beneficial owner is (i) a company that has owned shares representing 80% or more of the voting power of the company paying the dividends for a 12-month period ending on the date the dividend is declared, and that either owned shares representing such voting power prior to 1 October 1998 or satisfies certain clauses set forth in Article 23 of the treaty (Limitation on Benefits), or (ii) is a pension scheme, provided that such dividends are not derived from the carrying on of a business, directly or indirectly, by such pension scheme.
81	Dividends - Maximum rate of 15%. 15% applies if the beneficial owner of the dividends is a resident of the other Contracting State and the 5% rate does not apply. 5% rate applies if the beneficial owner is a resident of the other Contracting State and is a company which owns directly 10% of the voting stock of the company paying the dividends.
82	Interest - Maximum rate of 10%. 4.95% rate if the beneficial owner is a resident of the other Contracting State and if the interest is beneficially owned by any financial institution (including insurance company). 10% if the beneficial owner is a resident of the other Contracting State and the 4.95% rate does not apply.
83	Royalties - Maximum rate of 10%. 5% rate applies if the royalties are in consideration of the use, or right to use, industrial, commercial, or scientific equipment. 10% rate applies if the royalties are in consideration of the use, or right to use, any copyright of literary, dramatic, musical, artistic, or scientific work, including films, tapes, and other mean of image/sound reproduction; any patent, trademark, design/model, secret formula/ process for information concerning industrial, commercial, or scientific experience.

17. APPENDIX II - GENERAL CORPORATE ENTITY TAX DUE DILIGENCE REQUESTS

For the purpose of the following requests, we recommend obtaining historical documents covering all tax years for which the statute of limitations remains open under ordinary circumstances, or longer if there has been an agreement to extend.

Generally, the IRS may examine any closed tax year, but the statute of limitations for making an assessment is limited to three years from the later of the due date of the tax return for a particular tax period or the date the tax return was actually filed (including any extensions). For example, a taxpayer with a calendar year end that files its 31 December 2021 US federal income tax return under extension on or before 15 October 2022 (the extended due date) will be potentially subject to an audit assessment through 15 October 2025.

In the case of an understatement of gross income by more than 25%, the statute of limitations may be extended to six years. In addition, the statute of limitations may be extended by mutual consent of the taxpayer and taxing authority, this might happen in the case of an ongoing examination that is unlikely to conclude before the statute of limitations tolls. Finally, in the case of a failure to file, the statute of limitations never begins to run and is, in effect, indefinite.

Most states follow the IRS in using a three year statute of limitations while a few have a four year statute of limitations.

Nº	Category	Sub-Category	Description of Request
1	Tax Due Diligence	General	Tax contact person available to discuss income and non-income tax matters.
2	Tax Due Diligence	General	A current organisation chart, including all entities by full legal name, jurisdiction, date and place of formation, entity type, class of shares, and ownership percentages. Include a full history of each entity in the structure.
3	Tax Due Diligence	General	A summary of all audits (including status) for any tax, including federal, state, and local (including income/franchise, payroll, sales and use, property, excise, and any other tax). Provide all significant audit correspondence. Indicate whether the statute of limitations has been extended for any period.
4	Tax Due Diligence	General	Details of any preliminary restructuring necessary to effect the proposed acquisition of the Company, including any plan to remove cash/settle intercompany balances. Include any related tax analysis.
5	Tax Due Diligence	General	A summary of all material tax attributes and their years of expiration. In addition, a summary of any limitations with respect to the use of such attributes.
6	Tax Due Diligence	General	Copies of the tax provision workpapers supporting the Company's most recent financial statements. Copy of the Company's most recent tax provision calculation for the current period.
7	Tax Due Diligence	General	ASC 740-10 (FIN 48) and ASC 450-20 (FAS 5) workpapers and memorandums.
8	Tax Due Diligence	General	A schedule of any significant recent acquisitions or dispositions or indemnities. Include copies of acquisition agreements. In addition, provide any related tax due diligence reports, structure slides, and a description of the manner in which the basis of any asset was stepped-up.

USA

Nº	Category	Sub-Category	Description of Request
9	Tax Due Diligence	General	Copies of any tax sharing or indemnity agreements. Include a description of any other arrangement pursuant to which tax liabilities could be inherited or have been indemnified against (including several liability).
10	Tax Due Diligence	General	A schedule of related party transactions including the amounts and description of each, to the extent not reflected in the financial statements.
11	Tax Due Diligence	General	Schedule of deferred intercompany gains or losses, including amounts, and in what entity the deferred item resides.
12	Tax Due Diligence	General	A summary description of any significant tax incentives or negotiated tax arrangements granted to the Company or an affiliate.
13	Tax Due Diligence	General	Copies of memoranda, opinions, ruling requests, or other documentation regarding tax positions taken by the Company and its affiliates relating to any material transactions or tax planning ideas.
14	Tax Due Diligence	US Federal Income Tax	Copies of the Company's federal income tax returns for the previous three years (or open periods, if longer), including all attachments and disclosures, amendments and carryback claims.
15	Tax Due Diligence	US Federal Income Tax	Copy of the Company's calculations for its interest expense limitations, if any.
16	Tax Due Diligence	US Federal Income Tax	Current estimate of taxable income for current year and for prior year (if such tax return has not been filed).
17	Tax Due Diligence	US Federal Income Tax	Access to the tax workpapers used in preparing the Company's income tax returns for the previous three years.
18	Tax Due Diligence	US Federal Income Tax	Estimated transaction expenses related to the proposed transaction.
19	Tax Due Diligence	US Federal Income Tax	A schedule of tax amortisable intangibles and goodwill and the projected run-off.
20	Tax Due Diligence	US Federal Income Tax	A schedule of tax depreciation run-off for the current year and the next three years.
21	Tax Due Diligence	US Federal Income Tax	Copies of any tax elections, including Form 8832 (Entity Classification Election) for any entity and the IRS letter confirming acceptance of such election.
22	Tax Due Diligence	US Federal Income Tax	Schedule of the Company's outstanding debt obligations (including debt to related parties) setting forth principal and accrued interest. For each obligation, include a schedule of any differences between the accrual and payment of interest. Also include copies of any calculations related to interest deductions attributable to original issue discount and applicable high yield discount obligations.
23	Tax Due Diligence	US Federal Income Tax	Description of the Company's significant tax accounting policies. Include a description of the tax accounting method used with respect to deferred or unearned revenue (including deposits) recorded in the financial statements.
24	Tax Due Diligence	US Federal Income Tax	Details of adjustments made pursuant to a change in accounting method under IRC §481.

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Nº	Category	Sub-Category	Description of Request
25	Tax Due Diligence	US Federal Income Tax	Copies of all estimated tax payments made for the current and preceding tax years.
26	Tax Due Diligence	US Federal Income Tax	Details of any "reportable transactions" required to be disclosed pursuant to Treas. Reg. §1.6011-4.
27	Tax Due Diligence	US Federal Income Tax	Tax basis balance sheet, including information regarding inside and outside (stock) basis.
28	Tax Due Diligence	International Tax	A summary of the Company's non-US tax filings in significant jurisdictions (including type of tax and amounts paid by year). Also include a summary of all non-US income and non-income tax audits for the open tax years.
29	Tax Due Diligence	State Income / Franchise	Copies of all state and local income/ franchise/ gross receipts tax returns filed by each entity for the past three years.
30	Tax Due Diligence	State Income / Franchise	Schedule of states travelled into by year for the past three years. Alternatively, a brief description of employee travel (e.g. sales solicitation, services, trade shows).
31	Tax Due Diligence	State Income / Franchise	Apportionment / Allocation schedules for the past three years, listing property, payroll, and sales for each entity on a state-by-state basis.
32	Tax Due Diligence	State Income / Franchise	Schedule of the Company's tax filings by entity by state for income and non-income taxes (e.g. sales and use, property, payroll).
33	Tax Due Diligence	Sales and Use Tax	Sales and use tax returns for the past three fiscal years. Alternatively, a schedule of jurisdictions where the Company files sales and use tax returns. The schedule should detail the amounts collected or accrued and remitted for the past three years for each entity.
34	Tax Due Diligence	Sales and Use Tax	Schedule detailing sales by state as either taxable or not taxable for the past three years. Explanation for which sales are not taxable.
35	Tax Due Diligence	Sales and Use Tax	Schedule of all states in which the legal entities are registered or licensed to operate.
36	Tax Due Diligence	Sales and Use Tax	If available, provide a copy of any written internal guidelines used by the tax department concerning sales tax collection or use tax self-assessment (e.g. list of products subject to sales tax and purchases which require the accrual of use tax).
37	Tax Due Diligence	Sales and Use Tax	Detailed description of policies and procedures for the collection and maintenance of exemption certificates. Resale or other exemption certificates for the top three customers for each facility or location.
38	Tax Due Diligence	Sales and Use Tax	Schedule of the top 10 vendors for fixed assets (e.g. machinery and equipment, computer hardware or software, furniture and fixtures) and consumable items (e.g. office supplies).
39	Tax Due Diligence	Payroll Tax	Federal and state payroll tax filings within the last three years. If a third-party payroll processor is used, quarterly and annual summary statements of deposit and filings can be submitted in lieu of returns.

Nº	Category	Sub-Category	Description of Request
40	Tax Due Diligence	Payroll Tax	Details regarding the use of independent contractors, including the amount spent on independent contractors annually and the responsibilities of the Company and independent contractors. If applicable, the rationale for treating such workers as independent contractors instead of employees.
41	Tax Due Diligence	Payroll Tax	Forms 1099 for the most recent three years. Alternatively, a schedule of independent contractors, their compensation, and state of residence by year.
42	Tax Due Diligence	Property Tax	State and local real, personal, and intangible property tax returns and/or renditions or assessments filed within the last three years.
43	Tax Due Diligence	Property Tax	List of addresses where Company owned real or personal property is located.
44	Tax Due Diligence	Unclaimed Property	Unclaimed property filings for the last three years.
45	Tax Due Diligence	Unclaimed Property	Description of policies and procedures related to unclaimed property compliance and filings.

18. APPENDIX III - TABLE OF ABBREVIATIONS

Abbreviation	Description
AHYDO	Applicable High Yield Discount Obligation
AMT	Alternative Minimum Tax
APIC	Additional Paid-In Capital
ARPA	American Rescue Plan Act of 2021
ATI	Adjusted Taxable Income
BEAT	Base Erosion and Anti-Abuse Tax
BEPS	Base Erosion and Profit Shifting
CARES	Coronavirus Aid, Relief, and Economic Security Act of 2020
CEO	Chief Executive Officer
CFC	Controlled Foreign Corporation
CFIUS	Committee on Foreign Investment in the US
CFO	Chief Financial Officer
DD	Due Diligence
EBIT	Earnings before interest and taxes
EBITDA	Earnings before interest, taxes, depreciation, and amortisation
E&P	Earnings and Profits

Abbreviation	Description
FBAR	Foreign Bank Account Reporting
FDII	Foreign Derived Intangible Income
FIRPTA	Foreign Interest in Real Property Tax Act of 1980
FTC	Foreign Tax Credit
GILTI	Global Intangible Low Tax Income
HSR	Hart-Scott-Rodino Act
IRS	US Internal Revenue Service
KYC	Know Your Customer
LLC	Limited Liability Company
MNE	Multinational Enterprise
NOL	Net Operating Loss
OECD	Organisation for Economic Co-operation and Development
PFIC	Passive Foreign Investment Company
PLR	Private Letter Ruling
PMI	Post-Acquisition Integration
QEF	Qualified Electing Fund
R/E	Retained Earnings
RPII	Related Person Insurance Income
SEC	US Securities and Exchange Commission
TCJA	Tax Cuts and Jobs Act of 2017
US GAAP	US Generally Accepted Accounting Principles
USRPHC	US Real Property Holding Company
USRPI	US Real Property Interest
VAT	Value Added Tax

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