Choice of Entity
Post Tax Reform

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Agenda

- Corporate vs Pass-through Tax Rate Trade and Other Key Factors
- Choice of Entity and QBI
- Private Investment Funds and Management Companies
- Structuring Foreign Operations
- International Holding Companies
- FDI Entity Choice
Corporate vs Pass-through
Tax Rate Trade and Other Key Factors
Corporation vs Pass-through
Basic Tax Rate Trade For Individual Owners

- Substantial difference between 21% corporate rate and 37% top individual rate creates incentive to run business through C-corporation rather than pass-through entity
  - Benefits of corporate form are optimized if earnings can be retained and reinvested
  - 21% corporate tax rate and benefit of deferral of the 23.8% shareholder level tax on dividends
- Corporate tax rate advantage is lost if earnings are distributed currently to individual shareholders
  - 39.8% combined effect of 21% corporate tax rate + 23.8% shareholder level tax on dividends
  - Comparable to 37% top individual rate + NII/self-employment tax
- Deduction for Qualified Business Income (QBI) mutes incentive to incorporate for owners of eligible businesses and taxpayers who are below SSTB income threshold
  - 29.6% + NII/self-employment tax if full benefit of 20% QBI deduction is available
## Basic Tax Rate Trade For Individual Owners

<table>
<thead>
<tr>
<th>Consideration</th>
<th>C-Corp</th>
<th>Pass-Through</th>
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<tbody>
<tr>
<td>Tax Rate</td>
<td>21% (undistributed income) / 39.8% (distributed income)</td>
<td>37% (29.6% for QBI) plus self-employment tax/NII</td>
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<tr>
<td>Ability to conserve after-tax cash</td>
<td>Yes</td>
<td>Yes, but less than C corp due to higher rates; possible concern for lenders</td>
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<tr>
<td>Need to block foreign and tax-exempt investors</td>
<td>No</td>
<td>Yes</td>
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<tr>
<td>Ability to monetize back-end step up value</td>
<td>Gains from asset sale or sale of subsidiary (DRE or 338(h)(10)) taxed at 21%</td>
<td>23.8% tax on sale gain (other than section 751 hot assets)</td>
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<td></td>
<td>But overall tax increases to 39.8% if earnings are distributed</td>
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Deferral of Shareholder-level Tax

- **Deferral strategies**
  - Reinvest in business
  - Portfolio investments
    » Tax advantage driven largely by corporate vs. shareholder level rate arbitrage

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<tr>
<th></th>
<th>After-Tax Amount Invested</th>
<th>Y10 After-Tax (Pre Distribution)</th>
<th>Y10 After-Tax</th>
<th>Yield</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reinvest $100 after-tax earnings and distribute in 10 years</td>
<td>$100.00</td>
<td>$213.90</td>
<td>$162.99</td>
<td>5.01%</td>
</tr>
<tr>
<td>Distribute $100 after-tax earnings and invest in QDI dividend asset</td>
<td>$76.20</td>
<td>N/A</td>
<td>$158.81</td>
<td>4.73%</td>
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<tr>
<td>Distribute $100 after-tax earnings and invest in bonds</td>
<td>$76.20</td>
<td>N/A</td>
<td>$135.44</td>
<td>3.08%</td>
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</tbody>
</table>

- **Tax limitations on deferral strategies**
  - Limited benefit for investments that produce QDI or capital gains; benefit for ordinary income is limited
  - Need to navigate personal holding company, accumulated earnings tax rules
Exit Tax Benefits

- Pass-through provides additional exit tax benefits/flexibility
  - Seller can deliver asset tax basis step up on exit without an additional level of tax, which can be monetized as additional purchase price
    - 15-year amortization on goodwill; immediate expensing tax benefit for tangible property (subject to sunset) – can sell assets or partnership interests and take advantage of 743 adjustment
    - Additional purchase price increases amortization benefit
  - Easier to separate unwanted assets in a tax efficient manner
  - Step-up of tax basis of property for QBI tax basis (UBIA) test – but need to sell assets

- Tax benefits in connection with the sale of shares of a corporation are more limited
  - Gain from sale is capital gains (no hot asset rule)
  - No asset tax basis step-up in connection with a sale of shares, except in connection with 338(h)(10) or 336(e) where distribution to shareholders results in second level of tax
  - Improved access to tax deferred transactions if exit is acquisition by a corporation (section 368 reorganization provisions, not just section 351)
  - More difficult to separate unwanted assets – section 355 is only game in town
Owner and Employee Preferences
Self-Employment Tax

- General partnership
  - General partner subject to SE tax on share of partnership income
- Limited partner exception
  - Exclusion from SE tax applies to sharing income of a limited partner. Section 1402(a)(13)
    » Exclusion does not apply to guaranteed payments for services, but unlike S-corporation no reasonable compensation requirement
    » Status of LLC members uncertain
    » Proposed regulations would curtail the limited partner exclusion, but not in force
- S-corporation
  - S-corporation shareholders are not subject to SE tax on share of S-corporation income
  - Employee owners and S-corporation are subject to regular employment tax on compensation income
    » Must satisfy reasonable compensation requirement
QBI deduction depends upon W-2 wages (for individuals with income above the threshold amount)
  – Keeping W-2 employees preserves W-2 wage base

But promoting employees to sharing partner can provide QBI benefit to key service providers

Preferable to avoid guaranteed payments for services, which do not provide QBI benefit and erode W-2 wage base
Super Tax-Exempt Investors and Foreign Investors

- Super tax-exempt investors
  - TCJA does not change preference of super tax-exempt state pension plans to invest in pass-through entities
  - Less headwinds for super tax-exempt investment in corporations due to reduced corporate tax rate, if investment must come through corporate blocker (e.g., to protect tax assets from being damaged by tax-exempt use property rules)

- Foreign investors
  - TCJA reversal of *Grecian Magnesite* means that foreign investors generally will continue to invest in pass-through entities through blockers
  - Blocker tax leakage reduced due to lower US corporate tax rates
  - But 30% limit on net business interest deductions limits benefits of shareholder loans
Other Stakeholders – Creditor Preferences

• Creditors are concerned with after-tax cash flows available to service debt
  – Prior to TCJA, tax distributions to owners of pass-through entities often were determined at highest marginal tax rate applicable to individuals
    » Sometimes without regard to section 743 tax basis adjustments or section 704(c) allocations
  – Less pressure on individual vs. corporate income tax rate prior to tax reform
  – Tax distributions also typically pro rata to investors without regard to their tax status
    » Difficult to structure non-pro rata tax distributions because of distortive economic effects)

• Substantial increase in the difference between the 21% corporate income tax rate and the 37% top individual rate puts additional pressure on tax distribution assumptions for pass-through borrowers
  – May result in tax distributions that are calculated at lower rates or potentially less favorable pricing on the debt
  – Take into account QBI deduction? Note practical difficulties because deduction is determined at partner level
SALT Effects

• State corporate income tax and personal income tax also affect the corporation vs pass-through trade
  – High corporate income tax states reduce advantage of choosing corporate form
  – Special considerations for low income tax states
    » Decision to operate in corporate or pass-through form may be a push if state corporate income tax is replaced by business income tax that applies to pass-through businesses
    » In contrast, corporation may be a tax trap if state income tax only applies to corporations (e.g., FL)
  – Non-deductibility of state personal income taxes for federal purposes increases relative tax-efficiency of business income taxes (e.g., NYC UBT)
  – Operating in pass-through form may create significant SALT filing burden for owners if pass-through operates in multiple jurisdictions
Early Experience With Reduced Corporate Tax Rate and Deferral

• Data still emerging
  – S&P 500 companies have engaged in $384B of share buybacks during first half of 2018 (up 48% from 2017)
  – In 2018, total share buybacks by S&P 500 companies projected to exceed $1 trillion
  – Estimated 79% growth in capital spending
    Source: Goldman Sachs/CNN Money (Sept 17, 2018)

• Suggests that for public companies, at least, financial accounting benefits of buybacks/inefficiency of retained cash outweighs potential deferral benefits
  – Shareholders are able to make better use of after-tax proceeds; earnings retention strategies weigh on return on equity
Choice of Entity and QBI
Pass-through Business – QBI

- Deduction for 20% of Qualified Business Income (QBI) provides additional incentive to operate in pass-through form for owners of eligible business
  - 29.6% if full benefit of 20% deduction is available
  - Puts brakes on incentive to incorporate and create personal holding companies

- Limitation on QBI deduction based on W-2 wages and/or unadjusted basis of depreciable property (UBIA)
  - Limitation only applies to taxpayers above a threshold amount ($315,000 if married, $157,500 if single)
  - Promoting employees to sharing partner provides QBI benefit to key employees
    » Need to avoid guaranteed payments for services, which do not provide QBI benefit and erode the W-2 base
  - Keeping W-2 employees in order to preserve QBI wage base
Pass-through Business – QBI and SSTB

- Bad luck for owners of SSTBs who continue to be taxed at the 37% top income tax rate
  - SSTB kick out only applies to taxpayers above the threshold amount
  - Proposed regulations take taxpayer favorable, narrow view of trade or business where the principal asset of such trade or business is the reputation or skill of one or more of its employees

- S-corporation vs limited partnership effects
  - Limited partnership may be more efficient than S-corporation for delivering QBI benefit for taxpayers below the threshold amount
    » Unlike S-corporation, reasonable compensation requirement should not apply to limited partner, so partner sharing income can be all QBI (but need to avoid guaranteed payment)
    » S-corporation has reasonable comp requirement which reduces QBI
    » W-2 wage base effects not relevant for a taxpayer that is below the threshold amount
QBI Base Strategies – Aggregation of Business

- Election to aggregate trade or business for purposes of W-2/UBIA limitation under proposed QBI regulations
  - Must satisfy 50% relatedness test plus two out of three of: providing products or services customarily offered together OR sharing facilities or significant centralized business elements OR operating in coordination with or reliance on one another
    » SSTBs cannot be aggregated
  - Aggregation allows unused W-2/UBIA limitation to be absorbed by aggregated business
  - But, aggregation may not be beneficial if an aggregated business generates a loss that otherwise would have been allocated to a non-aggregated QBI that has a W-2/UBIA limitation
  - Aggregation rules take pressure off tax-driven combining (or separating) businesses to get (or avoid) aggregation results
QBI Base Strategies – Separation of Business

• How to separate a QBI from an SSTB?

  - Proposed QBI regulations rely on section 162 for definition of trade or business
    - No requirement for separate businesses to be housed in separate legal entities
    - However, separation can make a difference. Proposed regulations have cliff effect if
      QBI has an integrated SSTB component and SSTB component is over 5% of gross
      receipts; in that case the entire business is treated as SSTB

• Moral of story: SSTBs should be separated from QBIs
  - The preamble to the section 199A regs suggests that separate legal entities may help at
    least in close cases: “A taxpayer can have more than one trade or business ... However,
    in most cases, a trade or business cannot be conducted through more than one entity”
Proposed crack and pack rules severely limit self-help strategies aimed at separating QBIs from SSTB so that QBI can provide services to SSTB

- Income from providing QBI services to a related (50% common ownership) SSTB is not eligible for QBI
  - No benefit to separating SSTB and QBI
- Business that provides 80% or more of its property or services to a related SSTB is treated as part of the SSTB

Incidental business (less than 5% of gross receipts) also is treated as part of the SSTB even if a separate business
**Crack and Pack Limitations**

- Crack and pack rules create additional tax incentive to outsource back-office services to unrelated pass-through entities, so the service provider can use the QBI tax benefit
  - Same for office space – rent from unrelated QBI or REIT
  - Outsourcing to a related corporation is not restricted by crack and pack rules, but higher tax rates on earnings that are distributed to shareholders
Private Investment Funds and Management Companies
Private Equity Funds and Management Companies
Entity Choices

- Fund and GP structured as a limited partnership
  - Fund that will invest in foreign portfolio companies typically structured as a non-US partnership to prevent fund from being treated as US 10% shareholder under CFC rules
  - Non-US partnership also allows treaty benefits to flow through to foreign investors
    » US withholding tax determinations on dividends from US portfolio company are made by portfolio company; fund may want to elect to be treated as a withholding foreign partnership to be able to make its own withholding determinations
  - GPs typically structured as partnerships rather than LLCs – better flow through treatment for non-US members of GP, better tax treaty flow through
Manager may be structured as a limited partnership rather than LLC because limited partnership has better self-employment tax profile

S corporation manager?
- Inflexible profit sharing – but potential use of hybrid partnership structure with S-corporation holding companies
- Distribution of appreciated assets triggers tax on gain (section 311(b))
- Potential SALT leakage (e.g., NYC corporate income tax)
Private Equity Manager Structures
Tax Reform Effects

- Investing and asset management business is SSTB but incentive to incorporate Manager is limited if earnings are distributed currently
  - Possible use of deferral strategies
  - Incorporation brings risk of future corporate income tax rate increases
  - Access to FDII benefit through US corporate subsidiary?

- Continuing availability of capital gains treatment for carried interest is incentive to structure incentive compensation as partnership profits interest – carried interest, qualifying management fee waivers
  - Need to satisfy 3-year holding period under section 1061 to benefit from long-term capital gains treatment
    » No 3-year holding for qualified dividend income, for example in connection with leveraged recap of corporate portfolio company
    » But carried interest funded with return of capital distributions may give rise to distribution in excess of tax basis and capital gains that do not satisfy the 3-year holding period requirement
Exit Considerations for Fund Managers

- Interest in partnership management company and carried interest subject to 3-year holding period under Section 1061
  - Long-term capital gains *with respect to* applicable partnership interest
- How to structure sale of manager interests if there are recently admitted members with a less than 3-year holding period but manager’s assets are old and cold
  - “Partnership F reorganization”/continuation plus disregarded entity sale structure above
- Sale of interests in general partner
  - 3-year holding period tested based on ownership of general partner interests (not on holding period of underlying assets) except in connection with sale to related party
  - Partnership interest blended tax basis and holding period issues
    » Consider funding additional capital through partnership interest held by separate tax entity
Tax Reform Effects on Fund Entities
How My Foreign Portfolio Companies Became CFCs

- Portfolio companies more likely than ever to be treated as CFCs as a result of expanded downward attribution rules and change to definition of US 10% shareholder – now 10% by vote or by value

- More than ever, structuring fund as a non-US limited partnership is key to managing application of CFC rules because of expanded attribution rules
  - Taxable investors in the fund that are US 10% shareholders are in the line of fire. They are subject to tax under the CFC rules on subpart F income, GILTI full inclusion regime and section 956
  - Similar concerns for UBTI sensitive tax-exempts with respect to insurance income
Choice of Fund Entity

- What is the preferred jurisdiction for the fund limited partnership?
  - Delaware for funds that do not intend to invest outside of the United States
  - Non-US limited partnership for funds that expect to invest outside of the United States, in order to mitigate effect of CFC rules
    » Typical choices include Cayman Islands, Luxembourg, Canada
      ▪ UK now less favored as a result of upcoming loss of EU regulatory framework
    » Cayman Islands limited partnership is easy to use, but may not be attractive to European investors that are subject to offshore blacklist restrictions
    » Luxembourg limited partnership and associated regulatory platform may provide better access to European investors under Alternative Investment Fund Manager (AIFM) rules
      ▪ Luxembourg platform also helpful from BEPS anti-treaty shopping perspective
      ▪ VAT leakage on fund expenses (other than management fee)
    » Luxembourg structures required general partner and AIFM substance in Luxembourg, which may be internal or supplied by a third-party service provider
Publicly Traded Asset Managers: Up-PTP to Up-C Conversions

- Public investors hold limited partner units in PubCo LP, a publicly traded partnership which satisfies 90% qualifying income exception
  - US corporate level tax leakage on US Blocker
  - Tax leakage may be mitigated by shareholder loans, amortization tax benefit with respect to 743 step-up of management company goodwill
  - No entity level tax on unblocked carried interest

- Individual managers invest through pass-through entities
  - No blocker tax, managers typically participate in exit step-up amortization tax benefit through tax receivables agreement
Potential Conversion to UP-C Structure

- Benefits to going converting from Up-PTP to Up-C
  - Enhanced access to equity markets, particularly index funds, foreign investors that could not tolerate FIRPTA investment
  - Replaces administrative burden of K-1 reporting with 1099 reporting
  - Check the box incorporation allows Pubco to retain control structure
  - 21% corporate income tax rate reduces tax friction of corporate structure, particularly for managers that are weighted heavily toward management fee income
Conversion to UP-C structure results in US corporate income tax on all of PubCo income

- Reduced 21% corporate income tax rate means less headwinds attributable to tax on carried interest at corporate income tax rates
- 10.5% tax rate for GILTI held through foreign subsidiaries (e.g., non-US management company income)

Note: the decision does not affect legacy individual owners of the firm who stay invested through partnerships

- Reduction in corporate tax rate has reduced TRA benefit
Structuring Foreign Operations
US LP/LLC conducts its foreign operations through Foreign Sub, a foreign company that elects to be treated as a pass-through for US tax purposes
  - US limited partnership may provide better tax treaty flow through than LLC

Individual owners of US LP/LLC are currently taxed at 37% + SE/NII on foreign income
  - No QBI benefit available for non-US business
  - Flow-through foreign tax credit for foreign income taxes paid by Foreign Sub (up to 37% US rate), subject to foreign tax credit limitation, including potential branch basket
US Corp conducts its foreign operations through Foreign Sub, a foreign company that is treated as a corporation for US tax purposes.

US Corp is taxed currently on:
- Subpart F income: 21% rate
- GILTI: 50% deduction results in 10.5% tax rate (13.125% after 2015) – but may be reduced by FTC
- No current tax on annual 10% return on QBAI, or on other exempt income (e.g., high-taxed subpart F income), but watch out for Section 956!

Foreign tax credits available with respect Subpart F income, limited FTC for GILTI with respect to 80% of foreign income taxes.

100% dividends received deduction (section 245A) applies to dividends from Foreign Sub.
The Wrong Way: Pass-Through with Foreign Corporate Subsidiary

- Foreign Sub supplies goods and services to foreign customers
- Individual owners of US LP/LLC are taxed currently at 37% on subpart F income, GILTI
  - No GILTI deduction, no indirect foreign tax credit for individuals
    - GILTI rules do not have high-tax kick-out so loss of tax credit is felt in all foreign taxing jurisdictions
  - 10% deemed return on QBAI not taxed currently, but full tax applies to distributions from Foreign Sub to US LP/LLC (individuals also do not benefit from section 245A deduction)
Can a Section 962 Election Fix the Wrong Way?

- Under section 962, a US individual who is a 10% shareholder of a CFC may elect to be taxed at 21% corporate income tax rates on subpart F income
  - Section 962 election only available to individuals who are US 10% shareholders of Foreign Sub; individual owners of US LP/LLC who do not own 10% (indirectly or by attribution) are not eligible
  - Section 962 has been extended to GILTI. See section 951A(f)
  - But section 250 GILTI deduction may not be available for individuals who make 962 election

- Distributed earnings are subject to additional tax under Section 962(d)
  - US owners taxed on distributed earnings to the extent the earnings exceed US tax paid on subpart F/GILTI income

- Still the wrong way
US blocker corporation holds Foreign Sub

- Reduced US tax on GILTI (as compared to individual ownership) as a result of section 250 deduction – 50% deduction results in 10.5% tax rate (13.125% after 2025) plus 23.8% additional tax on distributed earnings
- If Foreign Sub operates in a low tax environment, advantage is limited
- If Foreign Sub is subject to substantial foreign tax income tax, advantage increases because US Sub is able to credit up to 80% of foreign taxes, which can eliminate cost of the US corporate income tax on GILTI
  » Withholding tax on dividends from Foreign Sub would cut into this benefit
• Gain from sale of shares of Foreign Sub
  – US Sub benefits from section 245A 100% DRD with respect to Section 1248 dividend
  – Gain above section 1248 dividend is subject to 21% corporate income tax
  – Additional 23.8% tax on distribution of earnings to US individual investors

• Potential strategies for mitigating gain from sale?
  – US Sub holds preferred shares in Foreign Sub that absorb some or all of GILTI; US LLC holds common shares directly
  – Possible application of section 951 Subpart F income/GILTI pro rata share anti-abuse rule?
International Holding Companies
US Holdco
US and Foreign Subsidiaries

- 21% corporate tax on US operations
- GILTI, subpart F income from Foreign Subs subject to US tax, but reduced US tax rates under TCJA reduce tax headwinds
  - 21% tax on subpart F income; 50% deduction for GILTI, resulting in 10.5% tax rate (13.125% after 2015)
  - No tax on deemed 10% return on QBAI
- Provides advantage for businesses that have significant QBAI, GILTI
  - Subpart F high-tax kick-out
  - No high tax kick-out for GILTI, including income that falls out of subpart F under active financing/insurance income (AFE)
• Foreign tax credits may reduce or eliminate US tax on Subpart F income, GILTI
  – Since no GILTI foreign tax credit carryforward, US losses that absorb GILTI result in lost foreign tax credits

• 100% dividends received deduction for distributions from foreign subsidiaries under 245A

• Future move to Foreign Holdco structure may be severely constrained by tax inversion rules

• Investor taxes
  – Distributions to US taxable investors subject to shareholder level US tax
  – Non-US investors subject to 30% US withholding tax, which may be reduced under an applicable tax treaty
  – 0% dividend withholding tax for section 892 investors that do not have control of US Holdco
Foreign Treaty Holdco
US and Foreign Subsidiaries

- 21% corporate income tax on US operations
- Dividends from US Subs subject to 30% US withholding tax
  - Potential to reduce withholding tax to 5%, and possibly to 0% for public company if the UK Holdco qualifies for tax treaty benefits
  - US dividend withholding tax leakage would be borne by all shareholders, including US shareholders
- Platform for acquiring US subsidiaries
  - Cash acquisitions (including with de minimis rollover) not subject to US tax-inversion rules
  - Can introduce shareholder debt in connection with cash acquisitions, subject to 163(j) earnings stripping limitations and BEAT, but limited rate arbitrage between US and UK based on current tax rates
Foreign Treaty Holdco
US and Foreign Subsidiaries (cont.)

- No UK tax on distributions to UK Holdco from US Subs and Foreign Subs if UK Holdco qualifies for benefits of UK participation exemption

- No US tax on foreign operations or appreciation
  - Creates advantage as compared to US Holdco structure for low-taxed foreign income, which is not subject to top up to US tax rates
  - Eliminates concerns about crediting foreign taxes (e.g., with respect to GILTI)
  - Future increases in US corporate income tax would not impact Foreign Subs
  - Allows foreign subs to guarantee US debt (but watch out for US 10% shareholders because Foreign Subs are CFCs due to downward attribution from UK Holdco to US Subs)
Investor taxes

- No UK withholding tax on dividends
- Distributions to US taxable investors subject to shareholder level US tax
  - QDI rate available for non-corporate US investors, if UK Holdco qualifies for treaty benefits or is traded on a qualifying exchange
  - US investors also bear proportionate share of US dividend withholding tax on distributions from US subsidiaries to UK Holdco
- US 10% shareholders in UK Holdco hit with CFC rules with respect to foreign subsidiaries, including GILTI, section 956
- Non-US investors
  - No additional withholding tax on distributions to non-US investors, regardless of ability to access tax treaty
Hybrid Foreign Treaty Holdco

- Similar to previous structure except
  - US investors do not suffer tax leakage on dividends from US subsidiaries because UK Holdco is pass-through for US tax purposes

- Conversion of UK Holdco to corporation (e.g., in connection with IPO) implicates inversion rules and section 367
FDII Entity Choice
FDII Base Case

• US corporation supplies goods or services to foreign customers
  – Sale of goods to foreign persons, for foreign use; supply of services to foreign customers
  – FDII also covers licensing of intangibles to foreign licensees for foreign use
  – Intended to encourage US companies to export goods and services

• US corporation benefits from 37.5% FDII deduction, resulting in 13.125% effective tax rate; deduction decreases to 21.88% after 2025, resulting in 16.405% effective rate
  – FDII deduction is not available to S-corporations and other pass-through businesses
  – Additional SALT leakage – depends on state corporate income tax rate and whether state tax also provides for FDII deduction

• Change in tax rate risk for taxpayers that repatriate assets into the United States in reliance on FDII rules
Should a Pass-Through Form a US Subsidiary to Take Advantage of FDII?

- US Sub supplies goods or services to foreign customers
- US Sub is taxed at 13.125% on FDII, but distributed earnings are subject to additional 23.8% tax = 33.8% effective tax rate
  - Combined effective tax rate increases to 36.3% after 2025
- Not a good trade for QBI eligible income which is taxed at 29.6% + NII/SE tax rate
- What of SSTBs?
  - 33.8% combined effective tax rate is less than 37% + NII/SE tax rate applicable to owners of SSTBs
  - But SALT leakage may erode a substantial portion of the benefit
    » For example, 6% state corporate income tax increases ETR on distributed earnings from 33.8% to 37.8% (after 2025 from 36.3% to 40.1%) (assuming a FDII deduction is not available for state tax purposes)
• Need to address issues relating to segregation of employees and property dedicated to supplying goods and services to foreign customers
  – Transfer pricing on intergroup transactions – negative tax rate arbitrage on goods and services provided to US LLC by US corporation

• US Sub at risk of future corporate income tax increases