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Memorandum

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subject: Allocation and Apportionment of Deferred Compensation Expense for Purposes of Calculating Section 250 Foreign-Derived Intangible Income

This memorandum responds to your request for assistance under sections 250 and 861.[1] This memorandum addresses the proper method of allocation and apportionment under the section 861 regulations of deferred compensation expense (DCE) for purposes of computing a taxpayer's Foreign-Derived Intangible Income (FDII) deduction. For purposes of this memorandum, DCE refers to an expense that is deductible by a taxpayer in a taxable year but that relates to personal services performed for the taxpayer in a prior taxable year or years.[2] This advice may not be used or cited as precedent.

ISSUE

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[1] In 2009, the Associate Chief Counsel International (ACCI) issued a Generic Legal Advice Memorandum (GLAM 2009-001) dealing with the allocation and apportionment of deferred compensation expense for purposes of computing a taxpayer's qualified production activity income and the section 199 deduction. This memorandum reflects the reconsidered advice of the Office of ACCI. GLAM 2009-001 does not represent the position of the Office and is obsolete.

[2] This memorandum does not address when DCE is capitalizable to inventory under section 263A or 471. The treatment of DCE in this situation is outside the scope of this memorandum.

For purposes of determining the FDII deduction, what is the proper method of allocating and apportioning DCE that relates to services provided prior to the effective date of section 250 pursuant to section 861, and, to what extent, if any, does this method differ from the statutory requirement under I.R.C. §250(b)(3)(A)(ii) that deductions be "properly allocable" to deduction eligible income?

CONCLUSION

Section 861 requires that taxpayers determine the factual relationship of a deduction to a class of gross income and to the statutory and residual groupings of gross income within that class of gross income. A taxpayer's apportionment methodology must reflect "to a reasonably close extent the factual relationship between the deduction and grouping of gross income." Temp. Treas. Reg. § 1.861-8T(c)(1). Even though DCE may relate to gross income derived by the taxpayer in a prior taxable year, it must be allocated to a class of gross income, and apportioned based upon the relevant grouping or groupings within the class that exists in the taxable year the deductions are taken into account under generally applicable federal income tax accounting rules. Under general federal income tax principles, the law in effect for the taxable year in which deductions are taken into account is applied in determining how deductions relate to a class of gross income, including which statutory groupings are relevant to apportionment of expenses within such class and the manner of apportionment. With respect to the Facts below, because the class of gross income to which the DCE taken into account (i.e., deducted) in 2018 relates is comprised of DEI and FDDEI, the deductions must be apportioned between those groupings of income in that year. The same conclusion applies under the "properly allocable" standard. The use of consistent standards for characterizing both the income and the expenses related to that income that are recognized in a taxable year is necessary to accurately measure the income eligible for the FDII deduction.

FACTS

Corporation X manufactures and sells Product A to both related and unrelated distributors. Corporation X is an accrual basis taxpayer with a calendar taxable year. Corporation X has been in existence since 2010 when it began manufacturing Product A. Beginning in 2018, Corporation X claimed the deduction pursuant to section 250 for FDII. For purposes of the FDII 250 deduction, the majority of Corporation X's gross income in 2018 and later is deduction eligible income (DEI), and a significant portion of that is claimed as foreign-derived deduction eligible income (FDDEI).

In addition to paying its employees' salaries on a regular basis in cash, since 2014 Corporation X has compensated employees with stock-settled restricted stock units (RSUs). A stock-settled RSU is an unsecured and unfunded promise by Corporation X to deliver one or more shares of stock to the service provider at a future date following a specified vesting condition. Corporation X's RSUs are designed to reward and retain employees over several years and vest after four years of continuous service. The terms of the RSU provide that delivery of substantially vested shares will occur on the date the vesting condition is satisfied. For example, on January 1, 2014, Corporation X grants an employee a stock-settled RSU that entitles the employee to 1,000 shares of Corporation X common stock if the employee continues to provide services to Corporation X until January 1, 2018. On January 1, 2018, the employee satisfies the vesting condition and Corporation X initiates delivery of the 1,000 shares of stock. Corporation X properly claims a deduction for the related expense in 2018.[3]

With respect to deductions allocable to Corporation X's sole class of gross income – i.e., income from sales of Product A – but which are not clearly related to one of the exceptions to DEI listed in section 250(b)(3)(A)(i) comprising the residual grouping, Corporation X claims that DCE relating to the performance of services prior to 2018, that is prior to the effective date of section 250, should be apportioned to the residual grouping and thus will not reduce gross DEI or FDDEI, but will still reduce other gross income in the residual grouping that is recognized in 2018. Thus, for RSU expenses that are deductible under sections 83 and 162 in 2018 and later, Corporation X claims that some portion of the deduction factually relates to an earlier taxable year prior to the section 250 effective date.

LAW AND ANALYSIS

Section 250 Background

The Tax Cuts and Jobs Act, Pub. L. 115-97, 131 Stat. 2054 (hereafter "TCJA"), enacted section 250, which provides for a deduction with respect to both Global Intangible Low-Taxed Income (GILTI) and (the subject of this GLAM) Foreign-Derived Intangible Income (FDII). The FDII deduction is only available to domestic corporations and is effective for taxable years beginning after December 31, 2017. The starting point for the calculation of a taxpayer's FDII deduction is deduction eligible income (DEI). DEI is the excess of a domestic corporation's gross income, determined without regard to certain excluded categories of income, over the deductions properly allocable to such gross income. I.R.C. §250(b)(3). Foreign-derived deduction eligible income (FDDEI) is a subset of DEI. FDDEI is generally any DEI which is derived from (1) sales of property to a foreign person which the taxpayer establishes is for a foreign use; and (2) services which the taxpayer establishes are provided either to a person, or with respect to property, located outside of the U.S. I.R.C. § 250(b)(4). The taxpayer's FDII deduction is the product of a fixed percentage, currently 37.5%, and the portion of the taxpayer's DEI (less a deemed return to certain qualified business assets) equal to the ratio of the taxpayer's FDDEI over its DEI. See I.R.C. §250(b)(1)-(2).

[3] As the name indicates, the compensation element of DCE may consist of other items such as pension payments, retiree medical payments, stock options, and other forms or types of compensation that may relate to an earlier period. However, for the sake of brevity this GLAM omits a discussion of types of DCE other than the RSUs described herein. Further, the analysis in this GLAM may apply to deductions other than compensation that may be seen as relating to an earlier period, such as a warranty payment resulting in a deduction allowable in 2018 that was incurred in respect of a product sold in an earlier year.

The regulations implementing FDII made conforming amendments to Treas. Reg. § 1.861-8 providing that section 250(b) is an "operative section"[4] for purposes of the section 861 regulations.[5] These amendments are applicable to taxable years beginning on or after January 1, 2021. Under the section 250 regulations therefore, deductions are allocated to gross DEI and gross FDDEI under the section 861 regulations. See Treas. Reg. § 1.250(b)-1(d)(2)(i). For taxable years beginning before January 1, 2021, taxpayers may, for purposes of determining DEI and FDDEI, allocate and apportion deductions in accordance with the principles of the section 861 regulations. If, for taxable years beginning before January 1, 2021, taxpayers do not apply the principles of the section 861 regulations, then the statutory "properly allocable" standard applies. See I.R.C. § 250(b)(3)(A)(ii).

For purposes of the FDII regulations, gross RDEI means gross DEI that is not FDDEI. Treas. Reg. §1.250(b)-1(c)(14). Expenses allocated and apportioned to gross DEI are then further allocated and apportioned between gross RDEI and gross FDDEI. See Treas. Reg. § 1.250(b)-1(d)(2)(i). The allocation and apportionment of expenses can increase the FDII deduction either by associating deductions with types of income excluded from DEI, thereby increasing DEI, or by associating deductions with RDEI, thereby increasing the ratio of FDDEI to DEI. Accordingly, the allocation and apportionment of deductions is of particular importance to the final amount of a taxpayer's FDII deduction.

Section 861 and "Properly Allocable" Background

Under section 861 and the section 861 regulations, a deduction is allocated to a class of gross income, and then, if necessary, apportioned between the statutory and residual groupings of gross income within that class. Treas. Reg. § 1.861-8(a)(2). The allocation and apportionment of a deduction is based on the factual relationship of the deduction to a class of gross income.

Treas. Reg. § 1.861-8(b)(1) provides that the classes of gross income are not predetermined but must be determined on the basis of the deductions to be allocated and that some deductions may be factually related to all of the taxpayer's gross income, rather than to a particular class of gross income. Treas. Reg. §1.861-8(b)(2) provides that a deduction is considered definitely related to a class of gross income, and therefore allocable to such class, if it is incurred as a result of, or incident to, an activity or in connection with property from which such class of gross income is derived.

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[4] An operative section is a provision of the Internal Revenue Code that requires the determination of taxable income from a specific activity or source. See Treas. Reg. § 1.861-8(f)(1).

[5] The term "section 861 regulations" means sections §§1.861-8, 1.861-8T, 1.861-9, 1.861-9T, 1.861-10, 1.861-10T, 1.861-11, 1.861-11T, 1.861-12, 1.861-12T, 1.861-13, 1.861-14, 1.861-14T, 1.861-17, and 1.861-20. Treas. Reg. §1.861-8(a)(1). Regulations implementing the section 250 FDII deduction use slightly different terminology to refer to regulations under section 861 and omit the reference to Treas. Reg. § 1.861-20 which did not exist in finalized form when the section 250 regulations were promulgated. See Treas. Reg. § 1.250(b)-1(d)(2)(i).

Where a deduction is incurred as a result of, or incident to, an activity or in connection with property that generates, has generated, or may reasonably be expected to generate gross income, it shall be considered definitely related to that gross income as a class whether or not any gross income in that class is accrued during the taxable year. Id. The regulations also provide that if a deduction is definitely related to a class of gross income, the deduction will be allocated to that class even if the amount of the deduction exceeds the gross income in that class for the taxable year, including if there is no gross income in that class in the taxable year. Treas. Reg. §1.861-8(d)(1). Thus, a deduction may be factually related to an activity, such as the production of a particular product, and allocated to the class of gross income derived from that activity, notwithstanding that in a particular taxable year the actual gross income recognized in connection with the activity is insignificant, or is recognized in an earlier taxable year, or in a subsequent taxable year.

Once allocated to a class of gross income, expenses are then associated with one or more groupings of income within that class based on the relevant categories of income defined under the Code section at issue. The term statutory grouping means the gross income from a specific source or activity which must first be determined in order to arrive at taxable income. See Treas. Reg. § 1.861-8(a)(4). The income that is relevant for determining the application of the particular Code section here, is the statutory grouping of gross income for purposes of applying section 250(b) as an operative section. Other income belongs to the residual grouping. Id. As with the allocation of a deduction to a class of gross income, the apportionment of a deduction to a statutory grouping of gross income must be made in a manner that reflects the factual relationship between the deduction and the statutory grouping of gross income. Temp. Treas. Reg. § 1.861-8T(c)(1). A taxpayer may apportion the deduction using various bases and factors provided the method or basis (e.g., comparison of units sold or gross income amounts) “reflects to a reasonably close extent the factual relationship between the deduction and grouping of gross income.” Id.

A taxpayer must furnish, if requested, information supporting the factual relationship, for purposes of both allocation and apportionment, of the deduction to the class of gross income and to the statutory grouping of gross income. Treas. Reg. § 1.861-8(f)(5).

As noted above, if for taxable years beginning before January 1, 2021, taxpayers do not apply the principles of the section 861 regulations, then the statutory “properly allocable” standard applies. See I.R.C. § 250(b)(3)(A)(ii). Although statutory provisions frequently use the term “properly allocable” and some cases have had reason to interpret that standard, the case law does not offer guidance helpful in determining how that standard should be applied in the context of section 250. In adopting regulations to implement statutory provisions using the “properly allocable” standard, the Treasury Department and the IRS have frequently used the section 861 regulations, which rely on a factual linkage of income and expense.[6]

Other Relevant Tax Accounting Authorities and Relationship to Section 861

Taxable income is generally defined as gross income minus the deductions allowed by Chapter 1 of the Internal Revenue Code. I.R.C. §63(a). In computing taxable income under section 63, the items specified in sections 161 through 199A are allowed as deductions. I.R.C. §161. Under section 162(a)(1), the ordinary and necessary expenses paid or incurred during the taxable year in carrying on a trade or business are allowed as deductions, including a reasonable allowance for salaries or other compensation for personal services actually rendered. In general, section 83(a) provides that when property, such as stock, is transferred in connection with the performance of services, the fair market value of the property (less any amount paid for the property by the service provider) is included in the gross income of the person who performed the services in the first taxable year in which the rights to the property become transferable or are no longer subject to a substantial risk of forfeiture. Section 83(h) generally provides that an employer's deduction for property transferred to an employee is equal to the amount included in the employee's gross income. The deduction is allowed in the taxable year in which or with which ends the taxable year in which such amount is included in the gross income of the person who performed the services.[7]

Under section 441(a), taxable income is computed on the basis of the taxpayer's taxable year. The term "taxable year" typically means the taxpayer's annual accounting period if it is a calendar year or fiscal year. I.R.C. §441(b)(1).

Section 461(a) provides that the amount of any deduction or credit shall be taken for the taxable year which is the proper taxable year under the method of accounting used in computing taxable income. Treas. Reg. § 1.461-1(a)(2)(i) provides that under an accrual method of accounting, a liability is incurred, and generally is taken into account for Federal income tax purposes, in the taxable year in which all the events have occurred that establish the fact of the liability and the amount of the liability can be determined with reasonable accuracy, and economic performance has occurred with respect to the liability.

Sections 861(b) and 862(b), respectively, describe how taxable income is computed from sources within and without the United States. From the items of specified gross income listed in sections 861(a) and 862(a), respectively, expenses are deducted and the remainder is included as taxable income from sources within the United States or without the United States. See I.R.C. §§ 861(b) and 862(b). Although sections 861 and 862 only refer to sourcing of income, Treas. Reg. § 1.861-8(a)(1) provides that the rules

[6] See, e.g., I.R.C. §199(c)(1) and Treas. Reg. § 1.199-4(d); I.R.C. §250(b)(3)(A)(ii) and Treas. Reg. § 1.250(b)-1(d)(2)(i).
[7] I.R.C. §83(h).

apply, "in determining taxable income of the taxpayer from specific sources and activities under other sections of the Code, referred to in this section as operative sections." Thus, the section 861 regulations provide that taxable income is computed for purposes of a particular operative section such as section 904(d)(1)[8] (the separate foreign tax credit limitations), sections 871(b)(1) and 882(a)(1)[9] (effectively connected taxable income for nonresident alien individuals and foreign corporations, respectively, or section 250(b)[10] (DEI and FDDEI).

Nothing in sections 861, 862 or the regulations thereunder modifies the general income tax accounting provisions of sections 63, 83(h), 161, 162, 441, and 461. Further, no judicial guidance or other authority has suggested that the statutory "properly allocable" standard affects the meaning or operation of these income tax accounting provisions. Accordingly, section 861 and the section 861 regulations, as well as the "properly allocable" standard, are governed by the tax accounting principles of sections 63, 83(h), 161, 162, 441, and 461 in the same manner as those principles generally apply under the Internal Revenue Code.

Analysis

Under section 861, Corporation X must determine the factual relationship between the DCE and its gross income. As provided in Treas. Reg. § 1.861-8(b)(2), a deduction is considered definitely related to a class of gross income, and therefore allocable to such class, if it is incurred as a result of, or incident to, an activity or in connection with property from which such class of gross income is derived. Corporation X's sole class of gross income is income from the manufacture and sale of Product A. For purposes of applying section 250(b) as an operative section, gross RDEI and gross FDDEI are treated as separate statutory groupings. See Treas. Reg. § 1.250(b)-1(d)(2)(i). The items of gross income that are excluded from DEI under section 250(b)(3)(A)(i)(I) through (VI) are in the residual grouping. Id. While most of Corporation X's gross income is deduction eligible income, some portion of Corporation X's gross income is excluded from DEI because it falls under one of the exceptions listed in section 250(b)(3)(A)(i)(I) through (VI).

In connection with a change in law, such as the introduction of the FDII deduction for taxable years beginning in 2018 and later, certain taxpayers have asserted that a deduction should not be treated as offsetting current year gross income in associating expenses with related income under an operative section. Such taxpayers have argued that an expense, such as DCE, which factually relates to a class of gross income, may be said to relate to gross income in the class recognized in an earlier taxable year, such that the current year's deduction should only reduce gross income in the residual grouping and not reduce gross income in the statutory grouping.

[8] Treas. Reg. § 1.861-8(f)(1)(ii).
[9] Treas. Reg. § 1.861-8(f)(1)(iv).
[10] Treas. Reg. § 1.861-8(f)(1)(v)(N).

Under section 441, Corporation X's taxable income is computed on the basis of its taxable year, which is the calendar year. Under section 461(a), Corporation X's deductions are taken in the proper taxable year under the method of accounting used in computing Corporation X's taxable income. To the extent that RSUs issued by Corporation X in 2014 vest, and shares are transferred to employees in 2018, the employee's income inclusion with respect to the shares occurs in 2018 and Corporation X's deduction for the DCE is properly taken in taxable year 2018.

Although the section 861 regulations envision that a deduction may be factually related to a class of gross income even though no gross income is recognized in the current taxable year, they do not (and cannot) change the taxable year in which an expense accrues. Sections 83(h), 441, 461, 861, and 862 do not contemplate that an expense, such as Corporation X's DCE, may be accrued in a different taxable year than that provided under generally applicable tax accounting rules, which here is the 2018 taxable year. Similarly, sections 441 and 461 provide no support under the "properly allocable" standard for accruing expenses in an earlier taxable year.

Further, no authority suggests that an otherwise apportionable deduction for a taxable year may be allocated to a particular grouping based on law applicable in a prior period, or apportioned taking into account such prior period law.[11] A basic principle of the federal income tax system is the annual accounting of income within a taxable year. Burnet v. Sanford & Brooks Co., 282 U.S. 359, 365 (1931) and Healy v. Commissioner, 345 U.S. 278, 281 (1953). Additionally, the determination of the amount of gross income and the allowable deductions for a taxable year depend upon the tax law in effect in the particular year. Reo Motors v. Commissioner, 338 U.S. 442, 447-48 (1950). It follows that the determination of how expenses deducted in a taxable year relate to a class of gross income must be governed by the tax laws in effect for the same taxable year, including which statutory groupings are relevant to apportionment of expenses within such class and the manner of apportionment.

It follows that, with respect to the facts in question, because the class of gross income to which the DCE taken into account in 2018 relates is comprised of DEI and FDDEI in 2018, the deductions must be apportioned between those groupings of income in that year. Any other approach would violate the requirement that the apportionment of

[11] Section 861 also provides rules on the sourcing of gross income, in contrast to the rules on deductions addressed herein. Treas. Reg. § 1.861-4 provides rules on the sourcing of personal service income, including multi-year compensation arrangements where compensation is included in income in one year but is attributable to a period that includes two or more taxable years. The source of multi-year compensation is generally determined on a time basis over the period to which the compensation is attributable. Treas. Reg. § 1.861-4 (b)(2)(ii)(E)-(F). Thus, these regulations recognize that the sourcing of current year gross income may have a relationship to a prior taxable year (or years). However, these regulations deal with the source of income rather than the treatment of deductions and, in contrast to taxpayer's position, do not use a prior taxable year's Federal income tax law (or change the taxable year in which gross income is recognized) to determine the source or amount of gross income recognized in the current taxable year.

deductions within a class of gross income for a taxable year "must be accomplished in a manner which reflects to a reasonably close extent the factual relationship between the deduction and the grouping of gross income." Temp. Treas. Reg. § 1.861-8T(c)(1). The fact that the service period to which compensation expense is relevant straddles the effective date of section 250 does not permit a taxpayer to depart from the normal rule that the deduction for such expense must be allocated to (and apportioned to groupings within) the class of gross income for the taxable year in which the deduction may be claimed. By claiming the DCE expense may be allocated solely against residual income rather than apportioned, Corporation X is in effect attempting to apply the federal income tax law of an earlier period to such expense, with resulting distortion of the amount of FDDEI.[12]

The conclusion that DCE deductions must be allocated to related income in a given year based on the rules for characterizing income in effect that year is consistent with precedent on the impact of changes in tax law. In other contexts, a change in law requires that taxpayers and the Service abide by the change in law in computing taxable income in a given taxable year notwithstanding that some aspect of the particular facts and circumstances may indicate a connection with an earlier taxable year. Although dealing with income, not expenses, in the installment sale context it is well settled, for example, that installment payments are subject to taxation under the provisions of the law as are in effect at the time the gain is recognized. See Estate of Kearns v. Commissioner, 73 T.C. 1223, 1225 (1980) (*citing* Snell v. Commissioner, 97 F.2d 891 (5th Cir. 1938)), and Klein v. Commissioner, 42 T.C. 1000 (1964). For example, in Snell, the taxpayer sold land on an installment basis in 1923 and apparently expected that subsequent installments would be taxed at capital gains rates which applied in 1923. Id. at 892. However, Congress changed the type of property subject to capital gain treatment such that installment gain recognized in 1924 and later would be taxed at the higher ordinary rate. Id. The court concluded that by deferring gain until later years, the gains "were left to fall under such provisions of the law as might be of [sic] force at their maturity. That the law might be changed, not only in the tax rate but in any other of its provisions, was a risk the taxpayer took in deferring the realization of his gains." Id. at 893. Similarly, under the so-called claim of right doctrine, where a taxpayer receives income which the taxpayer is subsequently required to return, the taxpayer is entitled to a deduction in the year of repayment although the tax benefit in the year of deduction could differ from the increase in taxes on account of the income received in the earlier year because of a change in rates for example. See Healy v. Commissioner, 345 U.S. 278, 284-85.[13]

In other specialized contexts, the expense allocation and apportionment rules allocate and apportion expenses based upon current year sales notwithstanding a factual

[12] The distortion arises because all gross income recognized in 2018 is eligible to be treated as DEI, but a portion of expenses recognized in the same taxable year may be said to be associated with income earned in prior years. In fact, under the taxpayer's theory, the taxable income included in the statutory grouping that is eligible for the FDII deduction may exceed the taxpayer's actual taxable income.
[13] Subsequently the claim of right doctrine was codified in section 1341. Section 1341 supports the underlying annual accounting concept by providing relief from it in certain contexts.

connection to a different period. For instance, the regulations that allocate and apportion research and experimental expenditures (hereafter, "R&E expenditures") acknowledge that R&E expenditures currently deductible ". . . are not reasonably expected to produce any current income in the taxable year in which the expenditures are incurred, and the regulations recognize that the results of R&E expenditures are speculative."[14] Thus, R&E expenditures will over time ". . . *ultimately* result in the creation of intangible property that will be used to generate income." Treas. Reg. § 1.861-17(b)(1) (emphasis added). However, currently deductible R&E expenditures must still be allocated to classes of gross income and apportioned between statutory and residual groupings, thus offsetting gross income recognized in the current taxable year and on the basis of the facts and applicable law for such taxable year.

Finally, the Treasury Department and the IRS adopted a rule in 2020 requiring that certain damages payments be apportioned among statutory and residual groupings based upon, as the case may be, relative amounts of gross income or relative asset values in each grouping in the taxable year the deductions are allowed.[15] See Treas. Reg. § 1.861-8(e)(5)(ii) and (iii). Although the regulatory provision does not explicitly address a change in law, the rule clearly refers to apportionment factors in existence "in the year the deductions are allowed," and not in the prior year when the underlying incident occurred. Example 17 (Treas. Reg. § 1.861-8(g)(17)) illustrates the rule when there is in fact a change in law. That example addresses the allocation and apportionment of expenses for legal damages arising from an event incident to the production or sale of products and the provision of services. In Example 17, a warehouse accident in 2016 is followed by a deductible damages payment in 2020. The underlying substantive rule requires that such expenses for damages be allocated to the class of gross income ordinarily produced by the assets involved in the event and apportioned based upon the relative value of the assets in the class in each grouping in the year the deductions are allowed. See Treas. Reg. § 1.861-8(e)(5)(ii). In the Example, that year was 2020, at which point, pursuant to the TCJA, the separate limitation category for foreign branch category income in section 904(d)(1)(B) was relevant. Although Example 17 implicates section 904 as an operative section, rather than section 250, it illustrates that the tax consequences of a deduction are based on the federal income tax law in effect for the taxable year in which the deduction is claimed even if events giving rise to the deduction occurred in a taxable year for which the relevant federal income tax law differed.

In the instant case, the treatment of DCE deductions for purposes of determining the FDII deduction should be similarly subject to taxation under the provisions of the law in effect for the taxable year in which the deductions accrued, which is 2018.

Please call (202) 317-6936 if you have any further questions.

[14] See Preamble to TD 9922, 85 FR 71998, 72008 (Nov. 12, 2020).
[15] Changes to the regulations were promulgated in TD 9922, 85 FR 71998 (Nov. 12, 2020).