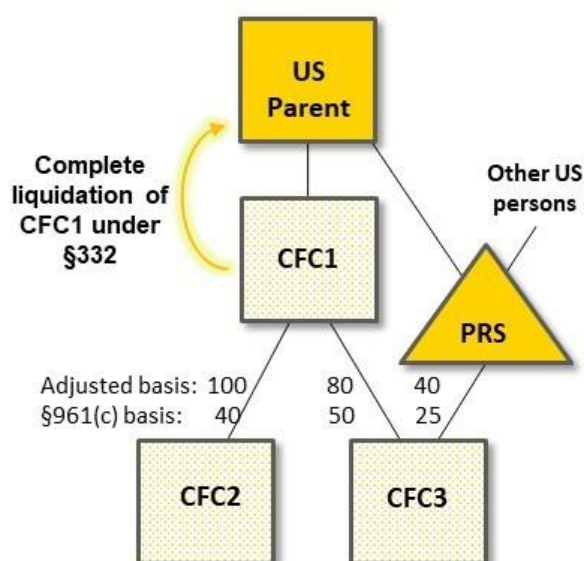


Technical Developments and Musings

Making it real: Section 961(c) basis and inbound transactions. [Notice 2024-16](#) announces forthcoming proposed regulations that expand the role of notional stock basis of a lower-tier CFC subsidiary when that subsidiary's stock is transferred to a US person in certain inbound nonrecognition transactions (§332 complete liquidations and §368 asset reorganizations). Generally, this type of basis—also known as §961(c) basis—is a notional account, subject to adjustments similar to those under §961(a) and (b), that is only taken into account for purposes of determining certain inclusions under subpart F. But double taxation

of CFC earnings could occur if the notional basis continues having a limited purpose once, for example, the lower-tier subsidiary becomes a first-tier subsidiary, e.g., because of an inbound nonrecognition transaction. Acknowledging this possibility, the notice thus provides limited relief to certain classes of inbound upstream and “sideways” transactions, generally limited to a US corporate chain with 100% ownership of the first-tier transferor CFC and lower-tier CFC subsidiary but with more expansive ownership rules for consolidated groups. Thus, in the complete liquidation of CFC1 depicted here, US Parent's aggregate basis in CFC2 stock includes basis previously treated as notional, assuming aggregate basis does not exceed FMV. However, the corresponding notional basis for CFC3 stock does *not* qualify for favorable treatment under the notice. While many §961(c) questions remain unresolved, the incremental basis expansion here is nevertheless a helpful development. For further info, see [Tax Alert 2024-0141](#).

Notional basis and inbound nonrecognition transactions



CAMT: CFC distributions and consolidated issues. Another notice of forthcoming proposed regulations, [Notice 2024-10](#), provides interim guidance clarifying certain provisions of the corporate alternative minimum tax (CAMT). The notice addresses the impact of certain distributions from a CFC in a taxpayer's applicable financial statement income (AFSI), which guidance should reduce the potential for the duplication of items in the taxpayer's AFSI. In addition, the notice modifies and clarifies previously issued guidance for determining the applicable financial statement of a consolidated return group member, particularly where all members are not included in a single financial statement. For further info, see [Tax Alert 2023-2105](#).

FTCs, DCLs and Pillar 2. December's CFC notice trilogy is rounded out with [Notice 2023-80](#), announcing forthcoming proposed regulations to address application of foreign tax credit (FTC) and related rules—as well as the dual consolidated loss (DCL) rules—to certain types of taxes described in the OECD's GloBE model rules. Among other things, this notice describes corporate structures of a multinational enterprise group that will not be eligible for FTC, such as where a CFC incurs a top-up tax whose computation takes into account the US taxes paid by a US parent company. For further info, see [Tax Alert 2023-2082](#).