DOING BUSINESS IN THE US

What to know about the Biden Tax Proposal before expanding to the US.

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AMESTO GLOBAL

About us.

Who is Global Tax Management?

Serving Multinational Corporations in all Industries

Life Sciences | Manufacturing | Technology | Chemicals | Energy/Utilities | Retail

Founded in 1995
100% employee owned
(ESOP)

100% focused on corporate tax services

We help companies build, operate, and manage tax department functions

OUR SERVICES bring practical approaches to address the complexities of direct and indirect taxation

- Tax Provision
- Income Tax Compliance
- Indirect Tax
- Tax Automation
- International Tax
- Transfer Pricing
- State & Local Tax
- R&D Tax Credit
- Tax Consulting & Planning

HOW WE DELIVER

Project-Based | Co-Sourced | Outsourced | Transitional

GLOBAL REACH

wts global

GTM is a U.S. member firm of the WTS Global international tax network.

GLOBAL TAX MANAGEMENT

Your presenters.

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Housekeeping.

- Attendee audio will be muted
- To ask a question, use the hand raise or chat box function.
- For technical assistance also use the chat function
- A recording link will be made available to all signees.

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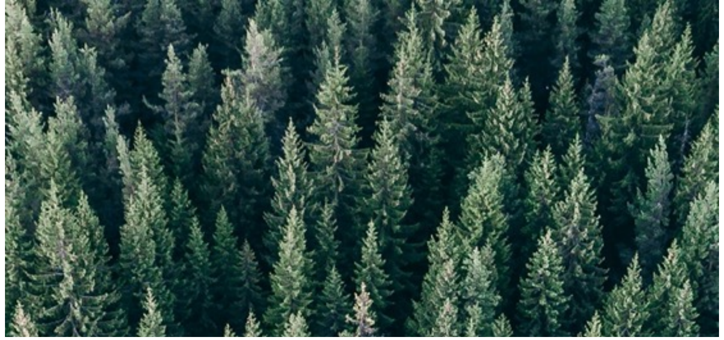
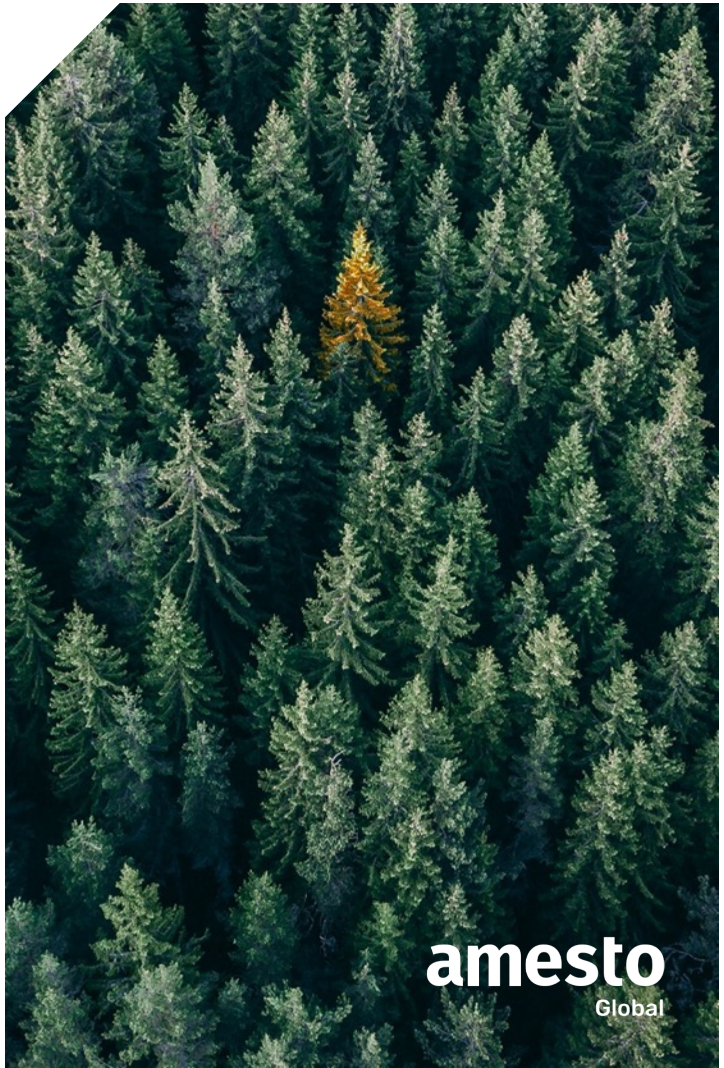
Agenda.

- Introduction
- Review Green Book Bidens' Tax Proposal
- Overview of Senators Wyden, Brown, Warner tax proposals
- Tax Modeling
- Tax Planning
- Investing in the US





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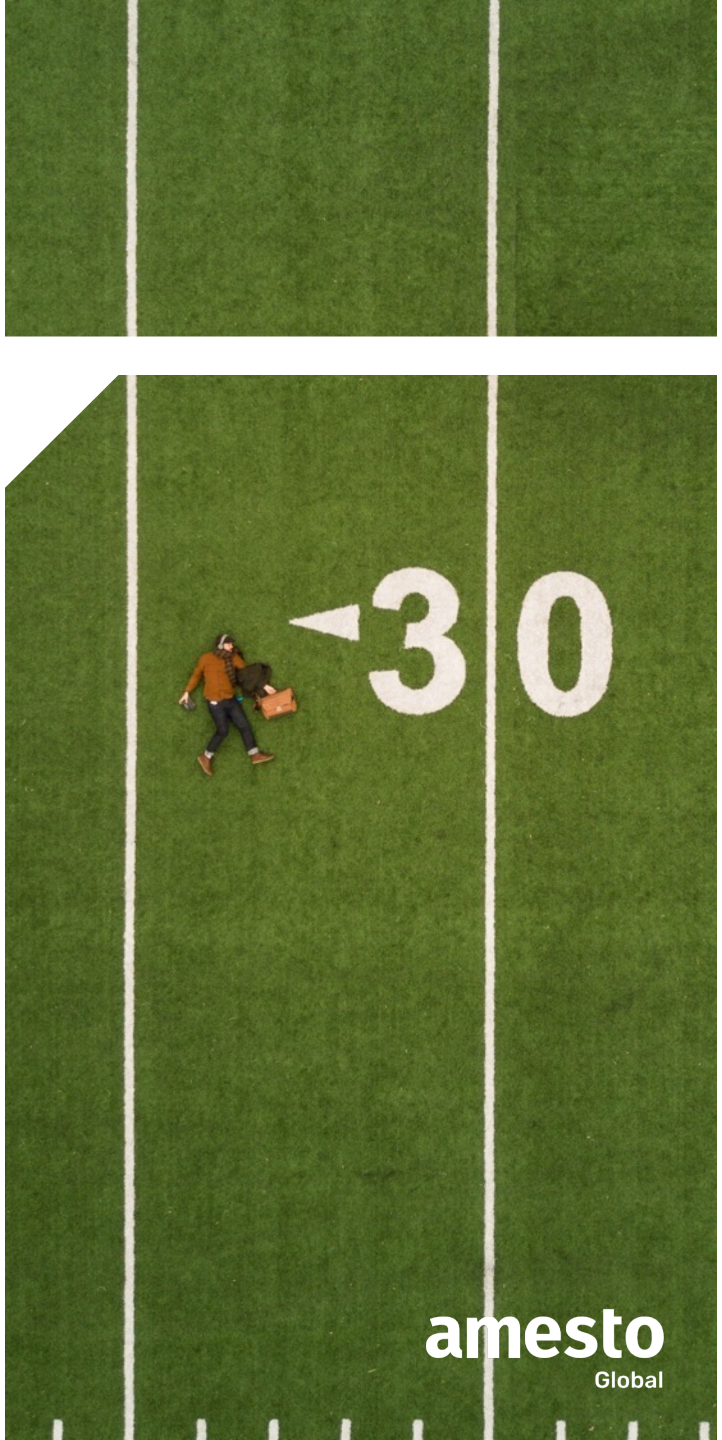
Review green book Biden's tax proposal.

Green book Biden's tax proposal.

- Green Book released on May 28, 2021
- Corporate tax rate would increase from 21% to 28%
- Worldwide interest expense limitation
  - Applies to worldwide structures with more than $5 million in net interest expense
  - New layer of interest expense disallowance on top of Sec. 163(j)
    - Sec. 163(j) currently limits interest expense to 30% of taxable version of EBITDA (EBIT after 2021)
    - Sec. 163(j) applies to entities with revenue in excess of $25 million (average 3 years)
  - Restrict interest expense if US has 1) net interest expense and 2) net interest expense in the US exceeds its proportionate share of worldwide net interest expense based on EBITDA
  - If the financial group cannot substantiate its worldwide interest expense, US can elect to limit its to 10% of adjusted taxable income + interest income
  - Disallowed interest expense may be carried forward indefinitely
- Expanded inversion rules
  - Continued US ownership threshold reduced from 80% or 60% to greater 50%
  - Alternative test could kick-in if foreign acquiring company is primarily managed and controlled in the US and:
    - FMV of domestic corp. is greater than foreign acquiring corp.
    - No substantial business activities in the foreign acquiring corporation



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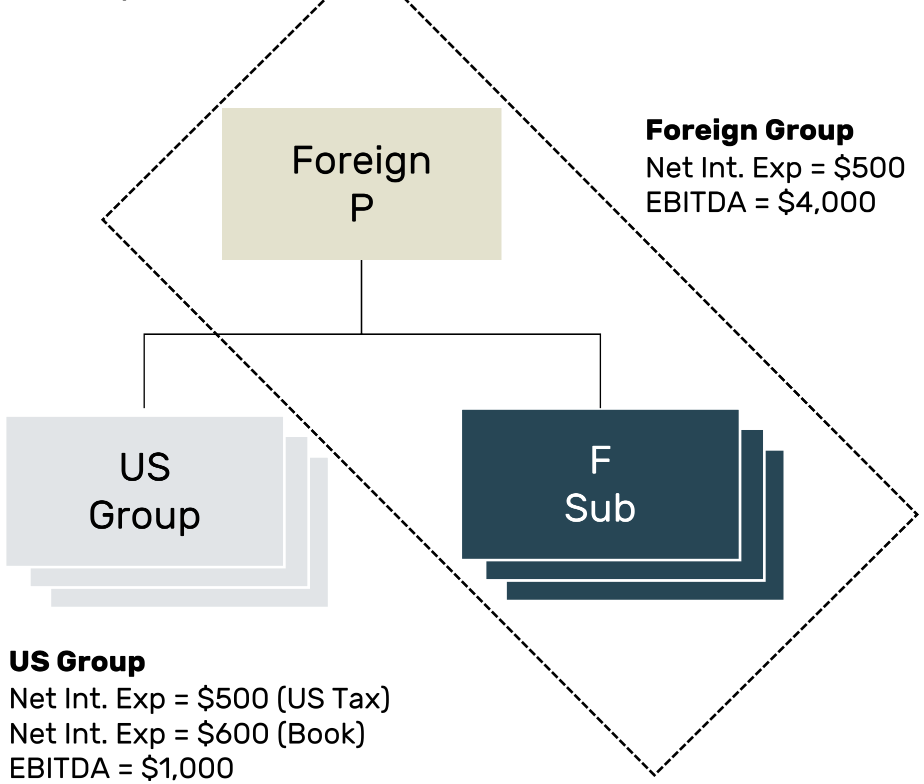
Green book Biden's tax proposal.

WORLDWIDE INTEREST EXPENSE

Example:

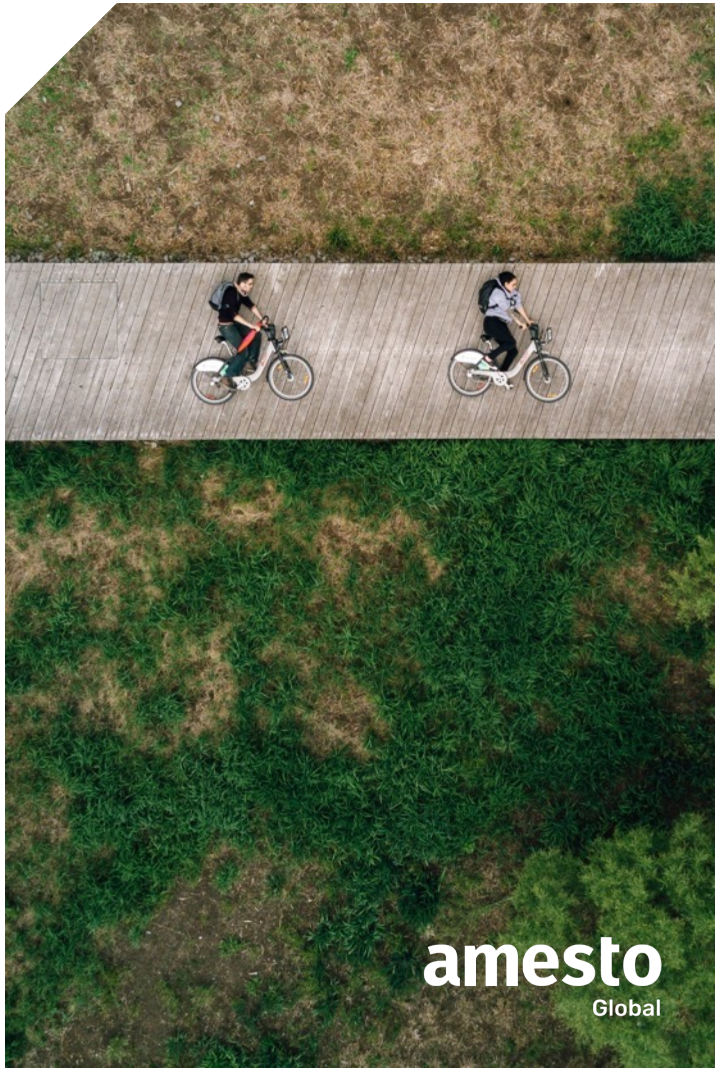


- Step 1: Calculate US Group share of net interest expense (NIE):
  - US EBTDA/Total EBIDTA x Total Net Interest Expense (Book)
  - $1,000/$5,000 x $1,100 = $220
- Step 2: Calculate excess book net interest expense:
  - US NIE (book) – US Group share of NIE
  - $600 - $220 = $380
- Step 3: Calculate excess net interest expense (tax):
  - US NIE (Tax) x US Excess book NIE / US book NIE
  - $500 x $380/$600 = $317

Green book Biden's tax proposal.

SHIELD will replace BEAT

- SHIELD = Stopping Harmful Inversions and Ending Low-Tax Developments
- BEAT served as successor to the corporate Alternative Minimum Tax with focus on base erosion payments
- SHIELD applies to Financial Reporting Groups with global revenue in excess of $500M annually (not 3-year average)
- SHIELD will disallow certain deductions for payments to "low-taxed members"
  - "Low-tax members" are defined as having an ETR below a "designated minimum tax rate"
    - "Designated minimum tax rate" would be rate agreed upon by the OECD under Pillar Two
      - Treasury is suggesting a 15% rate
    - Until then, "designated minimum tax rate" is 21%
  - Distinction between Primary and Secondary
    - Primary = Payment made directly to a low-tax member
      - Full deduction denied
    - Secondary = Payment made indirectly to a low-tax member
      - Deduction partially denied determined on pro-rata income basis



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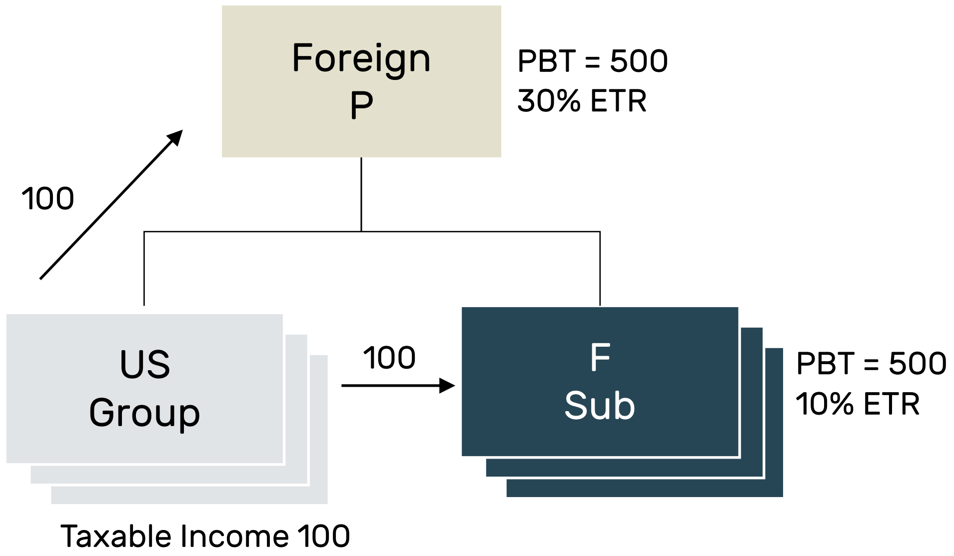
SHIELD

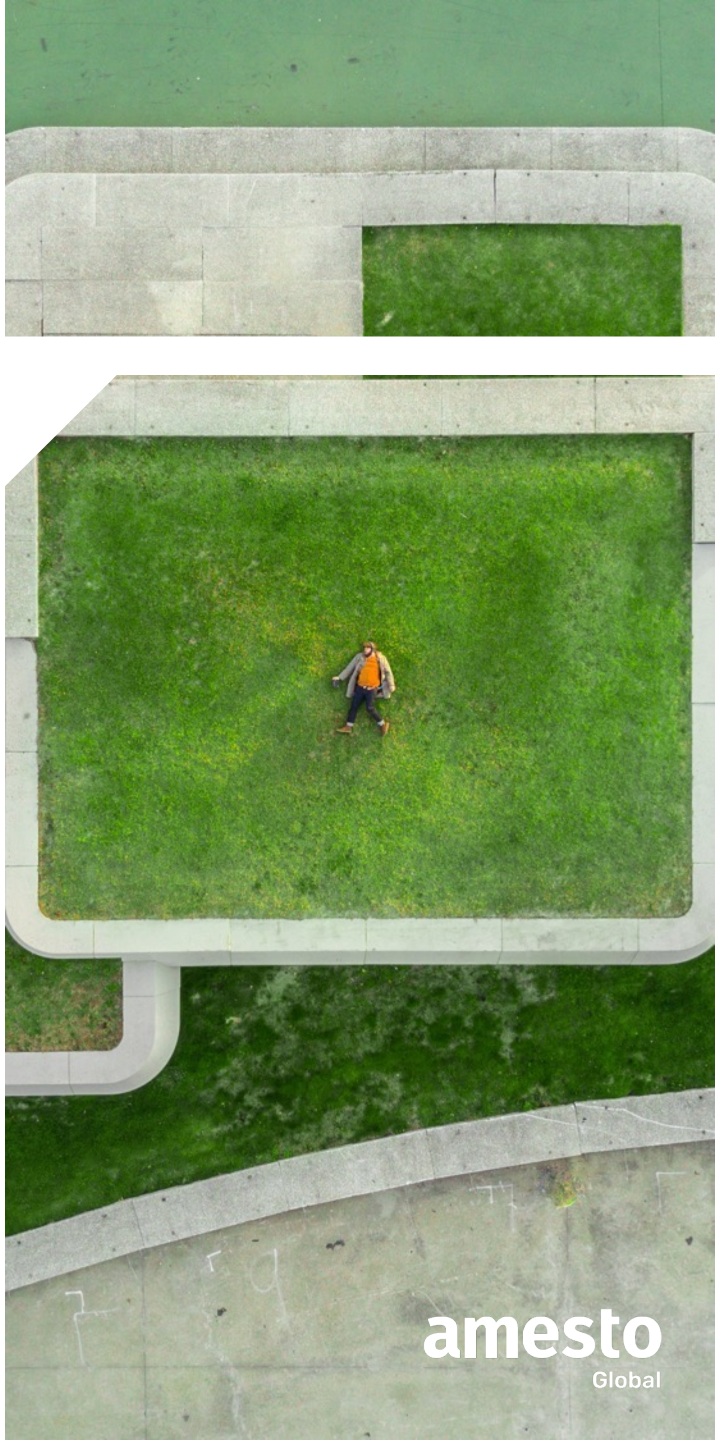
Example:



- Pre-SHIELD
  - Taxable Income $100
  - Tax Rate <u>28%</u>
  - Tax 28
  - Assumes BEAT does not apply
- Post-SHIELD
  - Taxable Income $100
  - Disallowed deduction 100 (100% because of Primary Payment to Low-Taxed)
  - Disallowed deduction <u>50</u> (500/1000 x 100 because of Secondary Payment)
  - Adjusted Taxable Inc. 250
  - Tax Rate <u>28%</u>
  - Tax 70

Green book Biden's tax proposal.

- Other Provisions
  - Onshoring and offshoring U.S. Business
    - Disincentive to move U.S. jobs offshore and incentive to move job in the U.S.
    - Disallow deductions related for offshoring job
    - Details to be provided but essentially may result a credit in 10% of eligible expenses for onshoring
  - Foreign-derived Intangible Income (FDII)
    - Intangible income related to export sales and services may currently be taxed at 13.125% if certain requirements are met
    - Tax proposal would repeal FDII
    - Replaced with a revamped R&D incentive
  - GILTI changes:
    - Foreign income of US' foreign subsidiary currently subject U.S. tax
    - GILTI effective tax rate would increase from 10.5% to 21%
    - Other changes to GILTI will increase tax on income
  - Subpart F
    - Foreign income that is passive income and "movable income" subject to 21% US tax
    - Changes to Subpart F to align with GILTI



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Overview Senators Wyden, Brown, Warner tax proposals.

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Senators Wyden, Brown, Warner International Tax Framework.

- Released on August 25, 2021 and includes draft statutory language
- Corporate tax rate: Not discussed
- FDII revised to incentivize domestic innovation
  - Export sale and services benefit may be limited to a certain percentage of R&D + certain training expenses (domestic innovation) instead of intangible income.
- Revise BEAT to have dual tax rates and incorporate SHIELD proposals in some fashion
  - BEAT=(10% × Regular Taxable Income) + (TBD% × Base Erosion Income)
    - Base Erosion Income=income added back in modified taxable income
    - 10% rate would increase to 12.5% after 12/31/2025
- Other Provisions
  - GILTI:
    - Additional changes that would increase GILTI tax
  - Subpart F:
    - Similar changes as GILTI

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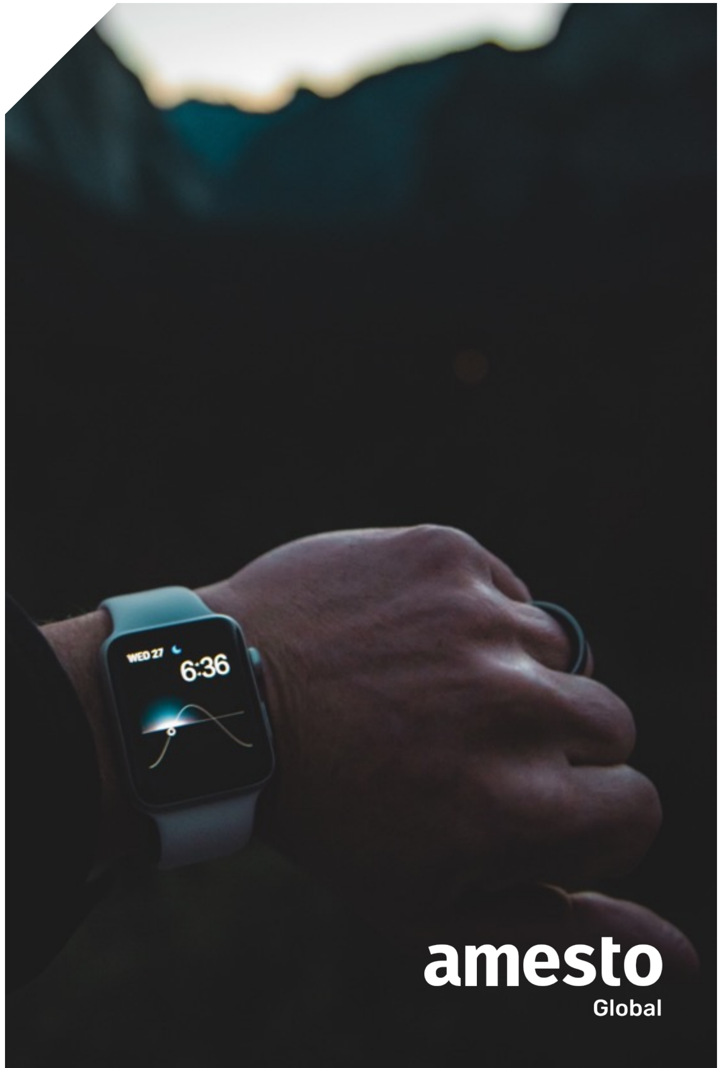
Tax modeling.

Tax Modeling & Considerations.

- BENEFITS OF TAX MODELING
  - Manage impact to financial statements (e.g., effective tax rate planning)
  - Cash flow management
  - Valuing potential acquisition targets (i.e., tax attributes acquired, future cash flow projections)
  - One of the first steps in identifying potential tax planning opportunities

- TAX MODELING CHALLENGES
  - Availability of data for forecasting
  - Assumptions that will likely need to be made
  - Uncertainty and ambiguity of enacted tax reform
    - If or when does tax reform become effective?
      - 2022?, Phase in of certain provisions?
    - What revisions might occur to final tax reform bill?
      - Tax rate 28% or 25%
    - What omissions and/or late provisions may be in the final tax reform bill?
      - Enhanced R&D incentive?



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Tax Modeling & Considerations.

- TAX MODELLING MECHANICS
  - Determine the best way to model based on the best data available
  - Provide flexibility for updates due to new data and/or changes in assumptions
  - Identify appropriate balance between detailed complex calculations and assumptions
  - Consider scenarios of different tax reforms proposals (e.g., Biden vs Wyden-Brown)
  - Leverage automation, visual reporting and analytical tools
  - Provide high-level comparison of before and after-tax reform impact

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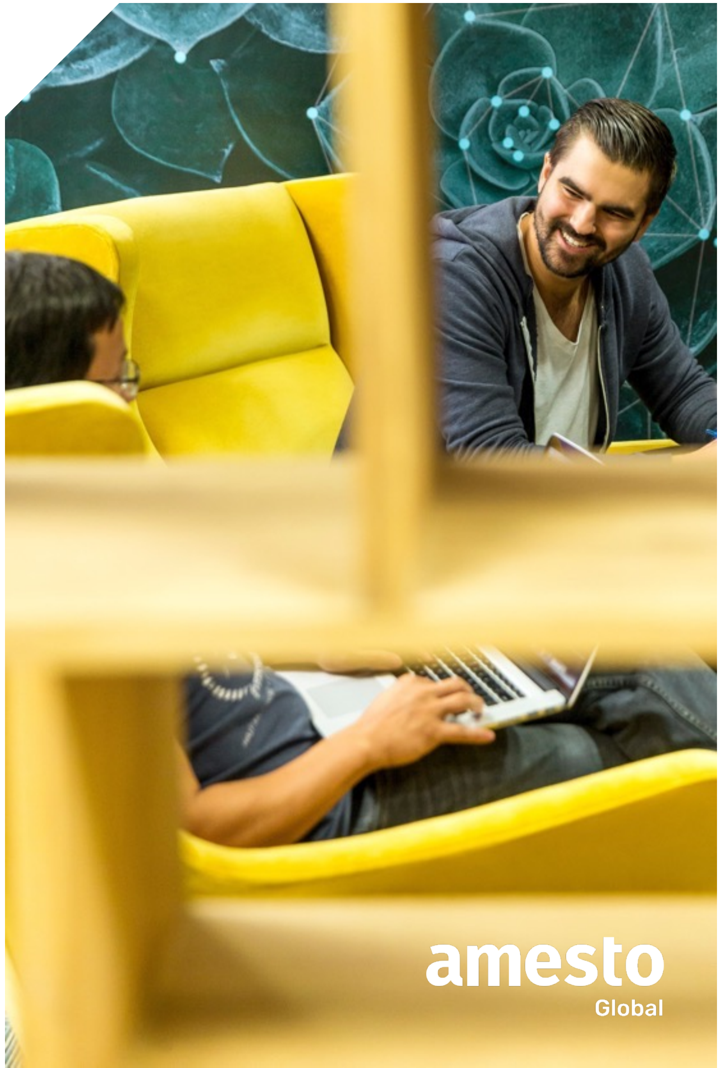
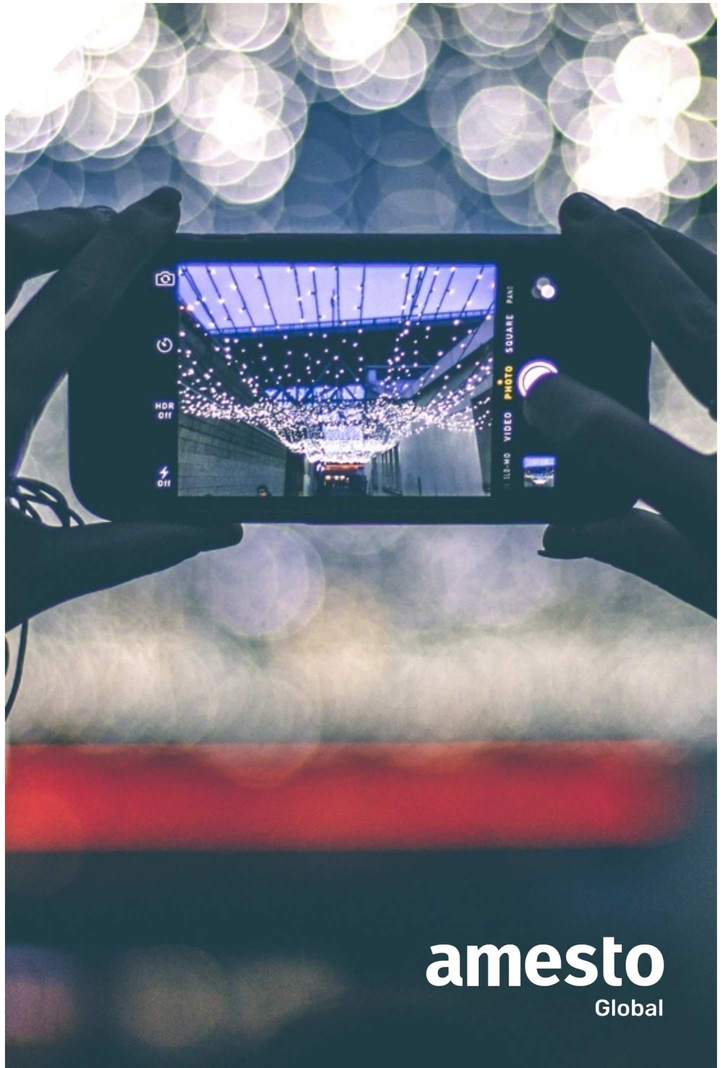
Tax Modeling & Considerations.

- MERGERS & ACQUISITIONS
  - Seller (both corporations and individuals)
    - May be more motivated to close transaction before tax law change becomes effective
      - ❖ Individuals: Capital gains at preferential tax rate (max 20%) versus ordinary income rates (max 39.6%)
      - ❖ Corporations: Tax on gain subject to 21% rate versus 28%
    - May be less concerned with structuring transaction as stock versus asset (or deemed asset) deal for tax reasons:
      - ❖ Individuals: Pre-tax reform would generally prefer the transaction to not be an asset sale due to ordinary gain treatment of non-capital assets
  - Buyer
    - May negatively impact cash flow projections
    - May impact the premium typically negotiated pre-tax reform by seller to structure the transaction as an asset deal
      - ❖ Favorable impact to buyer on making individual seller whole on taxes owed on asset vs stock sale
      - ❖ Favorable impact to buyer on 'step-up' in asset deal
    - In stock sale the value of tax attributes acquired (i.e., NOLs) may become more valuable
    - May have a higher net cost of financing (i.e., interest tax deductible?)



Tax Modeling & Considerations.

- U.S. INBOUND COMPANIES
    - Financial accounting (ASC 740: accounting for income taxes)
        - Deferred tax impact of tax rate change to financial statements
            - Revalue tax attributes and cumulative temporary differences
    - Tax minimization on tax rate change
        - Impact of accelerating income and deferring deductions (i.e., reverse tax planning)
    - Research & development activities
        - Weighing benefit of R&D in US versus overseas
    - Financing
        - Loan versus capital contribution



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Tax planning.

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Reverse Tax Planning? Why Now?

- Increase in Rate
- Expiring NOLs or general business credits (GBCs)
- Section 250 limitation planning
- BEAT planning

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Deferrals/Considerations/Elections

DEFER	CONSIDER	ELECT
• Paying certain liabilities subject to recurring item exception (e.g., rebates) • Funding of pension or defined benefit plans; or designating payments made after year end to the year paid rather than year services provided • Paying bonuses until later than 2½ mos. after year-end • Payments to related parties	• Placed-in-service date and review fixed asset accounting methods • Sale-leaseback transactions • Revision to bonus plan so liability not fixed at year end • Prepayments received for royalties or inventory sales • Compliance with capitalization rules (e.g., self constructed assets)	• Elect not to apply the 12-month rule (e.g., prepaid expenses) • Elect out of bonus depreciation and elect ADS lives for current year additions • Elect to capitalize R&D costs (pre-2022 only). • Elect to capitalize taxes and carrying charges • Elect to capitalize employee compensation and overhead costs to cost of property produced or acquired for resale • Elect change in method of capitalizing inventory costs • Do not elect to reduce R&E credit under §280C

Common method changes.

Change from claiming bonus depreciation to not claiming bonus for prior years (e.g., change 2018 and 2019 election on 2020 return filed by 10/15/2021)

Change to more disadvantageous UNICAP methods

Change in capitalization methodology and types of costs capitalized for self-constructed assets

Remediate exposures (e.g., inventory, warranty, or other expense reserves)

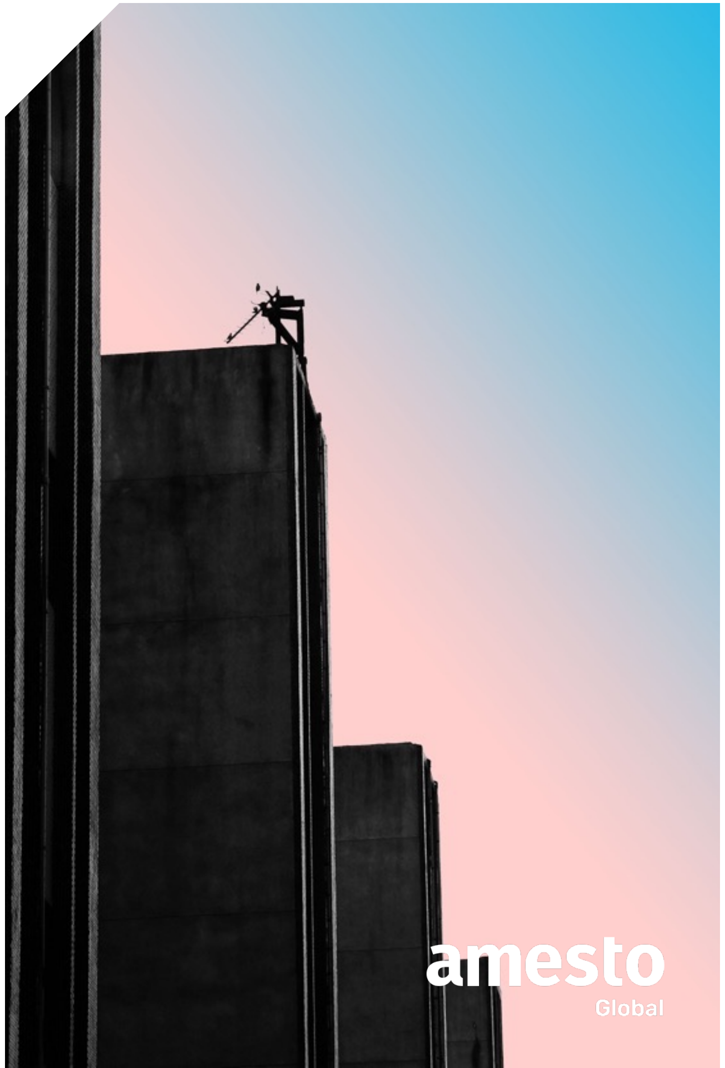
Change to Full Inclusion Method for advance payments under Reg. 1.451-8(b); and Elect not to claim cost offset method under Reg. 1.451-8(e) and -3(c)

Change to apply the Alternative AFS Revenue Method under Reg. 1.451-3(b)(2)(ii) (bypasses the enforceable right provision)

Defer rent expense – if currently following books and have increasing rents (generally straight-line accounting for book purposes)

Lessons learned/considerations.

- Modeling considerations
  - Increasing income or deferring deductions can have an impact on other attributes
    - E.g., Section §163(j), NOL/Tax credit absorption
  - Accelerating income for U.S. tax purposes only may cause failure of GILTI HTE
  - Deferring deductions can change 3% BEAT cutoff point
  - FTC and state impacts
  - Other unintended consequences
- Model options
  - Data to calculate accounting method change – i.e., §481(a) adjustment
  - Third party provider (e.g., Big 4)
  - ONESOURCE
  - Excel based
- Lessons learned from TCJA



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Investing in the US.

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- CORPORATION VS FLOW-THRU
  - Corporations
    - Currently taxed at 21% with rate increasing to 25-28% + State income taxes 0-10%
    - Distributions subject to potential withholding taxes depending on treaties
  - Flow-thru
    - Disregarded entity (singe member LLC)
      - Same as foreign corporation having a branch in the U.S.
      - Entity is taxed on effectively connected income
    - Partnership (multiple member LLC or actual partnerships)
      - Entity is taxed on effectively connected income
  - Corporation vs. Flow-Thru taxation:
    - Does not matter if entity has effectively connected income ("ECI")
      - Taxable either way
  - Flow-Thru preferable if you can avoid ECI (i.e. no Federal taxation)
    - Still possible in certain cases in absence of digital taxes in the U.S.
  - Current Biden's Tax Proposal as no impact on this

Investing in the US.

- FINANCING US OPERATIONS
    - Debt v. Equity
        - Interest expense is tax deductible v. dividends are non-deductible
        - Repayment of principal can be made tax free
        - Many items to consider under Biden's Tax Proposal:
            - Worldwide interest expense limitation
            - Sec. 163(j) interest expense limitation
            - Modified BEAT and/or SHIELD rules

- TRANSFER PRICING
    - US tax rules require transfer pricing studies needed that benchmark pricing on intercompany transactions
    - No transfer pricing rule changes with Biden tax proposal but need to consider:
        - Either changes to modified BEAT rules or new SHIELD regime
        - Financing limitation as discussed
        - Withholding taxes on certain intercompany transactions

- CONSIDER TAX BENEFIT OPPORTUNITIES LIKE FDII AND R&D

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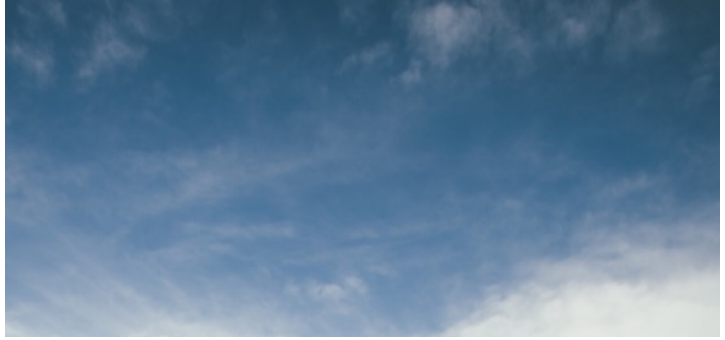

Questions?

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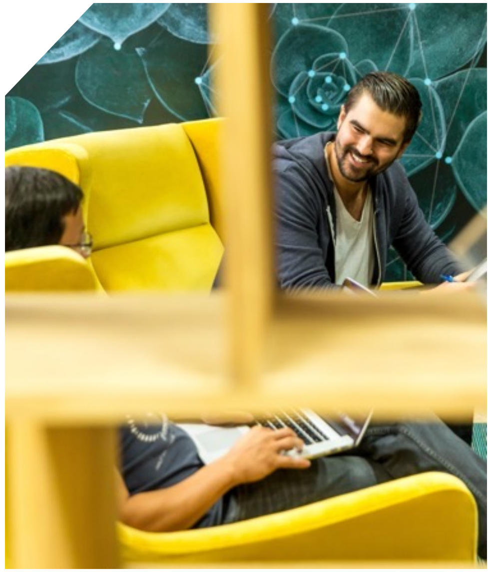

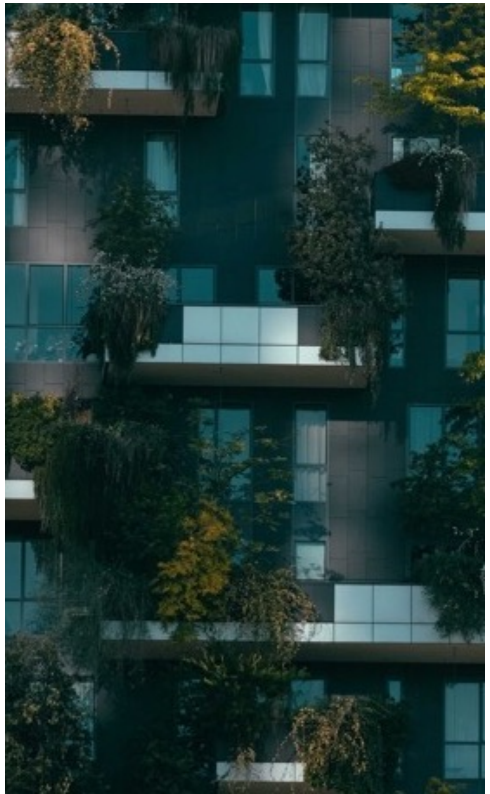

Contact us.

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