



October 26, 2026

Internal Revenue Service
CC:PA:01:PR (REG-115646-25)
Room 5503
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Re: National Foreign Trade Council Comments on Proposed Regulations (REG-115646-25) relating to Pro Rata Share of Subpart F Income, Tested Income, or Tested Loss

The National Foreign Trade Council (the “NFTC”) is writing to provide comments on the proposed regulations under REG-115646-25, “Pro Rata Share of Subpart F Income, Tested Income, or Tested Loss” (the “Proposed Regulations”), released by the Department of the Treasury (“Treasury”) and the Internal Revenue Service (“IRS”) on August 25, 2026.

The NFTC, organized in 1914, is an association of U.S. business enterprises engaged in all aspects of international trade and investment. Our membership covers the full spectrum of industrial, commercial, financial, and service activities. Our members support establishing and maintaining international tax norms that provide certainty to enterprises conducting cross-border operations.

Summary of Recommendation

The NFTC’s comments relate to the rule in the Proposed Regulations that would allow a foreign corporation’s taxable year to close on an elective basis in the case of “significant ownership variances,” which are generally defined to include one or more “specified transfers” by “U.S. Shareholders” (as defined in section 951(b)) pursuant to which the outstanding stock of a controlled foreign corporation (“CFC”) that is owned by those shareholders decreases by more than 50 percentage points (a “Closing Election”). The NFTC respectfully request that Treasury and the IRS eliminate the requirement that ownership reductions exceed a particular percentage threshold before a Closing Election is available. Alternatively, if Treasury and the IRS retain a quantitative threshold, we request that the threshold be reduced. Additionally, any U.S. Shareholder that disposes of its entire interest in a CFC should be permitted to make the Closing Election, regardless of the percentage of the CFC’s stock represented by that interest.

Background

The NFTC recognizes the work of Treasury and the IRS in developing the Proposed Regulations, which implement key changes from the One Big Beautiful Bill Act (the “OBBBA”) (P.L. 119-21) regarding the determination of a U.S. Shareholder’s pro rata share of subpart F income, tested income, and tested loss of a CFC. The statutory changes generally apply to taxable years of

foreign corporations beginning after December 31, 2025, with a transition rule for certain dividends paid by foreign corporations during the period between the OBBBA's enactment and the effective date of its changes.

Under prior law, a U.S. Shareholder's pro rata share of a CFC's subpart F income, tested income, or tested loss was determined using a hypothetical-distribution model, with reductions if the foreign corporation was not a CFC throughout the taxable year or if former section 951(a)(2)(B) applied. Prior law generally required only a U.S. Shareholder that owned stock of a CFC on the last day of the CFC's taxable year on which it was a CFC to take an inclusion under section 951(a) or section 951A(a). To account for ownership changes during the taxable year, former section 951(a)(2)(B) reduced a U.S. Shareholder's inclusion amount for dividends received in the CFC's taxable year by other shareholders with respect to the same stock.

For taxable years of foreign corporations beginning after December 31, 2025, the OBBBA replaces this framework with a time-and-ownership model that aligns a U.S. shareholder's inclusion to the period of ownership during which (i) the shareholder owned the stock (within the meaning of section 958(a)) and was a U.S. Shareholder, and (ii) the foreign corporation was a CFC. If these conditions are met on any day during the CFC's taxable year, a U.S. Shareholder must take into account its pro rata share of the CFC's subpart F income or tested income or tested loss for the taxable year, even if that shareholder does not own the stock on the last day of the year on which the foreign corporation was a CFC. Recognizing certain computational difficulties associated with this new model, including the fact that a seller U.S. shareholder's pro rata share could be affected by post-sale actions of the buyer, Congress granted regulatory authority in section 951(a)(4) for guidance allowing or requiring taxpayers to close the taxable year of a CFC upon a direct or indirect disposition of CFC stock.

The Proposed Regulations and the Closing Election

The Proposed Regulations would implement this new time-and-ownership model primarily through the "daily proration" method. Prop. Treas. Reg. § 1.951-1(e)(2)(i). This method would determine a U.S. Shareholder's pro rata share of relevant CFC items by dividing those items, computed over the CFC's taxable year, based on the number of days in the year during which the U.S. shareholder owned the stock while it was a CFC, applied on a block-by-block basis.

In exercising the regulatory grant of authority in section 951(a)(4), the Proposed Regulations would allow a foreign corporation's taxable year to close in two circumstances: a mandatory closing for "status change events" (a transaction that causes a foreign corporation to become, or cease to be, a CFC), and a Closing Election for "significant ownership variances." Prop. Treas. Reg. §§ 1.951-1(d)(1) and (d)(2).

A "significant ownership variance" generally occurs when one or more section 958(a) U.S. Shareholders engage in one or more "specified transfers" pursuant to the same plan and the aggregate percentage of the CFC's outstanding stock owned by those shareholders decreases by more than 50 percentage points, measured against their ownership immediately before the first specified transfer. Prop. Treas. Reg. § 1.951-1(d)(2)(ii)(A). For purposes of measuring a significant ownership variance, the Proposed Regulations disregard reorganizations described in section 368(a)(1)(F) involving a CFC and other transactions that increase a related U.S. person's ownership in a CFC.

The Preamble to the Proposed Regulations explains that the Closing Election is appropriate where there is a significant ownership variance because a seller (or selling group) relinquishing control of a CFC has a heightened interest in avoiding the effect of the new controlling shareholder's actions on the determination of the seller's pro rata share, and an inability to close

the CFC's taxable year in such circumstances could require the buyer and seller to coordinate in terms of tax compliance and controversy defense, potentially necessitating the negotiation of complex contractual provisions. The Preamble notes that Treasury and the IRS did not adopt recommendations that an elective closing be available upon less significant changes in ownership because (1) the potential benefit afforded from the Closing Election would be outweighed by the resulting compliance and administrative burden, and (2) the additional flexibility to make a Closing Election could lead to improper manipulation or abuse. *See* 91 Fed. Reg. 55037, at 55041 (Aug. 26, 2026).

The Proposed Regulations provide significant procedural safeguards related to the Closing Election. To make the Closing Election, each controlling section 958(a) U.S. Shareholder (*i.e.*, any section 958(a) U.S. Shareholder that experienced an ownership reduction by reason of the significant ownership variance) must file the statement described in Prop. Treas. Reg. § 1.951-1(d)(2)(v). In addition, before the statements are filed, the controlling section 958(a) U.S. Shareholders and the other section 958(a) U.S. Shareholders that owned CFC stock on any day during the CFC's taxable year, through the date of the significant ownership variance, must enter into the binding agreement described in Prop. Treas. Reg. § 1.951-1(d)(2)(iv)(B). No binding agreement is required, however, if there is a single controlling section 958(a) U.S. Shareholder and there is no other section 958(a) U.S. Shareholder that owned stock in the CFC on any day during the CFC's taxable year. *Id.* Given that the election closes the CFC's taxable year for all purposes and as to all shareholders, these requirements appear designed to ensure that affected section 958(a) U.S. Shareholders have notice of, and agree to, the election. Finally, to prevent taxpayers from making selective elections, the Proposed Regulations would include a consistency rule requiring the election to be made for each CFC that undergoes a significant ownership variance as part of a plan or series of related transactions. Prop. Treas. Reg. § 1.951-1(d)(2)(vi).

Recommendation

The NFTC appreciates the work of Treasury and the IRS to implement the OBBBA changes to the pro rata share rules. The NFTC is supportive of the Closing Election because it generally produces appropriate results for selling U.S. Shareholders and buying U.S. Shareholders. Absent a closing of the CFC's taxable year upon a disposition of CFC stock, a selling U.S. shareholder may be required to determine its pro rata share based in part on the CFC's activities after the seller's disposition of stock. That is, because the pro rata share rules do not employ factual tracing, income or loss arising after the disposition, including from activities undertaken solely at the direction of the buyer, may affect the seller's section 951(a) or section 951A(a) inclusion. The same could be true for a buying U.S. Shareholder regarding income generated during the seller's ownership period. A closing of the CFC's taxable year upon the disposition of CFC stock, pursuant to the Closing Election or otherwise, provides greater certainty by allowing the parties to determine the U.S. federal income tax consequences of the transaction at the time of the transaction, rather than after the normal close of the CFC's taxable year. Further, it provides more appropriate results from a tax policy perspective because the income included by the selling U.S. Shareholders and buying U.S. Shareholders would be better matched to the income or loss of the CFC arising during their respective periods of ownership.

Accordingly, the NFTC recommends that Treasury and the IRS reconsider the scope of the Closing Election and remove the more-than-50-percentage-point threshold to its application. The proposed percentage point threshold would deny relief from inappropriate results in circumstances where a U.S. Shareholder has meaningfully reduced its ownership in a CFC. Moreover, seller U.S. Shareholders often face the same compliance, reporting, and information-access concerns that the Closing Election appears intended to address; we do not believe these concerns are diminished merely because the decrease in section 958(a) ownership

represents 50 percent or less of the CFC's outstanding stock. Taxpayers should be permitted to weigh the compliance costs of making the Closing Election against the benefits of doing so. The existing procedural safeguards of the Proposed Regulations, including the consistency rule, written election statement, binding-agreement requirement, and related-person and section 368(a)(1)(F)-reorganization limitations, are sufficient to prevent inappropriate closings while allowing taxpayers to negotiate for the closing in a wider range of transactions. Even if a selling U.S. Shareholder ultimately is unable to secure agreement from the other parties to make a Closing Election, permitting the election would provide an important negotiating tool and would allow the parties to weigh the benefits of certainty against the costs of a short-period closing.

Alternatively, if Treasury and the IRS retain a quantitative threshold, we request that the quantitative threshold be lowered (for example, to a 10-percentage-point or greater threshold). Furthermore, a U.S. Shareholder that disposes of its entire interest in a CFC should be permitted to make the election, regardless of the percentage of the CFC represented by that interest. As described above, under the daily proration method, the selling U.S. Shareholder's pro rata share depends on the CFC's subpart F income, tested income, or tested loss determined for the CFC's entire taxable year. In such a case, the seller may need to obtain information from the CFC or an unrelated buyer after the seller has relinquished all ownership and practical access to the CFC's books and records to determine its section 951(a) or section 951A(a) inclusion for the year. The seller also may require the buyer's cooperation to substantiate return positions or respond to a subsequent examination regarding the year of the sale or exchange. These burdens may necessitate complex contractual provisions for which a seller may lack sufficient bargaining power to obtain protection, particularly when its interest in the CFC is comparatively small. A U.S. Shareholder that disposes of its entire interest in a CFC faces these compliance and information-access concerns regardless of whether that interest represents more than 50 percent of the CFC's outstanding stock. Accordingly, even if Treasury and the IRS retain a quantitative threshold, a complete disposition of a section 958(a) interest should independently qualify for an elective closing of the CFC's taxable year.

We appreciate your consideration and the opportunity to submit these comments.