

20th Annual International Tax Quantitative and Reporting Conference

Come back to a new future forward
March 20, 2025



The better the question. The better the answer. The better the world works.



Shape the future
with confidence

Disclaimer

- EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young LLP is a client-serving member firm of Ernst & Young Global Limited operating in the US.
- This presentation is © 2025 Ernst & Young LLP. All rights reserved. No part of this document may be reproduced, transmitted or otherwise distributed in any form or by any means, electronic or mechanical, including by photocopying, facsimile transmission, recording, rekeying, or using any information storage and retrieval system, without written permission from Ernst & Young LLP. Any reproduction, transmission or distribution of this form or any of the material herein is prohibited and is in violation of US and international law. Ernst & Young LLP expressly disclaims any liability in connection with use of this presentation or its contents by any third party.
- The views expressed by the presenters are not necessarily those of Ernst & Young LLP or other members of the global EY organization.
- This presentation is provided solely for the purpose of enhancing knowledge of tax matters. It does not provide accounting, tax or other professional advice because it does not take into account any specific taxpayer's facts and circumstances.
- Neither EY nor any member firm thereof shall bear any responsibility whatsoever for the content, accuracy or security of any third-party websites that are linked (by way of hyperlink or otherwise) in this presentation.

Welcome

Compliance update and controversy



Neelu Mehrotra
Americas Compliance Lead
Managing Director
Ernst & Young LLP

Agenda

- 1 | International tax controversy developments
- 2 | Key insights and issues for TY2024 compliance
- 3 | TY2024 international tax form and instruction updates

Objectives

- 1 | Outline key international tax controversy developments
- 2 | Discuss key insights and issues with respect to international compliance
- 3 | Review TY2024 international form and instruction updates

Presenters



Neelu Mehrotra
International Tax and
Transaction Services
Managing Director
Ernst & Young LLP



Janine Brzezinski
International Tax and
Transaction Services
Managing Director
Ernst & Young LLP



Kristin Chauvin
International Tax and
Transaction Services
Senior Manager
Ernst & Young LLP



Bryon Christensen
International Tax and
Transaction Services
Partner
Ernst & Young LLP

01

International tax controversy developments

US audit focus and what to watch for in 2025

Audit focus

- Environment remains dynamic
- More common use of the economic substance doctrine (ESD)
 - Particularly in transactions involving losses
- Heightened expectations for substantiation
- Interest expenses and 163(j) limitations
- Penalties asserted for substantial understatements as a matter of course, requiring the taxpayer to provide a reasonable cause statement
- Transfer pricing
 - US distributors of foreign-based multinational corporations (MNCs) with low margins or losses
 - Aggressive use of penalties
 - Use of economic substance doctrine

Tax controversies to watch in 2025

Issue	Notable Activity
Economic substance	<ul style="list-style-type: none">▪ Taxpayer's pending appeal to 10th Circuit in <i>Liberty Global, Inc. v. United States</i>, Dkt. No. 23-1410 (10th Cir.) (regarding application of ESD to disallow Section 245A deduction)
Validity of the blocked income regulations in Treas. Reg. §1.482-1(h)(2)	<ul style="list-style-type: none">▪ Taxpayer's pending appeal to 8th Circuit
Use of group support in interest rate analyses	<ul style="list-style-type: none">▪ In Advice Memorandum (AM) 2023-008, the IRS Chief Counsel concluded that the "implicit support" from group membership may be considered when determining the arm's-length interest rate charged for intragroup loans▪ Litigation of this issue is pending

Tax controversies to watch in 2025

Issue	Notable Activity
Validity of Section 965 transition tax	<ul style="list-style-type: none">Recent decision from Supreme Court in <i>Moore v. United States</i>, Dkt. No. 22-800 (Sup. Ct.) (regarding a constitutional challenge to the Section 965 transition tax)
Form 5471 penalties	<ul style="list-style-type: none">Recent decision by D.C. Circuit in <i>Farhy v. Commissioner</i>, Dkt. No. 23-1179 (D.C. Cir.) (regarding Tax Court holding that the IRS cannot assess penalties under Section 6038 for the failure to file Form 5471s)
Self-employment taxes for LPs	<ul style="list-style-type: none">Following an IRS-favorable decision on summary judgment, a trial on the facts regarding the “functions” of limited partners (LPs) is pending
Intangible property license; inclusion of stock-based compensation in cost base	<ul style="list-style-type: none">Pending decision from Tax Court

IRS budgets: FY2023-2025

Funding bucket	FY2023 enacted	FY2024 enacted	FY 2025 President's request	FY 2025 House Appropriations FSGG* Subcommittee
Taxpayer service	\$2.7b	\$2.8b	\$2.8b	\$2.8b
Enforcement	\$5.4b	\$5.4b	\$5.4b	\$3.4b
Operations support	\$4.1b	\$4.1b	\$4.1b	\$3.75b
Business systems modernization	\$0	\$0	\$0	\$150m
TOTAL	\$12.3b	\$12.3b	\$12.3b	\$10.1b

* FSGG = Financial Services and General Governance

IRS's 2024 IRA* strategic operating plan: Annual update supplement

Trends in audit activity

Number of new exam starts

Type of taxpayer	FY2018	FY2019	FY2020	FY2021	FY2022	FY2023	FY2024 target	FY2025 target
High income individuals**	2,307	2,108	2,693	2,227	3,625	4,326	4,398	3,848
Partnerships	9,033	5,823	4,106	4,327	3,155	6,709	4,074	5,215
Large corps.***	2,396	2,009	1,700	1,490	1,365	1,400	1,250	1,375

* IRA = individual retirement arrangement

** Individual return filers reporting over \$10 million of total positive income

*** Returns reporting assets of \$250 million and above

Source: <https://www.irs.gov/pub/irs-pdf/p3744a.pdf>, page 41.

Polling No. 1

What controversy issue do you think will have the biggest impact on audits in 2025?

- A. Economic substance
- B. Validity of the blocked income regulations in Treas. Reg. §1.482-1(h)(2)
- C. Section 965 transition tax
- D. Form 5471 penalties
- E. Intangible property license; inclusion of stock-based compensation in cost base
- F. N/A - EY, faculty, other

Preparing for an audit: *Loper Bright v. Raimondo*

Background

A regulation by the National Marine Fisheries Service (NMFS) requires certain fishing boats to:

- Carry persons to monitor and make sure they follow fishing quotas and rules
 - Boat owners are required to pay for these monitors.

Issue

Whether NMFS exceeded its authority in issuing a regulation requiring owners of fishing boats to pay for onboard monitors

Holding

Courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority, and courts may not defer to an agency interpretation of the law simply because a statute is ambiguous; Chevron is overruled.

***Loper Bright v. Raimondo* (continued)**

- Certain regulations may still receive judicial deference:
 - Statutory delegation of discretionary authority to an agency
 - Examples include Section 1502
 - Consider Section 904(d) with mixed delegations of authority:
 - General delegation to issue regulations “necessary or appropriate to carry out the purposes of this paragraph”
 - General anti-abuse delegation to prevent “the manipulation of character of income the effect of which is to avoid the purposes of this subsection”
 - Specific delegation providing “rules similar to the rules of [Section 904(d)(3)(C)] shall apply to interest, rents, and royalties received or accrued from entities which would be controlled foreign corporation if they were foreign corporations”
 - Potential for regulations to receive more deference if based on agency expertise on factual matters
 - Potential for regulations issued contemporaneously with statutes to receive more deference
 - Potential for longstanding regulations to receive more deference

Procedural considerations for regulatory challenges

- Resolution strategy for positions based on validity of a regulation:
 - Exam
 - Appeals
 - Litigation
- IRS requests for tax opinions
- Form 8275-R: Regulation Disclosure Statement
- Amended returns and protective refund claims:
 - Three years from date of filing; or two years from date of payment
 - Can be extended by agreement (e.g., if taxpayer is being audited)

ESD in context of an audit

Codified ESD (Section 7701(o))

- (1) In the case of any transaction to which the economic substance doctrine is relevant, such transaction shall be treated as having economic substance only if (both):
 - A. The transaction changes in a meaningful way (apart from federal income tax effects) the taxpayer's economic position.
 - B. The taxpayer has a substantial purpose (apart from federal income tax effects) for entering into such transaction.
- (5) Definitions and special rules
 - A. The term “economic substance doctrine” means the common law doctrine under which tax benefits under subtitle A with respect to a transaction are not allowable if the transaction does not have economic substance or lacks a business purpose.
 - C. The determination of whether the economic substance doctrine is relevant to a transaction shall be made in the same manner as if this subsection had never been enacted [**see also** Notice 2010-62].
 - D. The term “transaction” includes a series of transactions.

ESD: Relevance and basic business transactions

Is the transaction one to which the ESD is relevant?

- In its House Report, Congress explained that Section 7701(o) “is not intended to alter the tax treatment of certain basic business transactions that, under longstanding judicial and administrative practice[,], are respected, merely because the choice between meaningful economic alternatives is largely or entirely based on comparative tax advantages,” including the following so-called “Angel List” transactions:
 - The choice between capitalizing a business enterprise with debt or equity
 - A US person's choice between utilizing a foreign corporation or a domestic corporation to make a foreign investment
 - The choice to enter a transaction or series of transactions that constitute a corporate organization or reorganization under subchapter C
 - The choice to utilize a related-party entity in a transaction
- Notice 2010-62
 - IRS stated that ESD “only applies in the case of any transaction to which the economic substance doctrine is relevant.”

Liberty Global – District court

Background

- Liberty Global engaged in a transaction that created earnings and profits (E&P) outside the US.
- The E&P outside the US meant that distributions into the US were not taxable under new Section 245A.
- The IRS challenged the transactions that created E&P under the codified economic substance doctrine found in Section 7701(o).

District court decision

- Relying on the statutory text, legislative history and other authorities, Liberty Global argued that the codified economic substance doctrine is not relevant to basic business transactions such as the entity classification transactions challenged by the government.
- Judge Jackson rejected Liberty Global's argument, instead ruling that there is no such threshold "relevance" test as part of the codified economic substance doctrine under Section 7701(o).

Liberty Global – Appeal

Liberty Global arguments in appellate brief:

- The economic substance doctrine isn't relevant, and plays no role, when the statute or regulation doesn't require inquiry into economic reality and taxpayer motive.
- The economic substance doctrine doesn't permit disregarding a conversion to a corporation or its capitalization choices because the law permits taxpayers to make those choices based on tax consequences.
- The district court wrote the relevance requirement out of Section 7701(o).
- Relevant earnings and profits were not “artificial” – they were just as real as the gain the IRS seeks to tax.
- The government cannot selectively apply the economic substance doctrine.

Polling No. 2

Is your company under audit or anticipating to be under audit for tax years 2022 and/or 2023?

- A. Yes, currently under IRS audit
- B. Yes, anticipating an IRS audit to begin soon
- C. No
- D. N/A - EY, faculty, other

Audit readiness: Substantiation

- Substantiation continues to be an increasingly important audit issue.
- It arises in a variety of contexts.
- It is particularly relevant to credits:
 - R&D credit
 - Energy credits
 - Foreign tax credits (FTCs)
 - Employee retention credit
 - Global intangible low-taxed income (GILTI)
 - Foreign-derived intangible income (FDII)

Preparing for an audit: Substantiation example 1

- Treasury issued regulations specifying “minimum” documentation requirements for transfers of energy credits (TD 9993).
- The “minimum” requirements were “a baseline of information necessary for validating” the credit claim.
- The required minimum documentation includes:
 - Information that “validates the existence of the eligible credit property”
 - Documentation the “taxpayer has satisfied the requirements” to include bonus credits
 - Evidence of the “qualifying costs” or the amount of “qualifying production activities”

Preparing for an audit: Substantiation example 2

- Standard in Treas. Reg. 301.6402-2(b)(1):
 - “The claim must set forth ... facts sufficient to apprise the Commissioner of the exact basis thereof.”
- Chief Counsel Memorandum (CCM) 20214101F (Oct. 15, 2021):
 - Identify all business components
 - For each business component:
 - Identify all research activities performed
 - Identify all individuals who performed the research activities
 - Identify all information each individual sought to discover
- Provide:
 - Total qualified wage expenses
 - Total qualified supply expenses
 - Total qualified contract research expenses

Audit readiness

1 Most visible with credits, but not just credits

2 Agents trained to substantiate

3 Eligibility audits vs. tick-and-tie audits

4 Longer audit timelines

5 Increased readiness for summonses

Case study: IRS start of examination

- Opening information conference – provide books and records as requested
 - Financial data
 - Transfer pricing documentation
 - Organization charts
 - Board minutes
- Interview – taxpayer background and history
- Analyze Schedules M-3 and uncertain tax positions (UTPs)
- Reconciliation of books to return
- Balance sheet analysis
- Required compliance checks
- Minimum inventory checks
- Examination of identified issues
- Development of facts, sampling and testing

02

Key insights and issues for TY2024 compliance

Interdependencies and considerations

Coordination with federal and state

Continued increase in compliance and reporting reinforces the need to coordinate and communicate with federal and state teams.

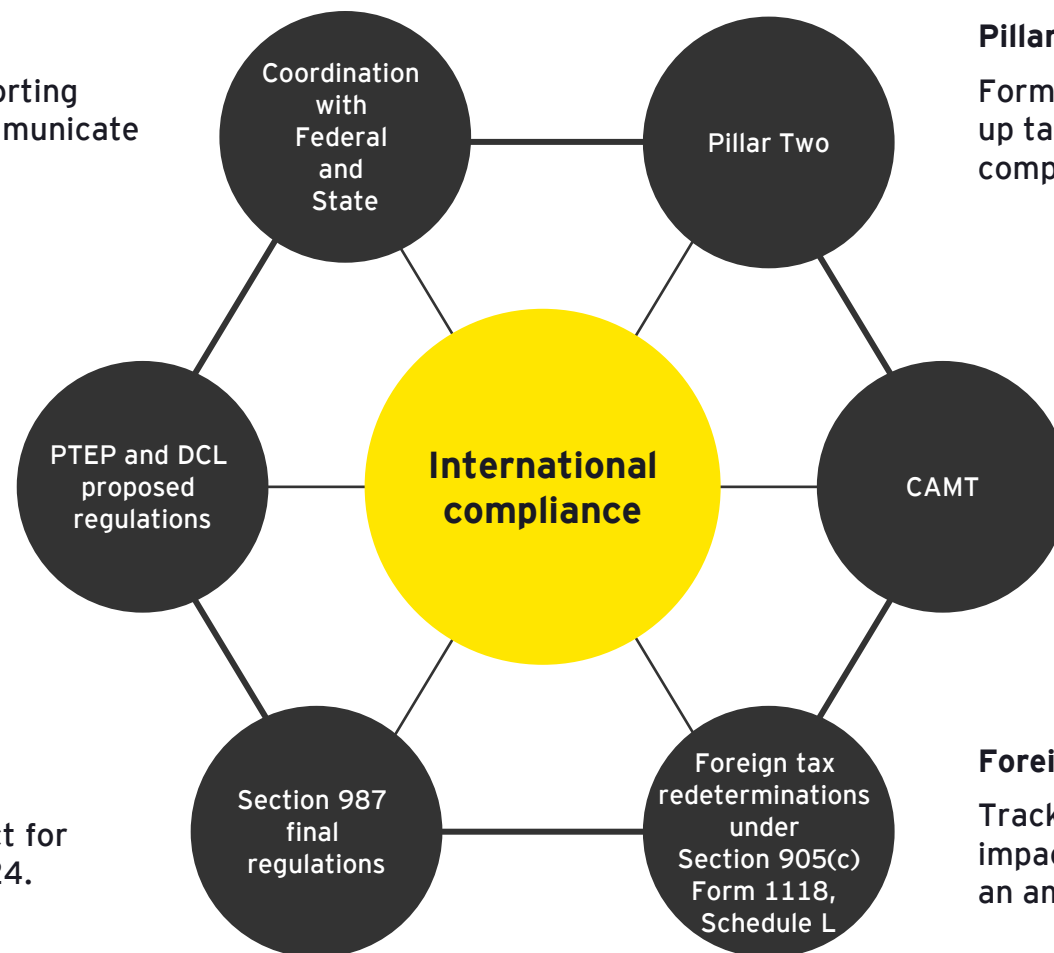
Previously taxed earnings and profits (PTEP) and dual consolidated loss (DCL) proposed regulations

Proposed PTEP regulations released November 2024 and reiterate a focus on documentation.

Proposed DCL regulations released August 2024.

Section 987 final regulations

Final Section 987 regulations go into effect for tax years starting after December 31, 2024.



Pillar Two

Form 5471, Schedule G, Item 20 asks about top-up tax, directly connecting US international compliance with Pillar Two.

Corporate alternative minimum tax (CAMT)

Increase CAMT reporting between expanded Form 4626 and Form 5471, Schedule H-1; consider partnership reporting.

Foreign tax redeterminations

Track foreign tax redeterminations and report impact on Form 1118, Schedule L; submission of an amended return may be required.

Summary of changes to international forms

IRS form	Form status	Instructions status	Material changes
Form 5471	Final as of 12/4/2024 Sch. Q - Final as of 12/4/2024 Sch. H-1 - Final as of December 9, 2024	Draft as of October 8, 2024	<ul style="list-style-type: none"> Added line item 20 (a and b) to Schedule G regarding the application of top-up taxes New Schedule H-1 added to Form 5471 similar to the 2023 Worksheet H-1 Schedule Q Column (xv) line 4 no longer greyed out
Form 8858	Final as of December 11, 2024	Final as of December 9, 2024	<ul style="list-style-type: none"> Principal business activity code number now required (previously just required a description of the principal business activity) New Schedule G question 14 regarding top-up taxes paid or accrued Clarifications to the instructions for category of filers
Form 8865	Draft as of July 17, 2024	Draft as of November 6, 2024	<ul style="list-style-type: none"> Updated the codes used for Schedule K-1 instructions for items: 15. Credits codes S, W, X, and AN and 20; other information codes AD, AV, and AX
Form 8865 Schedule K-2	Draft as of November 7, 2024	Draft as of September 30, 2024	<ul style="list-style-type: none"> New column (j) - Election by partnership added in section 1 of Part VII Part VIII, section 2, line 7's description was updated from "Reserved for future use" to "Cost sharing transactions payments" Part VIII, section 2, line 17-18's description was updated to include more detail regarding the 30% statutory rate
Form 8865 Schedule K-3	Draft as of October 18, 2024	Draft as of September 30, 2024	<ul style="list-style-type: none"> No changes to form or instructions

Summary of changes to international forms

IRS form	Form status	Instructions status	Material changes
Form 1118 (FTC)			<ul style="list-style-type: none"> No changes to form or instructions
Form 8990 (§163(j))		Final as of October 31, 2024	<ul style="list-style-type: none"> Updated instructions to indicate that the gross receipts test threshold for tax years beginning in 2024 is \$30m No change to the Form 8990 for 2024 tax years
Form 8991 (base erosion and anti-abuse tax (BEAT))	Final as of December 17, 2024	Final as of December 17, 2024	<ul style="list-style-type: none"> Additional detail in Schedule A, including new line for cost-sharing transaction payments as defined in Reg. § 1.482-7(b)(1)(I)
Form 8992 (GILTI)		Final as of January 13, 2025	<ul style="list-style-type: none"> Clarifying information has been added to the instructions for Schedule B
Form 8993 (FDII)		Final as of January 2, 2025	<ul style="list-style-type: none"> The specific instructions for line 29, GILTI Deduction, revised for purposes of clarification

Polling No. 3

How much time do you spend aggregating and populating the Form 5471 Schedule Q?

- A. <5 hours per Form 5471
- B. 5-10 hours per Form 5471
- C. >20 hours per Form 5471
- D. N/A - EY, faculty, other

What to focus on when completing international forms

- Evolution of international forms: International tax forms have evolved to create a detailed audit trail of key International Tax System (ITS) attributes.
- Entity-level vs. consolidated reporting:
 - Distinction between entity-level reporting and consolidated reporting for controlled foreign corporations (CFCs)
 - Impacts how income and expenses are reported
- Importance of accurate reporting:
 - Critical to report information accurately and consistently to avoid penalties and achieve compliance
 - Misreporting can lead to significant tax implications

What to focus on when completing international forms (continued)

- **Interrelated schedules:**
 - Many forms and schedules are interrelated, necessitating careful coordination.
 - Relationships to other forms can affect overall tax liability and compliance.
- **Form 5471, Schedule Q:**
 - Schedule serves as a key example of how detailed reporting is structured.
 - It also provides a roadmap for understanding the flow of information and compliance requirements.
 - **Foreign inclusions:**
 - Include Subpart F income and GILTI
 - Essential for understanding income inclusions from CFCs
- **Foreign tax credits:**
 - FTCs are important for mitigating double taxation on foreign income.
 - Interaction with Form 5471 and Schedule Q is crucial for accurate reporting.

Form 5471, Schedule Q, Pages 1-2

SCHEDULE Q
(Form 5471)
(Rev. December 2024)
Department of the Treasury
Internal Revenue Service

CFC Income by CFC Income Groups

Attach to Form 5471.
Go to www.irs.gov/Form5471 for instructions and the latest information.

OMB No. 1545-0123

Name of person filing Form 5471 _____ Identifying number _____

Name of foreign corporation _____ EIN (if any) _____ Reference ID number (see instructions) _____

Complete a separate Schedule Q with respect to each applicable category of income (see instructions).

A Enter separate category code with respect to which this Schedule Q is being completed (see instructions for codes)

B If category code "PAS" is entered on line A, enter the applicable grouping code (see instructions)

C If code "901" is entered on line A, enter the country code for the sanctioned country (see instructions)

Complete a separate Schedule Q for U.S. source income and foreign source income (see instructions for an exception).

D Indicate whether this Schedule Q is being completed for: ☐ U.S. source income or ☐ Foreign source income

Complete a separate Schedule Q for FOGEI or FORI income.

E If this Schedule Q is being completed for FOGEI or FORI income, check this box ☐

Enter amounts in functional currency of the foreign corporation (unless otherwise noted).

	(i) Country Code	(ii) Gross Income	(iii) Definitely Related Expenses	(iv) Related Person Interest Expense	(v) Other Interest Expense	(vi) Research & Experimental Expenses	(vii) Other Expenses (attach statement)
1 Subpart F Income Groups							
a Dividends, Interest, Rents, Royalties, & Annuities (Total)							
(1) Unit name:							
(2) Unit name:							
b Net Gain From Certain Property Transactions (Total)							
(1) Unit name:							
(2) Unit name:							
c Net Gain From Commodities Transactions (Total)							
(1) Unit name:							
(2) Unit name:							
d Net Foreign Currency Gain (Total)							
(1) Unit name:							
(2) Unit name:							
e Income Equivalent to Interest (Total)							
(1) Unit name:							
(2) Unit name:							
f Other Foreign Personal Holding Company Income (Total) (attach statement—see instructions)							
(1) Unit name:							
(2) Unit name:							

Important: See **Computer-Generated Schedule Q** in instructions.
For Paperwork Reduction Act Notice, see instructions.

Cat. No. 73414U

Basket-level reporting

Aligns with Form 1118, Schedule A

Aligns with Form 5471 Schedule E

Aligns with Form 1118 Schedule B

Entity-level reporting

Aligns with Form 8858

Schedule Q (Form 5471) (Rev. 12-2024)

	(viii) Current Year Tax on Reattributed Income From Disregarded Payments	(ix) Current Year Tax on All Other Disregarded Payments	(x) Other Current Year Taxes	(xi) Net Income (column (ii) less columns (iii) through (x))	(xii) Foreign Taxes for Which Credit Allowed (U.S. Dollars)	(xiii) Average Asset Value	(xiv) High Tax Election	(xv) Loss Allocation	(xvi) Net Income After Loss Allocation (column (xi) minus column (xvi))
1									
a									
(1)									
(2)									
b									
(1)									
(2)									
c									
(1)									
(2)									
d									
(1)									
(2)									
e									
(1)									
(2)									
f									
(1)									
(2)									

Important: See **Computer-Generated Schedule Q** in instructions.

Subpart F by type

Aligns with Form 5471, Schedule I

Aligns with Form 1118, Schedule A

Form 5471, Schedule Q, Page 3-4

Schedule Q (Form 5471) (Rev. 12-2024) Page **3**

Enter amounts in functional currency of the foreign corporation (unless otherwise noted).

	(i) Country Code	(ii) Gross Income	(iii) Definitely Related Expenses	(iv) Related Person Interest Expense	(v) Other Interest Expense	(vi) Research & Experimental Expenses	(vii) Other Expenses (attach statement)
1 Subpart F Income Groups							
g Foreign Base Company Sales Income (Total)							
(1) Unit name:							
(2) Unit name:							
h Foreign Base Company Services Income (Total)							
(2) Unit name:							
k International Boycott Income							
l Bribes, Kickbacks, and Other Payments							
m Section 901(j) income							
2 Recaptured Subpart F Income							
3 Tested Income Group (Total)							
(1) Unit name:							
(2) Unit name:							
4 Residual Income Group (Total)							
(1) Unit name:							
(2) Unit name:							
5 Total							

Important: See *Computer-Generated Schedule Q* in instructions.

Schedule Q (Form 5471) (Rev. 12-2024)

Schedule Q (Form 5471) (Rev. 12-2024) Page **4**

	(viii) Current Year Tax on Reattributed Income From Disregarded Payments	(ix) Current Year Tax on All Other Disregarded Payments	(x) Other Current Year Taxes	(xi) Net Income (column (ii) less columns (iii) through (x))	(xii) Foreign Taxes for Which Credit Allowed (U.S. Dollars)	(xiii) Average Asset Value	(xiv) High Tax Election	(xv) Loss Allocation	(xvi) Net Income After Loss Allocation (column (xi) minus column (xv))
1									
g									
(1)									
(2)									
h									
(1)									
(2)									
i									
(1)									
(2)									
j									
(1)									
(2)									
k									
l									
m									
2									
3									
(1)									
(2)									
4									
(1)									
(2)									
5									

Important: See *Computer-Generated Schedule Q* in instructions.

Schedule Q (Form 5471) (Rev. 12-2024)

Polling No. 4

Do you outsource, co-source or do your international compliance internally?

- A. Outsource
- B. Co-source
- C. In house
- D. N/A - EY, faculty, other

Key takeaways

- 1 | Understand key international controversy developments
- 2 | Understand the TY2024 international form and instruction updates
- 3 | Recognize the interdependencies in reporting

Thank you and questions

EY | Building a better working world

EY is building a better working world by creating new value for clients, people, society and the planet, while building trust in capital markets.

Enabled by data, AI and advanced technology, EY teams help clients shape the future with confidence and develop answers for the most pressing issues of today and tomorrow.

EY teams work across a full spectrum of services in assurance, consulting, tax, strategy and transactions. Fueled by sector insights, a globally connected, multidisciplinary network and diverse ecosystem partners, EY teams can provide services in more than 150 countries and territories.

All in to shape the future with confidence.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. Information about how EY collects and uses personal data and a description of the rights individuals have under data protection legislation are available via ey.com/privacy. EY member firms do not practice law where prohibited by local laws. For more information about our organization, please visit ey.com.

Ernst & Young LLP is a client-serving member firm of Ernst & Young Global Limited operating in the US.

© 2025 Ernst & Young LLP.
All Rights Reserved.

US SCORE no. 26199-251US
2410-11955-CS
ED None

This material has been prepared for general informational purposes only and is not intended to be relied upon as accounting, tax, legal or other professional advice. Please refer to your advisors for specific advice.

ey.com