When an Immigrant Owns a Foreign Company: CFC, Subpart F, GILTI (Now NCTI), and Form 5471

A Guide for U.S. Advisers. The Blind Spot in the Entrepreneur and UHNWI Immigrant's Move: How a Foreign Operating or Holding Company That Was Invisible to the United States Becomes, on the Owner's First Day of U.S. Residence, a Controlled Foreign Corporation, Triggering Current Subpart F and Net-CFC-Tested-Income (the Renamed GILTI) Inclusions Taxed Whether or Not Anything Is Distributed, the §962 Election and the High-Tax Exception, and the Form 5471 Reporting Whose Penalties and Open Statute of Limitations Punish Silence; with the 2026 Post-OBBBA Rules and the Pre-Residency Fixes That Prevent It

The single largest, least anticipated tax event in a business-owning immigrant's move to the United States is not on any closing statement: it is the transformation *of a foreign company from an ordinary local business into a controlled foreign corporation the moment its owner becomes a U.S. resident. While the owner was a nonresident, the company was outside the U.S. tax net entirely: the United States did not tax its profits, did not require its owner to report it, and cared nothing for its structure. On the residency starting date, the same company can become a CFC, and its owner a U.S. shareholder who must include the company's income, Subpart F income and net CFC tested income (the 2026 successor to GILTI), on a U.S. return whether or not a single dollar is distributed, and must file Form 5471, whose penalties begin at $10,000 per company per year and whose absence holds the entire return's statute of limitations open. Nothing changed inside the company; everything changed around it.*

This is the corner of pre-immigration and post-arrival planning where advisers most often discover the problem after it has bitten. The entrepreneur who built a company abroad, the family that holds its wealth through a non-U.S. holding company, the founder with equity in a foreign start-up: each carries, into U.S. residence, an anti-deferral and reporting burden that a domestic adviser may not see and a home-country adviser may not know to flag. This chapter is written for the U.S. adviser who must spot it: how to tell whether the company is a CFC, what income is swept into current U.S. tax, how the individual owner is taxed (and how the §962 election and the high-tax exception change that), what Form 5471 demands, and, most valuable of all, what can be done before the starting date to prevent the whole regime from attaching.

It is a companion to the firm's pre-immigration planning playbook and its overview of what changes at the green card, and it assumes the residence and domicile framework developed elsewhere. The rules here changed materially for tax years beginning after December 31, 2025 under the 2025 budget legislation (the One Big Beautiful Bill Act), which renamed GILTI, eliminated the QBAI exemption, and adjusted the deduction and credit percentages; the 2026 figures are used throughout and flagged as time-sensitive. The chapter states the rules generally; confirm each against the Code, the regulations, and any applicable treaty before relying on it, and coordinate with home-country counsel, because the same company is taxed there on its own terms.

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Summary

When a business-owning client becomes a U.S. resident, a foreign company that was outside U.S. tax can become a controlled foreign corporation (CFC): a foreign corporation more than 50% owned (by vote or value) by "U.S. shareholders," each a U.S. person owning at least 10%, counting direct, indirect, and constructive ownership, though stock of a nonresident alien relative is not attributed by family attribution. The consequences attach immediately and without any distribution.

1. Subpart F income, chiefly passive and mobile income (dividends, interest, rents, royalties, gains, and foreign base company sales and services income), is included currently in the U.S. shareholder's income.
2. Net CFC tested income (NCTI), the 2026 successor to GILTI, sweeps in most of the company's remaining active earnings; for tax years beginning after 2025 the old 10% QBAI exemption is eliminated, so essentially all tested income is exposed.
3. The individual is the problem: a U.S. individual owner is taxed on these inclusions at ordinary rates up to 37%, with no §250 deduction and no credit for the company's foreign corporate tax: often a punishing result.
4. The §962 election lets the individual be taxed on the inclusions as if a U.S. C corporation, at 21% with the 40% NCTI deduction (an effective ~12.6% rate before credits) and a 90% indirect foreign tax credit, but later actual distributions are taxed again to the extent they exceed the tax paid.
5. The high-tax exception can exclude income (Subpart F and tested) that bore a foreign effective rate above 18.9%, which frequently rescues owners from ordinary-tax-rate countries.
6. Form 5471 is mandatory: penalties start at $10,000 per company per year (up to $50,000 more after notice), foreign tax credits are reduced, and the statute of limitations on the whole return does not expire until three years after it is filed, narrowed to the missed items only where reasonable cause is shown.
7. The cure is timing: before the residency starting date, which under the substantial-presence test is retroactively the first day of U.S. presence in the year, a check-the-box election can liquidate an eligible company, earnings can be distributed, and the structure can be simplified; these steps are cheap for a nonresident and expensive or impossible afterward. Spot the foreign company early, run the CFC analysis before the move, and never let a business-owning immigrant arrive without a plan for it.

Part I. The blind spot: how residence turns a company into a CFC

The organizing fact of this chapter is that a foreign company's U.S. tax profile is created not by anything the company does but by the tax status of its owner. While the owner is a nonresident alien, the company is a foreign corporation earning foreign-source income outside the reach of U.S. tax and U.S. reporting; the United States sees nothing.[1] The instant the owner becomes a U.S. resident, that same owner is potentially a U.S. shareholder of a controlled foreign corporation, and the anti-deferral machinery designed to stop U.S. persons from parking

[1] I.R.C. §§ 881(a), 882(a)(1), (b) (a foreign corporation is taxed only on fixed or determinable income from sources within the United States and on income effectively connected with the conduct of a trade or business within the United States); § 6038(a)(1) (reporting required of a United States person with respect to a foreign business entity that it controls).

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income in low-tax foreign companies switches on around a company that was never designed with any of it in mind.[2] The residency starting date itself deserves care: for a green-card holder it is the first day of physical presence in the United States as a lawful permanent resident, and for one who becomes a resident under the substantial-presence test it is not the day the 183-day arithmetic is satisfied but, retroactively, the first day of presence in the United States during that calendar year, subject to a narrow de minimis exception for brief early visits.[3] Planning that assumes residence begins only when the test is met is planning against the wrong date.

That is why this is a blind spot rather than a mere complexity. The event has no transaction, no closing, no cash movement to prompt anyone to ask the question; it is triggered by a change of personal status that the client thinks of as an immigration matter, not a tax one. A domestic U.S. adviser meeting the client after arrival may never learn the foreign company exists; the home-country adviser who knows the company intimately may have no reason to know what U.S. residence does to it. The value of asking, early and as a matter of routine, whether an incoming client owns any interest in any non-U.S. company is measured in the inclusions and penalties it prevents.

Part II. Is the company a CFC? U.S. shareholder, control, and attribution

The analysis proceeds in two defined steps, and the definitions do the work. A U.S. shareholder is a U.S. person who owns 10% or more of a foreign corporation by vote or by value.[4] A controlled foreign corporation is a foreign corporation in which U.S. shareholders together own more than 50% of the stock, again by vote or value.[5] Both tests count not only stock owned directly but stock owned indirectly through entities and stock attributed by the constructive-ownership rules, which reach across families (spouse, children, grandchildren, and parents) and through partnerships, trusts, estates, and corporations.[6] One limitation is of first importance for immigrant families: under §958(b)(1), stock owned by a nonresident alien individual is not attributed to a U.S. person through family attribution, so a new resident is not treated as owning the shares of relatives who remain abroad merely because they are family.[7] A founder who owns 30% directly, whose adult U.S.-resident children own more among them, and whose

[2] I.R.C. §§ 951(a)(1)(A), 951A(a), 957(a); a resident alien is a United States person for this purpose, § 957(c), incorporating § 7701(a)(30).
[3] I.R.C. § 7701(b)(2)(A)(ii), (iii), (C); Treas. Reg. § 301.7701(b)-4(a), (c)(1) (up to 10 days of presence disregarded for the residency starting date if the individual establishes that during that period his or her tax home was in a foreign country and the closer connection was to that country).
[4] I.R.C. § 951(b) (ownership, directly, indirectly or constructively, of 10 percent or more of the total combined voting power of all classes of stock entitled to vote, or of the total value of shares of all classes of stock); § 957(c).
[5] I.R.C. § 957(a) (more than 50 percent of the total combined voting power or of the total value of the stock, owned within the meaning of § 958(a) or considered as owned under § 958(b) by United States shareholders "on any day during the taxable year of such foreign corporation").
[6] I.R.C. § 958(a)(1), (2) (direct ownership and proportionate ownership through a foreign corporation, foreign partnership, foreign trust or foreign estate); § 958(b) (constructive ownership under § 318(a), with the modifications of § 958(b)(1) to (4)); § 318(a)(1)(A) (spouse, children, grandchildren and parents), (a)(2), (a)(3).
[7] I.R.C. § 958(b)(1) ("stock owned by a nonresident alien individual (other than a foreign trust or foreign estate) shall not be considered as owned by a citizen or by a resident alien individual").

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family trust holds the balance may nonetheless control the company for these purposes even if no single person does.

Two structural points matter in 2026. First, the constructive-ownership rules were realigned by the 2025 legislation: the earlier repeal of the limitation in §958(b)(4) (which had produced widely criticized "downward attribution" that treated a U.S. partnership, estate, trust or corporation as owning the stock held by its foreign partners, beneficiaries or shareholders, so that many foreign companies became CFCs through affiliated U.S. entities) has been reversed for taxable years of foreign corporations beginning after December 31, 2025,[8] and a new §951B introduces a separate "foreign-controlled" regime for certain structures,[9] so the attribution analysis must be run under current law, not older memory. Second, control can be shared and non-obvious: a company owned by several family members, or by a foreign family holding structure, can cross the more-than-50% line in the aggregate. The practical rule for the adviser is to map ownership fully (direct, indirect, and constructive, across the whole family) before concluding the company is or is not a CFC, because the wrong answer here mis-states everything downstream.

Part III. Subpart F income: current tax on passive and mobile income

The older of the two inclusion regimes is Subpart F, and it targets the income most easily shifted to a low-tax company. A U.S. shareholder of a CFC must include, currently and whether or not it is distributed, that shareholder's pro rata share of the CFC's Subpart F income.[10] The core category is foreign personal holding company income, passive income such as dividends, interest, rents, royalties, annuities, and net gains from property producing such income; to this are added foreign base company sales and services income (income from dealings with or on behalf of related parties outside the

[8] I.R.C. § 958(b)(4), added by Pub. L. No. 119-21, § 70353(a)(1) (July 4, 2025), restoring the paragraph struck by Pub. L. No. 115-97, § 14213(a)(1) (Dec. 22, 2017): subparagraphs (A), (B) and (C) of § 318(a)(3) "shall not be applied so as to consider a United States person as owning stock which is owned by a person who is not a United States person"; applicable to taxable years of foreign corporations beginning after December 31, 2025, Pub. L. No. 119-21, § 70353(d).

[9] I.R.C. § 951B(a) to (c), added by Pub. L. No. 119-21, § 70353(b): a "foreign controlled United States shareholder" is a United States person that would be a United States shareholder if § 951(b) were applied with "more than 50 percent" in place of "10 percent or more" and § 958(b) were applied without its paragraph (4); a "foreign controlled foreign corporation" is a foreign corporation, other than a CFC, that would be a CFC on the same basis; subpart F and § 951A apply to such a shareholder separately from, and in addition to, their ordinary application.

[10] I.R.C. § 951(a)(1)(A), (a)(2), as amended by Pub. L. No. 119-21, § 70354(a), applicable to taxable years of foreign corporations beginning after December 31, 2025, § 70354(c)(1): every United States shareholder that owns stock within the meaning of § 958(a) on any day of the CFC year includes its pro rata share, which is the portion of the subpart F income attributable to the stock so owned and to the period of the CFC year during which the shareholder owned the stock, was a United States shareholder and the corporation was a CFC. For the year of the move the share is therefore attributable only to the period beginning on the residency starting date. The same rule governs the pro rata shares of tested income and tested loss, § 951A(c)(1). Proposed regulations would apply a daily proration and would permit or require the closing of the CFC's taxable year: REG-115646-25, 91 Fed. Reg. 55037 (Aug. 26, 2026), Explanation of Provisions I.B, I.C, and Applicability Dates (comment period closed on October 26, 2026; final regulations expected by January 4, 2027).

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CFC's country) and insurance income.[11] For a family holding company that mostly holds investments, or an operating company with significant passive or related-party income, Subpart F can pull a large part of the annual earnings into the owner's U.S. return the moment residence begins.

Several features sharpen the point. Subpart F income is taxed to the U.S. shareholder at that shareholder's own rates, as ordinary income, in the year the CFC earns it; the deferral that a foreign corporation normally provides is denied.[12] There are limitations and reliefs (a de minimis rule, a rule that caps Subpart F income at the CFC's current earnings and profits, and the high-tax exception discussed below), but the default is inclusion.[13] And because a new resident's foreign holding company is so often full of exactly the passive income Subpart F was written to catch, the regime frequently hits hardest precisely the family-investment structures that clients assume are the safest and most private.

Part IV. From GILTI to NCTI: the 2026 rules on active earnings

If Subpart F catches passive and mobile income, the tested-income regime catches almost everything else. Enacted as GILTI and, for tax years beginning after December 31, 2025, renamed net CFC tested income (NCTI), it requires a U.S. shareholder to include annually its pro rata share of each CFC's "tested income" (broadly, the CFC's gross income less allocable deductions, excluding items already caught by Subpart F and a few other carve-outs), net of its share of the tested losses of its other CFCs; as enacted, the inclusion was reduced by a permitted return.[14] The decisive 2026 change is that the permitted return has been eliminated: the old exemption for a 10% return on the CFC's

[11] I.R.C. § 952(a)(1), (2); § 954(a), (c)(1)(A) (dividends, interest, royalties, rents and annuities), (c)(1)(B) (the excess of gains over losses from the sale or exchange of property that gives rise to such income, of an interest in a trust, partnership or REMIC, and of property that gives rise to no income), (d)(1), (e)(1); § 953. Dividends, interest, rents and royalties received from a related CFC are not foreign personal holding company income to the extent attributable to income of the payer that is neither subpart F income nor effectively connected income, § 954(c)(6)(A); the rule, previously confined to taxable years beginning before January 1, 2026, was made permanent by Pub. L. No. 119-21, § 70351(a), applicable to taxable years of foreign corporations beginning after December 31, 2025, § 70351(b).

[12] I.R.C. § 951(a)(1)(A), (a)(3) (the amount is included for the shareholder's taxable year that includes the last day of the CFC year on which the shareholder owns the stock); § 1(j)(2) (rates up to 37 percent, continued without expiry by Pub. L. No. 119-21, § 70101(a)). The inclusion is an amount included in gross income under § 951(a), not a dividend received within § 1(h)(11)(B)(i).

[13] I.R.C. § 954(b)(3)(A) (no foreign base company income or insurance income where their sum is less than the lesser of 5 percent of gross income or $1,000,000), (b)(3)(B) (full inclusion where the sum exceeds 70 percent of gross income); § 952(c)(1)(A) (subpart F income limited to the current earnings and profits); § 954(b)(4).

[14] I.R.C. § 951A(a), (b)(1), (b)(2)(A), as amended and redesignated by Pub. L. No. 119-21, § 70323(a) (the catchline and subsection (a) now read "net CFC tested income"); tested income is computed without regard to income described in § 952(b), gross income taken into account in determining subpart F income, income excluded under the high-tax exception of § 954(b)(4), dividends received from related persons and foreign oil and gas extraction income, § 951A(b)(2)(A)(i)(I) to (V), less the deductions, including taxes, properly allocable to it, § 951A(b)(2)(A)(ii). Former § 951A(b) defined global intangible low-taxed income as the excess of the net CFC tested income over the net deemed tangible income return; it was struck by § 70323(a)(2).

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tangible business assets (QBAI) is gone, so essentially all of a CFC's active earnings are now tested income exposed to current U.S. tax.[15] What was designed as a tax on "intangible" super-profits has become, in substance, a current tax on nearly all of a CFC's income.

The rate depends entirely on who the U.S. shareholder is, and that is the heart of the immigrant's problem. A domestic C corporation computes NCTI with a §250 deduction, reduced from 50% to 40% for years after 2025, producing an effective U.S. rate of roughly 12.6% before foreign tax credits, and it may claim an indirect (deemed-paid) foreign tax credit for 90% of the CFC's foreign corporate tax.[16] A U.S. individual who owns the CFC directly gets none of that by default: no §250 deduction, no indirect foreign tax credit, and taxation at ordinary individual rates up to 37% on the full inclusion.[17] The same company, the same earnings, and the same foreign tax can therefore produce a modest residual U.S. tax in corporate hands and a severe one in individual hands, which is why the §962 election and the high-tax exception, next, are not fine print but the center of the plan.

How the CFC is held / taxed	Rate on the inclusion	§250 deduction & foreign tax credit	Key catch
U.S. individual, direct, no election	Ordinary rates up to 37%	No §250 deduction; no indirect FTC	Full U.S. tax with no credit for the company's foreign tax; usually the worst outcome.
U.S. individual with a §962 election	21% (corporate) on the inclusion	40% NCTI deduction; 90% indirect FTC	Later actual distributions are taxed again to the extent they exceed the §962 tax paid.
High-tax exception (foreign ETR > 18.9%)	Excluded from the inclusion	n/a (income removed from Subpart F / NCTI)	Elective and must be applied consistently;

[15] Pub. L. No. 119-21, § 70323(a)(2) (striking former § 951A(b) and former § 951A(d) on qualified business asset investment), applicable to taxable years beginning after December 31, 2025, § 70323(c). The effective date clauses differ: § 70323(c) speaks of taxable years beginning after December 31, 2025, which Treasury reads as the taxable years of the United States shareholder, whereas §§ 70353(d) and 70354(c) speak of taxable years of foreign corporations beginning after that date; for a calendar-year individual holding a calendar-year company the dates coincide (REG-115646-25, 91 Fed. Reg. 55037 (Aug. 26, 2026), Applicability Dates).

[16] I.R.C. § 250(a)(1)(B) (40 percent, substituted for 50 percent by Pub. L. No. 119-21, § 70321(a)(2), for taxable years beginning after December 31, 2025, § 70321(b); the step-down to 37.5 percent that former § 250(a)(3) had scheduled for those years was struck by § 70321(a)(3)); § 11(b) (21 percent; 21 percent of the remaining 60 percent is 12.6 percent); § 960(d)(1) (deemed paid foreign income taxes equal to 90 percent of the product of the inclusion percentage and the aggregate tested foreign income taxes, substituted for 80 percent by Pub. L. No. 119-21, § 70312(a)(1), for taxable years beginning after December 31, 2025, § 70312(c)); § 250(a)(1)(B)(ii) (the amount treated as a dividend under § 78 by reason of the taxes deemed paid shares in the deduction).

[17] I.R.C. § 250(a)(1) (deduction allowed "In the case of a domestic corporation"); § 960(a), (d)(1) (taxes deemed paid by a "domestic corporation"); § 1(j)(2).

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How the CFC is held / taxed	Rate on the inclusion	§250 deduction & foreign tax credit	Key catch
			depends on the foreign effective rate.
Held through a U.S. C corporation	~12.6% effective before FTC	40% NCTI deduction; 90% indirect FTC	Second layer of U.S. tax when the corporation pays a dividend to the individual.

Part V. The individual's rescue: the §962 election

Because the harshness falls on individuals, the most important single tool is the election under §962, which allows a U.S. individual who is a U.S. shareholder to elect to be taxed on Subpart F and NCTI inclusions as though he were a domestic C corporation.[18] The election imports the corporate machinery for that income: the 21% corporate rate applies in place of individual rates, the §250 deduction (40% for NCTI after 2025) is allowed, and the indirect foreign tax credit under §960 (90% of the CFC's foreign tax for NCTI) becomes available.[19] For a client whose foreign company pays meaningful local corporate tax, a §962 election can reduce the current U.S. cost of the inclusion to a small residual or to nothing, converting an unbearable result into a manageable one.

The election has a price that must be modeled, not assumed away. Section 962 changes the tax on the inclusion, not the character of the company's later distributions: when the CFC actually distributes the previously taxed earnings, the individual is taxed again on the distribution to the extent it exceeds the U.S. tax that was paid under the election.[20] In effect the election accelerates a modest tax now in exchange for a second, later tax on the cash when it comes out: excellent where the foreign tax is high and distributions are distant or never made, less attractive where the company will soon pay out its earnings, above all where it is not resident in a treaty country whose dividends can qualify for the

[18] I.R.C. § 962(a)(1) (the tax on the amounts included under § 951(a) is, "in lieu of the tax determined under sections 1 and 55", the tax that would be imposed under § 11 if the amounts were received by a domestic corporation), (a)(2); § 951A(d)(1)(A) (net CFC tested income treated as an amount included under § 951(a)(1)(A) for purposes of § 962); Treas. Reg. § 1.962-1(a); § 1.962-2(a) (election open to an individual, including a trust or estate, who is a United States shareholder).

[19] I.R.C. § 11(b); Treas. Reg. § 1.962-1(b)(1)(i)(A)(2), (B)(3) (taxable income computed from the inclusion and the portion of the § 250 deduction that a domestic corporation would be allowed), (b)(2)(i), (ii) (credit under §§ 960(a) and 960(d) as if the shareholder were a domestic corporation); I.R.C. § 960(d)(1) (90 percent for tested income; the credit under § 960(a) for the taxes attributable to a subpart F inclusion is not reduced). The regulation still names the percentage of § 250 as it stood before Pub. L. No. 119-21; for taxable years beginning after December 31, 2025 the percentage is 40 percent, § 250(a)(1)(B). The electing individual computes the deduction on Form 8993: Instructions for Form 8993 (Rev. December 2025), "Who Must File".

[20] I.R.C. § 962(d); Treas. Reg. § 1.962-3(a), (b)(1)(i), (ii) (excludable and taxable section 962 earnings and profits), (b)(3)(iii) (a distribution is attributed first to the excludable amount); I.R.C. § 961(a), second sentence (the increase in basis is limited to the tax paid under the election), (b)(1), second sentence.

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reduced rates.[21] The election is made annually and can be revisited, so it should be run as a live computation each year rather than set once and forgotten.[22]

Part VI. The high-tax exception

The second individual-side rescue is structural rather than elective-rate: income that has already borne a high foreign tax can be excluded from the inclusion altogether. Under the high-tax exception, a CFC's income, both Subpart F income and tested income, that was subject to a foreign effective tax rate greater than 90% of the top U.S. corporate rate (that is, greater than 18.9%, since 90% of 21% is 18.9%) may be excluded, by election, from the U.S. shareholder's current inclusion.[23] The rationale is that anti-deferral rules exist to stop the parking of income in low-tax jurisdictions, and income already taxed heavily abroad is not what they were meant to reach.

For the incoming immigrant this exception is often the difference between a crisis and a non-event, because so many clients come from ordinary-tax countries. A company that pays corporate tax at 25%, 28%, or 30% in its home country is above the 18.9% threshold, and its income may be excluded from Subpart F and NCTI by a properly made high-tax election, leaving in many cases little or no current U.S. inclusion even without a §962 election. The exception has conditions, is made on a consistent basis, and must be computed carefully at the level the rules

[21] I.R.C. § 1(h)(11)(B)(i)(II), (C)(i)(II) (a qualified foreign corporation includes a corporation eligible for the benefits of a comprehensive income tax treaty with the United States that the Secretary determines satisfactory and that includes an exchange of information program), (C)(iii)(I) (a corporation that is a passive foreign investment company in the year of the dividend or in the preceding year is excluded); Notice 2024-11, 2024-2 I.R.B., § 2 and appendix (current list of the treaties that meet the requirements; the treaties with Hungary and Russia removed, the treaty with Chile added).

[22] I.R.C. § 962(b) (election for the taxable year; "An election made for any taxable year may not be revoked except with the consent of the Secretary"); Treas. Reg. § 1.962-2(b) (statement filed with the return, listing the corporations, the inclusions, the earnings and profits and foreign taxes, and the distributions), (c)(1) (the election applies to all CFCs of the shareholder and is binding for the year), (c)(2) (revocation only with the Commissioner's approval on a material and substantial change in circumstances that could not have been anticipated).

[23] I.R.C. § 954(b)(4) (income "subject to an effective rate of income tax imposed by a foreign country greater than 90 percent of the maximum rate of tax specified in section 11"); § 11(b); § 951A(b)(2)(A)(i)(III) (tested income excludes gross income excluded from foreign base company income and insurance income by reason of § 954(b)(4)); Treas. Reg. § 1.954-1(d)(1)(i), (ii), (d)(5) (election by the controlling United States shareholders, binding on all United States shareholders); Treas. Reg. § 1.951A-2(c)(7)(i), (viii)(A), (B) (election by the controlling domestic shareholders with a timely filed original return or, within 24 months of the unextended due date, with an amended return; it covers each tentative gross tested income item of the CFC and binds all United States shareholders). The regulations still cite the tested income exclusion under its former number, § 951A(c)(2)(A)(i)(III).

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specify,[24] but it should be the adviser's first question for a client from a normal-tax jurisdiction: does the foreign tax already exceed 18.9%, and can the high-tax exception simply remove the income from the U.S. anti-deferral net?

Part VII. Form 5471: the reporting whose silence is the most expensive

Alongside the substantive tax runs an information-reporting obligation that punishes omission more reliably than the tax itself. A U.S. person who is an officer, director, or 10% shareholder of a foreign corporation, and in particular a U.S. shareholder of a CFC, must file Form 5471 with the annual return, in one or more of the filing categories of the instructions,[25] disclosing the company's ownership, income statement and balance sheet, earnings and profits, previously taxed earnings, and the Subpart F and tested-income computations.[26] It is not a formality: it is the return through which the entire CFC regime is administered, and the government enforces it with penalties that are severe and, importantly, apply whether or not any tax was due.[27]

The penalty structure is what makes silence dangerous. The base penalty is $10,000 per required form, per foreign corporation, per year; if the failure continues after the IRS mails notice, additional penalties of up to $50,000 per form can accrue; and a failure to file also reduces the taxpayer's foreign tax credits.[28] Most consequential of all, an

[24] Treas. Reg. § 1.954-1(d)(2) (effective rate determined separately for each CFC as the foreign income taxes paid or accrued with respect to the net item of income, divided by that net item increased by those taxes, in U.S. dollars), (d)(3)(iii) (taxes reasonably certain to be returned to a shareholder on a distribution are disregarded), (d)(4)(i) (the election is made consistently for all eligible items of passive foreign personal holding company income); Treas. Reg. § 1.951A-2(c)(7)(ii)(A), (iv)(A) (tentative gross tested income item determined for each tested unit: the CFC itself, an interest in a pass-through entity, a branch), (vi) (effective rate computed the same way for each item), (viii)(B), (E)(1) (the election covers every item of the CFC and, for a CFC group, all its members). A nominal statutory rate is therefore only the starting point of the computation.

[25] I.R.C. § 6038(a)(1), (a)(4), (e)(2) (information from a United States person that controls a foreign corporation, control meaning more than 50 percent of the vote or of the value, and from any United States shareholder of a CFC); § 6046(a)(1)(A), (B), (D), (a)(2) (returns by a citizen or resident who becomes an officer or director of a foreign corporation in which a United States person holds 10 percent, by a United States person who acquires stock meeting the 10 percent requirement, and by "each person who becomes a United States person while meeting the stock ownership requirements"); Instructions for Form 5471 (Rev. December 2025), "Purpose of Form", "Categories of Filers" (Category 2: officers and directors; Category 3: acquisitions and dispositions crossing the 10 percent line, and the person who becomes a U.S. person while meeting it; Category 4: control; Category 5: United States shareholders of a CFC). A new resident who holds 10 percent on the residency starting date is a Category 3 filer for that event; the United States shareholder of a CFC files as a Category 5 filer every year.

[26] I.R.C. § 6038(a)(1)(A) to (E); Instructions for Form 5471 (Rev. December 2025), "Who Must File" (schedules by category under the chart "Filing Requirements for Categories of Filers"), "Schedule J" (accumulated earnings and profits), "Schedule P" (previously taxed earnings and profits).

[27] I.R.C. § 6038(b)(1) (penalty "for each annual accounting period with respect to which such failure exists", without any condition that tax be due); Instructions for Form 5471 (Rev. December 2025), "Penalties".

[28] I.R.C. § 6038(b)(1) ($10,000 for each annual accounting period), (b)(2) ($10,000 for each 30-day period, or fraction of one, during which the failure continues after 90 days from the mailing of the notice, the increase not to exceed $50,000); § 6038(c)(1), (2), (3) (the foreign taxes creditable under §§ 901 and 960 are reduced by 10 percent,

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unfiled or materially incomplete Form 5471 holds open the statute of limitations on the taxpayer's entire return, not merely the international items, until three years after the required information is furnished; only where the taxpayer shows the failure was due to reasonable cause and not willful neglect is the extended period confined to the items related to the missed form.[29] A single missed form can therefore leave every line of several years' returns audit-exposed indefinitely. For a UHNWI immigrant with several foreign companies, the arithmetic of missed forms across multiple entities and years is alarming, and correcting it through the delinquent-information-return or streamlined procedures is far cheaper than waiting for the notice.[30]

Form 5471 feature	What the adviser must know
Who must file	U.S. persons who are officers, directors, or 10%+ shareholders of a foreign corporation; U.S. shareholders of a CFC. Multiple categories (1 to 5) with different schedules.[31]
When and how	Filed with the U.S. shareholder's income tax return (e.g., Form 1040), including extensions; one form per foreign corporation.[32]
Companion forms	Form 8992 (NCTI/GILTI computation), Form 8993 (§250 deduction), and the §962 statement; Schedules J and P track E&P and previously taxed earnings (PTEP).[33]
Base penalty	$10,000 per form, per foreign corporation, per year, regardless of whether any tax is due.

and by a further 5 percent for each 3-month period after the 90 days, the reduction being capped at the greater of $10,000 and the entity's income for the period and reduced by the dollar penalty for the same period); § 6038(c)(4)(B) (the time during which reasonable cause existed is disregarded); Instructions for Form 5471 (Rev. December 2025), "Penalties".

[29] I.R.C. § 6501(c)(8)(A) (for information required under §§ 6038 and 6046, among other provisions, the time for assessment of any tax "with respect to any tax return, event, or period to which such information relates shall not expire before the date which is 3 years after the date on which the Secretary is furnished the information"), (c)(8)(B) (where the failure "is due to reasonable cause and not willful neglect", the extension applies only to the related items).

[30] IRS, Delinquent international information return submission procedures (page last reviewed or updated April 19, 2026) (delinquent information returns other than Forms 3520 and 3520-A are attached to an amended return and filed under the normal procedures; penalties may be assessed under the existing procedures; a reasonable cause statement may be attached to each return); IRS, Streamlined filing compliance procedures (page last reviewed or updated July 11, 2026) (certification of non-willful conduct; closed to a taxpayer under civil examination or criminal investigation).

[31] Instructions for Form 5471 (Rev. December 2025), "Categories of Filers"; I.R.C. §§ 6038(a), 6046(a).

[32] Instructions for Form 5471 (Rev. December 2025), "When and Where To File" ("Attach Form 5471 to your income tax return (or, if applicable, partnership or exempt organization return) and file both by the due date (including extensions) for that return"), "Who Must File" ("Complete a separate Form 5471 and all applicable schedules for each applicable foreign corporation").

[33] Instructions for Form 8992 (Rev. December 2024), "Purpose of Form", "Who Must File" (the revision current on October 26, 2026, still titled with the former name of the inclusion); Instructions for Form 8993 (Rev. December 2025), "Who Must File" (domestic corporations and section 962 electing individuals), "Important Reminders" (40 percent for taxable years beginning after December 31, 2025); Treas. Reg. § 1.962-2(b); Instructions for Form 5471 (Rev. December 2025), "Schedule J", "Schedule P".

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Form 5471 feature	What the adviser must know
Continuation penalty	Up to $50,000 more per form for continued failure after IRS notice.
Collateral consequences	Reduction of foreign tax credits; the statute of limitations on the entire return does not expire until three years after the form is filed (narrowed to the unreported items where reasonable cause is shown).
Coming into compliance	Delinquent international information return submission or the streamlined procedures: far cheaper than assessment after notice.

Part VIII. Previously taxed earnings, basis, and avoiding double tax

Because Subpart F and NCTI tax the owner on earnings before they are distributed, the Code provides machinery to prevent taxing the same earnings twice: machinery the adviser must track or the client will pay twice in fact. Amounts included under Subpart F and NCTI become previously taxed earnings and profits (PTEP), and a later distribution of PTEP is generally not taxed again; correspondingly, an inclusion increases, and a PTEP distribution decreases, the U.S. shareholder's basis in the CFC stock.[34] The result is coherent only if the PTEP and basis accounts are maintained accurately from the first year of residence, which is one more reason the Form 5471 schedules that track these accounts are not clerical detail but the ledger on which the client's eventual freedom from double tax depends.[35]

The §962 case needs its own note, because that is where double tax most often creeps back in. Where the individual elected §962, the later distribution is shielded only to the extent of the U.S. tax actually paid under the election; the remainder of the distribution is a taxable dividend, potentially eligible for qualified-dividend rates if it comes from a corporation resident in a treaty country.[36] Getting the PTEP, basis, and §962 accounts right over time is unglamorous but decisive: it is the difference between a regime that taxes the earnings once, when earned, and one that taxes them again when they finally reach the family.

Part IX. Where PFIC meets CFC

A foreign company that produces mostly passive income raises a second regime, the

[34] I.R.C. § 959(a) (earnings and profits attributable to amounts included under § 951(a) are not included again when distributed), (d) (such a distribution is not a dividend but reduces earnings and profits); § 961(a) (basis increased by the amount included), (b)(1) (basis reduced by the amount excluded under § 959(a)), (b)(2) (the excess over basis is gain); § 951A(d)(1)(A) (net CFC tested income treated as an amount included under § 951(a)(1)(A) for purposes of §§ 959 and 961). No credit is allowed under § 901 for 10 percent of the foreign taxes, a withholding tax for example, paid on a distribution of previously taxed earnings that arose from a § 951A inclusion, § 960(d)(4), added by Pub. L. No. 119-21, § 70312(b), applicable under § 70312(c) to such taxes paid or accrued after June 28, 2025.

[35] Instructions for Form 5471 (Rev. December 2025), "Schedule J", "Schedule P" (the PTEP in the U.S. shareholder's annual PTEP accounts and the shareholder's U.S. dollar basis in that PTEP).

[36] I.R.C. § 962(d); Treas. Reg. § 1.962-3(a), (b)(1); I.R.C. § 961(a), second sentence, (b)(1), second sentence; I.R.C. § 1(h)(11)(C)(i)(II), (C)(iii)(I); Notice 2024-11, 2024-2 I.R.B., appendix. Whether the taxable section 962 earnings and profits are qualified dividend income depends on the corporation being a qualified foreign corporation; a passive foreign investment company is excluded.

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passive foreign investment company (PFIC) rules, and the interaction has a merciful default the adviser should know.[37] In general, a corporation that is a CFC as to a particular U.S. shareholder is, for that shareholder, taken out of the PFIC rules by the CFC/PFIC overlap rule, so the shareholder is taxed under the CFC regime rather than facing the punitive §1291 PFIC regime on top of it.[38] The relief is shareholder-specific and depends on the person being a U.S. shareholder of the CFC, so it protects the 10%-or-more family owners while smaller U.S. holders of the same company can still face PFIC treatment.[39]

Part X. The cure is timing: pre-residency fixes

As with most cross-border problems, nearly all of the value is created before the residency starting date, and the central technique is the entity-classification ("check-the-box") election. A client who, while still a nonresident, elects to treat the foreign corporation as a disregarded entity or partnership causes a deemed liquidation of the corporation;[41] done before residence, the deemed liquidation is generally a nonresident's non-event for U.S. purposes, it steps up the basis of the company's assets,[42] and, decisively, it eliminates the corporation as a separate entity so that no CFC, Subpart

The practical lesson is to classify the company correctly for each U.S. person involved, because the same foreign entity can be a CFC as to the controlling family and a PFIC as to a minority U.S. investor, with entirely different consequences and elections for each. Where a company is passive and the client's interest is below the U.S.-shareholder threshold, the PFIC analysis (and its QEF and mark-to-market elections) governs; where the family controls, the CFC analysis in this chapter governs.[40] Running both questions, for each holder, avoids the twin errors of missing a PFIC and of double-counting a CFC as a PFIC.

[37] I.R.C. § 1297(a) (75 percent or more of the gross income passive, or at least 50 percent of the assets held for the production of passive income).
[38] I.R.C. § 1297(d)(1), (2) (a corporation is not treated as a PFIC with respect to a shareholder during the qualified portion of the holding period, that is, the portion after December 31, 1997 during which the shareholder is a United States shareholder within § 951(b) and the corporation is a CFC); § 951(c) (an amount includible both under § 951(a)(1)(A) and under § 1293 is included only under § 951(a)); § 1291(a)(1), (2) (excess distributions and gains on disposition allocated ratably over the holding period, with the deferred tax amount added to the tax).
[39] I.R.C. § 1297(d)(2)(B), (d)(3)(A).
[40] I.R.C. § 1295(a), (b)(1) (qualified electing fund election); § 1296(a) (mark to market election for marketable stock); § 1297(d).
[41] Treas. Reg. § 301.7701-3(a) (an eligible entity may elect its classification), (c)(1)(i) (election on Form 8832), (g)(1)(ii), (iii) (an association that elects to be classified as a partnership or to be disregarded is deemed to distribute all its assets and liabilities to its owners in liquidation), (g)(2)(i) (the tax treatment of the deemed transactions is determined under all relevant provisions of the Code, including the step transaction doctrine).
[42] I.R.C. § 331(a) (amounts received in a complete liquidation are treated as in full payment in exchange for the stock); § 871(a)(1), (b) and §§ 881(a), 882(a)(1), (b) (a nonresident alien and a foreign corporation are taxed only on fixed or determinable income from United States sources and on effectively connected income, so that the deemed liquidation of a company without United States assets or business is outside United States tax); § 334(a) (the basis of property received in a complete liquidation is its fair market value "if gain or loss is recognized on receipt of such property"); § 1001(c) (the entire gain is recognized except as otherwise provided). No published guidance addresses the basis of a nonresident alien whose recognized gain on the deemed liquidation is outside United States tax; the point should be confirmed for each case.

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F, NCTI, or Form 5471 problem can arise after the move, because there is no foreign corporation left to be a CFC. One eligibility check comes first: most foreign entities may elect, but those on the per-se corporation list (a German AG or a French SA, for example, unlike a GmbH or a Sàrl) cannot check the box,[43] and for them the plan must use an actual liquidation, a reorganization, or a different holding vehicle. Timing is everything: the same election made after the starting date is a taxable liquidation to a U.S. person, and because substantial-presence residence begins retroactively on the first day of presence in the year of the move, the election must generally be effective before the client first sets foot in the United States that year, not merely before the day the test is met.[44]

Other pre-residency moves complement the election and are developed in the firm's pre-immigration planning playbook: distributing the company's accumulated earnings as a foreign-source dividend while the owner is still a nonresident, so that the United States never taxes them, as it would tax the same earnings paid out as a dividend after the move;[45] simplifying multi-tier holding structures that would otherwise multiply CFCs and Form 5471 filings; and, where the company must survive in corporate form, planning to hold it through a U.S. C corporation or another vehicle that carries the §250 deduction and indirect credit rather than leaving it in an individual's hands.[46] Each of these is cheap or free for a nonresident and expensive or impossible once residence begins, which is why the business-owning client must be identified and advised in the months before the move, not the year after.

Part XI. When the company must stay: living with the regime

Not every company can or should be liquidated or restructured away before the move; operating businesses have employees, licenses, contracts, and local-law and commercial reasons to remain exactly as they are. Where the company must stay, the plan shifts from prevention to management: determine each year whether it is a CFC, compute Subpart F and NCTI, apply the high-tax exception where the foreign rate qualifies, make or decline the §962 election on a current computation, maintain the PTEP and basis accounts, and file complete Forms 5471 (and the companion Forms 8992 and 8993) on time. Done properly, the regime is often bearable: the high-tax exception and §962 frequently reduce the residual U.S. tax

[43] Treas. Reg. § 301.7701-2(b)(8)(i) (listing "France, Societe Anonyme" and "Germany, Aktiengesellschaft" among the entities that are corporations per se); § 301.7701-3(a) (an entity not classified as a corporation under § 301.7701-2(b)(1), (3) to (8) is an eligible entity).

[44] I.R.C. § 7701(b)(2)(A)(iii); Treas. Reg. § 301.7701(b)-4(a); I.R.C. § 331(a); Treas. Reg. § 301.7701-3(c)(1)(iii) (the election may take effect on a date not more than 75 days before and not more than 12 months after it is filed), (g)(3)(i) (the deemed liquidation occurs immediately before the close of the day before the effective date).

[45] I.R.C. § 861(a)(2)(B) (a dividend from a foreign corporation is income from sources within the United States only in proportion to the corporation's effectively connected income, and only where 25 percent or more of its gross income for the preceding three years was effectively connected); § 871(a)(1) (the tax on a nonresident alien's dividends is confined to amounts received from sources within the United States); § 951(a)(2)(B); § 952(c)(1)(A). After the move the dividend is taxed to the resident, at the rates of § 1(h)(11) only if the payer is a qualified foreign corporation.

[46] I.R.C. § 250(a)(1); § 960(a), (d)(1).

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substantially for a company already taxed at a normal foreign rate.

The two disciplines that bound all of this are the familiar cross-border pair. First, respect the company's commercial substance: the tax plan must not dismantle a working business, and elections must fit the company's real operations and cash-flow needs. Second, coordinate both countries: the same company is taxed in its home jurisdiction, the foreign tax it pays drives the high-tax exception and the indirect credit, and its distributions have home-country consequences, so the U.S. plan must be built with home-country counsel, not in isolation. The goal is a structure that satisfies the U.S. anti-deferral rules at the lowest sustainable cost while leaving the underlying business intact.

Part XII. Planning and practice approaches

1. **Ask every incoming client about foreign companies.** Make "do you own any interest in any non-U.S. company, directly, indirectly, or through family or a trust?" a routine intake question; the regime is triggered by a status change with no transaction to prompt it.
2. **Map ownership fully before concluding CFC status.** Trace direct, indirect, and constructive ownership across the whole family and through entities under current §958 rules (including the restored §958(b)(4) limit, the new §951B, and the absence of family attribution from nonresident alien relatives) before deciding whether the more-than-50% and 10% tests are met.
3. **Compute both inclusion regimes.** Run Subpart F (passive and related-party income) and NCTI (nearly all remaining earnings now that QBAI is gone) for each CFC, at the shareholder level, for the year residence begins and every year after.
4. **Test the high-tax exception first for normal-tax countries.** If the CFC's foreign effective rate exceeds 18.9%, the high-tax election may remove the income from Subpart F and NCTI entirely: often the simplest and largest relief for clients from ordinary-tax jurisdictions.
5. **Model the §962 election as a live annual computation.** Where the exception does not apply, compare individual-rate inclusion with a §962 election (21%, 40% NCTI deduction, 90% indirect credit), remembering that the later distribution is taxed again above the §962 tax paid.
6. **File Form 5471 completely and on time.** Treat the $10,000-per-company penalty, the reduced credits, and the open statute of limitations as first-order risks; use the delinquent-return or streamlined procedures to fix past omissions before a notice arrives.
7. **Prevent the regime before the starting date.** Where feasible, check the box to liquidate the company (if the entity is eligible to elect), distribute accumulated earnings, and simplify structures while the client is still a nonresident: the cheapest and most complete fix, and one that closes after the move.
8. **Maintain PTEP and basis, and coordinate both countries.** Keep the previously-taxed-earnings and basis accounts accurate so distributions are not taxed twice, and build the plan with home-country counsel, since the foreign tax and the company's local treatment drive the U.S. result.

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Conclusion

A foreign company is the asset whose U.S. tax character changes most violently, and most silently, when its owner becomes a U.S. resident. On one side of the residency starting date it is an ordinary local business the United States ignores; on the other it can be a controlled foreign corporation whose passive income is caught by Subpart F, whose active earnings are caught by net CFC tested income now that the QBAI exemption is gone, and whose existence must be reported on Form 5471 under penalties that fall whether or not any tax is due. The individual owner faces the harshest version of the tax, but the §962 election and the high-tax exception frequently tame it, especially for the many clients whose companies already pay a normal foreign corporate tax. The most valuable move of all remains the one available only before the move: a check-the-box liquidation, a clean-out of earnings, a simplified structure, done while the client is still a nonresident. Spot the company early, run the analysis in both countries, and the entrepreneur-immigrant's greatest hidden exposure becomes a managed line item rather than a discovered disaster.

Contact

A foreign operating or holding company can become a controlled foreign corporation the day its owner becomes a U.S. resident, exposing the owner to current Subpart F and net-CFC-tested-income inclusions taxed whether or not anything is distributed, to the §962 election and high-tax-exception questions that determine how heavy that tax is, and to Form 5471 penalties and an open statute of limitations that punish silence; almost all of the fix is available only before the residency starting date. **Ashford International Law PC works with financial advisers, tax advisers, estate attorneys, and their clients** to identify foreign companies before a client's move, run the CFC, Subpart F, and NCTI analysis, test the high-tax exception and model the §962 election, bring Form 5471 filings into compliance, and, most valuably, carry out the pre-residency check-the-box liquidation, earnings clean-out, and restructuring that prevent the regime from attaching at all, coordinated with home-country counsel so the combined position is optimized.

The firm is led by attorney **Caroline Esche Ashford, PhD, JD**. A graduate of Columbia University Law School, her practice focuses on international estate planning and the cross-border taxation and administration of estates and trusts, including the pre-immigration and post-arrival treatment of foreign companies owned by new U.S. residents. Dr. Ashford is also licensed to practice law in Germany. She advises in French and German as well as English. The firm's attorneys are admitted in Germany, California, the District of Columbia, Maryland and Virginia.

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Ashford International Law PC

Washington, DC
1717 K St NW, Ste 900
Washington, DC 20006
Tel: +1 (202) 790-2500

Los Angeles
1901 Avenue of the Stars, 2nd Floor
Los Angeles, California 90067
Tel: +1 (310) 966-0961

Munich
Maximilianstraße 13
80539 Munich, Germany
Tel: +49 89 203006104

Email: info@internationalestatelaw.com · Web: internationalestatelaw.com

This article is intended for general educational purposes for U.S. estate planners, tax and financial advisers, and their clients and does not constitute legal or tax advice, nor does it create an attorney-client relationship. *The matters described depend on the specific facts, the client's status and intent, the applicable treaties, the home country's tax law, and the law and guidance in effect at the relevant time, and they change and are subject to variation. They include: the residency starting date rules; the controlled-foreign-corporation rules (the U.S.-shareholder 10% test, the more-than-50% control test, and the direct, indirect, and constructive-ownership rules, including the restored §958(b)(4) limitation, the new §951B, and the limits on attribution from nonresident aliens); Subpart F income (foreign personal holding company, foreign base company, and insurance income) and its current inclusion; net CFC tested income (the renamed GILTI) for tax years beginning after December 31, 2025, the elimination of the QBAI exemption, the §250 deduction reduced to 40%, the roughly 12.6% pre-credit corporate effective rate, and the 90% indirect foreign tax credit; the taxation of individual U.S. shareholders and the §962 election, including the tax on later distributions; the high-tax exception at a foreign effective rate above 18.9%; Form 5471 (filing categories, the $10,000 and up-to-$50,000 penalties, foreign-tax-credit reduction, and the open statute of limitations) and the companion Forms 8992 and 8993; previously taxed earnings and profits, basis, and the CFC/PFIC overlap; and the pre-residency check-the-box, earnings-distribution, and restructuring techniques. Amounts, rates, and percentages are time-sensitive and were changed by 2025 legislation effective in 2026; confirm each with qualified U.S. and local counsel and current law before acting.*

#CFC #ControlledForeignCorporation #GILTI #NCTI #SubpartF #Form5471 #Section962 #HighTaxException #Section250 #ForeignTaxCredit #PTEP #PFIC #CheckTheBox #PreImmigrationPlanning #USShareholder #AntiDeferral #ImmigrantEntrepreneur #UHNWI #CrossBorderTax #InternationalEstatePlanning #NonUSPersons #OBBBA

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