Answer-to-Question-_1_

Part 1)
The substantial presence test is met when the individual spends more than 182 days in the US in a taxable year or spends at least 31 days in the current year and his number of days for the current year plus 1/3 of the days of the immendiately preceding year + 1/6 of the number of days of the second preceding year equals or exceeds 183 (sec 7701(b)(3)]. In 2016, Johan is in the US 122 days, in 2017 he is in the US 104 days and in 2018 he is in US 181 days. Since he is not in the US for more than 182 days in any one year, he does not meet the substantial presence test under this particular criterion.

However, he can still meet the substantial presence test if he spends 31 days in the US + current year days + 1/3 number of days of the immediately preceding year + 1/6 of the number of days of the second immediately preceding year.

Since Johan has not been in the US prior to 2016, he does not meet the substantial presence test under this calculation for 2016. Even though he is in the US for 31 days, he is still only 122 days in total in the US and therefore less than 183.

In 2017, he spends at least 31 days in the US so 104 (2017 days) + 1/3 *122 (2016 days) = 144.6 days, therefore he does not meet the substantial presence test for 2017 since he is less than 183 days.

In 2018, he does meet the substantial presence test as follows: he is in the US for at least 31 days and 181 (2018 days) + 1/3 *104 (2017 days) + 1/6 * 122 (2016 days) = 236 days

Therefore, Johan meets the substantial presence test only in 2018 and therefore will be taxable on his worldwide income in the US in 2018 unless there are certain exemptions he can meet.

Part 2) Since he does not meet the substantial presence test in 2016 or 2017, the

consideration of where he has tax home is not relevant.
bUt it is relevenat for 2018. If a non resident alien, meets the substantial presence test in 2018, he can still avoid being taxed in the US if he meets the closer connection test. The test requires that 1) he spend less than 183 days in the US 2) has a tax home in another country and 3) has a closer connection to that home then to the US. In 2018, Johan is in US for 181 days therefore less than 183. He also has a home in country F where his wife and children live; therefore it appears that he has a closer connection to country F based on these criteria. Since he meets the closer connection test, he will not be taxed in the US, despite his cumulative total of days in 2018.

Part 3) If he is not a US resident, then he will only be taxable on his income earned while in the US, irrespective of the number of days he spent in the US. He will not be taxed on his worldwide income. His income is considered personal services income which is considered US trade or business and therefore taxable in the US. He could only avoid being taxed in the US under a commercial traveller exemption i.e. if he spent less than 90 days in the US and earned less than $3,000. He was paid $100,000 for 2016 and 2017 therefore he is likely over the limit in 2016 and 2017 and he also spent more than 90 days in the US in both these years. In 2018, he also stayed in excess of 90 days and made $75,000. THerefore, he will be taxed in US on his US income.

Part 4) If there was a treaty, he would be eligible for a broader commercial traveller excemption under Article 14 (2). This would require that he spend less than 183 days in the US and is paid by an employer who is not a resident of US and does not have a permanent establishment in the US. Since he works for F Co which is a country F corporation and not resident of US and has no permanent establishment, he will not be taxable in the US in any of the three years under the convention.

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Answer-to-Question-_2

Part 1) Taxation on US sales
The US sales will be taxed at 21% of total income under the new Tax cuts and jobs act

March 2018
10% of tax basis of productive assets = 10% * 64m = 6.4M

30 June 2018
10% of tax basis of productive assets = 10% * 83m = 8.3M

30 September 2018
10% of tax basis of productive assets = 10% * 75m = 7.5M

31 December 2018
10% of tax basis of productive assets = 10% * 55m = 5.5M

Revenues:		
Sales within US	50,000,000	
Direct Sales		30,000,000
Country X branch	20,000,000	
Dividend received from Y Co	525,000	

Total revenue	100,525,000	
Expenses related to 10% of tax basis	6,400,000	
	8,300,000	
	7,500,000	
		5,500,000

Taxable income	72,825,000	
dividends received deduction	525,000	

72,300,000

Tax at 21% 15,183,000

Taxation of direct foreign sales

Direct foreign sales will be considered all US source income irrespective of where the title passes based on the new tax cuts and jobs act because the goods were manufactured in the US. Therefore, there will be no foreign tax credits atttributable to this income

Taxation of Country X branch sales

As all goods are manufactured in the US, sales through Country X branch will be US source income with no foreign tax credits.

Income earned by Y co

Y co is a CFC since it is wholly owned by a US shareholder, therefore is will have to remit its share of subpart F and GILTI income to the US parent. It does not appear that Y Co has Subpart F income since it buys goods from unrelated parties (as opposed to purchasing from the US parent) and sells them entirely within the country of incorporation. Therefore, it does not have foreing base company sales income but it will have GILITI as follows

GILITI = sales income - 10% of production assets' tax bases = 5 - 0 = 5

GILTI deduction = 50% * 5 = 2.5m *21% = 0.525

The GILITI amount will be remitted to US CO

US CO will include it in income as part of DRD and will receive full deduction for DRD since it wholly owns Y Co. There are no foreign taxes related to Y Co.

Part 2) If equipment were purchased in the US there would be a deduction of 10%* adjusted tax basis of production assets times the tax rate of 21% which would be deducted frm total revenues

If manufacturing assets were purchased in Y Co, the tested income net of 10% of tax basis of production assets would be remitted to US CO net of 50% deduction of GILITI income which woud reduce the tax rate to 10.5%

Therefore, it appears that it would be advantagous to purchase assets through Y Co

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Answer-to-Question- 3
Globe Corp is a Delaware corporation therefore it is a US corporation that will be taxed on its worldwide income.
$20million of US source sales do not attract foreign tax credits

FDII = (37.5% * 30,000,000)*21% = 2,362,500
50% deduction = 50% * 2,362,500 = 1181,250
Therefore, 1181,250 will be deductible to GlobeCorp
Foreign taxes paid = 2m * 80% limit = 1.6 million can be claimed as foreign tax credit after 80% cap

30,000,000 through Country Z branch, this is US source income since all goods are manufactured in US irrespective of where the title passes, therefore, it is not eligible for foreign tax credit

GCo
30,000,000 million in foreign sales of which 3 million is eligible for participation exemption under section 245A (formerly indirect tax credits). Foreign tax credits are not allowed on taxes paid on the amount that is elegible for DRD. Therefore, 30m-3m or only 27 million out of 30 million is 90%. Since 2 million was paid in foreign taxes on the 30m but only 90% of that amount is eligible for foreign tax i.e 90% * 2m = 1.8m times 80%

cap = 1.44
GILTI - 30m - 0 = 30*21% = 6.3m
GILITI deduction = 50% * 6.3m = 3.15m

Foreign tax credits = 1.6m+1.44m = 3.04m can be claimed as foreign tax credits in the US

2,362,500 (FDII)and 3,150,000 (GILTI)can be claimed as DRD = 5,512,500

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Answer-to-Question-__5
Part 1) Intangibles that are potentially being transferred are licence, trademark and manufacturing rights.
Part 2) The IRS will initially accept the transfer price of $100 million because it was arm's length price at the time of transfer. Therefore, no adjustment will be required. However, as the license increases in value, its value will have to be reassessed and increased to reflect value 'commensurate with income'. This may lead to higher royalties being paid from K Co to Jay Co. Jay Co may be inclined to understate its royalty income from the subsidiary. If the adjustment is made in US, K Co will need to make a corresponding adjustment. This correspondinig adjustment may be treated as constructive or actual dividend from K Co to Jay Co.

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Answer-to-Question-_7__

Note: It is assumed that there is a typo in 'during the course of 2016' it will be assumed that 2018 should have been used instead)

Part 1) Delia was born in Country P, and is a citizen of country P. She is also a resident of Country Q (where she has been living for the past 10 years) and a resident of US since she spent more than 183 days in the US. Under the US Model Convention, she will be a resident of Country Q and US and the convention will provide a tie-breaker clause under Article 4(3) as follows
(a) she shall be deemed to be a resident of the of the state in which she has a permanent home available to her.
Since Delia's sole permanent home is in Country Q, she is deemed to be a resident of country Q under the convention.
Her being a resident of country P is not relevant here becasue there is no convention between P and US.

Because of her being considered a resident of country Q, she will not be a US resident despite being present in the US for more than 183 days under the convention.
Therefore, the US dividend received will be foreign source income to Delia. Because the dividend is received from a corporation in which she owns 25%, she and the corproation are related. As a non-resident, she will be charged withholding tax on FDAP (which includes dividends) but becasue the convention is in place, she will be charged 5% as a related party to the corporation. Therefore, her withholding tax will be $5,000.

Part 2) If Delia was born and was a citizen of US (but never lived or visited US) and instead lived in Country Q her entire life, she would still be considered a resident of US. This is provided for under Article 4(1) of the convention, 'for the purposes of this convention the term 'resident of a contracting state' means any person who under the laws of a contracting state is liable to tax therein by reason of his domicile, residence, citizenship...' Since Delia is a citizen of the US, she is also considered a resident. Therefore, she would be considered a resident of US and Country Q. Therefore, the tie-breaker clause will need to be applied as in Part 1. There is no difference to the answer in Part 2 and answer in Part 1 applies.