Answer-to-Question-_1_

(a) USD10m Manufacture of Product A for resale in US
<u>Source of Income</u>: This is US sourced income
<u>Taxable Income</u>: All USD10m is subject to federal tax at 21%
<u>Allowable Foreign Tax Credit</u>: No FTC exists
<u>Carry-fwd / back eligibility</u>: Nothing to carry-fwd / back

(b) USD3m Manufacture of Product A for export and use in Asia, title transfer in Asia and subject to foreign taxes of 15%
<u>Source of Income</u>: This is US sourced income under Sec. 863 (b) based on where the production activities occur which is all US.
<u>Taxable Income</u>: USD3m less 15% taxes paid (USD2.55m) is subject to federal tax at 21%
<u>Allowable Foreign Tax Credit</u>: As the income is deemed to be US sourced income no FTC is available
<u>Carry-fwd / back eligibility</u>: No carry fwd/back

(c) USD2m from purchase of Product B for export and use in Asia, title transfer in Asia and subject to foreign taxes of 30%
<u>Source of Income</u>: This is Foreign Sourced income under Sec. 862 (a) (6) based on where the exchange occurs
<u>Taxable Income</u>: The USD2m is taxable at federal tax rate of 21% with a reduction under Sec. 250 (a)(1)(A) of 37.5% to an effective tax rate of 13.125% - FDII income
<u>Allowable Foreign Tax Credit</u>: Full credit is allowed for taxes paid, but these are in a restricted bucket and not available for offset to other buckets
<u>Carry-fwd / back eligibility</u>: The excess credit can be carried forward 10 years and back 1 within relevant restricted buckets

(d) USD1m from sale of Product B by branch in France for use in France with title transfer in France subject to income tax of 15%
<u>Source of Income</u>: This source is without the US / foreign under Sec. 862
<u>Taxable Income</u>: USD1m (with section 78 gross up) is subject to

federal tax rate of 21% with a reduction under Sec. 250(a)(1)(B) of 50% to an effective tax rate of 10.5% - GILTI income
Allowable Foreign Tax Credit: under Sec. 960 80% of the taxes paid can be deemed as credit and offset against the taxes, but any excess is restricted to other GILTI incomes bucket
Carry-fwd / back eligibility: No carry forward exists for this deemed credit

(e) Sale of Products B to Acme Italy (related party) at arms length price, with USD2m profits in US, title passing in Italy with Acme Italy generate income of USD600k in Italy and USD400k in Germany, paying 25% taxes on this
Source of Income: All profits are Foreign Sourced Income
Taxable Income: USD2m is taxable in US under FDII rules at federal rates less 37.5% haircut while USD600k is subject to GILTI rules taxable at federal rate less 50% haircut and USD400k sold to Germany is captured by Subpart F rules and taxable at federal rate of 21%
Allowable Foreign Tax Credit: No tax credit exists on USD2m profit, while USD600k taxable at 25% in Italy would have a deemed credit of 80% of 25% (effectively a 20% credit [USD120k]) and USD400k sold in Germany would have a full tax credit of 25% [USD100k], but this would be restricted to the amount of the USD tax credits and so only 21% could be used [USD84k]
Carry-fwd / back eligibility: Nothing to c/f on USD2m, the USD400k in Italy would be used in full while the excess of the German profits tax credit excess [USD16k = USD100k - USD84k] under Subpart F rules can be carried forward 10 years and back 1

--------------ANSWER-1-ABOVE---------------

--------------ANSWER-2-BELOW---------------

Answer-to-Question-_2_

Interest payments withholding obligation:
1 - USD40k of portfolio interest / there exists a portfolio interest exemption from tax and therefore as no tax liability exists no withholding is required
2 - USD10k of interest to a foreign corporation which owns 15% of voting power / as there is greater than 10% ownership involved here the portfolio interest exemption doesn't apply, however, if the USD10k of interest payments is deemed to be effectively connected to the operations of the branch then an exemption under Sec 1441(c) may exist, otherwise 30% withholding tax would apply under Sec 1442

Tax consequenceses:
Beta has USD3.16m of branch profits remaining after payment of USD840k on it's USD4m of earned income. Branch profits are taxed at 30% under Sec. 884(a), therefore USD3.16m is potentially subject to a further tax of USD948k.
There is an exemption from the Branch Profits Tax for funds held for the day-to-day operations of the branch but not for an future potential investments, as it is clearly stated that only USD1m is required for day-to-day this means that the USD2.16m being held for future investments will be subject to tax at 30% under Sec. 884(a) and therefore USD648k additional taxes will be payable.

Funds to be used in purchasing business assets of USD2m and remitting remaining USD1.16m to Country X:
It is not clear if the business still requires a further USD1m for day-today operations after the USD2m investment. Assuming that the branch does not require the USD1m after the USD2m

investment, then the USD2m investment is not subject to the branch profits tax while the remaining USD1.16m would be subject to branch profits tax at 30% resulting in additional branch profits taxes of USD348k.

2016 US Model Tax Treaty in place:
As a branch exists in US for Beta it will be suject to US federal taxes as under Article 5 a "permanent establishment" would be deemed to exist and therefore Article 7 would be applied and the profits taxed at federal rate of 21%. Beta would then claim credit for the US taxes paid on its branch income in his corporate income tax return in Country X, subject to the relevant Country X rules.

--------------ANSWER-2-ABOVE---------------

--------------ANSWER-3-BELOW---------------

Answer-to-Question-_3_

Sec. 957 & 958 contain the rules around what constitutes a Controlled Foreign Company (CFC) for US purposes, summarised below:
- more than 50% of the corporations total voting power, or
- more than 50% of the corporations total value of it's stock
is owned by US shareholders on any day during a taxable year, then such foreign entity is a CFC

Sec 958 further clarifies the constructive ownership rules:
- if a corporation owns 50% or more of the shares then that sharesholder would be considered as owning all of the shares
- if a US person owns less than 10% of the shares, then that persons shareholding is excluded from consideration as to whether more than 50% is owned by US shareholders, the US person's direct/indirect and related persons shareholdings need to be factored into the 10% threshold limit

1)
Martina owns 60% of HoldCo, therefore HoldCo is potentially a CFC, as the HoldCo owns 60% of FCo and it is a corporation, it is deemed to own 100% of the shares for the constructive ownership rules. So even though a US shareholder only has 36% of the FCo (60% of 60%) under the constructive ownership rules of one corp holding more than 50% deems **FCo to be considered a CFC**

2)
-40% foreign shares of FPub (assuming there are no US shareholders of this entity)
-US partnerhsip owns 36% - 36% owned by US

-US Corp owns 10% - meets 10% rule, therefore considered as US shareholder
-T US citizen owns 9% - does not meet 10% rule therefore discounted
-X a US citizen owns 5% in own right, potentially excluded under 10% rule but as owns 9% (25% of 36%) in partnership and together with 5% in own right then X's further shareholdings are considered, without double counting the original shareholding
FCo is a CFC based on 36 + 10 + 5 = 51% held by US shareholders

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--------------ANSWER-3-ABOVE---------------

--------------ANSWER-4-BELOW---------------

Answer-to-Question-_6_

Form 8832 under Reg 301.7701.-3(c) can be made to make an election to change the classification of an entity, once an election is made it cannot be changed for 5 years and when making an election the effective date cannot be more than 75 days prior to the election or can be 12 months after the date of election

An election can only be made by eligible entities under Reg 301.7701-3

Under Reg 301.7701-2(b) an LLC is not noted as a US corporation and therefore dependent on shareholder numbers can be classified as under Reg 301.7701-3(b)(1) as a partnership if it has two or more members or a disregarded entity if it has 1 owner. In ABC LLC there are more than 1 members therefore the entity is classified as a partnership, without an election, an election could be made to treat the entity as a association/corporation

Under Reg 301.7701-3(b)(2)(b) foreign eligible entities with two members are associations if all members have limited liability (which is the stated position in the question), without an election, with an election the entity could be classified as a partnership

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--------------ANSWER-4-ABOVE---------------

--------------ANSWER-5-BELOW---------------

Answer-to-Question-_5_

Disclosures will be required on Form 5471 in relation to this restructuring

Section 367 and accompanying regulations govern such transfers. Title transfer assumed to happen in the foreign jurisdiction

Transfer of Plant and Equipment of USD2m, USD1m adjusted base:
The gain of USD1m on the plant and equipment is taxable, this is similar to pre-TCJA. Post-TCJA the USD2m will form part of the QBAI calculation going forward, giving an eligible deduction of USD200k in its GILTI calculation.

Transfer of Inventory value of USD500k, USD100k adjusted base:
The gain of USD400k on the inventory is taxable, this is similar to pre-TCJA

Transfer of Patent value of USD3m nil adjusted base:
Patent gain of USD3m is taxable as GILTI income with a 50% reduction under Sec. 250(a)(1)(B). Pre-TCJA there was no taxable income recognised on foreign intangible gains