

# BEPS & US Tax Reform: A Symbiotic Relationship

**Mindy Herzfeld**

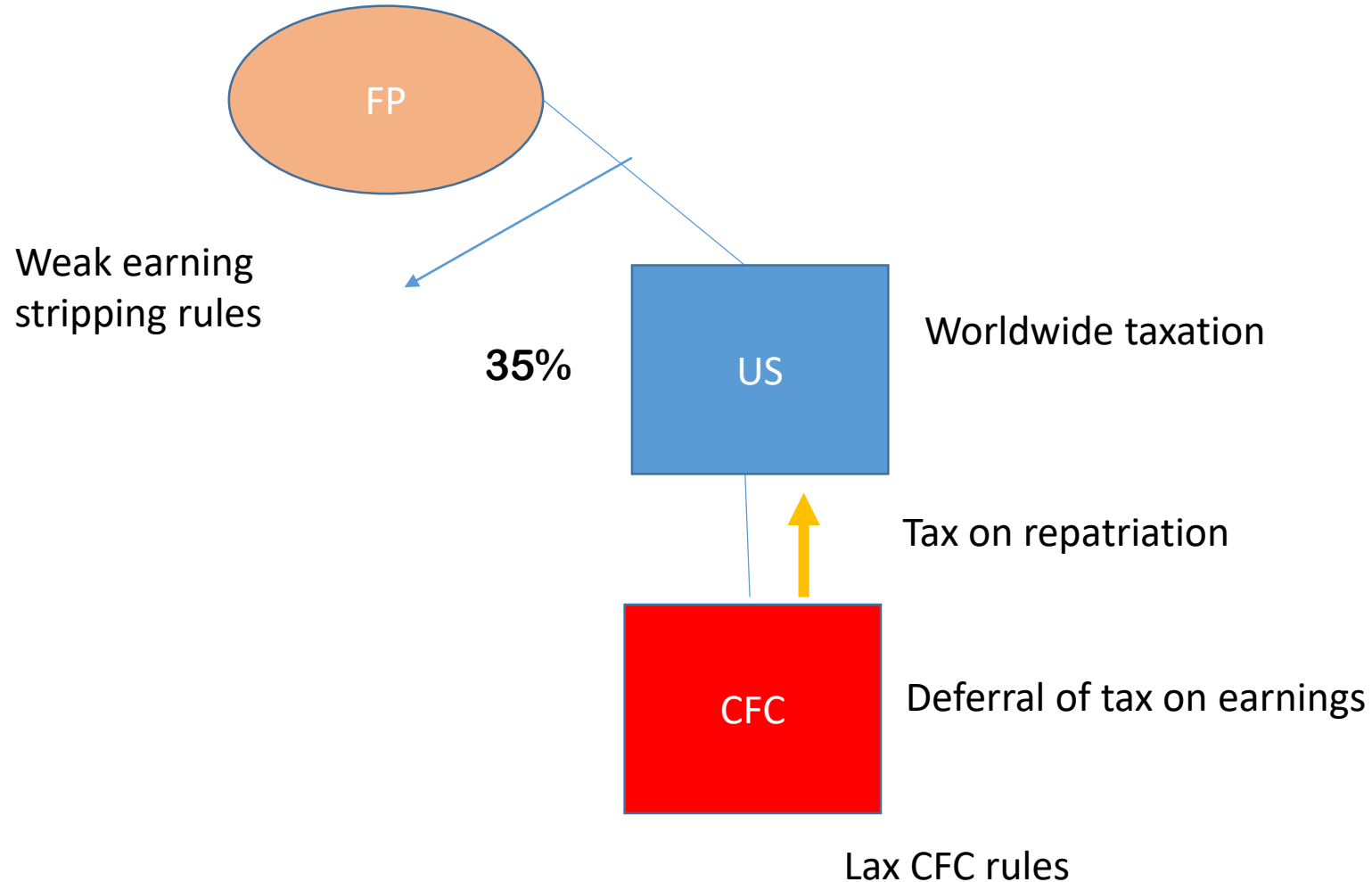
**University of Florida Levin College of Law**

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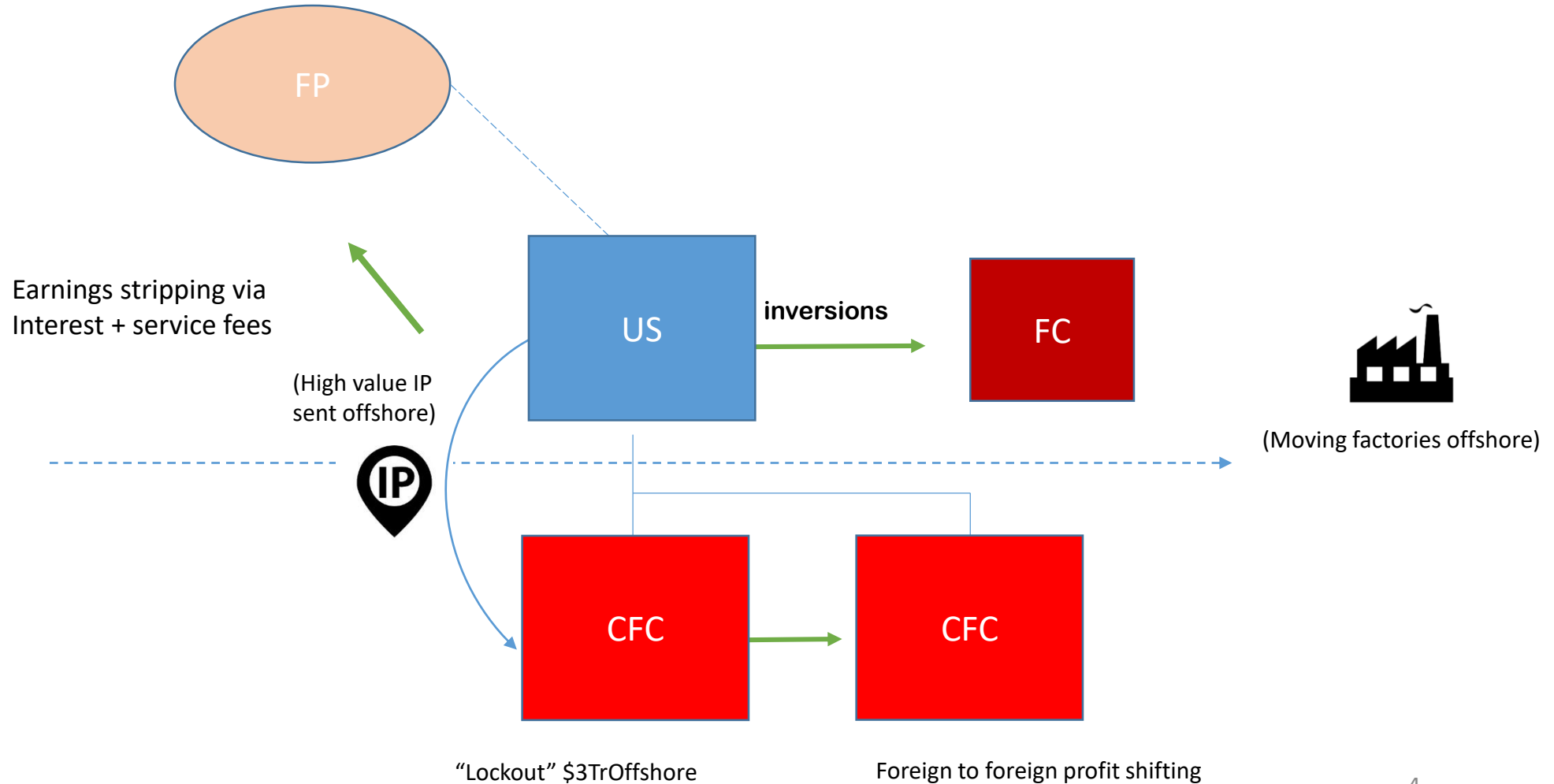
**Plenary Session : 1130-1200 Day 1**

# US Tax Reform: Key Features

# Pre TCJA U.S. Tax System characteristics



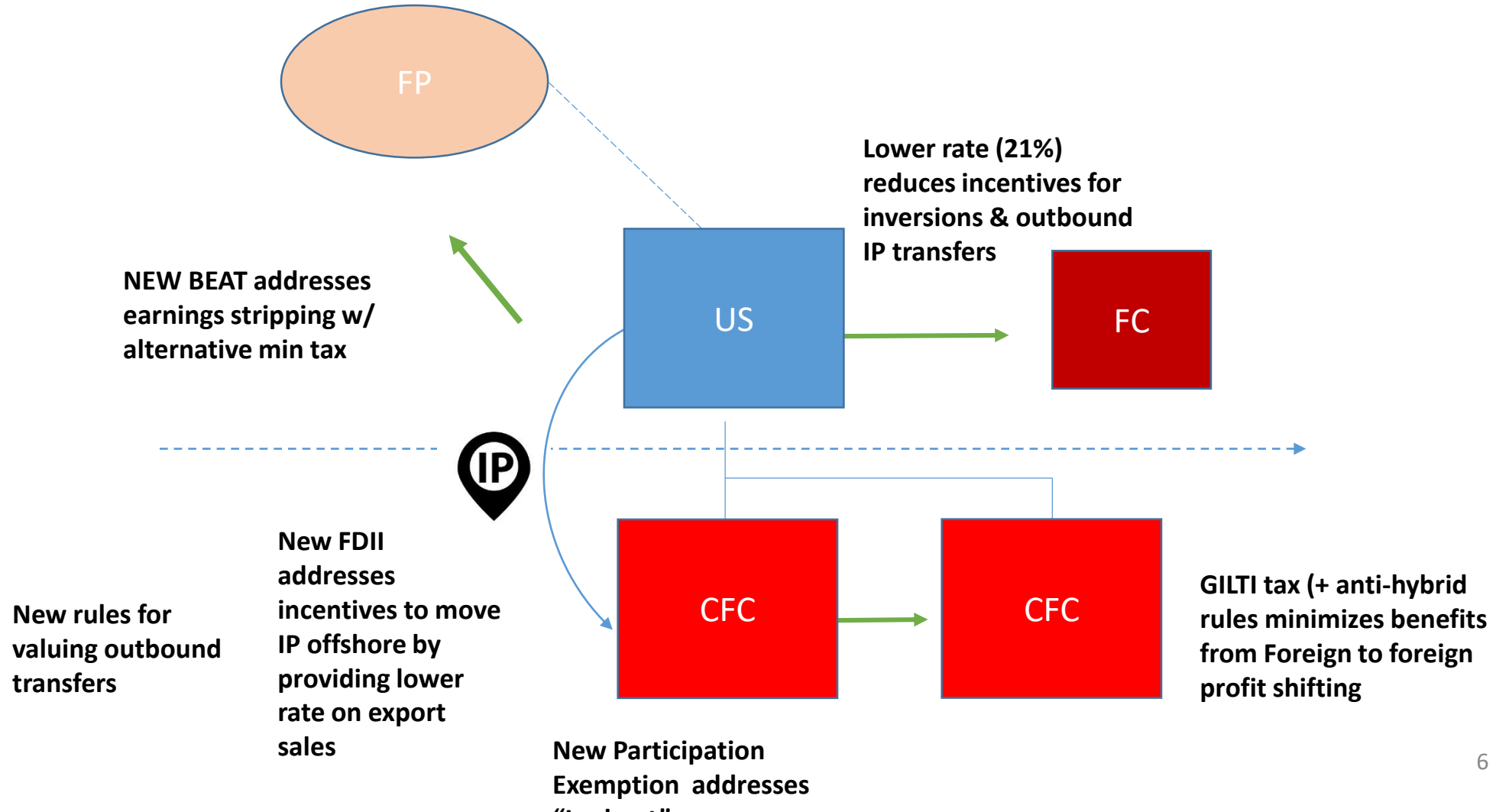
# Consequences of Pre TCJA Tax Rules



# International Highlights of US Tax Reform

- Lower corporate rate
- Limitation on interest expense: 30% of EBIT/EBITDA
- Participation exemption: is it really the case?
- GILTI: a minimum tax?
- BEAT: a minimum tax, inbound
  - A backstop to transfer pricing?
- FDII: an export incentive?
- Anti-hybrid rules
- Transfer pricing on outbound transfers

# TCJA Changes



# BEPS Goals

# BEPS Goals vis a vis the United States

- Combat multinational tax avoidance
- U.S. structural conditions that facilitated tax avoidance
  - High rate
  - Check-the-box rules
  - Weak anti-deferral rules
  - Ineffective transfer pricing rules
  - “Lockout”: high-tax imposed on repatriation



# BEPS & U.S. Tax Reform: Compared & Contrasted

# TCJA/BEPS Compared: The Parallels

TCJA	BEPS
Interest expense limitation – amended sec. 163(j)	Same – 30% EBIDTA (action 4)
Anti-hybrid rule – new sec. 267A	Same (action 2)
Anti-hybrid rule – new sec. 245A(e)	Similar (action 2)
CbC reporting (pre-TCJA, regulatory)	Same (action 13)

# TCJA/BEPS Compared: The Contrasts

TCJA	BEPS
Vastly expanded CFC rule – GILTI	No specific recommendation on CFCs
[Arguably] export incentive -- FDII	Substance requirements for patent boxes (action 5)
Revisions to section 482	Extensive revisions to OECD transfer pricing guidelines
N/A	Revised PE treaty language
BEAT	N/A

# TCJA/BEPS Compared: U.S. Already There?

BEPS	U.S.
Action 14 – Dispute Resolution	Mandatory Arbitration
Action 6 – treaty abuse rule	LOB
Action 12 – mandatory disclosure	Shelter disclosure rules; Fin48

# BEPS & U.S. Tax Reform

# Specific Influences

- Interest expense limitation: close to OECD recommendation
- Anti-hybrid rules
- GILTI: broadening of CFC rules

# Broader Influences

- Concerns over substance: ensure U.S. property (tangible & intangible) remains in the U.S.
- Concerns over other countries anti-abuse rules
- Concerns over new PE rules
- “socializing” of minimum rate on foreign earnings
- Other countries rates continue ↓

# A Circular Influence

- Ongoing BEPS Projects: Digital
- U.S. tax reform:
  - Addressed concerns?
  - Revisiting international tax allocation rules more broadly