

International tax landscape: US and global update

Southern Federal Tax Institute

27 October 2025



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Objectives

- Recognize how the US taxes income of non-US subsidiaries and how it has changed with the enactment of the Tax Cuts and Jobs Act (TCJA) and the One Big Beautiful Bill Act (OBBBA).
- Identify the changes in taxation of export income earned by a US company pre-TCJA through OBBBA.
- Discuss the latest updates with respect to the Organisation for Economic Co-operation and Development's (OECD's) Base Erosion and Profit Shifting (BEPS) Pillar 2 initiative



Agenda

1

- US taxation of non-US subsidiaries' earnings (post-TCJA and OBBBA)

2

- Taxation of export income earned by US companies

3

- Update on the OECD's BEPS Pillar 2 initiative

01

US taxation of non-US subsidiaries' earnings

US taxation of earnings of foreign subsidiaries owned by US person: overview

Pre-TCJA and OBBB

- Subpart F income (§951)
- Dividend income

TCJA

- Subpart F income (§951)
- Global intangible low-taxed income (GILTI) (§951A)
 - Qualified business asset investment (QBAI)
- Dividend income
 - 100% dividend received deduction (§245A)

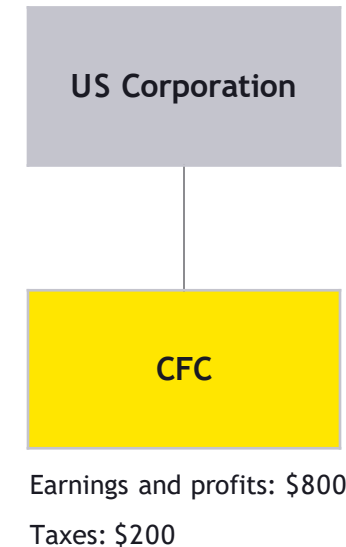
OBBBA

- Subpart F income (§951)
- GILTI (§951A)
- Dividend income
 - 100% dividend received deduction (§245A)

Not included: passive foreign investment company, Foreign Investment in Real Property Tax Act, income effectively connected with a US trade or business

US taxation of earnings of foreign subsidiaries owned by US person: Subpart F income - consistency since 1962

- Impact: Foreign subsidiaries' earnings are immediately included in the taxable income of US shareholders (defined in §951(b)) and subject to full US federal income tax.
- Requirements:
 - Controlled foreign corporation (CFC) - §957
 - US shareholder - §951(b)
 - Subpart F income earned by CFC - §952



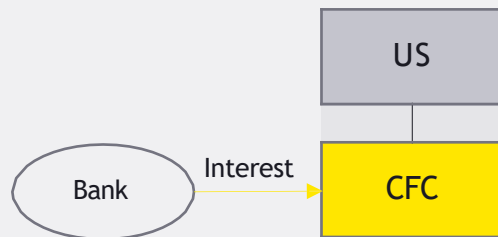
Subpart F income: If CFC earns \$800 of Subpart F income, then its earnings and profits are included in US Corporation's taxable income.

US taxation of earnings of foreign subsidiaries owned by US person:

Subpart F income - foreign base company income

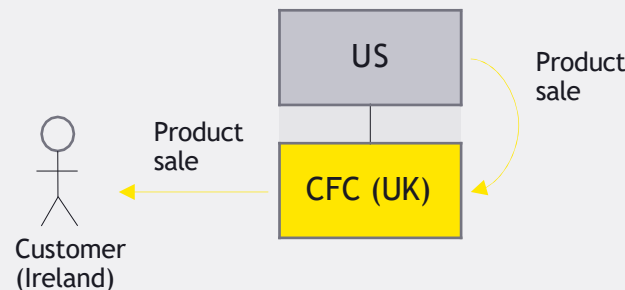
Foreign personal holding company income (§954(a)(1))

- Dividends, interest, rents, royalties and gains on certain types of property (among other types of income)



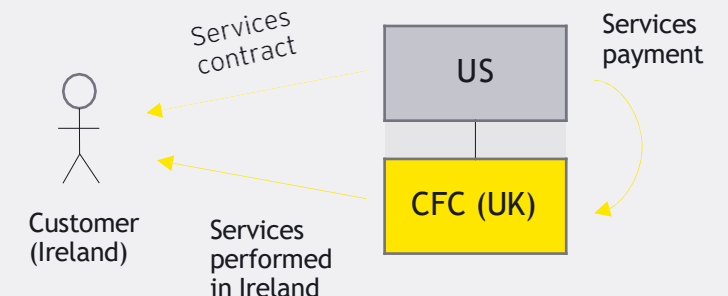
Foreign base company sales income (§954(a)(2))

- Income earned by a CFC where there is a related-party sale or purchase and the (i) product is not manufactured in the CFC's country, (ii) the product is not sold to a customer in the CFC's country and (iii) the CFC does not manufacture the product

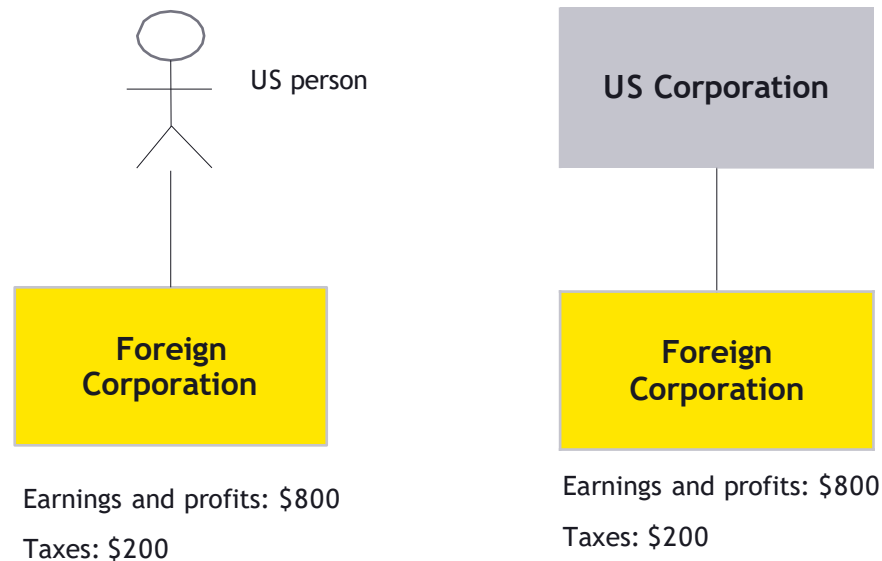


Foreign base company services income (§954(a)(3))

- Income earned by a CFC from a related party for services performed outside of the CFC's country of incorporation

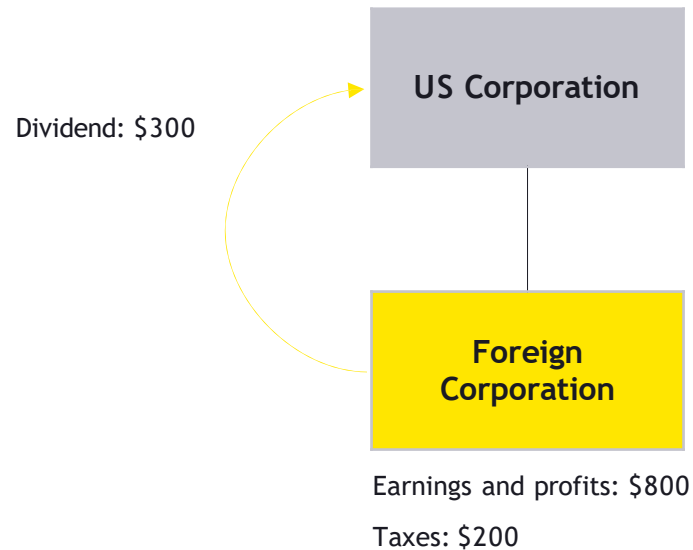


US taxation of earnings of foreign subsidiaries owned by US person: Pre-TCJA considerations



- Full \$800 of earnings and profits (E&P) *eventually* taxed in US
- Immediate taxation to the extent of Subpart F income (\$951)
- Eventual taxation to the extent of dividend income or sale of foreign corporation stock (\$1248)
- Foreign tax credits
 - Direct credits for individuals and US corporations (\$901)
 - Indirect credits for corporations (\$902/\$960)
- Previously taxed income (PTI) to prevent double taxation

US taxation of earnings of foreign subsidiaries owned by US person: Pre-TCJA example



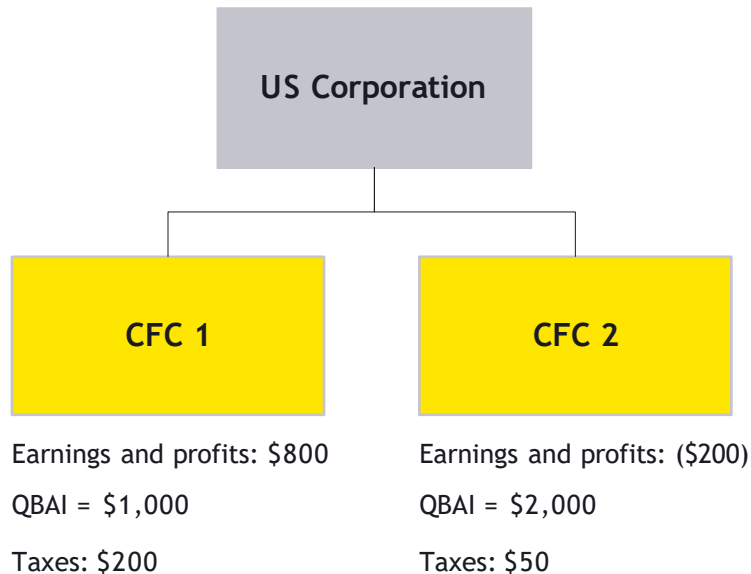
- Assume \$200 of Subpart F income
- Assume \$300 of dividends to US Corporation

FORM 1120

- Subpart F income \$200
- Dividend income \$100 (PTI of \$200)
- Section 78 gross-up \$60
- Total income \$360
- Tax rate 35%
- US federal tax before credit. \$12
- Foreign tax credit \$(60)
- US federal tax \$66

Deferral of taxation: remaining \$500 of foreign corporation earnings not subject to tax until repatriated as a dividend

US taxation of earnings of foreign subsidiaries owned by US person: Post-TCJA overview



- Taxation of E&P:
 - Partially immediately taxed in US
 - Remainder recognized as income upon a dividend distribution
- Immediate taxation:
 - Immediate taxation to the extent of Subpart F income (\$951) - **practically the same as pre-TCJA, but definition of US shareholder expanded**
 - Immediate taxation for GILTI:
 - Aggregate all CFC's tested income and tested losses
 - Applies to the extent aggregate CFC's tested income > 10% of QBAI
- Remainder recognized as income upon payment as a dividend or a sale of foreign corporation stock (\$1248)
 - Consider application of 100% dividend received deduction (\$250)
- Foreign tax credits
 - Direct credits for individuals and US corporations (\$901)
 - Indirect credits for corporations if attributable to income subject to US tax (\$960)
 - Expense apportionment - significant impact on tax arising from GILTI

US taxation of earnings of foreign subsidiaries owned by US person: GILTI - what you need to know

Controlled foreign corporations, US shareholders

- Only applies to net tested income of CFCs (as defined in §957), determined on an aggregate basis
- Only US shareholders (as defined in §951(b)) have a GILTI inclusion

Deemed tangible income return and Section 250 deduction

- Only net tested income that exceeds the net deemed tangible income return is included as a GILTI inclusion to US shareholders
- US shareholders that are US corporations may be eligible for a 50% deduction against their GILTI inclusion

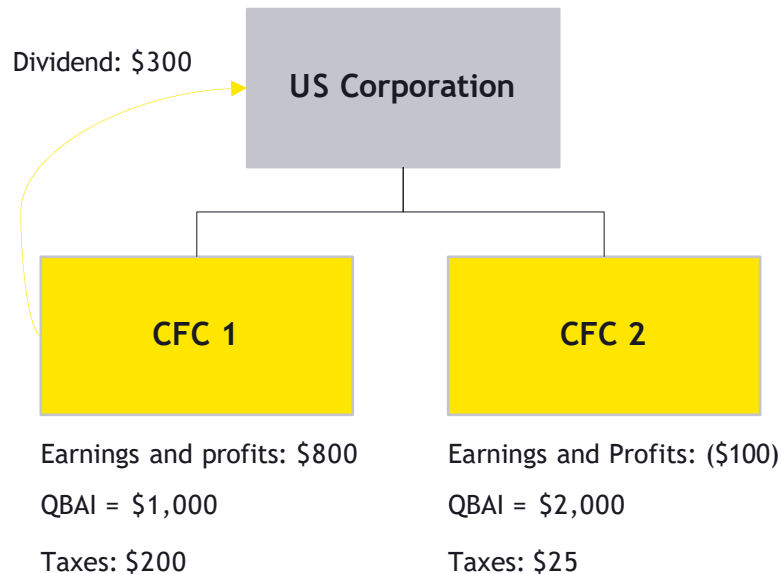
Foreign tax credits

- A US shareholder that is a US corporation may be eligible for a foreign tax credit for foreign taxes attributable to a CFC's tested income
- A 20% haircut is applied against eligible foreign taxes
- A US shareholder must apportion expenses to the GILTI basket

$$\text{Net CFC tested income} = \left[\begin{array}{l} \text{US shareholder's share of tested income} - \\ \text{- US shareholder's share of tested loss} \end{array} \right] - \text{Net deemed tangible income return}$$

$$\text{Net deemed tangible income return} = \left[10\% \times \text{QBAI} \right] - \text{Specified interest expense}$$

US taxation of earnings of foreign subsidiaries owned by US person: Post-TCJA example



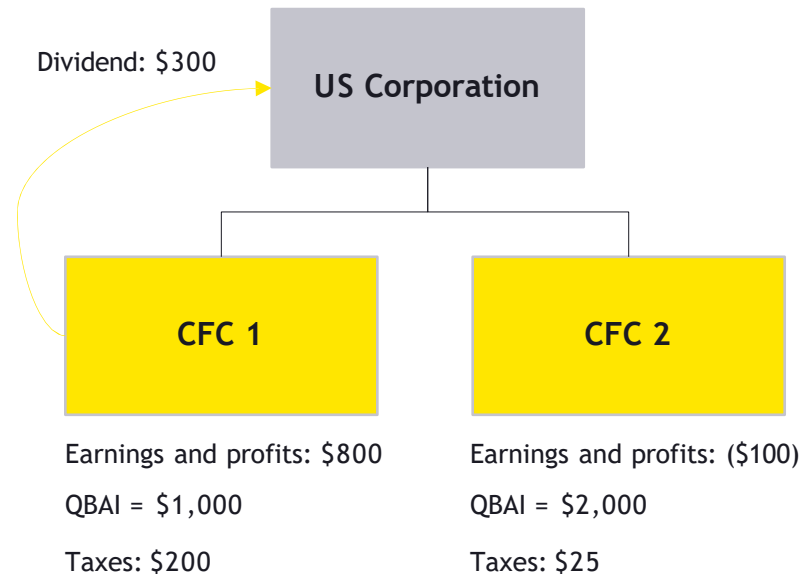
- Assume CFC 1 earns Subpart F income of \$200
- Assume \$300 dividend to US Corporation from CFC 1

FORM 1120

- Subpart F inclusion \$200
- GILTI inclusion \$400 (\$600 - \$100 tested loss - \$100 NDTI)
- Section 78 gross-up \$150 (\$50 from Sub F and \$100 from GILTI)
- Section 250 deduction (\$250) ([\$400 GILTI + \$100 GILTI \$78 G/U]* 50%)
- Total income \$500
- Tax rate 21%
- US federal tax before credit. \$105
- Foreign tax credit \$(105) (assumes no expense apportionment)
- US federal tax \$0

No tax on dividends: dividend of \$300 is previously taxed E&P (PTEP) - not taxed by US upon repatriation. Remaining \$500 can be repatriated as PTEP or a dividend eligible for 100% DRD

US taxation of earnings of foreign subsidiaries owned by US person: Post-TCJA example with expense apportionment



- Assume CFC 1 earns Subpart F income of \$200
- Assume US Corporation has \$2,000 of interest expense, of which 150 is allocated to the GILTI foreign tax credit basket

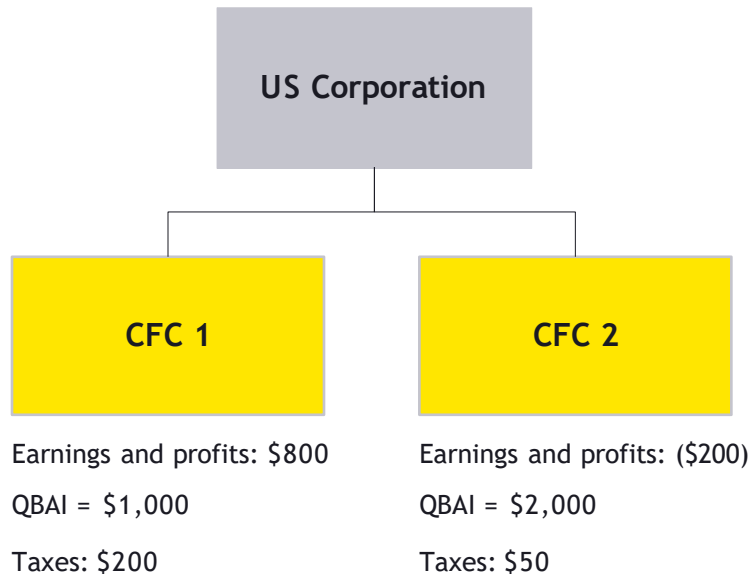
GILTI without foreign tax credit expense apportionment

US Tax Calculation	
Net GILTI Inclusion	400
Section 78 Gross Up	100
Total GILTI + 78 GU	500
Sec. 250 Deduction	-250
Total GILTI Income	250
US Tax Rate	21%
US Tax Before Credit	53
Foreign Tax Credit	53
US Tax After Credit	0
Foreign Tax Credit Limit	
GILTI Income	250
Expense Appt	0
GILTI FTC Basket	250
FTC Limit	53
Eligible Foreign Taxes	80
Foreign Tax Credit	53

GILTI with foreign tax credit expense apportionment

US Tax Calculation	
Net GILTI Inclusion	400
Section 78 Gross Up	100
Total GILTI + 78 GU	500
Sec. 250 Deduction	-250
Total GILTI Income	250
US Tax Rate	21%
US Tax Before Credit	53
Foreign Tax Credit	-21
US Tax After Credit	32
Foreign Tax Credit Limit	
GILTI Income	250
Expense Appt	-150
GILTI FTC Basket	100
FTC Limit	21
Eligible Foreign Taxes	80
Foreign Tax Credit	21

US taxation of earnings of foreign subsidiaries owned by US person: Post-OBBA overview



- Taxation of E&P:
 - Partially immediately taxed in US
 - Remainder recognized as income upon a dividend distribution
- Immediate taxation
 - Immediate taxation to the extent of Subpart F income (\$951) - **practically the same as pre-TCJA, but pro rata share of income definition changed**
 - Immediate taxation for ~~GILTI~~ net CFC tested income (NCTI):
 - Aggregate all CFC's tested income and tested losses
 - ~~Aggregate CFC's tested income > 10% of QBAI~~
- Remainder recognized as income upon payment as a dividend or a sale of foreign corporation stock (\$1248)
 - Consider application of 100% dividend received deduction (\$250)
- Foreign tax credits
 - Direct credits for individuals and US corporations (\$901)
 - Indirect credits for corporations if attributable to income subject to US tax (\$960)
 - ~~Expenses apportionment — significant impact on tax arising GILTI~~

US taxation of earnings of foreign subsidiaries owned by US person: NCTI - what you need to know

Controlled foreign corporations, US shareholders

- STILL: Only applies to net tested income of CFCs (as defined in §957), determined on an aggregate basis
- STILL: Only US shareholders (as defined in §951(b)) have a NCTI income inclusion

~~Deemed tangible income return~~ ~~and~~ Section 250 deduction

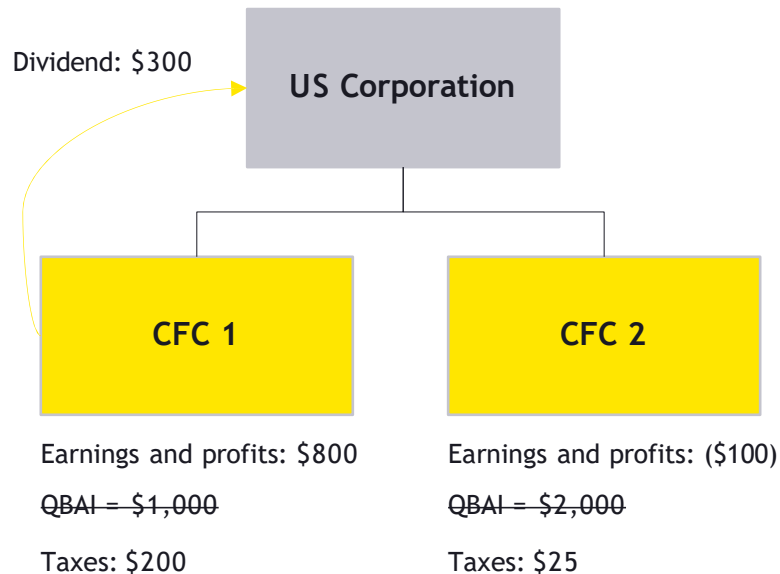
- ~~Only net tested income that exceeds the net deemed tangible income return is included as a GILTI inclusion to US shareholders~~
- US shareholders that are US corporations may be eligible for a ~~50%~~ 40% deduction against their ~~GILTI~~ NCTI inclusion

Foreign tax credits

- A US shareholder that is a US corporation may be eligible for a foreign tax credit for foreign taxes attributable to a CFC's tested income
- A ~~20%~~ 10% haircut is applied against eligible foreign taxes
- A US shareholder must apportion **limited** expenses to ~~GILTI~~ NCTI basket

$$\text{Net CFC tested income} = \left[\begin{array}{l} \text{US shareholder's share of tested income} - \\ \text{- US shareholder's share of tested loss} \end{array} \right]$$

US taxation of earnings of foreign subsidiaries owned by US person: Post-OBBA example



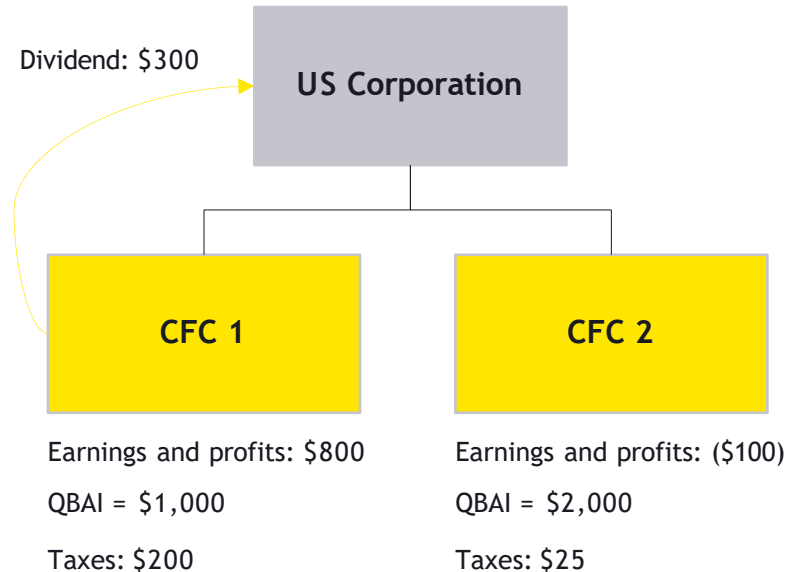
- Assume CFC 1 earns Subpart F income of \$200
- Assume \$300 dividend to US Corporation from CFC 1

FORM 1120

- Subpart F inclusion \$200
- GILTI inclusion \$500 (\$600 - \$100 tested loss - ~~\$100 NDTI~~)
- Section 78 gross-up \$175 (\$50 from Sub F and \$125 from GILTI)
- Section 250 deduction (\$250) ([\$500 GILTI + \$125 GILTI \$78 G/U] * 40%)
- Total income \$625
- Tax rate 21%
- US federal tax before credit. \$131
- Foreign tax credit \$(131) (assumes no expense apportionment)
- US federal tax \$0

No tax on dividends: dividend of \$300 is PTEP - not taxed by US upon repatriation. Remaining \$500 can be repatriated as PTEP or a dividend eligible for 100% DRD

US taxation of earnings of foreign subsidiaries owned by US person: Post-OBBA example with expense apportionment



- Assume CFC 1 earns Subpart F income of \$200
- Assume US Corporation has \$2,000 of interest expense, of which 150 is allocated to the GILTI foreign tax credit basket

GILTI with foreign tax credit expense apportionment

US Tax Calculation	
Net GILTI Inclusion	400
Section 78 Gross Up	100
Total GILTI + 78 GU	500
Sec. 250 Deduction	-250
Total GILTI Income	250
US Tax Rate	21%
US Tax Before Credit	53
Foreign Tax Credit	-21
US Tax After Credit	32
Foreign Tax Credit Limit	
GILTI Income	250
Expense Appt	-150
GILTI FTC Basket	100
FTC Limit	21
Eligible Foreign Taxes	80
Foreign Tax Credit	21

NCTI with foreign tax credit expense apportionment

US Tax Calculation	
Net GILTI Inclusion	500
Section 78 Gross Up	125
Total GILTI + 78 GU	625
Sec. 250 Deduction	-250
Total GILTI Income	375
US Tax Rate	21%
US Tax Before Credit	79
Foreign Tax Credit	79
US Tax After Credit	0
Foreign Tax Credit Limit	
GILTI Income	375
Expense Appt	0
GILTI FTC Basket	375
FTC Limit	79
Eligible Foreign Taxes	113
Foreign Tax Credit	79

02

Taxation of export income by US companies

US taxation of export income: overview

Pre-TCJA and OBBB

- Domestic international sales corporations (DISCs)
- Pre-2018: deduction for domestic production income (DPAD)
- Pre-2007: extraterritorial income (ETI)
- Pre-2001: foreign sales corporations (FSCs)

TCJA

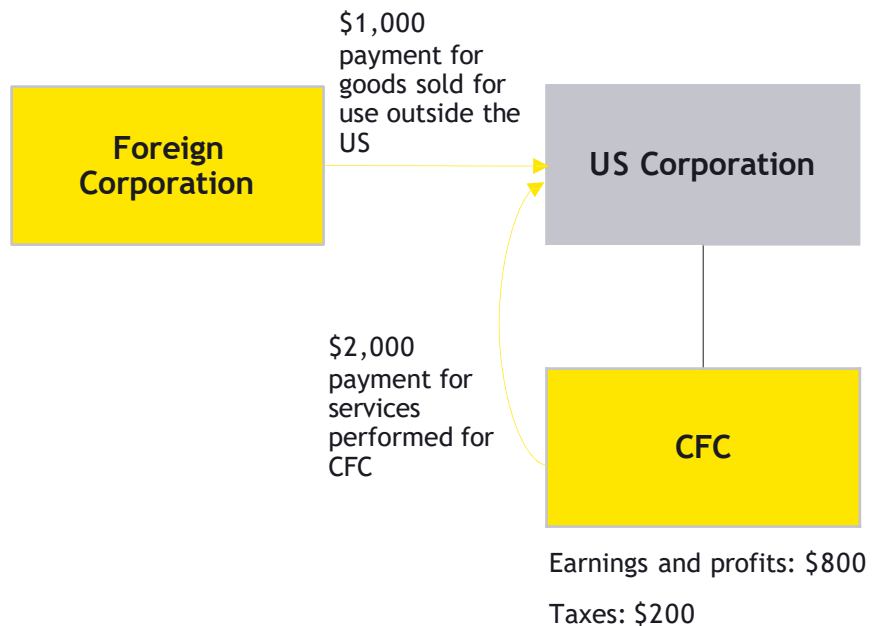
- Foreign-derived intangible income (FDII) (\$250)
 - Qualified business asset investment (QBAI)

OBBBA

- FDII (\$250)

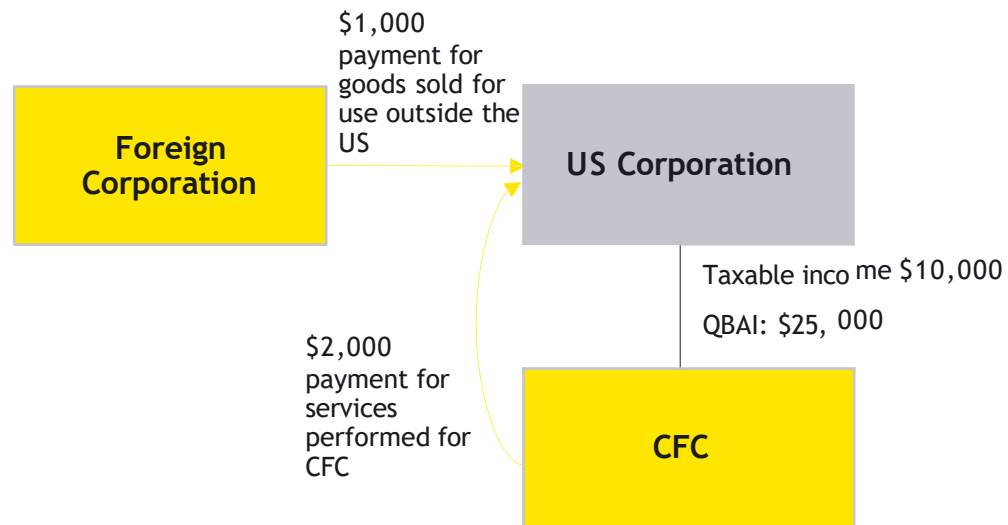
The US has historically used income tax benefits to incentivize US companies to keep export functions in the US (rather than moving people and assets offshore).

US taxation of export income: post-TCJA considerations



- FDII eligible for a 37.5% deduction under §250
- Export income is considered to be foreign-derived deduction eligible income (FDDEI), which includes:
 - Export sales
 - Export services
 - Gains from the sale of IP/royalty income from licensing intangible property outside of the US
 - Transportation income
- The benefit is reduced by the deemed tangible income return: 10% of QBAI
- Expenses must be apportioned against FDDEI (for interest expense, the amount is apportioned before the Section 163(j) limitation applies)

US taxation of export income: post-TCJA example



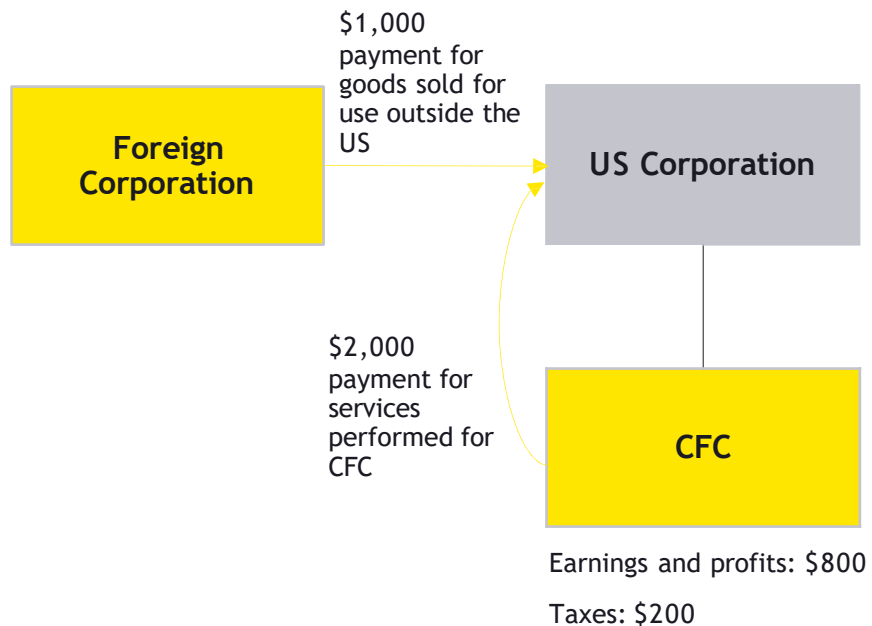
- Assume US Corporation earns \$10,000 of total taxable income
- Inclusive in the \$10,000 is \$2,000 of gross income from the export of goods and \$1,000 of gross income from export services
- Assume included in the \$10,000 is \$4,000 of interest expense, of which \$1,200 is allocated to FDDEI

FORM 1120

- FDDEI \$1,800 (\$3,000 - \$1,200 interest)
- Deduction eligible income (DEI) \$10,000
- Ration of FDDEI to DEI..... 18% (\$1,800 FDDEI/\$10,000 DEI)
- Deemed tangible income return (DTIR) \$2,500 (\$25,000 QBAI * 10%)
- Deemed intangible income (DII) \$7,500 (DEI - DTIR)
- Foreign-derived intangible income \$1,350 (\$7,500 DII * 18%)
- Section 250 deduction \$506 (\$1,350 * 37.5%)

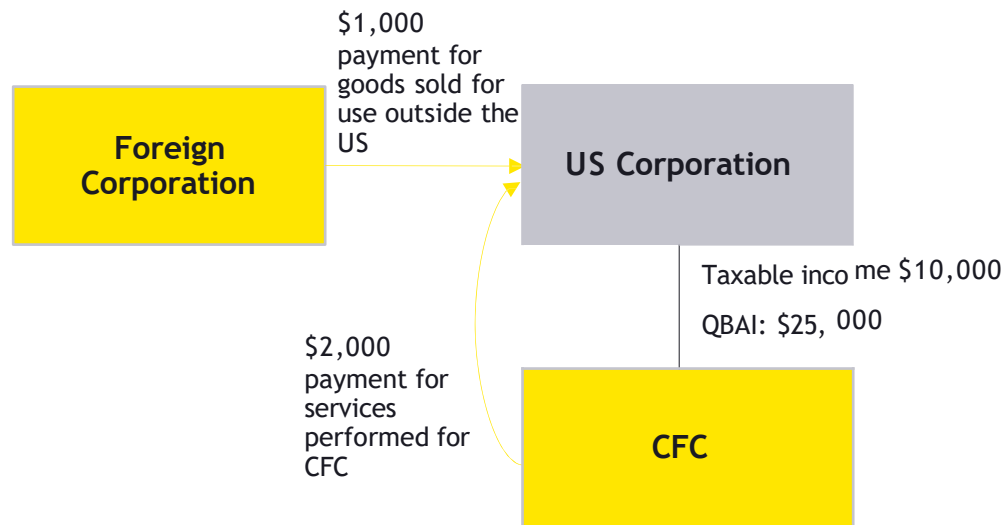
Export incentive: US Corporation received a deduction against taxable income for \$506 related to its export of goods (\$1,000) and services (\$2,000).

US taxation of export income: post-OBBA considerations



- ~~FDI~~ **FDDEI** eligible for a ~~37.5%~~ **40%** deduction
- Export income is considered to be FDDEI - which includes:
 - Export sales
 - Export services
- ~~Gains from the sale of IP/~~royalty income from licensing intangible property outside of the US
- Transportation income
- ~~The benefit was reduced by the deemed tangible income return; effectively 10% of QBAI~~
- ~~Certain expenses must be apportioned against FDDEI (in the case of interest expense, the amount was apportioned before the Section 163(j) limit)~~

US taxation of export income: post-TCJA example



- Assume US Corporation earns \$10,000 of total income
- Inclusive in the \$10,000 is \$2,000 of gross income from export services and \$1,000 of gross income from export services
- Assume included in the \$10,000 is \$4,000 of interest expense, of which \$1,200 is allocated to FDDEI

FORM 1120

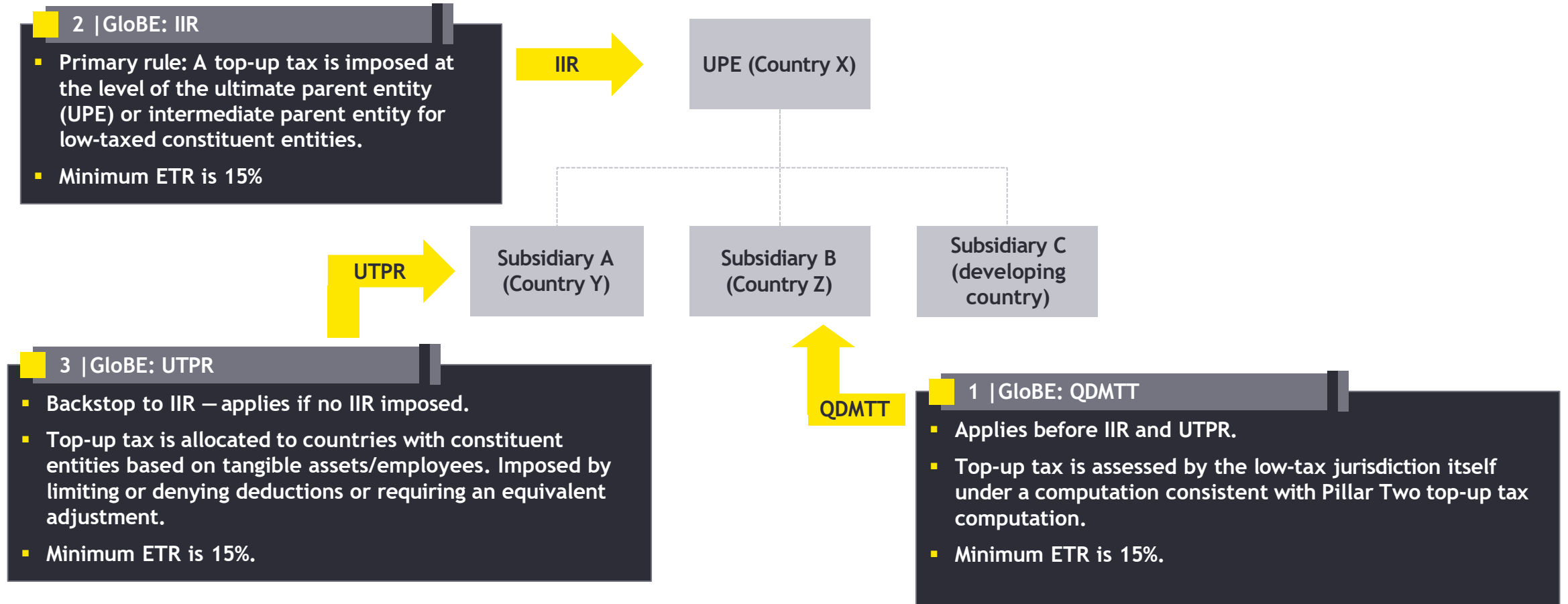
- FDDEI \$3,000
- Section 250 deduction \$1,200 ($\$3,000 \times 40\%$)

Export incentive: US Corporation received a deduction against taxable income for \$1,200 related to its export of goods (\$1,000) and services (\$2,000).

03

Update on OECD's BEPS project (Pillar Two)

Global minimum tax (Pillar 2): background



IIR = Income Inclusion Rule, UTPR = Undertaxed Profits Rule, QDMTT = Qualified Domestic Minimum Top-up Tax

Global minimum Tax (Pillar 2) status

Public statements

- June 2025: G7 shared understanding:
 - Side-by-side system
 - Material simplification to administration/compliance
 - Changes to Pillar 2 treatment of substance based non-refundable credits
- June 2025: OECD Secretary-General statement - “warmly welcomed the statement”
- July 2025: German Chancellor call for suspension of EU’s rollout
- July 2025: Bloomberg reports: OECD exploring a range of options
- Post-July: OECD/G20 framework and EU meetings

Impacts

- Potential changes and impact remain to be seen
- QDMTT - likely to remain in many countries
- Implementation through safe harbor a possibility, at least in the short term
- What about other tax systems: China? Brazil?
- What will impact be on compliance?
- More to come ...

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