GILTI Calculations for Individual CFC Shareholders: New Section 951A Tax on Foreign Intangible Income

THURSDAY, MAY 23, 2019, 1:00-2:50 pm Eastern

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May 23, 2019

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Presenters
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The taxing authorities have targeted off-shore entities for decades

The mechanisms used have evolved to match the ingenuity of the taxpayer

- SUBPART F
- PFIC
- Sec. 956
- GILTI
The 2017 TCJA took significant steps toward creating a ‘territorial’ tax regime for corporate taxpayers

- Implemented a ‘transition tax’ (Sec. 965) on deferred offshore earnings and profits;
- Allowed corporate taxpayers to repatriate funds without fewer tax implications (Sec. 245)

Under this new system, a taxpayer would have an incentive to shift income generating assets (particularly intangibles) offshore to lower tax jurisdictions

- Because the income relates to the active business it may escape the existing anti-deferral regimes
- Corporate taxpayers could repatriate funds from foreign subsidiaries tax free (Sec. 245).
Section 951A requires taxpayers to recognize income earned by controlled foreign corporations (CFCs) to the extent that income exceeds a fixed return.

This is the “Global Intangible Low Taxed Income” amount.

- Ex. The taxing authorities have determined that a typical café in Paris earns a 10% return on its business assets. A Starbucks café earns a 15% return on its business assets. The extra 5% is deemed to relate to the corporation’s worldwide branding/intangibles and is subject to tax in the US.
Who is Subject to GILTI?

Similar to Subpart F, US Shareholders of CFCs.

What is a CFC?
- Foreign corporation,
- Owned more than 50% by US Shareholders

What is a US Shareholder
- US person [as defined in Sec. 7701(a)(30)],
- Owning 10% or more of a CFC, directly or indirectly

Note that TCJA made significant changes to these basic definitions which apply both for Subpart F and GILTI
Repealed the 30 day safe harbor rule contained in prior Sec. 951
- Prior law: “If a foreign corporation is a controlled foreign corporation for an uninterrupted period of 30 days or more…”
- New law: “If a foreign corporation is a controlled foreign corporation at any time…”

Revised definition of US shareholder to look at value as well as vote
- New law adds: “10 percent or more of the total value of shares of all classes of stock”

Repealed Sec. 958(b)(4) prohibiting ‘downward attribution’
- Old law provided that constructive ownership rules “shall not be applied so as to consider a US person as owning stock owned by a person who is not a US person”
Examples:

- **US Person is a US Shareholder** because ownership is greater than 10%.
- **FC is a CFC** because US shareholders own more than 50%.
**Examples:**

- **US Person 1** is a US Shareholder because ownership is greater than 10%.
- **US Person 2** is not a US shareholder because ownership is not greater than 10%.
- **FC is not a CFC** because US shareholders do not own more than 50%.
Examples:

After repeal of Sec 958(b)(4) US Corp is a US Shareholder of FC2.
- FC2 is a CFC
- US Person is subject to GILTI/Subpart F
- US Corp is a Category 5 Filer or Form 5471
Like GILTI, Subpart F requires the current recognition of income that may later be distributed to the shareholder.

Subpart F avoids double taxation by providing various mechanism including:

- Previously taxed income (PTI): Sec. 959 provides that actual distributions from the CFC come first from PTI and are not taxable
- Basis adjustment: Sec. 961 provides that the US shareholder’s basis is increased by the inclusion amount

GILTI is treated in the same manner as subpart F for these provisions
Some basics...

- Starting in tax year 2018, a Global Intangible Low-Taxed Income ("GILTI") computation is required by a "US shareholder" (e.g., individual but broader term) of one or more CFCs.

- The required ownership is at least 10% of the stock of the CFC and the ownership can be direct or indirect (e.g., through pass-through entities and S corporations).

- The GILTI rules GILTI will subject a U.S. shareholder to tax on its pro rata share of the GILTI income of its CFCs that:
  - Is not otherwise taxed in the U.S. on a current basis (not ECI, not Subpart F, and not section 956), and
  - Exceeds a fixed routine return (10%) on the CFC’s tangible depreciable assets.

- GILTI inclusion is determined at the U.S. shareholder level and not with respect to each CFC for a taxable year.

- Very different calculation from Subpart F income and can be very complicated calculation as determined by the GILTI regulations.

- Subject to **Net Investment Income Tax** in the same manner as subpart F.
Calculating GILTI

• § 167 Depreciable Assets used in a Trade or Business

  10% rate of return allowed for these assets without triggering GILTI

• §197 Intangible Assets

  • Marketing intangibles (brand, logo etc.)
  • Computer software
  • Designs, patterns, formula
  • Customer based intangibles such as customer list
  • Amortizable Goodwill
  • Copyrights, patents and similar property

Income generated by these assets is deemed repatriated as GILTI

Income is not specifically traced to the intangible assets – formula provided by law determines how much of your income is allocable to Intangible Assets.
General GILTI formula

Pro rata share of **Tested Income** of all CFCs
- Pro rata share of **Tested Loss** of all CFCs
= Net CFC Tested Income
- **Net deemed tangible income return**
= GILTI Inclusion
GILTI Calculation

- Step 1: Pro Rata Share of Net Tested Income
- Step 2: 10% of QBAI
- Step 3: Specified Interest Expense
- Step 4: Net Deemed Tangible Investment Return (Net DTIR)
GILTI Calculation – Step 1: Net Tested Income

- The aggregate of such shareholder's pro rata share of the tested income of each CFC with respect to which such shareholder is a U.S. shareholder for such taxable year of such U.S. shareholder (determined for each taxable year of such CFC which ends in or with such taxable year of such U.S. shareholder), over

- The aggregate of such shareholder's pro rata share of the tested loss of each CFC with respect to which such shareholder is a U.S. shareholder for such taxable year of such U.S. shareholder (determined for each taxable year of such CFC which ends in or with such taxable year of such U.S. shareholder)
GILTI Calculation – Step 1: Net Tested Income

- Pro rata share - use Section 951(a)(2) in a methodology similar to subpart F

- The **tested income** of a CFC means the excess (if any) of the gross income of the corporation—determined without regard to certain exceptions to tested income—over deductions (including taxes) properly allocable to such gross income (“tested gross income”)

- All income and deductions must be computed based on U.S tax principles treated CFC as a **Domestic Corporation** (163(j) limitation, 245A, other book/tax differences)

- The **exceptions to tested income** are: (1) the corporation’s **ECI** under Section 952(b); (2) any gross income taken into account in determining the corporation’s **subpart F** income; (3) any gross income excluded from **foreign base company income or insurance income by reason of the high-tax exception** under Section 954(b)(4); (4) any **dividend received from a related person** (as defined in Section 954(d)(3)); and (5) any foreign **oil and gas extraction income** (as defined in Section 907(c)(1))

- The **tested loss** of a CFC means the excess (if any) of deductions (including taxes) properly allocable to the corporation’s gross income—determined without regard to the tested income exceptions—over the amount of such gross income
Qualified Business Asset Investment or QBAI means, with respect to any CFC for a taxable year, the average of the aggregate of its adjusted bases, determined as of the close of each quarter of the taxable year, in specified tangible property used in its trade or business and of a type with respect to which a deduction is generally allowable under section 167. The adjusted basis in any property must be determined using the alternative depreciation system under current section 168(g) and by allocating the depreciation deduction with respect to such property ratably to each day during the period in the tax year to which such depreciation relates, notwithstanding any provision of law which is enacted after the date of enactment of this provision (unless such later enacted law specifically and directly amends this provision’s definition).

Specified tangible property means any property used in the production of tested income. If such property is used in the production of both tested income and income that is not tested income (i.e., dual-use property), there are special rule allocation rules.

Special rules for partnership property when a CFC holds an interest in a partnership.
Assets that are used in a trade or business or to produce income and are depreciable under § 167

10% of QBAI

Does not include assets that are amortizable under §197 such as goodwill, patents, trademarks, patent, copyright, formula, process, design, pattern, knowhow, customer intangibles, marketing intangibles etc.
Under the Proposed Section 951A regulations:

- Do not use QBAI of CFC with tested loss
- QBAI – Anti abuse provision – do not count assets held for less than 12 months
U.S. shareholder’s **specified interest expense** is the excess of its aggregate pro rata share of the tested interest expense of each CFC over its aggregate pro rata share of the tested interest income of each CFC. See Prop. Reg. 1.951A-1(c)(3)(iii)

Tested interest expense and tested interest income are generally defined by reference to all interest expense and interest income that is taken into account in determining a CFC’s tested income or tested loss. See Prop. Reg. 1.951A-4(b)(1) and (2)

The Proposed Regulations also include certain exclusions and exceptions for purposes of determining tested interest expense and tested interest income. See Prop. Reg. 1.951A-4(b) for additional details

Regardless of whether interest expense increases tested loss or reduces tested income, the expense is “taken into account...in determining the shareholder's net CFC tested income” within the meaning of Section 951A(b)(2)(B)

**Simplifying...** Interest expense that reduces the CFC’s tested income less interest income that increases the CFC’s tested income
### GILTI Example – Specified Interest Expense

#### John Smith

<table>
<thead>
<tr>
<th>Company</th>
<th>Tested Income</th>
<th>QBAI</th>
<th>Specified Interest Expense</th>
</tr>
</thead>
<tbody>
<tr>
<td>ABC UK Ltd (UKI)</td>
<td>$1,000</td>
<td>400</td>
<td></td>
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<tr>
<td>ABC Israel Ltd (Israel)</td>
<td>$(600)</td>
<td>300</td>
<td></td>
</tr>
<tr>
<td>ABC Australia Pty Ltd (Australia)</td>
<td>$1,200</td>
<td>200</td>
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<table>
<thead>
<tr>
<th></th>
<th>Net Tested Income</th>
<th>QBAI</th>
<th>Allowed return</th>
<th>Deemed Tangible Inc Return</th>
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<tr>
<td></td>
<td>1,600</td>
<td>600</td>
<td>10%</td>
<td>60</td>
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<thead>
<tr>
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<th>Deemed Tangible Return Inc</th>
<th>Less: Total Specified Interest</th>
<th>Net DTIR</th>
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<tbody>
<tr>
<td></td>
<td>60</td>
<td>200</td>
<td>0</td>
</tr>
</tbody>
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<table>
<thead>
<tr>
<th></th>
<th>Net Tested Income</th>
<th>Net DTIR</th>
<th>GILTI</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1,600</td>
<td>0</td>
<td>1,600</td>
</tr>
</tbody>
</table>
“Net deemed tangible income return” or Net DTIR is, with respect to any U.S. shareholder for a taxable year, the excess (if any) of 10 percent of the aggregate of its pro rata share of the Qualified Business Asset Investment (QBAI) of each CFC with respect to which it is a U.S. shareholder over the amount of interest expense taken into account in determining its net CFC tested income for the taxable year to the extent that the interest expense exceeds the interest income properly allocable to the interest expense that is taken into account in determining its net CFC tested income.
GILTI Example

• Net Income of $1,000,000 taxed at 23% Israeli corporate tax rate
• Fixed assets in Israel $2,000,000 related to office equipment
• Subpart F Income $200,000

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
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<tr>
<td>Pre-tax Income</td>
<td>$1,000,000</td>
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<tr>
<td>Israeli Corporate tax</td>
<td>-230,000</td>
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<tr>
<td>Total E&amp;P</td>
<td>770,000</td>
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<tr>
<td>Subpart F Income</td>
<td>-200,000</td>
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<tr>
<td>Net Tested Income</td>
<td>570,000</td>
</tr>
<tr>
<td>QBAI</td>
<td>2,000,000</td>
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<tr>
<td>Allowed return</td>
<td>10%</td>
</tr>
<tr>
<td>Deemed Tangible Inc Return</td>
<td>200,000</td>
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<tr>
<td>Net Tested Income</td>
<td>570,000</td>
</tr>
<tr>
<td>Net DTIR</td>
<td>200,000</td>
</tr>
<tr>
<td>GILTI</td>
<td>370,000</td>
</tr>
</tbody>
</table>
An individual shareholder or an investor in a flow-through entity with GILTI is taxed at the highest ordinary income tax rate applicable to such individual.

§250 provides for a 50% deduction on a C corporation’s GILTI. Consequently C Corporations pay an effective tax of 10.5% on GILTI. An indirect foreign tax credit is allowed to reduce the GILTI, but only 80% of the standard deemed paid credit is allowed, while the §78 gross is 100% of what the standard deemed paid credit would be.

GILTI has its own separate foreign tax credit limitation basket. Carrying forward excess foreign tax credits for GILTI is disallowed, consequently, credits that aren’t used in the year of inclusion are lost.
### GILTI Tax Computation

<table>
<thead>
<tr>
<th></th>
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<tr>
<td></td>
<td>John Smith</td>
<td>U.S. C Corp</td>
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<tr>
<td>GILTI</td>
<td>$370,000</td>
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</tr>
<tr>
<td>Local Country tax paid</td>
<td>85,100</td>
<td>85,100</td>
</tr>
<tr>
<td>U.S. Tax @37% /10.5%</td>
<td>136,900</td>
<td>47,785</td>
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<tr>
<td>FTC allowed @80% of tax local tax</td>
<td>---------------</td>
<td>(68,080)</td>
</tr>
<tr>
<td>Residual U.S. tax</td>
<td>136,900</td>
<td>-0-</td>
</tr>
<tr>
<td>Total Tax Paid</td>
<td>222,000</td>
<td>85,100</td>
</tr>
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**Overall Effective Tax Rate before distribution**: 60% 23%
The Proposed Regulations adopt a bifurcated approach to domestic partnerships

- An ‘entity’ approach applies to non-US shareholders
- An ‘aggregate’ approach applies to US shareholders

The Treasury and IRS have requested comments on the following:

- Potential basis adjustments made to partners’ interest in the partnership
- Potential 704(b) capital account adjustments
- Partnership’s basis in CFC stock under section 961
- CFC’s previously taxed E&P with respect to the partner or partnership under section 959
- Partnership-level:
  - Pro-rata share of FC1’s tested income is $130 and FC2’s tested loss is $30; pro-rata share of FC1’s QBAI is $50; net CFC tested income is $100 ($130 - $30); net DTIR is $5 ($50 x 0.10); GILTI inclusion is $95 ($100 - 5).

- Partner-level:
  - X and Y Corp are US shareholder partners and are treated as owning section 958(a) stock of FC1 and FC2 proportionately as if PRS were a foreign partnership.
  - X Corp is allocated a 40% pro rata share of FC1 and FC2’s CFC tested items.
  - Y Corp: is allocated a 60% pro rata share of FC1 and FC2’s CFC tested items.

- X Corp and Y Corp each includes its pro rata share of PRS’s share of each CFC tested item of FC1 and FC2 (rather than including a distributive share of the GILTI inclusion amount of PRS).
X Corp (U.S.)
YE: 12/31

Y Corp (U.S.)
YE: 12/31

Z Corp (U.S.)
YE: 12/31

PRS (U.S.)
YE: 12/31

FC1 (Foreign)
YE: 12/31
Tested income: $100

FC2 (Foreign)
YE: 12/31
Tested income: $80

FC3 (Foreign)
YE: 12/31
Tested loss: $10

○ X & Y Corp: not a US shareholder partner with respect to either FC1 or FC2 because it owns less than 10% of each of FC1 and FC2 (by vote or value); includes in income its distributive share of PRS’s GILTI inclusion amount.

○ Z Corp:
  ○ Treated as a US shareholder of FC3 and a US shareholder partner with respect to FC1 as it owns at least 10% of the stock of FC1, but not with respect to FC2;
  ○ Pro rata share of FC1’s tested income and FC3’s tested loss is $12 ($20 x 0.60)
  ○ $12 and $10 ($10 x 1), respectively; net CFC tested income is $2 ($12 - $10); GILTI inclusion amount is $2.
  ○ Z’s distributive share of PRS’s GILTI inclusion amount with respect to FC2 is $4.80 ($8 x 0.60), which is determined without regard to PRS’s pro rata share of any item of FC1.
GILTI inclusions are determined on an aggregate basis at the consolidated level for the group rather than on a member by member basis.

Pro rata shares of tested loss, QBAI, tested interest expense, and tested interest income of each member are aggregated and then a portion of each aggregate amount is allocated to each US shareholder member based on the proportion of such member’s pro rata share of tested income to total tested income of the group for the year.
## GILTI Planning

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<td>Overall Effective Tax Rate before distribution</td>
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<td>23%</td>
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Eligible entities may be able to make an entity classification election to change from a corporation to a partnership/disregarded entity or vice-versa.

Revisit your previous planning with respect to entities.
CTB Election: CFC to CFP/FDE

- GILTI would not apply
- Income flow to the owners each year as it is earned
- Any foreign taxes paid or accrued would be creditable (a big change for individuals)
- The election would be a deemed liquidation which may trigger additional income.
Consider whether any current FDE/CFP:
  ▪ generates losses that could reduce tested income
  ▪ has significant business assets what would increase QBAI

Note that there are a variety of complex inbound/outbound rules that should be evaluated in either CTB election.
• Full Inclusion with FTC
• ETR should be 37%
• Caution: Deemed liquidation
Insert U.S. C Corp Holding company

- Income taxed in UK at 19%
- Income not subject to US corporate tax (FTC fully offsets US tax on GILTI)
- Qualified dividend distribution to US Citizen taxed at the 23.8% rate
- ETR 38% with ability to defer the 23.8% individual tax until cash is distributed.
The GILTI rules apply not only to individual U.S shareholders of a CFC, but also to corporate U.S. shareholders of a CFC. However, subject to a taxable income limitation, corporate U.S. shareholders of a CFC may be able to claim:

- **A deduction of up to 50 percent of the GILTI inclusion** (and the amount treated as a dividend received by such corporation under Section 78 that is attributable to the GILTI inclusion) pursuant to Section 250, which essentially reduces the U.S. corporate income tax rate on the GILTI inclusion prior to foreign tax credits from 21 percent to 10.5 percent.
- Furthermore, domestic C corporate taxpayers are able to offset the tax on their GILTI income inclusion with deemed paid foreign tax credits (FTCs) under Section 960 (which is 80 percent of foreign creditable taxes with no carryback or carryforwards).

In contrast, an individual that is a U.S. shareholder of a CFC is subject to a far more negative treatment with respect to his or her GILTI inclusion amount such as:

1. higher tax rate at individual marginal rates up to 37 percent;
2. no Section 250 to offset the GILTI tax; and
3. no ability to take deemed paid FTCs against the GILTI amount.

Thus, where a U.S. corporation could end up with no U.S. federal income tax on its GILTI inclusion based on the lower corporate tax rate, the Section 250 deduction, and deemed paid FTCs, a U.S. individual taxpayer could owe U.S. federal income tax on his or her GILTI inclusion amount up to the highest marginal rate of 37 percent.
An option to address some of this disparity in treatment exists if an individual makes an election under Section 962, which is an annual election.

A Section 962 election permits individual U.S. shareholders of CFCs to be taxed currently at corporate income tax rates on the Subpart F and GILTI inclusions of the CFC. The Section 962 election also allows for deemed paid FTCs to be claimed relating to foreign taxes paid by the CFC with respect to the Subpart F and GILTI amounts.

However, there is a potential downside to the Section 962 election as individuals would forfeit in large part the benefits of Section 959(a), which generally provides for tax-free distributions of previously taxed earnings and profits related to Subpart F and GILTI inclusions. When an individual U.S. shareholder receives a future cash distribution from such earnings when a Section 962 election is made, the future distribution would generate taxable income (with an exclusion of an amount equal to the taxes that were paid with respect to such income inclusions) for the individual and potentially a higher overall U.S. tax liability than if an election had not been made. Note that there could be scenarios in which the overall U.S. tax liability is actually reduced if an election is made; therefore, modeling out the tax implications of a Section 962 election and analyzing the tax implications of making a Section 962 election is critical.

Further, a Section 962 election does not result in all the benefits of an actual corporate taxpayer. For example, a 2018 Tax Court case determined that the election does not convert non-qualified dividends into qualified dividends (“QDI”) by treating those dividends as being distributed by a hypothetical domestic corporation to such individual. Thus, if the CFC is in a non-tax treaty jurisdiction, dividends paid by the CFC to the individual would be subject to taxation at ordinary individual income tax rather than lower qualified dividend rates.
Prior to proposed regulations issued on March 9, 2019, under Section 250 and Section 962, the regulations under Section 962 did not permit application of the Section 250 deduction. The proposed regulations clarify that individual U.S. shareholders who make the Section 962 election will be permitted to take the Section 250 deduction with respect to their GILTI inclusion amounts.
What would a §962 election look like? No FTC

U.S. individual shareholder directly wholly owns CFC with a USD functional currency. CFC generated $50,000 of GILTI Income. CFC didn't pay any foreign income taxes with respect to its GILTI income. CFC distributes its GILTI income to U.S. individual shareholder. Foreign jurisdiction does not impose a tax on distributions to U.S. individual shareholder.

<table>
<thead>
<tr>
<th></th>
<th>No Section 962 Election</th>
<th>Section 962 Election (QDI not available)</th>
<th>Section 962 Election (QDI available)</th>
</tr>
</thead>
<tbody>
<tr>
<td>CFC's income (GILTI)</td>
<td>50,000</td>
<td>50,000</td>
<td>50,000</td>
</tr>
<tr>
<td>Shareholder's Pro-rata share of GILTI Income</td>
<td>50,000</td>
<td>50,000</td>
<td>50,000</td>
</tr>
<tr>
<td>Less 50% GILTI Deduction - Section 250</td>
<td>-</td>
<td>(25,000)</td>
<td>(25,000)</td>
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<tr>
<td>Taxable Income on GILTI Income</td>
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<td>25,000</td>
<td>25,000</td>
</tr>
<tr>
<td>U.S. Income Tax Rate</td>
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<td>21%</td>
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<tr>
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<td>5,250</td>
<td>5,250</td>
</tr>
</tbody>
</table>

Income tax on distribution: Section 959(a)(1), 962(d)

<p>| | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash Distribution of GILTI Income</td>
<td>50,000</td>
<td>50,000</td>
<td>50,000</td>
</tr>
<tr>
<td>Total Income to Shareholder on Distribution</td>
<td>50,000</td>
<td>50,000</td>
<td>50,000</td>
</tr>
<tr>
<td>Less Previously Taxed E&amp;P - Section 959(a)</td>
<td>(50,000)</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Less Previous U.S. Taxed Paid - Section 962(d)</td>
<td>-</td>
<td>(5,250)</td>
<td>(5,250)</td>
</tr>
<tr>
<td>Taxable Income on Distribution of GILTI Income</td>
<td>-</td>
<td>44,750</td>
<td>44,750</td>
</tr>
<tr>
<td>U.S. Income Tax Rate</td>
<td>37%</td>
<td>37%</td>
<td>20%</td>
</tr>
<tr>
<td>U.S. Income Tax on GILTI Income Distribution *</td>
<td>-</td>
<td>16,558</td>
<td>8,950</td>
</tr>
<tr>
<td>Total U.S. Tax</td>
<td>18,500</td>
<td>21,808</td>
<td>14,200</td>
</tr>
<tr>
<td>Total Effective Tax Rate</td>
<td>37.00%</td>
<td>43.62%</td>
<td>28.40%</td>
</tr>
</tbody>
</table>

* U.S. shareholder can control when to distribute from GILTI income earnings and, correspondingly, when it will owe U.S. tax on distributions from GILTI income. To the extent the CFC pays foreign income taxes attributable to the GILTI income, a section 962 election by the individual would permit the use of the deemed foreign tax credits which may reduce the total tax liability.
What would a §962 election look like? FTC

U.S. individual shareholder directly wholly owns CFC with a USD functional currency. CFC generated $66,666 of taxable income, and pays $16,666 of foreign income tax with respect to such income (~25% effective tax rate). CFC generates GILTI income of $50,000. CFC distributes its GILTI to U.S. individual shareholder. Foreign jurisdiction does not impose a tax on distributions to U.S. individual shareholder.

<table>
<thead>
<tr>
<th></th>
<th>No Section 962 Election</th>
<th>Section 962 Election (QDI not available)</th>
<th>Section 962 Election (QDI available)</th>
</tr>
</thead>
<tbody>
<tr>
<td>CFC Pre-tax Income</td>
<td>66,666</td>
<td>66,666</td>
<td>66,666</td>
</tr>
<tr>
<td>Less Foreign Income Tax Liability</td>
<td>(16,666)</td>
<td>(16,666)</td>
<td>(16,666)</td>
</tr>
<tr>
<td>Less Exempt GILTI Income</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Less Net Deemed Tangible Income Return (DTIR)</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>CFC GILTI Income</td>
<td>50,000</td>
<td>50,000</td>
<td>50,000</td>
</tr>
<tr>
<td>Shareholder's Pro-rata Share of GILTI income</td>
<td>50,000</td>
<td>50,000</td>
<td>50,000</td>
</tr>
<tr>
<td>Gross-up Income for FTC - Section 78</td>
<td>-</td>
<td>16,666</td>
<td>16,666</td>
</tr>
<tr>
<td>Less 50% GILTI Deduction - Section 250</td>
<td>-</td>
<td>(33,333)</td>
<td>(33,333)</td>
</tr>
<tr>
<td>Taxable Income on GILTI Income</td>
<td>50,000</td>
<td>33,333</td>
<td>33,333</td>
</tr>
<tr>
<td>U.S. Income Tax Rate</td>
<td>37%</td>
<td>21%</td>
<td>21%</td>
</tr>
<tr>
<td>U.S. Income Tax before FTC</td>
<td>18,500</td>
<td>7,000</td>
<td>7,000</td>
</tr>
<tr>
<td>Foreign Tax Credit</td>
<td></td>
<td>7,000</td>
<td></td>
</tr>
<tr>
<td>U.S. Income Tax (after FTC) on GILTI Income</td>
<td>18,500</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Income tax on distribution: Section 959(a)(1), 962(d)</td>
<td></td>
<td></td>
<td></td>
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<td>50,000</td>
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<td>50,000</td>
<td>50,000</td>
</tr>
<tr>
<td>Less Previously Taxed E&amp;P - Section 959(a)</td>
<td>(50,000)</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Less Previous U.S. Taxed Paid - Section 962(d)</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Taxable Income on Distribution of GILTI Income</td>
<td>-</td>
<td>50,000</td>
<td>50,000</td>
</tr>
<tr>
<td>U.S. Income Tax Rate</td>
<td>37%</td>
<td>37%</td>
<td>20%</td>
</tr>
<tr>
<td>U.S. Income Tax on GILTI Income Distribution *</td>
<td>-</td>
<td>18,500</td>
<td>10,000</td>
</tr>
<tr>
<td>Total U.S. Tax</td>
<td>18,500</td>
<td>18,500</td>
<td>10,000</td>
</tr>
<tr>
<td>Total Foreign Tax</td>
<td>16,666</td>
<td>16,666</td>
<td>16,666</td>
</tr>
<tr>
<td>Total Tax Paid</td>
<td>35,166</td>
<td>35,166</td>
<td>26,666</td>
</tr>
<tr>
<td>Total Effective Tax Rate</td>
<td>52.75%</td>
<td>52.75%</td>
<td>40.00%</td>
</tr>
</tbody>
</table>

No Section 962 Election
Section 962 Election (QDI not available)
Section 962 Election (QDI available)
In Summary, some section 962 Issues to Consider:

- Local country income tax rate(s)
- Future plans for distributions
- Qualified foreign corporation/QDI?
- Local Country Withholding Taxes
- Plan for sale or other dispositions
  - Basis Increase
  - Interplay with section 1248
- Interplay with AMT
- Interplay with Section 250 Deduction (FDII)
- Section 962 election on an amended return
- GILTI FTCs vs Subpart F FTCs
- BUILDING A QUANTITATIVE MODEL is KEY!!!
➢ §338 election becomes more relevant

➢ QBAI planning
What should I be thinking about now?

- Assess which of your clients may be individuals that are shareholders in CFCs or Flow-through structures that are shareholders in CFCs
- Consider best re-structuring alternative to avoid harsh impact of “GILTI Individuals”
New GILTI Forms

- Form 5471 Schedule I-1 - Information for Global Intangible Low-Taxed Income
  - Conversion of CFC GILTI items to USD from functional currency

- Form 8992 – U.S. Shareholder Calculation of GILTI
  - Computes GILTI income

- Form 8993 – Deduction for FDII and GILTI
  - Compute FDII and GILTI deduction