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# Annual Conference Scottsdale, AZ

## GloBE Meets GILTI Integrated Planning and Modeling Strategies

*Tuesday October 25, 2022*

*11 AM – 12 PM*



## Moderator



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## Presenters



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# GloBE Meets GILTI

Integrated Planning and Modeling Strategies



# Discussion Topics

- Pillar II vs. GILTI vs. Book Minimum Tax vs. Rumors vs. BABA
- Constituent Entity vs. GILTI Tested Units
- Allocation of Income Taxes
  - Disparate Tax Bases for ETR analysis
    - U.S. Blending at Tested Unit, CFC and U.S. shareholder levels
  - Differing Substance Based Income Definitions
    - QBAI vs. Tangible Assets vs. Payroll
- Modeling Examples
  - 2022 Base Case
    - U.S. FTC, R&D Credits = Low ETR
    - GILTI/FTC Country-by-Country Proposals
    - CFC's Low and High-Tax with and without HTE and GILTI CbC considerations
  - Deduction vs. Credit
  - Book Minimum Tax
- Transition Rules
- Tax Controversy and Competent Authority
- Q&A

## Comparing GILTI vs. GloBE

Process Steps	GILTI Tested Unit	GloBE Constituent Entity
Determine Pre-tax Income of Each Constituent Entity and Tested Unit	<ul style="list-style-type: none"> <li>Begin with financial statement</li> <li>Adjustments to E&amp;P and Tested Income, including dividends and Equity Adjustments</li> <li>Tested units of a CFC within the same jurisdiction are combined</li> <li>Qualified Business Income @ 10%</li> </ul>	<ul style="list-style-type: none"> <li>Harmonize financial statement results among jurisdictions</li> <li>GloBE Income, including dividends and Equity Adjustments</li> <li>Constituent entities within the same jurisdiction are combined</li> <li>Substance based income exclusion @ 5%</li> </ul>
Allocable “Covered” Income Taxes	<ul style="list-style-type: none"> <li>See Treas. Reg. 1.861-20 and 1.904-6</li> <li>Apply local country taxes associated with Corresponding U.S. income items</li> </ul>	<ul style="list-style-type: none"> <li>Lower-tier constituent CFC entities may be “charged” with parent company income taxes relating to CFC income inclusions under conforming CFC inclusion regimes</li> </ul>
Base Line ETR	<ul style="list-style-type: none"> <li>ETR: 13.125% (21% x 50% §250 Deduction =10.5%)</li> <li>DPC: 80% x 13.125 = 10.5%</li> </ul>	<ul style="list-style-type: none"> <li>15% otherwise Top-up tax would be required</li> </ul>

## Case Study – Base Case Facts

- U.S. MNE Structure
- Luxembourg Holding Company
  - DRE's are UK, Ireland, Hong Kong and Switzerland
    - Mix of Low Taxed and High Taxed Jurisdictions
  - Canada is a high-taxed CFC
- U.S. is Low Taxed resulting from R&D Credit
- All Countries other than U.S. Adopt Pillar 2 Legislation including UTPR
  - No Qualified Domestic Minimum Top Up Taxes (QDMTT)
- GloBE Constituent Entity = U.S. Tested Unit
- GILTI is not country-by-country
  - Hypothetical ETR based on Tested Units as a Proxy

## Constituent Entity's GloBE Income or Loss

1. Financial Accounting Net Income
  - Ultimate Parent Entity Consolidated Financial Statements
  - Prior to elimination of intra-group items
    - *Like Forms 5471 & 8858 Schedules C*
2. Adjust Financial Accounting Net Income to GloBE Base
  - Adjustments to eliminate common book to tax differences where the adjustment is justified on policy grounds
  - Exclude Dividends, Stock-based compensation, Shipping Income, Asymmetric CFX Gains and Losses
    - *Like Form 8975 CbCR but different than Tested Income or U.S. E&P, e.g. deferred income tax*
3. Allocate GloBE Income to PE's or Flow-through Entities if necessary
  - Based on Local Tax Rules
    - *Conceptually like GILTI Tested Units*



## Adjusted Covered Income Taxes

1. Identification of Covered Income Taxes
  - Starting point is current income tax expense for Financial Accounting
    - *Including acceptable CFC regimes such as U.S. GILTI*
      - *Allocated to Low Taxed Constituent Entities on positive GloBE Income?*
  - Tax credits refundable after four years or more = reduction in taxes
  - Qualified refundable credits which must be paid w/i 4 years = addition in taxes
2. Adjust Covered Taxes for temporary differences and losses
  - Adjustments for Total Deferred Tax
  - Safeguards to protect the ETR calculation
  - Simplified loss-carryforward election
3. Allocate Covered Taxes to other constituent entities as necessary
4. Take post-filing adjustments into account



## Effective Tax Rate and Top-up Tax

1. Jurisdictional ETR = Covered Taxes/GloBE Income
2. Top-up % = 15% Minimum tax Rate – Jurisdictional ETR
3. Jurisdictional Excess Profit = GloBE Income – Substance Based Income Exclusion
  - (5% x Payroll) + (5% x Tangible Assets)
4. Jurisdictional Top-up Tax = (Top-up % x Jurisdictional Excess Profit) – Qualified Domestic Minimum Top-up Tax (QDMTT)
5. Allocation of Top-up Tax Between Low Taxed Constituent Entities within each Jurisdiction
  - Based on positive GloBE Income

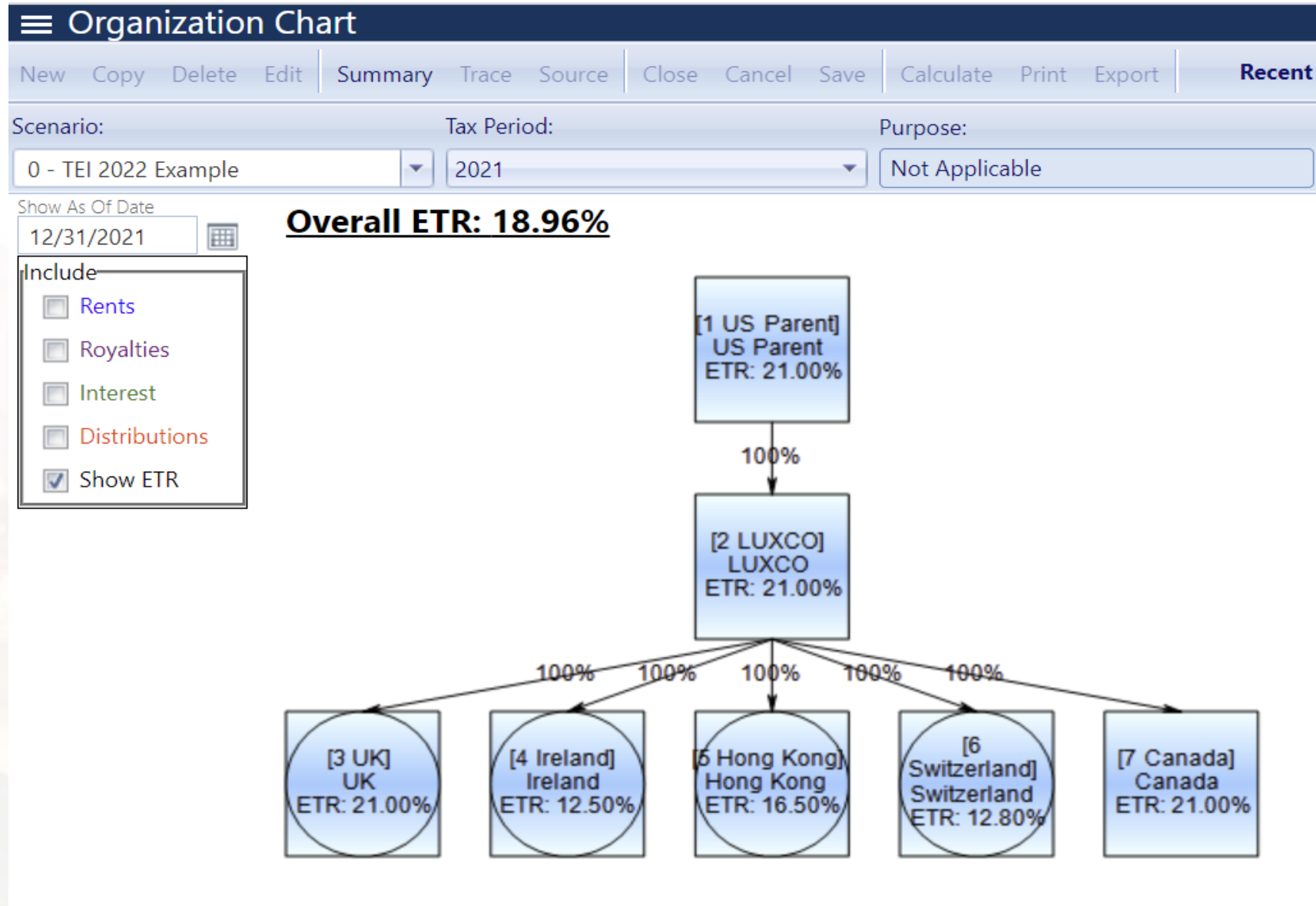
# Mapping Tax Liabilities and Push-down of Sub-F taxes Implies a book conformity concept

## 4.3.2

Covered Taxes are allocated from one Constituent Entity to another Constituent Entity as follows:

- (a) the amount of any Covered Taxes included in the financial accounts of a Constituent Entity with respect to GloBE Income or Loss of a Permanent Establishment is allocated to the Permanent Establishment;
- (b) the amount of any Covered Taxes included in the financial accounts of a Tax Transparent Entity with respect to GloBE Income or Loss allocated to a Constituent Entity-owner pursuant to Article 3.5.1(b) is allocated to that Constituent Entity-owner;
- (c) in the case of a Constituent Entity whose Constituent Entity-owners are subject to a Controlled Foreign Company Tax Regime, the amount of any Covered Taxes included in the financial accounts of its direct or indirect Constituent Entity-owners under a Controlled Foreign Company Tax Regime on their share of the Controlled Foreign Company's income are allocated to the Constituent Entity;
- (d) in the case of a Constituent Entity that is a Hybrid Entity the amount of any Covered Taxes included in the financial accounts of a Constituent Entity-owner on income of the Hybrid Entity is allocated to the Hybrid Entity; and
- (e) the amount of any Covered Taxes accrued in the financial accounts of a Constituent Entity's direct Constituent Entity-owners on distributions from the Constituent Entity during the Fiscal Year are allocated to the distributing Constituent Entity.

# Legal Entity Organization Chart – with Statutory Income Tax Rates





# Financial Accounting Net Income and Potential Adjustments

	A	B	C	D	E	F	G	H
1	Financial Statement Summary by Entity							
2								
3	Account Description	Total	2 LUXCO - U.S. Dollar	3 UK - British Pound Sterling	4 Ireland - U.S. Dollar	5 Hong Kong - U.S. Dollar	6 Switzerland - U.S. Dollar	7 Canada - U.S. Dollar
4	Sales	94,100,000	15,000,000	18,400,000	14,000,000	14,300,000	16,400,000	16,000,000
5	Returns & Allowances	0	0	0	0	0	0	0
5	Net Sales	94,100,000	15,000,000	18,400,000	14,000,000	14,300,000	16,400,000	16,000,000
7	Cost of Sales	0	0	0	0	0	0	0
8	Gross Profit	94,100,000	15,000,000	18,400,000	14,000,000	14,300,000	16,400,000	16,000,000
9	Dividends	20,000,000	20,000,000	0	0	0	0	0
10	Total Income	114,100,000	35,000,000	18,400,000	14,000,000	14,300,000	16,400,000	16,000,000
11								
12	Salaries and Wages	17,050,000	2,500,000	4,200,000	2,000,000	2,150,000	3,200,000	3,000,000
13	Other Deductions	12,500,000	5,000,000	7,500,000	0	0	0	0
14	Total Deduction	29,550,000	7,500,000	11,700,000	2,000,000	2,150,000	3,200,000	3,000,000
15								
16	Taxable Income	84,550,000	27,500,000	6,700,000	12,000,000	12,150,000	13,200,000	13,000,000
17								
18	Income Taxes - Current	8,900,000	1,000,000	1,500,000	1,250,000	1,650,000	1,000,000	2,500,000
19	Income Taxes - Deferred	600,000	0	600,000	0	0	0	0
20	Net Income	75,050,000	26,500,000	4,600,000	10,750,000	10,500,000	12,200,000	10,500,000

# Canadian Dividend to LUXCO - Various “What-if” Toggles

Intercompany Transactions

New

Copy

Delete

Edit

Summary

Trace

Source

Close

Cancel

Save

Calculate

Print

Export

Recent Pages: Adjustments

Scenario:

Tax Period:

Purpose:

Entity:

Chart:

0 - TEI 2022 Example

2021

Not Applicable

Not Applicable

Not Applicable

Transaction Filter:

Dividend, Interest, Royalty, Commission, Compensation, Cost Sharing, License, Platform, Premium, Property, Rights, Merchandise, Sec956 Inclusion

Transaction Name:

Distribution

Transaction Date:

12/31/2021

Delete

Apply Look Thru:

☒

Payor or Purchaser:

7 Canada Canada

Recipient or Seller:

2 LUXCO LUXCO

Payor Amount:

20,000,000

[USD]

Recipient Account:

1200 Dividend Income

WH Tax (Payor FC):

1,000,000

[USD]

Recipient Amount:

20,000,000

[USD]

Item of Income:

General Non Sub F

WH Tax (Recipient FC):

1,000,000

[USD]

WH Tax (Recipient USD):

1,000,000

[USD]

Recipient WH Tax Account:

7500 Withholding Taxes

Special Tax Treatment:

Same country exception:

☐

BEAT Payment:

☐

Other Options:

Additive:

☒

Active:

☐

14




# Eliminating Dividend Income for both GloBE and U.S. Tax Purposes

## Adjustments

New | Copy | Delete | Edit | Summary | Trace | Source | Close | Cancel | Save | Calculate | Print | Export | Recent Pages: A&A Account

Scenario: 0 - TEI 2022 Example Tax Period: 2021 Purpose: Not Applicable Entity: 2 LUXCO LUXCO

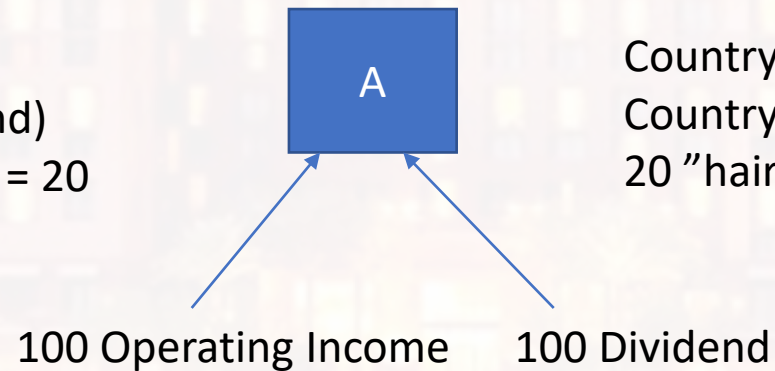
Adjustment List	Adjustment Purposes	Adjustment Information
GloBE and U.S. Tax	<input type="checkbox"/> BEPS CbCR <input type="checkbox"/> Financial Reporting <input checked="" type="checkbox"/> GloBE <input type="checkbox"/> Local Tax Tax Compliance <input type="checkbox"/> U.S. Book Minimum Tax <input checked="" type="checkbox"/> U.S. Tax	Eliminate Dividend Income for GloBE and U.S. GILTI calculation Purposes <input type="checkbox"/> Is Permanent? <input type="checkbox"/> Is Covered Asset?

Account	Reclass	Amount	Description	
1200 Dividend Income	<input type="checkbox"/>	(20,000,000)	Eliminate Dividend Income*	

(\*) View last change information by hovering the mouse cursor over the grid line.

### ***Example 4.1.3 – 1. (Haircut rule for dividends that are excluded from GloBE)***

GloBE Income = 100  
(100 Excluded Dividend)  
Adjusted Covered Tax = 20  
ETR = 20%



Country A Taxable Income = 200  
Country A Tax at 20% = 40  
20 "haircut" to Country A tax on excluded dividend

# Elimination of Deferred Income Taxes – U.S. Tax Purpose Only

Adjustments

New

Copy

Delete

Edit

Summary

Trace

Source

Close

Cancel

Save

Calculate

Print

Export

Recent Pages: ETR Summary

Scenario:

Tax Period:

Purpose:

Entity:

0 - TEI 2022 Example

2021

Not Applicable

3 UK UK

Adjustment List	Adjustment Purposes	Adjustment Information
Eliminate Deferred Income Tax	<input type="checkbox"/> BEPS CbCR <input type="checkbox"/> Financial Reporting <input type="checkbox"/> GloBE <input type="checkbox"/> Local Tax Tax Compliance <input type="checkbox"/> U.S. Book Minimum Tax <input checked="" type="checkbox"/> U.S. Tax	Eliminate deferred income tax for U.S. E&P and Tested Income Purposes. <input type="checkbox"/> Is Permanent? <input type="checkbox"/> Is Covered Asset?

Account	Reclass	Amount	Description
5150 Income Taxes - Deferred	<input type="checkbox"/>	(600,000)	Eliminate Deferred Income Tax*

\*) View last change information by hovering the mouse cursor over the grid line.



# CbCR – A Convenient Starting Point for GloBE Analysis

	A	B	C	D	E	F	G	H	I	J	K	L	M
1	A		B			C		D		E		F	
2	10/17/2022		Country-by-Country Report										
3	Scenario		TaxYear			Purpose		Entity					
4	0 - TEI 2022 Example		2021			GloBE		GRP Foreign Group					
5													
6													
7													
8						Profit (Loss)				Number of			
9						before Income				Employees			
10	Tax Jurisdiction		Total Revenue			Tax		Income Tax Paid				Tangible Assets	
11	Canada		16,000,000			13,000,000		2,500,000		30		3,000,000	
12													
13	Hong Kong		14,300,000			12,150,000		1,650,000		22		2,175,000	
14													
15	Ireland		14,000,000			12,000,000		1,250,000		20		2,500,000	
16													
17	Luxembourg		15,000,000			7,500,000		1,000,000		25		1,000,000	
18													
19	Switzerland		16,400,000			13,200,000		1,000,000		32		3,000,000	
20													
21	United Kingdom		18,400,000			6,700,000		2,940,000		42		2,100,000	
22													

19

# GILTI Tested Units = GloBE Constituent Entities

	A	B	C	D	E	F	G	H
1	<b>Tested Units</b>							
2	<b>Account Description</b>	<b>Total</b>	<b>2 LUXCO</b>	<b>3 UK</b>	<b>4 Ireland</b>	<b>5 Hong Kong</b>	<b>6 Switzerland</b>	<b>7 Canada</b>
3	Sales	94,100,000	15,000,000	18,400,000	14,000,000	14,300,000	16,400,000	16,000,000
4	Returns & Allowances	0	0	0	0	0	0	0
5	Net Sales	94,100,000	15,000,000	18,400,000	14,000,000	14,300,000	16,400,000	16,000,000
6	Cost of Sales	0	0	0	0	0	0	0
7	Gross Profit	94,100,000	15,000,000	18,400,000	14,000,000	14,300,000	16,400,000	16,000,000
8	<b>Computed Inclusions and Gross Up:</b>							
9	Royalties	(2,500,000)	0	0	0	0	(2,500,000)	0
10	<b>Total Income</b>	<b>91,600,000</b>	<b>15,000,000</b>	<b>18,400,000</b>	<b>14,000,000</b>	<b>14,300,000</b>	<b>13,900,000</b>	<b>16,000,000</b>
11								
12	Salaries and Wages	(17,050,000)	(2,500,000)	(4,200,000)	(2,000,000)	(2,150,000)	(3,200,000)	(3,000,000)
13	Other Deductions	(12,500,000)	(5,000,000)	(7,500,000)	0	0	0	0
14	<b>Total Deduction</b>	<b>(29,550,000)</b>	<b>(7,500,000)</b>	<b>(11,700,000)</b>	<b>(2,000,000)</b>	<b>(2,150,000)</b>	<b>(3,200,000)</b>	<b>(3,000,000)</b>
15								
16	<b>Taxable Income before Adjustments</b>	<b>62,050,000</b>	<b>7,500,000</b>	<b>6,700,000</b>	<b>12,000,000</b>	<b>12,150,000</b>	<b>10,700,000</b>	<b>13,000,000</b>
17								
18	<b>Taxable Income after Section 163(j)</b>	<b>62,050,000</b>	<b>7,500,000</b>	<b>6,700,000</b>	<b>12,000,000</b>	<b>12,150,000</b>	<b>10,700,000</b>	<b>13,000,000</b>
19								
20	<b>Taxable Income</b>	<b>62,050,000</b>	<b>7,500,000</b>	<b>6,700,000</b>	<b>12,000,000</b>	<b>12,150,000</b>	<b>10,700,000</b>	<b>13,000,000</b>
21								
22	Income Taxes - Current	(8,900,000)	(1,000,000)	(1,500,000)	(1,250,000)	(1,650,000)	(1,000,000)	(2,500,000)
23	<b>Total Taxes</b>	<b>(8,900,000)</b>	<b>(1,000,000)</b>	<b>(1,500,000)</b>	<b>(1,250,000)</b>	<b>(1,650,000)</b>	<b>(1,000,000)</b>	<b>(2,500,000)</b>
24								
25	<b>Net Income</b>	<b>53,150,000</b>	<b>6,500,000</b>	<b>5,200,000</b>	<b>10,750,000</b>	<b>10,500,000</b>	<b>9,700,000</b>	<b>10,500,000</b>
26								
27	<b>Effective Tax Rate in Percent</b>	<b>14.34</b>	<b>13.33</b>	<b>22.39</b>	<b>10.42</b>	<b>13.58</b>	<b>9.35</b>	<b>19.23</b>
28								
29	QBAI Amount	13,775,000	1,000,000	2,100,000	2,500,000	2,175,000	3,000,000	3,000,000
30								



## GloBE Meets GILTI

	A	B	C	D	E
1	A			B	
2	Calculation Summary			Current Law	
3	Tax Attributes			Last Run	
4	GILTI Inclusion			51,772,500	
5	DPC on GILTI			8,669,337	
6	GILTI Deduction			30,220,918	
7	FDII Deduction			4,392,173	
8	Foreign Tax Credit			4,981,331	
9	Net GILTI Inclusion			30,220,918	
10	U.S. Tax at 21%			6,346,393	
11	Less: FTC			4,179,081	
12	<b>Net GILTI Tax</b>			<b>2,167,312</b>	
13					
14					

# Prorating the U.S. GILTI Tax Based on GloBE Income

10/17/2022												
Pillar 2 Report - With Existing GILTI						Pro-Rated on GloBE Income						
Scenario	TaxYear	Purpose	Entity									
0 - TEI 2022 Example	2021	GloBE	GRP Foreign Group									
		64,550,000		2,167,312								
Tax Jurisdiction	Total Revenue	Profit (Loss) before Income Tax	Local Country Tax	GILTI Tax	Covered Taxes Effective Tax Rate	Top-up Tax Percentage	Tangible Assets	Payroll	Substance Based Profit	Excess Profit	Top-up Tax Before QDMTT	
Canada	16,000,000	13,000,000	2,500,000	436,484	22.59%	0.00%	3,000,000	3,000,000	300,000	12,700,000	0	
Hong Kong	14,300,000	12,150,000	1,650,000	407,945	16.94%	0.00%	2,175,000	2,150,000	216,250	11,933,750	0	
Ireland	14,000,000	12,000,000	1,250,000	402,908	13.77%	1.23%	2,500,000	2,000,000	225,000	11,775,000	144,334	
Luxembourg	15,000,000	7,500,000	1,000,000	251,818	16.69%	0.00%	1,000,000	2,500,000	175,000	7,325,000	0	
Switzerland	16,400,000	13,200,000	1,000,000	443,199	10.93%	4.07%	3,000,000	3,200,000	310,000	12,890,000	524,194	
United Kingdom	18,400,000	6,700,000	2,940,000	224,957	47.24%	0.00%	2,100,000	4,200,000	315,000	6,385,000	0	
										Total	668,528	

## Calculating GILTI on a Country-by-Country Basis

	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T
	A				B		C		D		E		F		G		H		I	
	GILTI Summary Report				GILTI Inclusion and Deemed Paid FTC Under Existing Law															
	CFC Entity Name				i) Aggregated Tested Income	j) Taxes on Aggregated Tested Income (Excludes Negative Taxes)	k) QBAI (Exclude QBAI of Tested Loss at U.S. Shareholder)	o) NDTIR (10.00% of k minus n)	p) GILTI (i minus o)	q) DPC (p / i * j)	Allocated GILTI to CFC	DPC computed at CFC								
					53,150,000	8,900,000	13,775,000	1,377,500	51,772,500	8,669,337	51,772,500	8,669,337								
	2 LUXCO LUXCO				42,650,000	6,400,000	10,775,000	0	0	0	41,544,631	6,234,130								
	7 Canada Canada				10,500,000	2,500,000	3,000,000	0	0	0	10,227,869	2,435,207								
					GILTI Inclusion and Deemed Paid FTC - Country-by-Country															
	LUXCO				6,500,000	1,000,000	1,000,000	100,000	6,400,000	984,615										
	U.S.				5,200,000	1,500,000	2,100,000	210,000	4,990,000	1,439,423										
	Ireland				10,750,000	1,250,000	2,500,000	250,000	10,500,000	1,220,930										
	Hong Kong				10,500,000	1,650,000	2,175,000	217,500	10,282,500	1,615,821										
	Switzerland				9,700,000	1,000,000	3,000,000	300,000	9,400,000	969,072										
	Canada				10,500,000	2,500,000	3,000,000	300,000	10,200,000	2,428,571										
					53,150,000	8,900,000	13,775,000	1,377,500	51,772,500	8,658,434										

# GILTI CbC FTC - Expanded Treas. Reg. 1.861-8 Analysis

	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	
	A					B		C		D		E	F		G	H	I		J	K	L
1	FTC Account Type Summary Report											E			G	H	I		J	K	L
2	Account Description					Total	U.S.		General		General Section 245A	Global Intangible LT Income		LUXCO	UK	Ireland	Hong Kong	Switzerland	Canada		
3	Sales					100,000,000	90,000,000		10,000,000		0	0		0	0	0	0	0	0	0	
4	Returns & Allowances					0	0		0		0	0		0	0	0	0	0	0	0	
5	Net Sales					100,000,000	90,000,000		10,000,000		0	0		0	0	0	0	0	0	0	
6	Cost of Sales					(35,000,000)	(31,500,000)		(3,500,000)		0	0		0	0	0	0	0	0	0	
7	Gross Profit					65,000,000	58,500,000		6,500,000		0	0		0	0	0	0	0	0	0	
8	Computed Inclusions and Gross Up:																				
9	GILTI Inclusion - Computed					51,772,500	0		0		0	51,772,500		6,400,000	4,990,000	10,500,000	10,282,500	9,400,000	10,200,000		
10	Section 78 Gross Up - GILTI					8,669,337	0		0		0	8,669,337		984,615	1,439,423	1,220,930	1,615,821	969,072	2,428,571		
11	Total Income					125,441,837	58,500,000		6,500,000		0	60,441,837		7,384,615	6,429,423	11,720,930	11,898,321	10,369,072	12,628,571		
12																					
13	Interest					(7,500,000)	(1,159,698)		0		(164,214)	(6,176,088)			0	0	0	0	0		
14	R&D Expense					(10,000,000)	(5,625,000)		(4,375,000)		0	0		0	0	0	0	0	0		
15	Stewardship Expense					(5,000,000)	0		0		(129,500)	(4,870,500)		0	0	0	0	0	0		
16	Other Deductions					(5,500,000)	(4,950,000)		(550,000)		0	0		0	0	0	0	0	0		
17	NOL - User TB Input					0	0		0		0	0		0	0	0	0	0	0		
18	Total Deduction					(28,000,000)	(11,734,698)		(4,925,000)		(293,714)	(11,046,588)		0	0	0	0	0	0		
19																					
20	Pre Tax Income					97,441,837	46,765,302		1,575,000		(293,714)	49,395,249		0	0	0	0	0	0		
21																					
22	GILTI Deduction					(30,220,918)	0		0		0	(30,220,918)		0	0	0	0	0	0		
23	FDII Deduction					(4,392,173)	(2,904,110)		(1,488,063)		0	0		0	0	0	0	0	0		
24	Sec 250 Exempt Interest Expense Adjustment					0	(738,008)		0		(118,659)	856,667		0	0	0	0	0	0		
25	Sec 250 Exempt All Other Expense Adjustment					0	(92,984)		92,984		0	0		0	0	0	0	0	0		
26	R&D Exclusive Adjustment (based on initial R&D					0	(2,187,500)		2,187,500		0	0		0	0	0	0	0	0		
27	Taxable Income after Adjustments					62,828,746	40,842,700		2,367,421		(412,373)	20,030,998		2,476,187	1,930,652	4,062,494	3,978,342	3,636,900	3,946,423		



# Calculating GILTI FTC on a Country-by-Country Basis

	A	B	C	D	E	F	G	H	I	J	K	L
	<b>FTC Summary Report</b>	<b>Total</b>	<b>General</b>	<b>General Section 245A</b>	<b>Global Intangible LT Income</b>	<b>LUXCO</b>	<b>UK</b>	<b>Ireland</b>	<b>Hong Kong</b>	<b>Switzerland</b>	<b>Canada</b>	<b>U.S.</b>
2	<b>Taxable Income for FTC:</b>											
5	Taxable Income after NOL Carryover	62,828,746	2,367,421	(412,373)	20,030,998							40,842,700
7	<b>Section 904(b)(4) Adjustment:</b>											
8	Section 904(b)(4) Adjustment	412,373	0	412,373	0							0
9	Foreign Source Income after 904(b)(4)	63,241,119	2,367,421	0	20,030,998							40,842,700
2	<b>FTC Limitation:</b>											
3	Foreign Source Income	63,241,119	2,367,421	0	20,030,998	2,476,187	1,930,652	4,062,494	3,978,342	3,636,900	3,946,423	40,842,700
5	Taxable Income	62,828,746										
6	U.S. Income Tax Rate Percent	21.0										
7	U.S. Income Tax	13,194,037										
9	Section 960(c) Adjustment	308,333	308,333	0	0							0
0	FTC Limitation adjusted for 960(c)	4,981,331	802,250	0	4,179,081	516,609	402,793	847,561	830,004	758,769	823,345	0
2	<b>Foreign Tax Credit Utilization:</b>											
3	Taxes Deemed Paid	8,669,337	0	0	8,669,337	984,615	1,439,423	1,220,930	1,615,821	969,072	2,428,571	0
4	Withholding Taxes on PTI	5,000,000	5,000,000	0	0							0
5	GILTI FTC Reductions (20.00% Reduction)	(1,733,867)	0	0	(1,733,867)	(196,923)	(287,885)	(244,186)	(323,164)	(193,814)	(485,714)	0
6	Sec965 PTEP Tax Reduction	(3,250,000)	(3,250,000)	0	0							0
7	Total Foreign Taxes	8,685,470	1,750,000	0	6,935,470	787,692	1,151,538	976,744	1,292,657	775,258	1,942,857	0
8	Total Creditable Foreign Taxes	8,685,470	1,750,000	0	6,935,470	787,692	1,151,538	976,744	1,292,657	775,258	1,942,857	0
0	Excess Limit/(Excess Credit)	(3,704,139)	(947,750)	0	(2,756,389)							0
1	Foreign Tax Credit Utilized	4,981,331	802,250	0	4,179,081	516,609	402,793	847,561	830,004	758,769	823,345	0

## GILTI Tax Cost on a Hypothetical CbC Approach

	A	B	C	D	E	F	G	H
	Calculation Summary	Current Law	Hypothetical Country-by-Country GILTI and GILTI FTC					
	Tax Attributes	Last Run	LUXCO	UK	Ireland	Hong Kong	Switzerland	Canada
	GILTI Inclusion	51,772,500	6,400,000	4,990,000	10,500,000	10,282,500	9,400,000	10,200,000
	DPC on GILTI	8,669,337	984,615	1,439,423	1,220,930	1,615,821	969,072	2,428,571
	GILTI Deduction	30,220,918	3,692,308	3,214,712	5,860,465	5,949,161	5,184,536	6,314,286
	FDII Deduction	4,392,173						
	Foreign Tax Credit	4,981,331	516,609	402,793	847,561	830,004	758,769	823,345
	Net GILTI Inclusion	30,220,918	3,692,308	3,214,712	5,860,465	5,949,161	5,184,536	6,314,286
	U.S. Tax at 21%	6,346,393	775,385	675,089	1,230,698	1,249,324	1,088,753	1,326,000
	Less: FTC	4,179,081	516,609	402,793	847,561	830,004	758,769	823,345
	<b>Net GILTI Tax</b>	<b>2,167,312</b>	<b>258,776</b>	<b>272,296</b>	<b>383,137</b>	<b>419,319</b>	<b>329,984</b>	<b>502,655</b>

## Specifically Allocating the U.S. GILTI Tax on a Country-By Country Basis

Pillar 2 Report - GILTI Hypothetical CbC													Version: 10.1.58	
Scenario	TaxYear	Purpose	Entity											
O - TEI 2022 Example	2021	GloBE	GRP Foreign Group											
Tax Jurisdiction	Total Revenue	Profit (Loss) before Income Tax	Local Country Tax	GILTI Tax	Covered Taxes Effective Tax Rate	Top-up Tax Percentage	Tangible Assets	Payroll	Substance Based Profit	Excess Profit	Top-up Tax Before QDMTT			
Canada	16,000,000	13,000,000	2,500,000	502,655	23.10%	0.00%	3,000,000	3,000,000	300,000	12,700,000	0			
Hong Kong	14,300,000	12,150,000	1,650,000	419,319	17.03%	0.00%	2,175,000	2,150,000	216,250	11,933,750	0			
Ireland	14,000,000	12,000,000	1,250,000	383,137	13.61%	1.39%	2,500,000	2,000,000	225,000	11,775,000	163,735			
Luxembourg	15,000,000	7,500,000	1,000,000	258,776	16.78%	0.00%	1,000,000	2,500,000	175,000	7,325,000	0			
Switzerland	16,400,000	13,200,000	1,000,000	329,984	10.08%	4.92%	3,000,000	3,200,000	310,000	12,890,000	634,751			
United Kingdom	18,400,000	6,700,000	2,940,000	272,296	47.94%	0.00%	2,100,000	4,200,000	315,000	6,385,000	0			
													Total	798,485

## Example 4.3.3 – 1 (Subpart F “push down” limited to lesser of two amounts in calculating Top Up Tax)

### Country A (25% rate)

Income	0
Subpart F Inc	50
Precredit Tax	12.5
Indirect FTC	(2.5)
Residual Tax	10

Tax allocated down 5

### Country B (5% Rate)

Net Income	100
Subpart F (passive)	50
Tax on passive	2.5
Tax on other	2.5

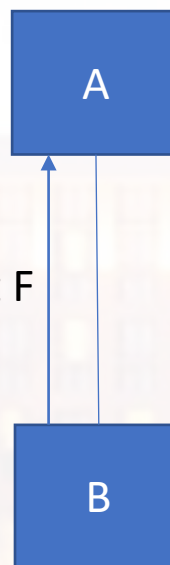
Tax allocated down 5

Total tax 10

ETR 10%

Top Up Tax Due 5

50 Subpart F



Limitation on “downward allocation” under Article 4.3.3:

Step 1: the Top-up Tax Percentage for Country B is 10% (15% - 5%).

Step 2: Step 1 Top-up percentage times passive income = 5 (10% x 50)

Step 3: the lesser of the Step 2 amount (i.e., 5), or the actual CFC Taxes imposed by Country A (i.e., 10)



## Hypothetical CbC Approach – Applying Push Down Limitation

	A	B	C	D	E	F	G	H
1	<b>Calculation Summary</b>	<b>Current Law</b>	<b>Hypothetical Country-by-Country GILTI and GILTI FTC</b>					
2	<b>Tax Attributes</b>	<b>Last Run</b>	<b>LUXCO</b>	<b>UK</b>	<b>Ireland</b>	<b>Hong Kong</b>	<b>Switzerland</b>	<b>Canada</b>
3	GILTI Inclusion	51,772,500	6,400,000	4,990,000	10,500,000	10,282,500	9,400,000	10,200,000
4	DPC on GILTI	8,669,337	984,615	1,439,423	1,220,930	1,615,821	969,072	2,428,571
5	GILTI Deduction	30,220,918	3,692,308	3,214,712	5,860,465	5,949,161	5,184,536	6,314,286
6	FDII Deduction	4,392,173						
7	Foreign Tax Credit	4,981,331	516,609	402,793	847,561	830,004	758,769	823,345
8								
9	Net GILTI Inclusion	30,220,918	3,692,308	3,214,712	5,860,465	5,949,161	5,184,536	6,314,286
10	U.S. Tax at 21%	6,346,393	775,385	675,089	1,230,698	1,249,324	1,088,753	1,326,000
11	Less: FTC	4,179,081	516,609	402,793	847,561	830,004	758,769	823,345
12	<b>Net GILTI Tax</b>	<b>2,167,312</b>	<b>258,776</b>	<b>272,296</b>	<b>383,137</b>	<b>419,319</b>	<b>329,984</b>	<b>502,655</b>
13								
14			<b>Application of Example 4.3.3-1 Limiting GILTI Push Down to Top-up % x Net GILTI Inclusion</b>					
15	<b>Top-Up Percentage Before GILTI</b>		<b>1.67%</b>	<b>0.00%</b>	<b>4.58%</b>	<b>1.42%</b>	<b>7.42%</b>	<b>0.00%</b>
16	<b>Limit on GILTI Tax Push Down</b>		<b>61,538</b>	<b>-</b>	<b>268,605</b>	<b>84,463</b>	<b>384,913</b>	<b>-</b>
17	<b>Allowable GILTI Push-Down</b>		<b>61,538</b>	<b>-</b>	<b>268,605</b>	<b>84,463</b>	<b>329,984</b>	<b>-</b>
18								
19								

30

31

## Case Study – Recap and Alternatives

- Base Case Conclusions
  - Difficulty in aligning existing GILTI Rules with Pillar 2
  - Luxembourg collects subsidiaries top-up taxes via Income Inclusion Rule (IIR)
  - What-if the U.S. is Low-tax – considering R&D and other non-refundable credits
    - Canada, U.K. and Luxembourg share U.S. Top up tax via Undertaxed Payments Rule (UTPR)
      - Based on Substance Based Income - Payroll and Tangible Assets
- Anticipate further issues with U.S. FTC Regulations
- U.S. eliminates Check-the Box Elections
- Taxpayer elects GILTI High-Tax Exclusion (“HTE”)
- U.S. Treasury make GILTI HTE Mandatory
  - Conformity with Subpart F high-tax exception?
- U.S. modifies GILTI via Build Back Better Proposal
  - But does not otherwise pass Pillar 1 Legislation



## Transition Rule Issues

- Under Art. 9.1.3 of Model Rules, upon an intragroup transfer of an asset that occurs after 11/30/2021 and before the fiscal year the MNE group comes within scope of GloBE rules, the transferee takes a tax basis in the acquired asset equal to the transferor's carrying value in the assets (i.e., no step up)
- The rule would apply even if the transferor recognizes a profit in the transfer subject to a tax, and even if such tax is in excess of 15%. For example, the rule could apply if:
  - US parent sells IP to CFC
  - Bermuda CFC sells IP to related CFC; gain taxed to US Parent as Subpart F
    - Compare with GILTI anti-abuse for “disqualified period” transfers
- It appears a license or rental of an asset (v. a sale) would not be subject to this transition rule

# Tax Controversy and Competent Authority

- Potential for double tax/Different treatment across jurisdictions
  - How will jurisdictions implement and interpret the guidance?
    - See transition rules
    - Will jurisdictions use the same tax base?
    - What are the requirements for substance?
  - How will Jurisdictions treat inconsistent interpretation?
    - What are the dispute resolution mechanisms?
- Applicability of relevant treaties
  - How Top-up tax fits into current U.S. Treaty framework?
  - Will adjustments be subject to Competent Authority?
    - Will APMA be will to take these cases into MAP?
  - How will the Pillar 2 rules impact existing or negotiated APAs/Agreements?

# Q&A and Wrap-up

# Thank You!



