

Mentoring at Scale

GILTI

*Global Intangible Low-Taxed Income —
the §951A pickup, the §250 deduction,
the §962 election, and a worked case
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GILTI — Global Intangible Low-Taxed Income

GILTI is the §951A inclusion that requires US shareholders of controlled foreign corporations to pick up the CFC's low-taxed income currently rather than deferring it. Enacted in the 2017 Tax Cuts and Jobs Act, GILTI reshaped the practitioner conversation for every US person or US corporation with a material foreign subsidiary. This is the walkthrough of how the calculation actually runs.

Snapshot: 2026-06-30 · **Applies to:** Any US shareholder (10%+ vote or value) of a controlled foreign corporation, including individuals and pass-through entities as well as C-corp shareholders.

Why the rule exists in the first place

The pre-TCJA problem — and how GILTI solves it

Before the 2017 Tax Cuts and Jobs Act, the US allowed **indefinite deferral** of a foreign subsidiary's active business income. The US parent owed no US tax on that income until the subsidiary distributed a dividend back home. Multinationals exploited this by parking intangibles — patents, brand rights, marketing rights, software licenses — in low-tax jurisdictions and letting the royalty streams accumulate offshore.

The pre-TCJA offshore-cash game	What it looked like	Why it worked
Step 1 — Transfer intangibles to a low-tax CFC	US parent licensed patents/brand rights to an Irish, Bermudian, or Cayman subsidiary	Intangibles were highly mobile and priced through transfer-pricing studies
Step 2 — The CFC earned massive royalty income	Foreign customer payments and intra-group royalties piled up at the low-tax sub	The economic activity was elsewhere but the income was booked at the CFC
Step 3 — Local tax was near zero	Ireland effective rate could reach ~2%; Bermuda / Cayman were 0%	Legal use of local incentives; not evasion, but aggressive planning
Step 4 — The CFC did not distribute	Cash sat in the offshore sub year after year	US tax never triggered because no dividend was declared to the US parent
The outcome by 2017	~\$2.6 trillion of US-multinational earnings trapped offshore	Apple alone had ~\$250B in Ireland; the largest single case, but not unusual

Congress had a choice: keep the deferral game and lose the tax base, or rewrite the rules. The TCJA rewrote them with a three-part package.

TCJA (2017) fix	What it did	Purpose
§965 — Transition Tax	One-time US tax on all pre-2018 accumulated offshore earnings, at 15.5% (cash) / 8% (illiquid)	Cleared the historical stockpile in one payment (installments allowed over 8 years)
§245A — Participation Exemption (100% DRD)	Going forward, dividends from a 10%-owned foreign subsidiary paid to a US C-corp are exempt from US tax	Removed the incentive to keep active business income offshore
§951A — GILTI	Current-year US pickup on the CFC's income above a 10% deemed return on tangible assets	The anti-deferral piece — makes sure the “intangible-driven” portion of CFC income gets taxed now, whether distributed or not

The logic of the 10% QBAI carve-out. Congress needed a proxy to separate “normal return on real operations” from “excess return that must be coming from mobile intangibles.” The proxy: assume tangible operating assets earn a 10% return. Anything above that is presumed to be intangible-driven and therefore taxed currently as GILTI. This is why a US-owned factory with lots of machinery pays less GILTI than a US-owned patent-holding company with none — the factory

gets a bigger free-pass return, the patent-holder gets essentially no free pass.

GILTI is the “anti-Apple” provision. It targets low-tax jurisdictions specifically because the whole design assumes high-tax jurisdictions are already taking their pound of flesh. That is why the §954(b)(4) high-tax election exists — if the CFC is already paying above 18.9% locally, GILTI backs off entirely.

The rule in one paragraph

What GILTI actually does — the mechanics

GILTI (§951A) requires the US shareholder of a controlled foreign corporation to include in current US taxable income the CFC’s net tested income above a deemed 10% return on the CFC’s qualified business asset investment (QBAI). The rule was designed to prevent deferral of low-taxed foreign income — particularly income earned from intellectual property held in low-tax jurisdictions — without disturbing the deferral of active foreign business income backed by tangible assets.

The three-line calc	Formula	What it means
(1) Tested income	CFC gross income – ECI – subpart F – high-taxed (if HTE) – related-party dividends	The CFC’s ordinary operating income, cleaned of items taxed under other regimes
(2) Net deemed tangible return	$10\% \times \text{QBAI}$	The “free pass” on a normal return on tangible property
(3) GILTI inclusion	Line 1 – Line 2	The amount picked up on the US shareholder’s return, whether distributed or not

Statutory constants

The numbers

Statutory item	Value	Detail
Deemed tangible return rate	10%	Applied to QBAI (qualified business asset investment)
§250 GILTI deduction (corporate)	50%	Available to C-corp US shareholders only
Effective US rate on GILTI (C-corp)	10.5%	$21\% \times (1 - 50\%)$
Foreign Tax Credit haircut	80%	§960(d) FTC on GILTI

The corporate-vs-individual distinction

Why GILTI hits individuals harder than corporations

The GILTI inclusion is the same for a US individual and a US corporation. But the effective US rate on that inclusion is dramatically different because the §250 deduction and the §960(d) foreign tax credit are corporate-only. The table below is the single-page summary.

Feature	C-corp shareholder	Individual (default)	Individual (§962 election)
Base US rate	21% corporate	Up to 37% individual	21% (via §962 fiction)
§250 deduction (50%)	Yes	No	Yes (unlocked by §962)
Effective US rate on GILTI	10.5% ($21\% \times 50\%$)	37%	10.5% (currently)
§960(d) FTC on Irish/foreign tax	Yes, 80% of foreign tax	No	Yes, 80% (via §962)
Break-even foreign effective tax rate for \$0 US tax	~13.125% ($10.5\% / 80\%$)	Never — always some US tax	~13.125% currently
Later distribution treatment	Distribution to C-corp shareholders taxed then (separate layer)	Distribution is PTI — tax-free once GILTI already picked up	Distribution is a taxable qualified dividend at $20\% + 3.8\% \text{ NIIT} = 23.8\%$
Verdict	The intended outcome — low rate, FTC works	The “GILTI trap” — 37% on Irish profit	Trade current-year tax for a future dividend tax if/when cash comes home

The §962 election is annual, and the math varies by expected distribution behavior. Practitioners running the §962 analysis should model both regimes end-to-end — the election that reduces current tax may increase lifetime tax if distributions are eventually made. The worked case below traces all three columns line-by-line with a real set of numbers.

The high-tax exclusion

The §954(b)(4) election that removes some CFCs from GILTI entirely

Section 954(b)(4) allows a US shareholder to elect to exclude from GILTI tested income any CFC-level income taxed at an effective foreign rate above 90% of the US corporate rate — currently 18.9% (90% of 21%). The election is made annually at the CFC level and can dramatically simplify a high-tax jurisdiction CFC's US tax picture.

Practical effect: A US-owned French or German subsidiary paying local corporate tax at 25-31% likely qualifies for the high-tax exclusion, which removes that CFC's income from GILTI entirely. A US-owned Irish operating subsidiary at the 12.5% Irish rate does not qualify (below 18.9% threshold) and generates GILTI income at the US shareholder level.

The election is at the shareholder level and applied consistently across all CFCs of the shareholder. The reporting mechanism is on Form 5471 Schedule I-1.

A worked case — one company, three owners

Grand Rapids Aerospace, Inc. — the same \$4M of Irish profit, three very different US tax bills

Meet Grand Rapids Aerospace, Inc. ("GRA"), a Michigan-headquartered precision-components manufacturer with a 100%-owned Irish operating subsidiary, GRA Ireland Ltd. GRA Ireland runs a real factory in Cork — buildings, machining equipment, quality-inspection lab — and manufactures a product line sold into European aerospace primes. This is a low-tax-jurisdiction CFC. The question every year is: *what does the Irish profit cost the US owner in US tax?* Same \$4M of Irish operating income, three different owners, three completely different answers. The tables below trace each one line-by-line.

Step 1 — The Irish subsidiary's 2026 numbers

Every GILTI calculation starts here. The CFC's own P&L; and its tangible-asset base drive everything downstream. All figures in USD (ignore FX for the walkthrough).

GRA Ireland Ltd — 2026 facts	Amount	Where it comes from
Gross revenue	\$12,000,000	Sales to European aerospace primes
Cost of goods sold	(\$6,000,000)	Raw materials, direct labor, factory overhead
Operating expenses	(\$2,000,000)	SG&A;, R&D;, engineering
Net operating income — the “tested income”	\$4,000,000	This is the number GILTI pulls into the US return
Tangible operating assets (buildings, machinery, tooling) — QBAI	\$10,000,000	Depreciable tangible property basis; the anti-deferral rule assumes a 10% return on these earns a pass
Irish corporate tax (12.5% × \$4M)	(\$500,000)	Paid to Ireland — this is the tax that generates any US Foreign Tax Credit
After-Irish-tax cash sitting in Ireland	\$3,500,000	What Ireland Ltd could distribute to the US parent

Step 2 — Compute the GILTI inclusion (same for every US owner)

This step is *identical* whether the US shareholder is a C-corp, an individual, or a partnership. The inclusion is what the individual/entity has to pick up on their US return. What changes is how it gets taxed downstream.

GILTI inclusion calculation	Amount	Formula
Tested income	\$4,000,000	From Step 1
Deemed tangible return (the “free pass”)	(\$1,000,000)	$10\% \times \text{QBAI} = 10\% \times \10M
GILTI inclusion — picked up on the US return	\$3,000,000	Tested income minus deemed tangible return

What this line means in plain English. Congress said: your Irish factory’s buildings and machines are worth \$10M, so it’s reasonable that they generate a 10% return (\$1M) — that piece we’ll leave alone. The other \$3M of profit looks “too good” for tangible assets alone; it’s the piece Congress assumes is really coming from intangibles that could just as easily be run through a US entity. That \$3M is GILTI — and it hits the US shareholder’s current return whether or not Ireland distributes a

dollar.

Step 3 — Owner #1: A US C-corporation

Assume GRA Inc. is itself a Delaware C-corp that owns GRA Ireland Ltd. The C-corp gets the §250 deduction and the §960(d) foreign tax credit. This is the “good” outcome that Congress designed the rule around.

C-corp shareholder	Amount	Note
GILTI inclusion picked up	\$3,000,000	From Step 2
§250 deduction (50%)	(\$1,500,000)	C-corp only
Taxable GILTI after deduction	\$1,500,000	
US tax at 21% corporate rate	\$315,000	Tentative US tax before FTC
Foreign tax credit (80% × \$500K Irish tax)	(\$400,000)	§960(d) allows 80% of the Irish tax as a GILTI FTC
Net US tax owed on GILTI	\$0	FTC exceeds tentative tax; carryover to future GILTI is generally not permitted

Even in a low-tax jurisdiction like Ireland (12.5%), a US C-corp shareholder pays no incremental US tax on GILTI because the §250 deduction plus the 80% FTC does the job. This is the outcome the statute was designed around. The rate break-even is roughly a 13.125% foreign effective tax rate; Ireland at 12.5% is just below it, so the tentative \$315K and the \$400K FTC leave a \$0 US bill in this case.

Step 4 — Owner #2: An individual (no §962 election)

Now assume GRA Ireland is owned directly by Sarah, an individual US shareholder (or through an LLC treated as disregarded / a pass-through). She has no C-corp between her and the CFC. The §250 deduction is not available to her, and the §960(d) GILTI FTC is not available to her *directly*. Here is the “GILTI trap.”

Individual shareholder (default)	Amount	Note
GILTI inclusion picked up	\$3,000,000	From Step 2
§250 deduction	\$0	NOT available to individuals
Taxable GILTI	\$3,000,000	Full inclusion
US tax at top marginal 37%	\$1,110,000	Ordinary income rate applies
Foreign tax credit for the Irish tax paid by the CFC	\$0	Individual cannot take §960(d) FTC without §962 election
Net US tax owed on GILTI	\$1,110,000	Owed currently, whether or not any cash comes out of Ireland

The total tax bite on the \$4M of Irish profit (individual, no §962)	Amount	% of Irish profit
Irish corporate tax already paid	\$500,000	12.5%
US GILTI tax at 37%	\$1,110,000	27.8%
Combined tax burden	\$1,610,000	40.3%
Amount of cash still sitting in Ireland (untouched)	\$3,500,000	—

Sarah owes \$1.11M of US tax this year on Irish profits she may never actually receive. The Irish subsidiary already paid \$500K locally. She is now writing a check for the balance without a dollar of Irish cash having crossed the Atlantic.

Step 5 — Owner #3: The same individual, but she elects §962

The §962 election lets Sarah be taxed on GILTI *as if* she were a C-corp for this one purpose. She unlocks the §250 deduction and the FTC. The trade-off: any subsequent distribution of the same \$4M from Ireland is taxed again as a dividend when it hits her personally.

Individual shareholder with §962 election	Amount	Note
GILTI inclusion picked up	\$3,000,000	From Step 2
§250 deduction (unlocked by §962)	(\$1,500,000)	Now available
Taxable GILTI after deduction	\$1,500,000	
US tax at 21% (corporate rate applied via §962)	\$315,000	Tentative
Foreign tax credit 80% × \$500K Irish tax	(\$400,000)	Now available via §962
Current-year US tax under §962	\$0	Same as the C-corp result — for now
Later — when Ireland distributes the \$3M of GILTI-taxed earnings to Sarah:		
Distribution of GILTI-inclusion amount (\$3M) — taxed as a qualified dividend	\$3,000,000	Because §962 was elected, the distribution is not treated as previously-taxed income to Sarah personally
Federal tax at 20% qualified-dividend rate + 3.8% NIIT = 23.8%	\$714,000	Owed in the year of distribution
Lifetime US tax under §962 (current + eventual distribution)	\$714,000	

Why practitioners still usually elect §962. \$714K owed years from now (when the cash actually comes home) beats \$1.11M owed *this year* on money that is still sitting in Ireland. Time value of money and the ability to defer the distribution decision both favor §962 in almost every low-tax-jurisdiction case. If Sarah never distributes — say she rolls it into more Irish operations or eventually sells the CFC as stock — she may never owe the \$714K at all.

Step 6 — The one-page comparison

Same \$4M of Irish operating profit. Same \$500K of Irish tax already paid. Three owners.

Owner scenario	Current-year US tax on GILTI	Eventual US tax on distribution	Combined US tax (before Irish)
C-corp shareholder	\$0	Depends on shareholder-level dividend	\$0 at the C-corp layer
Individual — no §962	\$1,110,000	\$0 (already taxed as GILTI)	\$1,110,000
Individual — with §962	\$0	\$714,000 (only when actually distributed)	\$714,000 (deferred)

A second worked case — the same company in a high-tax jurisdiction

What if GRA Ireland were GRA Germany? — the high-tax election

Change one variable: instead of Ireland at 12.5%, assume the subsidiary is in Germany at a 30% effective rate. Same \$4M of tested income, same \$10M QBAI. The subsidiary pays \$1.2M of German tax instead of \$500K of Irish tax. Because 30% > 18.9% (the 90%-of-US-rate threshold), the shareholder can elect the §954(b)(4) high-tax exclusion (HTE) and remove this CFC's income from GILTI entirely.

GRA Germany GmbH — HTE election	Without HTE	With HTE elected
Tested income entering GILTI pool	\$4,000,000	\$0 (excluded)
GILTI inclusion at the US shareholder	\$3,000,000	\$0
Current US tax — C-corp owner (with FTC)	\$0	\$0
Current US tax — individual owner (no §962)	\$1,110,000	\$0
Current US tax — individual owner (with §962)	\$0	\$0
Compliance simplicity	Full GILTI calc, Form 8992	Excluded from GILTI pool; just Form 5471 Schedule I-1 election

For a US individual owner of a German operating subsidiary, the HTE election is often the single most valuable planning move in the international-tax stack — it eliminates the \$1.11M “GILTI trap” entirely without requiring the §962 election. For a US C-corp owner the numbers are the same

either way (\$0 in both columns) but the compliance simplification is meaningful.

Two rules of thumb for practitioners. (1) For US individuals with *low-tax-jurisdiction* CFCs (Ireland at 12.5%, Bulgaria at 10%, Hungary at 9%), the §962 election almost always beats the default — you trade a current \$1.11M bill for a future \$714K bill you may never owe. (2) For US individuals with *high-tax-jurisdiction* CFCs (Germany 30%, France 25%, Belgium 25%), the §954(b)(4) high-tax election almost always beats both defaults — you exclude the income from GILTI entirely. Run both elections side by side before choosing.

Reporting

What actually gets filed

Form 5471: Filed annually by US shareholders of foreign corporations. Category 4 and Category 5 filers include US shareholders of CFCs. Schedule I reports the GILTI inclusion; Schedule I-1 reports the underlying tested income calculation.

Form 8992: The GILTI calculation and reporting form filed at the US shareholder level. Aggregates tested income and QBAI across all CFCs to compute the shareholder's GILTI inclusion.

Form 8993: The §250 deduction reporting form for C-corp US shareholders claiming the 50% GILTI deduction.

Penalties for late or incomplete Form 5471 filings are substantial — \$10,000 initial penalty per required form, escalating with continued failure. The IRS has increased Form 5471 enforcement activity materially since 2020.

The FDII companion mechanism

Foreign-Derived Intangible Income — the §250 provision that most GILTI analyses model in parallel

Section 250 grants US C-corporations two distinct deductions: the 50% GILTI deduction discussed above, and a separate 37.5% deduction for Foreign-Derived Intangible Income (FDII). FDII is the domestic-side counterpart to GILTI: it rewards US C-corporations that earn export income from serving foreign markets from a US location, effectively lowering the US rate on qualifying foreign-derived deduction-eligible income (FDDEI) to 13.125%.

Practitioners assessing a US C-corp shareholder's international tax position almost always model FDII in parallel with GILTI, because the two provisions interact through the same §250 deduction and the same taxable income limitation. A C-corp with material foreign customer export income and a low-tax CFC subsidiary will find that both provisions apply, and the taxable-income limitation on §250 may bind when GILTI + FDII combine.

The interaction to model: The §250 deduction is limited to the taxpayer's taxable income (after other deductions). A C-corp with a large GILTI inclusion but small US taxable income may not realize the full 50% GILTI deduction plus 37.5% FDII deduction. This is a mechanical drag most first-time modelers miss.

A separate reference page on FDII is planned for the next quarterly refresh cycle. In the meantime, practitioners modeling GILTI at a C-corp shareholder should coordinate with the FDII computation for the same taxpayer.

Cross-references

Where to read next

The applied companion: The Baratelli International Tax & Cross-Border Wealth guide walks the full CFC and GILTI analysis with worked cases across mid-market operating structures.

Full reference: Baratelli International Tax Reference hub.

Print edition: Download the GILTI print PDF.

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