

GILTI Inclusion for U.S. Individual (With 962 Election)

International Tax Structures for Americans Living Abroad

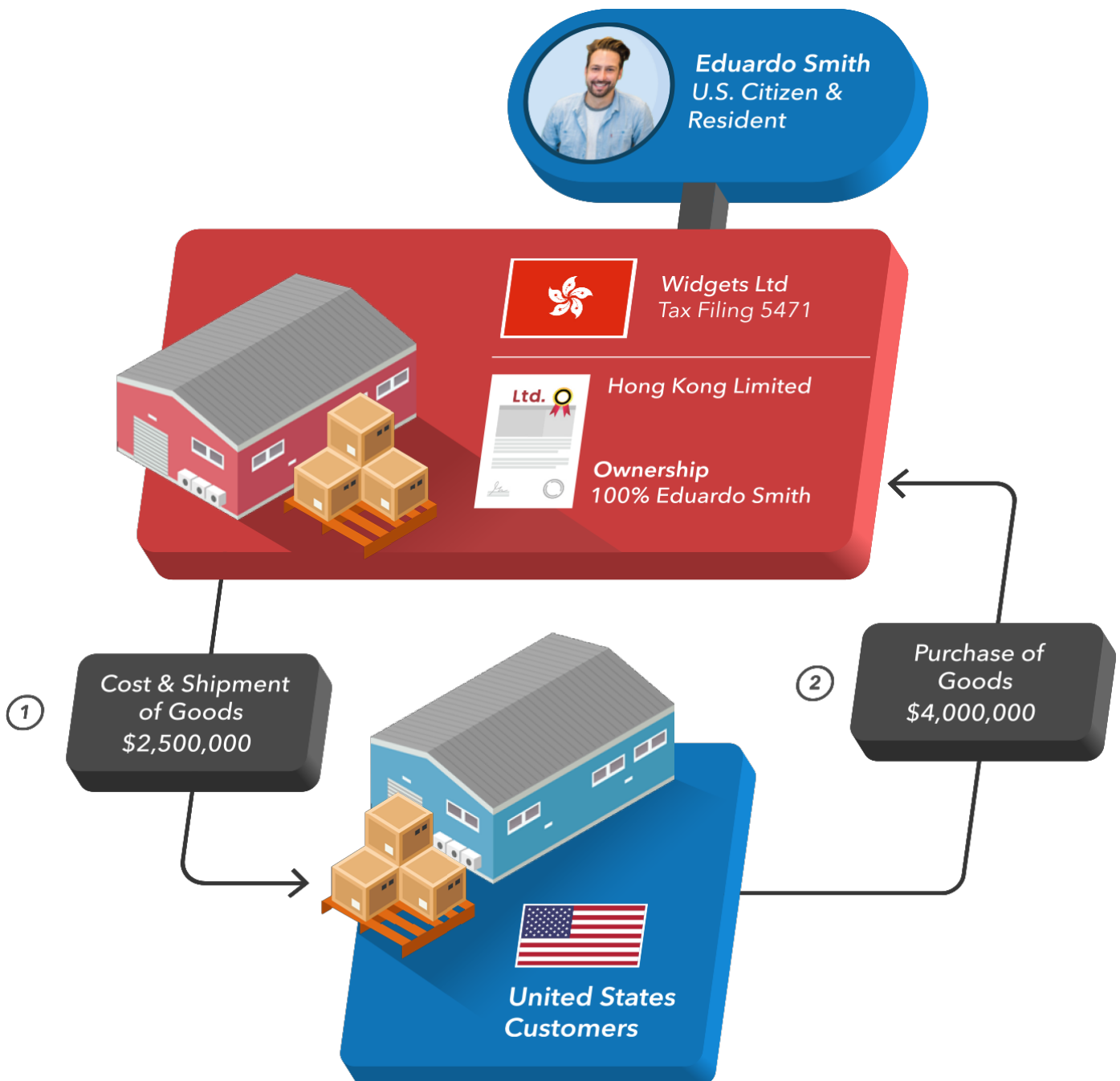
Global Intangible Low-Taxed Income (GILTI) Structure #3



By
Marcus Marcial

Structure Summary

An Individual owner of a Foreign Corporation is subject to Global Intangible Low-Taxed Income (GILTI) for the sales of physical goods shipped to the United States. He elects to claim a 962 Election, treating GILTI as if he were a U.S. corporation, thereby reducing his taxable inclusion.



GILTI Inclusion for U.S. Individual (Product Sales of Hong Kong CFC)

Structure Background

Widgets Ltd., a Hong Kong Limited company, is a seller of widgets that are produced in Hong Kong and shipped to U.S. customers. After the widgets are produced in Hong Kong, they are shipped directly to customers located in the United States in bulk. The sole owner of Widgets Ltd. is Eduardo Smith, a United States citizen and resident. As Eduardo is the sole owner, Widgets Ltd. is a Controlled Foreign Corporation per Internal Revenue Code §957. During the year, Widgets Ltd. earned Net Income from the sale of widgets in which no foreign taxes were paid, and no dividend distributions were paid to Eduardo.

Exempt from Subpart F

As the widgets are manufactured in the country of incorporation (Hong Kong), there is no inclusion of Subpart F Foreign Base Company Sales Income (FBCSI) per Internal Revenue Code §954(d).

No U.S. Sourcing & No Branch Profits Tax

As the widgets are shipped directly from Hong Kong to the United States, they have a foreign origin shipping point and a U.S. destination customer. Based on sourcing rules, there is no U.S. source income. Additionally, Widgets Ltd. does not conduct a trade or business in the United States within the meaning of Internal Revenue Code §862, having no Permanent Establishment. As a result, no Branch Profits tax applies.

Subject to GILTI

However, the gross income from the sale of widgets described in this structure is subject to Global Intangible Low-Taxed Income (GILTI) per Internal Revenue Code §951A. Specifically, the gross income of the corporation is subject to GILTI “Tested Income” subject per Internal Revenue Code §951A(c)(2).

Section 962 Election

Eduardo elects to treat Widgets Ltd. to be taxed as if it were a C-Corporation per Internal Revenue Code §962. The resulting effect is that its Net Income is subject to a 21% Corporate Tax Rate, but also qualifies for a 50% reduction in GILTI through Internal Revenue Code §250.

GILTI Inclusion for U.S. Individual (Product Sales of Hong Kong CFC)

Monetary Transactions & Accounting

1. Widgets Ltd. manufactured goods during the year costing \$2,500,000
2. The goods were later sold for \$4,000,000 and shipped directly from the manufacturing warehouse in Hong Kong to the customer's warehouse in the U.S.
3. At the close of the year, the Net Income from the business was \$1,500,000 (\$4,000,000 of Revenue less \$2,500,000 of Cost of Goods Sold). On the Balance Sheet, the business had the following assets: \$200,000 in cash, \$1,200,000 in equipment, and \$3,000,000 in inventory ready for sale.

Specified Tangible Property & Qualified Business Asset Investment (QBAI)

Specified tangible property (used in the calculation of GILTI) generally is defined as tangible property eligible for depreciation used in the production of gross tested income per Treasury Regulation §1.951A-3, referring to Qualified Business Asset Investment (QBAI). For the purposes of this example, the Equipment of \$1,200,000 is Specified Tangible Property, whereas the \$3,000,000 of inventory is not. As a result, a \$120,000 deduction (10% of \$1,200,000), referred to as a Deemed Tangible Income Return (DTIR), is available to reduce GILTI.

Section 250 Deduction & Taxable Income Calculation

There is a reduction of 50% of GILTI income (referred to as a Section 250 Deduction) as a result of the 962 Election. Additionally, the Foreign Corporation's income after this deduction is taxed at 21%, and also considers up to 80% of any foreign taxes paid. However, for this year, Widgets Ltd. paid no foreign taxes.

U.S. Tax Filing Compliance

4. **Form 5471 (Widgets Ltd.)** The foreign corporation must be disclosed on [Form 5471, Information Return of U.S. Persons With Respect To Certain Foreign Corporations](#), to satisfy the reporting requirements of Internal Revenue Code §6038. This form must be attached to Eduardo's personal tax filing.
5. **Form 8992 (Widgets Ltd.)**. The gross income from the foreign corporation must be reported on [Form 8992, U.S. Shareholder Calculation of Global Intangible Low-Taxed Income \(GILTI\)](#), attached to Form 5471, to calculate the includable income. For this year, GILTI is equal to \$1,380,000 [Tested Income of \$1,500,000 (Net Income) Minus \$120,000 (10% of Specified Tangible Property)].

GILTI Inclusion for U.S. Individual (Product Sales of Hong Kong CFC)

6. **Form 8993 (Widgets Ltd.).** The Section 250 Deduction is reported on [Form 8993, Section 250 Deduction for Foreign-Derived Intangible Income \(FDII\) and Global Intangible Low-Taxed Income \(GILTI\)](#), also attached to Form 5471.
7. **Form 1040 (Eduardo Smith).** On his personal Federal income tax return, Eduardo includes his GILTI inclusion of \$690,000, resulting in personal income tax of \$144,900 [$\$1,380,000 - \$690,000$ ($1,380,000 \times 50\%$) $\times 21\%$ Corporate Tax Rate], even if no dividends were paid during the year.

GILTI Inclusion for U.S. Individual (Product Sales of Hong Kong CFC)

Summarized Tax Returns and Financial Statements

3

Widgets Ltd. Income Statement		Widgets Ltd. Balance Sheet	
Sales Revenue	\$4,000,000	Cash	Liabilities
		\$200,000	\$3,000,000
Cost of Goods Sold	- \$2,500,000	Equipment	Equity
		\$1,200,000	\$1,400,000
Net Income	\$1,500,000	Inventory	
		\$3,000,000	

4

5

Form 5471 Widgets Ltd.	
Form 8992 Global Intangible Low Taxed Income	
Tested Income	\$1,500,000
Deemed Tangible Income Return (DTIR) [10% of Tangible Assets]	- \$120,000
GILTI = \$1,380,000	

7

Form 1040 Eduardo Smith (Single)	
GILTI Inclusion	\$690,000
U.S. Tax	\$144,900
	[21% Corporate Tax]

6

Form 8993 Section 250 Deduction	
GILTI	\$1,380,000
Section 250 Deduction [50% of GILTI]	- \$690,000
Taxable Inclusion = \$690,000	

GILTI Inclusion for U.S. Individual (Product Sales of Hong Kong CFC)

Resulting Tax Implications

As a result of this structure, Eduardo must recognize a Global Intangible Low Taxed Income Inclusion of \$1,380,000 to his taxable income. After deductions available as part of the 962 Election, the income tax owed personally is \$144,900, with an effective tax rate of 10.5%. This occurs even if Eduardo received no repatriated distributions from the foreign corporation.

This International Tax Structure is based on a set of hypothetical circumstances, and real-world results may vary. For more information and additional structures, visit <https://pacifico.tax/international-tax-structures>