

# The Form 5471 Series

## Episode 6

# Global Intangible Low-Taxed Income

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September 29, 2023

# The Form 5471 Series (2023-2024)

Date	Episode	Title
<b>Part 1. The Filer</b>		
April 28, 2023	1	Overview: Who is a Form 5471 Filer?
May 26, 2023	2	The Attribution Rules for Form 5471
June 30, 2023	3	The Nine Categories of Form 5471 Filers
July 28, 2023	4	Filing Exceptions and Reduced Filing Requirements
<b>Part 2. The Income Items</b>		
August 25, 2023	5	Subpart F Income
September 29, 2023	6	Global Intangible Low-Taxed Income
October 27, 2023	7	Distributions from Controlled Foreign Corporations
<b>Part 3. Damage Control</b>		
November 17, 2023	8	Foreign Tax Credit
January 26, 2024	9	Restructuring, Reorganization, and Liquidation of a Controlled Foreign Corporation
February 23, 2024	10	The Section 962 Election
March 29, 2024	11	Tax Performance Comparison: CFCs vs. Other Structure Types

# Table of Contents

1	IRC §951A Exists to Solve a Problem that IRC §245A Created	4
2	Applying IRC §951A and IRC §245A	11
3	IRC §951A Gross Income Inclusion Calculation Gross Income	15
4	The CFC's Gross Income	18
5	Exclusions from the CFC's Gross Income	23
6	The CFC's Gross Tested Income	26
7	The CFC's [Net] Tested Income	29
8	Net Deemed Tangible Income Return	36
9	Global Intangible Low-Taxed Income Inclusion Amount	50
10	The IRC §250 Deduction	53
11	Conclusion	57

# 1. IRC §951A Exists to Solve a Problem that IRC §245A Created

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# Jargon explainer: “territorial” tax system comes to America

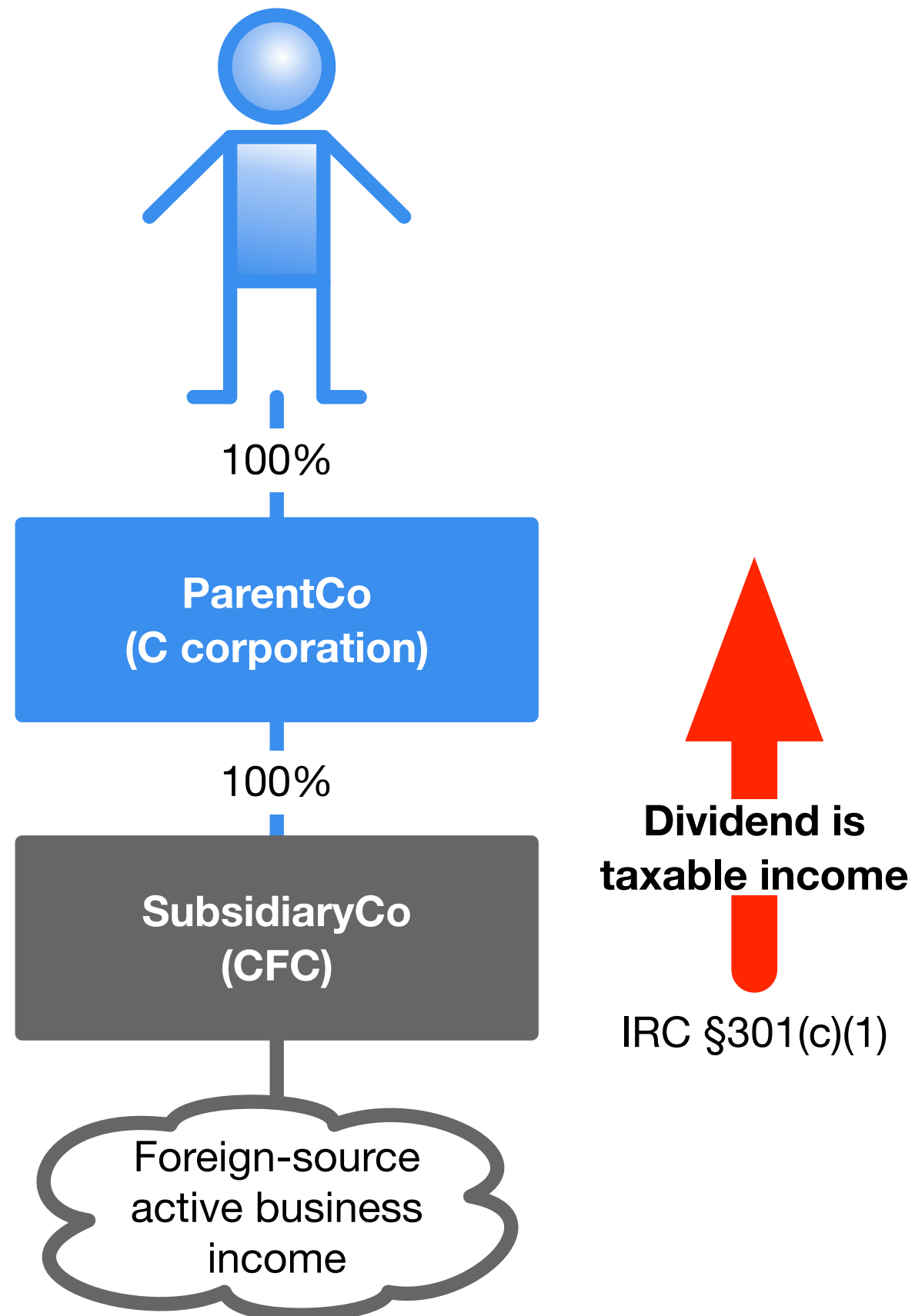
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- **Tax policy wonks, academics, and talking heads:** “U.S. multinationals are at a competitive disadvantage because of U.S. tax policies.”
- **Politicians:** “Billions of offshore profits could be ~~taxed~~ brought home to create jobs. Won’t somebody think of the voters?”
- **Result:** IRC §245A(a), a dividend-received deduction. U.S. multinationals can repatriate foreign-source profits without U.S. income tax.
- **Jargon explainer:** IRC §245A is a “participation exemption” that creates a “territorial” tax system: income earned outside the USA is not subject to Federal income tax.

# IRC §245A(a) allows tax-free dividends to the U.S. parent company

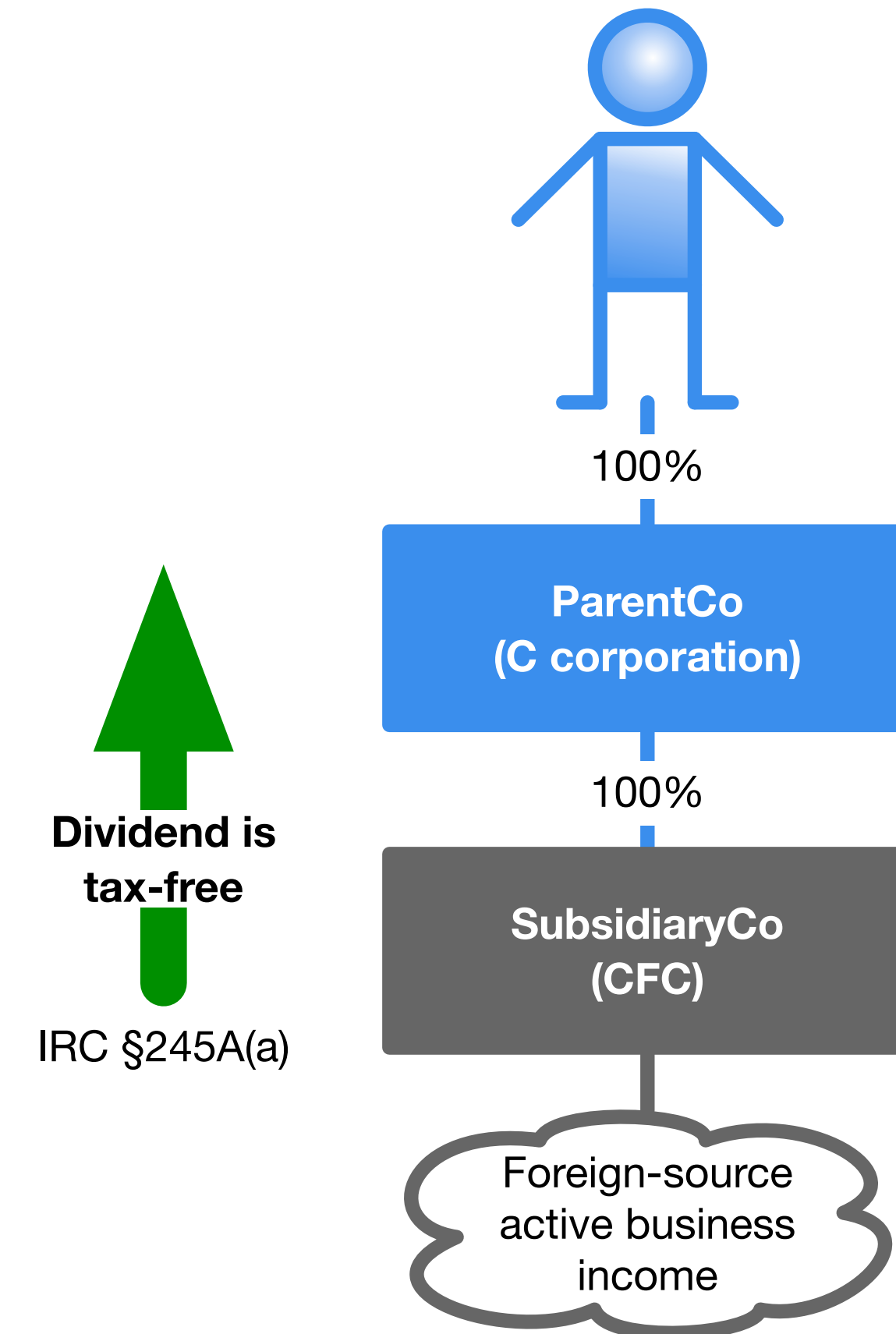
Before Tax Cuts and Jobs Act

“Worldwide Taxation”



After Tax Cuts and Jobs Act

“Participation Exemption”



# Jargon explainer: the territorial tax system causes “base erosion”

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- Simple, really:
- **If** foreign-source profits earned by a domestic corporation are taxed at 21% but foreign-source profits earned by a foreign subsidiary are taxed at 0% (because of the territorial system created by IRC §245A),
- **Then** why not move assets and business operations to a foreign subsidiary, earn foreign source profits, and receive them as a tax-free dividend?
- **Jargon explainer:** This is “base erosion.” Tax policy creates an incentive to reduce the domestic tax base of business activities and assets that generate taxable income.

# IRC §951A discourages base erosion tactics

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- If IRC §951A didn't exist, IRC §245A would create an incentive for U.S. multinationals to move income-generating assets and business operations out of the United States in order to generate more foreign-source income.
- If IRC §951A made ALL of the CFC's foreign-source active business income taxable, then IRC §245A would be pointless — it's just like subpart F income being included in gross income and IRC §959 allowing a tax-free distribution of previously-taxed earnings and profits.
- So IRC §951A only includes SOME of the foreign-source active business income in the gross income of the U.S. shareholder: just enough but not too much, to achieve just enough anti-base erosion incentives to change taxpayer behavior.



# And that's why IRC §951A is so complicated

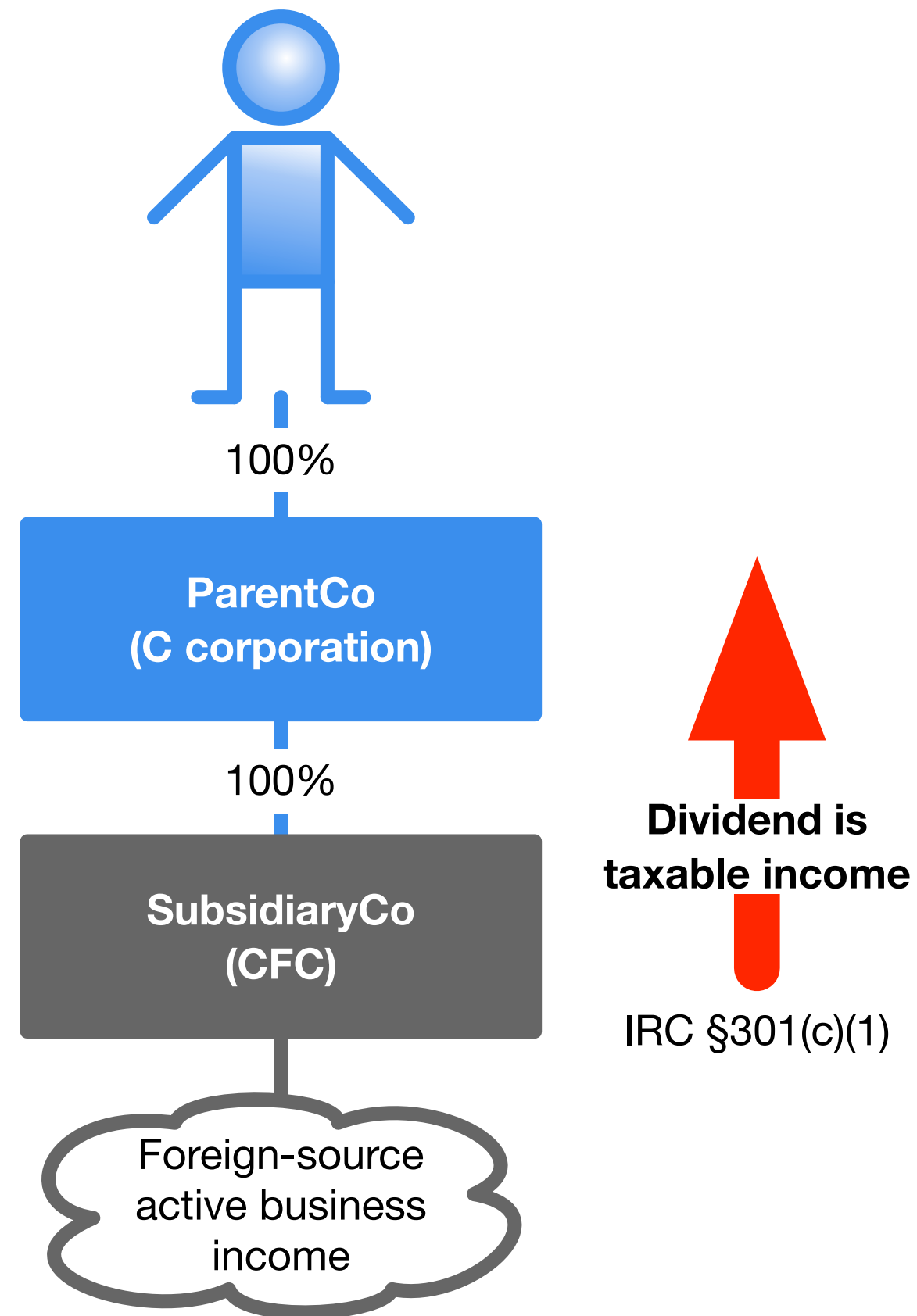
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- This is what Congress did when it created IRC §951A:
  - Define a new type of CFC income (“Global Intangible Low-Taxed Income”) to be included in the gross income of a U.S. shareholder.
  - Monkey around to find the Goldilocks spot of “just enough but not too much gross income inclusion” to prevent base erosion. (Hint: “Net Deemed Tangible Income Return”).
  - Try not to collide too badly with existing law (subpart F income, IRC §956, foreign tax credits, etc.).

# IRC §951A gross income inclusion partially offsets IRC §245A

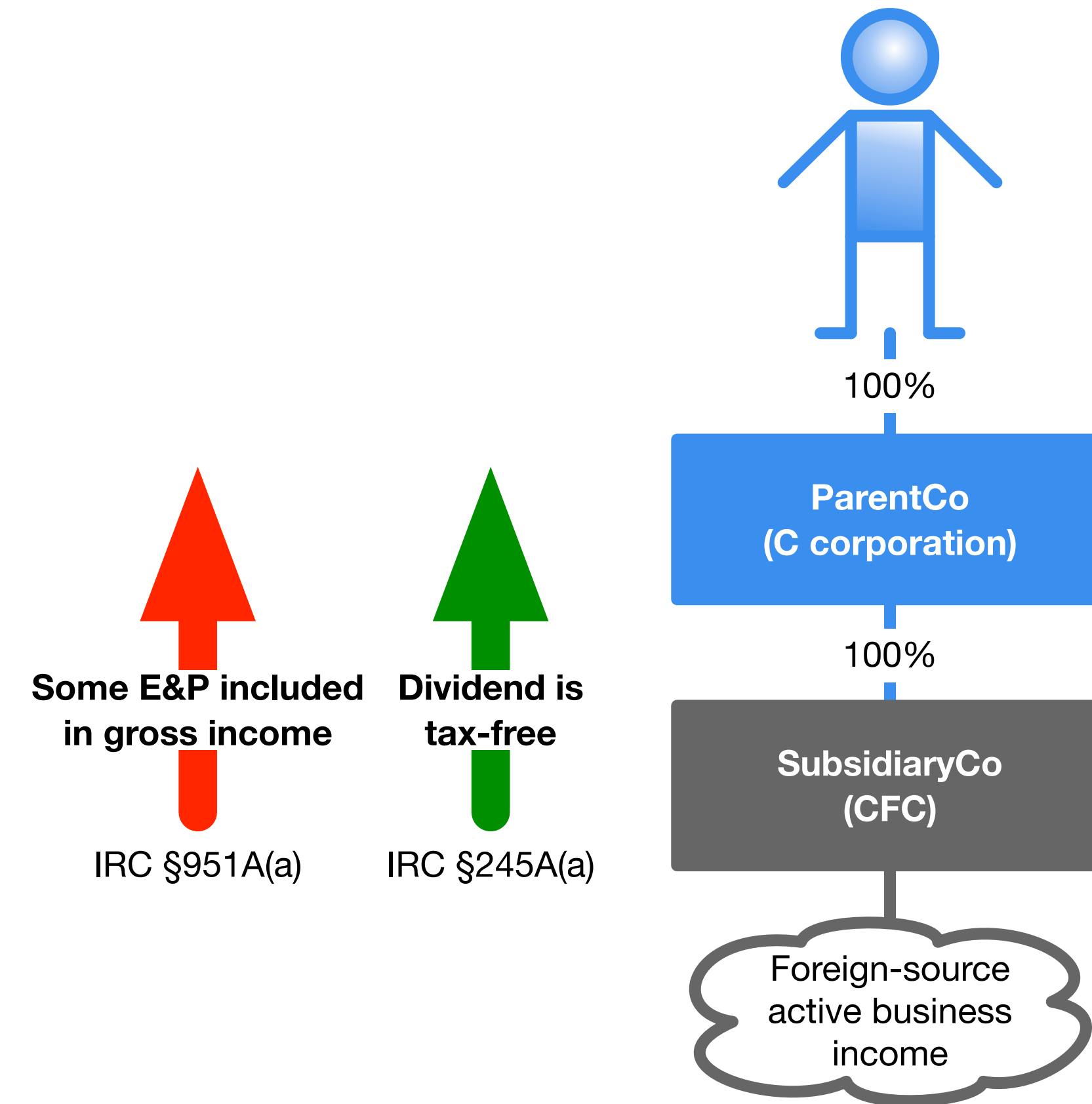
Before Tax Cuts and Jobs Act

“Worldwide Taxation”



After Tax Cuts and Jobs Act

“Participation Exemption”



## 2. Applying IRC §951A and IRC §245A

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## Two conditions for IRC §951A gross income inclusion

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“Each person who is a **United States shareholder** of any **controlled foreign corporation** for any taxable year of such United States shareholder shall include in gross income such shareholder’s global intangible low-taxed income for such taxable year.”

*IRC §951A(a), emphasis added.*

## Two conditions for the IRC §245A dividend-received deduction

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“In the case of any dividend received from a **specified 10-percent owned foreign corporation** by a **domestic corporation which is a United States shareholder** with respect to such foreign corporation, there shall be allowed as a deduction an amount equal to the foreign-source portion of such dividend.”

*IRC §245A(a), emphasis added.*

# Subtle differences: who gets the income? who gets the deduction?

	Taxpayer	Foreign Corporation
Dividend-received deduction IRC §245A(a)	Domestic corporation that is a United States shareholder	Specified 10-percent owned foreign corporation
Gross income inclusion IRC §951A(a)	United States shareholder	Controlled foreign corporation

### 3. IRC §951A Gross Income Inclusion Calculation

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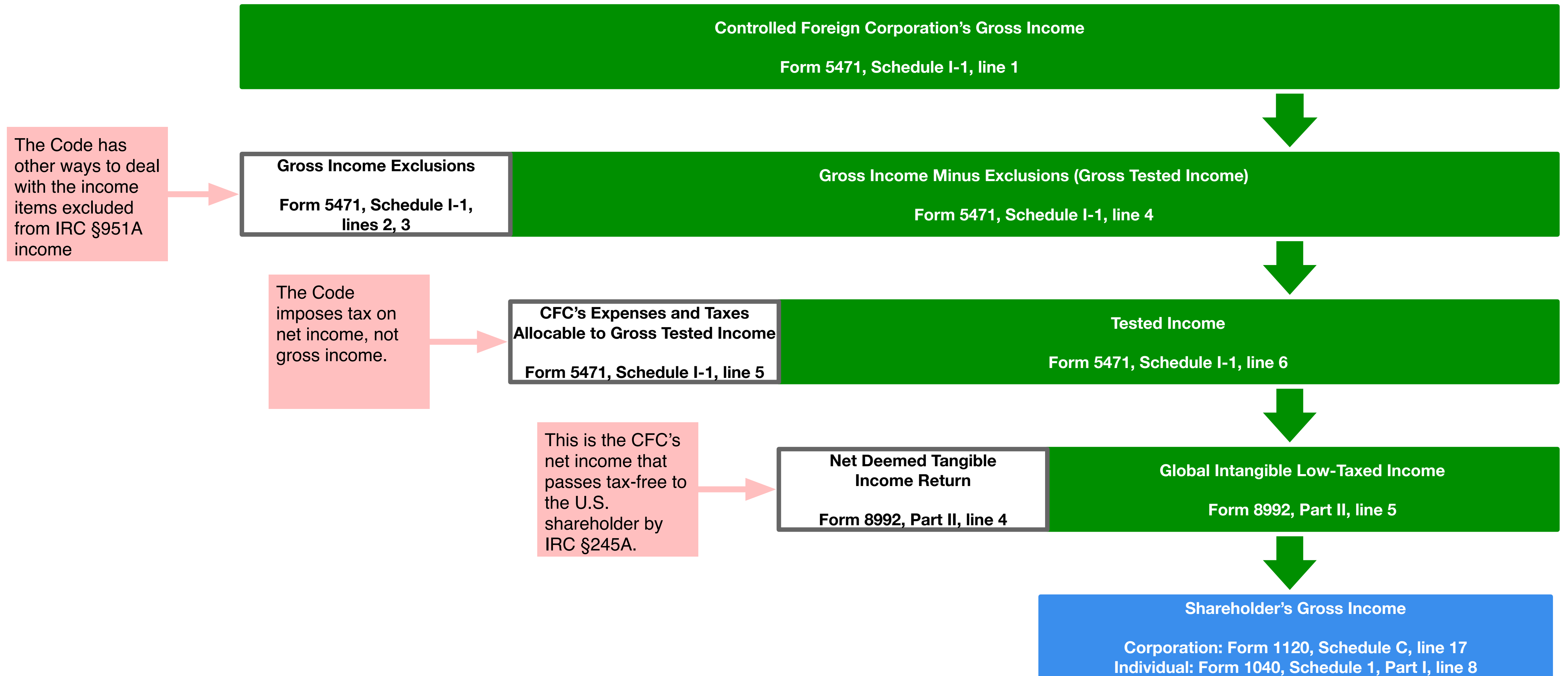
# IRC §951A exists to override Subchapter C

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- Subchapter C says that corporations are taxed on their income. Shareholders do not recognize income until the corporation makes a distribution to them. IRC §301(c).
- IRC §951A overrides Subchapter C.
- **Some** shareholders (“United States shareholders”) must pay Federal income tax on **some** of a controlled foreign corporation’s income (“global intangible low-taxed income”) — whether or not the controlled foreign corporation makes a distribution to its shareholders.



# IRC §951A(a) inclusion: the remainder after three subtraction steps



## 4. The CFC's Gross Income

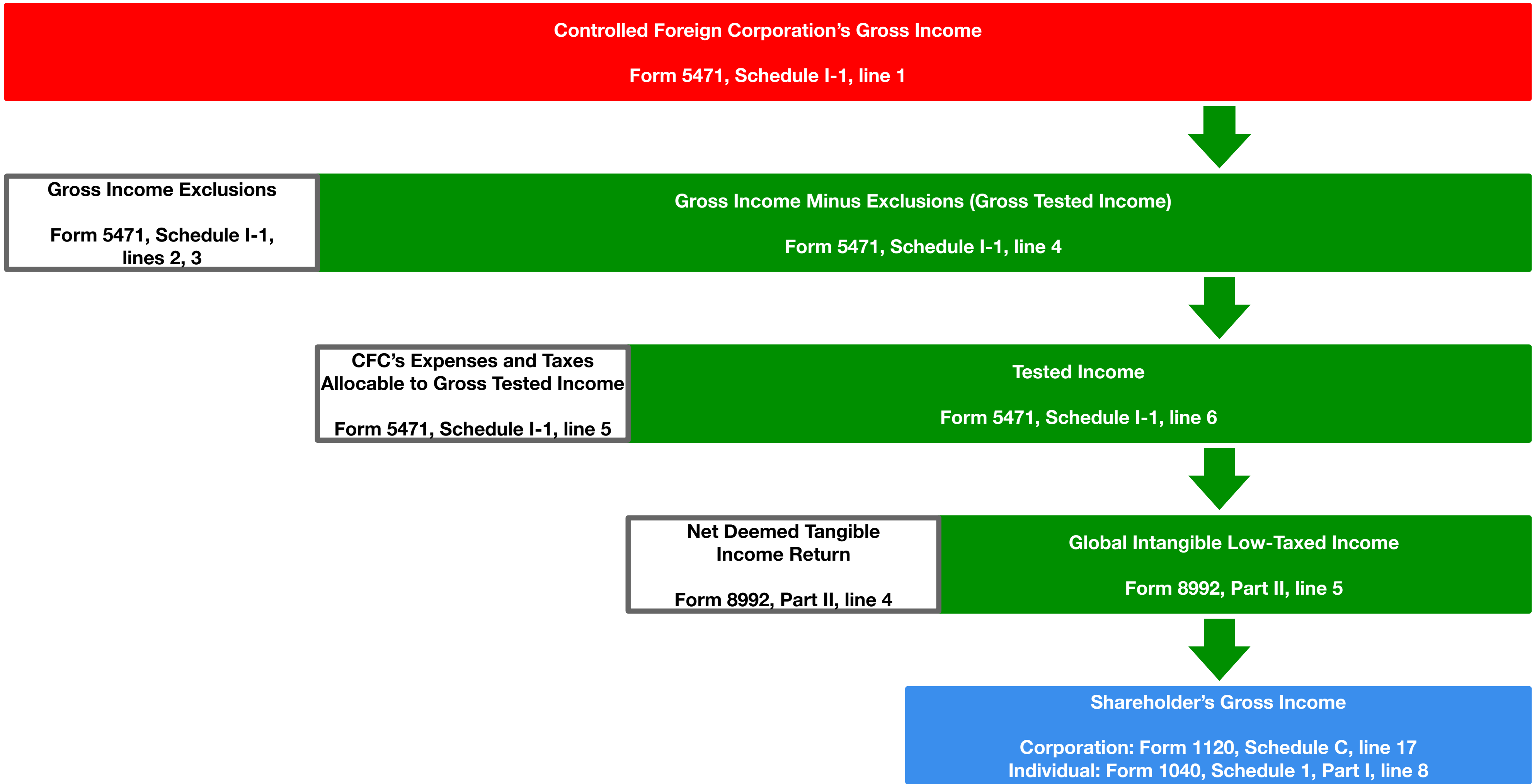
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Form 5471, Schedule I-1, line 1.

# The CFC's Profit & Loss Statement

Description	Amount
<i>Income</i>	
Gross sales revenue	20,000
<i>Expenses</i>	
Depreciation	(2,000)
Interest expense	(1,000)
<b><i>Net Income</i></b>	<b><i>17,000</i></b>

# Start with the CFC's gross income



# Gross income for Global Intangible Low-Taxed Income: law

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- Calculate the CFC's gross income using the same rules used to compute gross income for the purpose of determining the CFC's Subpart F income. *Regs. §1.951A-2(c)(2)(i)*.

“For purposes of determining tested income and tested loss, the gross income and allowable deductions of a controlled foreign corporation for a CFC inclusion year are determined under the rules of § 1.952-2 . . . .”

- Regs. §1.952-2(a)(1) says pretend the CFC is a domestic corporation:

“Except as provided in subparagraph (2) of this paragraph, the gross income of a foreign corporation for any taxable year shall, subject to the special rules of paragraph (c) of this section, be determined by **treating such foreign corporation as a domestic corporation** taxable under section 11 and by applying the principles of section 61 and the regulations thereunder.”

# Gross income on Form 5471, Schedule I-1

Description	Amount
<i>Income</i>	
Sales	20,000
<i>Expenses</i>	
Depreciation	(2,000)
Interest expense	(1,000)
<b>Net Income</b>	<b>17,000</b>

**SCHEDULE I-1 (Form 5471)**  
(Rev. December 2021)  
Department of the Treasury  
Internal Revenue Service

**Information for Global Intangible Low-Taxed Income**  
▶ Attach to Form 5471.  
▶ Go to [www.irs.gov/Form5471](http://www.irs.gov/Form5471) for instructions and the latest information.

OMB No. 1545-0123

Name of person filing Form 5471  
**THE FORM 5471 SERIES EPISODE 6**

Identifying number  
999-99-9999

Name of foreign corporation  
**CFC LTD.**

EIN (if any)

Reference ID number (see instructions)  
CFCLTD

Separate Category (Enter code—see instructions.) ▶ **GEN**

	Functional Currency	Conversion Factor	U.S. Dollars
<b>Functional Currency is USD</b>			
<b>1</b> Gross income (see instructions if cost of goods sold exceed gross receipts).....	20,000.		
<b>2</b> Exclusions (see instructions if cost of goods sold exceed gross receipts)			
<b>a</b> Effectively connected income.....			
<b>b</b> Subpart F income.....			
<b>c</b> High-tax exception income per section 954(b)(4).....			
<b>d</b> Related party dividends.....			
<b>e</b> Foreign oil and gas extraction income.....			
<b>3</b> Total exclusions (combine lines 2a through 2e).....			
<b>4</b> Gross income less total exclusions (line 1 minus line 3) (see instructions).....	20,000.		
<b>5</b> Deductions properly allocable to amount on line 4.....	3,000.		
<b>6</b> Tested income (loss) (line 4 minus line 5) (see instructions).....	17,000.	1	17,000.
<b>7</b> Tested foreign income taxes.....			
<b>8</b> Qualified business asset investment (QBAI).....	18,000.	1	18,000.
<b>9a</b> Interest expense included on line 5.....	1,000.		
<b>b</b> Qualified interest expense.....			
<b>c</b> Tested loss QBAI amount.....			
<b>d</b> Tested interest expense (line 9a minus the sum of line 9b and line 9c). If zero or less, enter -0-.....	1,000.	1	1,000.
<b>10a</b> Interest income included in line 4.....			
<b>b</b> Qualified interest income.....			
<b>c</b> Tested interest income (line 10a minus line 10b). If zero or less, enter -0-.....			

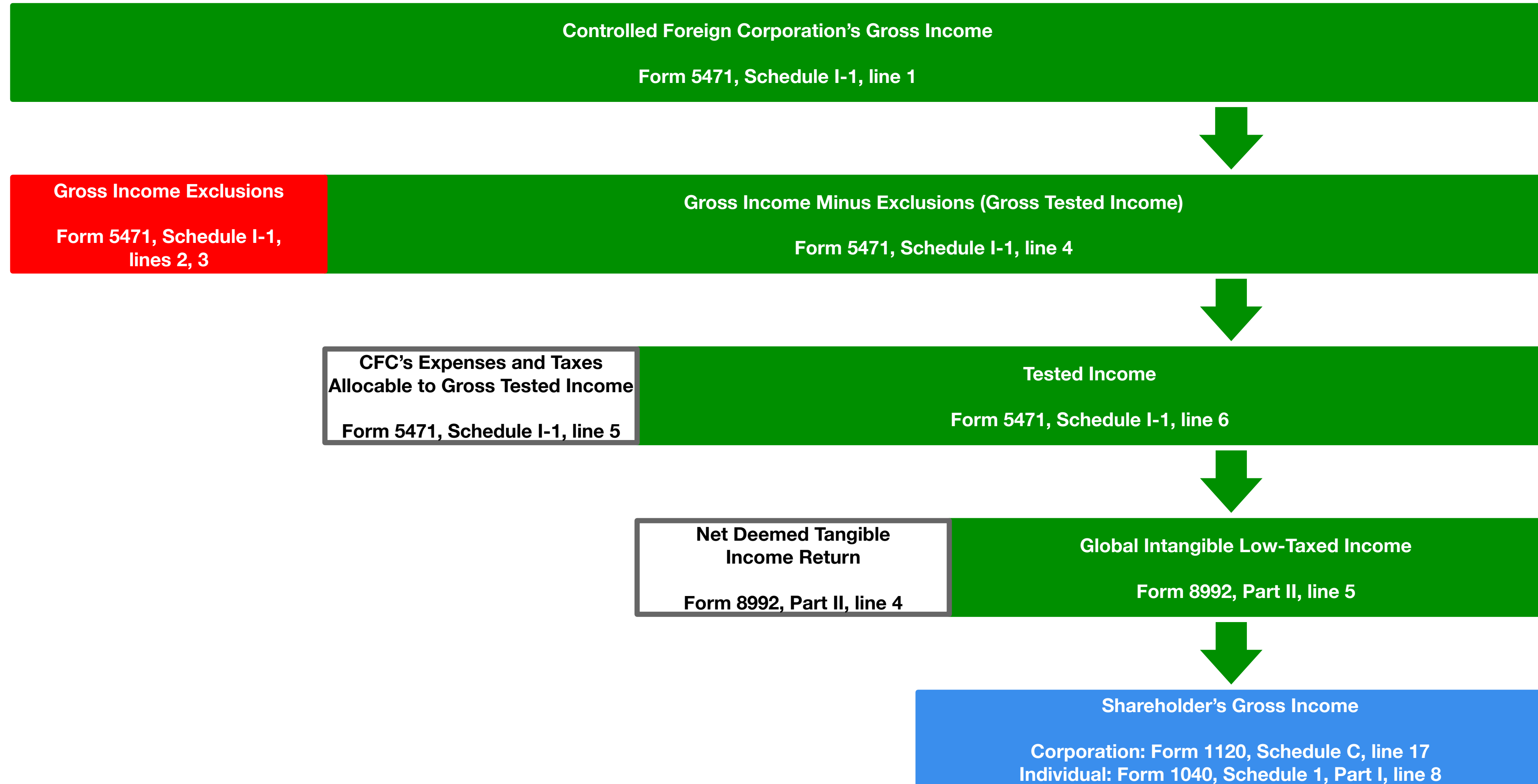
BAA For Paperwork Reduction Act Notice, see instructions. Schedule I-1 (Form 5471) (Rev. 12-2021)

## 5. Exclusions from the CFC's Gross Income

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Form 5471, Schedule I-1, lines 2, 3.

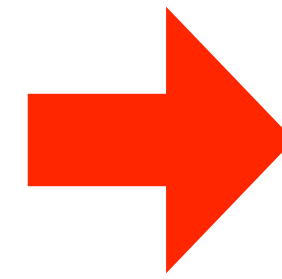
# Exclusions from the CFC's gross income





# Exclusions from the CFC's gross income on Form 5471, Schedule I-1

- The Internal Revenue Code already has ways to impose U.S. income tax on these income items.
- Therefore, IRC §951A deducts these items from the CFC's gross income. IRC §951A(c)(2)(A)(i).



**SCHEDULE I-1 (Form 5471)**  
(Rev. December 2021)  
Department of the Treasury  
Internal Revenue Service

**Information for Global Intangible Low-Taxed Income**  
▶ Attach to Form 5471.  
▶ Go to [www.irs.gov/Form5471](http://www.irs.gov/Form5471) for instructions and the latest information.

OMB No. 1545-0123

Name of person filing Form 5471: THE FORM 5471 SERIES EPISODE 6  
Identifying number: 999-99-9999

Name of foreign corporation: CFC LTD. EIN (if any):  
Reference ID number (see instructions): CFCLTD

Separate Category (Enter code—see instructions.): GEN

		Functional Currency	Conversion Rate	U.S. Dollars
<b>1</b>	Gross income (see instructions if cost of goods sold exceed gross receipts).....	20,000.		
<b>2</b>	Exclusions (see instructions if cost of goods sold exceed gross receipts)			
<b>a</b>	Effectively connected income..... <b>2a</b>			
<b>b</b>	Subpart F income..... <b>2b</b>			
<b>c</b>	High-tax exception income per section 954(b)(4)..... <b>2c</b>			
<b>d</b>	Related party dividends..... <b>2d</b>			
<b>e</b>	Foreign oil and gas extraction income..... <b>2e</b>			
<b>3</b>	Total exclusions (combine lines 2a through 2e).....			
<b>4</b>	Gross income less total exclusions (line 1 minus line 3) (see instructions).....	20,000.		
<b>5</b>	Deductions properly allocable to amount on line 4.....	3,000.		
<b>6</b>	Tested income (loss) (line 4 minus line 5) (see instructions).....	17,000.	1	17,000.
<b>7</b>	Tested foreign income taxes.....			
<b>8</b>	Qualified business asset investment (QBAI).....	18,000.	1	18,000.
<b>9a</b>	Interest expense included on line 5..... <b>9a</b>	1,000.		
<b>b</b>	Qualified interest expense..... <b>9b</b>			
<b>c</b>	Tested loss QBAI amount..... <b>9c</b>			
<b>d</b>	Tested interest expense (line 9a minus the sum of line 9b and line 9c). If zero or less, enter -0-.....	1,000.	1	1,000.
<b>10a</b>	Interest income included in line 4..... <b>10a</b>			
<b>b</b>	Qualified interest income..... <b>10b</b>			
<b>c</b>	Tested interest income (line 10a minus line 10b). If zero or less, enter -0-.....			

**Functional Currency is USD**

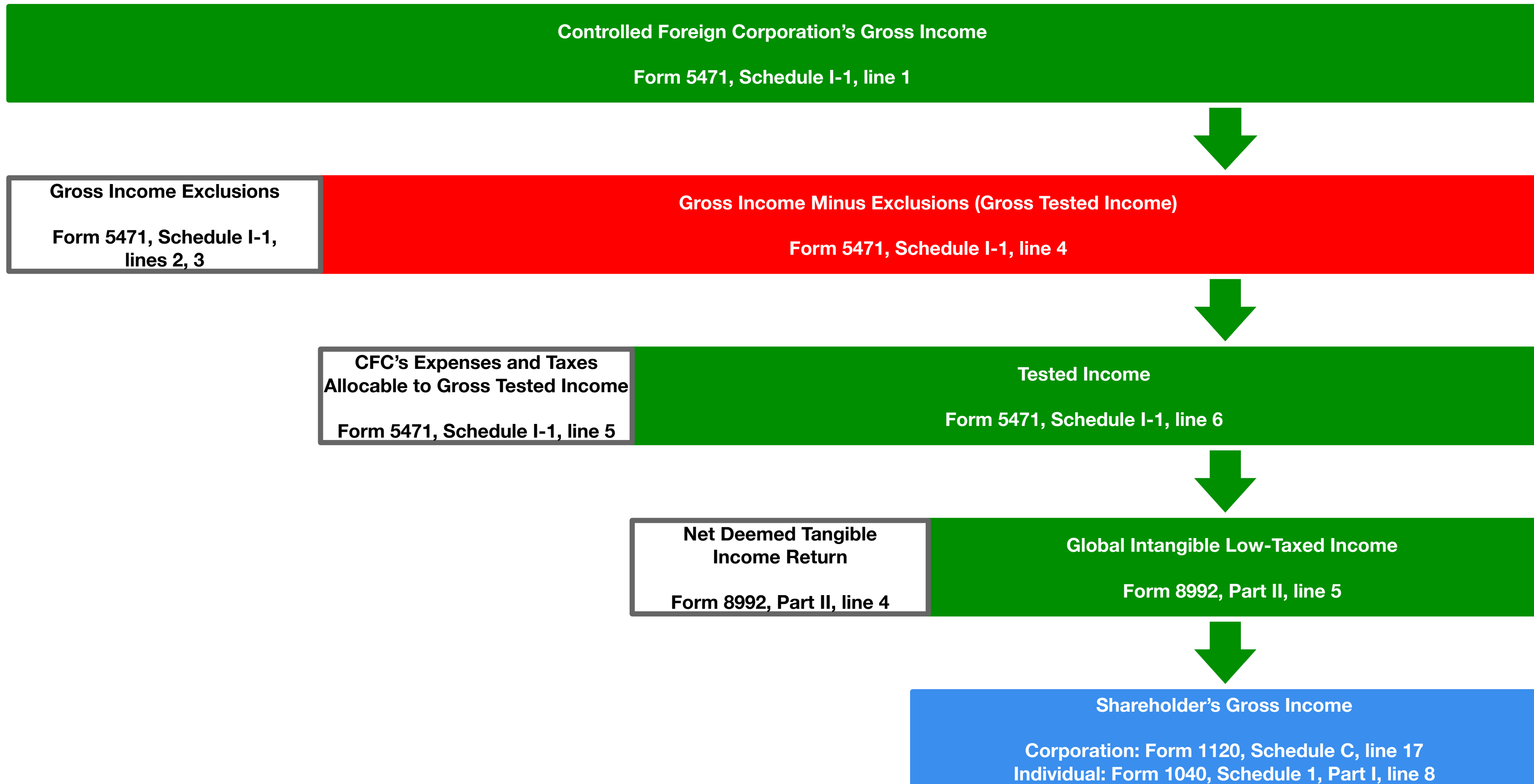
BAA For Paperwork Reduction Act Notice, see instructions. Schedule I-1 (Form 5471) (Rev. 12-2021)

## 6. The CFC's Gross Tested Income

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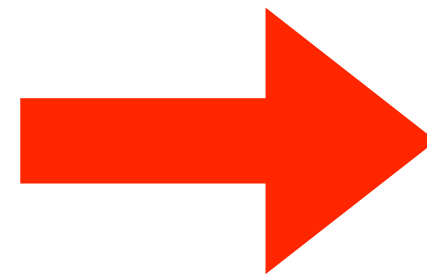
Defined at Regs. §1.951A-2(c)(1); Form 5471, Schedule I-1, line 4.

# Gross tested income: what's left over after the exclusions



# Gross income – exclusions = gross tested income

SCHEDULE I-1 (Form 5471)		Information for Global Intangible Low-Taxed Income		OMB No. 1545-0123	
(Rev. December 2021)		▶ Attach to Form 5471.			
Department of the Treasury Internal Revenue Service		▶ Go to <a href="http://www.irs.gov/Form5471">www.irs.gov/Form5471</a> for instructions and the latest information.			
Name of person filing Form 5471			Identifying number		
THE FORM 5471 SERIES EPISODE 6			999-99-9999		
Name of foreign corporation		EIN (if any)	Reference ID number (see instructions)		
CFC LTD.			CFCLTD		
Separate Category (Enter code—see instructions.)			▶ GEN		
<b>Functional Currency is USD</b>		Functional Currency	Conversion Rate	U.S. Dollars	
1 Gross income (see instructions if cost of goods sold exceed gross receipts)		1	20,000.		
2 Exclusions (see instructions if cost of goods sold exceed gross receipts)					
a Effectively connected income		2a			
b Subpart F income		2b			
c High-tax exception income per section 954(b)(4)		2c			
d Related party dividends		2d			
e Foreign oil and gas extraction income		2e			
3 Total exclusions (combine lines 2a through 2e)		3			
4 Gross income less total exclusions (line 1 minus line 3) (see instructions)		4	20,000.		
5 Deductions properly allocable to amount on line 4		5	3,000.		
6 Tested income (loss) (line 4 minus line 5) (see instructions)		6	17,000.	1	17,000.
7 Tested foreign income taxes		7			
8 Qualified business asset investment (QBAI)		8	18,000.	1	18,000.
9a Interest expense included on line 5		9a	1,000.		
b Qualified interest expense		9b			
c Tested loss QBAI amount		9c			
d Tested interest expense (line 9a minus the sum of line 9b and line 9c). If zero or less, enter -0-		9d	1,000.	1	1,000.
10a Interest income included in line 4		10a			
b Qualified interest income		10b			
c Tested interest income (line 10a minus line 10b). If zero or less, enter -0-		10c			

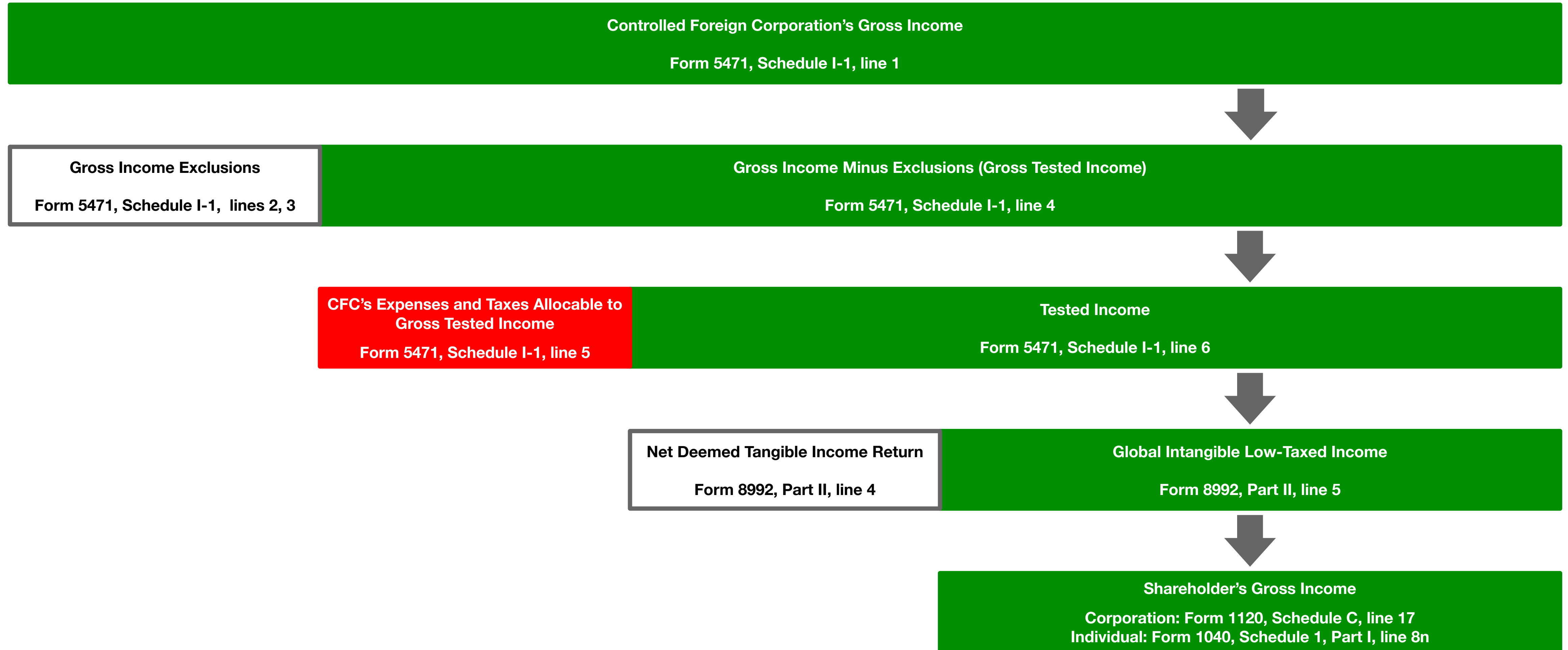


## 7. The CFC's [Net] Tested Income

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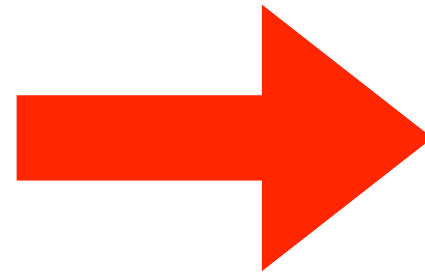
Form 5471, Schedule I-1, lines 5, 6 (CFC); Form 8992, Part I (shareholder's pro rata share).

# Deductions, taxes allocable to gross tested income



# Deductions, taxes allocable to gross tested income: tax return

SCHEDULE I-1 (Form 5471)		Information for Global Intangible Low-Taxed Income		OMB No. 1545-0123	
(Rev. December 2021)		▶ Attach to Form 5471.			
Department of the Treasury Internal Revenue Service		▶ Go to <a href="http://www.irs.gov/Form5471">www.irs.gov/Form5471</a> for instructions and the latest information.			
Name of person filing Form 5471			Identifying number		
THE FORM 5471 SERIES EPISODE 6			999-99-9999		
Name of foreign corporation		EIN (if any)	Reference ID number (see instructions)		
CFC LTD.			CFCLTD		
Separate Category (Enter code—see instructions.)			▶ GEN		
<b>Functional Currency is USD</b>		Functional Currency	Conversion Rate	U.S. Dollars	
<b>1</b> Gross income (see instructions if cost of goods sold exceed gross receipts)		1	20,000.		
<b>2</b> Exclusions (see instructions if cost of goods sold exceed gross receipts)					
<b>a</b> Effectively connected income		2a			
<b>b</b> Subpart F income		2b			
<b>c</b> High-tax exception income per section 954(b)(4)		2c			
<b>d</b> Related party dividends		2d			
<b>e</b> Foreign oil and gas extraction income		2e			
<b>3</b> Total exclusions (combine lines 2a through 2e)		3			
<b>4</b> Gross income less total exclusions (line 1 minus line 3) (see instructions)		4	20,000.		
<b>5</b> Deductions properly allocable to amount on line 4		5	3,000.		
<b>6</b> Tested income (loss) (line 4 minus line 5) (see instructions)		6	17,000.	1	17,000.
<b>7</b> Tested foreign income taxes		7			
<b>8</b> Qualified business asset investment (QBAI)		8	18,000.	1	18,000.
<b>9a</b> Interest expense included on line 5		9a	1,000.		
<b>b</b> Qualified interest expense		9b			
<b>c</b> Tested loss QBAI amount		9c			
<b>d</b> Tested interest expense (line 9a minus the sum of line 9b and line 9c). If zero or less, enter -0-		9d	1,000.	1	1,000.
<b>10a</b> Interest income included in line 4		10a			
<b>b</b> Qualified interest income		10b			
<b>c</b> Tested interest income (line 10a minus line 10b). If zero or less, enter -0-		10c			



**Depreciation: \$2,000  
Interest expense: \$1,000**

**See Form 5471, Schedule F, Line 9.  
QBAI is calculated by taking the  
average of the quarterly adjusted  
basis value for the year.**

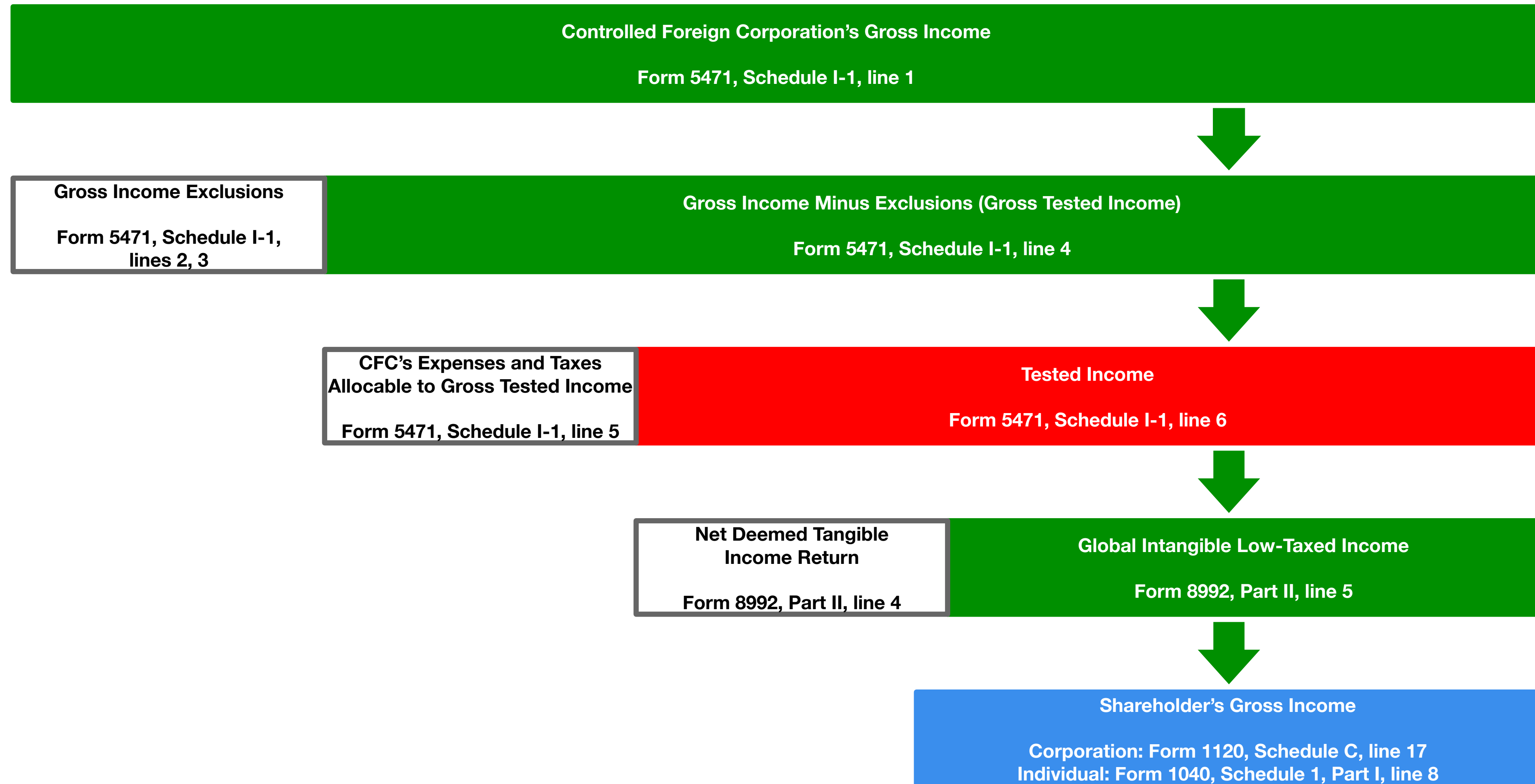
# Allowable deductions, taxes allocable to gross tested income: law

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- Deductions are **allowable** using the same rules that apply to calculating Subpart F income: apply Regs. §1.952-2 and pretend the CFC is a domestic corporation. *Regs. §1.951A-2(c)(2)(i).*
- **Allocate** the CFC's deductible expenses and taxes paid among the six categories of income (five exclusions and the remainder, gross tested income) using the rules borrowed from Subpart F at IRC §954(b)(5) and Regs. §1.954-1(c). *Regs. §1.951A-2(c)(3).*



Gross tested income – (allocable deductions + taxes) = tested income



# Gross tested income – (allocable deductions + taxes) = tested income

**SCHEDULE I-1 (Form 5471)**  
(Rev. December 2021)  
Department of the Treasury  
Internal Revenue Service

**Information for Global Intangible Low-Taxed Income**  
▶ Attach to Form 5471.  
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OMB No. 1545-0123

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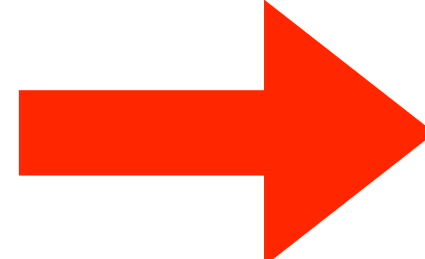
Name of person filing Form 5471: **THE FORM 5471 SERIES EPISODE 6**      Identifying number: **999-99-9999**

Name of foreign corporation: **CFC LTD.**      EIN (if any):      Reference ID number (see instructions): **CFCLTD**

Separate Category (Enter code—see instructions.): **GEN**

		Functional Currency	Conversion Rate	U.S. Dollars
<b>1</b>	Gross income (see instructions if cost of goods sold exceed gross receipts).....	20,000.		
<b>2</b>	Exclusions (see instructions if cost of goods sold exceed gross receipts)			
<b>a</b>	Effectively connected income..... <b>2a</b>			
<b>b</b>	Subpart F income..... <b>2b</b>			
<b>c</b>	High-tax exception income per section 954(b)(4)..... <b>2c</b>			
<b>d</b>	Related party dividends..... <b>2d</b>			
<b>e</b>	Foreign oil and gas extraction income.... <b>2e</b>			
<b>3</b>	Total exclusions (combine lines 2a through 2e).....			
<b>4</b>	Gross income less total exclusions (line 1 minus line 3) (see instructions).....	20,000.		
<b>5</b>	Deductions properly allocable to amount on line 4.....	3,000.		
<b>6</b>	Tested income (loss) (line 4 minus line 5) (see instructions).....	17,000.	1	17,000.
<b>7</b>	Tested foreign income taxes.....			
<b>8</b>	Qualified business asset investment (QBAI).....	18,000.	1	18,000.
<b>9a</b>	Interest expense included on line 5..... <b>9a</b>	1,000.		
<b>b</b>	Qualified interest expense..... <b>9b</b>			
<b>c</b>	Tested loss QBAI amount..... <b>9c</b>			
<b>d</b>	Tested interest expense (line 9a minus the sum of line 9b and line 9c). If zero or less, enter -0-.....	1,000.	1	1,000.
<b>10a</b>	Interest income included in line 4..... <b>10a</b>			
<b>b</b>	Qualified interest income..... <b>10b</b>			
<b>c</b>	Tested interest income (line 10a minus line 10b). If zero or less, enter -0-.....			

Schedule I-1 (Form 5471) (Rev. 12-2021)



**Functional Currency is USD**

**Depreciation: \$2,000  
Interest expense: \$1,000**

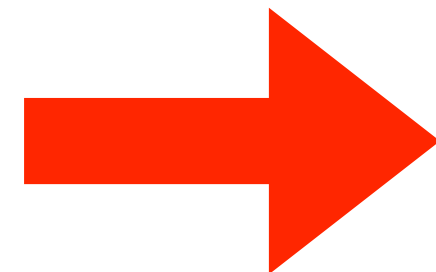
**See Form 5471, Schedule F, Line 9.  
QBAI is calculated by taking the average of the quarterly adjusted basis value for the year.**

# Shareholder's pro rata share of tested income: Form 8992, Part I, line 1

Form <b>8992</b>	<b>U.S. Shareholder Calculation of Global Intangible Low-Taxed Income (GILTI)</b>	OMB No. 1545-0123
(Rev. December 2022)	<b>Go to <a href="http://www.irs.gov/Form8992">www.irs.gov/Form8992</a> for instructions and the latest information.</b>	Attachment Sequence No. <b>992</b>
Department of the Treasury Internal Revenue Service		

Name of person filing this return <b>THE FORM 5471 SERIES EPISODE 6</b>	A Identifying number 999-99-9999
Name of U.S. shareholder	B Identifying number

<b>Part I Net Controlled Foreign Corporation (CFC) Tested Income</b>		
<b>1</b> Sum of Pro Rata Share of Net Tested Income If the U.S. shareholder is not a member of a U.S. consolidated group, enter the total from Schedule A (Form 8992), line 1, column (e). If the U.S. shareholder is a member of a U.S. consolidated group, enter the amount from Schedule B (Form 8992), Part II, column (c), that pertains to the U.S. shareholder.	1	17,000.
<b>2</b> Sum of Pro Rata Share of Net Tested Loss If the U.S. shareholder is not a member of a U.S. consolidated group, enter the total from Schedule A (Form 8992), line 1, column (f). If the U.S. shareholder is a member of a U.S. consolidated group, enter the amount from Schedule B (Form 8992), Part II, column (f), that pertains to the U.S. shareholder.	2	( )
<b>3</b> Net CFC Tested Income. Combine lines 1 and 2. If zero or less, stop here .....	3	17,000.

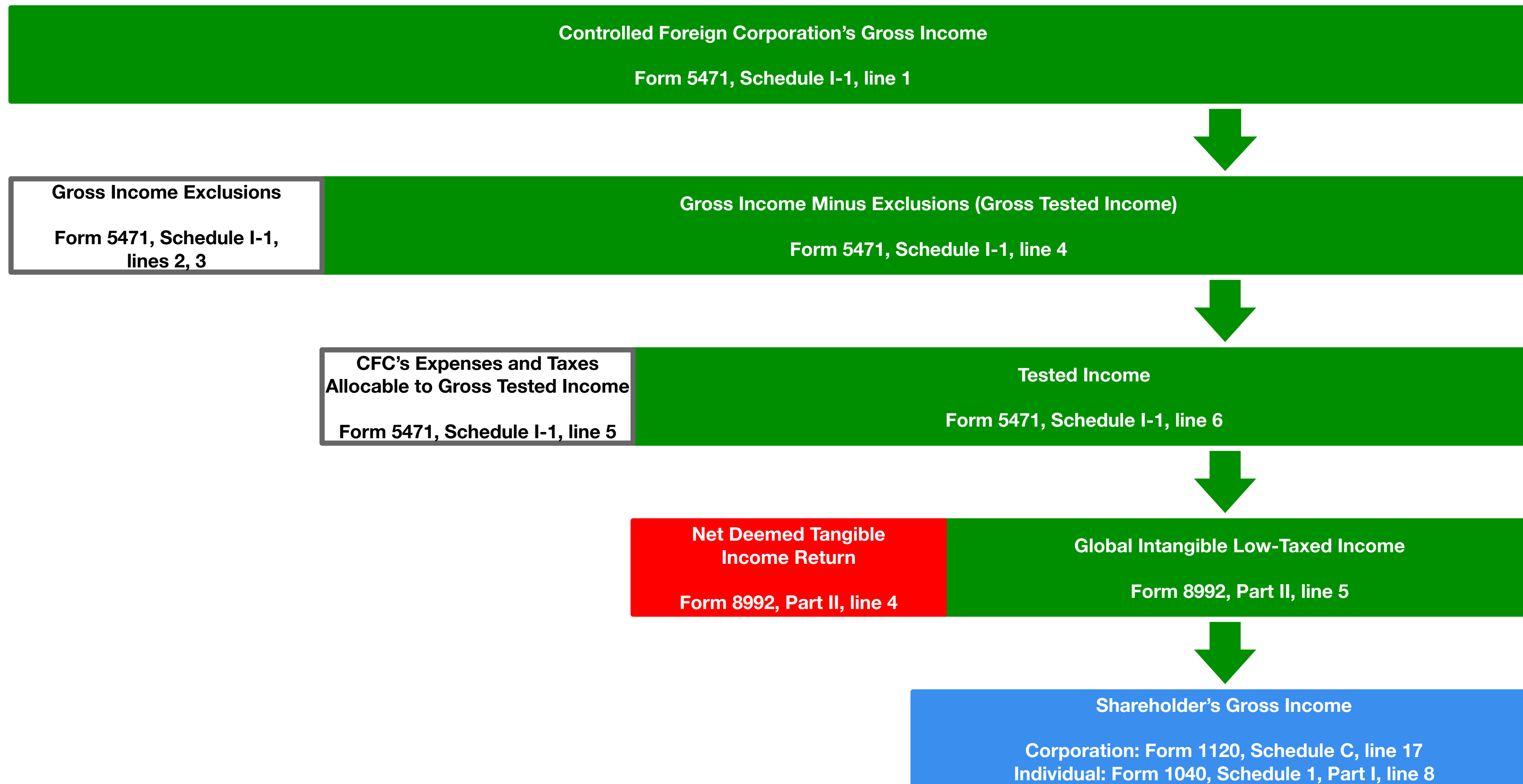


# 8. Net Deemed Tangible Income Return

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Form 5471, Schedule I-1, Lines 8 - 10; Form 8992, Part II.

# Net Deemed Tangible Income Return (Net “DTIR”)



# Congress: some [net] tested income is tax-free and some is taxable

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- If all net tested income is INCLUDED in gross income, then there is no reason to for the dividend-received deduction (IRC §245A). Foreign-source active business income would not be tax-free.
- If all net tested income is EXCLUDED from gross income, then taxpayers have an incentive to Commit Acts of Base Erosion by moving intangible assets and business operations out of the United States.
- So, IRC §951A finds an arbitrary middle ground. Some of the CFC's tested income is included in a U.S. shareholder's gross income, and some is not.

# Net Deemed Tangible Income Return: the tax-free income

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- [Net] Tested Income has two components:
  - Net Deemed Tangible Income Return — computed using an arbitrary formula.
  - The rest of the [Net] Tested Income.
- Net Deemed Tangible Income Return is not included in gross income of the United States shareholder.
- Net Deemed Tangible Income Return can then be paid as a dividend to the United States shareholder and be protected by the dividend-received deduction of IRC §245A — tax-free income to the United States shareholder.

## Net DTIR is an arbitrary amount: 10% of depreciable assets

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- Net Deemed Tangible Income Return is an arbitrary, made-up number.
- It's an income item created from a balance sheet item.
- It's an assumed rate of return that a public market investor would be presumed to insist on receiving: 10% ROI on assets.
- 10% of *which* assets, though? Business assets depreciable under IRC §167.
- Theory: you're not moving tangible assets around for clever tax reasons; depreciable assets are where they are for sound business reasons.



# Anti-abuse tactic: calculate quarterly adjusted basis, take average

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- DTIR uses adjusted basis of tangible/depreciable assets (“QBAI”) to compute the portion of [Net] Tested Income that is not subject to inclusion in the United States shareholder’s gross income.
- To prevent massive equipment purchases on December 31, you compute adjusted basis quarterly and use the average to compute DTIR.

## The asset base = QBAI

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- Identify “**specified** tangible property” used to produce **tested** income. *IRC §951A(d)(2)*. Must be depreciable assets. *IRC §951A(d)(1)(B)*.
- Compute the adjusted basis for each asset, quarterly, and then compute the average of everything you just computed. *IRC §951A(d)(1)*.
- Congratulations. You have **Qualified Business Asset Investment** — “QBAI” — the number you need.
- Form 5471, Schedule I-1, line 8. Go to Regs. §1.951A-3 for more details.

# How to compute Net Deemed Tangible Income Return

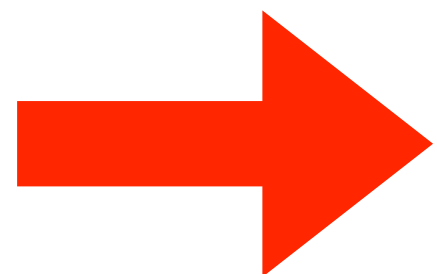
	<b>QBAI</b> Form 5471, Schedule I-1, Line 8	“Qualified Business Asset Investment”. IRC §951A(d); Regs. §1.951A-3(b). This is the adjusted basis of the CFC’s depreciable assets used to generate IRC §951A(a) income.
<b>x</b>	<b>X 10%</b> Form 8992, Part II, Line 2	The percentage is specified in IRC §951A(b)(2)(A) and Regs. §1.951A-1(c)(3)(ii).
<b>=</b>	<b>Deemed Tangible Income Return</b> Form 8992, Part II, Line 2	Regs. §1.951A-1(c)(3)(ii). Simple multiplication.
<b>-</b>	<b>Specified Interest Expense</b> Form 8992, Part II, Line 3c	Definition at IRC §951A(b)(2)(B); Regs. §1.951A-1(c)(3)(iii).
<b>=</b>	<b>Net Deemed Tangible Income Return</b> Form 8992, Part II, Line 4	IRC §951A(b)(2); Regs. §1.951A-1(c)(3)(i)(B). Simple subtraction.

# Qualified Business Asset Investment on Schedule I-1

SCHEDULE I-1 (Form 5471) (Rev. December 2021)		Information for Global Intangible Low-Taxed Income		OMB No. 1545-0123	
Department of the Treasury Internal Revenue Service		▶ Attach to Form 5471. ▶ Go to <a href="http://www.irs.gov/Form5471">www.irs.gov/Form5471</a> for instructions and the latest information.			
Name of person filing Form 5471 THE FORM 5471 SERIES EPISODE 6			Identifying number 999-99-9999		
Name of foreign corporation CFC LTD.		EIN (if any)		Reference ID number (see instructions) CFCLTD	
Separate Category (Enter code—see instructions.)			▶ GEN		
<b>Functional Currency is USD</b>			Functional Currency	Conversion Rate	U.S. Dollars
1	Gross income (see instructions if cost of goods sold exceed gross receipts)		1	20,000.	
2	Exclusions (see instructions if cost of goods sold exceed gross receipts)				
a	2a	Effectively connected income			
b	2b	Subpart F income			
c	2c	High-tax exception income per section 954(b)(4)			
d	2d	Related party dividends			
e	2e	Foreign oil and gas extraction income			
3	Total exclusions (combine lines 2a through 2e)		3		
4	Gross income less total exclusions (line 1 minus line 3) (see instructions)		4	20,000.	
5	Deductions properly allocable to amount on line 4		5	3,000.	
6	Tested income (loss) (line 4 minus line 5) (see instructions)		6	17,000.	1
7	Tested foreign income taxes		7		
8	Qualified business asset investment (QBAI)		8	18,000.	1
9a	9a	Interest expense included on line 5		1,000.	
b	9b	Qualified interest expense			
c	9c	Tested loss QBAI amount			
d	9d	Tested interest expense (line 9a minus the sum of line 9b and line 9c). If zero or less, enter -0-		1,000.	1
10a	10a	Interest income included in line 4			
b	10b	Qualified interest income			
c	10c	Tested interest income (line 10a minus line 10b). If zero or less, enter -0-			

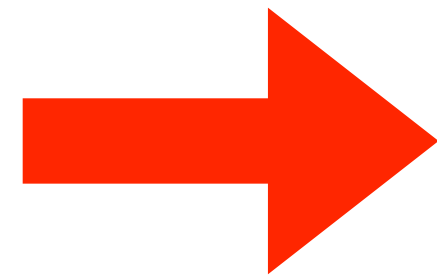
BAA For Paperwork Reduction Act Notice, see instructions. Schedule I-1 (Form 5471) (Rev. 12-2021)

See Form 5471, Schedule F, Line 9. QBAI is calculated by taking the average of the quarterly adjusted basis value for the year.



- The \$18,000 QBAI amount on line 9 is derived from our example's hypothetical balance sheet:
- \$19,000 depreciable asset minus \$2,000 of depreciation in the current year (which you see as an expense on line 5).

# “Deemed” tangible income return calculation (Form 8992)



<b>Part II Calculation of Global Intangible Low-Taxed Income (GILTI)</b>			
<b>1</b>	Net CFC Tested Income. Enter amount from Part I, line 3. ....	<b>1</b>	17,000.
<b>2</b>	Deemed Tangible Income Return (DTIR) If the U.S. shareholder is not a member of a U.S. consolidated group, multiply the total from Schedule A (Form 8992), line 1, column (g), by 10% (0.10). If the U.S. shareholder is a member of a U.S. consolidated group, enter the amount from Schedule B (Form 8992), Part II, column (i), that pertains to the U.S. shareholder.	<b>2</b>	1,800.
<b>3a</b>	Sum of Pro Rata Share of Tested Interest Expense If the U.S. shareholder is not a member of a U.S. consolidated group, enter the total from Schedule A (Form 8992), line 1, column (j). If the U.S. shareholder is a member of a U.S. consolidated group, leave line 3a blank.	<b>3a</b>	1,000.
<b>b</b>	Sum of Pro Rata Share of Tested Interest Income If the U.S. shareholder is not a member of a U.S. consolidated group, enter the total from Schedule A (Form 8992), line 1, column (i). If the U.S. shareholder is a member of a U.S. consolidated group, leave line 3b blank.	<b>3b</b>	
<b>c</b>	Specified Interest Expense If the U.S. shareholder is not a member of a U.S. consolidated group, subtract line 3b from line 3a. If zero or less, enter -0-. If the U.S. shareholder is a member of a U.S. consolidated group, enter the amount from Schedule B (Form 8992), Part II, column (m), that pertains to the U.S. shareholder.	<b>3c</b>	1,000.
<b>4</b>	Net DTIR. Subtract line 3c from line 2. If zero or less, enter -0-.....	<b>4</b>	800.
<b>5</b>	GILTI. Subtract line 4 from line 1. If zero or less, enter -0-.....	<b>5</b>	16,200.

BAA For Paperwork Reduction Act Notice, see separate instructions.

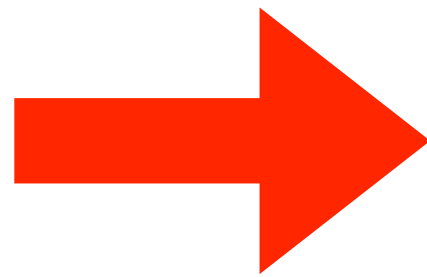
Form **8992** (Rev. 12-2022)

# DTIR minus interest = Net DTIR

	<b>QBAI</b> Form 5471, Schedule I-1, Line 8	“Qualified Business Asset Investment”. IRC §951A(d); Regs. §1.951A-3(b). This is the adjusted basis of the CFC’s depreciable assets used to generate IRC §951A(a) income.
<b>x</b>	<b>X 10%</b> Form 8992, Part II, Line 2	An arbitrary percentage specified in IRC §951A(b)(2)(A) and Regs. §1.951A-1(c)(3)(ii).
<b>=</b>	<b>Deemed Tangible Income Return</b> Form 8992, Part II, Line 2	Regs. §1.951A-1(c)(3)(ii). Simple multiplication.
<b>-</b>	<b>Minus Specified Interest Expense</b> Form 8992, Part II, Line 3c	Definition at IRC §951A(b)(2)(B); Regs. §1.951A-1(c)(3)(iii).
<b>=</b>	<b>Net Deemed Tangible Income Return</b> Form 8992, Part II, Line 4	IRC §951A(b)(2); Regs. §1.951A-1(c)(3)(i)(B). Simple subtraction.

# “Qualified” to “tested” interest expense: Schedule I-1

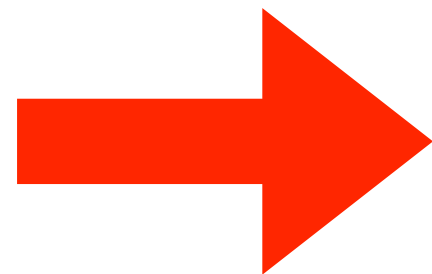
SCHEDULE I-1 (Form 5471) (Rev. December 2021)		Information for Global Intangible Low-Taxed Income		OMB No. 1545-0123	
Department of the Treasury Internal Revenue Service		▶ Attach to Form 5471. ▶ Go to <a href="http://www.irs.gov/Form5471">www.irs.gov/Form5471</a> for instructions and the latest information.			
Name of person filing Form 5471 THE FORM 5471 SERIES EPISODE 6			Identifying number 999-99-9999		
Name of foreign corporation CFC LTD.		EIN (if any)	Reference ID number (see instructions) CFCLTD		
Separate Category (Enter code—see instructions.) ▶ GEN					
<b>Functional Currency is USD</b>		Functional Currency	Conversion Rate	U.S. Dollars	
1 Gross income (see instructions if cost of goods sold exceed gross receipts) . . . . .		1	20,000.		
2 Exclusions (see instructions if cost of goods sold exceed gross receipts)					
a Effectively connected income . . . . .		2a			
b Subpart F income . . . . .		2b			
c High-tax exception income per section 954(b)(4) . . . . .		2c			
d Related party dividends . . . . .		2d			
e Foreign oil and gas extraction income . . . . .		2e			
3 Total exclusions (combine lines 2a through 2e) . . . . .		3			
4 Gross income less total exclusions (line 1 minus line 3) (see instructions) . . . . .		4	20,000.		
5 Deductions properly allocable to amount on line 4 . . . . .		5	3,000.		
6 Tested income (loss) (line 4 minus line 5) (see instructions) . . . . .		6	17,000.	1	17,000.
7 Tested foreign income taxes . . . . .		7			
8 Qualified business asset investment (QBAI) . . . . .		8	18,000.	1	18,000.
9a Interest expense included on line 5 . . . . .		9a	1,000.		
b Qualified interest expense . . . . .		9b			
c Tested loss QBAI amount . . . . .		9c			
d Tested interest expense (line 9a minus the sum of line 9b and line 9c). If zero or less, enter -0- . . . . .		9d	1,000.	1	1,000.
10a Interest income included in line 4 . . . . .		10a			
b Qualified interest income . . . . .		10b			
c Tested interest income (line 10a minus line 10b). If zero or less, enter -0- . . . . .		10c			



# “Tested” to “specified” interest expense: Form 8992

<b>Part II Calculation of Global Intangible Low-Taxed Income (GILTI)</b>			
<b>1</b>	Net CFC Tested Income. Enter amount from Part I, line 3. ....	<b>1</b>	17,000.
<b>2</b>	Deemed Tangible Income Return (DTIR) If the U.S. shareholder is not a member of a U.S. consolidated group, multiply the total from Schedule A (Form 8992), line 1, column (g), by 10% (0.10). If the U.S. shareholder is a member of a U.S. consolidated group, enter the amount from Schedule B (Form 8992), Part II, column (i), that pertains to the U.S. shareholder.	<b>2</b>	1,800.
<b>3a</b>	Sum of Pro Rata Share of Tested Interest Expense If the U.S. shareholder is not a member of a U.S. consolidated group, enter the total from Schedule A (Form 8992), line 1, column (j). If the U.S. shareholder is a member of a U.S. consolidated group, leave line 3a blank.	<b>3a</b>	1,000.
<b>b</b>	Sum of Pro Rata Share of Tested Interest Income If the U.S. shareholder is not a member of a U.S. consolidated group, enter the total from Schedule A (Form 8992), line 1, column (i). If the U.S. shareholder is a member of a U.S. consolidated group, leave line 3b blank.	<b>3b</b>	
<b>c</b>	Specified Interest Expense If the U.S. shareholder is not a member of a U.S. consolidated group, subtract line 3b from line 3a. If zero or less, enter -0-. If the U.S. shareholder is a member of a U.S. consolidated group, enter the amount from Schedule B (Form 8992), Part II, column (m), that pertains to the U.S. shareholder.	<b>3c</b>	1,000.
<b>4</b>	Net DTIR. Subtract line 3c from line 2. If zero or less, enter -0-.....	<b>4</b>	800.
<b>5</b>	GILTI. Subtract line 4 from line 1. If zero or less, enter -0-.....	<b>5</b>	16,200.

**BAA For Paperwork Reduction Act Notice, see separate instructions.** Form **8992** (Rev. 12-2022)

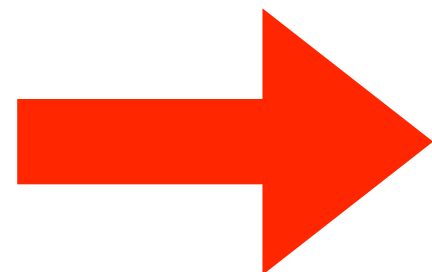




# Net Deemed Tangible Income Return: Form 8992

<b>Part II Calculation of Global Intangible Low-Taxed Income (GILTI)</b>			
<b>1</b>	Net CFC Tested Income. Enter amount from Part I, line 3. ....	<b>1</b>	17,000.
<b>2</b>	Deemed Tangible Income Return (DTIR) If the U.S. shareholder is not a member of a U.S. consolidated group, multiply the total from Schedule A (Form 8992), line 1, column (g), by 10% (0.10). If the U.S. shareholder is a member of a U.S. consolidated group, enter the amount from Schedule B (Form 8992), Part II, column (i), that pertains to the U.S. shareholder.	<b>2</b>	1,800.
<b>3a</b>	Sum of Pro Rata Share of Tested Interest Expense If the U.S. shareholder is not a member of a U.S. consolidated group, enter the total from Schedule A (Form 8992), line 1, column (j). If the U.S. shareholder is a member of a U.S. consolidated group, leave line 3a blank.	<b>3a</b>	1,000.
<b>b</b>	Sum of Pro Rata Share of Tested Interest Income If the U.S. shareholder is not a member of a U.S. consolidated group, enter the total from Schedule A (Form 8992), line 1, column (i). If the U.S. shareholder is a member of a U.S. consolidated group, leave line 3b blank.	<b>3b</b>	
<b>c</b>	Specified Interest Expense If the U.S. shareholder is not a member of a U.S. consolidated group, subtract line 3b from line 3a. If zero or less, enter -0-. If the U.S. shareholder is a member of a U.S. consolidated group, enter the amount from Schedule B (Form 8992), Part II, column (m), that pertains to the U.S. shareholder.	<b>3c</b>	1,000.
<b>4</b>	Net DTIR. Subtract line 3c from line 2. If zero or less, enter -0-.	<b>4</b>	800.
<b>5</b>	GILTI. Subtract line 4 from line 1. If zero or less, enter -0-.	<b>5</b>	16,200.

**BAA For Paperwork Reduction Act Notice, see separate instructions.** Form **8992** (Rev. 12-2022)

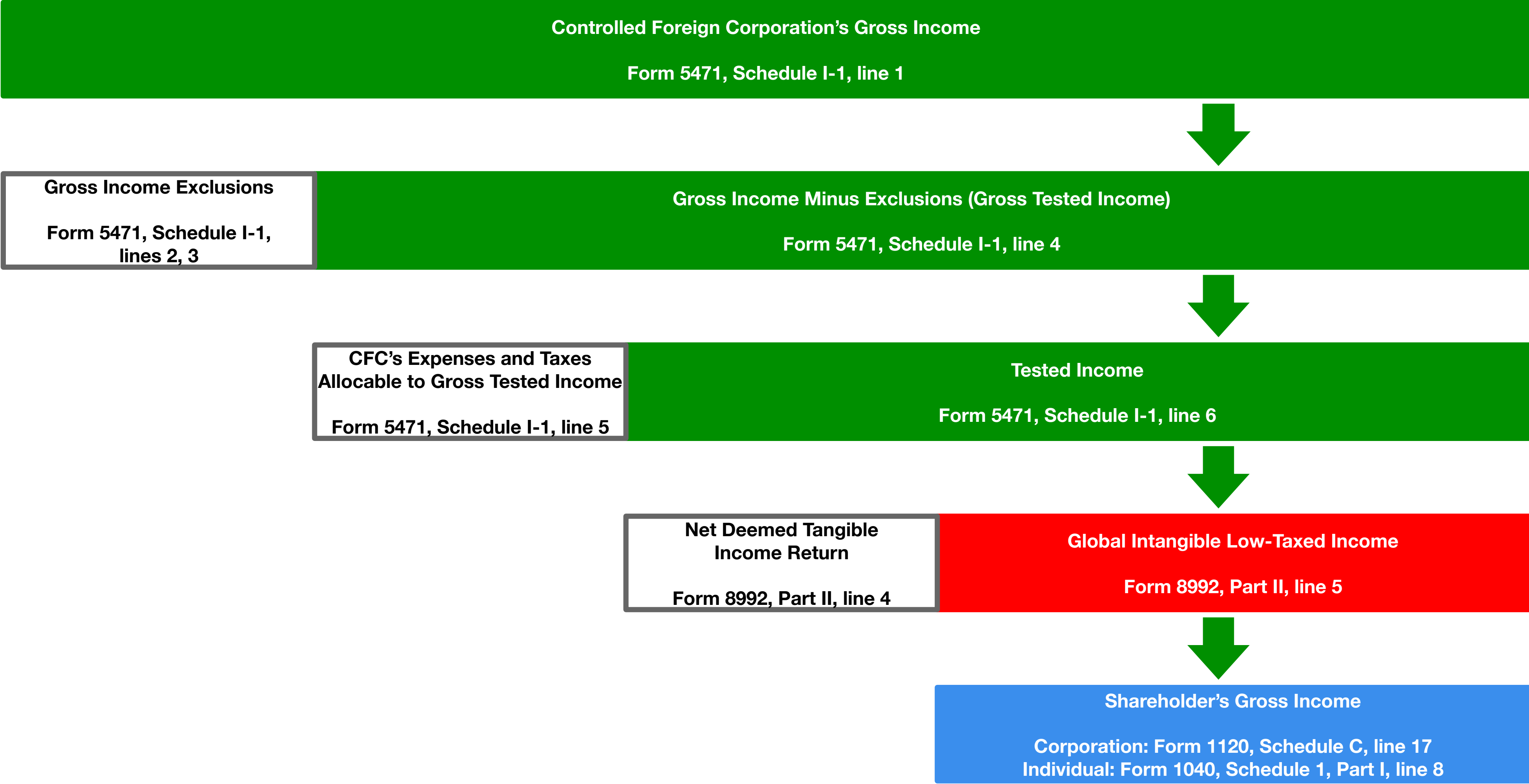


## 9. Global Intangible Low-Taxed Income: To Your Gross Income

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Form 8992, Part II, line 5.

# Global Intangible Low-Taxed Income: what you're taxed on

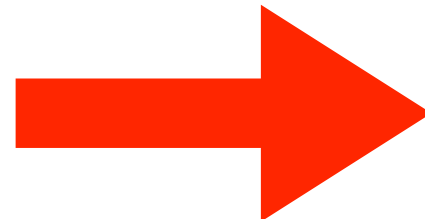


# Calculate the inclusion on Form 8992, Part II, line 5

<b>Part II Calculation of Global Intangible Low-Taxed Income (GILTI)</b>			
<b>1</b>	Net CFC Tested Income. Enter amount from Part I, line 3. ....	<b>1</b>	17,000.
<b>2</b>	Deemed Tangible Income Return (DTIR) If the U.S. shareholder is not a member of a U.S. consolidated group, multiply the total from Schedule A (Form 8992), line 1, column (g), by 10% (0.10). If the U.S. shareholder is a member of a U.S. consolidated group, enter the amount from Schedule B (Form 8992), Part II, column (i), that pertains to the U.S. shareholder.	<b>2</b>	1,800.
<b>3a</b>	Sum of Pro Rata Share of Tested Interest Expense If the U.S. shareholder is not a member of a U.S. consolidated group, enter the total from Schedule A (Form 8992), line 1, column (j). If the U.S. shareholder is a member of a U.S. consolidated group, leave line 3a blank.	<b>3a</b>	1,000.
<b>b</b>	Sum of Pro Rata Share of Tested Interest Income If the U.S. shareholder is not a member of a U.S. consolidated group, enter the total from Schedule A (Form 8992), line 1, column (i). If the U.S. shareholder is a member of a U.S. consolidated group, leave line 3b blank.	<b>3b</b>	
<b>c</b>	Specified Interest Expense If the U.S. shareholder is not a member of a U.S. consolidated group, subtract line 3b from line 3a. If zero or less, enter -0-. If the U.S. shareholder is a member of a U.S. consolidated group, enter the amount from Schedule B (Form 8992), Part II, column (m), that pertains to the U.S. shareholder.	<b>3c</b>	1,000.
<b>4</b>	Net DTIR. Subtract line 3c from line 2. If zero or less, enter -0-.....	<b>4</b>	800.
<b>5</b>	GILTI. Subtract line 4 from line 1. If zero or less, enter -0-.....	<b>5</b>	16,200.

**BAA For Paperwork Reduction Act Notice, see separate instructions.**

Form **8992** (Rev. 12-2022)



## 10. The IRC §250 Deduction

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“A spoonful of sugar makes the medicine go down.”  
— *Mary Poppins, noted international tax scholar.*

# Who can take the IRC §250 deduction?

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- Domestic C corporations. *IRC §250(a)*.
- Individuals who make the IRC §962 election to have Subpart F income and IRC §951A income taxed using C corporation tax methods. *Regs. §1.962-1(b)(1)(i)(B)(3)*.

# The IRC §250 deduction

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- IRC §245A allows foreign-source active business income (up to the 10% ROI on depreciable assets) to be repatriated to the United States tax-free.
- IRC §250 reduces the tax imposed on the rest of the foreign-source active business income (the CFC's income above the 10% return on depreciable assets).
- It is an arbitrary tax deduction: 50% of the Global Intangible Low-Taxed Income inclusions amount. (This will decrease to 37.5% in 2026).

# The IRC §250 deduction

“In the case of a **domestic corporation** for any taxable year, there shall be allowed as a deduction an amount equal to the sum of—

(A) [omitted]

(B) 50 percent of—

(i) the global intangible low-taxed income amount (if any) which is included in the gross income of such domestic corporation under section 951A for such taxable year, and

(ii) [IRC §78 inclusion - omitted]”

*IRC §250(a)(1)(B).*

Form <b>8993</b> (Rev. December 2021) Department of the Treasury Internal Revenue Service		<b>Section 250 Deduction for Foreign-Derived Intangible Income (FDII) and Global Intangible Low-Taxed Income (GILTI)</b>		OMB No. 1545-0123	
			Attachment Sequence No. <b>993</b>		
Name of person filing this return			Identifying number		
<b>Part I Determining Deduction Eligible Income (DEI) and Deemed Intangible Income (DII)</b> (see instructions)					
<b>1</b>	Gross income			<b>1</b>	
<b>2</b>	Exclusions				
<b>a</b>	Income included under section 951(a)(1) (see instructions)	<b>2a</b>			
<b>b</b>	Income included under section 951A (see instructions)	<b>2b</b>			
<b>c</b>	Financial services income	<b>2c</b>			
<b>d</b>	CFC dividends (see instructions)	<b>2d</b>			
<b>e</b>	Domestic oil and gas extraction income	<b>2e</b>			
<b>f</b>	Foreign branch income	<b>2f</b>			
<b>3</b>	Total exclusions (add lines 2a through 2f)			<b>3</b>	
<b>4</b>	Gross DEI (subtract line 3 from line 1)			<b>4</b>	
<b>5</b>	Deductions properly allocable to the amount on line 4			<b>5</b>	
<b>6</b>	DEI (subtract line 5 from line 4)			<b>6</b>	
<b>7a</b>	Deemed tangible income return (DTIR) (10% of QBAL)	<b>7a</b>			
<b>b</b>	DTIR (10% of QBAL) from partnerships	<b>7b</b>			
<b>c</b>	Total DTIR (add lines 7a and 7b)			<b>7c</b>	
<b>8</b>	DII (subtract line 7c from line 6)			<b>8</b>	
<b>Part II Determining Foreign-Derived Deduction Eligible Income (FDDEI)</b> (see instructions)					
		(A) Foreign-derived income from all sales of general property	(B) Foreign-derived income from all sales of intangible property	(C) Foreign-derived income from all services	(D) Total (add columns (A) through (C))
<b>9a</b>	Gross receipts				<b>9a</b>
<b>b</b>	Gross receipts from partnerships				<b>9b</b>
<b>c</b>	Total gross receipts (add lines 9a and 9b)				<b>9c</b>
<b>10a</b>	Cost of goods sold (COGS) (see instructions)				<b>10a</b>
<b>b</b>	COGS from partnerships (see instructions)				<b>10b</b>
<b>c</b>	Total COGS (add lines 10a and 10b)				<b>10c</b>
<b>11</b>	Gross FDDEI (subtract line 10c from line 9c)				<b>11</b>
<b>12</b>	Allocable deductions				<b>12</b>
<b>13</b>	Allocable deductions from partnerships				<b>13</b>
<b>14</b>	Interest deductions				<b>14</b>
<b>15</b>	Research and experimental deductions				<b>15</b>
<b>16</b>	Other apportioned deductions				<b>16</b>
<b>17</b>	Other apportioned deductions from partnerships				<b>17</b>
<b>18</b>	Total deductions (add lines 12 through 17)				<b>18</b>
<b>19</b>	FDDEI (subtract line 18 from line 11)				<b>19</b>
<b>Part III Determining FDII and/or GILTI Deduction</b> (see instructions)					
<b>20</b>	Foreign-derived ratio (FDDEI/DEI) (divide line 19 by line 6)				<b>20</b>
<b>21</b>	FDII (multiply line 8 by line 20)				<b>21</b>
<b>22</b>	GILTI inclusion (see instructions)				<b>22</b>
<b>23</b>	Total FDII and GILTI (add lines 21 and 22)				<b>23</b>
<b>24</b>	Taxable income (see instructions) (If zero or less, skip lines 25 through 27 and enter -0- on lines 28 and 29.)				<b>24</b>
<b>25</b>	Excess FDII and GILTI over taxable income (subtract line 24 from line 23). If zero or less, enter -0- here and on lines 26 and 27				<b>25</b>
<b>26</b>	FDII reduction (divide line 21 by line 23; multiply by line 25)				<b>26</b>
<b>27</b>	GILTI reduction (subtract line 26 from line 25)				<b>27</b>
<b>28</b>	FDII deduction (see instructions). Enter here and on Form 1120, Schedule C				<b>28</b>
<b>29</b>	GILTI deduction (see instructions). Enter here and on Form 1120, Schedule C				<b>29</b>



# 11. Conclusion

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# Conclusion

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- IRC §951A is designed to discourage too much base erosion behavior (moving assets and business operations to foreign subsidiaries).
- IRC §951A creates:
  - A CFC-level income item that is included in a United States shareholder's gross income. Subsequent dividends are tax-free distributions of previously taxed earnings and profits under IRC §959.
  - A CFC-level income item that is excluded from a United States shareholder's gross income. Subsequent dividends are tax-free because IRC §245A creates a dividend-received deduction.

# Thanks!

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## *Disclaimer*

*This is not legal advice and I am not your lawyer. Do not rely on this presentation—do your own research to verify that the information is correct and that it applies to you. Or hire someone intelligent to help you.*