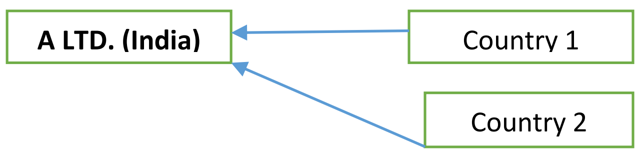
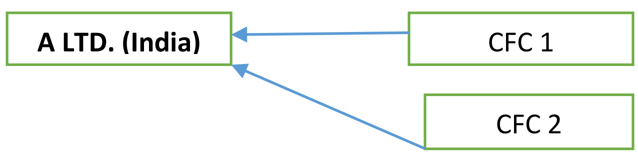
BEPS Action plan 3 (CFC Corporation)

Example:

- A LTD. (Indian company) has business all across the world. As per Indian law, A LTD is paying tax on its worldwide income.



- A LTD created its subsidiaries (CFC) outside India say in Dubai and Bermuda. Since subsidiary is separate legal entity, Now Indian law will not apply on the income earned by subsidiaries. Unless such income is repatriated in India i.e. dividend.



- Now A LTD. Can deter its tax payment until dividend is distributed by subsidiary.

Recommendation:-
CFC income should be calculated as per tax law applicable in the parent country. It means CFC income should be taxable in parent country irrespective of its remittance in parent country.

GILTI (Global Intangible Low-Tax Income)

GILTI is the income earned by foreign affiliates of US companies from intangible assets such as patents, trademarks, and copyrights.

Basic applications:-

1. Applies broadly to certain income generated by a CFC
2. "U.S shareholders" are required to include certain income generated by its CFC(s), regardless of actual repatriation.
3. U.S. shareholders who are domestic - C corporations (other than RICs and REITs) are eligible for up to an 80 percent deemed paid foreign tax credit (FTC) and a 50 percent

deduction of the current year inclusion plus the full amount of the Section 78 gross-up (subject to certain limitations).

GILTI will heavily impact any foreign business where profit is high relative to the fixed asset base.

- Services companies
- Procurement/Distribution companies
- Software/Technology companies

Section 951A of TCJA

U.S. shareholder of any CFC for a tax year must include in gross income its GILTI for that year.

Calculation of GILTI Income:-

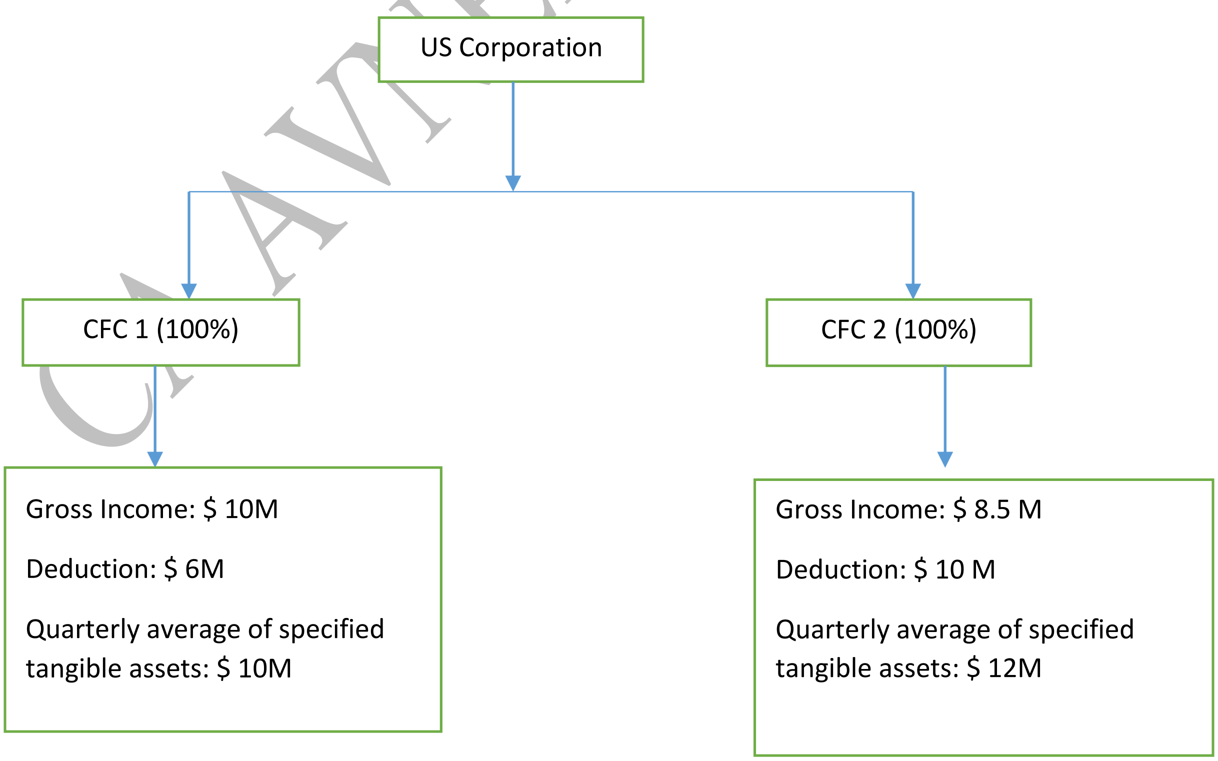
Step 1:- Determine net tested income

Step 2:- 10% of the qualified business asset investment

Step 3:- GILTI = Step 1 Less Step 2

Step 4:- Deduction of FTC is available

Example:-



Step 1: Determine net tested income

CFC 1 = $4M

CFC 2 = -$1.5M

Total Net Tested income = $ 2.5M

Step 2: Determine 10% of the qualified business asset investment

CFC 1 = 10% OF $ 10M = $ 1M

CFC 2 = 10% OF $ 12M = $ 1.2M

Total = $ 2.2M

Step 3:- GILTI = Step 1 Less Step 2

= $ 2.5M Less $ 2.2M = $.3M

80% Deemed Paid Foreign Tax Credit for GILTI:-

U.S. Parent Corporation is deemed to have paid an allocable portion of the foreign taxes paid by any CFCs from which the parent has a GILTI inclusion; and the parent's income must be grossed up for the taxes paid by the CFC which relate to its GILTI income inclusion. The credit is limited to 80% of the foreign taxes paid. There is no carryback or carry forward for taxes paid or accrued in the GILTI basket.

Step 1: Determine GILTI
Step 2: Taxes paid by CFC on GILTI shall be deemed to be paid by parent
Step 3: Add deemed tax under step 2 in GILTI
Step 4: Claim FTC max. Up to 80% of deemed tax paid