

**40th Annual TEI-SJSU
High Tech Tax Institute
November 5, 2024**

Pillar Two



TAX EXECUTIVES INSTITUTE, INC.
Silicon Valley Chapter



**LUCAS COLLEGE AND
GRADUATE SCHOOL OF BUSINESS**
MST Program

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Speaker Panel



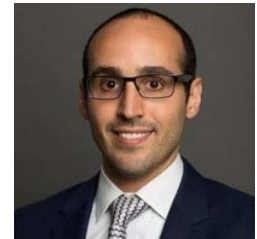
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IRS, Office of the Associate
Chief Counsel (International)

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Discussion Topics

- Compliance requirements, administration and timeline
- Incentives and credits
- M&A, divestitures and post-merger integration
- Co-investment structures
- Dual consolidated losses, disregarded payment losses and duplicate loss arrangements

Compliance Requirements, Administration and Timeline

Pillar Two compliance has arrived

Form	Frequency	Number of forms	Due date	Complexity
Registration Form	One time	1x per implementing jurisdiction (although not every jurisdiction may require it) (filed locally and visible only to local jurisdiction)	12 months after close of first fiscal year (although may vary by jurisdiction e.g., Belgium, Germany, and France are all sooner than than)	Low (but forms are non-standardized, leading to some complexity)
GloBE Information Return (GIR)	Annual	1x per in-scope jurisdiction (filed locally or centrally and exchanged with other jurisdictions)	15/18 months after close of fiscal year (should be uniform for all jurisdictions)	High , but simplified for the first three years if eligible for Transitional CBC Safe Harbor
Local Pillar Two Tax Form	Annual	1x per implementing jurisdiction (filed locally and visible only to local jurisdiction)	15/18 months after close of fiscal year (although may vary by jurisdiction)	High , but likely can be leveraged from GIR
Notification Form	Annual	1x per implementing jurisdiction (filed locally and visible only to local jurisdiction)	15/18 months after close of fiscal year (although may vary by jurisdiction)	Low
Other	In addition to above, some jurisdictions may require other “administrative filings.” For example, Austria requires an agreement be filled with the tax authority before the end of the year to nominate a local taxpayer			

Data Challenges

- New information not previously tracked
- CbCR and process as relevant to transitional safe harbors
- Close and consolidation process (e.g., may require consolidation within a jurisdiction)
- Separate “GloBE” books in some instances
- Granularity of DTL tracking for purposes of DTL recapture rule

Incentives and Credits

Tax credits in a post Pillar Two world

Qualified Refundable Tax Credits ("QRTCs")	Non-QRTCs	Market Transferable Tax Credits ("MMTCs")	Non-MTTCs	Other Tax Credits ("OTC")
<ul style="list-style-type: none"> Refundable (paid cash / cash equivalents) within 4 years of CE being eligible for credit Face value of credit generally treated as GloBE Income in the year entitlement accrues May be recognized as deferred income over useful life of assets consistent with accounting treatment 	<ul style="list-style-type: none"> Refundable (in whole or in part) but do not meet QRTC requirements Treated as a reduction to Covered Taxes. 	<ul style="list-style-type: none"> Can be used by holder to reduce covered taxes in <i>issuing jurisdiction AND</i> Meets legal and transferability standards in the hands of the holder (based on whether originator or purchaser) Broadly treated as GloBE Income 	<ul style="list-style-type: none"> Does not meet the MTTC requirements in the hands of the originator and / or the purchaser. Treated as reduction to Covered Taxes to the extent that the non-MTTC is used to satisfy tax liability. Reduction equal to amount of credit less purchase price. 	<ul style="list-style-type: none"> Not refundable and non-transferable credits that can only be used to offset the covered tax liability of the CE (e.g.: U.S. R&D credit) Treated as a reduction to covered taxes.
<p>Example: UK and Ireland refundable R&D credit US Sec. 45X</p>		<p>Example: US IRA transferable tax credits (seller)</p>	<p>Example: US IRA transferable tax credits (buyer)</p>	<p>Example: US R&D credit</p>

Why does it matter?

Tax credits, when treated as a reduction to Covered Taxes (numerator), reduce the Jurisdictional ETR to a greater extent than when treated as an increase to the GloBE Income (denominator).

QRTCs and MTTCs	
PTBI:	100
Credit:	10
Post-credit PTBI:	<u>110</u>
Book Tax Expense:	<u>21</u>
After Tax Profit:	89
U.S. Jurisdictional ETR:	
GloBE Income =	110
Covered Taxes =	21
ETR =	19%
Top-up tax =	0

Non QRTCs, Other Tax Credits, and Non-MTTTs (to extent of discount)	
PTBI:	<u>100</u>
Pre-credit book tax:	21
Credit:	10
Book Tax expense:	<u>11</u>
After Tax Profit:	89
U.S. Jurisdictional ETR:	
GloBE Income =	100
Adjusted Covered Taxes =	11
ETR =	11%
Top-up tax =	4

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How are jurisdictions reacting?

Select responses:

- Singapore refundable investment credit (new)
- Swiss cantons (grants and QRTCs) (new)
- Vietnam investment support fund (new)
- Ireland QRTC (modification of existing credit)
- Bermuda corporate tax (new)
- Barbados QRTC (new)
- Many others

Relevant Pillar Two rules -

- “practical significance” test w/r/t (Q)RTC
- “provided that such jurisdiction does not provide any benefits that are related to such rules” w/r/t (Q)DMTT
- Peer review process

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M&A, divestitures and post-merger integration

Transfers of Entities

General rules

▪ Buyer

- In the acquisition year and each succeeding year, the target shall determine its GLOBE Income and Adjusted Covered Taxes using its historical carrying value of assets and liabilities. Art. 6.2.1(c).
 - Thus, the effect of purchase accounting adjustments (including DTAs/DTLs arising from purchase accounting) are generally ignored.
 - Limited exception for transactions occurring before December 1, 2021.

▪ Seller

- A CE's GLOBE Income and ETR is adjusted to exclude Excluded Equity Gain or Loss (Art. 3.2.1(c)), the amount of current tax expense with respect to excluded income (Art. 4.1.3(a)), and deferred taxes associated with the excluded income or loss (Art. 4.4.1(a)).
- In some cases, Seller may expect to make an Equity Investment Inclusion Election (see Commentary on Art. 3.2.1, para 57.4 *et seq*) for the selling jurisdiction that results in equity gain or loss and associated taxes being partly or fully taken into account in Seller's GLOBE Income and Adjusted Covered Taxes.

Transfers of Entities

Deemed asset transfer (Art. 6.2.2)

- The acquisition or disposal of a Controlling Interest in a CE will be treated as an acquisition or disposal of the assets and liabilities if:
 - the jurisdiction in which the target CE is located, or in the case of a Tax Transparent Entity, the jurisdiction in which the assets are located, treats the acquisition or disposal of that Controlling Interest in the same or similar manner as an acquisition or disposition of the assets and liabilities; and
 - imposes a Covered Tax on the seller based on the difference between the tax basis and the consideration paid in exchange for the Controlling Interest or the fair value of the assets and liabilities.
- If Art. 6.2.2 applies, then Buyer can obtain a basis “step-up” for GLOBE purposes.
 - Does not apply if transaction occurs in a pre-GLOBE year (see June 2024 Admin Guidance).
 - Expected to apply to U.S. seller’s sale of a U.S. target that is a DRE in a post-GLOBE year.
 - May apply to U.S. seller’s sale of a U.S. target that is a corporation in a transaction to which Section 338(h)(10) applies in a post-GLOBE year.

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Transfers of Assets

General rules

- **Buyer**
 - Acquiring CE will determine its GLOBE Income using the acquiring CE’s carrying value of the acquired assets and liabilities determined under the accounting standard used in preparing Consolidated Financial Statements of the UPE. Art. 6.3.1.
 - However, for transactions accounted for at cost (e.g., GAAP common control transactions), the acquiring CE must compute its basis in the acquired assets and liabilities based on the arm’s length price (i.e., fair value) where the transaction is cross-border. Arts. 3.2.3 & 3.2.8.
 - The acquiring CE establishes “GLOBE” DTAs or DTLs when GLOBE basis diverges from financial reporting basis. June 2024 Administrative Guidance, Chapter 2.
- **Seller**
 - Disposing CE will include the gain or loss on disposition in the computation of its GLOBE Income. Art. 6.3.1.
 - The disposing CE must generally base its gain or loss under GLOBE on the arm’s length price. Commentary to Art. 6.3.1, para. 73.1.

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Transfers of Assets

GLOBE Reorganizations (Art. 6.3.2)

- MNE group does not recognize GLOBE Income from an asset transfer if the transfer qualifies as a GLOBE Reorganization.
- GLOBE Reorganization means a transformation or transfer of assets and liabilities such as in a merger, demerger, liquidation, or similar transaction where:
 - (a) the consideration for the transfer is, in whole or in significant part, equity interests issued by the acquiring CE or by a person connected with the acquiring CE, or, in the case of a liquidation, equity interests of the target (or, when no consideration is provided, where the issuance of an equity interest would have no economic significance);
 - (b) the disposing CE's gain or loss on those assets is not subject to tax, in whole or in part; and
 - (c) the tax laws of the jurisdiction in which the acquiring CE is located require the acquiring CE to compute taxable income after the disposition or acquisition using the disposing CE's tax basis in the assets, adjusted for any Non-qualifying Gain or Loss on the disposition or acquisition.
- Unclear that a cross-border transaction can ever qualify as a GLOBE Reorganization.

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Transition Rules

In general

Article 9.1.1

- For determining GLOBE ETR for a jurisdiction in a Transition Year, and for each subsequent year, the MNE Group takes into account all DTAs and DTLs reflected or disclosed in the financial accounts of all of the CEs in a jurisdiction for the Transition Year... at the lower of the Minimum Rate or the applicable domestic tax rate. A DTA recorded at a rate lower than the Minimum Rate may be taken into account at the Minimum Rate if the DTA is attributable to a GloBE Loss. The impact of any valuation adjustment, or accounting recognition adjustment with respect to a DTA is disregarded.

Article 9.1.2

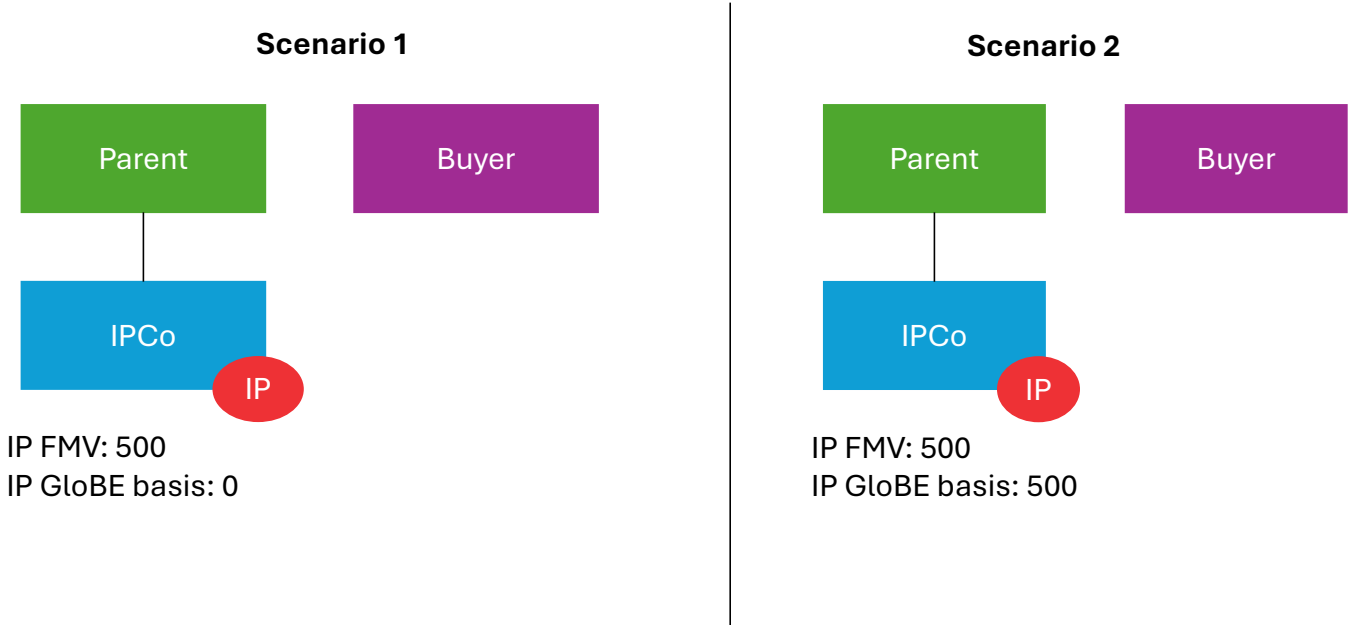
- DTAs arising from items excluded from the computation of GLOBE Income are excluded from a CE's Transition Year opening balance if those DTAs were generated in a transaction that occurred after November 30, 2021.

Article 9.1.3

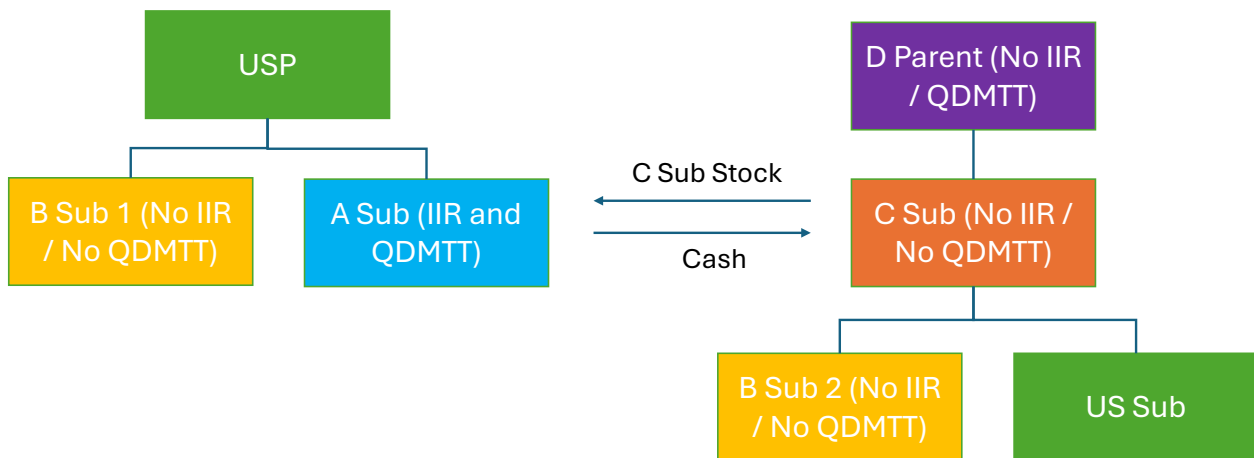
- For an intragroup asset transfer occurring after November 30, 2021, and before the disposing CE's Transition Year, the acquiring CE's basis in the acquired assets for GLOBE purposes is equal to the disposing CE's carrying value (i.e., no step-up is permitted for GLOBE purposes).
- The February 2023 Admin Guidance provides an exception for transactions in which the disposing CE pays tax on the transaction.
 - To the extent of tax paid, this will typically result in the acquiring CE establishing a GLOBE DTA equal to the tax paid by the disposing CE, not to exceed 15% of the difference between the tax basis and GLOBE basis, or a fair value basis in the asset(s) for GLOBE purposes.

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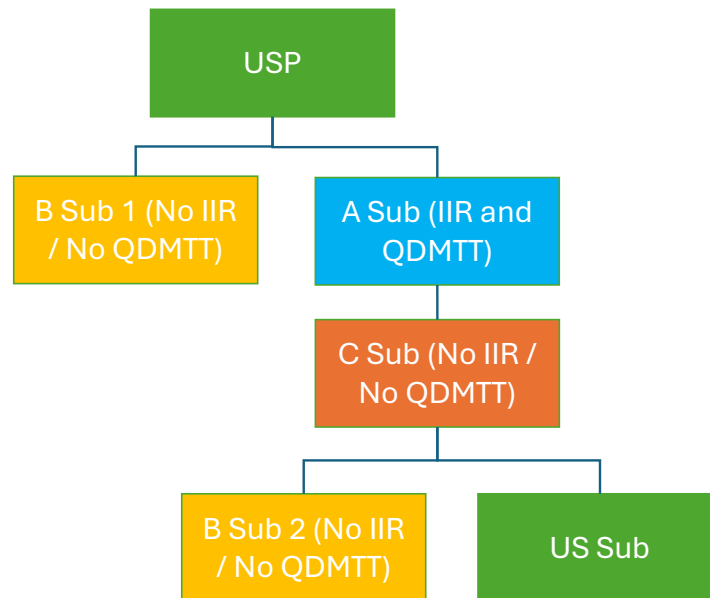
Share Deals vs Asset Deals: In General



Acquisition



Post-Acquisition Integration



Co-investment Structures

Co-investment structures

GLOBE JVs

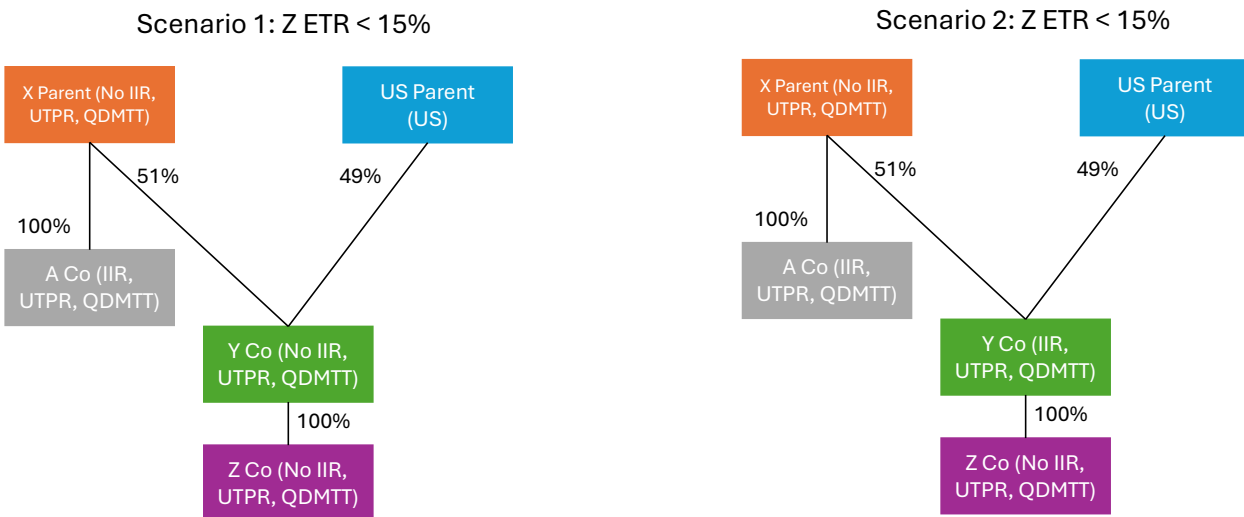
Definition of GLOBE Joint Venture

- Joint Venture means an Entity whose financial results are reported under the equity method in the Consolidated Financial Statements of the UPE provided that the UPE holds directly or indirectly at least 50% of its Ownership Interests.

Treatment of GLOBE Joint Ventures

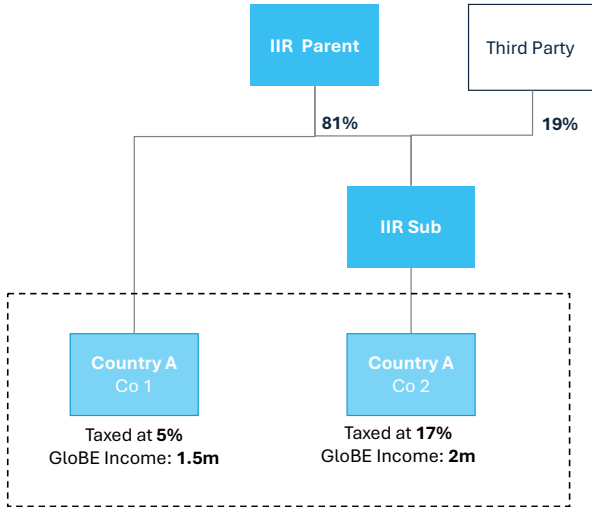
- (a) Top-Up Tax of the Joint Venture and its JV Subsidiaries is computed as if they were CEs of a separate MNE Group and as if the Joint Venture was the UPE of that Group;
- (b) a Parent Entity that holds directly or indirectly Ownership Interests in the Joint Venture or a JV Subsidiary shall apply the IIR with respect to its Allocable Share of the Top-up Tax of a member of the JV Group; and
- (c) the JV Group Top-up Tax shall be reduced by each Parent Entity’s Allocable Share of the Top-up Tax of each member of the JV Group that is brought into charge under a Qualified IIR under (b), and any remaining amount shall be added to the Total UTPR Top-up Tax Amount.

Co-investment structures



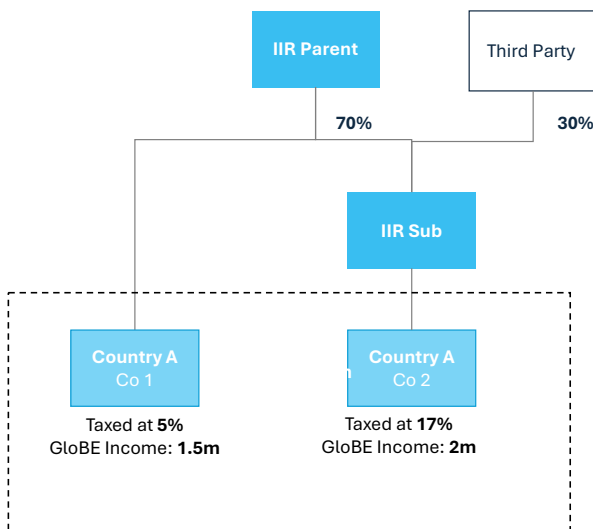
Co-investment structures

Minority interest: <20% owned



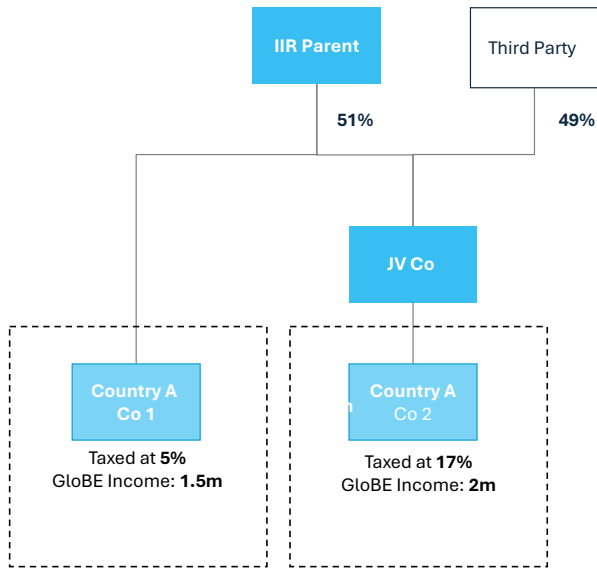
Co-investment structures

Partially-owned parent entity (POPE)



Co-investment structures

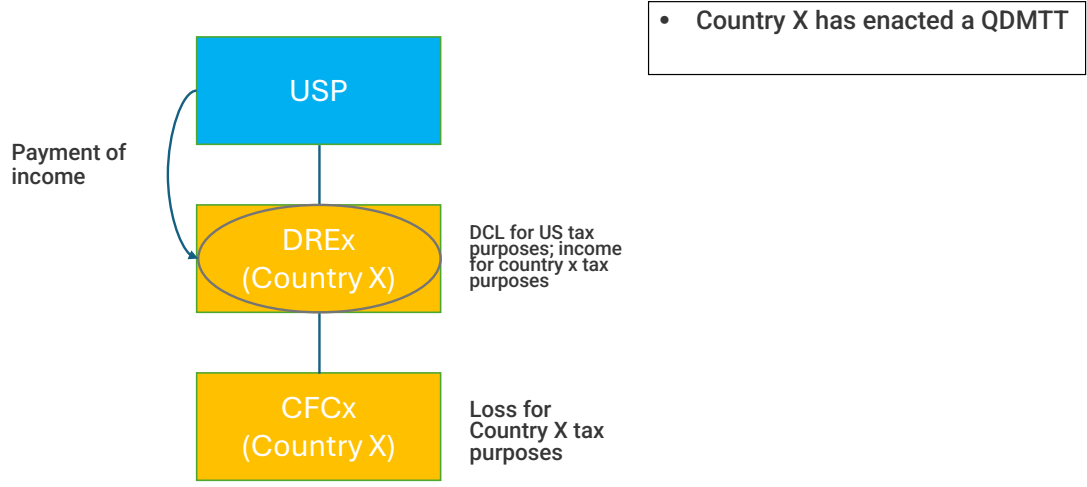
Joint Venture



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Dual Consolidated Losses,
Disregarded Payment Losses and
Duplicative Loss Arrangements

DCL – Pillar Two Foreign Use



Disregarded Payment Loss

