

Double deduction/dual inclusion

In relation to the US-GILTI regime

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Our work with the Swedish hybrid mismatch rules

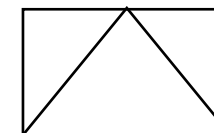
- Internal training when the hybrid mismatch rules were implemented.
- Actively working with the hybrid rules in two different groups, one for the large companies and one for the small and middle size companies.
- Selections based on different situations according to the hybrid rules, conducting analyses and investigations.
- External training of the US tax rules by IBFD.
- Using the forum JITSIC (Joint International Taskforce on Shared Intelligence and Collaboration).

The Swedish group contribution system

- A way to offset operating losses of one Swedish company against operating profits of another Swedish company within the same group.
- It may be used by qualifying groups (a holding greater than 90 % of the capital which must have been upheld during the whole fiscal year).
- The group contribution is tax deductible for the contributor and taxable for the recipient.

US check-the-box regulations

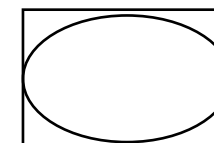
- A US parent group company is taxed for all foreign group companies for US Federal income tax purposes (USFIT purposes)
- Entity classification is selecting the form of an organization that will determine the treatment of the entity for USFIT purposes. It may differ from the classification that the entity has under the law of the jurisdiction where it is organized.
- An entity that may elect its status is referred to as an “eligible entity”, and the general rules of classification are:
 - if the eligible entity has two or more owners, the entity may elect to be classified either as a partnership or a corporation; and
 - if the eligible entity has only one owner, the entity may elect to be classified either as a corporation (regarded entity) or as a disregarded entity.
- An entity classified as a disregarded (transparent) entity will be treated as an entity not separated from its owner (i.e. as a branch)



Hybrid entity
(partnership)



Corporation,
Regarded entity



Disregarded
entity (branch)

GILTI (Global Intangible Low Tax Income)

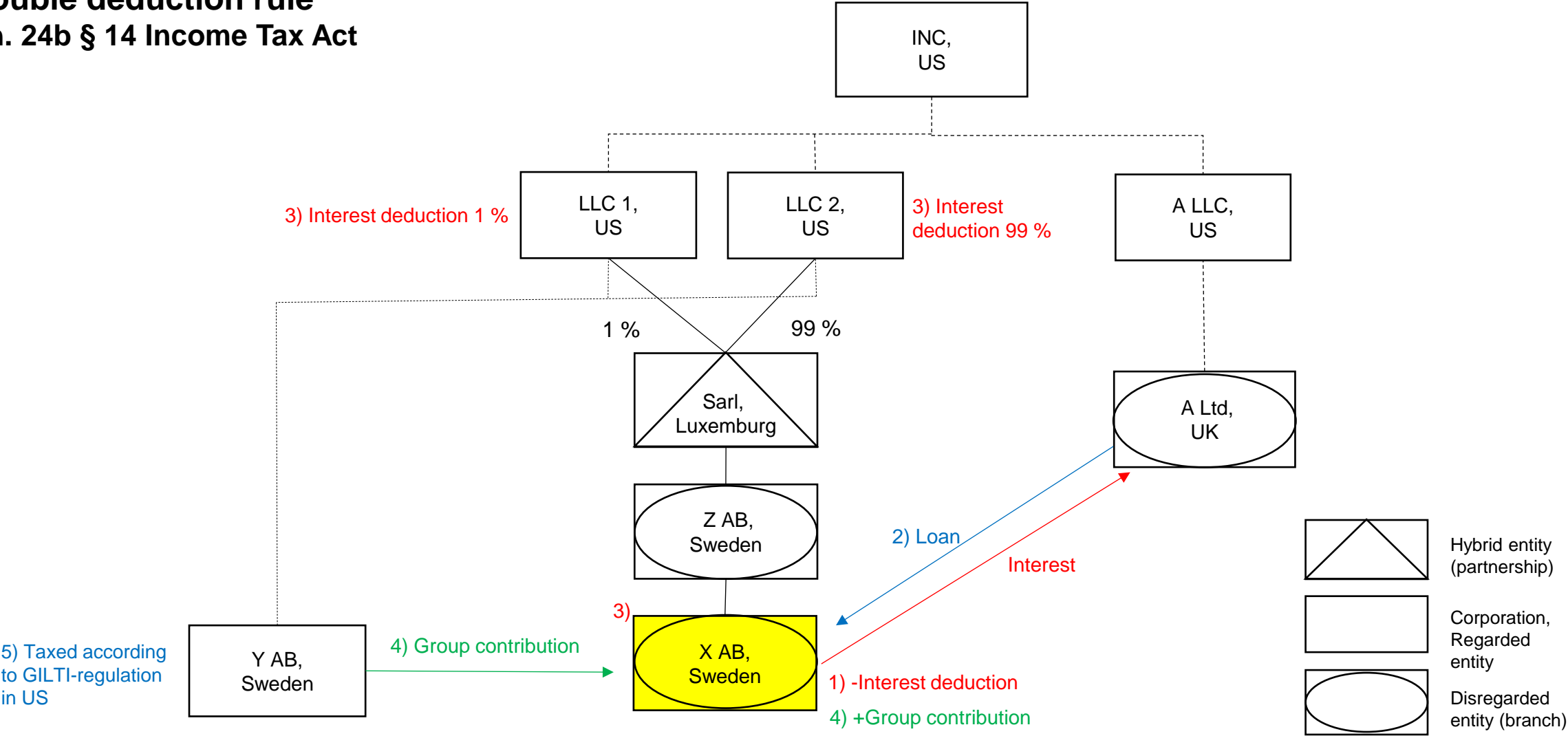
- A US shareholder is taxed for GILTI of a controlled foreign corporation (CFC).
- The computations for GILTI of a CFC are made at the level of the US shareholders and is taxed by being included in the income of the US shareholders on a pro rata basis.
- GILTI is defined (in general terms) as the US shareholder's portion of the income of a CFC that exceeds the shareholder's portion of a deemed 10 % return on the CFC's tangible property.
- Income and loss is calculated for each CFC, the results for all such CFCs are then aggregated.
- US corporate shareholders are permitted to claim a partial deduction of 50 % for the amount of GILTI included in income.
- The deduction will result in an effective tax rate of 10,5 % on GILTI.

Double deduction rule – Swedish Income Tax Act

- **OECD BEPS Action 2: Report “Neutralising the Effects of Hybrid Mismatch Arrangements**
Recommendation 6, Deductible hybrid payments rule
- **ATAD** - Council Directive (EU) 2017/952 amending Directive (EU) 2016/1164, article 9.1 b
- **Ch. 24 b § 14 Income Tax Act**
A company is not allowed to make a deduction for expenses for the Swedish taxation
 - if a company in another jurisdiction is allowed to make a deduction for the same expenses,
 - to the part the deduction of expenses is made against income in another company at the Swedish taxation, for example against received group contribution, and
 - deduction is not denied in the other jurisdiction.

Exception: The denial of deduction does not apply if the deduction corresponds to income that is accounting for tax in both jurisdictions (dual inclusion income). It applies for both income of the company making the deduction and the company with the income. Therefore CFC-taxation is also taken into account.

Double deduction rule
Ch. 24b § 14 Income Tax Act



Background

The Swedish company, X AB, is part of a US group

- 1) X AB deducts interest expenses of EUR 150 million referring to an intra-group loan from a company in UK, A Ltd
 - 2) X AB is treated as a disregarded (transparent) entity for USFIT purposes by it's owners in US. X AB is an independent tax payer in Sweden and is thereby a hybrid company.
 - 3) As a result of treating X AB as a disregarded entity the owners receive a deduction for the same interest expenses for the USFIT in relation to its ownership.
 - 4) X AB received a group contribution of EUR 130 million from Y AB. X AB:s deduction of the interest expenses is thereby made against income in another company.
- ⇒ A hybrid mismatch according to Chapter 24 b, paragraph 14 in the Income Tax Act.
- 5) Y AB is treated as a regarded entity by the same owners and is taxed according to the GILTI-regulation in US

Dual inclusion income?

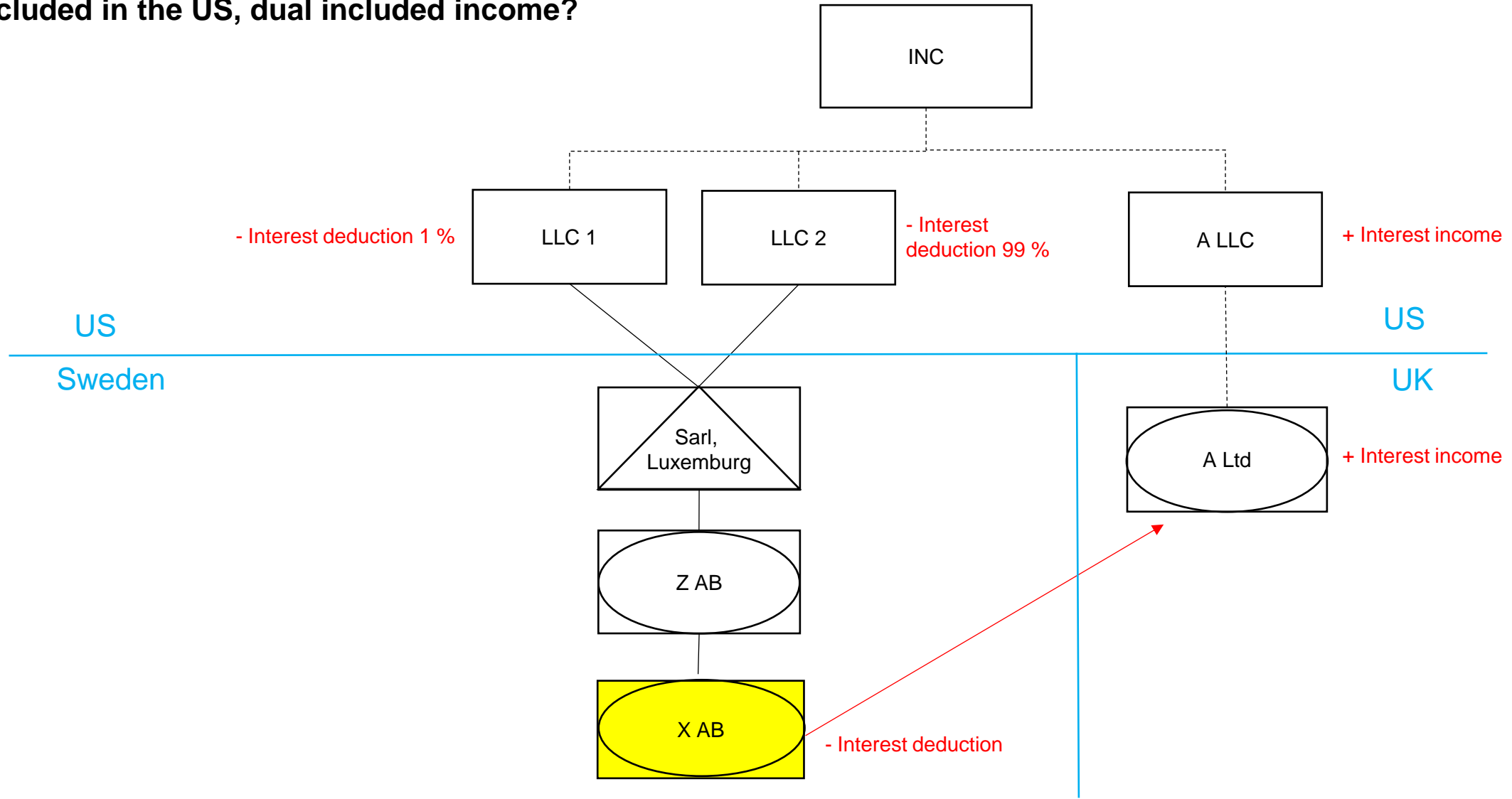
X AB has no income of it's own which can constitute a dual inclusion income

- X AB has no income taxed for USFIT purposes
- Received group contributions are not taken into account in the US

The company's argument why there's no hybrid situation:

1. The corresponding interest income has been taxed at the receiving company in UK, and the income has been included by it's owner in the same consolidated federal income tax return, at the same way as the company's interest expense.
2. The company Y AB, which submits the group contribution, is taxed according to the GILTI-regime. The income therefore constitute a dual inclusion income.

1) Interest income taxed in the UK and included in the US, dual included income?



2) Taxation of GILTI income for Y AB, dual included income?

