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IRS Issues Rules to Clarify Global Intangible Low-Taxed Income (GILTI) Requirements

By Jason Rauhe, CPA

IRS has issued proposed regulations under the global intangible low-taxed income (GILTI) provision (Sec. 951A) in the Tax Cuts and Jobs Act of 2017.

According to Treasury Secretary Steven Mnuchin, the regulations will “provide clarity to taxpayers and close loopholes that previously allowed for inappropriate international tax planning and shifting profits overseas.”

Overview

Generally speaking, under pre-2018 income tax law, a U.S. shareholder was not required to recognize income earned by a foreign corporation until the income was distributed to the U.S. shareholder as a dividend. After tax reform became effective Jan. 1, 2018, a requirement was instituted for certain multinational U.S. corporations to recognize – and pay tax on – a percentage of annual foreign earnings regardless of whether this income is repatriated to the U.S.—i.e., global intangible low-taxed income (GILTI) rules.

GILTI requires that any U.S. person who owns at least 10 percent of the value or voting rights in one or more controlled foreign corporations (CFC) include its global intangible low-taxed income as currently taxable income, which is over a set return on depreciable tangible assets. The intention of this provision, which imposes a 10.5 percent effective tax rate on the excess amount (i.e., earnings from intangible assets), is to discourage corporations from avoiding U.S. taxes by holding intangible assets abroad in tax havens. While the intention of the tax law is to discourage U.S. corporations from transferring valuable intangible property outside the U.S., we are discovering that most corporations must consider GILTI tax implications even in scenarios where traditional intangible property (e.g., patents) are still owned by the U.S. corporation.

However, the GILTI calculation is complex and guidance has been anticipated to enable U.S. corporations to effectively plan for and potentially consider operational structure changes to minimize this tax. The new regulations and accompanying guidance represent a beginning for helping corporations identify foreign assets and investments and calculate GILTI-related income or losses, thus ensuring multinationals pay taxes on their future overseas profits.

More GILTI Guidance to Come

There are remaining concerns that tax professionals have about the application and implementation of GILTI, including how the tax will take into account foreign tax credits and business expenses, how GILTI administration will affect decisions about potential deals in the pipeline and how GILTI compliance will affect how liabilities are recorded on financial statements. Unfortunately the newly proposed regulations do not include various sourcing and other unknown impacts to the foreign tax credit calculation and utilization.

In effect, GILTI is still a work in progress with many moving parts and more guidance to come. Compliance will require new strategies and skillful tax planning to maximize opportunities and minimize tax obligations.

We will continue to provide updates as the IRS provides additional rules.

Compliance with GILTI and other tax provisions affecting U.S. corporations doing business overseas requires international tax planning expertise.

To determine the impact on your particular tax situation, contact Jason Rauhe, CPA, at 440-605-7124 or email **jrauhe@skodaminotti.com**.