

Report on recent US international tax developments - 24 July 2020

NEW! EY Tax News Update: Global Edition

EY's new Tax News Update: Global Edition is a free, personalized email subscription service that allows you to receive EY Global Tax Alerts, newsletters, events, and thought leadership published across all areas of tax. Access more information about the tool and registration [here](#).

Also available is our [EY Global Tax Alert Library](#) on ey.com.

The United States (US) Treasury and Internal Revenue Service (IRS) on 20 July issued eagerly-anticipated Global Intangible Low-taxed Income (GILTI) final regulations ([TD 9902](#)) and proposed regulations ([REG-127732-19](#)) that address the application of the high-tax exclusions from GILTI under Internal Revenue Code¹ Section 951A(c)(2)(A)(i)(II) (the GILTI high-tax exclusion) and from subpart F income under Section 954(b)(4) (the proposed subpart F high-tax exception), respectively.

The final GILTI high-tax exclusion generally is even less flexible, and more complex, than as proposed. Treasury retained the high threshold rate of foreign tax (under current law, 18.9%) and the election is "all or nothing" as it applies to all items of income of all controlled foreign corporations (CFCs) in which a taxpayer holds (or is deemed to hold) a majority equity interest. Further, the final regulations require an even more precise association of foreign taxes and items of income. In particular, the final regulations apply the exclusion separately to each of a CFC's "tested units" – with the effect that it is even less likely that many taxpayers will benefit from the final regulations. Among the few taxpayer-favorable modifications, however, a taxpayer may elect to apply the exclusion (or not) (i) annually and (ii) retroactively, to CFC tax years beginning after 31 December 2017.

In regard to the proposed regulations, under the current subpart F income high-tax exception, the effective foreign tax rate is calculated separately for individual items of subpart F income determined at the CFC level (e.g., foreign base company sales income and foreign base company services income). Further, the current exception gives taxpayers considerable flexibility: The election is available annually as to each “item” of income and is decoupled from the GILTI high-tax exclusion.

The proposed regulations would generally conform the subpart F income high-tax exception to the GILTI high-tax exclusion, also reducing its application. The proposed subpart F income exception, in other words, would apply separately to each tested unit of a CFC, rather than to individual items of subpart F income determined at the CFC level. The proposed regulations would combine, into a single “unitary” election, the subpart F income exception and the GILTI high-tax exclusion. That is, a taxpayer would be required to apply both of those regimes, or neither.

The proposed regulations would apply to CFC tax years beginning after the date on which final regulations are published.

For more background on the regulatory package, see EY Global Tax Alert, [US Final and proposed GILTI regulations deliver few benefits and more than a few surprises](#), dated 23 July 2020.

An IRS official this week was quoted as saying that the Government expects to release proposed regulations on previously taxed earnings and profits (PTEP) before the end of the year. The official said she expected the timeline – which has been pushed back several times – to hold despite “this year’s very unique circumstances.”

The G20 Finance Ministers met virtually 18-19 July, with the Base Erosion and Profit Shifting (BEPS) 2.0 project among the topics discussed. Two important documents were released: the annual [OECD/G20 Inclusive Framework on BEPS Progress report](#) to the G20 Finance Ministers on the work of the Inclusive Framework and the [G20 Finance Ministers meeting communiqué](#). The Organisation for Economic Co-operation and Development (OECD) report, which reviews recent activity on the BEPS 2.0 project, indicates the OECD’s intention to deliver detailed blueprints for both Pillars 1 and 2 in October 2020. This will provide an opportunity for stakeholder comment and serve as a basis for future agreement on final solutions in both areas. The G20 communiqué notes the plan for a report on the blueprints on each Pillar to be submitted to the next Finance Ministers meeting that is scheduled for mid-October 2020.

Speaking during an OECD webcast on 22 July, Pascal Saint-Amans, Director of the OECD’s Centre for Tax Policy and Administration said significant progress has been made on the BEPS 2.0 project, but he tamped down expectations that final agreement necessarily would be reached by the end of the year. Saint-Amans said, “I think we need to be realistic, and as much as I welcome the G-20 telling us they hope to have agreement by year-end . . . we have to recognize there are a number of pending issues.” The OECD official also said that regardless of what is agreed to in October, there will still be need for the development of implementation rules as well as an opportunity for comment on the blueprints.

Endnote

1. All “Section” references are to the Internal Revenue Code of 1986, and the regulations promulgated thereunder.

For additional information with respect to this Alert, please contact the following:

Ernst & Young LLP, International Tax and Transaction Services, Washington, DC

- ▶ Arlene Fitzpatrick arlene.fitzpatrick@ey.com
- ▶ Joshua Ruland joshua.ruland@ey.com

About EY

EY is a global leader in assurance, tax, transaction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. For more information about our organization, please visit ey.com.

© 2020 EYGM Limited.
All Rights Reserved.

EYG no. 005067-20Gbl

1508-1600216 NY
ED None

This material has been prepared for general informational purposes only and is not intended to be relied upon as accounting, tax, or other professional advice. Please refer to your advisors for specific advice.

ey.com

About EY

EY is a global leader in assurance, tax, transaction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. For more information about our organization, please visit ey.com.

© 2015 EYGM Limited.
All Rights Reserved.

EYG no. xxxxxx
1508-1600216 NY
ED None

This material has been prepared for general informational purposes only and is not intended to be relied upon as accounting, tax, or other professional advice. Please refer to your advisors for specific advice.

ey.com