Washington Update

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IRS, Treasury Hearing on GILTI

Feb. 14, 2019

On Feb. 13, the Internal Revenue Service (IRS) and Treasury Department held a public hearing on the guidance related to the Global Intangible Low-Taxed Income (GILTI) provision (REG-104390-18), issued on Oct. 10, 2018, passed under the *Tax Cuts and Jobs Act* (P.L. 115-97). Two witnesses—Stewart Lipeles (Baker & McKenzie, LLP) and Catherine Schultz (National Foreign Trade Council)—testified at the hearing.

Lipeles urged the Treasury Department to withdraw the Qualified Business Asset Investment (QBAI) anti-abuse guidance on the grounds that it is invalid. He said the proposed rule disregards congressional intent and has no basis in the legislative history of the statute. Further, it does not reference any specific grant of rulemaking authority. Lipeles also said that the anti-abuse rule fails to take a taxpayer's intent into account—as it does not consider whether a transaction has a non-tax economic substance or a business purpose.

Schultz raised a number of issues with the proposed guidance, focusing on the fact that taxpayers with operations in high-tax jurisdictions may be subject to double taxation due to interactions between the GILTI and the Base Erosion Anti-abuse Tax (BEAT) (IRC Sec. 59A).

The following officials represented the Treasury Department and the IRS at the hearing. None of the department officials issued a statement at the hearing.

- Melinda Harvey, Senior Counsel, Branch 2, IRS Office of Associate Chief Counsel;
- Jeffery Mitchel, Branch Chief, Branch 2, IRS Office of Associate Chief Counsel;
- John Merrick, Senior Level Counsel, IRS Office of Associate Counsel;
- Kevin Jacobs, Senior Technician Reviewer, IRS Office of Associate Chief Counsel; and
- Gary Scanlon, Attorney-Advisor, Office of the International Tax Counsel, Treasury Department

Please contact Harold Hancock or Rosemary Becchi for questions about the GILTI regulations.