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Report No. 1402
October 11, 2018

The Honorable David J. Kautter
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The Honorable Charles P. Rettig
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The Honorable William M. Paul
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Re: *Report No. 1402 on Previously Taxed Earnings under Section 959*

Dear Messrs. Kautter, Rettig, and Paul:

I am pleased to submit Report No. 1402, commenting on the rules governing previously taxed earnings and profits under Section 959 ("PTI") and the related basis adjustments under Section 961, primarily focusing on the changes to the Code made by An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018 (the "Act"). In addition to issues that have arisen specifically with respect to the Act, this Report also addresses certain previously existing issues, some of which have heightened importance (and others with perhaps lesser importance) after the Act.

Sections 951-965 ("**Subpart F**") establish an anti-deferral regime that requires certain U.S. 10% shareholders to include currently in gross

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income certain earnings and profits (“**E&P**”) of a controlled foreign corporation (“**CFC**”) regardless of whether the CFC distributes such E&P. Under pre-Act law, the tax treatment of U.S. Shareholders often depended on the amount and type of PTI (i.e., “traditional” Subpart F income or Section 956) created or distributed. The Act introduced new types of PTI resulting from the application of the Section 951A (“**GILTI**”) and Section 965 provisions. The importance of the amount and type of PTI has been enhanced by the Act, both because of the large amount of PTI in the system under the Section 965 transition tax and, going forward, the GILTI regime, and because of the additional types of PTI in the system. Despite the Section 245A 100% dividends received deduction, the PTI regime has continued importance for determining basis adjustments, foreign tax credits, and foreign currency gain or loss, among other consequences.

The Report lays out several analytical frameworks through which PTI issues should be considered. In particular, the analytical frameworks tie the treatment of PTI to alternative possibilities of Congressional intent; namely, whether Congress intended certain types of income to be exempt from tax, taxed at a reduced rate, or fully taxed at the highest marginal rate. Also, the analytical frameworks compare results of multiple CFCs conducting foreign activities to the results if the foreign activities were conducted by a single CFC, and articulate the principle of avoiding double taxation or unintended non-taxation of the same earnings, whenever possible.

We appreciate your consideration of our recommendations. If you have any questions or comments regarding this Report, please feel free to contact us and we will be glad to assist in any way.

Respectfully submitted,



Karen G. Sowell
Chair

Enclosure

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