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Report No. 1394

May 4, 2018

The Honorable David J. Kautter
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Department of the Treasury
1500 Pennsylvania Avenue, NW
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The Honorable David J. Kautter
Acting Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
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The Honorable William M. Paul
Principal Deputy Chief Counsel and
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Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Re: *Report No. 1394 on the GILTI Provisions of the Code*

Dear Messrs. Kautter and Paul:

I am pleased to submit Report No. 1394 addressing the so-called "GILTI" provisions of the Internal Revenue Code of 1986, as amended (the "Code"). These provisions were added by P.L. 115-97 (the "Act"), enacted on December 22, 2017. The GILTI provisions are primarily in new Code Section 951A (income inclusion) and Section 250 (deduction), although the Act made conforming changes to other Code provisions. In general, the GILTI provisions require a 10% U.S. shareholder (a "U.S. shareholder") of a controlled foreign corporation (a "CFC") to pay, on a current basis, a minimum aggregate U.S. and foreign tax on its share of the earnings of the CFC.

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The Report discusses the issues under the GILTI rules that we have identified so far and that we consider most significant. A summary of our principal recommendations is contained in Part II of the Report. In most cases we comment on the statute as written without proposing far-reaching revisions to it, although we make some specific suggestions for statutory changes to make the GILTI regime work better.

Part IV of the Report is a detailed analysis of certain of the GILTI provisions and discussion of our recommendations. Our recommendations include guidance concerning:

- the extent to which members of a consolidated group should be treated as a single corporation for various GILTI purposes;
- the appropriate method for calculating tested income of a CFC, including the determination of allowable deductions and the ability of a CFC to carry over tested losses and interest expense disallowed under Section 163(j);
- computational issues, including the order in which GILTI and Section 956 inclusions are determined, issues that arise when a CFC is sold mid-year, and the relationship between Section 163(j) and Section 250;
- foreign tax credit issues, including the Section 904 basket for a Section 78 gross-up of a GILTI inclusion, determination of when foreign taxes are attributable to tested income, methods for matching the timing of tested income and related foreign taxes, the allocation of expenses of a U.S. shareholder to GILTI income, and limitations on foreign tax credits under Section 904;
- the application of the GILTI rules to CFCs held through partnerships, including whether the GILTI calculations are to be made at the level of the partnership or the partner; and
- other issues, including the effect of Section 962, the consequences of repeal of the Section 958(b)(4) exception to the attribution rules, and the application of the GILTI rules to a RIC, REIT, or tax-exempt shareholder.

In connection with our recommendation in Part IV.E.2(d) of the Report that the Section 78 gross-up for a GILTI inclusion be in the GILTI foreign tax credit basket, it is particularly urgent that this issue be resolved promptly because uncertainty is affecting quarterly reporting of public companies under GAAP.

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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