

September 19, 2018

## Tax Update

### U.S. Treasury Issues Proposed GILTI Regulations

On September 13, 2018, the U.S. Treasury Department released [proposed regulations](#) under the Global Intangible Low-Taxed Income ("GILTI") regime enacted as part of the Tax Cuts and Jobs Act. The regulations also include proposed amendments and additions to the Subpart F and consolidated return regulations.

GILTI provisions have been identified as some of the most challenging items from the Tax Cuts and Jobs Act for U.S. multinational businesses operating in Puerto Rico due to their expected impact on Puerto Rico's tax advantages relative to other jurisdictions.

Under the GILTI regime, a "United States shareholder" of one or more "controlled foreign corporations" ("CFCs") generally must include in gross income its pro rata share of the net profits of those CFCs to the extent that the profits exceed a routine return on certain tangible depreciable assets held by the CFCs. For a corporate US shareholder, the inclusion is subject to a 21% tax rate, but it is eligible for a 50% deduction (resulting in an effective tax rate of 10.5%). Generally, a corporate US shareholder may take as a credit against its GILTI tax liability 80% of its pro rata share of the non-US income taxes "properly attributable" to the portion of profits of its CFCs that it included in income.

The proposed regulations include provisions: (i) describing how to calculate the elements underlying the GILTI inclusion; (ii) setting out anti-abuse rules for certain basis "step-up" transactions; (iii) revising the definition of "pro rata share," for purposes of inclusions of both GILTI and subpart F income; (iv) describing how consolidated groups compute their GILTI inclusions; and (v) adopting a hybrid "aggregate/entity" approach for partnerships and their partners for purposes of the GILTI regime. Treasury and IRS are requesting public comments on the proposed regulations.

Additional regulations are expected to follow.

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