Tax Insights

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IRS Issues Final Regulations on Deduction for FDII and GILTI

The IRS issued final regulations (TD 9901) (https://s3.amazonaws.com/public-inspection.federalregister.gov/2020-14649.pdf) regarding the deduction for "foreign-derived intangible income" (FDII) and "global intangible low-taxed income" (GILTI). The FDII and GILTI provisions (under Section 250) were added to the Code by the 2017 Tax Cuts and Jobs Act. (Section references are to the Internal Revenue Code of 1986, as amended (the Code).) The IRS released proposed regulations (REG-104464-18) relating to the deduction for FDII and GILTI in March 2019. (See our prior coverage here (https://www.stradley.com/insights/publications/2019/03/tax-insights-march-13-2019).) The preamble to the final regulations states that the regulations retain the general approach and structure of the proposed regulations, but with certain revisions. Highlights of the final regulations include:

- **Documentation requirement:** The proposed regulations provided that to establish (for purposes of the FDII deduction) that a recipient is a foreign person, property is for a foreign use, or a recipient of a general service is located outside the United States), the taxpayer must obtain specific types of documentation. The final regulations eliminate the documentation requirement and instead contain more general substantiation requirements that are not limited to a narrow set of documents.

- **Ordering rule:** The IRS has determined that further study is required to determine the appropriate rule for coordinating Sections 250(a)(2), 163(j) and 172 with regards to the ordering rule in Proposed Regulations Section 1.250(a)-1(c)(4). Before further guidance is issued, taxpayers may choose any reasonable method for applying Sections 163(j) and 172 in conjunction with Section 250 (which could include the ordering rule described in the proposed regulations) if the method is applied consistently for all taxable years beginning on or after Jan. 1, 2021.

- **Anti-avoidance rule:** The final regulations adopt the proposed regulations' anti-avoidance rule that says that, for purposes of calculating a domestic corporation's qualified business asset investment, a transfer of specified tangible property by a domestic corporation to a related party is disregarded if, within a two-year period beginning one year before the transfer, the domestic corporation leases the same or substantially similar property from a related party and such transfer and lease occur pursuant to a principal purpose of reducing the domestic corporation's deemed tangible income return. However, the final regulations add that the anti-avoidance rule does not apply to a transfer of property that occurs before March 4, 2019.

IRS Prohibited From Auditing NOL Carryforward

In Legal Advice Issued by Field Attorneys 20202501F (https://www.irs.gov/pub/irs-lafa/20202501f.pdf), the IRS Chief Counsel found that the IRS could not audit two net operating loss (NOL) carryforwards from previously audited tax years where the IRS had previously disallowed the NOLs, but, after the taxpayer protested, the IRS Office of Appeals allowed the NOLs.

IRS Issues FAQs on COVID-19 Effect on Collection Activities

The IRS posted on its website frequently asked questions (FAQs (https://www.irs.gov/newsroom/people-first-initiative-faqs-liens-levies-and-other-collection-activities)) on the effect of COVID-19 on liens, levies, and other IRS collection activities.

IRS Finds Superseding Return Does Not Restart Limitations Period

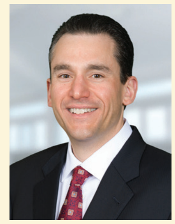
The IRS issued Chief Counsel Advice 202026002 (https://www.irs.gov/pub/irs-wd/202026002.pdf) in which it determined that when a "superseding return" is filed, the original return is the "return" that starts the statutory period for assessing the tax due or claiming a refund of an overpayment.

IRS Extends Acceptance of Digital Signatures and Emailed Documents

In a memo (https://www.irs.gov/pub/foia/ig/spder/nhq-01-0620-0002.pdf) to its employees, the IRS has extended, through Dec. 31, the period during which it will accept digital signatures and emailed documents.

Pennsylvania Issues 2020 Common Level Ratios

The Pennsylvania Department of Revenue has issued new common level ratio real estate valuation factors (https://www.revenue.pa.gov/GeneralTaxInformation/Tax%20Types%20and%20Information/RTT/Documents/clr_factor_current.pdf) for purposes of calculating realty transfer tax. The ratios generally apply to documents accepted for filing from July 1 to June 30, 2021.



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