

Stradley Ronon Stevens & Young, LLP
2005 Market Street
Suite 2600
Philadelphia, PA 19103-7018
215.564.8000 Telephone
215.564.8120 Facsimile
www.stradley.com

With other offices in:
Washington, D.C.
New York
New Jersey
Illinois
Delaware



www.meritas.org

Our firm is a member of Meritas. With 189 top-ranking law firms spanning 97 countries, Meritas delivers exceptional legal knowledge, personal attention and proven value to clients worldwide.

Information contained in this publication should not be construed as legal advice or opinion or as a substitute for the advice of counsel. The enclosed materials may have been abridged from other sources. They are provided for educational and informational purposes for the use of clients and others who may be interested in the subject matter.

Copyright © 2020
Stradley Ronon Stevens & Young, LLP
All rights reserved.

IRS Issues Final Regulations on Income Subject to High Rate of Foreign Tax

The IRS has issued final regulations (TD 9902) (<https://s3.amazonaws.com/public-inspection.federalregister.gov/2020-15351.pdf>) under the global intangible low-taxed income (GILTI) and subpart F income provisions of the Code regarding the treatment of income that is subject to a high rate of foreign tax. Section 951A, enacted as part of the 2017 Tax Cuts and Jobs Act, requires a U.S. shareholder of a controlled foreign corporation (CFC, as defined under Section 957) to include in gross income the shareholder's GILTI inclusion for a tax year. (Section references are to the Internal Revenue Code of 1986, as amended (Code).) The determination of a U.S. shareholder's GILTI inclusion begins with the calculation of items such as tested income, tested loss, and qualified business asset investment, of each CFC owned by the shareholder (tested items).

In 2019, the IRS issued proposed regulations that provided an election to exclude from gross tested income, gross income subject to foreign income tax at an effective rate that is greater than 90% of the rate that would apply if the income were subject to the U.S. maximum rate of tax (GILTI high-tax exclusion). The final regulations retain the basic approach and structure of the 2019 proposed regulations. Although the final regulations finalize the portion of the 2019 proposed regulations under Sections 951A and 954 regarding the treatment of income subject to a high rate of foreign tax, they do not finalize the portions of the 2019 proposed regulations under Sections 951, 956, 958 and 1502 regarding the treatment of domestic partnerships. The IRS plans to finalize those regulations separately. Also, under the final regulations, taxpayers may elect the GILTI high-tax exclusion on an annual basis. Therefore, if an entity revoked a GILTI high-tax exclusion election for one year, it can elect the GILTI high-tax exclusion the following year. The final regulations also replace the qualified business unit-by-qualified business unit approach in the 2019 proposed regulations with a more targeted approach based on "tested units."

IRS Issues Proposed Regulations on Subpart F Income and GILTI

In addition to the final regulations discussed above, the IRS has issued proposed regulations (REG-127732-19) (<https://s3.amazonaws.com/public-inspection.federalregister.gov/2020-15349.pdf>) under the subpart F income and GILTI provisions of the Code regarding the treatment of certain income that is subject to a high rate of foreign tax. In part, the proposed regulations would revise and conform the provisions of the subpart F high-tax exception with the provisions of the GILTI high-tax exclusion that are contained in the final regulations.

3rd. Circuit Court of Appeals Rules Business Relocation Grants Are Taxable Income

The 3rd Circuit Court of Appeals ruled (<https://www.stradley.com/-/media/files/publications/2020/07/opinion-3rd-cir.pdf>) that New Jersey business relocation grants given to a financial services company cannot be excluded from the company's taxable income because there were no restrictions on how the funds could be used. The taxpayer argued that the relocation grants should be considered contributions to capital exempt from tax under the Code; however, the court determined that the grants should be classified as part of the financial services company's income and reversed the decision of the U.S. Tax Court in the case.

CRS Publishes Report on Taxation of Carried Interest

The Congressional Research Service (CRS) published a report titled “Taxation of Carried Interest,” (<https://crsreports.congress.gov/product/pdf/R/R46447>) which describes carried interest as a form of compensation often received by fund managers of alternative investment vehicles, e.g., private equity or hedge funds. “Much of the concern over the tax treatment of carried interest has been about its fairness, and economic efficiency, which may be of increased salience as investments in alternative investment vehicles have grown,” the report says. As of mid-2019, private equity and hedge funds had approximately \$14.3 trillion in assets under management. The report looks at various legislative proposals, including S. 1639, Ending the Carried Interest Loophole Act.

IRS Announces New Compliance Campaign on Deferred Foreign Income

The IRS Large Business and International division has announced a new compliance campaign (<https://www.irs.gov/businesses/corporations/irs-lbi-compliance-campaign-july-6-2020>). The new campaign focuses on U.S. shareholders who should be reporting and paying tax, under Section 965, on deferred foreign income of a specified foreign corporation.



Christopher C. Scarpa



Jacquelyn Gordon

For more information, contact Christopher C. Scarpa at 215.564.8106 or cscarpa@stradley.com or Jacquelyn Gordon at 215.564.8176 or jgordon@stradley.com.

CDFI Fund Announces \$3.5 billion in NMTC

The Treasury Department’s Community Development Financial Institutions Fund (CDFI Fund) announced that it has awarded \$3.55 billion in New Markets Tax Credits (NMTC) designed to spur investment and economic growth in low-income urban and rural communities nationwide. The award list and other information on the NMTC program can be found at <https://www.cdfifund.gov/programs-training/Programs/new-markets-tax-credit/Pages/award-announcement-step.aspx>.