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## IRS Issues Form for Calculating GILTI

The IRS has released Form 8992, U.S. Shareholder Calculation of Global Intangible Low-Taxed Income (GILTI) (<https://www.irs.gov/forms-pubs/about-form-8992>), to help taxpayers that are U.S. shareholders of a controlled foreign corporation (CFC) determine the amount of GILTI the shareholders must include in gross income. The 2017 Tax Cuts and Jobs Act (TCJA) added Section 951A to the Code, which requires a U.S. shareholder to include in GILTI its pro rata share of certain items of each CFC owned by such U.S. shareholder, such as tested income, tested loss and qualified business asset investment. A U.S. shareholder does not compute a separate GILTI inclusion amount with respect to each CFC for a tax year, but rather computes a single GILTI inclusion amount by reference to all its CFCs. A U.S. shareholder is a U.S. person that owns (directly, indirectly or constructively) 10 percent or more of the total combined voting power of all the classes of voting stock of a CFC or 10 percent or more of the total value of shares of all classes of stock of a CFC. GILTI is included in the U.S. shareholder's gross income in a manner similar to inclusions of Subpart F income under the Code. (All Section references are to the Internal Revenue Code of 1986, as amended (Code).)

## IRS Issues Form to Calculate Business Interest Deduction

The IRS has released the final version of Form 8890, Limitation on Business Interest Expense Under Section 163(j) (<https://www.irs.gov/forms-pubs/about-form-8890>) to help taxpayers determine the amount of business interest that can be deducted and the amount that can be carried forward to the subsequent tax year. The TCJA added Section 163(j), which limits the deduction of business interest expense for taxable years beginning after Dec. 31, 2017. "Business interest" means any interest, other than investment interest, paid or accrued on indebtedness properly allocable to a trade or business.

For any taxpayer to which Section 163(j) applies, Section 163(j)(1) limits the annual deduction for business interest expense to the sum of (1) the taxpayer's business interest income (as defined in Section 163(j)(6)) for the taxable year, (2) 30 percent of the taxpayer's adjusted taxable income (as defined in Section 163(j)(8)) for the taxable year and (3) the taxpayer's floor plan financing interest (certain interest paid by vehicle dealers, defined in Section 163(j)(9)) for the taxable year.

## Pennsylvania Guidance Excludes Certain Hedging Transactions From Corporate Net Income Tax

The Pennsylvania Department of Revenue released Corporation Tax Bulletin No. 2019-01 (<https://www.revenue.pa.gov/GeneralTaxInformation/TaxLawPoliciesBulletinsNotices/TaxBulletins/CT/Documents/Corporation%20Tax%20Bulletin%202019-01.pdf>), which provides guidance regarding receipts from certain hedging transactions that are excluded from the numerator and denominator of a corporation's sales factor for purposes of Pennsylvania's corporate net income tax (CNI). Generally, corporations are subject to CNI for the privilege of doing business in the state. The starting point for calculating a corporation's CNI is federal taxable income before the net operating loss deduction and certain other special deductions. In determining the corporation's CNI, all business income is apportioned to Pennsylvania by multiplying such business income by the sales factor. Business income includes gains and losses from the disposition of assets in the regular course of a corporation's trade or business. The guidance provides that for tax years starting

after Dec. 31, 2018, the following receipts are excluded from the numerator and denominator of the sales factor: (1) gross receipts related to gain or loss from a transaction identified as a hedge under Section 1221(b)(2)(A) or Section 475(c)(3); (2) receipts attributed to accrued interest income or expense, gain or loss on a debt instrument, a payable, a receivable, or a forward contract payable in a foreign currency for foreign currency gain or loss that is computed under Section 988; and (3) gross receipts related to Section 986(c)(1) foreign exchange gain or loss on distributions of previously taxed income.

### Pennsylvania Guidance Clarifies When Taxpayers Are Subject to Sales and Use Tax

The Pennsylvania Department of Revenue released Sales and Use Tax Bulletin 2019-01 ([https://www.revenue.pa.gov/GeneralTaxInformation/TaxLawPoliciesBulletinsNotices/TaxBulletins/SUT/Documents/st\\_bulletin\\_2019-01.pdf](https://www.revenue.pa.gov/GeneralTaxInformation/TaxLawPoliciesBulletinsNotices/TaxBulletins/SUT/Documents/st_bulletin_2019-01.pdf)), which provides guidance to taxpayers for when marketplace and remote sellers, marketplace facilitators and certain other vendors maintain a place of business in Pennsylvania or otherwise have sufficient nexus with the Commonwealth that would cause such taxpayers to be subject to its sales and use tax requirements. In response to the Supreme Court's decision in *South Dakota v. Wayfair* (see our prior coverage here (<https://www.stradley.com/insights/publications/2018/06/tax-insights-june-27-2018>)) that a physical presence was not required by the Constitution for a taxpayer to be subject



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to sales and use tax in a given state, the guidance provides standards for an economic nexus (i.e., generally taxpayers who made more than \$100,000 of gross sales within Pennsylvania) to the Commonwealth that would require a taxpayer to collect and remit its sales tax. The bulletin also provides guidance on coordination with Pennsylvania's Marketplace Sales Act, or Act 43, which requires certain vendors who have neither a physical presence nexus nor an economic nexus in Pennsylvania to elect to collect and remit Pennsylvania sales tax or elect not to collect and remit sales tax, but to otherwise comply with the notice and reporting requirements of the Act.

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