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IRS Issues Final Regulations on GILTI and Foreign Tax Credits

The IRS issued final regulations (https://s3.amazonaws.com/public-inspection.federalregister.gov/2019-12437.pdf?utm_medium=email&utm_campaign=pi+subscription+mailing+list&utm_source=federalregister.gov) (1) that provide guidance to determine the amount of global intangible low-taxed income (GILTI) included in the gross income of certain U.S. shareholders of foreign corporations, (2) relating to the determination of a U.S. shareholder's pro rata share of a controlled foreign corporation's (CFC) subpart F income included in the shareholder's gross income and (3) relating to certain foreign tax credit (FTC) provisions applicable to persons who directly or indirectly own stock in foreign corporations. The final regulations retain the basic approach and structure of the GILTI proposed regulations (see our prior coverage here (<https://www.stradley.com/insights/publications/2018/09/tax-insights-september-26-2018>) and here (<https://www.stradley.com/insights/publications/2017/12/tax-insights-december-20-2017>)) and some rules under the foreign tax credit proposed regulations, with certain revisions (see our prior coverage here (<https://www.stradley.com/insights/publications/2018/12/tax-insights-december-5-2018>)).

The final GILTI regulations (GILTI was enacted by the 2017 Tax Cuts and Jobs Act (TCJA)) generally provide guidance to U.S. shareholders for calculating items of income determined at the CFC level, the shareholder's pro rata share of such items, and the amount of such items included in GILTI and the shareholder's gross income for the taxable year. The final FTC regulations are being adopted to ensure that the applicability dates of these rules coincide with the applicability dates of the statutory provisions to which they relate. Future guidance will address issues concerning the allocation and apportionment of expenses to determine a taxpayer's FTC limitation under Section 904. (Section references are to the Internal Revenue Code of 1986, as amended (Code).)

IRS Issues Temporary Regulations on Dividends-Received Deduction

The IRS issued temporary regulations (<https://s3.amazonaws.com/public-inspection.federalregister.gov/2019-12441.pdf>) under Section 245A that limit the dividends-received deduction for certain domestic corporations that receive dividends from CFCs or are shareholders of upper-tier CFCs that receive dividends from lower-tier CFCs. Section 245A was added to the Code under the TCJA as part of the U.S.'s move toward a modified territorial tax system for income earned by foreign subsidiaries of domestic corporations and other domestic shareholders. Section 245A provides for a 100% dividends-received deduction regarding the "foreign-source portion" of any dividends received from a specified 10%-owned foreign corporation by a domestic corporation that is a U.S. shareholder. Specifically, the temporary regulations limit (1) the dividends-received deduction available for certain dividends received from current or former CFCs and (2) the applicability of the exception to foreign personal holding company income for certain dividends received by upper-tier CFCs from lower-tier CFCs. The temporary regulations are effective June 18 and generally apply to distributions occurring after Dec. 31, 2017.

IRS Issues Final Regulations Reducing Federal Charitable Contribution by Amount of State or Local Tax Credit

IRS has issued final regulations (<https://www.federalregister.gov/documents/2019/06/13/2019-12418/contributions-in-exchange-for-state-or-local-tax-credits>) with an accompanying news release (<https://www.irs.gov/newsroom/final-regulations-on-charitable-contributions-and-state->

[and-local-tax-credits](#)) which address reductions to charitable contribution deductions taken as a result of state or local tax credits received by a taxpayer. The final regulations generally adopt the proposed regulations that were issued in August 2018. (See our prior coverage here. (<https://www.stradley.com/insights/publications/2018/08/tax-insights-august-29-2018>)) In response to the \$10,000 cap on state and local tax deductions enacted by the TCJA, states created certain programs that allowed for a transfer of property under a state or local tax credit program to be treated as a charitable contribution for federal income tax purposes, thus allowing an individual taxpayer to still receive a federal tax benefit beyond the \$10,000 limit. The proposed regulations, and now final regulations, seek to eliminate these workarounds. First, the final regulations retain the general rule that if a taxpayer makes a payment or transfers property to or for the use of an entity described in Section 170(c), and the taxpayer receives or expects to receive a state or local tax credit in return for such payment, the tax credit constitutes a return benefit to the taxpayer, or quid pro quo, reducing the taxpayer's charitable contribution deduction. Second, the taxpayer must reduce its charitable contribution deduction if it receives or expects to receive state or local tax deductions in excess of the taxpayer's payment or the fair market value of property transferred by the taxpayer. Third, the final regulations retain the 15% exception, under which a taxpayer may disregard state and local tax credits as a return benefit where such credits do not exceed 15% of the taxpayer's payment. Fourth, the final regulations apply to payments made by a trust or decedent's estate in determining its charitable contribution deduction under Section 642(c). Lastly, the final regulations reflect typographical corrections made to the proposed regulations.

IRS Issues Notice for Safe Harbor With Respect to Disallowed Charitable Contribution Deductions

The IRS, in Notice 2019-12 (<https://www.irs.gov/pub/irs-drop/n-19-12.pdf>), announced that it intends to publish a



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proposed regulation providing a safe harbor under Section 164 for certain individuals who itemize their tax deductions and who make a payment to or for the use of an entity described in Section 170(c) in return for a state or local tax credit. Prior to issuance of the proposed regulations, taxpayers may rely on the safe harbor provisions of the Notice. Under the safe harbor, an individual may treat as a payment of state or local tax for purposes of Section 164 the portion of a payment for which a charitable contribution deduction under Section 170 is or will be disallowed under Treas. Reg. § 1.170A-1(h)(3). This treatment as a payment of state or local tax under Section 164 is allowed in the taxable year in which the payment is made to the extent the resulting credit is applied, consistent with applicable state or local law, to offset the individual's state or local tax liability for such taxable year or the preceding taxable year. In states and localities that permit an individual to carry forward an excess credit amount to a subsequent taxable year, an individual may treat the carryforward amount as a state or local tax payment under Section 164 for the taxable year or years to which the credit is applied, consistent with applicable state or local law, to offset a state or local tax liability.