GILTI, FDII and the BEAT: Tax Planning in a Post-Reform World

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INTRODUCTION

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IRC § 951A: Global Intangible Low-Taxed Income ("GILTI")

A United States shareholder of a controlled foreign corporation includes in gross income the shareholder's global intangible low-taxed income ("GILTI").

GILTI is the excess of net CFC tested income over the net deemed tangible income return.

Net CFC tested income is the excess of the aggregate of the shareholder's pro rata share of the tested income of each CFC, over the shareholder's pro rata share of the tested loss of each CFC.

Net deemed tangible income return generally is 10% of the shareholder's pro rata share of the qualified business asset investment ("QBAI").

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IRC § 951A: Global Intangible Low-Taxed Income ("GILTI")

Tested income is the excess of gross income over allocable deductions, disregarding effectively connected income, subpart F income, high-taxed income, any dividend received from a related person, and any foreign oil and gas extraction income. A tested loss is the excess of allocable deductions over gross income.

QBAI is the average of the corporation's basis (determined using the alternative depreciation system under IRC § 168(g)) in tangible property used in the production of tested income and eligible for depreciation under IRC § 167).

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IRC § 250: Foreign-Derived Intangible Income (“FDII”)

A domestic corporation is allowed a deduction equal to 37.5% of its foreign-derived intangible income (“FDII”) and 50% of its GILTI (plus the IRC § 78 amount). If the FDII and GILTI amounts exceed taxable income, the deductions are reduced.

A domestic corporation’s FDII is the amount which bears the same ratio to its deemed intangible income as its foreign-derived deduction eligible income bears to its deduction eligible income.

Deemed intangible income is the excess of the deduction eligible income over the deemed tangible income return (10% of OBAI).

IRC § 250: Foreign-Derived Intangible Income (“FDII”)

Deduction eligible income does not include Subpart F income, GILTI, financial services income, any dividend received from a CFC, any domestic oil and gas extraction income, and any foreign branch income.

Foreign-derived deduction eligible income is deduction eligible income derived in connection with (A) property sold to any person who is not a United States person, and which the taxpayer establishes is for a foreign use, or (B) services provided by the taxpayer which the taxpayer establishes are provided to any person, or with respect to property, not located in the United States.

Taxpayers are required to maintain documentation establishing that a person and use are foreign.