UPDATES AND OTHER TIDBITS

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THE HIGH-TAX KICKOUT: G.I.L.T.I. OR NOT G.I.L.T.I.?

On June 21, the Treasury published proposed and final regulations under Code §951A. They address, *inter alia*, an expansion of the high-tax kickout exception applicable to Subpart F Income.

In a nutshell, Code §951A excludes several items from gross tested income, and thus from G.I.L.T.I., including foreign base company income ("F.B.C.I.") and insurance income subject to the high-tax kickout. The final regulations do not allow for the high-tax kickout exception to apply to gross tested income not otherwise constituting F.B.C.I. or insurance income. Instead, they defer to the proposed regulations to suggest a framework under which taxpayers could elect for non-F.B.C.I. or non-insurance income to benefit from the high-tax kickout.

The proposed regulations provide that controlling domestic shareholders of a C.F.C. can elect for the high-tax kickout exception to apply to all the C.F.C.'s items of income for the taxable year that meet the effective 18.9% foreign tax rate. This effective rate must be computed on a unit-by-unit basis for each Qualified Business Unit. For this purpose, controlling domestic shareholders generally are U.S. Shareholders owning more than 50% of the voting rights in the C.F.C. in the aggregate. The election is made by attaching a statement to the return (including to amended returns) and is binding on all the U.S. Shareholders of the C.F.C. In the case of a controlling domestic shareholder group, the election applies to each C.F.C. in that group. Unless revoked, the election applies to the year of the election and subsequent years. Finally, it should be noted that, if the high-tax kickout exception is elected for, the foreign income taxes associated to the excluded income and the property generating the excluded income are, respectively, excluded from the Code §960 indirect foreign tax credit and from qualified business asset investments.

The final regulations caution that taxpayers cannot rely on the proposed regulations to elect for non-F.B.C.I. or non-insurance income to benefit from the high-tax kickout before the proposed regulations become final.

SENATE TO VOTE ON TAX TREATIES

On June 25, the Senate Foreign Relations Committee approved protocols to four income tax treaties, clearing the way for the treaties to be considered by the full Senate. Senate approval is the final step needed in order for instruments of ratification to be exchanged with the treaty partner jurisdiction. The protocols relate to income tax treaties with Japan, Luxembourg, Spain, and Switzerland.

Senator Rand Paul (R-K.Y.), a member of the Senate Foreign Relations Committee, has held up consideration of the protocols because of his opposition to exchange of information provisions without what proper safeguards in place to protect U.S. businesses and citizens abroad.

Apparently, the protocols will require a formal vote by the full Senate rather than a streamlined process of unanimous consent by voice vote. In any case, this is a significant step, as no tax treaty or protocol has been approved by the Senate since 2010.

FRENCH SOCIAL SECURITY CHARGES (C.S.G. AND C.R.D.S.) ARE CREDITABLE

As stated in our June 19 Client Alert, the French *contribution sociale généralisée* ("C.S.G.") and *contribution au remboursement de la dette sociale* ("C.R.D.S.") perviously were not considered creditable foreign income taxes since they were considered falling under the provisions of the France-U.S. Totalization Agreement. The U.S. Court of Appeals for the District of Columbia Circuit reversed this holding but remanded the case back to the Tax Court for further review and possible reconsid-eration. Based on a joint status report recently filed with the Tax Court, the French and U.S. agreed that neither the C.S.G. nor the C.R.D.S. fall under the provisions of the France-U.S. Totalization Agreement.

On June 26, the I.R.S. circulated an agency statement providing that the C.S.G. and the C.R.D.S. were not social "taxes" covered by the Totalization Agreement. The I.R.S. thus does not intend to challenge foreign tax credit claims for these two types of French social charges "on the basis that the Agreement on Social Security applies to those taxes."

The I.R.S. statement further provides that affected taxpayers have ten years to file a claim for refund. The I.R.S. intends to issue further guidance soon.

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