

June 25, 2018

The Honorable David J. Kautter
Assistant Secretary (Tax Policy)
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

The Honorable David J. Kautter
Acting Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

The Honorable William M. Paul
Acting Chief Counsel and Deputy Chief Counsel (Technical)
Internal Revenue Service
1111 Constitution Avenue, NW
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Lafayette G. “Chip” Harter III
Deputy Assistant Secretary (International Tax Affairs)
Department of the Treasury

Douglas L. Poms
International Tax Counsel
Department of the Treasury

Re: Request for Guidance on Expense Apportionment to Global Intangible Low-Taxed Income

Dear Sirs:

The Retail Industry Leaders Association (“RILA”) respectfully requests that the Department of the Treasury (“Treasury”) and the Internal Revenue Service (“IRS”) issue guidance indicating that, for purposes of the foreign tax credit limitation under section 904(a), indirect expenses (such as interest and stewardship) are not apportioned to any amount includible in gross income of a United States shareholder as Global Intangible Low-Taxed income (“GILTI”) under section 951A of the Internal Revenue Code, as amended by P.L. 115-97 (the “Code”).

The Tax Cuts and Jobs Act (“Act”), enacted late last year, made significant changes to the Code in many areas. This includes an entirely new statutory provision, Section 951A, which provides that each United States shareholder of any controlled foreign corporation (“CFC”) for any taxable year must include in gross income such shareholder’s GILTI. As the Treasury and the

IRS work to update guidance in this area, RILA appreciates your consideration of our views highlighted below.

RILA and Its Members

RILA is the trade association of the world's largest and most innovative retail companies. RILA members include more than 200 retailers, product manufacturers, and service suppliers, which together account for more than \$1.5 trillion in annual sales, millions of American jobs, and more than 100,000 stores, manufacturing facilities and distribution centers domestically and abroad. More than 42 million jobs in the United States are either a retail job or a job that relies on retail. Because of the retail industry's role as a significant employer, and the billions of dollars retailers pay in federal, state and local taxes, few industries have a greater impact on the U.S. economy than retail.

Treasury Should Issue Guidance to Carry Out Congressional Intent

The apportionment of interest and other expenses to our RILA members' GILTI foreign tax credit limitation is a significant issue. As the law stands now, taxpayers that have apportioned expenses that reduce foreign source income will pay U.S. tax on their foreign source income even if such income is not considered "low tax" (defined by Congress to be a foreign rate of 13.125%)---in essence subjecting such income to double taxation. It is evident that this is not what Congress intended.

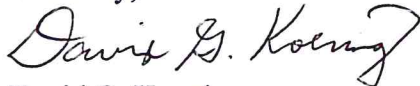
The Conference Report to the Act and the "low tax" name of the GILTI provision itself reveals that Congress intended for the GILTI tax to apply to low-tax jurisdictions. However, analysis indicates that if indirect expenses are apportioned to the GILTI basket, high-taxed foreign income could be subject to U.S. tax even though its income was already subject to a rate higher than 13.125%. In addition, the Act's limit of GILTI foreign tax credits to 80% of the foreign taxes paid and the removal of the ability to carryforward or carryback GILTI related foreign tax credits show clear Congressional intent on how to treat GILTI related foreign tax credits. The unintended negative consequences of the expense apportionment regulations that were drafted well before GILTI was enacted are inconsistent with the intent of the new law, result in unfair outcomes for many taxpayers and place U.S. companies at a competitive disadvantage vis-à-vis their foreign owned competitors.

Considering that the GILTI provision has significantly broadened current U.S. taxation of certain foreign source income, the foreign tax credit (and associated foreign tax credit limitation) is essential to achieve Congress' intended U.S. taxation of CFCs. These issues, along with potential solutions, have previously been identified and presented to Treasury. An example which RILA supports was proposed by Illinois Tool Works (ITW) in an April 4, 2018 letter. The ITW letter proposes a solution that categorizes GILTI as "exempt income" for purposes of the foreign tax credit limitation, thereby shutting off the allocation and apportionment of expenses to that category of income. Alternatively, Treasury could allow apportionment of expenses to GILTI up to the target rate of 13.125%, while also eliminating apportionment that would cause the effective rate to exceed 13.125%.

Conclusion

RILA appreciates the opportunity to provide comments on implementation of the GILTI provision under the new law. We hope you will consider our recommendations, and those previously presented by Illinois Tool Works and others, as you work to provide guidance under Code Section 951A. If you would like to discuss our recommendations in this letter, please contact David G. Koenig at 703-600-2051 or at david.koenig@rila.org.

Sincerely,



David G. Koenig
Vice President, Tax
Retail Industry Leaders Association

cc:

Brenda Zent
Gary Scanlon
Marjorie Rollinson
Leni Perkins