The United States (US) Office of Management and Budget’s Office of Information and Regulatory Affairs reportedly has completed its review of proposed regulations on the Foreign Derived Intangible Income (FDII) provision that was enacted as part of the 2017 Tax Cuts and Jobs Act (TCJA), and sent the regulations back to Treasury for final review. The proposed regulatory package presumably will be released to the public soon. The provision provides for a 37.5% deduction that, subject to limitations, can result in an effective tax rate of 13.125% for income from FDII for tax years beginning after 31 December 2017 and before 1 January 2026. For tax years beginning after 31 December 2025, the deduction is reduced to 21.875% and the effective tax rate on FDII is, subject to limitations, therefore increased to 16.406%.

The Organisation for Economic Co-operation and Development (OECD) Forum on Harmful Tax Practices (FHTP) has been reviewing the FDII provision since last fall. The US Government’s position is that FDII, combined with the Global Intangible Low Taxed Income (GILTI) provision, creates tax neutrality and therefore is not a harmful tax practice. A Treasury official was recently quoted as saying that the FHTP deliberations are on hold pending the release of final FDII regulations.

In other TCJA international regulatory developments, the Internal Revenue Service (IRS) will hold a hearing on proposed foreign tax credit regulations (REG-105600-18) on 14 March. Discussion outlines are due by 8 March.
In transfer pricing developments, the IRS Large Business & International Division issued a memorandum (LB&I-04-0219-001) this week that requires transfer pricing issue teams to consult with the Advance Pricing and Mutual Agreement (APMA) office on issues involving transfer pricing transactions between US taxpayers and related parties in US tax treaty countries that may result in adjustments for which competent authority assistance may be required. The new requirement applies whether or not the taxpayer currently has a mutual agreement procedure or advance pricing agreement case in APMA or whether APMA has an active relationship with the treaty partner.

The IRS also is requesting comments on final regulations (T.D. 8656) that provide guidance on imposition of the Internal Revenue Code (IRC) Section 6662 accuracy-related penalty for IRC Section 482 adjustments. The comments are due by 30 April.

US Treasury Secretary Steven Mnuchin said this week that the US Government supports France’s efforts to encourage countries to adopt a corporate minimum tax. Several European countries have indicated support for some form of a global minimum tax, taking their cue from the US’s enactment of GILTI. The Treasury Secretary also reiterated the US Government’s opposition to unilateral enactment of a Digital Services Tax, including France’s proposal.

A minimum tax is one of the proposals in the OECD’s public consultation document on possible solutions identified to address issues related to base erosion and profit shifting, in addition to proposals related to tax challenges arising from the digitalization of the economy, which was released on 13 February. It is expected to be one of the subjects of discussion at a 13-14 March OECD public consultation in Paris.

A senior Treasury official this week was quoted as saying that the multilateral global minimum tax discussions are at the earliest stages, and all design options are on the table, including a per country approach or an average rate approach similar to that in GILTI. The former approach could present significant challenges, the official noted.

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EYG no. 000669-19Gbl
1508-1600216 NY
ED None

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