



Hank Gutman Quoted by Law360 on Biden GILTI Proposals

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November 9, 2020

IPB Counsel Hank Gutman was quoted in Law360's November 8 article, "GILTI Tweaks Likely Central To Biden Int'l Tax Agenda." Noting that President-Elect Joe Biden said on the campaign trail that his administration would "close each and every one of the Trump loopholes that he created in 2017 to reward companies with big tax breaks for offshoring," the article states that "As it exists, GILTI levies a 10.5% tax on offshore "intangible" income, calculated as returns above 10% on a company's offshore depreciable tangible property. Because companies can claim some foreign tax credits on GILTI, it ultimately applies only if the overall foreign tax rate on that income is lower than 13.125%. Because the TCJA exempts most other foreign income from taxation, the GILTI tax is meant to discourage companies from moving valuable intangible assets such as intellectual property to low-tax jurisdictions."

It goes on to explain that, "Biden has proposed nixing the tangible asset aspect of GILTI so that it would apply to most foreign income of U.S. taxpayers. He would also calculate the rate country by country. And his tax plan would double the rate to 21% while raising the overall corporate rate to 28%.

Combined, these provisions would drastically increase the tax costs of overseas business for U.S. taxpayers, shifting the U.S. much closer to a worldwide tax system. A country-by-country calculation could also increase administrative burdens for companies, which would now see an incentive to do more cross-border tax planning for all of the jurisdictions they do business in."

"These proposals assume a conclusion but invite a discussion," said Hank Gutman, of counsel at Ivins Phillips & Barker Chtd. and a former deputy tax legislative counsel in the Treasury Department Office of Tax



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Policy. "All of these things are placeholders."