FASB Staff Q&A on the Accounting for Global Intangible Low-Taxed Income

Background

The Tax Cuts and Jobs Act requires a US shareholder of a foreign corporation to include in income its global intangible low-taxed income (GILTI). In general, GILTI is described as the excess of a US shareholder's total net foreign income over a deemed tangible income return, which is defined as 10 percent of its foreign qualified business asset investment reduced by certain interest expense amounts. There is no loss carryforward mechanism to allow GILTI losses in one year to offset GILTI income in another year.

The Tax Cuts and Jobs Act allows a deduction of 50 percent of GILTI, but this deduction is limited to the taxpayer's taxable income. An entity also is allowed a deemed paid foreign tax credit of 80 percent of foreign taxes attributable to the underlying foreign corporation. Unused foreign tax credits associated with GILTI cannot be carried forward or back or used against other foreign source income. A US shareholder would increase its basis in the foreign corporation for the GILTI inclusion.

Question

Does the FASB staff believe that an entity should recognize deferred taxes for basis differences expected to reverse as GILTI in future years or should GILTI be included in tax expense in the year it is incurred?

Response

The FASB staff does not believe that Topic 740 on income taxes is clear as to the treatment of GILTI.

Some stakeholders believe that it would not be appropriate to provide deferred taxes on individual inside basis differences or the outside basis difference (or portion thereof) because a taxpayer's GILTI is based on its aggregate income from all foreign corporations. Because the computation is done at an aggregate level, the unit of account is not the taxpayer's investment in an individual foreign corporation or that corporation's assets and liabilities. These stakeholders believe that the guidance on deferred tax accounting in Topic 740 using the asset and liability approach does not address taxes on aggregated income because basis differences of a foreign corporation in one jurisdiction may be offset by basis differences in a foreign corporation in another jurisdiction and ultimately may never be taxed. Furthermore, these stakeholders believe that the GILTI computation is dependent on contingent or future events (for example, future foreign income versus loss, the amount of foreign qualified business asset investment in a given year, future foreign tax credits, or future taxable income), which suggests that taxes on GILTI should be accounted for as period costs similar to special deductions.

Other stakeholders believe that the current tax imposed on GILTI is similar to the tax imposed on existing Subpart F income. Deferred taxes generally are provided under Topic 740 for basis differences that are expected to result in Subpart F income upon reversal. Because GILTI is included in the US shareholder's taxable income when earned by the foreign corporations, similar to Subpart F income, these stakeholders believe that a US shareholder should recognize deferred tax assets and liabilities when basis differences exist that are expected to affect the amount of GILTI inclusion upon reversal.

Based on the different views provided, the FASB staff believes that Topic 740 is not clear related to the accounting for GILTI, and an entity may apply either interpretation of Topic 740. The staff believes that an entity must disclose its accounting policy related to GILTI inclusions in accordance with paragraphs 235-10-50-1 through 50-3.

The staff plans to monitor how entities that are subject to GILTI are accounting for and disclosing its effects by reviewing annual or quarterly reports issued for periods ending December 31, March 31, and June 30. Following their review, the staff will provide an update to the Board so it can consider whether improvements may be needed for the accounting or disclosures for GILTI.