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U.S. Court of Federal Claims: Regulations governing allocation of disqualified-basis GILTI amortization deductions held invalid

The U.S. Court of Federal Claims held that regulations governing the allocation of certain deductions from global intangible low-taxed income (GILTI) are invalid because the Department of the Treasury and the IRS lacked the statutory authority to promulgate them.

The case is: *Keysight Technologies, Inc. & Subsidiaries v. United States*, No. 25-137 (Fed. Cl. July 2, 2026). Read the Court of Federal Claims' opinion.

Background

Enacted under the Tax Cuts and Jobs Act (TCJA) of 2017, the GILTI regime under section 951A taxes certain foreign earnings of controlled foreign corporations (CFCs) in the year they are earned. Because GILTI became effective for tax years of foreign corporations beginning after December 31, 2017, a gap period occurred for fiscal-year taxpayers. During this transition window, taxpayers could engage in intercompany asset transfers that created a stepped-up tax basis (disqualified basis) in the transferred assets.

To prevent taxpayers from using this basis to reduce future U.S. tax, Treasury and the IRS issued Treas. Reg. § 1.951A-2(c)(5). This regulation required that any depreciation or amortization deductions attributable to this disqualified basis be allocated solely to residual CFC gross income, thereby preventing them from reducing gross tested income under the GILTI regime.

Summary

The taxpayer sought refunds for tax years 2020, 2021, and 2022, claiming amortization deductions under section 197 to reduce its GILTI inclusion. These deductions were attributable to the stepped-up basis of assets transferred between its related CFC subsidiaries during the 2018 fiscal tax year gap period. The IRS denied these refund claims based on the allocation rules in Treas. Reg. § 1.951A-2(c)(5). The taxpayer challenged the validity of the regulation, arguing that it exceeded the statutory authority of Treasury.

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The Court of Federal Claims granted partial summary judgment for the taxpayer, holding that the regulation is invalid because Treasury lacked the authority to promulgate it. Relying on the Supreme Court's decision in *Loper Bright Enterprises v. Raimondo*, the court concluded that the general rulemaking authority under section 7805(a) does not allow Treasury to rewrite clear statutory terms or invent restrictions to correct perceived congressional mismatches. Furthermore, the court held that the statutory term "properly allocable" under section 951A(c)(2)(A)(ii) has a contextual meaning historically aligned with the factual relationship test of section 861, and Treasury's contrary interpretation commanded no persuasive weight under *Skidmore v. Swift & Co.*

The court also emphasized that, unlike other subsections of section 951A that include express grants of regulatory authority, section 951A(c) contains no such delegation to the Secretary, and section 951A(c)(2)(A)(ii) itself does not confer authority to redefine "properly allocable."

KPMG observation

The issues in this case (*Keysight*), and a recent U.S. Tax Court opinion (*Siemens* (read *TaxNewsFlash*)), are closely related, as both cases stem from the Treasury's attempt to eliminate tax benefits arising from intercompany asset sales during the post-TCJA gap period for fiscal-year CFCs. However, the two regulations targeted opposite sides of the same transactions.

While the regulation in *Siemens* attempted to eliminate the seller's section 245A dividends-received deduction (DRD) benefit with respect to the generated earnings and profits (E&P), the regulation in *Keysight* targeted the buyer's side by denying amortization deductions from the stepped-up asset basis. In both instances, the courts applied the reasoning in *Loper Bright* to reject the regulatory overrides of Treasury, establishing a strong judicial trend against administrative attempts to unilaterally correct perceived legislative mismatches.

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