



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

TO: Alex Goodenough, Office of Information and Regulatory Affairs

FROM: Ryan Law
Deputy Assistant Secretary
Office of Privacy, Transparency, and Records

SUBJECT: Justification for Emergency Processing: S Corporation Guidance under Section 958 (Rules for Determining Stock Ownership) and Guidance Regarding the Treatment of Qualified Improvement Property under the Alternative Depreciation System for Purposes of the QBAI Rules for FDII and GILTI (NOT-114860-20)

The Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) are requesting approval of OMB Control No. 1545-2291 under emergency procedures in connection with provisions of Public Law 115-97, 131 Stat. 2054 (December 22, 2017), commonly referred to as the Tax Cuts and Jobs Act (TCJA). The TCJA added to the Internal Revenue Code section 951A, which sets forth global intangible low-taxed income (GILTI) rules. On June 21, 2019, the Treasury Department and the IRS published final regulations to implement the GILTI rules. These final regulations changed a key rule in the proposed regulations that impacted the Federal income tax consequences of GILTI for certain S corporations and their shareholders.

Shortly after publication of the final GILTI regulations, the Treasury Department and the IRS became aware that S corporations had furnished Schedules K-1 to shareholders for the 2018 taxable year on or before the final GILTI regulations' publication date, and had relied on the proposed GILTI regulations. The Treasury Department and the IRS released Notice 2019-46 to reduce compliance burdens for taxpayers and processing burdens for the IRS by permitting S corporations to rely on the proposed GILTI regulations solely for the 2018 taxable year.

Based on comments received regarding the GILTI final regulations and Notice 2019-46, the Treasury Department and the IRS are issuing the attached notice (Notice) to provide a transition rule for those S corporations that were impacted by the key rule change set forth in the GILTI final regulations. S corporations and their shareholders (if applicable) file a white paper election with their returns to apply the transition rule. This transition rule will result in a material change in the Federal income tax consequences of the GILTI rules as applied to certain S corporations. However, by September 15, 2020, S corporations must file a 2019 calendar year income tax return (Form 1120-S) and pay any tax, interest, and penalties due. To provide S corporations with sufficient time to take the transition rule into account in preparing their original 2019 Federal income tax returns (filed under extension), the Treasury Department and the IRS intend to release the Notice on August 31, 2020. Taxpayers have until March 15, 2021 to file the election on an amended 2019 return or with their 2020 returns.

In light of the short timeline to provide guidance regarding this aspect of the GILTI rules, the IRS plans to issue the Notice on August 31, 2020, and thus requests approval of the control number by that date. Given the inability to seek public comment during such a short timeframe, IRS respectfully requests a waiver from the requirement to publish notice in the Federal Register seeking public comment during the period of Office of Management and Budget review. However, public comment will be solicited in the Notice published in the Internal Revenue Bulletin, and in conjunction with a subsequent extension of the approval to collect this information.