Miller & Chevalier

Loren Ponds Comments on Tension Between GILTI and Pillar 2 Allocation in Tax Notes

"Treasury Outlines Viable Approaches for GILTI Pillar 2 Allocation"

TAX NOTES

06.08.2022

Loren Ponds commented on U.S. Department of the Treasury's proposed allocation approaches for controlled foreign corporation (CFC) taxes that could be taken into account if the global intangible low-taxed income (GILTI) regime is a qualified CFC regime under Pillar 2, during a June 8 conference sponsored by the 2022 Texas Federal Tax Institute. Ponds highlighted the tension that exists in a scenario under which GILTI is a CFC tax regime, rather than one that conforms to the contours of an income inclusion rule (IIR) as outlined under Pillar 2's Global anti-base erosion (GloBE) rules. Because the U.S. has thus far failed to enact the proposed legislative changes that would bring GILTI in line with the IIR, under the Pillar 2 Model Rules, GILTI would instead likely be characterized as a CFC tax regime. Under this scenario, taxes paid at the U.S. shareholder level would be have to be allocated back down to the CFC level, and if the resulting effective tax rate is high enough in those CFCs' respective jurisdictions, countries would then be precluded from imposing a qualified domestic minimum top-up tax.