Tax Insights
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Services

Court rejects Treasury's GILTI regulation

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In brief

What happened?

The United States Court of Federal Claims on July 2, 2026, resolved cross-motions for summary judgment in *Keysight Technologies, Inc. & Subsidiaries v. United States*, No. 25-137. The case addressed whether Treasury had authority to promulgate Reg. 1.951A-2(c)(5), which limits deductions attributable to 'disqualified basis' in computing global intangible low-taxed income (GILTI) under Section 951A.

The court granted Keysight's partial motion for summary judgment and denied the government's cross-motion. Applying a post-Loper Bright framework, the court held that Treasury lacked authority to promulgate the regulation and that Treasury's interpretation of 'properly allocable' was not persuasive under *Skidmore v. Swift & Co*.

Why is it relevant?

The decision is one of the first to interpret the scope of the Treasury Department's regulatory authority under Section 7805(a) after the Supreme Court overturned *Chevron* in *Loper Bright Enterprises v. Raimondo.*

The opinion reinforces the post-Chevron principle that courts, not agencies, decide statutory meaning. It also illustrates that Treasury's interpretation may receive little or no persuasive weight under Skidmore when the court finds reasoning, consistency, and statutory footing lacking.

Because this is a trial-level refund decision, taxpayers should evaluate its relevance in light of their own facts, procedural posture, and any further appellate developments. The opinion also could be relevant to taxpayers with open GILTI years, pending refund claims, or disputes in which Treasury relies on broad rulemaking authority rather than a specific statutory delegation.

Actions to consider

Taxpayers whose fiscal-year controlled foreign corporations (CFCs) may have been subject to the disqualified basis rules due to transactions occurring during the "GILTI gap period" in 2018 should consider whether the court's holding may affect current or prior years, including by reviewing documentation supporting the relationship between deductions and gross tested income. Additionally, taxpayers considering the validity of other regulations should evaluate the relevance of the court's reasoning to the basis for which Treasury and the IRS have asserted authority to promulgate those other regulations.

In detail

Background

GILTI, as enacted by the Tax Cuts and Jobs Act of 2017 (TCJA), taxes certain foreign income in the year earned on a current basis. For fiscal-year CFCs, the TCJA's effective dates created a gap period after the final measurement date for the toll charge under Section 965 and the first tax year to which GILTI applied. As a result, income generated during this gap period was not subject to GILTI. Treasury responded to this gap period by promulgating Reg. 1.951A-2(c)(5), which was intended to prevent taxpayers from generating an untaxed basis step-up through asset transfers between related CFCs during a 'disqualified period.'

In general, the regulation allocates deductions or losses attributable to disqualified basis to "residual CFC gross income," meaning gross income that is neither tested income, subpart F income, nor effectively connected income. As a result, those deductions or losses generally cannot reduce income that would be subject to US federal income tax.

Keysight challenged the regulation on three grounds: the regulation contradicted the statute, exceeded Treasury's authority, and was not a logical outgrowth of the proposed rule under the Administrative Procedure Act (APA). The United States responded that fiscal-year CFC taxpayers received an unwarranted benefit from Congress's effective-date choice, that Treasury had broad authority under Section 7805(a), and that Section 951A(c)(2)(A)(ii) delegated authority to determine what deductions are 'properly allocable.'

Court's analysis

The court analyzed whether the Code supplied an express or implied delegation sufficient to support Reg. 1.951A-2(c)(5), and then, having concluded in the negative, considered whether Treasury's interpretation of 'properly allocable' carried persuasive weight under *Skidmore*. The court concluded that general rulemaking authority and asserted statutory ambiguity were not enough to sustain the regulation.

Post-*Chevron* framing and standard of review

The court began by placing the dispute in the post-*Chevron* world, stating that "when *Chevron* fell, so too did the presumption that statutory ambiguity favors the agency." It read *Loper Bright* as confirming that courts, not agencies, have the final word on statutory meaning. The court also noted that *Loper Bright* did not eliminate older interpretive tools. In particular, *Skidmore* remains available, allowing courts to consider agency interpretations for their persuasive value.

Observation: The court did not treat statutory ambiguity as a license for Treasury to choose among permissible interpretations. Instead, the court asked whether Congress delegated authority to Treasury to make the specific allocation rule at issue.

Statutory and regulatory foundation

The dispute centered on how deductions should be treated when calculating GILTI. Reg. 1.951A-2(c)(5) generally prevents certain deductions tied to 'disqualified basis' from reducing a CFC's gross tested income.

The government relied on Section 7805(a), Treasury's general authority to issue 'needful' regulations to enforce the Code; Section 954(b)(5), which addresses deductions properly allocable to foreign base company income; and Section 951A(c)(2)(A)(ii), which refers to deductions properly allocable to gross tested income "under rules similar to the rules of [S]ection 954(b)(5)."

Keysight argued those provisions did not authorize Treasury to adopt the challenged rule, and that 'properly allocable' should be understood by reference to existing allocation principles, including rules that generally look to the factual relationship between a deduction and the related income.

Observation: The government treated ambiguity of the term 'properly allocable' as an implicit grant of regulatory authority; Keysight treated the phrase as importing existing allocation principles based on context and legislative intent. The court adopted an interpretation closer to Keysight's, without defining the term universally.

Section 7805(a) was not enough

The court rejected the argument that Section 7805(a), standing alone, gives Treasury enough authority to promulgate the regulation. The government argued that, even after *Loper Bright*, Section 7805(a) should be read as a broad delegation allowing Treasury to issue regulations that make the law operate consistently with Congress's unexpressed intent.

The court rejected that argument as too broad. If Treasury could decide both what rules are 'needful' and the substantive content of those rules without a more specific delegation, then *Loper Bright* would lose much of its force. The court also reasoned that if Section 7805(a) alone were enough, Congress would have little reason to include specific regulatory delegations elsewhere in the Code.

Observation: After *Loper Bright*, Treasury could face greater difficulty defending regulations that rely on broad anti-abuse purpose, legislative history, or revenue-protection concerns without a specific statutory delegation tied to the operative provision.

Section 951A(c)(2)(A)(ii) did not supply a delegation

The court acknowledged that Section 7805(a) may support regulations when combined with a specific grant of authority, but it found no such grant in this case. The court noted that Section 951A(d)(4) authorizes regulations to prevent avoidance, but only of “this subsection,” meaning Section 951A(d), which addresses QBAI. Because the challenged regulation affected tested income under Section 951A(c), the court refused to extend QBAI-specific authority to that deduction rule.

The court also rejected the government’s argument that Section 7805(a), together with Section 951A(c)(2)(A)(ii), gave Treasury discretion to fill TCJA gaps. The court found that Section 951A(c)(2)(A)(ii) contains no express or implied delegation, and unlike other parts of Section 951A, subsection (c) does not mention the Secretary. The court viewed Treasury’s reliance on the phrase “rules similar to the rules of section 954(b)(5)” as an overextension, reading Section 954(b)(5) narrowly as granting regulatory authority for purposes of Section 954(a), which addresses foreign base company income, not GILTI.

Finally, the court rejected the government’s enforcement and anti-abuse rationale. The court found that argument logical but unsupported by the record and gave limited weight to conference-report language suggesting a general congressional concern with abusive or non-economic transactions. In the court’s view, Congress addressed that concern only to the extent reflected in the enacted statutory text, and the court would not expand Treasury’s regulatory authority based on broad statements in legislative history.

Observation: The decision reflects a textualist approach to congressional intent: even where legislative history suggests a general anti-abuse purpose, the court treated the enacted statutory language as controlling and refused to infer a broader delegation of regulatory authority than the statute itself reasonably supported. The opinion leaves open how specific a delegation must be before Treasury may issue substantive anti-abuse rules in adjacent statutory areas.

Skidmore did not save Treasury’s interpretation

After rejecting Treasury’s claimed statutory authority, the court considered whether Treasury’s interpretation of ‘properly allocable’ deserved persuasive weight under *Skidmore*. Unlike *Chevron*, Skidmore allows a court to consider an agency’s view only to the extent the court finds it persuasive.

The court noted that Section 951A does not define ‘properly allocable,’ but rejected the idea that Treasury could use that lack of definition as open-ended authority to write its preferred allocation rule.

Looking to broader statutory context and historical allocation rules, the court concluded that Keysight had the stronger argument that ‘properly allocable,’ in this setting, was closer to a factual-relationship concept than to Treasury’s broader anti-abuse allocation rule. The court did not define ‘properly allocable’ universally; it held only that Treasury’s interpretation was not persuasive in this GILTI context.

Court’s conclusion

The court held that Treasury lacked authority to promulgate Reg. 1.951A-2(c)(5). While Section 7805(a) grants broad authority to prescribe regulations, the court found no specific authority, express or implied, in the Code to support Treasury’s rule, and Treasury’s interpretation of ‘properly allocable’ had no persuasive weight under *Skidmore*. The court denied the government’s cross-motion for summary judgment and granted Keysight’s partial motion for summary judgment.

The court did not reach Keysight’s separate APA argument that the final regulation was not a logical outgrowth of the proposed rule. The opinion also did not adopt a universal definition of ‘properly allocable’; instead, it concluded that, in this statutory context, Keysight had shown a stronger connection to historical factual-relationship allocation principles.

Financial reporting considerations

ASC 740 requires a company to evaluate uncertain tax positions as of each balance sheet date to determine whether the facts and circumstances supporting the sustainability of a position have changed and whether the recognized tax benefit remains appropriate. Changes in the expected outcome of a position's sustainability should be supported by new information, rather than by a reassessment of information previously available. Because a court decision constitutes new information, the decision in *Keysight Technologies, Inc. & Subsidiaries v. United States* should be evaluated in the reporting period in which the decision was issued. If the decision occurred after a balance sheet date but before the issuance of a company's financial statements, subsequent event disclosures also should be considered.

Let's talk

For a deeper discussion of how this decision might affect your business, please contact:

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