



## Corporation Business Tax GILTI Treatment for Privilege Periods Ending on and After July 31, 2023

### TB-110 - Issued September 12, 2023 Tax: Corporation Business Tax

P.L. 2023, c.96, which was signed into law on July 3, 2023, made a series of technical corrections, clarifications, and changes to the Corporation Business Tax Act (CBT), Gross Income Tax Act (GIT), and other miscellaneous requirements. This Technical Bulletin discusses the changes to the CBT treatment for Global Intangible Low Taxed Income (GILTI), I.R.C. s. 250(a) deduction, and Foreign-derived intangible income (FDII). For the treatment of these items for privilege periods ending before July 31, 2023, see [TB-92\(R\)](#) and [TB-88\(R\)](#).

#### **GILTI is Treated as a Dividend**

Effective for privilege periods ending on and after July 31, 2023, GILTI income is treated as a dividend for New Jersey purposes and is reported on the dividends and other inclusions line (line 4 of Schedule A, Part I). GILTI may be excluded (dividend exclusion) as set forth in [N.J.S.A. 54:10A-4\(k\)\(5\)](#) or may be eliminated (intercompany eliminations) under [N.J.S.A. 54:10A-4.6.d](#). The I.R.C. §250 deductions for GILTI and FDII are no longer allowed as [N.J.S.A. 54:10A-4.15](#) has been repealed. The gross amount of FDII is included in ENI for Corporation Business Tax purposes.

#### **Dividend Exclusion and GILTI**

The dividend exclusion applies after the New Jersey additions but before New Jersey deductions to ENI. For privilege periods ending on and after July 31, 2023, the dividend exclusion is a pre-allocation exclusion.

Dividends and deemed dividends (reported on Schedule A) from 80% or more owned subsidiaries are 100% excluded from ENI. Dividends and deemed dividends from more than 50% but less than 80% owned subsidiaries that were included in the taxpayer's gross income on Schedule A are 50% excluded. However, P.L. 2023, c. 96 added a claw-back provision for the purposes of the exclusion (see [N.J.S.A. 54:10A-4\(k\)\(5\)\(F\)\(ii\)](#)). The claw-back provision requires that the taxpayer's entire dividend exclusion be reduced by 5% of all dividends and deemed dividends received by the taxpayer during the same privilege period (claw-back provision).

**Combined Group Filers** – Intercompany dividends and deemed dividends distributed between combined group members that are eliminated above the dividend exclusion line on the tax return are not eligible for the dividend exclusion. The claw-back provision in [N.J.S.A. 54:10A-4\(k\)\(5\)\(F\)\(ii\)](#) does not apply to these intercompany dividend (and deemed dividend) transactions.

#### **CFC Income that Generated the GILTI**

For non-U.S. corporations that are members of a water's-edge combined group or elective affiliated group, treaty protected income and the non-effectively connected income (i.e., income that is not connected to the U.S. business) of a non-U.S. corporation is excluded from ENI. Consequently, such items of income are not eligible for exclusion or elimination as they were not included in ENI in the first place. However, worldwide groups are required to include worldwide income regardless of tax treaties. Thus, there could be differing impacts depending on the method that is filed.

#### **Reporting GILTI and FDII on Schedule J**

When calculating the allocation factor on Schedule J, GILTI (not excluded from ENI) will only be included in the denominator for most taxpayers. The Division is not aware of any real-life situations that would require the GILTI to be included in the numerator of the allocation factor. If a taxpayer includes an amount in the numerator, they must include a rider with the return detailing the addition. Taxpayers are not permitted to look through to underlying sales of the controlled foreign corporations (CFC) that

generated the GILTI when determining how to allocate GILTI unless the CFCs are members of the combined group. The gross amount of the FDII will be included in the denominator.

When a CFC is included as members of the combined group on the same New Jersey combined return as a taxpayer that is required to include the GILTI in income for federal purposes, the CFC's receipts are included in the denominator of the combined group allocation factor. This is because, pursuant to N.J.S.A. 54:10A-4.7, the denominator of the allocation factor for a combined group filing a New Jersey combined return includes the receipts of all of the business entities included as members of the combined group on the same New Jersey combined return. If the CFC is not included in the same combined return as the taxpayer that was required to include the GILTI in income for federal purposes then the combined group denominator does not include the CFC's receipts.

**Separate Return Filers** – The GILTI and FDII must be reported on Schedule A. Taxpayers must include the GILTI (not excluded by N.J.S.A. 54:10A-4(k)(5)) and the gross FDII amounts in the allocation factor on Schedule J. The CFC's receipts are not included in the allocation factor on Schedule J. The I.R.C. § 250 deductions for GILTI and FDII are not allowed.

**Water's-Edge Basis or Affiliated Group Elective Basis where a CFC is NOT included in the combined group** – The GILTI and FDII must be reported on Schedule A. Taxpayers must include the GILTI (not excluded by N.J.S.A. 54:10A-4(k)(5)) and the gross FDII amounts in the allocation factor on Schedule J. The CFC's receipts are not included on Schedule J. The I.R.C. § 250 deductions for GILTI and FDII are not allowed.

**Water's-Edge Basis where a CFC is included in the combined group** – The GILTI, CFC income, and FDII must be reported on Schedule A as part of the combined group's ENI. If the underlying income of the CFC that generated the GILTI was excluded from ENI (either as the result of a tax treaty or because the income was not effectively connected to a business in the U.S.), the portion of GILTI attributable to these excluded amounts are not eliminated or excluded a second time. Only the portion of the receipts attributable to GILTI that has not been excluded or eliminated is included in Schedule J. The combined group must include the gross FDII amount in the allocation factor on Schedule J. The I.R.C. § 250 deductions for GILTI and FDII are not allowed.

**World-Wide Group Elective Basis where a CFC is included in the combined group** – The GILTI, CFC income, and FDII, must be reported on Schedule A as part of the combined group's ENI. Taxpayers must include the CFC's receipts in the allocation factor on Schedule J. However, if the GILTI is eliminated from ENI, it would not be included as part of the allocation factor on Schedule J. The combined group must include the gross FDII amount in the allocation factor on Schedule J. The I.R.C. § 250 deductions for GILTI and FDII are not allowed.

**GILTI and FDII Derived from a Combined Group Member's Independent Business Operations** – There are instances where a portion of a member's business operations can be independent of the unitary business activity of the combined group. Such member of a combined group must complete Schedule X and report the separate portion of its business operations (and those operations that are not part of another combined group). If the income from those operations is GILTI or FDII then that income must be reported on Schedule X in the same manner as a separate return filer (as described above). This reporting is in lieu of filing a separate return to report the separate portion of the member's business operations.

See N.J.A.C. 18:7-5.2; N.J.A.C. 18:7-5.18; N.J.A.C. 18:7-5.19; N.J.A.C. 18:7-21.7; N.J.A.C. 18:7-21.27

The Division of Taxation is in the process of drafting regulations addressing the topics covered by this Technical Bulletin.

**Note:** A Technical Bulletin is an informational document that provides guidance on a topic of interest to taxpayers and may describe recent changes to the relevant laws, regulations, and/or Division policies. It is

accurate as of the date issued. However, taxpayers should be aware that subsequent changes to the applicable laws, regulations, and/or the Division's interpretation thereof may affect the accuracy of a Technical Bulletin. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.