



TB-92 - Issued August 22, 2019 Tax: Corporation Business Tax

The federal Tax Cuts and Jobs Act (TCJA) (P.L. 115-97) was signed into law on December 22, 2017, and contained numerous changes to the federal Internal Revenue Code (IRC). This Technical Bulletin discusses the application of IRC §951A and IRC §250 enacted as part of the TCJA to the New Jersey Corporation Business Tax (CBT) Act. The Division of Taxation has made a decision to revise the allocation methodology of Global Intangible Low-Taxed Income and Foreign Derived Intangible Income from the gross domestic product methodology detailed in TB-85(R). This Technical Bulletin Replaces TB-85(R).

Federal Tax Treatment of IRC §951A (GILTI) and IRC §250 (FDII and GILTI/FDII Deduction)

IRC §951A created a new category of gross income for federal tax purposes known as "Global Intangible Low-Taxed Income" (GILTI). IRC §951A requires each U.S. shareholder of a controlled foreign corporation (CFC) to include its share of GILTI in its federal taxable income for the applicable tax year. IRC §250(b) identified another new category of gross income for federal tax purposes known as "Foreign Derived Intangible Income" (FDII). Neither GILTI nor FDII are treated as dividends or deemed dividends for federal purposes.

There is a corresponding deduction for both GILTI and FDII in IRC §250(a). For federal purposes, the §250(a) deductions are intended to reduce the effective tax rate for the GILTI and FDII amounts.

Treatment of IRC §951A and IRC §250 under the New Jersey CBT Act

For New Jersey purposes, the income starting point is line 28 of federal Form 1120 (or the corresponding line of any other federal corporate return filed), which is entire net income (ENI) before net operating loss deductions and special deductions (N.J.S.A. 54:10A-4(k)). Therefore, GILTI and FDII are included in ENI. GILTI and FDII are not treated as dividends or deemed dividend income for New Jersey CBT purposes; they are separate categories of income and are not treated as distributions from earnings and profits. As such, N.J.S.A. 54:10A-4(k)(5), which deals with the treatment of certain dividends, is not applicable.

Note: FDII and GILTI are included on different lines for federal and New Jersey purposes. To avoid double reporting the income on Schedule A above line 28, taxpayers must reduce the amounts reported on any other lines by the amount of the FDII and GILTI included on lines 10a and 10b of the 2018 Schedule A when transferring income data reported on the federal form 1120 onto the New Jersey Schedule A. For the 2019 return, GILTI and FDII are reported on Schedule A, Part I, lines 4(b) and 4(c), respectively.

P.L. 2018, c. 131, enacted a provision allowing the federal deductions under IRC §250(a) for New Jersey CBT purposes. However, such deductions are allowed only to the specific taxpayer that included the respective GILTI and FDII income on its federal and New Jersey CBT returns **and** that actually took the deductions for federal tax purposes. If taxpayers were not allowed the IRC §250(a) deduction for federal tax purposes, they will not be allowed the deduction for New Jersey CBT purposes. See N.J.S.A. 54:10A-4.15.

Sourcing of GILTI and FDII under the New Jersey CBT Act

GILTI and FDII are a hybrid of different income items. GILTI and FDII are sourced under the category of "all other business receipts" pursuant to N.J.S.A. 54:10A-6(B)(6) and N.J.A.C. 18:7-8.12(e). However, the result

may not reflect a fair and equitable allocation. Generally speaking, GILTI and FDII are integrated in the business of the taxpayer.

The GILTI income and the FDII income and the corresponding IRC §250(a) deductions must be reported on Schedule A. To compute the New Jersey allocation factor on Schedule J, the net amount of GILTI and the net FDII income amounts are included in the numerator (if applicable) and the denominator. This is to help prevent distortion to the allocation factor and arrive at a reasonable and equitable determination of New Jersey tax.

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. The exception is when the CFCs are included as members of the combined group on the same New Jersey combined return as a taxpayer that is also required to include the GILTI in income for federal purposes. 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. Thus, the CFC's receipts are included in the denominator of the combined group allocation factor only when the CFCs are included in the same New Jersey combined return as the members required to include the GILTI in income for federal purposes. If the CFCs are not included in the same combined return as the taxpayer required to include the GILTI in income for federal purposes, the combined group denominator does not include the CFC's receipts.

Sourcing for Combined Groups

Water's-Edge Basis or Affiliated Group Elective Basis where none of the CFCs are included. Taxpayers must include the net GILTI and net FDII income amounts in the numerator (if applicable) and the denominator of the allocation factor on Schedule J, pursuant to N.J.S.A. 54:10A-4.7. The GILTI income and the FDII income and the corresponding IRC §250(a) deductions must be reported on Schedule A. Controlled foreign corporations are usually not included on affiliated group combined returns.

Water's-Edge Basis or World-Wide Group Elective Basis where the CFCs are included. Taxpayers must include the CFC's receipts (net of the IRC §250(a) deduction for GILTI) in the numerator (if applicable) and the group denominator, pursuant to N.J.S.A. 54:10A-4.7. The GILTI income is excluded from the combined group's ENI, as prescribed in [TB-88](#), and the GILTI must be excluded in the allocation factor. This is to prevent the double taxation and double counting of the income and receipts derived from the same source since the CFC's income is already included in the combined group's ENI. The combined group must include the net FDII income amount in the numerator (if applicable) and the group denominator of the allocation factor on Schedule J, pursuant to N.J.S.A. 54:10A-4.7. The GILTI income, CFC income, and FDII income and the corresponding IRC §250(a) deductions must be reported on Schedule A as part of the combined group's ENI. The Division of Taxation is developing a schedule (Schedule A-8) to prevent the double counting of income.

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 the GILTI income or FDII income, that income must be reported on Schedule X in the same manner. This is in lieu of filing a separate return to report the separate portion of the member's business operations.

Filing Instructions

Taxpayers currently on extension for their 2018 tax year that ended before July 31, 2019, and taxpayers with a 2019 short period that ended before July 31, 2019, that file a 2018 CBT-100 or 2018 BFC-1 **will not**

complete the Schedule A-6 that was contained in the original package of forms. The lines that referenced the Schedule A-6 have been adjusted as follows:

- CBT-100 and BFC-1, Page 1, line 3c "Total allocated net income – Add lines 3a and 3b"
- CBT-100, Page 1, line 6 "Investment Company – Enter 40% of the total of line 1 plus line 3b"
- CBT-100, Page 1, line 7 "Real Estate Invest. Trust – Enter 4% of the total of line 1 plus line 3b"
- CBT-100 and BFC-1, Schedule A, lines 10a and b, disregard the instruction to carry the amounts onto Schedule A-6
- CBT-100, Schedule A, line 37b has been blanked out. Treat this line as if the entry is zero.
- BFC-1, Schedule A, line 38b has been blanked out. Treat this line as if the entry is zero.
- CBT-100 and BFC-1, Schedule J must include the net amount of the GILTI income and the net amount of the FDII income, as applicable.

Taxpayers that already filed a 2018 CBT-100, CBT-100-R, or 2018 BFC-1 for their 2018 tax year that ended before July 31, 2019, may need to file an amended return taking into account this Technical Bulletin. If an amended return is required, write "GILTI Amended Return" at the top of the return. Any resulting overpayment can either be credited toward future payments or refunded.

Note: A taxpayer that will be part of a 2019 combined group can have the overpayment credited toward the combined group's future estimated payments and tax liabilities.

The 2019 CBT-100, 2019 CBT-100U, BFC-1-F, and 2019 BFC-1 will reflect the information contained in this Technical Bulletin. As such, taxpayers that have a 2018 fiscal tax year that ends on or after July 31, 2019, and taxpayers that have a 2019 tax year that ends before July 31, 2020, will report their GILTI and FDII income and corresponding GILTI and FDII deductions, accordingly.

Information clarifying the intent of this Technical Bulletin has been posted [online](#).

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.