



SOURCING IRC §951A (GILTI) and IRC §250 (FDII) for Privilege Periods Ending Before July 31, 2023

TB-92(R) - [Revised September 12, 2023](#) 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 Replaced TB-85(R) but only applies to privilege periods ending before July 31, 2023.

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, which affect the treatment for Global Intangible Low Taxed Income (GILTI), the I.R.C. s. 250(a) deduction, and Foreign-derived intangible income (FDII) for privilege periods ending on and after July 31, 2023. For information on these changes, see [TB-110](#).

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) classified certain income that has always been included in the tax base for both Federal and New Jersey tax purposes into a special category, "Foreign Derived Intangible Income" (FDII), in order to provide corporate taxpayers an export subsidy deduction. Neither GILTI nor FDII are treated as dividends or deemed dividends for federal purposes.

For privilege periods ending before July 31, 2023, there was 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\(k\)](#)). While FDII has been newly classified under the IRC for the purposes of qualifying for the export subsidy deduction, the income has always been in the tax base for both Federal and New Jersey tax purposes as part of ENI. Therefore, GILTI and FDII are included in ENI. GILTI and FDII are not treated as dividends or deemed dividend income for privilege periods ending before July 31, 2023; they were separate categories of income and were 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, was not applicable for privilege periods ending before July 31, 2023.

Note: Prior to the return for 2019, FDII and GILTI were 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. On the 2019-2022 returns, GILTI and FDII were 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 (Note: P.L. 2023, c. 96, repealed N.J.S.A. 54:10A-4.15).

Sourcing of GILTI and FDII under the New Jersey CBT Act

GILTI and FDII are hybrids of different income items. GILTI is 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 of such sourcing may not reflect a fair and equitable allocation. While FDII has been newly classified under the IRC as a special category of income, FDII continues to be classified, sourced, and allocated under existing New Jersey statutes and regulations. Generally speaking, GILTI and FDII are integrated with the worldwide business of the taxpayer.

GILTI and FDII, 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 amounts are included in the numerator (if applicable) and the denominator for privilege periods ending before July 31, 2023. This is to help prevent distortion to the allocation factor and arrive at a reasonable and equitable determination of New Jersey tax.

Barring an unusual set of facts and circumstances, the net GILTI will be included in the denominator only, for most taxpayers. Outside of hypothetical scenarios, the Division is not aware of any real-life situations that would require the net GILTI related amounts to be included in the numerator of the allocation factor. If a situation arises in which the net GILTI is included in the numerator based on the taxpayer’s unique facts and circumstances, the taxpayer is not precluded from requesting discretionary relief under N.J.A.C. 18:7-8.3 and N.J.A.C.18:7-10.1.

Generally, 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. However, 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, 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 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 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 and the FDII, and the corresponding IRC §250(a) deductions, must be reported on Schedule A. Controlled foreign corporations are 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 is excluded from the combined group’s

ENI, as prescribed in [TB-88\(R\)](#), 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 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, CFC income, and FDII, 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 GILTI.

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 or FDII, 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 **will not complete the Schedule A-6 that was contained in the original package of forms for tax year 2018**. 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 and the net amount of the FDII, 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, and corresponding GILTI and FDII deductions, accordingly.

The net GILTI will almost exclusively be included in the denominator of the allocation factor. In rare situations that may present themselves in the future where either the net GILTI or the net FDII are included in the numerator based on the taxpayer's unique facts and circumstances, the taxpayer is not precluded from requesting discretionary relief under [N.J.A.C. 18:7-8.3](#) and [N.J.A.C. 18:7-10.1](#).

For more information see [N.J.A.C. 18:7-5.8](#); [N.J.A.C. 18:7-5.19](#); and [N.J.A.C. 18:7-21.1](#) through 21.29.

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.

Revision Information: This Technical Bulletin was revised on September 12, 2023, to indicate that P.L. 2023, c.96, affected the treatment for Global Intangible Low Taxed Income (GILTI), the I.R.C. s. 250(a) deduction, and Foreign-derived intangible income (FDII) for privilege periods ending on and after July 31, 2023. For information on these changes, see [TB-110](#).