



CORPORATION TAX BULLETIN 2019-02

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PENNSYLVANIA CORPORATE NET INCOME TAX TREATMENT OF GLOBAL INTANGIBLE LOW-TAXED INCOME AND FOREIGN-DERIVED INTANGIBLE INCOME

Overview

The Tax Cuts and Jobs Act of 2017 added Sections 951A and 250 to the Internal Revenue Code (the “Code”). For Federal income tax purposes, Section 951A subjects certain U.S. taxpayers to tax on their global intangible low-taxed income (“GILTI”) for tax years beginning on or after January 1, 2018. Section 250 of the Code authorizes a Federal deduction for taxpayers reporting GILTI and taxpayers with foreign-derived intangible income (“FDII”). This Bulletin provides guidance on how GILTI and FDII are treated for Pennsylvania Corporate Net Income Tax (“CNIT”) purposes.

Federal Treatment of GILTI & FDII

GILTI is included in Federal taxable income in a manner similar to Subpart F income insofar as it is deemed repatriated in the year earned. Taxpayers reporting GILTI may, for Federal income tax purposes, also claim a deduction against a portion of their GILTI income. Additionally, taxpayers with FDII may claim a deduction with respect to this income. The GILTI and FDII deductions are provided by Section 250 of the Code and are considered special deductions for Federal income tax purposes.

To prevent double taxation, Section 959(a) of the Code provides that amounts attributable to Subpart F inclusions are treated as previously taxed income (“PTI”) and are excluded from gross income when actually distributed. Section 951(A)(f)(1) of the Code treats GILTI income as Subpart F income for purposes of Section 959 of the Code. Therefore, deemed income from GILTI should not be taxed a second time when actually distributed.

Pennsylvania Treatment of GILTI & FDII

Dividend

The CNIT base starts with Federal taxable income as reported on a CNIT taxpayer’s Federal income tax return or, for companies included in a consolidated return group, as would have been reported on a Federal income tax return on a separate company basis. Pennsylvania treats Subpart F income as dividend income for CNIT purposes. Since GILTI is treated in a manner similar to Subpart F income for Federal income tax purposes, Pennsylvania will treat GILTI income as dividend income for CNIT purposes.

CNIT taxpayers, therefore, should include GILTI in their CNIT base for the year in which the GILTI is recognized (or would be recognized on a separate company basis if the CNIT taxpayer were required to file a separate Federal income tax return) for Federal income tax purposes. When actually distributed, Pennsylvania will follow the Federal treatment of such distribution as PTI and the distribution will not be subject to CNIT.

Dividends Received Deduction



Pennsylvania law allows a deduction for corporations that receive dividends from foreign corporations. Because Pennsylvania treats GILTI income as dividend income for CNIT purposes, Pennsylvania will allow a dividends received deduction with respect thereto, including for any CNIT taxpayer that would have been entitled to such deduction on a separate company basis if it were required to file a separate Federal income tax return. A taxpayer should note that its dividends received deduction may be less than 100% depending upon its ownership interest in the entity generating the GILTI income.

No Special Deduction

Pennsylvania's CNIT base is computed without regard to special deductions. Because the GILTI and FDII deductions are in Section 250 of the Code, they are special deductions for Federal income tax purposes and Pennsylvania taxpayers are not entitled to a GILTI or FDII deduction.

Not Included for Purposes of Apportionment

Pennsylvania law specifically excludes dividends from the sales factor. Because Pennsylvania will treat GILTI income as dividend income for CNIT purposes, GILTI income is not included in a corporation's sales factor.

Personal Income Tax Treatment

Pennsylvania Personal income tax ("PIT") is imposed on eight separate classes of income, one of which is dividends. For PIT purposes, a dividend is defined as a distribution in cash or property made out of current or accumulated earnings and profits ("E&P"). For federal income tax purposes, GILTI is taxed even though no actual distribution of cash or property out of E&P occurs. Because this "deemed dividend" does not involve an actual distribution of cash, it is not a dividend for PIT purposes. If and when an actual distribution of cash out of E&P is made to a PIT taxpayer, it will be subject to PIT as a dividend. PIT taxpayers must report this taxable dividend income regardless of whether they receive a Form 1099-DIV with respect to the actual distribution.

Future Guidance

The Internal Revenue Service ("IRS") has indicated that it intends to provide further guidance on GILTI. The Pennsylvania Department of Revenue anticipates providing further guidance once clarification is provided by the IRS.