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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.

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. These provisions were enacted to prevent abusive offshore tax-sheltering of income while encouraging business investment and job growth in the United States.

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 CBT purposes, the starting point for calculating entire net income (ENI), pursuant to N.J.S.A. 54:10A-4(k), is the amount of income reported for federal income tax purposes before the net operating loss deduction and special deductions. Therefore, GILTI and FDII are included in ENI. Further, 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), dealing with the treatment of certain dividends, is not applicable.

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.

Sourcing of GILTI and FDII under the New Jersey CBT Act

GILTI and FDII are sourced under the category of “all other business receipts” pursuant to N.J.S.A. 54:10A-6(B)(6). While GILTI and FDII could generally be sourced to New Jersey based on N.J.A.C. 18:7-8.12(e) (Other Business Receipts), the result may not reflect a fair and equitable allocation.

GILTI and FDII are a hybrid of different income items. GILTI, by design, constitutes displaced U.S. income at least in part; FDII might also contain such income. Further, the result of the FDII deduction (an incentive meant to encourage certain domestic activities) could yield a disproportionate impact on New Jersey.

Taxpayers may not look through to underlying sales when determining how to allocate GILTI and FDII, because they represent items of receipt to the taxpayer.

The Division of Taxation has determined that in order to prevent distortion to the allocation factor, and arrive at a reasonable and equitable level of NJ taxation, ***all corporation business taxpayers*** filing a CBT-100 or BFC-1 will calculate the portion of GILTI and FDII that is subject to New Jersey tax based on a separate special accounting method.

The relevant allocation factor for computing the tax on net GILTI and net FDII amounts, **will be equal to the ratio of New Jersey’s gross domestic product (GDP) over the total GDP of every US state (and the District of Columbia) in which the taxpayer has economic nexus**. GDP amounts should be based on the most recent quarter’s data published by the US Bureau of Economic Analysis as of the end of the taxpayer’s privilege period.

For example, assuming economic nexus in all 50 states, the current ratio of New Jersey GDP for allocation purposes approximates 3.1%. When applied to the net GILTI amount (after reduction for the 50% §250 deduction), this results in taxation of approximately 1.6% of gross GILTI.

All CBT taxpayers reporting GILTI and FDII should complete the new Schedule A-6 in conjunction with their 2018 return, and include the allocated net GILTI and net FDII amounts on line 3c of page 1 of the CBT-100 or BFC-1 to remove those amounts from the regular tax calculation on page 1, line 3(a).

The Division of Taxation will promulgate regulations addressing the sourcing of GILTI, FDII and the §250(a) deductions, consistent with the treatment set forth in 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.