



Combined Groups: Exclusion of Double Inclusion of GILTI and Treatment of Related Party Addbacks

TB-88 - Issued April 23, 2019

Tax: Corporation Business Tax

P.L. 2018, c. 48 and P.L. 2018, c. 131 collectively mandate combined reporting for tax years ending on and after July 31, 2019 (beginning on and after August 1, 2018, if a full 12-month tax year of the managerial member begins August 1, 2018, and ends July 31, 2019). The chapter laws also provided several other amendments. This Technical Bulletin addresses I.R.C. § 951A, I.R.C. § 250, N.J.S.A. 54:10A-4(k)(2)(I), and N.J.S.A. 54:10A-4.4 (in the context of New Jersey combined returns only), and the relevant portions of N.J.S.A. 54:10A-4.6.

Both N.J.S.A. 54:10A-4(k)(2)(I) and N.J.S.A. 54:10A-4.4.e contain an exception to the related party addbacks for transactions between members of a combined group reported on a New Jersey combined return.

The relevant portions of N.J.S.A. 54:10A-4.6 state that:

A taxable member of a combined group shall determine its entire net income from the unitary business as its share of the entire net income of the combined group in accordance with a combined unitary tax return made pursuant to this section and sections 19, 20, and 23 of P.L.2018, c.48 (C.54:18A-4.7, C.54:18A-4.8, and C.54:10A-4.11). The entire net income from the unitary business of a combined group is the sum of the entire net incomes of each taxable member and each nontaxable member of the combined group derived from the unitary business, which shall be determined as follows:

- a. For a member incorporated in the United States, the income included in income of the combined group shall be the member's entire net income otherwise determined pursuant to the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.).
- b. For a member not incorporated in the United States, the income to be included in the entire net income of the combined group shall be determined from a profit and loss statement that shall be prepared for each foreign branch or corporation in the currency in which the books of account of the branch or corporation are regularly maintained, adjusted to conform it to the accounting principles generally accepted in the United States for the presentation of those statements and further adjusted to take into account any book-tax differences required by federal or State law. The profit and loss statement of each foreign member of the combined group and the allocation factors related thereto, whether United States or foreign, shall be translated into or from the currency in which the parent company maintains its books and records on any reasonable basis consistently applied on a year-to-year or entity-by-entity basis. Income shall be expressed in United States dollars. In lieu of these procedures and subject to the determination of the director that the income to be reported reasonably approximates income as determined under the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.), income may be determined on any reasonable basis consistently applied on a year-to-year or entity-by-entity basis.

N.J.S.A. 54:10A-4.11 also mandates a water's-edge default filing method with an option of the managerial member to choose either a world-wide election or affiliated group election.

This publication provides information on how members of a combined group included on the same New Jersey combined return will comply with various statutory provisions.

GILTI and the I.R.C. § 250(a) Deduction

For New Jersey Corporation Business Tax purposes, a combined group can include the controlled foreign corporations that generate Global Intangible Low Tax Income (GILTI) included in other members' entire net income. Members of a combined group that are incorporated under the laws of a foreign nation must include all world-wide income regardless of whether it is included as income for federal purposes.

Although there are certain income exclusions for New Jersey Corporation Business Tax (CBT) purposes, there is not a provision in the CBT that specifically excludes the non-effectively connected income of a member of a combined group that is a corporation incorporated under the laws of a foreign nation. The income of a controlled foreign corporation is included in the combined group income if the controlled foreign corporation is a member included on the same New Jersey combined return. Therefore, the inclusion of GILTI generated by the controlled foreign corporation in the entire net income of other members of a combined group would improperly result in a double inclusion (and double taxation) of the same income. The Division of Taxation has determined that such double inclusion of the same income is improper. A schedule is being created for taxpayer's to use, which will eliminate the double taxation of GILTI. The schedule will require the following information:

1. The amount of GILTI (in part or in whole) reported for federal tax purposes by the members of the combined group that are included in the New Jersey combined return;
2. The identity of other members of the combined group that are included in the same New Jersey combined return, which are the controlled foreign corporations that generated GILTI;
3. The amount of the controlled foreign corporation members' income that generated GILTI, which is already included in the combined group's entire net income; and
4. The identity of any other controlled foreign corporations that were not included in the same New Jersey combined return but that also generated GILTI.

Note: Only GILTI amounts that are directly attributable to the controlled foreign corporation combined group members that are included in the same New Jersey combined return can be excluded. GILTI that is not attributable to any of the members of the same New Jersey combined return cannot be excluded.

The deduction available in N.J.S.A. 54:10A-4.15 (relating to IRC § 250) remains available to the extent it was taken for federal purposes if the GILTI is excluded by the Director to prevent double taxation.

Related Parties NOT Included on the Same New Jersey Combined Return and the Related Party Addbacks

The related party expense addbacks do not apply to members of the combined group included on the same New Jersey combined return. If there are related parties not included on the same New Jersey combined return, the related party deduction/expense addbacks will apply unless some other exception applies.

The Unreasonable Exception. Generally, the Director will allow the members of the combined group to claim an unreasonable exception for the expenses attributable to the related party for purposes of the addback required under N.J.S.A. 54:10A-4(k)(2)(I) and N.J.S.A. 54:10A-4.4, consistent with the circumstances outlined in [TAM-2011-13R](#).

GILTI and the Unreasonable Exception. There are circumstances where the GILTI inclusion in entire net income of a member of the combined group is generated by a related party controlled foreign corporation that is not included as a member of the same New Jersey combined group. The expenses represented by the payments made by combined group members to the related party controlled foreign corporation are generally required to be added back pursuant to N.J.S.A. 54:10A-4(k)(2)(I) and N.J.S.A. 54:10A-4.4. If no exception applies, it could lead to double taxation.

Therefore, the Director will allow the members of the combined group to claim an unreasonable exception for the expenses attributable to the related party controlled foreign corporation if:

1. There is a related party not included in the same New Jersey combined return; and
2. The members of the combined group have GILTI from the related party; and
3. The members of the combined group can demonstrate that the related party was the entity that generated the GILTI included in the member's entire net income.

Note: Taxpayers filing on a separate return basis that have GILTI from a related party included in their entire net income may also be able to claim an unreasonable exception to the related party addback provisions of N.J.S.A. 54:10A-4(k)(2)(I) and N.J.S.A. 54:10A-4.4.

The amounts deducted pursuant to N.J.S.A. 54:10A-4.15 (relating to IRC § 250) are not subject to the related party addback provisions of N.J.S.A. 54:10A-4(k)(2)(I) or N.J.S.A. 54:10A-4.4.

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.