United States

New Jersey Treats GILTI as Dividend, According to Guidance on Corporate Business Tax Changes

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New Jersey businesses will need to report global intangible low-taxed income (GILTI) as dividends on their state corporate business tax returns, according to the latest technical bulletin (TB-110) issued by the New Jersey Division of Taxation. This treatment is effective for privilege periods ending on and after 31 July 2023. TB-110 sheds light on the recent changes regarding New Jersey's treatment of GILTI, Internal Revenue Code (IRC) section 250(a) deduction, and foreign-derived intangible income (FDII) under P.L. 2023, c. 96 (*see* New Jersey Revamps Corporate Tax System, Eliminating FDII Deduction and Increasing GILTI Deduction (7 July 2023)).

According to TB-110, GILTI is treated as a dividend for New Jersey purposes and is reported on the dividends and other inclusions line (line 4 of Schedule A, Part I) of the corporate business tax return. As such, GILTI may be excluded by the state's dividends received deduction (i.e. dividend exclusion) or eliminated under combined reporting.

TB-110 provides that the dividend exclusion applies after the state additions, but before the state deductions, to the taxpayer's entire net income (ENI). For tax periods ending on and after 31 July 2023, the dividend exclusion is a pre-allocation exclusion (meaning the dividend exclusion is applied before a taxpayer determines its New Jersey tax base based on an allocation factor). Taxpayers can exclude 100% of dividends and deemed dividends received from 80% or more owned subsidiaries; or 50% of dividends and deemed dividends received from more than 50% but less than 80% owned subsidiaries. TB-110 clarified, however, that under P.L. 2023, c. 96, a claw-back provision exists that requires the taxpayer to reduce their entire dividend exclusion by 5% of all dividends and deemed dividends received by the taxpayer during the same tax period.

TB-110 also provides that the IRC section 250 deductions for GILTI and FDII have been repealed by the New Jersey legislature. In addition, the gross amount of FDII is included in a taxpayer's ENI for CBT purposes.

TB-110 also provides guidance on how to report GILTI, controlled foreign corporation (CFC) and FDII income in the following cases:

- for separate return filers;
- water's-edge basis or affiliated group elective basis where a CFC is not included in the combined group;
- water's-edge basis where a CFC is included in the combined group;
- world-wide group elective basis where a CFC is included in the combined group; and
- where the is GILTI and FDII derived from a combined group member's independent business operations.

As a result of TB-110, the Division also updated TB-88(R) and TB-92(R) to indicate that guidance included therein applies only for tax years ending before 31 July 2023.

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