Maryland Income Tax
Tax Alert

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Questions? Send them to taxhelp@comp.state.md.us.

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Maryland Guidance on the Reporting and Taxation of IRC § 951A Global Intangible Low Taxed Income

Questions have arisen as to how Maryland treats Global Intangible Low Taxed Income (GILTI), the new category of income created by the Tax Cuts and Jobs Act (TCJA). GILTI is included in federal adjusted gross income. GILTI is not a dividend or deemed dividend, so it is not eligible for Maryland's dividend subtraction; therefore, GILTI is taxed as income in Maryland. GILTI's corresponding federal § 250 deduction for corporations is also captured on the Maryland return.

TCJA broadened the scope of foreign earnings subject to tax when it created GILTI. The new federal provisions impose a tax on shareholders of controlled foreign corporations (CFCs) when the return on specific tangible assets of the CFC exceeds 10%. These specific assets are referred to as qualified business asset investment (QBAI). Taxation of GILTI is based on the assumption that if a company invests in tangible assets, it can reasonably expect a return of 10% on those assets. Any profit in excess of 10% of QBAI is supernormal, and it is inferred that supernormal profits are attributable to intangible assets that have been parked in foreign, low tax rate jurisdictions to avoid tax. GILTI rules presume that some of this income is more appropriately sourced to the United States, and is subject to tax, though at a lower rate. Because of how GILTI is calculated, the tax on GILTI will affect any business whose income is high relative to the fixed asset base. The GILTI rules apply to US persons that own, directly or indirectly, 10% or more of the value or vote of the CFC.

The lower tax rate is achieved, at the federal level, through a deduction, as well as a credit. IRC § 250 entitles C corporations to a 50% deduction on GILTI. This deduction is only available to C corporations, not to partnerships or S corporations, who ultimately pass the income to their respective partners and shareholders. Individual partners and shareholders must include their pro-rata share of GILTI on their individual returns. C corporations reporting GILTI are also entitled to a federal tax credit up to 80% of foreign taxes paid, or an amount equal to its US tax liability times the ratio of foreign profits to worldwide profits, whichever is lower.

This Tax Alert will address how, mechanically, GILTI income is captured by Maryland on the income tax returns for corporations, pass-through entities, and individuals.

GILTI on Maryland Forms for Corporations, Pass-Through Entities, and Individuals

Form 500, Corporations

GILTI and the corresponding § 250 deduction are included in Maryland taxable income for corporations. There is no mechanism under Maryland law that provides a foreign tax credit for this income.

GILTI amounts are included in federal adjusted gross income. Federal adjusted gross income at line 28 of federal Form 1120, or line 25a of federal Form 1120-C, is the starting point for Maryland Form 500. The § 250 deduction is a special deduction, reported on line 29b of federal Form 1120 and line 26b of 1120-C. Special deductions are subtracted from federal taxable income on line 1c of Maryland Form 500. To compute the Maryland apportionment factor, the gross amount of GILTI is included in the denominator. Because GILTI is income attributable to intangibles, it is included in the numerator based on the average of the property and payroll factors. If the resulting apportionment formula does not fairly represent the extent of a corporation's activity in this State, the Comptroller may alter the formula or its components. Manufacturing corporations using the single sales factor do not include GILTI in the apportionment formula.

Form 510, S-Corporations, Partnerships, Limited Liability Companies, Business Trusts

The entire amount of GILTI is included in Maryland taxable income for pass-through entities. Pass-through entities are not eligible for the § 250 deduction, and no foreign tax credit is available. GILTI is passed to the individual shareholders, partners, or members through the income reported on the K-1.

The Maryland pass-through entity return begins with the total distributive or pro rata share of income on federal form 1065, 1065-B or 1120S. Since GILTI is included in income at the federal level, it flows through to the Maryland return.

Whether the pass-through entity uses the apportionment formula or separate accounting to determine its allocation of income, GILTI must be included in Maryland income. Pass-through entities using the apportionment formula must include GILTI in the denominator. GILTI is included in the numerator based upon the average of the property and payroll factorsIf the resulting apportionment formula does not fairly represent the extent of a corporation's activity in this State, the Comptroller may alter the formula or its components. For entities eligible to apportion income using a separate accounting, the Comptroller may accept a reasonable method of allocating a portion of GILTI to Maryland.

Form 502, Individual Shareholders; Form 504, Fiduciaries

The entire amount of GILTI is included in individuals' and fiduciaries' Maryland taxable income. GILTI is included in federal adjusted gross income, which is the starting point for Maryland Forms 502 and 504. No deductions or credits apply, and the entire GILTI amount is subject to Maryland tax.

Nonresident beneficiaries of resident fiduciaries are not taxed on income derived from intangible personal property. To the extent GILTI is held in trust for the benefit of a nonresident beneficiary, it is eligible for the nonresident beneficiary subtraction.

Form 505, Nonresident Individuals

The entire amount of GILTI is included in federal adjusted gross income as other income. However, nonresidents are not subject to Maryland tax on income attributable to intangibles; therefore, GILTI may be excluded from Maryland income on Maryland Form 505.

Note on Apportionment

If the taxpayer asserts the apportionment formula does not fairly reflect the income attributable to Maryland, it may request an alternative apportionment method. Requests for alternative apportionment must be in writing, propose the alternative apportionment calculation, and must include a copy of the Maryland income tax return. The request for alternative apportionment should be submitted at the time the return is filed. If the return has already been filed, taxpayers may still submit the request for alternative apportionment for review. Requests for alternative apportionment should be mailed to: Comptroller of Maryland, Attn: Legal Section, PO Box 1829, Annapolis, MD 21404-1829.

Waiver of Interest and Penalty on Underpayment of Estimated Tax

Due to the timing of the publication of this Tax Alert, taxpayers affected by IRC § 951A may have underestimated their 2018 final or extension tax payment or 2019 quarterly estimated income tax payments for Maryland purposes. The Comptroller has the authority to waive interest and penalty for reasonable cause. If a taxpayer owes interest or penalty for underpayment of estimated taxes due to underreporting GILTI, and the return has already been filed, they may submit a request for abatement in writing, along with adjusted payment, to Taxpayer Accounting at the following address:

Comptroller of Maryland
110 Carroll Street
Attn: Taxpayer Accounting
Annapolis, Maryland 21401

If the original 2018 return is being filed, the request should be a statement included with the return. The written request must also include support demonstrating that the underpayment was due to the tax on GILTI. The return should be sent to the address in the instructions.