

Highlights:

- GILTI, less applicable deductions, must be included in a corporate taxpayer's federal taxable income or an individual taxpayer's federal adjusted gross income.
- Under certain circumstances, the Net GILTI Amount (defined below) could be offset in whole or in part by the Missouri Dividends Deduction, nonbusiness income, or non-Missouri Dividends.

The New Federal GILTI Provision May Affect Taxpayers' Missouri Income Tax Amount

On December 22, 2017, President Trump signed PL 115-97, popularly known as the Tax Cuts and Jobs Act ("TCJA").¹ The TCJA includes a new federal tax on Global Intangible Low-taxed Income (GILTI). Provisions governing GILTI are set forth in IRC Section 951A.

The new Section 951A is intended to tax a U.S. shareholder's share of its controlled foreign corporation's global intangible low-taxed income using a lower-than-ordinary effective rate of 10.5 percent. Beginning in 2026, this effective rate will be increased to 13.125 percent. Corporate taxpayers may take a special deduction, pursuant to new IRC Section 250, equal to half of the U.S. shareholder's GILTI amount, in addition to the related IRC §78 gross-up. Beginning in 2026, the deduction permitted under IRC Section 250 is reduced to 21.785 percent. The Section 250 deduction is available only to corporate shareholders. On September 13, 2018, the Department of the Treasury and the IRS issued proposed regulations (REG-104390-18) under section 951A that provide guidance to U.S. shareholders as to how they determine their GILTI inclusions.

Guidance for Missouri Corporate Income Taxpayers

Missouri, as a rolling conformity state, uses federal taxable corporate income after net operating losses and special deductions as its starting point to determine Missouri corporate taxable income (Form 1120, Line 30).² Therefore, income arising from Section 951A is automatically included in the starting point for calculating Missouri taxable income. Section 250 provides a special deduction for federal tax purposes. Because the starting point for Missouri taxes is federal Form 1120, Line 30, Missouri corporate taxable income takes into account the Section 250 deduction.

Section 951A income, less related Section 250 deductions, will be referred to as the "Net GILTI Amount." Missouri corporate income taxpayers will include the Net GILTI Amount on MO-1120, Line 1.

The Net GILTI Amount is treated as though it were a dividend for Missouri purposes. For corporate taxpayers apportioning using Method One, Three Factor Apportionment, if the Net GILTI Amount constitutes the taxpayer's business income, an apportioned share of the Net GILTI Amount may be subtracted through the Missouri Dividends Deduction on MO-1120, Line 10. To the extent the GILTI amount constitutes nonbusiness income, the amount should be included on Forms MO-NBI and also on MO-MS, Part 1, Lines 9 or 12. Taxpayers reporting nonbusiness income should include on MO-NBI a sufficiently detailed description of their business, the nonbusiness income, and an explanation of why the

¹ See Tax Cuts & Jobs Act, Pub. L. No. 115-97 (2017), available at <https://www.congress.gov/115/plaws/publ97/PLAW-115publ97.pdf>.

² See §§ 143.091; 143.431.1, RSMo.

income is reported as nonbusiness income. Failure to do so will result in the Department's Taxation Division disallowing the reported nonbusiness income amount. The Net GILTI Amount does not constitute property or payroll for purposes of computing the apportionment factor using Three Factor Apportionment. To the extent it is not allocated, the net GILTI amount should be included in the sales factor for Three Factor Apportionment purposes if it qualifies as a sale pursuant to 12 CSR 10-2.045(19), 12 CSR 10-2.075(42), and/or 12 CSR 10-2.075(64)(c).

Any treatment of this amount as a sale may be disallowed in order to fairly apportion income.³ Missouri's enactment of the Multistate Tax Compact authorizes the Department to use a reasonable alternative apportionment method, as to any part of a taxpayer's business activity, in order to arrive at equitable allocation and apportionment.⁴

For corporate taxpayers using Method Two or Two A, an apportioned share of the Net GILTI Amount should be included in the Missouri Dividends Deduction, MO-1120, Line 10, to the extent it is attributable to sources within Missouri. To the extent that this amount constitutes dividends from a non-Missouri payer, it should be entered on MO-MS, Part 2, Line 12. To the extent this amount does not fall within either of these categories, it should not be included on MO-1120, Line 10 or MO-MS, Part 2, Line 12. The Net GILTI Amount does not constitute sales or business transacted for purposes of calculating the numerator or the denominator of the Method Two or Two A apportionment factors.

Special Guidance for Consolidated Taxpayers Filing Separately in Missouri (“Consolidated Federal and Separate Missouri Return”)

Taxpayers filing a consolidated federal return and separate Missouri corporate income tax returns should follow the guidance in the paragraphs above with the following modifications.

The separate company that is a member of an affiliated group for federal return purposes must determine its Net GILTI Amount as if it filed a separate federal corporate income tax return for the same tax year. For example, if the separate company held no ownership percentage of its affiliated group's controlled foreign corporation, that separate company would have no Net GILTI Amount for Missouri purposes. If one corporation within the affiliated group held all of the affiliated group's ownership interest in the controlled foreign corporation, that corporation would include the full Net GILTI Amount in its federal taxable income for Missouri purposes.

Guidance for Missouri Individual Income Taxpayers

Individual income taxpayers may be subject to Section 951A.⁵ Individuals, however, are not entitled to the deductions available under Section 250.⁶ For tax year 2018, GILTI income will be included in "Other Income" on federal Form 1040, Schedule 1, Line 21.⁷ Therefore, this will automatically be included when an individual reports his or her federal adjusted gross income on Form MO-1040, Line 1.

³ See 12 CSR 10-2.075(43).

⁴ See § 32.200, Art. IV, Section 18, RSMo.

⁵ See IRC § 951A(a).

⁶ See IRC § 250(a)(1).

⁷ Cf. Schedule 1 (Form 1040) (2018), IRS, available at <https://www.irs.gov/pub/irs-pdf/i1040s1.pdf>; Form 1040 Instructions (2018), pg. 89, IRS, available at <https://www.irs.gov/pub/irs-pdf/i1040gi.pdf>.