New York State Tax Treatment of Repatriation and Global Intangible Low-Taxed Income for Individuals and Fiduciaries

The federal Tax Cuts and Jobs Act[1] (TCJA) created new provisions in the Internal Revenue Code (IRC) addressing income earned from overseas operations, including mandatory deemed repatriation income and global intangible low-taxed income (GILTI).

Mandatory deemed repatriation income

- The TCJA required taxpayers to recognize mandatory deemed repatriation income as Subpart F income. This is generally accomplished for U.S. shareholders by recognizing post-1986 accumulated earnings and profits and deficits of certain specified foreign corporations under IRC § 965(a) and (b) (together referred to as the *IRC § 965(a) inclusion amount*). These taxpayers are then allowed to deduct a portion of the inclusion amount under IRC § 965(c), resulting in a net IRC § 965 amount.

- Unlike federal law, which allows certain taxpayers to elect to defer payment of a portion of their federal tax liability related to their mandatory deemed repatriation income, New York taxpayers cannot defer payment of any portion of their New York State tax associated with mandatory deemed repatriation income.

GILTI

- For federal tax purposes, under IRC § 951A, a U.S. shareholder of any controlled foreign corporation (CFC) is required to include in gross income its GILTI, which is the excess of a U.S. shareholder's net CFC tested income for the tax year over the U.S. shareholder's net deemed tangible income return for the tax year.

The amounts recognized under IRC §§ 965 and 951A include amounts earned directly by the U.S. shareholders, as well as distributive shares of such amounts from flow-through entities.

This memorandum generally explains the impact of these federal changes on fiduciaries and individuals for New York State tax purposes.

Fiduciaries (Estates and Trusts)

Net IRC § 965 amounts and GILTI required to be included in federal total income must be included in the total income reported to New York.

Individuals

If you are a full-year resident, you must include net IRC § 965 amount and GILTI in your federal adjusted gross income (FAGI) and, consequently, New York taxable income. The net

[1] See Public Law 115-97.

IRC 965 amount is included in FAGI regardless of whether you elected to defer the payment of the federal tax due on that net IRC § 965 amount.

If you are a nonresident or part-year resident, the net IRC § 965 amount and GILTI are in FAGI and these amounts are treated as income from an intangible. Accordingly, as income from an intangible:

- if you are a nonresident or part-year resident where the last day of the tax year of the foreign corporation that generated a net IRC § 965 amount or GILTI occurred in your nonresident period, the net IRC § 965 amount or GILTI from such foreign corporation is sourced to New York if the stock of the foreign corporation that generated such income was used in a trade or business in New York State; and

- if you are a part-year resident where the last day of the tax year of the foreign corporation that generated a net IRC § 965 amount or GILTI occurred in your resident period, the net IRC § 965 amount or GILTI from such foreign corporation is sourced to New York.

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