

## Massachusetts enacts legislation clarifying income tax treatment of GILTI for corporate excise tax purposes

### Overview

On October 23, 2018, Governor Baker signed a supplemental budget bill (H. 4930),<sup>1</sup> which includes the following modifications to Massachusetts law affecting the corporate excise tax:

- Global intangible low-taxed income (GILTI) under § 951A of the Internal Revenue Code (IRC) is treated as “dividends” included in taxable income and eligible for a 95% dividends received deduction (DRD.)
- Deductions allowed under §§ 245A, 250, and 965(c) of the IRC are disallowed.
- GILTI is excluded in computing the sales factor of the apportionment formula.

This tax alert summarizes these law changes.

### GILTI is included in taxable income and eligible for a 95% DRD

H. 4930 provides that GILTI under IRC § 951A of the IRC will be included in taxable income for corporate excise tax purposes. The legislature revised the definition of “net income” provided in Mass. Gen. Laws ch. 63, § 30, upon which the income measure of the corporate excise tax is based. Net income is defined as “gross income less the deductions, but not credits, allowable under the provisions of the [IRC] ... In lieu of disallowing any deduction allocable, in whole or in part, to dividends not included in a corporation's taxable net income, five percent of such dividends shall be includable therein, as provided in said subsection (a) of said section thirty-eight.”<sup>2</sup>

“Gross income” means gross income “as defined under the provisions of the [IRC], as amended and in effect for the taxable year...”,<sup>3</sup> which includes dividend income.<sup>4</sup> H. 4930 added the following language to the definition of net income:

“[T]he term ‘dividend’ shall include but not be limited to amounts included in federal gross income pursuant to sections 951 and 951A of the [IRC].”<sup>5</sup>

As a result of this amendment, GILTI will be treated as dividend income for Massachusetts corporate excise tax purposes and will be included in net income and eligible for a 95% DRD, subject to the voting stock ownership requirements.

### Deductions provided by IRC §§ 245A, 250, and 965(c) are disallowed

A number of changes were made to the IRC through the passage of P.L. 115-97 (the Act), including but not limited to the following: the enactment of IRC § 245A, which provides a deduction for the foreign source portion of distributions received by a U.S. shareholder from a controlled foreign corporation (CFC) out of earnings and profits; the enactment of IRC § 250, which allows deductions offsetting GILTI and foreign derived intangible income (FDII); and the enactment of IRC § 965(c), which allows a participation deduction in calculating the deemed repatriation under IRC § 965. Through the enactment of H. 4930, Massachusetts decoupled from the deductions allowed by IRC §§ 245A, 250 and 965(c), with the result that taxpayers are required to adjust net income to add back the amounts deducted federally.<sup>6</sup>

<sup>1</sup> Ch. 273 (H. 4930), Laws 2018, effective October 23, 2018. A copy of the adopted law is available [here](#).

<sup>2</sup> G.L. c. 63, § 30(4).

<sup>3</sup> G.L. c. 63, § 30(3).

<sup>4</sup> IRC § 61(a)(7).

<sup>5</sup> H. 4930, Sec. 14, amending G.L. c. 63, § 30(4).

<sup>6</sup> H. 4930, Sec. 12, amending G.L. ch. 63, § 30.

**GILTI is excluded from the sales factor**

Massachusetts excludes dividends in computing the sales factor of the apportionment formula for corporate excise tax purposes.<sup>7</sup> Because amounts included in federal gross income pursuant to IRC § 951A are treated as dividends for Massachusetts purposes, GILTI is excluded from the sales factor.

**Contacts:**

If you have questions regarding H. 4930 or other Massachusetts tax matters, please contact any of the following Deloitte professionals:

**Robert A. Carleo Jr.**  
**Managing Director**  
Deloitte Tax LLP, Boston  
+1 617 437 2349  
[rcarleo@deloitte.com](mailto:rcarleo@deloitte.com)

**Alexis Morrison-Howe**  
**Senior Manager**  
Deloitte Tax LLP, Boston  
+1 617 437 2345  
[alhowe@deloitte.com](mailto:alhowe@deloitte.com)

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<sup>7</sup> Mass. Gen. Laws ch. 63, § 38(f). The exception to this rule applies to financial institutions. However, H. 4930 amends Mass. Gen. Laws ch. 63, § 2A to provide that amounts included in federal gross income under IRC §§ 951 and 951A are excluded from the sales factor calculation of financial institutions as well. Mass. Gen. Laws ch. 63, § 2A(h).