



MULTISTATE INCOME/FRANCHISE TAX

## California Legislature proposes A.B. 71, relating to taxation of GILTI and repatriation income

### Tax Alert

## Overview

[A.B. 71](#), relating to taxation of global intangible low-taxed income (“GILTI”) and certain repatriation income, has taken another step towards passage, with the Assembly Committee on Appropriations passing this bill by a 12 to 4 vote on May 20, 2021. A.B. 71 was first introduced on December 7, 2020, and it will now move to the Assembly Floor for vote. **A.B. 71 faces additional procedural steps and possible revisions, including consideration by the Senate, and has not yet been enacted into California law.** Because A.B. 71 is not part of the Governor’s 2021-2022 Budget, it is not subject to the requirement that the Governor must sign the Budget generally by July 1<sup>st</sup>.

The provisions under the Corporation Tax Laws and the Personal Income Tax Laws differ: while A.B. 71 would not provide apportionment factor relief for the inclusion of GILTI for corporate franchise/income tax purposes, there is a provision that would allow a taxpayer to petition the California Franchise Tax Board for alternative apportionment for personal income tax purposes. The following summarizes other notable provisions from the version of A.B. 71 amended as of March 25, 2021.

## A.B. 71

If enacted, A.B. 71 would provide, for corporate franchise/income tax purposes:

- Beginning January 1, 2022, a taxpayer that makes a water’s edge election would take into account 50 percent of GILTI (as defined in A.B. 71), **but not the apportionment factors**, of its affiliated corporations.
- Beginning January 1, 2022, a taxpayer that makes a water’s edge election would take into account 40 percent of the repatriation income (as defined in A.B. 71), **but not the apportionment factors**, of its affiliated corporations.

- Taxpayers that have made a water's edge election would be permitted, for taxable year 2022 only, an opportunity to revoke this election, thereby filing on a worldwide basis.
- A.B. 71 also proposes to cap credits that would be able to be used to offset the additional tax resulting from inclusion of GILTI and repatriation income at \$5 million (considered in the aggregate for a California combined report).

For personal income tax purposes only, A.B. 71 would provide:

- For taxable years beginning on or after January 1, 2022, A.B. 71 would provide that I.R.C. section 951A, relating to GILTI, as enacted by the federal Tax Cuts and Jobs Act of 2017, shall apply, except that if a taxpayer that is not a C corporation has income under I.R.C. section 951A that is derived from a corporation that is part of a combined reporting group doing business in California and has made a water's edge election, 50 percent of that income would be apportioned to California using the same apportionment factor as was used for the combined reporting group.
- This provision would not apply if:
  - (1) The taxpayer is not a C corporation and the income under I.R.C. section 951A is derived from a corporation that is part of a combined reporting group doing business in California that does not make a water's edge election.
  - (2) The taxpayer is not a C corporation and the income under I.R.C. section 951A is derived from a corporation that is not part of a combined reporting group doing business in California.
- A.B. 71 would allow a taxpayer to submit a petition to the California Franchise Tax Board for alternative apportionment, if the taxpayer has income under I.R.C. section 951A.

## Get in touch

[Valerie Dickerson](#)

[Robert Waldow](#)

[Christopher Campbell](#)

[Shirley Wei](#)

[Jairaj Guleria](#)

[Karen Notz](#)

[Tony Pollock](#)

[Kathy Freeman](#)



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30 Rockefeller Plaza  
New York, NY 10112-0015  
United States

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