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NOTICE: CORPORATE INCOME TAX GUIDANCE ON FEDERAL "TAX CUTS AND JOBS ACT"

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Public Law 115-97, known as the "Tax Cuts and Jobs Act" (TCJA), was enacted on December 22, 2017. The TCJA, in part, makes significant changes to the taxation of foreign-sourced income earned by U.S. corporations and their foreign subsidiaries. Three of the most significant changes are addressed herein.

Foreign Income Repatriation **(2017)**
The TCJA requires a mandatory "deemed" repatriation of deferred foreign earnings. Internal Revenue Code (IRC) 965 requires certain foreign corporations to add to subpart F income the greater of their accumulated post-1986 deferred foreign earnings and profits (E&P) measured on November 2, 2017, or December 31, 2017. While the deemed repatriation is included in taxable income in the last tax year beginning prior to January 1, 2018, an election may be made to pay the liability over eight years under a prescribed methodology.

In published guidance issued in March 2018, the Internal Revenue Service (IRS) stated that taxpayers who have IRC 965 income must include an *IRC 965 Transition Tax Statement* with their federal tax return. This form will report the IRC 965 net income required to be added to Subpart F income, the total net tax liability associated with the repatriated income, and the amount of tax liability to be paid in installments. The IRS also stated that the taxpayer must make two separate payments: one payment reflecting the tax owed without regard to IRC 965 and a second, separate, payment reflecting tax owed resulting from IRC 965.

The Michigan Corporate Income Tax (CIT) base begins with FTI. Accordingly, the repatriated income reported for federal purposes must be included in the FTI used as the starting point for computing the CIT base income. However, the CIT provides a deduction for foreign dividends, including but not limited to Subpart F income, to the extent included in FTI.[1] Taxpayers are required to properly report IRC 965 income on their Michigan return even though it may have no tax effect.

Taxpayers that have filed their 2017 CIT returns and have not included the IRC 965 income must file an amended return to properly report that income and any associated deduction.

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[1] See MCL 206.623(2)(d). While this section references IRC sections 951 to 964, the newly enacted IRC 965 clearly states that the repatriation income is included in Subpart F income as computed under IRC 951. The Department interprets that IRC 965 is incorporated into the CIT through operation of IRC 951 and the Legislative intent to exclude Subpart F income.

Base Erosion and Anti-Abuse Tax (BEAT) **(2018)**
U.S. corporate shareholders of a foreign business are now able to deduct amounts paid or accrued to a related foreign person for services, interest, rents and royalties etc. Further, these shareholders are allowed to deduct certain dividends when computing FTI. These deductions can reduce federal tax on foreign profits. The TCJA created a mechanism to prevent erosion of the U.S. tax base that occurs through payment of the tax-deductible expenses. The additional tax is generally calculated after adding back to taxable income certain deductible payments made to related foreign persons. This new tax is described as a base erosion and anti-abuse tax or "BEAT." The BEAT is effective for tax years beginning after December 31, 2017.

The BEAT is generally calculated as a percentage of modified taxable income less the regular tax liability. Modified taxable income is determined by adding back to taxable income current year deductions involving payments to related foreign persons. The Department views BEAT as a tax measured by net income. Generally, no deduction is allowed for federal income taxes when computing FTI.[2] However, if BEAT was deducted in computing the FTI that was reported to Michigan, the CIT requires that the deduction be added back to the FTI used as the starting point for CIT base.[3]

Global Intangible Low Taxed Income (GILTI) **(2018)**
Profits earned by a domestic corporation's foreign subsidiary will now be able to be paid back as a dividend without generating any U.S. tax. GILTI is designed to discourage a shift of investment abroad by imposing tax on foreign-sourced intangible income. GILTI is a new category of income that is treated similarly to subpart F income in that it is deemed repatriated in the year earned. This provision applies to tax years after December 31, 2017. Under IRC 951A, a U.S. Shareholder of a controlled foreign corporation (CFC) must include in its gross income its GILTI inclusion in a manner similar to Subpart F income. Therefore, the Department preliminarily concludes that GILTI income is included in FTI, but would be deducted as a dividend from a foreign entity, similar to other Subpart F income, when determining the CIT tax base.

The IRS has indicated it may provide further clarifying guidance on the coordination of GILTI inclusion in the determination of Subpart F income. The Department anticipates providing further guidance once clarification is provided by the IRS.

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[2] IRC 275.
[3] See MCL 206.623(2)(b).