Montana Department of Revenue

Gene Walborn
Director

Steve Bullock
Governor

Montana Corporate Income Tax Treatment of International Tax Provisions under Tax Cuts and Jobs Act of 2017

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. The following provides guidance on the treatment for Montana Corporate Income Tax purposes of Internal Revenue Code (IRC) §§ 965 (deemed repatriation of foreign dividends); 951A and 250 (global intangible low-taxed income [GILTI] and the GILTI deduction); and 250 (Foreign-Derived Intangible Income [FDII]). This guidance applies to the 2017 and subsequent tax years.

IRC §965 – Deemed Repatriation of Foreign Income

The TCJA requires a mandatory "deemed repatriation of deferred foreign earnings" as Subpart F income. IRC §965 requires certain foreign corporations to add to Subpart F income the greater of their accumulated post-1986 deferred foreign earnings and profits, and deficits of certain foreign corporations (IRC §965 Inclusion Income). These taxpayers are then able to deduct a portion of the IRC §965 Inclusion Income (IRC §965 Deduction). While the deemed repatriation is required to be reported in the 2017 tax year, a taxpayer may make a federal election to pay the liability over eight years. Corporations that have IRC §965 income must include an IRC §965 Transition Tax Statement (Transition Tax Statement) with their federal return.

All taxpayers must treat IRC §965 Inclusion Income as Subpart F income for Montana purposes and attach federal Form 965 (Transition Tax Statement) to their Montana return. Any §965 income recognized as IRC §78 gross up for federal purposes will also be recognized as §78 gross up income for Montana purposes.

Water's edge filers
Tax year 2017
To properly reflect the §965 inclusion income on the Montana return for taxpayers who file on a water's edge basis, add the total amount of income reported on line 1 of federal Form 965 on Montana Form CIT page 3, line 2i "other additions." §15-31-325(4), MCA, allows a corresponding deduction as a foreign dividend deduction on Montana Form CIT, page 3, line 3g "other reductions" totaling 80% of the §965 inclusion income added back for Montana purposes.

However, if any of the §965 inclusion income included in "other additions" is received from subsidiaries included in the Montana water's edge filing, such as those incorporated in tax haven countries listed in §15-31-322, MCA, a 100% deduction of the total amount of inclusion income related to these entities is allowed as an intercompany dividend elimination rather than 80%. This amount should be reported on page 3, line 3g "other reductions."

Furthermore, if any of the §965 inclusion income included in “other additions” is received by 80/20 companies, a 100% deduction of the total amount of inclusion income related to these entities is allowed rather than 80% pursuant to §15-31-322, MCA. This amount should be reported on page 3, line 3g “other reductions.”

To properly reflect §78 gross up income related to the §965 income on the Montana return for taxpayers who file on a water’s edge basis, add the total amount of income reported on line 4a of the federal Form 965 on Montana Form CIT page 3, line 2i “other additions.” Pursuant to §15-31-325(5), MCA, a 100% corresponding deduction is allowed on Montana Form CIT, page 3, line 3g “other reductions” totaling the amount included in “other additions.”

Tax year 2018

The §965 inclusion income is already properly reflected in federal taxable income, line 28 of federal Form 1120. The §965 inclusion income received by members of the Montana water’s edge group will not require a state addback. Pursuant to §15-31-325(4), MCA, a corresponding deduction is allowed as a foreign dividend deduction on Montana Form CIT, page 3, line 3g “other reductions” totaling 80% of the §965 inclusion income received by members of the Montana water’s edge group (figured without regard to any §78 gross up income). This deduction is allowed rather than the amount shown on federal Form 1120, Schedule C, line 15, column c. §78 gross up that is included in the calculation of §965 inclusion income must be removed from the §965 deduction allowable for Montana purposes, as the gross up deduction is calculated elsewhere as described below.

However, if any of the §965 inclusion income is received from subsidiaries included in the Montana water’s edge filing, such as those incorporated in tax haven countries listed in §15-31-322, MCA, a 100% deduction of the total amount of inclusion income related to these entities is allowed as an intercompany dividend elimination rather than 80%. This amount should be reported on page 3, line 3g “other reductions.”

Income of 80/20 companies is excluded from the calculation of Montana taxable income on Montana Form CIT, page 3, line 3e; consequently, §965 inclusion income, including any §78 gross up, received by an 80/20 company is already properly excluded so no deduction is allowed.

§78 gross up income related to the §965 income is already properly reflected in federal taxable income, line 28 of federal Form 1120. This gross up income received by members of the Montana water’s edge group will not require a state addback. Pursuant to §15-31-325(5), MCA, Montana water’s edge filers are allowed a deduction of 100%, but not more than 100%, of the §78 gross up that has been included in apportionable income. The §78 gross up related to §965 income is included in this allowable deduction. The total Montana gross up deduction should be reported on Montana Form CIT, page 3, line 3g “other reductions” totaling the amount included on federal Form 1120, Schedule C, line 18, column (a) that represents amounts received by members of the Montana water’s edge group.

Worldwide filers
Tax year 2017
To properly reflect the §965 inclusion income on the Montana return for taxpayers who file on a worldwide basis, add the total amount of income reported on line 1 of the federal Form 965 on Montana Form CIT page 3, line 2i "other additions." A corresponding deduction is allowed as an intercompany dividend elimination on Montana Form CIT, page 3, line 3g "other reductions" totaling 100% of the §965 inclusion income added back for Montana purposes.

If any of the §965 inclusion income is received from subsidiaries that are not included in the Montana worldwide filing, see instructions for Limited Combination filers below.

To properly reflect §78 gross up income related to the §965 income on the Montana return for taxpayers who file on a worldwide basis, add the total amount of income reported on line 4a of the federal Form 965 on Montana Form CIT page 3, line 2i "other additions." A 100% corresponding deduction is allowed on Montana Form CIT, page 3, line 3g "other reductions" totaling the amount included in "other additions."

Tax year 2018
The §965 inclusion income is already properly reflected in federal taxable income, line 28 of federal Form 1120. The §965 inclusion income received by members of the Montana worldwide group will not require a state addback. A corresponding deduction is allowed as an intercompany dividend elimination on Montana Form CIT, page 3, line 3g "other reductions" totaling 100% of the §965 inclusion income received from members of the Montana worldwide group (figured without regard to any §78 gross up income). This deduction is allowed rather than the amount shown on federal Form 1120, Schedule C, line 15, column c. §78 gross up that is included in the calculation of §965 inclusion income must be removed from the §965 deduction allowable for Montana purposes, as the gross up deduction is calculated elsewhere as described below.

§78 gross up income related to the §965 income is already properly reflected in federal taxable income, line 28 of federal Form 1120. This gross up income received by members of the Montana worldwide group will not require a state addback. A deduction is allowed to Montana taxpayers filing on a worldwide basis for 100%, but not more than 100%, of the §78 gross up that has been included in apportionable income. The §78 gross up related to §965 income is included in this allowable deduction. The total Montana gross up deduction should be reported on Montana Form CIT, page 3, line 3g "other reductions" totaling the amount included on federal Form 1120, Schedule C, line 18, column (a) that represents amounts received by members of the Montana worldwide group.

If any of the §965 inclusion income is received from subsidiaries that are not included in the Montana worldwide filing, see instructions for Limited Combination filers below.

Separate Company, Domestic or Limited Combination Filers
Tax year 2017
To properly reflect the §965 inclusion income on the Montana return for taxpayers who file on a separate company, domestic or limited combination basis, add the total amount of income

reported on line 1 of the federal Form 965 that was received by the entity or group of entities included in the Montana return. This amount should be reported on Montana Form CIT page 3, line 2i "other additions." A corresponding deduction is allowed on Montana Form CIT, page 3, line 3g "other reductions" totaling only those amounts reported on line 3 of the federal Form 965 that are associated with the entity or group of entities included in the Montana return.

However, if any of the §965 inclusion income is received from subsidiaries that are included in the Montana limited combination filing, a 100% deduction of the total amount of inclusion income related to these entities is allowed as an intercompany dividend elimination rather than the amount reported on federal Form 965.

To properly reflect §78 gross up income related to the §965 income on the Montana return for taxpayers who file on a separate company, domestic or limited combination basis, add the total amount of income reported on line 4a of the federal Form 965 that is received by the entity or group of entities included in the Montana return, on Montana Form CIT page 3, line 2i "other additions." A 100% corresponding deduction is allowed on Montana Form CIT, page 3, line 3g "other reductions" totaling the amount included in "other additions."

Tax year 2018

The §965 inclusion income is already properly reflected in federal taxable income, line 28 of federal Form 1120. The §965 inclusion income will not require a state addback. A corresponding deduction is allowed on Montana Form CIT, page 3, line 3g "other reductions" totaling only those amounts reported on federal Form 1120, Schedule C, line 15, column (c) that are received from the entity or group of entities included in the Montana return (figured without regard to any §78 gross up income). This deduction is allowed rather than the amount shown on federal Form 1120, Schedule C, line 15, column c. §78 gross up that is included in the calculation of §965 inclusion income must be removed from the §965 deduction allowable for Montana purposes, as the gross up deduction is calculated elsewhere as described below.

However, if any of the §965 inclusion income is received from subsidiaries that are included in a Montana limited combination filing, a 100% deduction of the total amount of inclusion income related to these entities is allowed as an intercompany dividend elimination rather than the amount reported on federal Form 1120, Schedule C.

§78 gross up income related to the §965 income is already properly reflected in federal taxable income, line 28 of federal Form 1120. This gross up income will not require a state addback. A deduction is allowed to Montana taxpayers for 100%, but not more than 100%, of the §78 gross up that has been included in apportionable income. The §78 gross up related to §965 income is included in this allowable deduction. The total Montana gross up deduction should be reported on Montana Form CIT, page 3, line 3g "other reductions" totaling the amount included on federal Form 1120, Schedule C, line 18, column (a) that represents amounts received by the entity or group of entities included in the Montana return.

IRC §951A – Global Intangible Low-Taxed Income (GILTI) and IRC §250 GILTI deduction

Beginning with tax year 2018, the TCJA created this new category of foreign income under IRC §951A. GILTI requires the U.S. owner of a CFC to potentially include a portion of the CFC's earnings in the U.S. owner's federal taxable income. As deemed income to the U.S. owner, GILTI is comparable to Subpart F income. The TCJA also created a deduction related to the GILTI under IRC §250 (GILTI deduction).

For Montana Corporate Income Tax purposes, Montana considers GILTI a foreign dividend that is included in the owner's federal taxable income. All taxpayers must attach federal Form 8992 (U.S. Shareholder Calculation of GILTI) and federal Form 8993 (§250 Deduction for FDII and GILTI) to their Montana return. Any GILTI recognized as IRC §78 gross up for federal purposes will also be recognized as §78 gross up income for Montana purposes.

Water's edge filers

Tax year 2018

The GILTI is already properly reflected in federal taxable income, line 28 of federal Form 1120. No state addback is required. Pursuant to §15-31-325(4), MCA, a corresponding deduction is allowed as a foreign dividend deduction. The allowable deduction totals 80% of GILTI received by members of the Montana water's edge group, figured without regard to any §78 gross up income included in the federal calculation. The deduction should be reported on Montana Form CIT, page 3, line 3g "other reductions." This deduction is allowed rather than the amount shown on federal Form 1120, Form 8993, Part IV, line 9. §78 gross up that is included in the calculation of GILTI must be removed from the GILTI deduction allowable for Montana purposes, as the gross up deduction is calculated elsewhere as described below.

If any of the GILTI is received from subsidiaries included in the Montana water's edge filing, such as those incorporated in tax haven countries listed in §15-31-322, MCA, a 100% deduction of the total amount of GILTI (figured without regard to any §78 gross up income included in the federal calculation) related to these entities is allowed as an intercompany dividend elimination rather than 80%. This amount should be reported on page 3, line 3g "other reductions."

§78 gross up income related to GILTI is already properly reflected in federal taxable income, line 28 of federal Form 1120. This gross up income received by members of the Montana water's edge group will not require a state addback. Pursuant to §15-31-325(5), MCA, Montana water's edge filers are allowed a deduction of 100%, but not more than 100%, of the §78 gross up that has been included in apportionable income. The §78 gross up related to GILTI is included in this allowable deduction. The total Montana gross up deduction should be reported on Montana Form CIT, page 3, line 3g "other reductions" totaling the amount included on federal Form 1120, Schedule C, line 18, column (a) that represents amounts received by members of the Montana water's edge group.

Income of 80/20 companies is excluded from the calculation of Montana taxable income on Montana Form CIT, page 3, line 3e; consequently, any of the GILTI received, including §78 gross up associated with the GILTI, by an 80/20 company is already properly excluded so no deduction is allowed.

Worldwide filers
Tax year 2018
The GILTI is already properly reflected in federal taxable income, line 28 of federal Form 1120. No state addback is required. A corresponding deduction is allowed as an intercompany dividend elimination. The allowable deduction totals 100% of GILTI received from members of the Montana worldwide group, figured without regard to any §78 gross up income included in the federal calculation. The deduction should be reported on Montana Form CIT, page 3, line 3g "other reductions." This deduction is allowed rather than the amount shown on federal Form 1120, Form 8993, Part IV, line 9. §78 gross up that is included in the calculation of GILTI must be removed from the GILTI deduction allowable for Montana purposes, as the gross up deduction is calculated elsewhere as described below.

§78 gross up income related to GILTI is already properly reflected in federal taxable income, line 28 of federal Form 1120. This gross up income received by members of the Montana worldwide group will not require a state addback. Montana worldwide filers are allowed a deduction of 100%, but not more than 100%, of the §78 gross up that has been included in apportionable income. The §78 gross up related to GILTI is included in this allowable deduction. The total Montana gross up deduction should be reported on Montana Form CIT, page 3, line 3g "other reductions" totaling the amount included on federal Form 1120, Schedule C, line 18, column (a) that represents amounts received by members of the Montana worldwide group.

If any of the GILTI is received from subsidiaries that are not included in the Montana worldwide filing, see instructions for Limited Combination filers below.

Separate Company, Domestic or Limited Combination Filers
Tax year 2018
The GILTI is already properly reflected in federal taxable income, line 28 of federal Form 1120. No state addback is required. A corresponding deduction is allowed on Montana Form CIT, page 3, line 3g "other reductions" totaling only those amounts reported on federal Form 1120, Form 8993, Part IV, line 9 (figured without regard to any §78 gross up income included in the federal calculation) associated with the entity or group of entities included in the Montana return. §78 gross up that is included in the calculation of GILTI must be removed from the GILTI deduction allowable for Montana purposes, as the gross up deduction is calculated elsewhere as described below.

However, if any of the GILTI is received from subsidiaries that are included in the Montana limited combination filing, a 100% deduction of the total amount of GILTI (figured without regard to any §78 gross up income) related to these entities would be allowed as an intercompany dividend elimination rather than the amount reported on federal Form 8993.

Any §78 gross up income related to GILTI received from the entity or group of entities included in the Montana return is already properly reflected in federal taxable income, line 28 of federal Form

1120. This gross up income will not require a state addback. Montana filers are allowed a deduction of 100%, but not more than 100%, of the §78 gross up that has been included in apportionable income. The §78 gross up related to GILTI is included in this allowable deduction. The total Montana gross up deduction should be reported on Montana Form CIT, page 3, line 3g "other reductions" totaling the amount included on federal Form 1120, Schedule C, line 18, column (a) that represents amounts received by the entity or group of entities included in the Montana return.

IRC §250 – Deduction for Foreign Derived Intangible Income (FDII)

For tax years beginning after December 31, 2017, the TCJA created this new deduction for corporations under IRC §250. The deduction relates to certain federal taxable income to which a special federal tax rate is intended to apply. FDII is not considered a foreign dividend for Montana Corporate Income Tax purposes. To claim a deduction for FDII, all taxpayers must attach federal Form 8993 (§250 Deduction for FDII and GILTI) to their Montana return.

Water's edge filers

Tax year 2018

FDII is already properly reflected in federal taxable income, line 28 of federal Form 1120. A deduction is allowed on Montana Form CIT, page 3, line 3g "other reductions" totaling the amount reported on federal Form 1120, Form 8993, Part IV, line 8 (figured without regard to any §78 gross up income included in the federal calculation) that represents amounts related to those entities included in the Montana water's edge group. §78 gross up that is included in the calculation of the §250 FDII deduction must be removed from the calculation for Montana purposes, as the gross up deduction is calculated elsewhere for Montana purposes as described below.

§78 gross up income related to FDII is already properly reflected in federal taxable income, line 28 of federal Form 1120. Pursuant to §15-31-325(5), MCA, Montana water's edge filers are allowed a deduction of 100%, but not more than 100%, of the §78 gross up that has been included in apportionable income. The §78 gross up related to FDII is included in this allowable deduction. The total Montana gross up deduction should be reported on Montana Form CIT, page 3, line 3g "other reductions" totaling the amount included on federal Form 1120, Schedule C, line 18, column (a) that represents amounts received by members of the Montana water's edge group.

If any of the federal FDII deduction is related to entities excluded from the Montana water's edge group, such as an 80/20 company, the deduction from federal Form 1120, Form 8993, Part IV, line 8 attributable to these entities is not allowed, as the income related to these entities has already been excluded.

Worldwide filers

Tax year 2018

FDII is already properly reflected in federal taxable income, line 28 of federal Form 1120. A deduction is allowed on Montana Form CIT, page 3, line 3g "other reductions" totaling the amount reported on federal Form 1120, Form 8993, Part IV, line 8 (figured without regard to any §78 gross up income included in the federal calculation) that represents amounts related to those entities included in the Montana worldwide group. §78 gross up that is included in the calculation of the §250 FDII deduction must be removed from the calculation for Montana purposes, as the gross up deduction is calculated elsewhere for Montana purposes as described below.

§78 gross up income related to FDII is already properly reflected in federal taxable income, line 28 of federal Form 1120. Montana worldwide filers are allowed a deduction of 100%, but not more than 100%, of the §78 gross up that has been included in apportionable income. The §78 gross up related to FDII is included in this allowable deduction. The total Montana gross up deduction should be reported on Montana Form CIT, page 3, line 3g "other reductions" totaling the amount included on federal Form 1120, Schedule C, line 18, column (a) that represents amounts received by members of the Montana worldwide group.

If any of the federal FDII deduction is related to entities excluded from the Montana worldwide filing, see instructions for Limited Combination filers below.

Separate Company, Domestic or Limited Combination Filers
Tax year 2018

FDII is already properly reflected in federal taxable income, line 28 of federal Form 1120. A deduction is allowed on Montana Form CIT, page 3, line 3g "other reductions" totaling only those amounts reported on federal Form 1120, Form 8993, Part IV, line 8 (figured without regard to any §78 gross up income included in the federal calculation) that represents amounts related to the entity or group of entities included in the Montana return. §78 gross up that is included in the calculation of the §250 FDII deduction must be removed from the calculation for Montana purposes, as the gross up deduction is calculated elsewhere for Montana purposes as described below.

§78 gross up income related to FDII is already properly reflected in federal taxable income, line 28 of federal Form 1120. Montana filers are allowed a deduction of 100%, but not more than 100%, of the §78 gross up that has been included in apportionable income. The §78 gross up related to FDII is included in this allowable deduction. The Montana total gross up deduction should be reported on Montana Form CIT, page 3, line 3g "other reductions" totaling the amount included on federal Form 1120, Schedule C, line 18, column (a) that represents amounts received by the entity or group of entities included in the Montana return.

If any of the federal FDII deduction is related to entities excluded from the Montana domestic or limited combination filing, the deduction from federal Form 1120, Form 8993, Part IV, line 8 attributable to these entities is not allowed, as the income related to these entities has already been excluded.