

18-10 September 2, 2019

## **FINANCE MEMORANDUM**

### **New York City Tax Treatment of GILTI, FDII, and IRC § 965 Repatriation Amounts Under the General Corporation Tax, Unincorporated Business Tax, and Banking Corporation Tax**

The federal *Tax Cuts and Jobs Act* (Public Law 115-97) created new provisions in the Internal Revenue Code (“IRC”) addressing income earned from overseas operations including mandatory deemed repatriation income (“IRC § 965 income”), foreign-derived intangible income (“FDII”), and global intangible low-taxed income (“GILTI”).

This Finance Memorandum contains instructions for reporting GILTI, FDII, and IRC § 965 amounts on New York City General Corporation Tax (“GCT”), Unincorporated Business Tax (“UBT”), and Banking Corporation Tax (“BTX”) <sup>1</sup> returns and attachments. These instructions do not apply to reporting other amounts of Subpart F income, which should continue to be reported according to published forms and instructions.

Taxpayers that have an underpayment of estimated tax penalty for the 2017 tax year that is attributable to IRC § 965 income may request an abatement of the penalty in accordance with the procedures set forth in Finance Memorandum 18-4.

Note that pending legislation at the Federal level addressing the tax treatment of GILTI and FDII amounts could change the way taxpayers are required to treat these amounts for City tax purposes. The following instructions are subject to change.

#### **General IRC § 965 Reporting Instructions**

The *Tax Cuts and Jobs Act* requires certain U.S. taxpayers to recognize mandatory deemed repatriation income as Subpart F income. In general, this is accomplished by U.S. shareholders recognizing post-1986 accumulated earnings and profits and deficits of certain 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 IRC § 965(a) inclusion amount under IRC § 965(c).

IRC § 965 income is a component of federal taxable income, and there are no specific statutory modifications under the GCT, UBT, or BTX that exclude this income from City tax computations. Hence, for purposes of the GCT, UBT, and BTX, the net IRC § 965 income reported to the IRS pursuant to Subpart F, must be incorporated into the starting point of City tax calculations. Note that IRC § 965 income must be treated as dividend income from stock for City tax purposes. The IRC § 965(a) inclusion amount must be classified as business income, investment income, or income from subsidiary capital, to the extent applicable, and deductions, including the deduction under IRC § 965(c) and interest deductions, must be attributed to the appropriate category of income. The net IRC § 965 income must be allocated, or in the case of income from subsidiary capital, excluded, in accordance with its classification and existing City law.

<sup>1</sup> The Department will provide separate guidance regarding the Business Corporation Tax

Under IRC § 965(n), taxpayers are permitted to make an election to not take IRC § 965 income into account in determining their net operating loss deduction (“NOL”) under IRC § 172 for the taxable year, and for purposes of determining NOL carrybacks and carryovers. Subchapter S Corporations and Unincorporated Businesses treated as partnerships for federal income tax purposes will be permitted to make an election similar to the election available under IRC § 965(n) for purposes of calculating their City tax. Unincorporated Businesses treated as individuals for federal income tax purposes, including individuals who are the sole members of disregarded entities who have made the IRC § 965(n) election for federal tax purposes, must calculate their NOLs for New York City tax purposes in a manner that is consistent with their federal NOL calculation.

Elections to defer net IRC § 965 transition tax payments at the federal level are inapplicable for New York City tax purposes.

Elections to use an alternative method to compute post-1986 earnings and profits, under § 3.02 of Notice 2018-13, will be recognized for New York City tax purposes.

### **General Form Instructions for Reporting IRC § 965 Amounts for Tax Year 2018**

For tax year 2018, the Internal Revenue Service (IRS) requires all U.S. persons required to include amounts in income under IRC § 965 to complete and attach Form 5471, Form 965, and Form 965-A or Form 965-B to their federal return. **Use your federal or pro-forma (see below) Form 5471, Form 965, Form 965-A and Form 965-B when following the instructions in this Finance Memorandum.**

- Flow-through entities must include their **distributive shares** and **pro rata shares** of any IRC § 965 amounts from other flow-through entities when computing their IRC § 965(a) inclusion amount.
- The net IRC § 965 amount is the IRC § 965(a) inclusion amount less the IRC § 965(c) deduction.
- To properly complete their New York City returns, **fiduciary filers (estates and trusts)** that have a net IRC § 965 amount not distributed to beneficiaries must follow the applicable instructions below:
  - A pro-forma federal Form 1041 (with accompanying schedules) must be completed.
  - The pro-forma federal Form 1041 must include, on page 1, line 8, *Other income*, the entire net IRC § 965 amount (including both the net IRC § 965 amount not distributed to beneficiaries and the net IRC § 965 amount distributed to beneficiaries).
  - New York City returns must be completed following the instructions for such returns but using the amounts from the pro-forma federal Form 1041 (with accompanying pro-forma schedules) rather than the amounts from the federal Form 1041 filed with the IRS.
  - A copy of the federal and pro-forma Form 1041 must be attached to the New York City return.
- The IRC § 965(a) inclusion amount is on Line 3 of Form 965.
- The IRC § 965(c) deduction amount is on Line 17 of Form 965.
- Attach a copy of the federal Form 965 along with accompanying worksheets used to compute the IRC § 965 amounts, to the New York City tax return.
  - If the taxpayer is part of a federal affiliated group that files a consolidated return, but files a separate City return, the taxpayer should compute and attach a pro forma Form 965, Form 965-A and Form 965-B to show IRC § 965 amounts computed on a separate basis.
  - The reporting corporation of a New York City combined group must complete a pro-forma Form 965 and accompanying worksheets as if the group was one taxpayer.

- Attach a copy of each Form 5471 required to be filed with the IRS in connection with IRC § 965 income.
- Attach a copy of any statement provided to the IRS pursuant to IRC § 965(n), IRC § 965(m), or Notice 2018-13, § 3.02. Taxpayers who are Subchapter S Corporations or Unincorporated Businesses treated as partnerships for federal income tax purposes, making an election pursuant to IRC § 965(n), must attach a statement to their return indicating their intention to not apply their NOLs against IRC § 965 income.

### **IRC § 965 Reporting Instructions for Taxpayers Filing Form NYC-3L or NYC-3A**

- Schedule B, Line 1: Include the net IRC § 965 amount on this line. IRC § 965(a) inclusion should be included on Part I, Line 13 of form NYC-ATT-S-CORP, and IRC § 965(c) deduction should be included on Part II, Line 19 of form NYC-ATT-S-CORP.
- Schedule B, Line 3: If any portion of the IRC § 965(a) inclusion amount on Schedule B, Line 1 is income from subsidiary capital, in addition to amounts otherwise included on Line 3, include an amount equal to:
  - $\text{Total IRC § 965(c) deduction} \times (\text{IRC § 965(a) inclusion amount from subsidiary capital} \div \text{total IRC § 965(a) inclusion amount})$
- Schedule B, Line 9(a): If any portion of the IRC § 965(a) inclusion amount on Schedule B, Line 1 is income from subsidiary capital, include that portion of the IRC § 965(a) inclusion amount on this line.
- Schedule B, Line 10: If any portion of the IRC § 965(a) inclusion amount on Schedule B, Line 1 is dividend income from non-subsidary corporations, other than dividends from stocks not meeting the holding period requirement under IRC § 246(c), include that portion less the 965(c) deduction amount attributable to that income in the calculation of the amount to be included on this line. The 965(c) deduction amount attributable to 50% of 965(a) amounts that are dividends from non-subsidary corporations is to be calculated as follows:
  - $\text{Total 965(c) deduction} \times (50\% \text{ of IRC § 965(a) inclusion amount constituting dividends from non-subsidary corporations} \div \text{total IRC § 965(a) inclusion amount})$
- Schedule B, Line 11: Subchapter S Corporations will be permitted to make an election similar to the election available under IRC § 965(n) for purposes of calculating their City tax. In order to make this election, taxpayers must attach a statement to their return indicating their intention to **not** apply their NOLs against IRC § 965 income. All taxpayers who make this election must enter the amount that would have been allowed if the taxpayer had no income under IRC § 965(a) and no corresponding deduction under IRC § 965(c).
- Schedule B, Line 20 (a): If any portion of the IRC § 965(a) inclusion amount on Schedule B, Line 1 is investment income, that portion of the IRC § 965(a) inclusion amount should be included in the calculation of the amount to be included on Schedule B, Line 20(a).
- Schedule B, Line 20(f): If any portion of the IRC § 965(a) inclusion amount on Schedule B, Line 1 is investment income, the portion of taxpayer's IRC § 965(c) deduction that is attributable to such income must be included on Schedule B, Line 20(f), and calculated as follows:
  - $\text{Total IRC § 965(c) deduction} \times (\text{IRC § 965(a) inclusion amount that is investment income} \div \text{total IRC § 965(a) inclusion amount})$

- Schedule B, Line 21: When apportioning NOLs to investment income, taxpayers who have made the election not to apply NOLs against their IRC § 965 income must exclude all IRC § 965 amounts from both the numerator and the denominator of the ratio by which they multiply the NOL at this step.

#### **IRC § 965 Reporting Instructions for Taxpayers Filing Forms NYC-1 and NYC-1A**

- Schedule B, Line 1: Include the net IRC § 965 amount on this line. IRC § 965(a) inclusion amount should be included on Part I, Line 13 of form NYC-ATT-S-CORP, and IRC § 965(c) deduction should be included on Part II, Line 19 of form NYC-ATT-S-CORP.
- Schedule B, Line 23: If any portion of the IRC § 965(a) inclusion amount on Schedule B, Line 1 is income from subsidiary capital, include this amount in the calculation of the amount to be included on Schedule B Line 23, and exclude any corresponding deduction under IRC § 965(c) as follows:
  - $60\% \text{ of IRC } \S 965(a) \text{ inclusion amount from subsidiary capital} - [\text{Total IRC } \S 965(c) \text{ deduction} \times (60\% \text{ of IRC } \S 965(a) \text{ inclusion amount from subsidiary capital} \div \text{total IRC } \S 965(a) \text{ inclusion amount})]$ .
- Schedule B, Line 27: Subchapter S Corporations will be permitted to make an election similar to the election available under IRC § 965(n) for purposes of calculating their City tax. In order to make this election, taxpayers must attach a statement to their return indicating their intention to **not** apply their NOLs against IRC § 965 income. All taxpayers who make this election must enter the amount that would have been allowed if the taxpayer had no income under IRC § 965(a) and no corresponding deduction under IRC § 965(c).

#### **IRC § 965 Reporting Instructions for Taxpayers Filing Form NYC-204**

- On Schedule B, Line 3: Include net amount of IRC § 965 income, calculated by subtracting the deduction allowed under IRC § 965(c) from the IRC § 965(a) inclusion amount.
- Schedule B, Line 21: If any portion of the IRC § 965(a) inclusion amount on Schedule B, Line 3 is investment income, other than dividends from stocks not meeting the holding period requirement under IRC § 246(c), that income, less the 965(c) deduction amount attributable to that income should be included in the calculation for Schedule B, Line 21. The 965(c) deduction amount attributable to 50% of 965(a) amounts that are dividends other than dividends from stocks not meeting the holding period requirement under IRC § 246(c) is to be calculated as follows:
  - $\text{Total 965(c) deduction} \times (50\% \text{ of IRC } \S 965(a) \text{ inclusion amount constituting dividends other than dividends from stocks not meeting the holding period requirement under IRC } \S 246(c) \div \text{total IRC } \S 965(a) \text{ inclusion amount})$ .
- Schedule B, Line 29(a): If any portion of the IRC § 965(a) inclusion amount on Schedule B, Line 3 is investment income, include this amount in the calculation for Schedule B, Line 29(a).
- Schedule B, Line 29(f): If any portion of the IRC § 965(a) inclusion amount on Schedule B, Line 3 is investment income, in addition to amounts otherwise included on Schedule B, Line 29(f), include an amount equal to:
  - $\text{Total IRC } \S 965(c) \text{ deduction} \times (\text{IRC } \S 965(a) \text{ inclusion amount that is investment income} \div \text{total IRC } \S 965(a) \text{ inclusion amount})$
- Schedule A, Line 3b: Taxpayers who subtracted a distributive share of any IRC § 965(a) inclusion amounts that constitute business income received from another partnership on Line 23 of Schedule B should add back the same percentage of such income as the other partnership allocated to the City

- for purposes of determining its own business income. Taxpayers who added back a distributive share of any IRC § 965(c) deductions corresponding to business income from another partnership on Line 15 of Schedule B should subtract the same percentage of this deduction that the other partnership allocated to the City for purposes of determining its own business income.
- Schedule A, Line 7b: Taxpayers who subtracted a distributive share of any IRC § 965(a) inclusion amounts that constitute investment income received from another partnership on Line 23 of Schedule B should add back the same percentage of such income as the other partnership allocated to the City for purposes of determining its own investment income. Taxpayers who added back a distributive share of IRC § 965(c) deductions corresponding to investment income from another partnership on Line 15 of Schedule B should subtract the same percentage of this deduction that the other partnership allocated to the City for purposes of determining its own investment income.
- Schedule A, Line 11: Unincorporated Businesses treated as partnerships for federal income tax purposes will be permitted to make an election similar to the election available under IRC § 965(n) for purposes of calculating their City tax. In order to make this election, taxpayers must attach a statement to their return indicating their intention to **not** apply their NOLs against IRC § 965 income. All taxpayers who make this election must enter the amount that would have been allowed if the taxpayer had no income under IRC § 965(a) and no corresponding deduction under IRC § 965(c).

#### **IRC § 965 Reporting Instructions for Taxpayers Filing Form NYC-202 and NYC-202EIN**

- Schedule B, Line 5: Include net amount of § 965 income, calculated by subtracting the deduction allowed under IRC § 965(c) from the IRC § 965(a) inclusion amount. Fiduciary filers (estates and trusts) must include the **entire** net IRC § 965 amount (including both the net IRC § 965 amount **not** distributed to beneficiaries and the net IRC § 965 amount **distributed** to beneficiaries), even if only the net IRC § 965 amount distributed to a beneficiary is included in *Other income* reported on federal Form 1041, Page 1, Line 8.
- Schedule B, Line 17: If any portion of the IRC § 965(a) inclusion amount on Schedule B, Line 5 is investment income, other than dividends from stocks not meeting the holding period requirement under IRC § 246(c), include this amount less the 965(c) deduction amount attributable to that income in the calculation for Schedule B, Line 17. The 965(c) deduction amount attributable to 50% of 965(a) amounts that are dividends other than dividends from stocks not meeting the holding period requirement under IRC § 246(c) is to be calculated as follows:
  - Total 965(c) deduction x (50% of IRC § 965(a) inclusion amount constituting dividends other than dividends from stocks not meeting the holding period requirement under IRC § 246(c) ÷ total IRC § 965(a) inclusion amount).
- Schedule B, Line 25(a): If any portion of the IRC § 965(a) inclusion amount on Schedule B, Line 5 is investment income, include this amount in the calculation for Schedule B, Line 25(a).
- Schedule B, Line 25(f): If any portion of the IRC § 965(a) inclusion amount on Schedule B, Line 5 is investment income, in addition to amounts otherwise included on Line 25(f), include an amount equal to:
  - Total IRC § 965(c) deduction x (IRC § 965(a) inclusion amount that is investment income ÷ total IRC § 965(a) inclusion amount).
- Schedule A, Line 11: All taxpayers who make an election under IRC § 965(n) must enter the amount that would have been allowed if the taxpayer had no income under IRC § 965(a) and no

corresponding deduction under IRC § 965(c). Unincorporated Businesses treated as individuals for federal income tax purposes, including individuals who are the sole members of disregarded entities, and trusts and estates, who have made the IRC § 965(n) election for federal tax purposes must calculate their NOLs for City tax purposes in a manner consistent with their federal NOL calculation, and must attach the statement provided to the IRS in connection with IRC § 965(n) to their City return.

### **General GILTI and FDII Reporting Instructions**

The TCJA created a new category of income from controlled foreign corporations (CFCs) under section 951A, called GILTI. For federal tax purposes, a U.S. shareholder of a 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.<sup>2</sup> There are no specific statutory modifications under the GCT, UBT, and BTX that exclude GILTI income. Therefore, taxpayers subject to the GCT, UBT, and BTX must incorporate GILTI into the starting point of their City tax computations and classify GILTI as business income, investment income, or income from subsidiary capital, to the extent applicable. With respect to the GCT and BTX, IRC § 78 dividends attributable to GILTI are not included in ENI.

For City tax purposes, if the stock that generates GILTI is business capital the income is treated as business income, if the stock that generates GILTI is investment capital the income is treated as investment income, and if the stock that generates GILTI is subsidiary capital the income is treated as income from subsidiary capital.

The TCJA added section 250 to the IRC, which provides a U.S. domestic corporation taxed as a C corporation<sup>3</sup> with a deduction for its foreign-derived intangible income ("FDII deduction")<sup>4</sup> and its global intangible low-taxed income ("GILTI deduction")<sup>5</sup> and the amount treated as a dividend under section 78 which is attributable to its GILTI.<sup>6</sup>

The GILTI deduction does not apply to S corporations or their shareholders at the federal level.<sup>7</sup> However, subject to statutorily specified limitations, under the City's GCT and BTX entire net income is the same as the entire taxable income which a taxpayer would have been required to report to the United States Treasury Department if it had not made an election under Subchapter S of Chapter One of the Internal Revenue Code. There are no specific statutory modifications under the GCT or BTX that exclude the GILTI deduction from City tax computations. Therefore, taxpayers subject to the GCT and BTX will be

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<sup>2</sup> See IRC § 951A.

<sup>3</sup> REITs and RICs are not eligible for the deduction allowed under IRC § 250 related to GILTI.

<sup>4</sup> IRC § 250(a)(1)(A) (reduced by IRC § 250(a)(2)). The FDII deduction is 37.5% of the corporation's FDII before 2025, and 21.87% thereafter. A domestic corporation's FDII is its deemed intangible income ("DII") multiplied by the percentage of its deduction eligible income ("DEI") that is foreign-derived deduction eligible income ("FDDEI").

<sup>5</sup> IRC § 250(a)(1)(B)(i) amount, as reduced by IRC § 250(a)(2).

<sup>6</sup> Note that section 78 gross up dividends are not included in ENI under the GCT and BTX statutes. Hence, taxpayers will not be permitted to incorporate the deduction under IRC § 250(a)(B)(ii) into their City tax computations.

<sup>7</sup> Except that the deduction under IRC § 250(a)(1)(A) is applicable in certain cases where an individual makes an election under section 962.

permitted to calculate entire net income by taking the GILTI deduction into account.<sup>8</sup> Note that the GILTI deduction must be attributed to business income, investment income, or income from subsidiary capital, to the extent applicable.

For GCT purposes, if the stock of a CFC that generates GILTI is business capital, the net GILTI amount (GILTI from business capital minus corresponding GILTI deduction) must be included in the calculation of the Business Allocation Percentage in order to properly reflect the taxpayer's business income and capital in the City. Such net GILTI income must be included in the denominator but not the numerator of the BAP.

If the stock of a foreign corporation that generates GILTI is investment capital, or income from subsidiary capital, only the net GILTI income (GILTI income from investment capital or subsidiary capital minus the GILTI deduction amount attributable to that income) may be deducted as investment income or income from subsidiary capital in the computation of business income. The net GILTI amounts that are investment income or income from subsidiary capital are not included in the numerator or denominator of the BAP.

Proposed regulations issued by Treasury and the IRS interpret IRC § 962 as permitting individual U.S. shareholders<sup>9</sup> to elect to be treated as a domestic corporation with respect to GILTI income.<sup>10</sup> Individuals who make the IRC § 962 election will be permitted to reduce taxable income by the portion of the section 250 deduction that would be allowed to a domestic corporation with respect to the individual's GILTI and the section 78 gross-up attributable to the shareholder's GILTI.<sup>11</sup> Taxpayers who have made the election under IRC § 962 for federal tax purposes must calculate their GILTI deduction for City tax purposes in a manner consistent with their federal calculation. UBT taxpayers who make the IRC § 962 election to be treated as a domestic corporation for federal purposes must include net GILTI income that is generated from business capital in the denominator but not the numerator of the BAP.

### **General Form Instructions for Reporting GILTI and FDII Amounts**

The IRS requires any U.S. shareholder of one or more CFCs that is required to include GILTI in gross income under IRC § 951A to complete and attach to their federal return, new Schedule I-1, *Information for Global Intangible Low-Taxed Income*, with Form 5471, *Information Return of U.S. Persons With Respect to Certain Foreign Corporations*. U.S. shareholders are also required to file Form 8992, *U.S. Shareholder Calculation of Global Intangible Low-Taxed Income (GILTI)*, and, where applicable, Form 8993, *Section 250 Deduction for Foreign-Derived Intangible Income (FDII) and Global Intangible Low-Taxed Income (GILTI)*. **Use your federal or pro-forma (see below) Schedule I-1, Form 8992 and Form 8993 when following the instructions in this Finance Memorandum.**

<sup>8</sup> New York City decouples from the federal FDII deduction for purposes of the GCT, so GCT taxpayers will not be permitted to incorporate the deduction under IRC § 250(a)(1)(A) into their City tax computations. *See* Administrative Code § 11-602(8)(b)(20). There is no statutory modification under the BTX that excludes the FDII deduction from City tax computations. Therefore, taxpayers subject to the BTX will be permitted to calculate entire net income by taking the FDII deduction into account.

<sup>9</sup> Including trusts and estates, which are treated as individuals, individuals who are partners in a partnership, and S corporation shareholders.

<sup>10</sup> *See* Prop. Treas. Reg. § 1.962-1(b)(1)(i)(B)(3), proposed to apply to taxable years of a foreign corporation ending on or after March 4, 2019, and with respect to a U.S. person, for the taxable year in which or with which such taxable year of the foreign corporations ends.

<sup>11</sup> GILTI is treated as an amount included under section 951(a) for purposes of section 962. *See* IRC § 951A(f)(1)(A) and Prop. Treas. Reg. § 1.951A-6(b)(1).

- UBT taxpayers who make the IRC § 962 election to be treated as a domestic corporation for federal purposes must attach the statement provided to the IRS in connection with the IRC § 962 election to their City return.
- GCT and BTX taxpayers will be permitted to incorporate the GILTI deduction into their City tax computations.
- BTX taxpayers will be permitted to incorporate the FDII deduction into their City tax computations.
- Attach a copy of the federal or pro-forma Form 8992, Form 8993 and Schedule I-1, along with accompanying worksheets used to compute GILTI and, where applicable, FDII amounts, to the New York City tax return.
  - If the taxpayer is part of a federal affiliated group that files a consolidated return, but files a separate City return, the taxpayer should compute and attach a pro forma Schedule I-1, Form 8992 and Form 8993 to show GILTI and FDII amounts computed on a separate basis.
  - The reporting corporation of a New York City combined group must complete a pro-forma Schedule I-1, Form 8992 and Form 8993 and accompanying worksheets as if the group was one taxpayer.
- Attach a copy of each Form 5471 required to be filed with the IRS in connection with GILTI income where applicable.

#### **GILTI Reporting Instructions for Taxpayers Filing Form NYC-3L or NYC-3A**

- Schedule B, Line 1: Include the GILTI inclusion amount as well as the GILTI deduction on this line. The GILTI inclusion amount should be included on Part I, Line 13 of form NYC-ATT-S-CORP, and the GILTI deduction should be included on Part II, Line 19 of form NYC-ATT-S-CORP.
- Schedule B, Line 3: If any portion of the GILTI inclusion amount included on Schedule B, Line 1 is income from subsidiary capital, in addition to amounts otherwise included on Line 3, include an amount equal to:
  - $\text{GILTI deduction} \times (\text{GILTI inclusion amount from subsidiary capital} \div \text{total GILTI inclusion amount})$ 
    - Schedule B, Line 9(c): If any portion of the GILTI inclusion amount on Schedule B, Line 1 is income from subsidiary capital, include that portion of the GILTI inclusion amount on this line.
- Schedule B, Line 20 (a): If any portion of the GILTI inclusion amount on Schedule B, Line 1 is investment income, that portion of the GILTI inclusion amount should be included in the calculation of the amount to be included on Schedule B, Line 20(a). Note that GILTI amounts are included on this line for convenience, but GILTI is not dividend income and must not otherwise be treated as such for City tax purposes.
- Schedule B, Line 20(f): If any portion of the GILTI inclusion amount on Schedule B, Line 1 is investment income, the portion of taxpayer's GILTI deduction that is attributable to such income must be included on Schedule B, Line 20(f), and calculated as follows:
  - $\text{GILTI deduction} \times (\text{GILTI inclusion amount that is investment income} \div \text{total GILTI inclusion amount})$ .



### **GILTI Reporting Instructions for Taxpayers Filing Forms NYC-1 and NYC-1A**

- Schedule B, Line 1: Include the GILTI inclusion amount as well as the GILTI and FDII deductions on this line. The GILTI inclusion amount should be included on Part I, Line 13 of form NYC-ATT-S-CORP, and the GILTI and FDII deductions should be included on Part II, Line 19 of form NYC-ATT-S-CORP.
- Schedule B, Line 24: If any portion of the GILTI inclusion amount on Schedule B, Line 1 is income from subsidiary capital, include this amount in the calculation of the amount to be included on Schedule B Line 24, and exclude any corresponding GILTI deduction as follows:
  - 60% of GILTI inclusion amount from subsidiary capital – [GILTI deduction x (60% of GILTI inclusion amount from subsidiary capital ÷ total GILTI inclusion amount)]
- If any portion of the taxpayer's FDDEI<sup>12</sup> is income from subsidiary capital, include this amount in the calculation of the amount to be included on Schedule B Line 24, and exclude any corresponding FDII deduction as follows:
  - 60% of FDDEI from subsidiary capital – [FDII deduction x (60% of FDDEI from subsidiary capital ÷ total FDDEI)]

### **GILTI Reporting Instructions for Taxpayers Filing Form NYC-204**

- On Schedule B, Line 3: Include the GILTI inclusion amount on this line.
- Schedule B, Line 29(a): If any portion of the GILTI inclusion amount on Schedule B, Line 3 is investment income, include this amount in the calculation for Schedule B, Line 29(a). Note that GILTI amounts are included on this line for convenience, but GILTI is not dividend income and must not otherwise be treated as such for City tax purposes.

### **GILTI Reporting Instructions for Taxpayers Filing Form NYC-202 and NYC-202EIN**

- Schedule B, Line 5: Include the GILTI inclusion amount on this line. Taxpayers who have made an election under IRC § 962 to be treated as a domestic corporation must include the GILTI inclusion amount, reduced by the portion of the section 250 deduction that would be allowed to a domestic corporation with respect to the individual's GILTI and the section 78 gross-up attributable to GILTI.
- Schedule B, Line 25(a): If any portion of the GILTI inclusion amount on Schedule B, Line 5 is investment income, include this amount in the calculation for Schedule B, Line 25(a). Note that GILTI amounts are included on this line for convenience, but GILTI is not dividend income and must not otherwise be treated as such for City tax purposes.
- Schedule B, Line 25(f): For taxpayers who have made an election under IRC § 962, if any portion of the GILTI inclusion amount on Schedule B, Line 5 is investment income, in addition to amounts otherwise included on Schedule B, Line 25(f), include an amount equal to:
  - GILTI deduction plus Section 78 gross-up attributable to GILTI x (GILTI inclusion amount that is investment income ÷ total GILTI inclusion amount).

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<sup>12</sup> A domestic corporation's FDII is its deemed intangible income ("DII") multiplied by the percentage of its deduction eligible income ("DEI") that is foreign-derived deduction eligible income ("FDDEI").).