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New York: Legislation revises GILTI exclusion rules, modifies "Wayfair" threshold

New York lawmakers passed Senate Bill 6615 that: (1) revises the state's treatment of "global intangible low-taxed income" (GILTI); and (2) increases the economic nexus threshold for remote sellers and marketplace providers. The governor on June 24, 2019, signed the bill.

Revised GILTI treatment

Under current state law, GILTI is included in a corporation's New York entire net income base, net of the deduction allowed under IRC section 250. Under legislation enacted earlier this year, GILTI is also included in the denominator of the receipts factor. No GILTI is included in the numerator of the New York receipts factor.

Senate Bill 6615 revises the treatment of GILTI effective for tax years beginning on or after January 1, 2019.

- Under New York law, entire net income, minus net investment income and net other exempt income (subject to certain modifications) equals a taxpayer's business income. "Other exempt income" means the sum of exempt controlled foreign corporation (CFC) income and exempt unitary corporation dividends.

- For New York State purposes only, Senate Bill 6615 expands the definition of "exempt CFC income" to include 95% of the income required to be included in the taxpayer's gross income under IRC section 951A(a) that is received from a corporation not included in a combined report with the taxpayer. The inclusion applies without regard to the deduction allowed under IRC section 250.

- In computing entire net income, no deduction is allowed for the federal deduction allowed under IRC section 250(a)(1)(B)(i)—the 50% deduction that applies to the amount of GILTI included in the gross income of a domestic corporation. New York in 2018, "decoupled" from the deduction allowed under IRC section 250(a)(1)(A) for foreign-derived intangible income (FDII).

- Senate Bill 6615 also provides that no GILTI will be included in a corporation's numerator, and 5% will be included in the denominator of the apportionment factor.

The new provisions do not apply for New York City income tax purposes.

Revised economic nexus threshold ("Wayfair")

Senate Bill 6615 revises New York's sales and use tax economic nexus thresholds that apply to remote sellers and marketplace providers.

The current standard is gross receipts in excess of $300,000 and more than 100 sales of property delivered into New York in the immediately preceding four quarterly periods ending on the last day of February, May, August and November.

Under the new law, the threshold for both remote sellers and marketplaces is increased to $500,000 in receipts. The 100 transaction threshold is retained.

The change is deemed to have been in effect from June 21, 2018 (the date of the U.S. Supreme Court's decision in the *Wayfair* case) for remote sellers and is effective from June 1, 2019, for marketplace providers.

For more information about the GILTI measures, contact a tax professional with KPMG's State and Local Tax practice:

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