DEPARTMENT OF REVENUE

CORPORATE FRANCHISE TAX
Include CFCs with GILTI
Worldwide Unitary Option

March 24, 2021

	Yes	No
DOR Administrative Costs/Savings	X	

Revised to Exclude Individual Shareholders of CFCs

Department of Revenue
Analysis of H.F. 2114 (Marquart)

	Fund Impact			
	F.Y. 2022	**F.Y. 2023**	**F.Y. 2024**	**F.Y. 2025**
		(000's)		
General Fund	$229,600	$169,900	$171,800	$177,800

Effective beginning with tax year 2021.

EXPLANATION OF THE BILL

Current Law: Section 951A of the Internal Revenue Code imposes a tax on certain income designated as global intangible low-taxed income (GILTI). GILTI represents income in excess of a designated rate of return. This excess is subject to tax. GILTI is earned by a controlled foreign corporation (CFC). The term controlled refers to ownership of a foreign corporation by a domestic parent corporation.

The Minnesota response to the federal law was to allow a subtraction for any GILTI reported on the federal return.

Proposed Law:
Include Income of CFCs that Generate GILTI
Under the proposal, if a CFC generates any income designated as GILTI and the Commissioner of Revenue determines that it is a member of the unitary group, all of the income of the CFC can be included as income of the unitary group. Under federal law only income in excess of designated rate of return is taxed.

In determining tax liability, the CFC must report its income according to generally accepted accounting practices and other tax accounting standards required by the Commissioner of Revenue. The profit and loss statement must be prepared in the currency used by the corporation. However, the final results must be reported in dollars.

Option for Worldwide Unitary Election
If a CFC generates GILTI and has a unitary relationship with other related corporations, the unitary group may instead elect to apportion all its income to Minnesota using the worldwide reporting election. This is an exception to the general rule under current law that requires unitary groups to be made of corporations with domestic charters. Under worldwide reporting, all related corporations make a unitary group regardless whether a corporation holds a domestic or a foreign charter. This is the most comprehensive method of reporting income, which apportions income to Minnesota based on Minnesota's share of the worldwide apportionment factor. A worldwide election is effective only if made by all members of the unitary group. The election is binding for the next 10 years, although the election may be withdrawn under certain circumstances.

REVENUE ANALYSIS DETAIL

- Under the proposal, if a taxpayer includes income of a CFC that generates GILTI then the entire income of the CFC is included in the unitary group. The effect is to include all the CFC's income in the taxpayer's net income, not just the GILTI portion.
- By design, GILTI can only be positive. It is assumed that in most cases the net income included under the proposal would exceed the GILTI attributed to a CFC.
- The proposal is assumed to be similar in its impact to proposals to include income booked to tax haven countries. The most comprehensive list of countries designated as tax havens is sometimes called the "strong tax haven list." It is assumed that most GILTI income is generated in countries on the strong tax haven list.
- Based on an independent analysis of tax haven proposals in other states, the proposal is estimated to increase corporate tax revenue by 11%. This percentage was revised downward from 12% because this proposal applies to only corporate shareholders of CFCs.
- The estimate of corporate revenue is from the February 2021 forecast by Minnesota Management and Budget.
- The impact would fall entirely on the corporate franchise tax. For individuals with GILTI income, the tax liability would shift from the taxpayer to the CFC, which would have to file a Minnesota corporate franchise tax return.
- It is assumed that taxpayers would only choose the worldwide unitary election if doing so would reduce tax liability. The estimate was reduced by 5% to account for worldwide unitary elections.
- The included income would not qualify for a dividend received deduction.
- All of tax year 2021 revenue gain was allocated to fiscal year 2022. Other tax years were allocated 30% / 70% to fiscal years.

Minnesota Department of Revenue
Tax Research Division
https://www.revenue.state.mn.us/revenue-analyses

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