



Georgia Department of Revenue
Policy Bulletin IT 2018-01 (Revised)
Exclusion for Dividends from Sources Outside the United States
Updated August 13, 2019

1) **Purpose:** This policy bulletin provides guidance regarding the Georgia Code Section 48-7-21 exclusion for dividends from sources outside the United States.

2) **Effective Date:** All open years.

3) **Authority:**

O.C.G.A. § 48-7-21(b):

(8) There shall be subtracted from taxable income dividends received by:

(A) A corporation from sources outside the United States as defined in the Internal Revenue Code of 1986. For purposes of this subparagraph, dividends received by a corporation from sources outside of the United States shall include amounts treated as a dividend and income deemed to have been received under provisions of the Internal Revenue Code of 1986 by such corporation if such amounts could have been subtracted from taxable income under this paragraph, had such amounts actually been received. The deduction provided by Section 250 shall apply to the extent the same income was included in Georgia taxable net income. The deduction, exclusion, or subtraction provided by Section 245A, Section 965, or any other section of the Internal Revenue Code of 1986 shall not apply to the extent income has been subtracted pursuant to this subparagraph. Amounts to be subtracted under this subparagraph shall include the following unless excluded by this paragraph, as defined by the Internal Revenue Code of 1986:

(i) Qualified electing fund income;

(ii) Subpart F income, including income specified in Section 951A of the Internal Revenue Code of 1986; and

(iii) Income attributable to an increase in United States property by a controlled foreign corporation.

The amount subtracted under this subparagraph shall be reduced by any expenses directly attributable to the dividend income; and

4) **Scope:** A Policy Bulletin is intended to provide guidance to the public and to Department personnel. It is a written statement issued to apply principles of law to a specific set of facts or a general category of taxpayers, superseding all conflicting documents and oral directives previously issued by the Department. A Policy Bulletin does not have the force or effect of law and is not binding on the public. It is, however, the Department's position and is binding on agency personnel until superseded or modified by a change in statute, regulation, court decision, or subsequent Policy Bulletin.

5) Issues:

- a) Which persons are eligible for the exclusion for dividends from sources outside the United States as determined by O.C.G.A. § 48-7-21(b)(8)(A)?
- b) Are there Georgia deferral payment options like the Internal Revenue Code Section 965(h) or 965(i) deferral payment options?
- c) Does Georgia recognize the Internal Revenue Code Section 962 individual taxpayer election to pay tax on the income as if the income is received by a domestic C corporation?
- d) Additional guidance.

6) Discussion of Issues:

- a) **Which persons are eligible for the exclusion for dividends from sources outside the United States as determined by O.C.G.A. § 48-7-21(b)(8)(A)?**

Only federal C corporations are allowed this Georgia exclusion.

O.C.G.A. § 48-7-21(a) provides for the computation of Georgia taxable income of corporations. While O.C.G.A. § 48-7-21 does apply to the computation of the income of an S Corporation, the related federal income is treated as being received at the ultimate recipient level and not at the S Corporation level (or partnership level for that matter) and hence is treated as being received at the ultimate recipient level for Georgia purposes. The federal treatment is evidenced by the fact that the Internal Revenue Code Section 965(a) inclusion, Internal Revenue Code Section 965(c) deduction, Internal Revenue Code Section 951A inclusion, and other subpart F inclusions are reported separately to S Corporation shareholders. Also, the related federal deductions are not available at the S Corporation level. Finally, individual shareholders make the Internal Revenue Code Section 965 elections and make the Internal Revenue Code Section 962 election to pay tax on the income as if received by a domestic C corporation. As such, an S Corporation is not allowed the exclusion for dividends from sources outside the United States. An S-Corporation that is considered a C-Corp for Georgia purposes is also not allowed this Georgia exclusion since the income is still separately stated and is only combined to pay the tax at the entity level.

Georgia taxable net income for individuals is computed pursuant to O.C.G.A. § 48-7-27 which does not provide an exclusion for dividends from sources outside the United States.

Pursuant to O.C.G.A. §§ 48-7-22(b) and 48-7-23, fiduciaries and partnerships compute their income in the same manner as an individual (though except with respect to income taxed at the fiduciary level, it is moot due to the ultimate recipient treatment) and therefore pursuant to O.C.G.A. § 48-7-27 fiduciaries and partnerships are not allowed the exclusion for dividends from sources outside the United States. Since the related federal income is treated as being received at the ultimate recipient level, however, partners that are federal C corporations are allowed this Georgia exclusion.

- b) **Are there Georgia deferral payment options like the Internal Revenue Code Section 965(h) or 965(i) deferral payment options?** No. Georgia adopts the federal starting point for income computation purposes. See O.C.G.A. §§ 48-7-21 and 48-7-27. Georgia law regarding how tax is paid, however, is provided for separately and there is no comparable deferral payment provision in Georgia law.
- c) **Does Georgia recognize the Internal Revenue Code Section 962 individual taxpayer election to pay tax on the income as if the income is received by a domestic C Corporation?** No. Internal

Revenue Code Section 962 provides a different payment mechanism and does not affect Federal Adjusted Gross Income. Georgia adopts Federal Adjusted Gross Income as the federal starting point for income computation purposes (See O.C.G.A. § 48-7-27) and does not adopt federal provisions relating to how tax is paid. Georgia law regarding how tax is paid is provided for separately from Georgia's incorporation of the federal starting point and there is no provision comparable to the IRC Section 962 election in Georgia law. As such, this election is not allowed for Georgia purposes.

- d) **Additional Guidance.** Please see the attached chart for additional guidance. This has been updated to also include 2018 years and later.

FOR MORE INFORMATION

For more information on this subject, contact Taxpayer Services at 1-877-423-6711 from 8:00 a.m. to 4:30 p.m. ET, Monday through Friday, excluding holidays. Deaf and hard of hearing taxpayers who have access to TDD equipment can use the Georgia Relay program. For more information visit <http://georgiarelay.org>. For forms and other information, visit our website <http://dor.georgia.gov>.

Provision	Domestic C-Corp shareholder of a foreign corporation (also applies to income that flows from a pass-through entity to the C-Corp assuming they are treated as an owner of a foreign corporation under federal rules)		Domestic S-Corp Shareholder of a foreign corporation (Also applies to an S-Corp when considered a C-Corp for Georgia purposes since the income is still separately stated and is only combined to pay the tax at the entity level)		Domestic Partnership shareholder of a foreign corporation		Domestic Fiduciary (estates and trusts) shareholder of a foreign corporation		Domestic Individual shareholder of a foreign corporation (also applies to income that flows from a pass-through entity to the individual assuming they are treated as an owner of a foreign corporation under federal rules)	
	Federal	Georgia	Federal	Georgia	Federal	Georgia	Federal	Georgia	Federal	Georgia
Tax Years beginning on or after January 1, 2018										
2018 and later Sec. 951 controlled foreign corporation inclusion provision	Applies (income included)	Income deducted by Georgia law (net amount after Sec. 245A deduction is subtracted on Georgia return which in most cases is zero). Any subtraction must be reduced by the expenses that are directly attributable to the net amount after the Sec. 245A deduction.	Determined at ultimate recipient level; it is a separately stated item and thus taxation is determined at the ultimate recipient level.	Same as federal since income is considered federally and hence for Georgia to be received by ultimate recipient	Determined at ultimate recipient level; it is a separately stated item and thus taxation is determined at the ultimate recipient level.	Same as federal since income is considered federally and hence for Georgia to be received by ultimate recipient	Applies to income taxed at trust level (income included), beneficiary uses rules based on type of taxpayer they are	Same as federal since income is considered federally and hence for Georgia to be received by ultimate recipient	Applies (income included)	Same as federal (no exclusion provided in Georgia law). Amount is included on Federal return and hence will flow to the Georgia return.
2018 and later 100% Sec. 245A deduction of foreign dividends	Applies (deduction allowed)	Same as federal (deducted at federal level and flows to Georgia return in federal income starting point)	Eligibility for the Sec. 245A deduction is determined at the ultimate recipient level.	Same as federal since income is considered federally and hence for Georgia to be received by ultimate recipient	Eligibility for the Sec. 245A deduction is determined at the ultimate recipient level.	Same as federal since income is considered federally and hence for Georgia to be received by ultimate recipient	Does not apply to income taxed at trust level (deduction not allowed), beneficiary uses rules based on type of taxpayer they are	Same as federal since income is considered federally and hence for Georgia to be received by ultimate recipient	Does not apply (deduction not allowed)	Same as federal
2018 and later Sec. 951A GILTI inclusion	Applies (income included)	Income deducted by Georgia law (net amount after Sec. 250 deduction is subtracted on Georgia return). The subtraction must be reduced by the expenses that are directly attributable to the net amount after the Sec. 250 deduction.	Determined at ultimate recipient level; it is a separately stated item and thus taxation is determined at the ultimate recipient level.	Same as federal since income is considered federally and hence for Georgia to be received by ultimate recipient	Determined at ultimate recipient level; it is a separately stated item and thus taxation is determined at the ultimate recipient level.	Same as federal since income is considered federally and hence for Georgia to be received by ultimate recipient	Applies to income taxed at trust level (income included), beneficiary uses rules based on type of taxpayer they are	Same as federal since income is considered federally and hence for Georgia to be received by ultimate recipient	Applies (income included)	Same as federal (no exclusion provided in Georgia law). Amount is included on Federal return and hence will flow to the Georgia return.
2018 and later Sec. 250 deduction for GILTI	Applies (deduction allowed)	Same as federal (deducted at federal level and flows to Georgia return in federal income starting point)	Eligibility for the Sec. 250 deduction is determined at the ultimate recipient level.	Same as federal since income is considered federally and hence for Georgia to be received by ultimate recipient	Eligibility for the Sec. 250 deduction is determined at the ultimate recipient level.	Same as federal since income is considered federally and hence for Georgia to be received by ultimate recipient	Does not apply to income taxed at trust level (deduction not allowed), beneficiary uses rules based on type of taxpayer they are	Same as federal since income is considered federally and hence for Georgia to be received by ultimate recipient	Does not apply (deduction not allowed)	Same as federal

Provision	Domestic C-Corp shareholder of a foreign corporation (also applies to income that flows from a pass-through entity to the C-Corp assuming they are treated as an owner of a foreign corporation under federal rules)	Domestic S-Corp Shareholder of a foreign corporation (Also applies to an S-Corp when considered a C-Corp for Georgia purposes since the income is still separately stated and is only combined to pay the tax at the entity level)	Domestic Partnership shareholder of a foreign corporation	Domestic Fiduciary (estates and trusts) shareholder of a foreign corporation	Domestic Individual shareholder of a foreign corporation (also applies to income that flows from a pass-through entity to the individual assuming they are treated as an owner of a foreign corporation under federal rules)					
Tax Years beginning on or after January 1, 2018										
2018 and later Sec. 250 deduction for FDI	Applies (deduction allowed)	Same as federal (deducted at federal level and flows to Georgia return in federal income starting point)	Determined at ultimate recipient level; it is a separately stated item and thus taxation is determined at the ultimate recipient level.	Same as federal since income is considered federally and hence for Georgia to be received by ultimate recipient	Determined at ultimate recipient level; it is a separately stated item and thus taxation is determined at the ultimate recipient level.	Same as federal since income is considered federally and hence for Georgia to be received by ultimate recipient	Does not apply to income taxed at trust level (deduction not allowed), beneficiary uses rules based on type of taxpayer they are	Same as federal since income is considered federally and hence for Georgia to be received by ultimate recipient	Does not apply (deduction not allowed)	Same as federal
2018 Sec. 965 repatriation provision (if deferred foreign income company year ended in 2018)	Applies (income included)	Income deducted by Georgia law. The net amount after the Sec. 965(c) deduction is subtracted on the Georgia return. The subtraction must be reduced by the expenses that are directly attributable to the net amount after the Sec. 965(c) deduction.	Determined at ultimate recipient level; it is a separately stated item and thus taxation is determined at the ultimate recipient level.	Same as federal since income is considered federally and hence for Georgia to be received by ultimate recipient	Determined at ultimate recipient level; it is a separately stated item and thus taxation is determined at the ultimate recipient level.	Same as federal since income is considered federally and hence for Georgia to be received by ultimate recipient	Applies to income taxed at fiduciary level (income included), beneficiary uses rules based on type of taxpayer they are	Same as federal since income is considered federally and hence for Georgia to be received by ultimate recipient.	Applies (income included)	Same as federal (no exclusion provided in Georgia law) Net amount after Sec. 965(c) deduction is included on Federal return and hence will flow to the Georgia return.
2018 Sec. 965(c) deduction (if deferred foreign income company year ended in 2018)	Applies (deduction allowed)	Same as federal (deducted at federal level and flows to Georgia return in federal income starting point)	Determined at ultimate recipient level; it is a separately stated item and thus taxation is determined at the ultimate recipient level.	Same as federal since income is considered federally and hence for Georgia to be received by ultimate recipient	Determined at ultimate recipient level; it is a separately stated item and thus taxation is determined at the ultimate recipient level.	Same as federal since income is considered federally and hence for Georgia to be received by ultimate recipient	Applies to income taxed at fiduciary level (deduction allowed), beneficiary uses rules based on type of taxpayer they are	Same as federal since income is considered federally and hence for Georgia to be received by ultimate recipient	Applies (deduction allowed)	Same as federal (already deducted at federal level and flows to Georgia return in federal income starting point)
2018 Sec. 965(h) election to pay liability in 8 installments (if deferred foreign income company year ended in 2018)	Applies (election allowed)	Does not apply since income already deducted but note no comparable provision in Georgia law	N/A	N/A	N/A	N/A	Applies to tax at fiduciary level (election allowed), beneficiary uses rules based on type of taxpayer they are	Does not apply since it does not affect the income computation but instead addresses how the tax is paid (no comparable provision in Georgia law)	Applies (election allowed)	Does not apply since it does not affect the income computation but instead addresses how the tax is paid (no comparable provision in Georgia law)

Provision	Domestic C-Corp shareholder of a foreign corporation (also applies to income that flows from a pass-through entity to the C-Corp assuming they are treated as an owner of a foreign corporation under federal rules)	Domestic S-Corp Shareholder of a foreign corporation (Also applies to an S-Corp when considered a C-Corp for Georgia purposes since the income is still separately stated and is only combined to pay the tax at the entity level)	Domestic Partnership shareholder of a foreign corporation	Domestic Fiduciary (estates and trusts) shareholder of a foreign corporation	Domestic Individual shareholder of a foreign corporation (also applies to income that flows from a pass-through entity to the individual assuming they are treated as an owner of a foreign corporation under federal rules)					
Tax Years beginning on or after January 1, 2018										
Sec. 962 individual election to pay tax on income as if received by a domestic corporation	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	Applies (election allowed)	Does not apply since it provides a different tax computation and does not affect Federal Adjusted Gross Income and there is no comparable provision in Georgia law. But note since the gross up of foreign taxes paid relates to allowing the federal credit such gross up may be subtracted for Georgia purposes if it is included in federal AGI.
2018 Sec. 965(l) special rule for S Corp shareholders to defer payment until the triggering year (if deferred foreign income company year ended in 2018)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	Applies if S Corp Shareholder	Does not apply since it does not affect the income computation but instead addresses how the tax is paid (no comparable provision in Georgia law)

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Tax Years beginning before January 1, 2018										
Pre 2018 Sec. 965 repatriation provision	Applies (income included)	Income deducted by Georgia law. Normally the net amount after the Sec. 965(c) deduction would be subtracted on the Georgia return since it is technically in federal taxable income but this is not necessary since it is presented federally on the IRC 965 Transition Tax Statement. However, an addition must be made on the Georgia return for the expenses that are directly attributable to the net amount after the Sec. 965(c) deduction.	Determined at ultimate recipient level; it is a separately stated item and thus taxation is determined at the ultimate recipient level.	Same as federal since income is considered federally and hence for Georgia to be received by ultimate recipient	Determined at ultimate recipient level; it is a separately stated item and thus taxation is determined at the ultimate recipient level.	Same as federal since income is considered federally and hence for Georgia to be received by ultimate recipient	Applies to income taxed at fiduciary level (income included), beneficiary uses rules based on type of taxpayer they are	Same as federal since income is considered federally and hence for Georgia to be received by ultimate recipient. With respect to income taxed at the fiduciary level the net amount after Sec. 965(c) deduction should be added in the adjustments to income section of the Georgia return since the income is not included directly in federal income but instead is included federally on the IRC 965 Transition Tax Statement.	Applies (income included)	Same as federal (no exclusion provided in Georgia law) Net amount after Sec. 965(c) deduction is included on federal return and hence will flow to the Georgia return.
Pre 2018 Sec. 965(c) deduction	Applies (deduction allowed)	Only the net amount remaining after the 965(c) deduction is eligible for the Georgia deduction	Determined at ultimate recipient level; it is a separately stated item and thus taxation is determined at the ultimate recipient level.	Same as federal since income is considered federally and hence for Georgia to be received by ultimate recipient	Determined at ultimate recipient level; it is a separately stated item and thus taxation is determined at the ultimate recipient level.	Same as federal since income is considered federally and hence for Georgia to be received by ultimate recipient	Applies to income taxed at fiduciary level (deduction allowed), beneficiary uses rules based on type of taxpayer they are	Same as federal since income is considered federally and hence for Georgia to be received by ultimate recipient	Applies (deduction allowed)	Same as federal (already deducted at federal level and flows to Georgia return in federal income starting point)
Pre 2018 Sec. 965(h) election to pay liability in 8 installments	Applies (election allowed)	Does not apply since income already deducted but note no comparable provision in Georgia law	N/A	N/A	N/A	N/A	Applies to tax at fiduciary level (election allowed), beneficiary uses rules based on type of taxpayer they are	Does not apply since it does not affect the income computation but instead addresses how the tax is paid (no comparable provision in Georgia law)	Applies (election allowed)	Does not apply since it does not affect the income computation but instead addresses how the tax is paid (no comparable provision in Georgia law)

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Tax Years beginning before January 1, 2018											
Pre 2018 Sec. 965(i) special rule for S Corp shareholders to defer payment until the triggering year	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	Applies if S Corp Shareholder	Does not apply since it does not affect the income computation but instead addresses how the tax is paid (no comparable provision in Georgia law)
Pre 2018 Sec. 962 individual election to pay tax on income as if received by a domestic corporation	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	Applies	Does not apply since it provides a different tax computation and does not affect Federal Adjusted Gross Income and there is no comparable provision in Georgia law. But note since the gross up of foreign taxes paid relates to allowing the federal credit such gross up may be subtracted for Georgia purposes if it is included in federal AGI.