

18-4 April 20, 2018

FINANCE MEMORANDUM

Deemed Repatriation Income under the General Corporation Tax, the Banking Corporation Tax, and the Unincorporated Business Tax

Federal Public Law 115-97, known as the Tax Cuts and Jobs Act (TCJA), was signed into law on December 22, 2017, and requires certain US taxpayers to recognize mandatory deemed repatriation income under section 965 of the Internal Revenue Code (IRC). This Finance Memorandum describes tax considerations and late payment penalty relief for New York City (City) taxpayers affected by IRC § 965 and subject to the General Corporation Tax (GCT), the Banking Corporation Tax (BTX), and the Unincorporated Business Tax (UBT).

Taxpayers subject to the GCT, BTX or UBT must report their IRC § 965(a) inclusion amounts and IRC § 965(c) deduction amounts on IRC 965 Transition Tax Statements and their applicable federal tax forms. Neither the GCT, nor BTX nor UBT provides specific modifications for these income and deduction amounts. Instead, the income must be classified as business income, investment income, or income from subsidiary capital, to the extent applicable, and deductions must be attributed to that income, including the IRC § 965(c) amount. The net income (net section 965 income) must be allocated or, in the case of income from subsidiary capital, excluded, in accordance with its classification and existing law. Taxpayers under the GCT, BTX and UBT must pay the additional City tax liability generated by net section 965 income in the same tax year that they report the IRC § 965(a) inclusion for federal income tax purposes. They may not elect to defer payment of the City tax attributable to their net section 965 income, whether or not their owners elect to defer payment for federal income tax purposes.

Accordingly, net section 965 income may result in substantial increases to the City tax liability of some S corporations and unincorporated business taxed under the GCT, BTX, or UBT for tax year 2017. The Department of Finance (DOF) has determined that the enactment of the TCJA so late in tax year 2017 constitutes reasonable cause for taxpayers to have underpaid the portion of their City tax liabilities attributable to net section 965 income when due for the 2017 tax year. Accordingly, if a taxpayer receives a bill from DOF that includes a penalty for failing to pay the correct amount of tax when due, and the underpayment is attributable to net section 965 income, the taxpayer may request an abatement of the penalty.

An abatement request submitted pursuant to this Memorandum must include a copy of the taxpayer's IRC 965 Transition Tax Statement, and be submitted by email to Penalty_Abatements@finance.nyc.gov. Requests may also be mailed to the Adjustments & Discrepancies Unit, 59 Maiden Lane, 19th Floor, New York, NY 10038. Questions may be submitted through DOF's online portal for inquiries by tax type, which may be accessed through the URL: <http://www1.nyc.gov/site/finance/about/contact-us.page>.

If the taxpayer submits a penalty abatement request that includes its IRC 965 Transition Tax Statement, and, by October 15, 2018, either pays the remaining tax and applicable interest due or enters into an installment payment agreement to pay the remaining tax and applicable interest due, DOF will waive the applicable penalty.