

18-7 September 25, 2018

FINANCE MEMORANDUM

Tax Treatment of IRC § 965 Repatriation Amounts for Tax Year 2017 for Business Corporation Taxpayers

The federal *Tax Cuts and Jobs Act* (Public Law 115-97) 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).

This Finance Memorandum contains instructions for reporting these IRC § 965 income and deduction amounts on 2017 New York City Business Corporation Tax return(s) and attachments.¹ These instructions do not apply to reporting other amounts of Subpart F income, which should be reported according to the 2017 forms and instructions previously published.

- If a taxpayer has IRC § 965 amounts in its 2017 tax year and has already filed its 2017 New York City Business Corporation Tax return, it **must** file an amended return using these instructions.
- If a taxpayer has IRC § 965 amounts in its 2017 tax year and has not yet filed its 2017 New York City Business Corporation Tax return, it **must** use these instructions when filing its original return.

General Reporting Instructions for Tax Year 2017

For tax year 2017, the Internal Revenue Service (IRS) requires all taxpayers that have income under IRC § 965 to complete and attach, to their federal return, an *IRC 965 Transition Tax Statement* that includes the IRC § 965(a) inclusion amount, IRC § 965(c) deduction, and the total federal net tax liability under IRC § 965.² **Use your federal or pro-forma (see below) *IRC 965 Transition Tax Statement* when following the instructions in this Finance Memorandum.**

When computing their total federal net tax liability under IRC § 965, taxpayers are required to re-compute their net income tax (tax less credits) for the tax year using a federal taxable income (FTI) amount **with** all IRC § 965 amounts included. This computation is referred to by the IRS as the “with calculation.”³ The inclusion of IRC § 965 amounts in FTI changes federal limitations on income, deductions, and credits. **Taxpayers must use their federal amounts used to compute the “with calculation” when preparing their 2017 New York City tax return.**

- A taxpayer must compute a pro-forma *IRC 965 Transition Tax Statement* to show IRC § 965 amounts computed on a separate basis if the taxpayer is part of a federal consolidated group but files separately in New York City.

¹ The department will provide separate guidance regarding the General Corporation Tax, Banking Corporation Tax, and Unincorporated Business Tax.

² Computed under IRC § 965(h)(6).

³ See IRC § 965(h)(6)(A)(i) and I.R.S. Pub. No. 5292, Cat. No. 15018A (Apr. 6, 2018)

- The designated agent of a New York City combined group must compute a pro-forma *IRC 965 Transition Tax Statement* to show IRC § 965 amounts computed as if the New York City combined group had filed a consolidated federal return if the New York City combined group differs from the designated agent's federal consolidated group.
- Corporate partners and beneficiaries must include their distributive shares from partnerships and estates and trusts when computing their applicable *IRC 965 Transition Tax Statement* and any related New York City addition or subtraction modifications.
- The IRC § 965(a) inclusion amount is on line 1 of the applicable *IRC 965 Transition Tax Statement*.⁴
- The IRC § 965(c) deduction amount is on line 3 of the applicable *IRC 965 Transition Tax Statement*.⁴
- The net IRC § 965 amount is the IRC § 965(a) inclusion amount less the IRC § 965(c) deduction from the applicable statement.
- A copy of the federal and pro-forma (if applicable) *IRC 965 Transition Tax Statement*, along with accompanying worksheets used to compute the IRC § 965 amounts, **including all federal amounts used for the “with calculation,”** must be attached to the 2017 New York City tax return.

Attribution of Interest Expenses to IRC § 965 Income

The definition of *Exempt CFC income* includes the IRC § 965(a) inclusion amount. Taxpayers must add back to FTI interest deductions directly or indirectly attributable to the IRC § 965(a) inclusion amount or make the 40% safe harbor election using the procedures in Finance Memorandum 16-2 (01/26/2016), *Direct and Indirect Attribution of Interest Deductions Under the Business Corporation Tax (Corporate Tax of 2015)*.

- If the stock of a foreign corporation that generates IRC § 965 amounts is investment capital, it is not exempt CFC stock for purposes of attribution. Taxpayers must include this stock in the investment capital indirect attribution formula.
- If the stock of a foreign corporation that generates IRC § 965 amounts is business capital, it is exempt CFC stock for purposes of attribution. Taxpayers must include this stock in the exempt CFC stock indirect attribution formula.

Taxpayers must also add back any IRC § 965(c) deduction used to reduce federal taxable income reported to New York City.

Note: Exempt CFC income is not included in the numerator or denominator of the receipts fraction for purposes of computing the business allocation percentage in Schedule F of Form NYC-2 and Form NYC-2A.

⁴ Captive and noncaptive REITs that made the IRC § 965(m)(1)(B) election must include 100% of the §965(a) and §965(c) amounts on their applicable statement, but use 8% of these amounts when reporting these values on their New York City tax return according to the instructions in this Finance Memorandum.

Specific Reporting Instructions for 2017 Business Corporation Tax

Taxpayers reporting IRC § 965 amounts must use the following instructions along with the general instructions above when completing these 2017 forms:

- Form NYC-2 *Business Corporation Tax Return*
- Form NYC-2A, *Combined Business Corporation Tax Return*
- Form NYC-2A/BC, *Member's Detail Report*
- Form NYC-2.1, *Investment and Other Exempt Income and Investment Capital*

Form NYC-2

- *Form NYC-2, Schedule B, line 1, Federal Taxable Income (FTI) Before Net Operating Loss (NOL) and Special Deductions*
 - Taxpayers must report their FTI before NOL and special deductions, as computed for the “with calculation.”
- *Form NYC-2, Schedule B, line 14, Other Additions*
 - Taxpayers must include the amount of their IRC § 965(c) deduction amount to the extent such amount was deducted in computing federal taxable income reported on Schedule B, line 1. If applicable, include the taxpayer’s distributive share of IRC § 965(c) deductions from pass-through entities.⁵
- *Form NYC 2.1, Schedule B*
 - Taxpayers must add their IRC § 965(a) inclusion amount to any other gross exempt CFC income and report the total on Schedule B, line 1.
 - Taxpayers must complete the appropriate parts and lines of Schedule B pertaining to their chosen method of attribution of interest deductions – 40% safe harbor election or direct and indirect attribution.

Form NYC-2A

- *Form NYC-2A, Schedule B, line 1g, Federal Consolidated Taxable Income Before New York City Additions and Subtractions*
 - The CTI of the New York City combined group must be computed using the combined group’s consolidated FTI as computed for the combined group’s “with calculation.”
- *Form NYC-2A, Schedule B, line 14, Other Additions*
 - The combined group must include the amount of the deduction allowed under IRC § 965(c) that was included on Schedule B, line 1g. Do **not** report amounts for this addition in the Columns of Schedule B, line 14 titled “Designated Agent,” “Total of all Affiliates,” and “Intercorporate Eliminations.” Only report the “Combined Group Total.” If applicable, include the combined group’s distributive share of IRC § 965(c) deductions from pass-through entities.⁵

⁵ Include amounts from the federal or pro-forma, if applicable, I.R.S. Pub. No. 5292, 965 Workbook, Worksheet 1.1, Part II, lines 12 and 13 respectively.

- *Form NYC-2A/BC*

Combined group members must **not** report the new addition modifications.

- *Form NYC-2.1, Schedule B*

- The combined group must add the IRC § 965(a) inclusion amount to any other gross exempt CFC income and report the total on Schedule B, line 1.
- The combined group must complete the appropriate parts and lines of Schedule B pertaining to their chosen method of attribution of interest deductions – 40% safe harbor election or direct and indirect attribution.