



Tax Treatment of IRC § 965 Repatriation Amounts for Tax Year 2017 for New York C Corporations, Insurance Corporations, and Exempt Organizations

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 Notice contains instructions for reporting these IRC § 965 amounts on the 2017 New York State corporation tax returns 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 State 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 State corporation tax return, it **must** use these instructions when filing its original return.

General Form 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 **Taxpayers must use their federal or pro-forma (see below) IRC 965 Transition Tax Statement when following the instructions in this Notice.**

When computing their total federal net tax liability under IRC § 965, taxpayers are required to 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 State tax return.**

¹ The department will provide separate guidance for flow-through entity tax returns (i.e. NY S corporation, partnership, and fiduciary tax returns).

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)

- 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.
- The designated agent (Article 9-A) or the parent (Article 33) of a New York combined group must compute a pro-forma *IRC 965 Transition Tax Statement* to show IRC § 965 amounts computed as if the New York combined group had filed a consolidated federal return if the New York combined group differs from the designated agent's or parent'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 State addition or subtraction modifications under Article 9-A or Article 33.
- 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 State tax return.

New York C Corporations

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 [TSB-M-15\(8\)C, \(7\)I](#), *Direct and Indirect Attribution of Interest Deductions for Article 9-A Taxpayers*.

- 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.

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

Note: Exempt CFC income is not included in the numerator or denominator of the business apportionment factor computed in Part 6 of Form CT-3 and Form CT-3-A.

Specific Form Instructions for New York C Corporations for Tax Year 2017

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

- Form CT-3, *General Business Corporation Franchise Tax Return*
- Form CT-3-A, *General Business Corporation Combined Franchise Tax Return*
- Form CT-3.1, *Investment and Other Exempt Income and Investment Capital*
- Form CT-225, *New York State Modifications*
- Form CT-225-A, *New York State Modifications (for filers of combined franchise tax returns)*
- Form CT-225-A/B, *Group Member's Detail Spreadsheet, New York State Modifications (for filers of combined franchise tax returns)*

Form CT-3

- *Form CT-3, Part 3, 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 CT-225, Schedule A, Parts 1 and 2*
 - Taxpayers must use new addition modification code **A-510** (and **EA-510**, if applicable, for their distributive share of the modification from pass-through entities) to report their IRC § 965(c) deduction amount to the extent such amount was deducted in computing their federal taxable income reported on Form CT-3, Part 3, line 1.⁵
- *Form CT-3.1, 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 CT-3-A

- *Form CT-3-A, Part 3, line 1a, Federal consolidated taxable income (CTI) of New York combined group*
 - The CTI of the New York State combined group must be computed using the combined group's consolidated FTI as computed for the combined group's “with calculation.”

⁵ Amounts for codes A-510 and EA-510 are 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 CT-225-A, Schedule A, Part 1 and Part 2, Column E*
 - The combined group must use new addition modification code **A-510** (and **EA-510**, if applicable, for the combined group's distributive share of the modification from pass-through entities) to report the combined group's IRC § 965(c) deduction amount in Column E only to the extent such amount was not already added back in computing Form CT-3-A, Part 3, line 1g.⁵ Do **not** report amounts for the new addition modifications in Columns A through D of Form CT-225-A. Only report the total amount of the A-510 and EA-510 modifications, on their respective lines, in Column E.
- *Form CT-225-A/B*
 - Combined group members must **not** report the new addition modifications.
- *Form CT-3.1, 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.

Insurance Corporations

Taxpayers must use a new subtraction modification from FTI for the IRC § 965(a) inclusion amount received from foreign corporations that are not included in a combined report with the taxpayer. This amount is not eligible for the existing subtraction modifications for income from subsidiary capital or the 50% exclusion for dividends from nonsubsidiaries. In addition, taxpayers must add back to FTI the IRC § 965(c) deduction, as well as interest and noninterest deductions directly or indirectly attributable to their IRC § 965(a) inclusion amount.

Captive insurers that file Form CT-33-C, *Captive Insurance Company Franchise Tax Return*, and insurers that file Form CT-33-NL, *Non-Life Insurance Corporation Franchise Tax Return*, make no adjustments for IRC § 965 amounts on their corporation tax returns.

Specific Form Instructions for Insurance Corporations for Tax Year 2017

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

- Form CT-33, *Life Insurance Corporation Franchise Tax Return*
- Form CT-33-A, *Life Insurance Corporation Combined Franchise Tax Return*
- Form CT-33-A/B, *Subsidiary Detail Spreadsheet*
- Form CT-225, *New York State Modifications*
- Form CT-225-A, *New York State Modifications (for filers of combined franchise tax returns)*
- Form CT-225-A/B, *Group Member's Detail Spreadsheet, New York State Modifications (for filers of combined franchise tax returns)*

Form CT-33

- *Form CT-33, Schedule G, line 62, Federal taxable income before operations loss or net operating loss (NOL)*
 - Taxpayers must report their federal taxable income before operations loss or net operating loss, as computed for the “with calculation.”
- *Form CT-33, Schedule G, line 67, Deductions attributable to subsidiary capital*
 - Taxpayers must add the interest and noninterest deductions attributable to subsidiaries that generated IRC § 965(a) inclusion amounts to any other interest and noninterest deductions attributable to subsidiaries and report the total.
- *Form CT-33, Schedule G, line 73, Interest, dividends and capital gains from subsidiary capital*
 - Taxpayers must **not** include any IRC § 965 amounts.
- *Form CT-33, Schedule G, line 74, Fifty percent of dividends from nonsubsidiary corporations*
 - Taxpayers must **not** include any IRC § 965 amounts.
- *Form CT-225, Schedule A, Parts 1 and 2, and Schedule B, Parts 1 and 2*
 - Taxpayers must use new addition modification codes **A-604** (and **EA-604**, if applicable, for their distributive share of the modification from pass-through entities) to report their IRC § 965(c) deduction amount only to the extent such amount was not already added back on Form CT-33, Schedule G, lines 63 or 67.⁶
 - Taxpayers must use new addition modification code **A-605** to add back interest and noninterest deductions directly and indirectly attributable to IRC § 965(a) inclusion amounts from nonsubsidiaries.
 - Taxpayers must use new subtraction modification codes **S-605** (and **ES-605**, if applicable, for their distributive share of the modification from pass-through entities) to report the IRC § 965(a) inclusion amount.⁷

Form CT-33-A

- *Form CT-33-A, Schedule D, line 64, FTI before operations or net operating loss, Column E*
 - The combined group must report federal taxable income before operations loss or net operating loss, as computed for the “with calculation” in Column E. Do not report any amounts in Columns A through D of line 64.

⁶ Amounts for codes A-604 and EA-604 are 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.

⁷ Amounts for codes S-605 and ES-605 are from the federal or pro-forma, if applicable, I.R.S. Pub. No. 5292, 965 Workbook, Worksheet 1.1, Part I, lines 1 and 2, respectively.

- *Form CT-33-A, Schedule D, line 69, Deductions attributable to subsidiary capital*
 - For all combined group members, add the interest and noninterest deductions attributable to subsidiaries that generated IRC § 965(a) inclusion amounts to any other interest and noninterest deductions attributable to subsidiaries and report the total.
- *Form CT-33-A, Schedule D, line 76, Interest, dividends, and capital gains from subsidiary capital*
 - Do **not** include any IRC § 965 amounts.
- *Form CT-33-A, Schedule D, line 77, Fifty percent of dividends from nonsubsidiary corporations*
 - Do **not** include any IRC § 965 amounts.
- *Form CT-33-A/B, Subsidiary Detail Spreadsheet, Schedule D*
 - Do **not** include any IRC § 965 amounts.
- *Form CT-225-A, Schedule A, Parts 1 and 2, Column E; Schedule B, Parts 1 and 2, Column E*
 - The combined group must use new addition modification codes **A-604** (and **EA-604**, if applicable, for the combined group's distributive share of the modification from pass-through entities) to report the combined group's IRC § 965(c) deduction amount for all members of the group in Column E only to the extent such amount was not already added back on Form CT-33-A, Schedule D, lines 65 or 69.⁸
 - The combined group must use new addition modification code **A-605** to report the interest and noninterest deductions directly and indirectly attributable to IRC § 965(a) inclusion amounts from nonsubsidiaries in Column E.
 - The combined group must use new subtraction modification code **S-605** (and **ES-605**, if applicable, for the combined group's distributive shares of the modification from pass-through entities) to report the combined group's IRC § 965(a) inclusion amount in Column E.⁹
 - Do **not** report amounts for these new modifications in Columns A through D of Form CT-225-A. Only report the total amount of the applicable modifications, on their respective lines, in Column E.
- *Form CT-225-A/B*
 - Combined group members must **not** report the new addition and subtraction modifications.

⁸ Amounts for codes A-604 and EA-604 are 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.

⁹ Amounts for codes S-605 and ES-605 are from the federal or pro-forma, if applicable, I.R.S. Pub. No. 5292, 965 Workbook, Worksheet 1.1, Part I, lines 1 and 2, respectively.

Exempt Organizations

Taxpayers must include in New York unrelated business taxable income any net IRC § 965 amount required to be included in federal unrelated business taxable income. There is no New York exemption or deduction for this income for exempt organizations and no related income modifications.

Specific Form Instructions for Exempt Organizations for Tax Year 2017

Exempt organizations reporting federal IRC § 965 amounts must use the following instructions, along with the general form instructions above, when completing their 2017 Form CT-13, *Unrelated Business Income Tax Return*.

Form CT-13

- *Form CT-13, line 1, Federal unrelated business taxable income before net operating loss deduction and after \$1,000 specific deduction*
 - Taxpayers must report their federal unrelated business taxable income before net operating loss deduction and after \$1,000 specific deduction, as computed for the “with calculation.”

Note: An N-Notice is generally issued to announce a singular event, such as an update to a previously issued tax form or instruction, or to announce a new due date for filing returns and making payments of tax because of a natural disaster. The department does not revise previously issued N-Notices.