

Repatriated Earnings Subject to Transition Tax

Federal Law Requires the Payment of a Transition Tax on Foreign Earnings as if They Had Been Repatriated to the United States

The federal Tax Cuts and Jobs Act amended Section 965 of the Internal Revenue Code. The amendment requires certain United States shareholders to pay a transition tax on the untaxed foreign earnings of certain specified foreign corporations as if those earnings had been repatriated to the United States. For federal income tax purposes, these deemed repatriated ("repatriated") earnings are subject to a transition tax for the 2017 and 2018 tax years.

Franchise, Excise Tax Treatment of Repatriated Earnings Varies Depending Upon How Taxpayers Report Them to the IRS

The starting point for determining the income subject to excise tax is federal taxable income. Thus, whether repatriated earnings are included in taxable net earnings for 2017 and 2018 depends on how they are reported for federal tax purposes. Based upon the guidance recently published by the IRS, taxpayers should handle repatriated earnings as follows:

Corporations and Other Entities Filing Federal Form 1120

Corporations will report repatriated earnings on the IRC 965 Transition Tax Statement and not on Federal Form 1120. Thus, repatriated earnings should not be included in the net earnings calculation on Schedule J-4. They should not be deducted as dividends, and they should not be included in the apportionment formula.

S Corporations Filing Federal Form 1120-S

Although S corporations will report repatriated earnings on Federal Form 1120-S, Tennessee law requires an S corporation to calculate its net earnings as though it had not made the Subchapter S election. Thus, repatriated earnings, and related deductions from Federal Form 1120-S, Schedule K, should not be included in the net earnings calculation on Schedule J-3. They also should not be deducted as dividends, and they should not be included in the apportionment formula.

Partnerships and Other Entities Filing Federal Form 1065

Partnerships will report repatriated earnings and the related exclusion amount on Federal Form 1065. These amounts should be included in the net earnings calculation on Schedule J-1. A deduction for dividends received from an 80% or more owned corporation may be made on Schedule J in the amount of the repatriated earnings less the exclusion amount. The apportionment formula should include repatriated earnings less the related exclusion amount and dividend received deduction.

Real Estate Investment Trusts Filing Federal Form 1120-REIT

REITs are required to report repatriated earnings, net of any exclusion amount, on Federal Form 1120-REIT as "Other Income" but can deduct them on Federal Schedule A as dividends paid. As such, the net earnings calculation on Schedule J-4 will include repatriated earnings less dividends paid. The amount received from an 80% or more owned corporation, net of any exclusion amount, may be

deducted to the extent they are included on Schedule J-4. The apportionment formula should include repatriated earnings less the related exclusion amount and any dividend received deduction.

For More Information

Visit www.tn.gov/revenue. Click on Revenue Help to search for answers or to submit an information request to one of our agents.

References

Tenn. Code Ann. Ann. §§ 67-4-2006(a)(2), 67-4-2006(b)(2)(A), 67-4-2012(g); TENN. COMP. R. & REGS. 1320-06-01-.32(1)(b), P.L. No. 115-97