DEPARTMENT OF REVENUE

Deferred Foreign Income under the Tax Cuts and Jobs Act

Federal law changes enacted December 22, 2017, require U.S. shareholders to pay a federal transition tax on the untaxed foreign earnings of certain foreign corporations as if those earnings had been repatriated to the United States. Minnesota does not conform to these changes.

Public Law 115-97, commonly known as the Tax Cuts and Jobs Act, amended section 965 of the Internal Revenue Code (IRC) to include these deemed repatriated amounts in federal taxable income (FTI) for tax years 2017 and 2018, depending on when the foreign corporation's taxable year ends.

This information sheet outlines how the federal changes affect Minnesota tax returns for tax year 2017. We will provide guidance for tax year 2018 in our updated tax forms and instructions.

Minnesota Treatment of Deferred Foreign Income (DFI)

Under section 965, deferred foreign income (DFI) is part of FTI and added to the U.S. shareholder's Subpart F income. FTI is the starting point for determining income subject to Minnesota income and franchise taxes. However, DFI is not included in Minnesota net income because state tax law does not currently conform to the changes made by the Tax Cuts and Jobs Act.

Who is required to report DFI?

Taxpayers that may be required to report DFI include domestic C corporations, S corporations, partnerships, trusts, and real estate investment trusts (REIT) that own a direct or indirect interest in a foreign corporation.

Individual taxpayers may report DFI as direct shareholders of foreign corporations or DFI from pass-through entities. Examples include DFI that flows through to the taxpayer from an interest in a domestic partnership, as a shareholder in an S corporation, or as a beneficiary of another pass-through entity that owns an interest in a foreign corporation.

Minnesota Treatment of Actual Repatriated Dividends

Minnesota's law has not changed. Minnesota taxpayers must continue to report and pay tax on foreign source dividends when they are received and realized. This occurs when a taxpayer receives an actual distribution in cash or property from the foreign corporation's current or accumulated earnings and profits (E&P).

This income is apportioned for state taxes using Minnesota's apportionment formula. Corporations may be entitled to a Dividends Received Deduction on this distribution income.

Taxpayers must report this distribution as taxable dividend income regardless of whether they receive a Form 1099-DIV with respect to the actual distribution. If you are unsure if amounts you have received represent an actual foreign source dividend, contact the company making the distribution.

Impact of Nonconformity on 2017 Minnesota Returns

Because deferred foreign income is included in FTI for purposes of federal tax, it may be necessary to subtract federally reported DFI on your state return.

Using the table on the next page, you should subtract from Minnesota net income the net amount of any DFI that was included in FTI on your federal return under IRC section 965(a) as reduced by section 965(c). Reduce the subtraction by any portion of DFI that you received as an actual repatriated dividend distribution.

Deferred Foreign Income Adjustments on Your 2017 Minnesota Return

Taxpayer	If your federal return:	Do this on your Minnesota return:
Individual	Includes DFI on Form 1040 and that DFI is also included on a Minnesota KPI, KS, or KF (Code 15).	Subtract DFI on Minnesota M1NC, line 14. Include a copy of your federal IRC 965 Transition Tax Statement with your 2017 return.
Partnership	Includes DFI on federal Form 1065, Schedule K.	Include DFI information on Minnesota KPI, line 10, or KPC, line 13, with code 15. Include a copy of your federal IRC 965 Transition Tax Statement with your 2017 return.
S corporation	Includes DFI on federal Form 1120-S, Schedule K.	Include DFI information on Minnesota KS, line 10, with code 15. Include a copy of your federal IRC 965 Transition Tax Statement with your 2017 return.
Fiduciary	Includes DFI distributed to beneficiaries on Form 1041.	Include DFI information on Minnesota KF, line 16, with code 15. Include a copy of your federal IRC 965 Transition Tax Statement with your 2017 return.
	Includes DFI not distributed to beneficiaries but reported on IRC 965 Transition Tax Statement (not Form 1041).	Do **not** subtract DFI from Minnesota M2 since it is not reported on the federal Form 1041. Include a copy of your federal IRC 965 Transition Tax Statement with your 2017 return.
C corporation	Includes DFI reported on IRC 965 Transition Tax Statement (not Form 1120).	Do **not** subtract DFI from Minnesota M4I since it is not reported on the federal Form 1120. Include a copy of your federal IRC 965 Transition Tax Statement with your 2017 return.
REIT	Includes DFI reported on Form 1120-REIT. **Note:** REITs that elect under IRC section 965(m)(1)(B) to defer inclusion should only adjust for the portion of DFI that they included in 2017.	Subtract DFI from Minnesota M4I, line 4m. Include a copy of your federal IRC 965 Transition Tax Statement with your 2017 return.

What if I already filed my 2017 Minnesota return?

Using the table above, you should amend your 2017 Minnesota tax return and schedules if you either:

- Included DFI in Minnesota net income
- Did not include actual repatriated dividend income that you received

You are not required to file an amended return only to report DFI that should have been included in FTI if the DFI would be subtracted from Minnesota net income on the same return. **Note:** Do not deduct DFI as dividends or include DFI in the apportionment formula.

Additional Information

Federal law allows certain taxpayers to elect to pay the tax liability related to DFI over eight years. This election does not apply to Minnesota net income because deferring the taxpayer's tax liability has no effect FTI.

We will continue to monitor IRS guidance and work with stakeholder groups on these complex issues. For more information, see Q & A about Reporting Related to Section 965 and 2017 Tax Returns on the IRS website.