

Q&A on Completing Form CBT-DIV 2017

Recently signed legislation (P.L. 2018, c. 48, and P.L. 2018, c. 131) made several changes to the Corporation Business Tax Act that are retroactive to tax years beginning on and after January 1, 2017. This Q&A focuses on those changes.

Note: In order to simplify the reporting of dividends and deemed repatriation dividends, including the IRC §965 deemed repatriation dividends, to reflect the changes to the Corporation Business Tax Act, the Division of Taxation created a supplemental form to use instead of the CBT-DIV 2017. The Division strongly encourages taxpayers who need to file to use Form CBT-DIV 2017 Supplemental. The questions below have not yet been updated to reflect the new Form CBT-DIV 2017 Supplemental.

1. What were the retroactive law changes?

For tax years beginning on and after January 1, 2017, the law:

- Decoupled New Jersey from the deduction and exemptions permitted under I.R.C. §965 for tax years beginning on and after January 1, 2017 (N.J.S.A. 54:10A-6.5).
- Reduced the dividend exclusion for taxpayers receiving dividends from an 80% or more owned subsidiary. The exclusion was reduced from 100% to 95% of the dividends included in Federal taxable income.
- Created a temporary special allocation to provide factor relief. Taxpayers can use a special allocation formula, which is the lesser of the three-year average 2014 through 2016 allocation factor, or 3.5% for calculating the tax on dividends and deemed dividends received by a taxpayer from a subsidiary. The special allocation factor applies for tax years beginning on and after January 1, 2017, and beginning before January 1, 2019.
- Permits an exclusion of dividends by a taxpayer if the taxpayer's subsidiary received those same dividends from other lower-tiered subsidiaries that filed and paid tax (greater than the minimum tax) to New Jersey in the same tax year.

2. What is the purpose of Form CBT-DIV 2017?

Form CBT-DIV 2017 is a reconciliation form used to account for retroactive changes to the Corporation Business Tax Act resulting from P.L. 2018, c. 48 and P.L. 2018, c. 131.

3. Who needs to file Form CBT-DIV 2017?

Taxpayers who file Form CBT-100 or BFC-1 for tax year (privilege period) 2017 and need to account for the changes must file Form CBT-DIV 2017. This includes corporations that:

- Received dividends or deemed dividends from an 80% or more owned subsidiary; or
- Reported I.R.C. §965(a) deemed dividends for Federal income tax purposes; or
- Reported I.R.C. §965(c) deduction amounts.

The *tax return year* may differ from a taxpayer's tax year (privilege period). As such, not all returns filed on a 2017 Form CBT-100 (or BFC-1) need to be reconciled on Form CBT-DIV 2017. The following answers whether a Form CBT-DIV 2017 is needed:

- 2017 New Jersey tax return for a 2016 tax year (privilege period): **No**
- 2017 New Jersey tax return for a 2017 tax year (privilege period): **Yes**
- 2018 New Jersey tax return for a 2017 tax year (privilege period) that began on or after August 1, 2017, and ended on or after July 31, 2018: **No** (2018 returns will reflect the law changes)

- 2017 New Jersey tax return for a short-period 2018 tax year (privilege period) that began on or after January 1, 2018, and ended before July 31, 2018: *No* (a separate, one-time, short-period return is being drafted to reflect the law changes)
- 2018 New Jersey tax return for a 2018 tax year (privilege period): *No*

4. Does every corporation business taxpayer have to file Form CBT-DIV 2017?

No. New Jersey S corporations and real estate investment trusts (as defined in N.J.S.A. 54:10A-4(p) and N.J.S.A. 54:10A-4(l), respectively) do not need to complete Form CBT-DIV 2017. In addition, corporations that didn't have I.R.C. §965 income, exclusions, or deductions, and/or that didn't have tiered subsidiary(s), and/or that didn't take a 100% dividend exclusion on their 2017 return are not required to file the Form CBT-DIV 2017.

5. Does a Federal S corporation that never elected to be a New Jersey S corporation have to file Form CBT-DIV 2017?

Yes. For New Jersey tax purposes, a Federal S corporation that never made a valid New Jersey S corporation election is a C corporation. Therefore, a non-electing Federal S corporation must file both Form CBT-100 and Form CBT-DIV 2017.

6. Does a Gross Income Tax taxpayer have to file Form CBT-DIV 2017?

No. A New Jersey Gross Income Tax taxpayer does not need to complete Form CBT-DIV 2017. However, I.R.C. §965 amounts must be reported on the taxpayer's NJ-1040.

7. If a taxpayer is filing two short-period returns for 2017, can they file one Form CBT-DIV 2017 for both periods?

No. Dividends (paid or deemed) must be accounted for in the period when they are reported for Federal purposes. The dividends also must be reconciled on Form CBT-DIV 2017 for that same period. If more than one Form CBT-DIV 2017 is required, the forms should be mailed in together and a rider explaining the accounting period dates should be attached.

8. If a taxpayer has not yet filed Form CBT-100 or BFC-1 for the 2017 tax year (privilege period), how do they report the I.R.C. §965 amounts for a 2017 tax year (privilege period) that begins on or after August 1, 2017, and ends on or after July 31, 2018?

A 2017 tax year (privilege period) that begins on or after August 1, 2017, and ends on or after July 31, 2018, is filed on a 2018 CBT-100 or 2018 BFC-1 tax return. Page 1, Schedule A, Schedule R, and Schedule P are being updated, a new schedule for tiered dividends is being created, and other updates to the forms are being implemented. The I.R.C. §965 amounts will be reported on the applicable schedules and forms as noted in the instructions for the 2018 forms.

9. If a taxpayer is on extension and has not filed Form CBT-100 or BFC-1, where should the I.R.C. §965(a) deemed dividends and the I.R.C. §965(c) deduction be reported on Schedule A?

The taxpayer must file Form CBT-100 or BFC-1 based on the prior law, and then complete Form CBT-DIV 2017 to account for the law changes. The taxpayer must include a copy of the I.R.C. 965 Repatriation Tax Schedule that was submitted with their Federal Form 1120.

To properly report the entries on the 2017 Form CBT-100 or BFC-1 on Schedule A, Schedule P, and Schedule R, include as follows:

- The net I.R.C. §965 amount must be reported on Schedule A, line 33(b).
- The I.R.C. §965(a) amount must be reported on Schedule P and Schedule R where appropriate.
- The I.R.C. §965(a) amount must be reported on Schedule A, line 37 based on calculating the relevant exclusion amount using Schedule P and Schedule R.

NOTE: A taxpayer subject to N.J.S.A. 54:10A-34 reporting their 2017 income on a 2018 return does not need to fill out CBT-DIV 2017. The 2018 BFC-1 is being amended to reflect the law changes.

10. How should the I.R.C. §965 amounts be reported on Form CBT-DIV 2017?

Assuming the amounts were properly included on the originally filed 2017 Form CBT-100 or BFC-1 on Schedule A, Schedule P, and Schedule R, the amounts must be reported on Form CBT-DIV 2017 as follows:

- The I.R.C. §965 amount is reported on line 33(b) in Column A and Column B of the Revisions to Schedule A (page 2, Form CBT-DIV 2017).
- The I.R.C. §965(c) deduction and any I.R.C. §965 amounts exempted under the Federal Internal Revenue Code are reported on lines 33(e) and 33(f), respectively, in Column B of the Revisions to Schedule A (page 2, Form CBT-DIV 2017).
- The I.R.C. §965(a) amount must be reported on line 37 of the Revisions to Schedule A. In Column A, use the exclusion amount originally calculated on Schedule P and Schedule R. In Column B, use the reduced exclusion amount based on the law change.
- In addition, the I.R.C. §965(a) amounts are reported on line 1a of the Tiered Dividend Computation (page 3, Form CBT-DIV 2017), if applicable.

NOTE: The taxpayer **must include** a copy of the I.R.C. 965 Repatriation Tax Schedule that was submitted with their Federal Form 1120.

11. What if the taxpayer filed the CBT-100 or BFC-1 incorrectly?

Form CBT-DIV 2017 can only be used to reconcile dividend income. Amounts reported on lines 28-33(d) of the Revisions to Schedule A cannot be amended. If there is a change to an amount on one of these lines, the taxpayer needs to file an amended return. Complete Form CBT-100 or BFC-1 (based on the prior law) and write the word “Repatriation Amended Return” in bold letters in the upper right hand corner of the return. Also complete Form CBT-DIV 2017 to account for the law changes. Mail **both** forms (and any other supporting documentation) to:

New Jersey Division of Taxation
Director’s Office
PO Box 240
Trenton, NJ 08695-0240

12. What are some of the common reasons why a taxpayer might need to file both an amended return and the Form CBT-DIV2017?

- a.** The taxpayer filed their original tax return (Form CBT-100 or BFC-1) without accurately calculating its stock ownership percentage due to the repeal of I.R.C. §958(b)(4), which revised the stock attribution rules for Federal income tax purposes.

In this case, the taxpayer needs to recompute their dividend exclusion amount reported on Schedule A, line 37 and amend their tax return so the income properly flows through to the CBT-DIV 2017.

- b.** The taxpayer did not report the deemed dividends under I.R.C. §965(a) on Form CBT-100 or BFC-1, but had received such deemed dividends and taken the deduction for Federal purposes on their Federal I.R.C. 965 Transition Tax Statement.

In this case, the taxpayer must file an amended return (CBT-100 or BFC-1) and Form CBT-DIV 2017.

The following amounts must be included on the 2017 Form CBT-100 or BFC-1, Schedule A, Schedule P, and Schedule R:

- The net I.R.C. §965 amount must be reported on Schedule A, line 33(b).
- The I.R.C. §965(a) amount must be reported on Schedule P and Schedule R where appropriate.

- The I.R.C. §965(a) amounts must be reported on Schedule A, line 37 based on calculating the relevant exclusion amount using Schedule P and Schedule R.

The taxpayer will then report the amounts on Form CBT-DIV 2017 as follows:

- The I.R.C. §965 amount must be reported on line 33(b) in Column A and Column B of the Revisions to Schedule A (page 2, Form CBT-DIV 2017).
- The I.R.C. §965(c) deduction and any I.R.C. §965 amounts exempted under the Federal Internal Revenue Code must be reported on lines 33(e) and 33(f), respectively, in Column B of the Revisions to Schedule A (page 2, Form CBT-DIV 2017).
- The I.R.C. §965(a) amount must be reported on line 37 of the Revisions to Schedule A. In Column A, use the exclusion amount originally calculated on Schedule P and Schedule R. In Column B, use the reduced exclusion amount based on the law change.
- In addition, the I.R.C. §965(a) amounts are reported on line 1a of the Tiered Dividend Computation (page 3, Form CBT-DIV 2017), if applicable.

13. Does New Jersey follow the retroactive changes under the Tax Cuts and Jobs Act that broadened the stock ownership attribution rules, resulting in more subsidiaries of a taxpayer meeting the 80% or more ownership threshold for the purposes of N.J.S.A. 54:10A-4(k)(5)?

Yes. New Jersey follows the Federal ownership attribution rule changes under I.R.C. §958(b) *and* I.R.C. §318 that broadened the Federal attribution rules that were retroactive to January 1, 2017, in addition to the already broad corporation business tax attribution rules. Thus, depending on the facts and circumstances, more subsidiaries of a taxpayer likely qualify in the 80% or more ownership category for the dividend received exclusion.

14. What was the intent of the special allocation factor for the subsidiary dividends?

The special allocation was created to provide relief in calculating the tax on the dividends for 80% or more owned subsidiaries that are now to be included in entire net income for tax years beginning on and after January 1, 2017, and beginning before January 1, 2019.

15. What is the purpose of the Tiered Dividend Computation Schedule?

In addition to the relief provided by the special allocation factor, the law also allows an exclusion of dividends by a taxpayer if the taxpayer's subsidiary received those same dividends from other lower-tiered subsidiaries that filed and paid tax (greater than the minimum tax) to New Jersey in the same tax year.

The Tiered Dividend Computation schedule is where a taxpayer calculates the extent, if any, to which an allocated tiered dividend exclusion applies and the tax liability after subtracting the allocated tiered subsidiary dividends as applicable from the allocated subsidiary dividends. N.J.S.A. 54:10A-4(k)(5)(C) provides an allocated tiered subsidiary dividend exclusion under certain circumstances.

16. Can a taxpayer receive the Tiered Subsidiary Dividend Exclusion under N.J.S.A. 54:10A-4(k)(5)(C) if the tiered subsidiary did not file a Form CBT-DIV 2017?

Maybe. If the subsidiary paid tax to New Jersey based on income (greater than the minimum tax) and the dividends were taxed at the 50% dividend exclusion on the subsidiary's Form CBT-100 or Form BFC-1, the parent may be able to claim the exclusion.

17. What is the due date of Form CBT-DIV 2017?

Form CBT-DIV 2017 must be filed on or before January 31, 2019. If the original return is being filed under extension, Form CBT-DIV 2017 is due within 30 days of that filing (or by January 31, 2019, whichever is later).