

**Unless Kansas decouples from federal Sec. 965 deemed foreign income repatriation, Kansas employers face significant tax increases**

**Example illustrating issue**

U.S. company - *USCo* - owns France company - *FranceCo*.

In a typical year, USCo earns \$100myn from its U.S. operations

FranceCo earns \$50myn from its France operations.

In a typical year, FranceCo pays a dividend to USCo of \$1myn and reinvests \$49myn in machinery and equipment.

For Kansas tax purposes, USCo required to include 20% of the FranceCo dividend income (after the 80% DRD) in its KS apportionable income.

USCo pays \$351K of Kansas tax in a typical year.

In 2017 as a result of the federal TCJA, USCo is required to recognize \$1.519 billion of FranceCo's 31+ years of undistributed earnings (the portion of the earnings that were reinvested in France and not paid as a dividend to USCo).

**Issues**

*Income not actually received by US Co.* - USCo is not taxed on amounts actually received, but only deemed received for federal tax purposes. As in this example, the earnings remain in France

*Unfair apportionment* - Kansas requires USCo to use apportionment factor from 2017 U.S. business activity to apportion 30+ years of foreign income - there is no representation in the apportionment factor of where the 30+ years of foreign income was earned. U.S. Supreme Court caselaw requires that states fairly apportion income.

*Enormous tax increase* - In 2017 USCo pays \$1.414myn of Kansas tax -- almost 4 x its typical Kansas tax liability.

**Typical Year**

USCo		
1. Earnings from U.S. operations		\$100,000,000
2. Dividend received from FranceCo	\$1,000,000	
3. Less 80% DRD	\$800,000	
4. Net foreign income		\$200,000
5. Total apportionable income		\$100,200,000
6. Kansas Apport. factor from U.S. business activity		5%
7. Kansas Apportioned income		\$5,010,000
8. Kansas Tax Rate		7%
<b>9. Kansas Tax in a typical year</b>		<b>\$351,000</b>

Line 11  
80%\*Line 2  
Line 2-3  
Line 1+4  
Line 5\*6  
Line 7\*8

FranceCo		
10. Earnings from France ops		\$50,000,000
11. Dividend paid to U.S. Corp		\$1,000,000
12. Investment in equipment		\$49,000,000

Line 10-11

**2017 - TCJA year**

USCo		
1. Earnings from U.S. operations		\$100,000,000
2. Dividend received from FranceCo	\$1,000,000	
2a. Deemed repatriation	\$1,519,000,000	
2b. Total foreign income	\$1,520,000,000	
3. Less 80% DRD	\$1,216,000,000	
4. Net foreign income		\$304,000,000
5. Total apportionable income		\$404,000,000
6. Kansas Apport. factor from U.S. business activity		5%
7. Kansas Apportioned income		\$20,200,000
8. Kansas Tax Rate		7%
<b>9. Kansas Tax in 2017</b>		<b>\$1,414,000</b>

Line 11  
Line 15  
Line 2+2b  
80% line 2b  
Line 2-3  
Line 1+4  
Line 5\*6  
Line 7\*8

FranceCo		
10. Earnings from France ops		\$50,000,000
11. Dividend paid to U.S. Corp		\$1,000,000
12. Investment in equipment		\$49,000,000
13. Each year earnings reinvested		\$49,000,000
14. # of years (1986-2017)		31
15. Total unrepatriated earnings from 1986-2017		\$1,519,000,000

Line 10-11  
Line 13\*14