



TaxNewsFlash

United States

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Notice 2018-10: Failure-to-deposit penalty relief relating to medical device excise tax

The IRS today released an advance version of Notice 2018-10 that provides penalty relief relating to certain failures to deposit the medical device excise tax imposed under section 4191. NOTE: H.R. 195 enacted January 22, 2018, extends the moratorium on the medical device excise tax contained in Code section 4191(c) for two years (through December 31, 2019), for sales after December 31, 2017.

Read [Notice 2018-10](#) [PDF 37 KB]

Background

Section 4191 imposes a medical device excise tax on the sale, use, or lease of a "taxable medical device" by its manufacturer or importer at a rate of 2.3% of the price for which each device was sold. Certain adjustments to the sale price are allowed, and in some situations, a constructive sale price may be used to determine the tax base. In addition, export sales are generally not subject to the tax, subject to certain registration requirements. After a 2-year moratorium, the tax became effective again for sales beginning January 1, 2018.

The tax is paid quarterly and semi-monthly deposits are required to be made. The first deposit is due January 29, 2018 for sales of taxable medical devices for the period January 1, 2018-January 15, 2018.

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Notice 2018-10 and deposit penalty relief

Notice 2018-10 provides temporary relief from the section 6656 failure to deposit penalty for timely deposits of the medical device excise tax for the first three calendar quarters of 2018, provided that the taxpayer demonstrates a good faith effort to

attempt to comply with the requirements and that the failure was not due to willful neglect.

The penalty under section 6656 will begin to apply for deposits due during the fourth calendar quarter of 2018 and later.

Beginning in the third calendar quarter of 2018, medical device manufacturers may use the safe harbor rules of Reg. section 40.6302(c)-1(b)(2) for semi-monthly deposits due during that quarter. For purposes of the safe harbor, the first calendar quarter of 2018 is the look-back quarter for deposits due during the third calendar quarter.

KPMG observation

Today's notice issues relief only from the section 6656 deposit penalty for taxpayers making a good faith effort to comply with the deposit rules. The notice does not provide relief from making the deposits or from filing the quarterly federal excise tax return.

For more information, contact a tax professional with KPMG's Excise Tax Practice group:

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