



TaxNewsFlash

United States

No. 2018-067
February 14, 2018

Rev. Proc. 2018-17: Initial impressions, section 965 and “specified foreign corporations” changing tax years

Rev. Proc. 2018-17 provides guidance concerning section 965—added to the Code by the new tax law (Pub. L. No. 115-97) in the United States—and modifies the circumstances under which the IRS will grant approval of certain requests by “specified foreign corporations” for changes in annual accounting periods filed under Rev. Proc. 2002-39 and Rev. Proc. 2006-45.

[Rev. Proc. 2018-17](#) [PDF 24 KB] was issued by the IRS to prevent the avoidance of application of section 965 by changes in the tax years of certain “specified foreign corporations” (as defined under section 965(e)).

Rev. Proc. 2018-17 applies:

- With respect to any request to change an annual accounting period that ends on December 31, 2017, regardless when the request was filed
- To a section 965 “specified foreign corporation” seeking to change its tax year that ends on December 31, 2017

For purposes of applying this revenue procedure, a 52-53-week tax year is deemed to begin on the first day of the calendar month nearest to the first day of the 52-53-week tax year, and is deemed to end or close on the last day of the calendar month nearest to the last day of the 52-53-week tax year (as applicable).

Initial impressions

The restriction added by Rev. Proc. 2018-17 potentially affects not only the application of section 965(a), but other provisions, as well, such as new section 951A.

Rev. Proc. 2018-17 by its terms only affects the ability of a controlled foreign corporation (CFC) to change its year that begins on January 1, 2017, to a year that ends before December 31, 2017. This was accomplished by adding a new restriction (number (15)) to the list of scope restrictions in section 4.02 of [Rev. Proc. 2006-45](#) [PDF 56 KB]. New restriction (15) only applies to a CFC; however, it does not affect the U.S. company's ability to change its tax year automatically.

One of the conditions for a CFC shareholder to change its tax year is that any majority-owned CFCs must make a conforming change under Rev. Proc. 2006-45. The issue is whether the new CFC restriction in 4.02(15) would effectively preclude the shareholder from meeting the conforming change condition to be able itself to make the change under Rev. Proc. 2006-45 because its CFC is precluded from doing so.

The reason that CFC conforming changes appear to continue to be allowed is found in section 6.09 of Rev. Proc. 2006-45. Section 6.09 explicitly waives the full list of restrictions in section 4.02 with respect to a CFC required to make a conforming change. There is nothing in Rev. Proc. 2018-17 that alters the section 6.09 waiver.

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