

TaxNewsFlash

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IRS provides FAQs about “transition tax” on foreign earnings (new Code section 965)

The IRS today released a list of “frequently asked questions” (FAQs) about return filing and tax payment obligations relating to the “transition tax” under new Code section 965.

The new tax law (Pub. L. No. 115-97, enacted December 22, 2017) added section 965 to the Code. In general, section 965 requires United States shareholders to pay a transition tax on the untaxed foreign earnings of certain specified foreign corporations as if those earnings had been repatriated to the United States.

The [**list of FAQs**](#) is to be used by taxpayers in filing 2017 tax returns that report amounts under section 965. The FAQs (and related indices) provide guidance concerning the following questions:

- Who is required to report amounts under section 965 on a 2017 tax return?
- How are amounts under section 965 reported on a 2017 tax return?
- Is there any other reporting in connection with section 965 required on a 2017 tax return?
- What elections are available with respect to section 965 on a 2017 tax return?
- Who can make an election with respect to section 965 on a 2017 tax return?
- When must an election with respect to section 965 be made?
- How is an election with respect to section 965 made on a 2017 tax return?

- Is a Form 5471 with respect to all specified foreign corporations with respect to which a person is a United States shareholder required to be filed with the person's 2017 tax return, regardless of whether the specified foreign corporations are CFCs?
- Are domestic partnerships, S corporations, or other passthrough entities required to report any additional information to their partners, shareholders, or beneficiaries in connection with section 965?
- How should a taxpayer pay the tax resulting from section 965 for a 2017 tax return?
- If not already filed, when should an individual taxpayer electronically file a 2017 tax return?
- If a person has already filed a 2017 tax return, what should the person do?

KPMG observation

Initial impressions of today's FAQs on section 965 reveal the following:

- The FAQs confirm that domestic partnerships, domestic trusts, and S corporations cannot make any section 965-related election for their investors.
- The IRS will issue additional guidance on or by April 2, 2018, to address elections to be made by individuals.
- For corporate taxpayers with section 965 liabilities, the IRS appears to want these taxpayers to include the net section 965 inclusion, 965(c) DRD (dividends received deduction), and associated foreign tax credits on a separate schedule, and not to report those amounts on Form 1120 or Form 1118.
- The IRS is requesting that taxpayers make the payments for their section 965 liabilities separate from their regular tax liabilities.

Earlier guidance

A related IRS release—[IR-2018-53](#)—notes that the IRS has already released Notice 2018-7, Notice 2018-13, and Rev. Proc. 2018-17 concerning section 965, and that future additional guidance will be released “in the weeks ahead.”

- Read [TaxNewsFlash](#) that describes Rev. Proc. 2018-17
- Read [TaxNewsFlash](#) about Notice 2018-13
- Read [TaxNewsFlash](#) about Notice 2018-7

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