



TaxNewsFlash

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Notice 2018-26: Special elections under section 965, reporting and paying the “transition tax”

The IRS today released an advance version of Notice 2018-26 as guidance under section 965 concerning the “transition tax” as added to the Code by the new tax law (Pub. L. No. 115-97, enacted December 22, 2017).

[Notice 2018-26](#) [PDF 120 KB] describes rules and procedures relating to certain special elections under section 965, and provides guidance on how to report and pay the transition tax.

Notice 2018-26 also provides relief to taxpayers from certain estimated tax requirements and penalties arising from the enactment of the transition tax under section 965 and the change to existing stock attribution rules in the new tax law.

With today’s notice, comments are requested about these rules and about what additional guidance would assist taxpayers in computing the transition tax. The IRS and Treasury stated additional future guidance will be issued.

The purpose of this report is simply to provide text of the IRS notice. Initial impressions will be provided in future reports from KPMG LLP.

Background

Newly enacted Code section 965 imposes a transition tax on untaxed foreign earnings of foreign subsidiaries of U.S. companies by deeming those earnings to be repatriated. Foreign earnings held in the form of cash and cash equivalents are taxed at a 15.5% rate, and the remaining earnings are taxed at a rate of 8%. The transition tax generally may be paid in installments over an eight-year period.

Guidance previously issued by the IRS concerning section 965 includes:

- Notice 2018-07 describing regulations that the IRS and Treasury Department intend to issue, including rules for determining the amount of cash and cash equivalents for purposes of applying the 15.5% rate and rules for determining the impact of intercompany transactions (including distributions) on the amount of foreign earnings subject to the transition tax—read [TaxNewsFlash](#)
- Notice 2018-13 describing to-be-issued regulations for determining amounts included in gross income by a United States shareholder under section 951(a)(1) by reason of new section 965—read [TaxNewsFlash](#)
- Rev. Proc. 2018-17 to prevent the avoidance of the application of section 965 by changes in the tax years of certain “specified foreign corporations” (any controlled foreign corporation (CFC) and any foreign corporation with respect to which one or more domestic corporations is a “United States shareholder” (see section 965(e))—read [TaxNewsFlash](#)

Notice 2018-26

Notice 2018-26 describes:

- Future regulations under section 965 and announces the IRS’s intent to modify certain form instructions as a result of section 965
- A modification that the Treasury Department and the IRS intend to make with respect to regulations under section 965 that were described in Notice 2018-13
- Guidance under section 962 in connection with section 965
- Guidance concerning the application of the estimated tax rules in sections 6654 and 6655 and a waiver from the penalty imposed under those sections with respect to estimated taxes in connection with section 965 and the repeal of section 958(b)(4)
- The effective dates of the regulations and other guidance under section 965
- A clarification of the effective date pursuant to Notice 2018-13

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