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IRS again updates FAQs, “transition tax” under Code section 965; penalty relief and filing information

The IRS has again updated 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 newly added FAQs are indicated by the notation “Posted: 06/04/2018” on the IRS website, and reflect that the IRS will waive certain late-payment penalties relating to the section 965 transition tax and further provide additional information for individuals subject to the section 965 transition tax regarding the due date for relevant elections. Read a related IRS release, [IR-2018-131](#).

The new FAQs are on the IRS website at: [Questions and Answers about Reporting Related to Section 965 on 2017 Tax Returns](#) and are as follows:

Q15: If a taxpayer that has made a section 965(h) election for 2017 filed a 2017 income tax return that calculated an overpayment without including the taxpayer’s total net tax liability under section 965, and the taxpayer attempted to elect to credit the calculated overpayment to its estimated tax liability for 2018, will the IRS determine an addition to tax for an underpayment of taxpayer’s 2018 estimated taxes because the credit elect won’t be available for the first required 2018 estimated tax installment?

A15: No. The IRS has determined that no addition to tax for an underpayment of estimated taxes under section 6654 or 6655 will apply (nor be increased) if a taxpayer makes an estimated tax payment sufficient to satisfy both the underpayment of the first required estimated tax installment for 2018 and the full amount of the second required estimated tax installment for 2018 on or before the due date for the second installment (that is, June 15, 2018, for calendar year taxpayers). This relief from the addition to tax for the underpayment of estimated

taxes applies only to taxpayers whose first required installment for 2018 was due on or before April 18, 2018. If the IRS sends a taxpayer a notice of an addition to tax for underpayment of estimated tax under section 6654 or 6655 and the taxpayer meets all the conditions for relief described above (including making the required payment by the due date for the second installment), the taxpayer should contact the IRS office that issued the notice and request abatement of the addition to tax for underpayment of estimated taxes in accordance with the provisions in these FAQs and updated instructions to Forms 2210 and 2220.

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Q16: If an individual fails to timely pay his or her first installment of tax due under section 965(h), will the IRS assess an addition to tax for failure to pay? Will the taxpayer's requirement to pay all subsequent installments be accelerated under section 965(h)(3)?

A16: If an individual meets the criteria in this paragraph and pays the total amount of the first installment on or before the due date for the second installment, the IRS will not assess an addition to tax for failure to timely pay the first installment and will not accelerate subsequent installments under section 965(h)(3). An individual with a net tax liability under section 965 is required to report the liability on his or her tax return for the year in which or with which the inclusion year of the deferred foreign income corporation ends and pay the full amount of that liability on the unextended due date of that return, unless the individual elects to pay the liability in eight annual installments pursuant to section 965(h)(1). However, the IRS has determined that, if an individual's net tax liability under section 965 in the individual's 2017 taxable year is less than \$1 million, the individual makes a timely election under section 965(h), and the individual did not pay the full amount of the first installment by the due date under section 965(h)(2), the failure to make the payment will not result in an acceleration event under section 965(h)(3) so long as the individual pays the full amount of the first installment (and its second installment) by the due date for its 2018 return (determined without regard to extensions). For this purpose, the relevant due date generally is April 15, 2019. In the case of United States citizens or residents whose tax homes and abodes, in a real and substantial sense, are outside the United States and Puerto Rico, and United States citizens and residents in military or naval service on duty, including non-permanent or short term duty, outside the United States and Puerto Rico, the relevant due date is June 17, 2019, which is provided by Treas. Reg. §1.6081-5(a)(5) and (6). Although the IRS will not assess an addition to tax for failure to timely pay the first installment, a taxpayer will be liable for interest on such amount from the due date of the installment. See I.R.C. §6601.

If the IRS sends a taxpayer a notice of an addition to tax for failure to timely pay the first installment, and the taxpayer meets all the conditions for relief described above (including making the required payment by the due date for the second installment due under section 965(h)), the taxpayer should contact the IRS office

that issued the notice and request abatement of the addition to tax for failure to timely pay the first installment in accordance with the provisions in these FAQs.

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Q17: If an individual has filed his or her 2017 tax return, but has not made the section 965(h) election, may the individual file another 2017 return on which he or she makes the election?

A17: Yes. If an individual with a net tax liability under section 965 in the individual's 2017 tax year has already filed his or her tax return and did not make an election under section 965(h), such individual can make the section 965(h) election by filing a Form 1040X that complies with the procedures set forth in these FAQs (including, for example, the IRC 965 Transition Tax Statement(s) described in Q&A 3 and the election statement described in Q&A 7) on or before the due date of the individual's 2017 return, taking into account any additional time that would have been granted if the individual had made an extension request. For this purpose, the IRS will treat the individual as if he or she had requested a Q17 for and received the extension.

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KPMG observation – FAQ 15

New FAQ 15 provides penalty relief for taxpayers who intended to apply an existing 2017 overpayment to their Q1 2018 estimated tax payment or who included with their 2017 filing extension request a payment containing an amount sufficient to cover their Q1 2018 estimated tax payment, and who did not make a separate and timely Q1 2018 estimated tax payment specifically earmarked for such purpose following the late issuance on April 13, 2018, of IRS FAQs 13 and 14, regarding the application of 2017 overpayments of tax. This relief is made necessary due to the IRS's late issuance, on March 13, 2018 (revised April 13, 2018), of FAQ 10 regarding how to make the section 965 payments and the late issuance on April 13, 2018, of inconsistent and possibly contradictory guidance in the form of FAQs 13 and 14 regarding how IRS intends to apply 2017 overpayments (first to 2017 tax liability, then to the first installment of section 965 tax liability due with the 2017 return, and then any remainder to future installments of section 965 tax liability).

Pursuant to FAQ 15, taxpayers who intended to have a 2017 overpayment applied to their Q1 2018 estimated tax payment but cannot, due to the application of FAQs 13 and 14 and who did not make a timely separate and specifically identified Q1 estimated tax payment, may avoid the addition to tax for an underpayment of estimated taxes under section 6654 or 6655 if the Q1 2018 estimated tax payment is made on or before the due date for their second estimated tax payment (June 15, 2018, for calendar year taxpayers) and their second estimated tax payment is timely made in full. **This relief is limited to taxpayers whose first required installment for 2018 was due on or before April 18, 2018, and the deadline for making the Q1 2018 payment is June 15, 2018.**

Read more about the FAQs in an earlier edition of [TaxNewsFlash](#)

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