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Text of regulations, section 965 “transition tax”

The U.S. Treasury Department and IRS today released proposed regulations (REG-104226-18) relating to the “transition tax” under section 965—as added to the Code by the new tax law (Pub. L. No. 115-97) enacted in December 2017.

Section 965 imposes a transition tax—one that requires a mandatory deemed repatriation of previously untaxed earnings. Under this provision, a 15.5% rate applies to earnings attributable to liquid assets, and an 8% rate applies to earnings attributable to illiquid assets.

According to a related IRS release (**IR-2018-158**), taxpayers may generally elect to pay the transition tax in installments over an eight-year period under section 965(h). The proposed regulations contain detailed information on the calculation and reporting of a United States shareholder’s section 965(a) inclusion amount, as well as information for making the elections available to taxpayers under section 965.

Read text of the **proposed regulations** [PDF 770 KB] (249 pages)

In general, the regulations address the taxation of previously untaxed foreign subsidiary earnings and reflect the U.S. international tax system’s move away from a deferral-based approach.

- The regulations are in a proposed form. This means that there will be at least one more round of public comments.
- The proposed regulations generally appear to be consistent with prior IRS guidance (IRS notices), but provide more detail.
- The proposed regulations are a large package—to be expected given the complexity of section 965 and the fact that this measure was one of the largest revenue raisers in the new tax law enacted in December 2017.

The purpose of this report is to provide text of today's regulations. Initial impressions of these regulations will be provided in a follow-up edition of *TaxNewsFlash*.

Direct comments, including requests for subscriptions, to Washington National Tax. For more information, contact KPMG's Federal Tax Legislative and Regulatory Services Group at + 1 202.533.4366, 1801 K Street NW, Washington, DC 20006-1301.