

MEMO# 31380

September 10, 2018

IRS Provides Excise Tax Relief for Section 965 Inclusions

[31380]

September 10, 2018 TO: ICI Members

Tax Committee SUBJECTS: Tax RE: IRS Provides Excise Tax Relief for Section 965 Inclusions

The Internal Revenue Service (IRS) has provided [guidance](#) for regulated investment companies (RICs) on the excise tax treatment of amounts required to be included in gross income under § 965. As requested by the Institute, [\[1\]](#) Rev. Proc. 2018-47 provides that RICs may take such inclusions into account for the 2018 excise tax year.

Section 965 was amended as part of the 2017 tax reform legislation. [\[2\]](#) It provides rules intended to transition taxpayers from the current worldwide system of taxation to a participation exemption system. Amended § 965 generally requires a US shareholder (including a RIC) that owns 10 percent or more of a foreign corporation to include as current income (specifically, as a “subpart F inclusion” under § 951(a)(1)) its pro rata share of the foreign corporation’s post-1986 undistributed accumulated earnings and profits for its last taxable year beginning before January 1, 2018. This mandatory subpart F inclusion is subject to a participation exemption, resulting in tax on the inclusion at rates of 15.5 percent, if attributable to the foreign corporation’s cash position, or 8 percent, if attributable to the foreign corporation’s other positions.

The interaction of the timing rules under § 965 and the excise tax rules of § 4982 potentially could have required any RIC investing in a calendar-year foreign corporation to include the § 965 subpart F income in its excise tax calculations for 2017, regardless of the RIC’s taxable year. Under § 4982(e), a RIC’s ordinary income for excise tax purposes generally is determined by treating the calendar year as the RIC’s taxable year. The calendar-year foreign corporation’s year ending December 31, 2017, thus ends with or within a RIC’s excise tax year ending December 31, 2017. This means that a RIC could have been required to include its § 965 inclusions in determining its 2017 excise requirements. Given the timing of the passage of the legislation, however, it would have been practically impossible for RICs to have identified and addressed this issue in time to include these amounts in their 2017 excise tax requirements.

Rev. Proc. 2018-47 thus provides that a RIC may include the § 965 amounts in its 2018 excise tax calculations. Specifically, the guidance states that the IRS will not challenge a RIC’s treatment of a 2017 inclusion if the RIC (1) treats the 2017 inclusion in the same

manner as a specified gain (within the meaning of § 4982(e)(5)(B)(i) that (but for § 4982(e)(5)) would be properly taken into account during the portion of the RIC's 2017 excise tax year that is after October 31; and (2) treats any deduction under § 965(c) attributable to the 2017 inclusion in the same manner as a specified loss (within the meaning of § 4982(e)(5)(B)(ii)) that (but for § 4982(e)(5)) would be properly taken into account during the portion of the RIC's 2017 excise tax year that is after October 31.

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endnotes

[1] See Institute Memorandum No. 32231, dated March 15, 2018, which can be found at: https://www.ici.org/my_ici/memorandum/memo31131.

[2] See Institute Memorandum No. 30991, dated December 21, 2017, which can be found at: https://www.ici.org/my_ici/memorandum/memo30991.

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