



# TaxNewsFlash

## United States

No. 2018-559  
December 12, 2018

### **IRS provides FAQs, “transition tax” under section 965 for 2018 returns**

The IRS today posted a set of questions and answers (referred to as “FAQs”) concerning issues relating to section 965 filing and reporting requirements for 2018 tax returns.

These [FAQs](#) (*Questions and Answers about Tax Year 2018 Reporting and Payments Arising under Section 965*, posted December 12, 2018) provide answers to questions related to tax year 2018 return filing and payment obligations arising under section 965—including reporting and payment obligations resulting from amounts included in income for the 2017 tax year. The IRS explained that a prior version of FAQs provide answers to questions regarding tax year 2017 return filing and payment obligations arising under section 965.

#### **Background**

The new tax law (Pub. L. No. 115-97, enacted December 22, 2017) added section 965 to the Code. Section 965 generally 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 IRS in March 2018 originally released the FAQs to be used by taxpayers in filing 2017 tax returns that report amounts under section 965 and paying the tax required by section 965. Read [TaxNewsFlash](#)

Subsequently, the IRS updated the FAQs about reporting related to section 965 on 2017 tax returns. Read [TaxNewsFlash](#) and [TaxNewsFlash](#)

#### **Overview of FAQs**

Among the FAQs in today’s release are items addressing the following issues:

- When a section 965(h) election was made on a 2017 tax return—with the taxpayer electing to pay the section 965(h) net tax liability portion of the 2017 income tax liability in eight annual installments—how was the section 965(h) net tax liability portion of the 2017 income tax liability assessed and how does the taxpayer make the second installment payment?
- When a section 965(h) election is made on the 2018 tax return—with the taxpayer electing to pay the section 965(h) net tax liability portion of the 2018 income tax liability in eight annual installments—how is the section 965(h) net tax liability portion of the 2018 income tax liability assessed and how does the taxpayer make the first installment payment?
- When a section 965(h) election was made for the 2017 tax year and there is an unsatisfied but properly deferred payment obligation for the 2017 section 965(h) net tax liability, and if the 2018 income tax payments (including estimated tax payments) exceed the 2018 tax year income tax liability and the taxpayer has fully paid all of the 2017 section 965(h) net tax liability annual installment payment obligations that are due, can the taxpayer receive a refund of (or a credit to the 2019 tax year) of the amount of the 2018 income tax overpayment?
- When a section 965(h) election is made on the 2018 tax return and if the 2018 payments, including estimated tax payments, exceed the 2018 net income tax liability (as described under section 965(h)(6)(A)(ii) (net income tax determined without regard to section 965)) and the first annual installment (due in 2019) is pursuant to an election under section 965(h), can the taxpayer receive a refund of the excess amounts or a credit of the excess amounts to the 2019 estimated income tax?
- When a section 965(h) election is made on the 2018 tax return, how will the IRS apply the 2018 estimated tax payments (including amounts elected to be applied as a credit against estimated tax from the 2017 tax year) to the 2018 net tax liability under section 965?
- When the taxpayer reported income under section 965 on either the 2017 or 2018 tax returns (or both), what forms must be completed and attached to the 2018 income tax return?

The IRS has provided three examples illustrating the principles of these FAQs.

### **KPMG observation**

The IRS timely issued these FAQs on issues related to the payment and reporting of obligations arising under section 965 for the 2018 tax year, thereby affording taxpayers sufficient time to consider the implications of section 965 with respect to payments, including estimated tax payments, for their 2018 tax year.

These FAQs include clarifications and updates to the procedures for making tax year 2017 section 965(h) installment payments due in 2018, and for making tax year 2018 section 965(h) net tax liability payments (either in installments or in full).

Taxpayers will want to take these FAQs and their effects into account when reviewing and calculating tax year 2018 and 2019 estimated tax payments.

Taxpayers with a section 965 inclusion will also want to determine that first quarter 2019 tax payments are made separately, specifically dedicated to tax year 2019.

Payments for first quarter 2019 included with 2018 estimated tax payments or paid with a Form 7004, *Application for Automatic Extension of Time To File Certain Business Income Tax*, Information, and Other Returns, pursuant to the FAQs, will be applied to a taxpayer's section 965(h) future installments and not to tax year 2019 estimated tax.

The information contained in TaxNewsFlash is not intended to be "written advice concerning one or more Federal tax matters" subject to the requirements of section 10.37(a)(2) of Treasury Department Circular 230, as the content of this document is issued for general informational purposes only, is intended to enhance the reader's knowledge on the matters addressed therein, and is not intended to be applied to any specific reader's particular set of facts. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. Applicability of the information to specific situations should be determined through consultation with your tax adviser.

KPMG International is a Swiss cooperative that serves as a coordinating entity for a network of independent member firms. KPMG International provides no audit or other client services. Such services are provided solely by member firms in their respective geographic areas. KPMG International and its member firms are legally distinct and separate entities. They are not and nothing contained herein shall be construed to place these entities in the relationship of parents, subsidiaries, agents, partners, or joint venturers. No member firm has any authority (actual, apparent, implied or otherwise) to obligate or bind KPMG International or any member firm in any manner whatsoever.

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.

To unsubscribe from TaxNewsFlash-United States, reply to [Washington National Tax](#).

[Privacy](#) | [Legal](#)