KPMG

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IRS to consider relief from double taxation related to section 965 repatriation

The IRS today issued a press release announcing that it is willing to consider requests for relief from double taxation related to repatriation under section 965. The IRS stated that it has become aware of limited circumstances in which it may be appropriate to provide relief from double taxation resulting from application of the repatriation tax under section 965, as amended by the 2017 U.S. tax law (Pub. L. No. 115-97) that is commonly known as the "Tax Cuts and Jobs Act" (TCJA).

According to today's IRS release—**IR-2020-16** (January 17, 2020)—the IRS has determined that in unique circumstances, such as when a corporation paid an unusual dividend for business reasons, not because of the enactment of TCJA, it may be appropriate to provide relief from double taxation. When the same earnings and profits of foreign corporations are taxed both as dividends and under section 965, double taxation could result.

> **KPMG observation**
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> The double taxation result described in the release could occur when a distribution to a U.S. shareholder was made out of earnings that were taxed by section 965 but not recharacterized as previously taxed earnings under the Reg. section 1.965-2 ordering rules. One such example is when a first-tier foreign subsidiary with a November 30th U.S. year-end made a distribution to its U.S. shareholder(s) between the November 2, 2017 first measurement date for section 965 and November 30, 2017. Such a distribution would not have reduced the foreign subsidiary's section 965 earnings amount (e.g., because not an "SFC-to-SFC" distribution), and also would not be treated as previously taxed because it was made in the year prior to the U.S. tax year of the foreign subsidiary to which section 965 applied.
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> Other examples of similar double taxation results—e.g., if the Reg. section 1.965-4 double-counting rules did not offer full relief for inter-SFC payments—might exist as well.
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> SFC = specified foreign corporation

Today's IRS release continues to explain that the IRS is open to considering relief from such double taxation when there is no significant reduction in the resulting tax by application of foreign tax credits, such that the taxpayer would be required to pay more tax than it would have if the dividend had not been paid.

The IRS release directs taxpayers that have fact patterns that may fit these limited circumstances may raise them with the IRS by contacting the Office of Associate Chief Counsel (International).

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.