Tax Insights

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IRS Issues Guidance on Certain Section 965 Income for RIC Excise Tax Purposes

The IRS released Revenue Procedure 2018-47 (https://www.irs.gov/pub/irs-drop/rp-18-47.pdf), which provides guidance for purposes of a regulated investment company's (RIC) calculation of its excise tax on amounts required to be included in gross income under Sections 965 and 951(a)(1). The IRS will not challenge a RIC that defers any 2017 Section 965 inclusion income (and any Section 965(c) deduction) until its excise tax year occurring after Oct. 31, 2017. (Section references are to the Internal Revenue Code of 1986, as amended, unless otherwise provided.)

Section 4982 imposes a 4 percent excise tax on any RIC that does not distribute by Dec. 31 of each year an amount equal to at least (1) 98 percent of its ordinary income for the calendar year, (2) 98.2 percent of capital gain net income (that is, the excess of the gains from sales or exchanges of capital assets over the losses from such sales or exchanges) for the one-year period ended on Oct. 31 of such calendar year, and (3) any prior year undistributed ordinary income and capital gain net income. RICs are able to defer any "specified gain" or "specified loss" that would be properly taken into account for the portion of the calendar year after Oct. 31. Any net ordinary loss, specified gain or specified loss deferred is treated as arising on Jan. 1 of the following calendar year.

Under Section 965 (which was amended by the Tax Cuts and Jobs Act), a U.S. shareholder of a foreign corporation is required to pay a transition tax on untaxed foreign earnings as if those earnings had been repatriated to the United States. Section 965(a) provides that for the last taxable year of a deferred foreign income corporation (DFIC) that begins before Jan. 1, 2018 (such year of the DFIC, the "inclusion year"), the subpart F income of the corporation (as otherwise determined for such taxable year under Section 952) is increased by the greater of (1) the accumulated post-1986 deferred foreign income of such corporation determined as of Nov. 2, 2017, or (2) the accumulated post-1986 deferred foreign income of such corporation determined as of Dec. 31, 2017 (each such date, a "measurement date," and the greater of the accumulated post-1986 deferred foreign income of the corporation as of the measurement dates, the "Section 965(a) earnings amount").

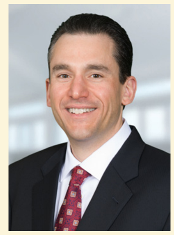
The subpart F income of a DFIC with a calendar year fiscal year will be increased by the above amount under Section 965(a) for the 2017 year. A RIC that is a U.S. shareholder of such DFIC must include in gross income its pro rata share of the DFIC's subpart F income for its tax year that includes or ends on Dec. 31, 2017. As such, but for the Revenue Procedure, under certain excise tax rules, the RIC's required distribution for excise tax purposes would have been increased by any amounts included in its income under Section 951(a)(1), by reason of Section 965. Instead, the IRS is permitting RICs to treat such amount as a "specified gain" and defer its inclusion for excise tax purpose until the excise tax year of the fund that begins after Oct. 31, 2017.

IRS Clarifies That Proposed Regulations Do Not Affect Business Payment Deductions

The IRS, in a news release (https://www.irs.gov/newsroom/clarification-for-business-taxpayers-payments-under-state-or-local-tax-credit-programs-may-be-deductible-as-business-expenses), has clarified that recent IRS proposed regulations (see our prior coverage here (https://www.stradley.com/insights/publications/2018/08/tax-insights-august-29-2018)) that reduce a taxpayer's federal charitable contribution by the amount of any state or local tax credit will not impact the deductibility of business-related payments to charities for which such business taxpayers receive a state or local tax credit. As long as a payment qualifies as an "ordinary and necessary" business expense, it will be an allowable business deduction.

IRS Offshore Voluntary Disclosure Program Ends on Sept. 28

The IRS reminded taxpayers (https://www.irs.gov/newsroom/irs-offshore-voluntary-compliance-program-to-end-sept-28) that the Offshore Voluntary Disclosure Program will end on Sept. 28, 2018. Taxpayers have until that date to apply for relief from a failure to comply with offshore account filing requirements. Taxpayers should note that the IRS's more restrictive disclosure program, the Streamlined Filing Compliance Procedures (https://www.irs.gov/individuals/international-taxpayers/streamlined-filing-compliance-procedures), is still available.



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