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## IRS Updates List of Automatic Accounting Method Changes

The IRS, in Revenue Procedure 2019-43 (<https://www.irs.gov/pub/irs-drop/rp-19-43.pdf>), has updated the list of accounting method changes to which the IRS' automatic change procedures apply. Generally, under Section 446(e) taxpayers must obtain IRS consent before changing a method of accounting. (Section references are to the Internal Revenue Code of 1986, as amended.) However, for some accounting method changes, the IRS provides an automatic procedure for obtaining its consent to the accounting method changes.

## LB&I Targets Compliance With Section 965 Transition Tax

The IRS Large Business and International (LB&I) division has announced that in one of its new audit campaigns it will target compliance with the Section 965 transition tax (<https://www.irs.gov/businesses/corporations/lbi-active-campaigns>). Section 965 was added by the 2017 Tax Cuts and Jobs Act (TCJA) and generally requires certain U.S. shareholders of certain specified foreign corporations that have untaxed foreign earnings and profits to pay a tax as if those earnings and profits have been repatriated to the United States. Section 965 applies to the last taxable year of the relevant specified foreign corporation that begins before Jan. 1, 2018, and the amount included in income under Section 965 is includible in the U.S. shareholder's year in which or with which such a specified foreign corporation's year ends. The campaign will start with 2017 returns and generally require looking at both the 2017 and 2018 tax returns. The IRS anticipates that returns selected as part of the 965 campaign will also be risked and, if appropriate, examined for other material issues, especially issues related to TCJA planning.

## LB&I Issues Unit on Evaluating Reliability of Forms W-8

The LB&I division of the IRS has released a process unit ([https://www.irs.gov/pub/irs-utl/wit\\_p\\_008\\_01\\_02.pdf](https://www.irs.gov/pub/irs-utl/wit_p_008_01_02.pdf)) on evaluating a withholding agent's electronic records to determine the reliability of Forms W-8 submitted by foreign account holders. Withholding agents rely on Forms W-8 in completing and submitting Forms 1042-S to the IRS and foreign account holders. The unit outlines eight steps that will assist an examiner auditing a withholding agent in obtaining electronic data needed to determine the reliability of information provided in Forms W-8.

## ABA Submits Comments on Proposed Built-In Gain and Loss Regulations

The American Bar Association (ABA) submitted a comment letter (<https://www.americanbar.org/content/dam/aba/administrative/taxation/policy/2019/111219comments.pdf>) to the IRS on the proposed regulations under Section 382(h) regarding built-in gain and losses. Section 382 generally limits the amount of a loss corporation's taxable income for any year after it experiences an ownership change that may be offset by losses and other tax attributes generated in a year prior to an ownership change. The two main items that the letter addresses are (1) the computation of net unrealized built-in gain (NUBIG) or net unrealized built-in loss (NUBIL) and (2) the treatment of foregone amortization as an "item of income" for purposes of the recognized built-in gain (RBIG) determination.

## NYSBA Submits Comments on Proposed Built-In Gain and Loss Regulations

The New York State Bar Association (NYSBA) submitted a comment letter ([https://www.nysba.org/Sections/Tax/Tax\\_Section\\_Reports/Tax\\_Section\\_Reports\\_2019/Report\\_1426.html](https://www.nysba.org/Sections/Tax/Tax_Section_Reports/Tax_Section_Reports_2019/Report_1426.html)) to the IRS on the proposed regulations under Section 382(h) regarding built-in gain and losses. The NYSBA letter addresses the following items: (1) adoption of the modified 1374 approach and the elimination of the 338 approach (both safe harbors put forth in Notice 2003-65), (2) computation of NUBIG and NUBIL, (3) identification of RBIG and recognized built-in loss (RBIL) under the modified 1374 approach, and (4) miscellaneous items, including a transition rule.

## Ninth Circuit Won't Rehear Altera Case

In *Altera Corporation & Subsidiaries v. Commissioner* (<https://www.stradley.com/-/media/files/publications/2019/11/altera-order-112019.pdf?la=en&hash=094BEE8882A658625832D1486EA5C86D>), the Ninth Circuit denied Altera Corporation's petition for a rehearing en banc; three judges dissented from the decision. In 2018, a divided panel of the Ninth Circuit reversed the Tax



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Court decision in the case and held that the cost-sharing regulations were valid. (See our prior coverage here (<https://www.stradley.com/insights/publications/2019/08/tax-insights-august-14-2019>), here (<https://www.stradley.com/insights/publications/2018/08/tax-insights-august-15-2018>) and here ([https://www.stradley.com/insights/publications/2018/01/tax\\_insights\\_january\\_24\\_2018](https://www.stradley.com/insights/publications/2018/01/tax_insights_january_24_2018)).)