



December 22, 2017

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RE: Taxpayers Should be Permitted to Use Ratable Allocation to Determine Amounts
Subject to the Deemed Repatriation Tax

Dear Messrs. Kautter, Trier and Harter:

As amended by the Tax Cuts and Jobs Act, Section 965 will require taxpayers to determine a foreign corporation's "accumulated post-1986 deferred foreign income" as of two specified dates. The corporation's subpart F income is increased by the greater of these amounts in its last taxable year beginning before 2018. However, one or both of the testing dates will not correspond to the end of the foreign corporation's taxable year. Accordingly, we respectfully request that the Treasury Department provide guidance concerning the allocation of income and expenses for purposes of section 965. We recommend strongly that taxpayers be permitted to apportion amounts ratably on a day-count basis, or to adopt other reasonable methods to ensure an appropriate matching of income and expenses allocable to the relevant periods.

Ratable allocation would be more fair, more administrable, and less susceptible to manipulation than calculations made on a closing of the books basis. Whereas failure to permit ratable allocation could result in inappropriate distortions, and mismatches of income and expenses. Businesses incur significant costs that relate to the entire year from an economic

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perspective, such as compensation and foreign tax expense, but that may not be taken into account for tax purposes until they are fixed at or close to year-end.

The potential for mismatches can be particularly significant for financial services businesses because of their compensation model. A relatively high proportion of total compensation is paid in the form of discretionary bonuses. These bonuses represent compensation for services rendered over the course of the year, and they may not be accrued for tax purposes until their amount (or the minimum aggregate amount payable to employees as a group) is fixed, typically at or close to the end of the calendar year. Failure to take account of 2017 bonuses in determining deferred foreign income as of November 2, 2017 would overstate income attributable to that period.

A flexible, pro rata approach would ease the administrative burden associated with calculating deferred foreign income for purposes of section 965. Preparing annual tax computations to determine U.S. earnings and profits for a substantial operating company is a big project, the difficulty of which is compounded by the need to account for book/tax differences under section 964. It would be very burdensome to require taxpayers to go through that exercise two or three times in respect of a single taxable year.

Our recommendation is consistent with the approach that the Treasury has taken in respect of other part-year fact patterns. *See* Treasury regulations §§1.951-1(b)(1)(i) (allocation of subpart F income on a day-count basis, adjusted for distributions); 1.1502-76(b) (day-count allocation, except for extraordinary items, when a company joins or leaves a consolidated group); and 1.901-2(f)(4)(ii) (foreign taxes allocated by reference to consolidated return rules).

We very much appreciate the need to provide regulatory guidance on new Section 965 as soon as possible, and we urge that this clarification relating to the allocation of income and expenses to part-year periods be included in such guidance. Please feel free to contact me at ppeabody@sifma.org or 202-962-7000 if you have any questions or would like to discuss this issue in further detail.

Sincerely,



Payson Peabody
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