Harbingers of More IRS Enforcement of Repatriation/Transition Taxes

By Hale E. Sheppard*

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I. Introduction

Congress overhauled the U.S. international tax system in late 2017, an important aspect of which was the mandatory repatriation of certain amounts from foreign corporations and the resulting income taxes on U.S. shareholders. The change was drastic, the Internal Revenue Service ("IRS") struggled to issue timely guidance, and the calculations to determine the repatriation tax were, in a word, complex. Consequently, significant non-compliance occurred initially, particularly with respect to tax returns of U.S. shareholders for 2017 and/or 2018. Violations have continued in later years, too, largely because of the ability of certain U.S. shareholders to defer assessment and/or payment of the repatriation tax.

Some U.S. shareholders who failed to report repatriation taxes properly on their returns for 2017 and/or 2018 might be relaxing, believing that the passage of time has allowed them to escape the wrath of the IRS. They would be wrong. This article explains the main rules applicable to the repatriation tax, describes two studies and a memorandum serving as omens of increased IRS enforcement actions, and identifies three obscure tax provisions that allow the IRS ample time to identify, audit, tax, and penalize U.S. shareholders whose non-compliance took place years ago.

II. A Look at Yesteryear

For decades, multinational companies based in the United States often could defer paying taxes on certain active income generated by its subsidiaries abroad until they decided to repatriate it.[1] Many companies, predictably, arranged their business affairs in such a manner as to postpone or otherwise manipulate repatriation of earnings and the corresponding taxes. In the words of expert, "in the early years of income tax, foreign corporations were widely used by U.S. persons to avoid U.S. taxation of foreign income, or at least defer it indefinitely."[2]

The following illustration shows the financial advantage of reinvesting active foreign earnings in endeavors overseas:

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Suppose that a U.S. taxpayer in the 35-percent tax bracket is considering whether to make an investment in an active enterprise in the United States or in an equivalent investment opportunity in a country in which the income tax rate is zero. Assume the U.S. taxpayer chooses to make the investment in the foreign country through a controlled foreign corporation ("CFC") that earns $100 of active income today, and the U.S. taxpayer defers tax on that income for five years by reinvesting the income in the CFC. Assume further that the CFC can invest the money and earn a 10-percent return per year, and the income earned is not subject to foreign tax or current U.S. taxation under Subpart F. After five years, the taxpayer will have earned $161.05 of income and will pay tax of $56.37 on repatriation, for an after-tax income of $104.68.

If, instead, the U.S. taxpayer pursues the equivalent investment opportunity in the United States, income from such an investment will not be eligible for deferral. As a result, the taxpayer receives $100 in income today, pays tax of $35, and has only $65 to reinvest. The taxpayer invests that amount at an after-tax rate of 6.5 percent (this is a 10-percent pre-tax rate less 35 percent tax on the earnings each year). At the end of five years, this taxpayer has after-tax income of only $89.06 ....

The result is that the foreign investment option to defer tax on the income for five years leaves the taxpayer with $15.62 more in profits than the domestic investment option that requires the taxpayer to pay tax on the income immediately, even though the pre-tax rate of return (10 percent) is the same for both investments. As a result, the foreign investment is the preferred choice (all else being equal).[3]

III. Mandatory Repatriation of Foreign Income

Things radically changed in December 2017, when Congress enacted the Tax Cuts and Jobs Act.[4] Among other things, that legislation amended Code Sec. 965, thereby triggering a one-time "deemed repatriation tax" on U.S. shareholders of certain foreign corporations.[5] The IRS imposed the tax on *direct* U.S. shareholders and *indirect* U.S. shareholders (*i.e.*, U.S. persons owning interests in domestic passthrough entities that were U.S. shareholders). This occurred by obligating the foreign corporations to pretend to repatriate untaxed earnings and profits ("E&P") that they had accumulated abroad since 1986.[6] The imaginary repatriation caused U.S. shareholders to report income, characterized as a "Code Sec. 965(a) inclusion," on their tax returns.[7] Congress anticipated that this one-time hit would generate an enormous influx of tax revenue, reaching nearly $340 billion, with a "b."[8]

The repatriation tax was tricky from a timing perspective. It applied to the last taxable year of the foreign corporation that *began before* January 1, 2018, and U.S. shareholders had to include the income on their tax returns for the year in which the *foreign corporation's year ended*.[9] This resulted in some multi-year situations. If both the U.S. shareholder and the foreign corporation used a calendar year ending on December 31, 2017, then the U.S shareholder, assuming that he was an individual, had to pay the tax by April 15, 2018. That was the original deadline for filing his Form 1040 (*U.S. Individual Income Tax Return*) for 2017.[10]

The situation was different, however, where the foreign corporation used a fiscal year, but the U.S. shareholder used a calendar year. For instance, if the foreign corporation used a fiscal year beginning August 1, 2017 (*i.e.*, the last taxable year that *began before* January 1, 2018) and ending July 31, 2018, then the U.S. shareholder would not have paid the tax until April 15, 2019. That was the original deadline for his Form 1040 for 2018. In theory, some U.S. shareholders could have been required to pay repatriation taxes with their Forms 1040 for 2017 *and* 2018, depending on the number of foreign corporations in which they invested and the taxable years of such corporations.[11]

Just because it was a one-time tax does not mean that all U.S. shareholders paid it at one time. Two major elections regarding payment exist. First, U.S. shareholders could elect to pay the tax in eight back-loaded annual installments.[12] The initial five installments consisted of eight percent each, with the following three installments increasing to 15 percent, 20 percent, and 25 percent, respectively.[13] This eight-year plan is eliminated, though, if U.S. shareholders miss a payment, cease doing business, sell substantially all their assets, go into bankruptcy, die, *etc.* The IRS demands full, immediate payment of all outstanding repatriation tax in those instances.[14]

Second, certain indirect U.S. shareholders (*i.e.*, those who are shareholders of a Subchapter S corporation, which, in turn, is a shareholder in a foreign corporation) can elect to defer assessment of the repatriation tax until a "triggering event" occurs.[15]

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IV. Three Harbingers of IRS Enforcement

The government has sent three signals that it intends to increase repatriation tax enforcement and that it still has plenty of time to do so. These indications are discussed below.

A. First Report in 2019

The IRS watchdog, the Treasury Inspector General for Tax Administration ("TIGTA"), analyzed implementation of the repatriation tax and issued its findings in May 2019 ("First Report").[16] Because Congress enacted Code Sec. 965 in late December 2017, and because some U.S. shareholders were required to pay repatriation taxes with their 2017 returns shortly thereafter, it is not surprising that the First Report devoted significant space to the initial IRS guidance and operational troubles.[17] The First Report then turned its attention to the future, particularly the challenges that the IRS would face in ensuring compliance with Code Sec. 965 going forward. It explained that the IRS needed to take additional actions "to more fully identify and address those taxpayers that do not comply" and to develop "a comprehensive compliance strategy."[18]

To its credit, the IRS acknowledged many problems. It conceded that it did not have enough time and/or money to create a broad compliance plan, properly identify risks, correlate data related to multi-year installment payments, adequately train employees to identify and assess the repatriation tax, or establish appropriate networks for sharing knowledge among and supplying assistance to employees.[19]

The First Report claimed that the IRS "has the ability to identify a large number of filers that should have reported [repatriation tax liabilities] on their tax returns."[20] What was the trick? The IRS analyzed the information about accumulated E&P and retained earnings on Form 5471 (*Information Return of U.S. Persons with Respect to Certain Foreign Corporations*), which allowed it to ascertain about 52,000 tax returns on which the IRS would expect to see repatriation taxes.[21] The IRS considered using this data to send letters to the relevant taxpayers before the deadline for the 2018 returns notifying them of their potential repatriation tax obligations. Ultimately, the IRS declined to do so, opting to implement a broad outreach effort through organizations, return preparers, *etc.*[22]

The First Report also highlighted the fact that the IRS had yet to implement adequate procedures to ensure compliance in situations where U.S. shareholders elected to pay the repatriation tax in eight installments or to delay payment until a triggering event occurred.[23]

The First Report concluded that the IRS should develop and document a comprehensive plan consisting of, among other things, a manner to identify non-compliant taxpayers, an evaluation of the benefits of sending advance notices to taxpayers based on data derived from Forms 5471, procedures for monitoring ongoing compliance by taxpayers electing to defer payment, validation of the repatriation tax computations done by taxpayers, and steps to ensure that taxpayers did not violate the anti-abuse rules in determining their accumulated E&P. The IRS agreed with these suggestions.[24]

B. Second Report in 2022

TIGTA revised the repatriation tax a few years later, generating another look in September 2022 ("Second Report").[25]

1. Compliance Campaigns

The Second Report discusses achievements and shortcomings of the IRS's two remaining repatriation tax initiatives, namely, the Individual Campaign and the Business Campaign. The goals of the former are to increase compliance by taxpayers who did not voluntarily report their repatriation tax liability and to check the calculations of those who did.[26] To accomplish this, the IRS planned to send up to 4,500 "soft letters" to taxpayers who likely had a repatriation tax obligation, urging them to file amended tax returns to "self-correct" the matter. It also intended to conduct as many as 300 examinations to identify any unintentional non-compliance by taxpayers who attempted to meet their repatriation tax duties.[27] The Second Report explains that the IRS did not reach its mark, sending soft letters to only 2,500 individual taxpayers. Of the recipients of such letters, only 22 percent filed amended tax returns, as suggested by the IRS.[28] The Second Report confirms that the IRS is currently auditing slightly more than 300 tax returns, principally of individuals who enclosed a Form 5741 with their Form 1040 showing E&P of the foreign corporation but not reporting a repatriation tax liability.[29] The IRS confirmed that it would maintain the Individual Campaign "until there is an observed increase in the compliance of taxpayers of Code Sec. 965 liabilities by its use of the soft letters and examinations."[30]

The Business Campaign, which focuses on compliance by partnerships and corporations, was initiated because the IRS observed inaccuracies in the tracking and reporting on Form 5471 of accumulated E&P, the key component to calculating the repatriation tax.[31] The IRS anticipated a high level of "inadvertent non-compliance"

with Code Sec. 965 because of its complexity.[32] The IRS intended to conduct hundreds of audits of business tax returns for 2017, but it had difficulties getting out of the gate, so to speak. In particular, because Congress enacted Code Sec. 965 in late December 2017, and because the return-filing deadlines for entities hit merely a few months thereafter, the IRS "did not have time to develop tax forms needed for taxpayers to properly report the Code Sec. 965 tax obligations."[33] Accordingly, the IRS had to review, manually, the "Transition Tax Statements" submitted by the entities.[34] This time-consuming work yielded precisely what the IRS expected, significant non-compliance. In terms of numbers, the IRS issued Examination Reports seeking $6.4 billion in additional repatriation taxes from just the 235 entities it had the resources to audit.[35] Because of the pervasiveness of inaccurate E&P calculations, math errors, and tax understatements, the IRS recently issued 50 additional "soft letters" to entities with indications of possible repatriation tax problems.[36]

2. Ineffective Monitoring of Deferred Payments

As explained above, there are two payment-deferral elections related to Code Sec. 965. Certain direct U.S. shareholders can choose to make eight installment payments over as many years. Moreover, certain indirect U.S. shareholders can opt to postpone payment until the occurrence of certain triggering events. It should come as no surprise that many taxpayers took advantage of the chance to delay payment. The Second Report identified over 11,000 direct U.S. shareholders who selected the eight-year route, and nearly 1,000 indirect shareholders who pushed the financial burden until a triggering event happened in the future. Together, they represent over $122 billion in future tax revenue over which the IRS would want to watch closely.[37]

Despite the number of taxpayers and amounts at issue, the Second Report explains that the IRS has encountered several obstacles to effectively monitoring compliance by taxpayers that made deferral elections. Shortness of time from the outset was a problem, for example. Congress created Code Sec. 965 in late December 2017, and the deadline for the first installment payment for calendar-year U.S shareholders of calendar-year foreign corporations was April 15, 2018. That was less than four months after enactment of Code Sec. 965, which made it unfeasible for the IRS to develop and implement an appropriate form for reporting the repatriation tax liability and initial payment.[38] Another obstacle facing the IRS was the uniqueness of installment payments in general. The Second Report explained that the installment option created administrative havoc because "IRS information technology and compliance systems are designed for taxes that are due in a specific year, not spread over a multi-year period."[39] Yet another challenge affecting Code Sec. 965 oversight, and virtually everything else, was the Coronavirus. It slowed the processing of tax returns filed by U.S. shareholders, reduced the IRS's capacity to monitor installment payments, and caused reassignment of certain personnel originally tasked with identifying and solving Code Sec. 965 issues.[40]

U.S. shareholders must make installment payments by the original (*i.e.*, unextended) deadline for filing their tax returns. Late payments lead to delinquency penalties, which, in turn, trigger acceleration of the entire outstanding repatriation tax. The IRS created procedures to mitigate this ultra-harsh consequence. For starters, the IRS is supposed to send "reminder notices" and payment vouchers to U.S. shareholders six to eight weeks before the deadline, clarifying the total liability outstanding and the size of the next installment.[41] Some U.S. shareholders still neglect to pay, despite the anticipatory nudge by the IRS. In those situations, the IRS is supposed to send tardy U.S shareholders a "soft notice," granting them 30 days to respond with the installment payment, interest charges, and a statement of "reasonable cause" as to why the IRS did not get its money on time.[42] Failure by U.S. shareholders to make this submission and/or convince the IRS that "reasonable cause" existed causes acceleration of the repatriation tax. Having such rules and procedures is one thing, carrying them out is another. The Second Report explained that over 10 percent of the sample cases it studied involved U.S. shareholders with late installment payments. The IRS neither sent "soft letters" nor demanded immediate, full payment of the remaining tax in the majority of those cases.[43]

The Second Report highlights problems with payment deferral by indirect U.S. shareholders, too. It explains that such shareholders are required to file a Form 965-A (*Annual Report of Deferred Net 965 Tax Liability Related to 965 Amounts Allocated from S Corporations*) every year until they have paid the entire repatriation tax. The Second Report emphasizes that this information reporting is critical because "the IRS does not have the ability to systematically monitor for the occurrence of a triggering event."[44] Given its importance, it is logical that the IRS must (not may) assess a penalty equal to five percent of the repatriation tax when indirect U.S. shareholders omit Form 965-A.[45] The Second Report claims that the IRS is not adequately performing its duties in this regard. For instance, it found that nearly 20 percent of

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the shareholders violated their Form 965-A obligations, yet the IRS failed to impose mandatory penalties totaling approximately $6.3 billion.[46] The Second Report admonished that the IRS must develop procedures for identifying indirect U.S. shareholders who did not report correct figures on Form 965-A "to ensure that the penalties are properly assessed."[47] The Second Report also identified several instances where the initial deferred tax amount significantly decreased on subsequent Form 965-A, which is something that should not happen unless part of the repatriation tax was paid, transferred, or became due. The Second Report warned that the IRS "needs to account for any changes in the deferral amounts from year to year to ensure that taxpayers remain in compliance and that any potential revenue is not lost."[48]

3. Future Actions

The Second Report recommended that the IRS take several actions. It suggested prioritizing compliance actions against the large number of U.S. shareholders who received "soft letters" warning them of possible of unpaid repatriation tax but did not take corrective actions. It further suggested that the IRS implement procedures to systematically identify shareholders not meeting their installment payment duties, such that outstanding repatriation tax liabilities can be accelerated, as appropriate. Finally, it urged the IRS to create an efficient process for identifying and penalizing indirect U.S. shareholders who made a deferral election, and then failed to file timely and accurate Forms 965-A each year until a triggering event. The IRS agreed to take these steps.[49]

C. Assessment-Period Memo in 2022

In what cannot be a coincidence, the IRS issued a memo about the extended assessment period applicable to the repatriation tax ("Memo") just one week after TIGTA released its Second Report.[50]

Some background is necessary to understand the significance of the Memo. Generally, the IRS has three years from the time that a taxpayer files the relevant return to identify it, audit it, and propose additional taxes, penalties, or other changes.[51] Several exceptions to the general three-year rule exist, including one specifically designed for the repatriation tax. The IRS has six years, instead of the normal three years, to scrutinize tax returns involving such tax.[52] Those three extra years can make a big difference.

As explained earlier in this article, the repatriation tax ordinarily was due with the tax returns of U.S. shareholders for 2017 and/or 2018. Also, as covered above, two payment-deferral elections exist. Direct U.S. shareholders can make eight installment payments over as many years, while certain indirect U.S. shareholders can put off payment until the occurrence of triggering events. The Memo clarifies that the special six-year assessment period for repatriation taxes is activated by the filing of the tax returns for 2017 or 2018, *not* the later years when U.S. shareholders make installment payments or when triggering events take place.

The Memo announces that the IRS is currently conducting repatriation tax audits and plans to continue doing so in the future. Specifically, the Memo informs Revenue Agents that they might be getting assigned returns to audit pursuant to the Individual Campaign and/or Business Campaign, which have limited time remaining on the normal three-year assessment period. Not to worry, the Memo indicates, if such returns contain repatriation tax issues to scrutinize. The Memo explains to Revenue Agents the steps they need to take when they decide, in conjunction with their supervisors, to allow the normal three-year assessment period to lapse in situations where "additional examination activity related to Code Sec. 965 is warranted" and it is likely that "the taxpayer incorrectly calculated or failed to include the net tax liability under [Code Sec.] 965."[53]

V. Other Critical Assessment-Period Issues

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The Memo reminds Revenue Agents of, and emboldens them to rely on, the special six-year assessment period set forth in Code Sec. 965. What the Memo overlooks is also critical, particularly to U.S. shareholders with repatriation tax violations linked to their tax returns for 2017 and/or 2018.

A. Filing Duties and Penalties

U.S. taxpayers with ownerships interests in, or certain other connections with, foreign corporations often must file various international information returns with the IRS, including Form 8938 (*Statement of Specified Foreign Financial Assets*) and Form 5471.[54] Failure to submit such returns provokes penalties. Specifically, when taxpayers neglect to provide a timely, accurate, and complete Form 8938 or Form 5471, the IRS can assert a penalty of $10,000 per violation.[55]

Failure to file nearly all international information returns not only triggers penalties, but also gives the IRS an extended, or perhaps unlimited, period to audit. The two relatively obscure procedural provisions highlighted next constitute powerful tools for the IRS.[56]

B. First Tool—International Information Returns

As explained above, the general rule is that the IRS has three years from the time a taxpayer files a tax return to identify it as problematic, conduct an audit, offer all required administrative procedures, and issue a final notice proposing adjustments.[57] One exception to this rule is found in Code Sec. 6501(c)(8), which applies to situations where a taxpayer fails to file proper information returns about foreign entities, transfers, or assets.[58] This tax provision dictates that, if a taxpayer does not file complete and accurate international information returns, such as Form 8938 or Form 5471, then the assessment period never starts to run against the IRS.

It terms of its broad scope, Code Sec. 6501(c)(8) states that the assessment period remains open "with respect to any tax return, event, or period to which [the missing or problematic international information return] relates." The legislative history indicates that the IRS can expansively construe the notion of "related items" when it comes to arguing for longer assessment periods. In particular, it signals that the provision allows the IRS to (i) make adjustments to tax returns concerning items that should have been disclosed on international information returns enclosed with such tax returns, (ii) make adjustments to other items, to the extent that they are affected by data that was not properly revealed on international information returns, and (iii) assert penalties and interest stemming from all such adjustments.[59]

The IRS has issued various types of internal guidance on this matter. Notably, the IRS released an International Practice Unit ("IPU") telling Revenue Agents that if they identify unfiled Form 5471 for years under audit, they should consider expanding the audit to encompass earlier years. The IPU also underscored that Code Sec. 6501(c)(8) holds the assessment period open indefinitely, not only when a taxpayer altogether fails to submit a Form 5471, but also when a taxpayer filed a "substantially incomplete" one. The IPU thereby inspires IRS personnel to advance the argument that the assessment-period expires only after a taxpayer files a "substantially complete" Form 5471; ones containing major errors or omissions might not suffice.[60]

C. Second—Income Omissions Tied to Foreign Assets

The IRS also has the power to enlarge the assessment-period because of unreported income, such as a missing or deficient repatriation tax liability on the returns of U.S. shareholders for 2017 and/or 2018.

Code Sec. 6501(e)(1)(A) states that the IRS can assess taxes within six years of the time that the taxpayer files the relevant tax return if where (i) a taxpayer omits income from a tax return, *and either* (ii) such omitted income exceeds 25 percent of the gross income that the taxpayer actually reported on the tax return, *or* (iii) such omitted income is more than $5,000 *and* is attributable to foreign financial assets that must be disclosed on Form 8938.[61] The primary consequence of this provision is that relatively minor amounts of omitted income can keep the assessment period open a full six years, instead of the normal three. It takes little to reach a threshold of $5,000 in today's economy. The IRS has provided several examples of instances in which taxpayers will be subject to scrutiny for six years, including the following:

> Taxpayer filed his 2005 federal income tax return on or before April 15, 2006. The return contains a more-than-25-percent omission of income, including an omission of more than $5,000 of income attributable to a foreign financial asset. Because the statute of limitations is six years from the filing date of the return for both the "more-than-25-percent omission of income" and the "omission of more than $5,000 of income attributable to a foreign financial asset," the statute of limitations will not expire before April 15, 2012 ....[62]

VI. Conclusion

This article demonstrates that many U.S. shareholders likely violated their repatriation tax duties when filing tax returns for 2017 and/or 2018. Non-compliance persists thanks to the ability of some shareholders to defer tax payments or await triggering events. The IRS is committed to strengthening enforcement to address shortcomings identified in the First Report and Second Report, billions of dollars of tax revenue are still at stake, and the IRS counts on various provisions to extend assessment periods and challenge shareholders with repatriation tax transgressions back to inception. U.S. shareholders with repatriation tax problems, intentional or inadvertent, past or present, should keep these realities in mind as they devise a game plan.

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[1] Charles E. Gustafson *et al. Taxation of International Transactions, Second Edition*, West Group, 2001, pgs. 399–529; Ernest R. Larkins, *International Applications of U.S. Income Tax Law*, Wiley, 2004, pgs. 241–308; Robert J. Misey, Jr. *Practical Guide to U.S. Taxation of International Transactions, Ninth Edition*, Wolters Kluwer, 2013, paragraphs 500–504; Boris I. Bittker *et al. Fundamentals of International Taxation*, Warren, Gorman & Lamont, 2002, pgs. 69-2–69-108.

[2] Joseph Isenbergh, *International Taxation, Foundation Press*, 2000, pg. 169.

[3] U.S. Joint Committee on Taxation. Background on Selected Policy Issues on International Tax Reform. JCX-45-17 (Sep. 28, 2017), pg. 27. *See also* Congressional Research Service. Tax Reform: Repatriation of Foreign Earnings. Report IF10640 (Dec. 4, 2017). *See also* Congressional Research Service. Tax Cuts on Repatriation Earnings as Economic Stimulus: An Economic Analysis. Report R40178 (Dec. 21, 2012).

[4] Tax Cuts and Job Act—Public Law 115-97 (Dec. 22, 2017).

[5] Code Sec. 965(a); Reg. §1.965-1(a).

[6] Detailed information about the repatriation tax, how it functions, and why Congress introduced it can be found in various sources. *See*, *e.g.*, U.S. House of Representatives. Tax Cuts and Jobs Act, Conference Report, 115th Congress, 1st Session, Report 115-466 (Dec. 15, 2017), pgs. 606-621; U.S. Joint Committee on Taxation. General Explanation of Public Law 115-97, JCS-1-18 (Dec. 2018), pgs. 355–367.

[7] Code Sec. 965(f); Reg. §1.965-1(b); Form 965 (*Inclusion of Deferred Foreign Income Upon Transition to Participation Exemption System*).

[8] U.S. Joint Committee on Taxation. Estimated Budget Effects of the Conference Agreement for H.R. 1, the Tax Cuts and Jobs Act. JCX-67-17 (Dec. 18, 2017), pg. 6.

[9] Tax Cuts and Job Act - Public Law 115-97, Section 14103(a) (Dec. 22, 2017); Reg. §1.965-9; Notice 2018-07, IRB 2018-4, 317, Sections 2.01 and 3.01(a).

[10] Notice 2018-07, IRB 2018-4, 317, Sections 2.01 and 3.01(a).

[11] Notice 2018-07, IRB 2018-4, 317, Sections 2.01 and 3.01(a).

[12] Code Sec. 965(h); Reg. §1.965-7(b).

[13] Code Sec. 965(h)(1); Reg. §1.965-7(b)(1).

[14] Code Sec. 965(h)(3); Reg. §1.965-7(b)(3).

[15] Code Sec. 965(i)(1); Reg. §1.965-7(c). For these purposes, "triggering events" include the entity losing its classification as a Subchapter S corporation, ceasing business, selling substantially all assets, and a transfer of any stock (including because of death). *See* Code Sec. 965(i)(2); Reg. §1.965-7(c)(3).

[16] Treasury Inspector General for Tax Administration. Implementation of the Tax Cuts and Jobs Act Deemed Repatriation Tax Presented Significant Challenges. Report No. 2019-34-033 (May 2019).

[17] *Id.*, pgs. 5–18. The IRS released several items early in the process. *See*, *e.g.*, Notice 2018-07, IRB 2018-4, 317 (Guidance Under Code Sec. 965), Notice 2018-13, IRB 2018-6, 341 (Additional Guidance Under Code Sec. 965 and Guidance Under Code Secs. 863 and 6038 in Connection with the Repeal of Code Sec. 958(b)(4)), Notice 2018-26, IRB 2018-16, 480 (Additional Guidance Under Code Sec. 965; Guidance Under Code Secs. 62, 962, and 6081 in Connection with Code Sec. 965; and Penalty Relief Under Code Secs. 6654 and 6655 in Connection with Code Sec. 965 and Repeal of Code Sec. 958(b)(4)); REG-104226-18 (Guidance Regarding Transition Tax under Code Sec. 965 and Related Provisions); Notice 2018-78, IRB 2018-42, 604 (Additional Guidance Under Code Sec. 965), and Publication 5292 (*How to Calculate Code Sec. 965 Amounts and Elections Available to Taxpayers*).

[18] Treasury Inspector General for Tax Administration. Implementation of the Tax Cuts and Jobs Act Deemed Repatriation Tax Presented Significant Challenges. Report No. 2019-34-033 (May 2019), pg. 19.

[19] *Id.*, pgs. 19 and 20.

[20] *Id.*, pg. 20.

[21] *Id.*, pg. 20.

[22] *Id.*, pg. 21.

[23] *Id.*, pg. 21.

[24] *Id.*, pg. 22.

[25] Treasury Inspector General for Tax Administration. Additional Actions Are Needed to Ensure Taxpayer Compliance with the Code Sec. 965 Repatriation Tax. Report No. 2022-34-062 (September 2022).

[26] *Id.*, pg. 7.

[27] *Id.*, pg. 7.

[28] *Id.*, pg. 7.

[29] *Id.*, pg. 10.

[30] *Id.*, pg. 7.

[31] *Id.*, pg. 10.

[32] *Id.*, pg. 10.

[33] *Id.*, pg. 10.

[34] *Id.*, pgs. 10 and 11.

[35] *Id.*, pg. 12.

[36] *Id.*, pg. 13.

[37] *Id.*, pg. 19.

[38] *Id.*, pg. 19.

[39] *Id.*, pg. 19.

[40] *Id.*, pg. 19.

[41] *Id.*, pg. 20.

[42] *Id.*, pgs. 20 and 21.

[43] *Id.*, pg. 21.

[44] *Id.*, pg. 23.

[45] Code Sec. 965(i)(7). This provision states that, in cases of unfiled or inaccurate Form 965-A, "there shall be assessed" an addition to tax equal to five percent of the deferred tax liability.

[46] Treasury Inspector General for Tax Administration. Additional Actions Are Needed to Ensure Taxpayer Compliance with the Code Sec. 965 Repatriation Tax. Report No. 2022-34-062 (September 2022), pg. 23.

[47] *Id.*, pg. 24.

[48] *Id.*, pg. 24.

[49] *Id.*, pgs. 13 and 25.

[50] Internal Revenue Service. Updated Interim Guidance for Examinations with Code Sec. 965 Issues—Statute Considerations, Examination and Classification. LB&I-04-0922-0019 (Sep. 21, 2022), Tax Notes Doc. No. 2022-30803; *See also* Internal Revenue Service. Updated Interim Guidance for TEFRA Partnership Examinations with Code Sec. 965 Issues—Statute Considerations, Examination and Classification. LB&I-04-0821-0010 (Aug. 20, 2021), Tax Notes Doc. No. 2021-33302; *See also* Internal Revenue Service. Updated Interim Guidance for BBA Partnership Examinations (the Centralized Partnership Audit Regime of 2015) with Code Sec. 965 Issues—Statute Considerations, Examination and Classification. LB&I-04-0821-0009 (Aug. 20, 2021), Tax Notes Doc. No. 2021-33303.

[51] Code Sec. 6051(a).

[52] Code Sec. 965(k).

[53] Internal Revenue Service. Updated Interim Guidance for Examinations with Code Sec. 965 Issues—Statute Considerations, Examination and Classification. LB&I-04-0922-0019 (Sep. 21, 2022), pg. 3, Tax Notes Doc. No. 2022-30803.

[54] For a detailed discussion of common international filing requirements, *see* Hale E. Sheppard, *Specified Domestic Entities Must Now File Form 8938: Section 6038D, New Regulations in 2016, and Expanded Foreign Financial Asset Reporting*, 42, 3 INT'L TAX J. 5 (2016); Hale E. Sheppard, *Extended Assessment Periods and International Tax Enforcement: Rafizadeh v. Commissioner, Unreported Foreign Assets, and Use of FATCA Weapons*, 44, 5 J. INT'L TAX'N 25 (2018); and Hale E. Sheppard, *Lessons from an International Tax Dispute: Three Interrelated Cases, in Three Different Proceedings, Generating Three Separate Liabilities*, 46, 5 INT'L TAX J. 43 (2020).

[55] Code Sec. 6038D(d)(1); Reg. §1.6038D-8(a); Code Sec. 6038(b)(1); Reg. §1.6038-2(k)(1)(i); Code Sec. 6046(f); Reg. §1.6046-1(k).

[56] Code Sec. 6501(c)(8)(A).

[57] Code Sec. 6501(a).

[58] Code Sec. 6501(c)(8).

[59] U.S. Joint Committee on Taxation. Technical Explanation of the Revenue Provisions Contained in Senate Amendment to the House Amendment to H.R. 1586, Scheduled for Consideration by the House of Representatives on August 10, 2010. JCX-46-10. Aug. 10, 2010, pg. 37. *See also* Chief Counsel Advisory 201147030 (Nov. 25, 2011).

[60] Internal Revenue Service. "Failure to File the Form 5471 – Category 4 and 5 Filers – Monetary Penalty." International Practice Unit (updated as of Oct. 7, 2015).

[61] Code Sec. 6501(e)(1)(A); U.S. Joint Committee on Taxation. Technical Explanation of the Revenue Provisions Contained in Senate Amendment 3310, The "Hiring Incentives to Restore Employment Act," under Construction by the Senate. JCX-4-10 (Feb. 23, 2010), pgs. 64–66; Public Law 111-147, Hiring Incentives to Restore Employment Act, Code Sec. 513(d), Mar. 18, 2010.

[62] IRSIG SBSE-25-0312-022 (Mar. 09, 2012).

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