Part III

Administrative, Procedural, and Miscellaneous

26 CFR 601.204: Changes in accounting periods and in methods of accounting.
(Also: Part I, §§ 442, 898, 965; 1.442-1)

Rev. Proc. 2018-17

SECTION 1. PURPOSE

This revenue procedure modifies the circumstances under which the Internal Revenue Service ("IRS") grants approval of certain requests by certain foreign corporations for changes in annual accounting periods filed under Rev. Proc. 2002-39, 2002-22 I.R.B. 1046, and Rev. Proc. 2006-45, 2006-45 I.R.B. 851. This revenue procedure is issued pursuant to section 965(o) to prevent the avoidance of the purposes of section 965 through changes in the taxable years of certain specified foreign corporations (within the meaning of section 965(e)).[1]

SECTION 2. BACKGROUND

.01 Section 442 and §1.442-1(a) generally provide that a taxpayer seeking to change its annual accounting period and use a new taxable year must obtain the approval of the

[1] The term "specified foreign corporation" is defined differently in sections 898(b) and 965(e). In order to avoid confusion, this revenue procedure refers to a specified foreign corporation within the meaning of section 898(b) as a "section 898 specified foreign corporation" and to a specified foreign corporation within the meaning of section 965(e) as a "section 965 specified foreign corporation."

Commissioner.

.02 In general, under §1.442-1(b)(2), a change in annual accounting period will be approved when a taxpayer agrees to the Commissioner's prescribed terms, conditions, and adjustments for effecting the change.

.03 Section 1.442-1(b)(3) provides that the Commissioner will prescribe the administrative procedures for a taxpayer to be allowed to adopt, change, or retain an annual accounting period.

.04 Rev. Proc. 2002-39 provides the general procedures under section 442 and §1.442-1(b) for obtaining the approval of the Commissioner to adopt, change, or retain an annual accounting period for federal income tax purposes.

.05 Rev. Proc. 2006-45, as a successor to Rev. Proc. 2002-37, 2002-22 I.R.B. 1030, provides the exclusive procedures for certain corporations to obtain automatic approval of the Commissioner to change their annual accounting periods, including a section 898 specified foreign corporation that is changing to a one-month deferral year or to a 52-53-week taxable year that references the one-month deferral year. See section 4.02(8) of Rev. Proc. 2006-45.

.06 Section 898(a) provides that the taxable year of any section 898 specified foreign corporation is the required year determined under section 898(c). In contrast, a foreign corporation other than a section 898 specified foreign corporation generally does not have a required year.

.07 In general, section 898(b) defines a section 898 specified foreign corporation as any controlled foreign corporation (as defined in section 957) ("CFC") with respect to which a United States shareholder (as defined in section 951(b), subject to certain modifications) owns, on certain testing days, more than 50 percent of either the total voting power of all classes of stock of such corporation entitled to vote or the total value of all classes of stock of such corporation. The rules of section 958(a) and (b) apply for purposes of determining ownership. A United States shareholder that meets this more-than-50-percent ownership threshold is referred to in this revenue procedure as a "majority U.S. shareholder."

.08 The required year determined under section 898(c) is the majority U.S. shareholder year (as defined in section 898(c)(3)), or, if there is no majority U.S. shareholder year, the taxable year prescribed under regulations. Section 898(c)(2) provides that a section 898 specified foreign corporation may elect, in lieu of the required year, a taxable year beginning one month earlier than the majority U.S. shareholder year.

.09 Section 965(a) provides that for the last taxable year of a deferred foreign income corporation ("DFIC") that begins before January 1, 2018, the subpart F income of the corporation (as otherwise determined for such taxable year under section 952) shall be increased by the greater of the accumulated post-1986 deferred foreign income of such corporation determined as of November 2, 2017, or December 31, 2017 (each such date, a "measurement date").

.10 For purposes of section 965, a DFIC is, with respect to any United States shareholder, any section 965 specified foreign corporation of such United States shareholder that has accumulated post-1986 deferred foreign income (as of a measurement date) greater than zero. Section 965(d)(1). The term "section 965 specified foreign corporation" means (A) any CFC, and (B) any foreign corporation with respect to which one or more domestic corporations is a United States shareholder ("10-percent corporation"). Section 965(e)(1). For purposes of sections 951 and 961, a 10-percent corporation is treated as a CFC solely for purposes of taking into account the subpart F income of such corporation under section 965(a). Section 965(e)(2). However, if a passive foreign investment company (as defined in section 1297) with respect to the shareholder is not a CFC, then such corporation is not a section 965 specified foreign corporation. Section 965(e)(3).

.11 Section 965(o) provides that the Secretary shall prescribe such regulations or other guidance as may be necessary or appropriate to carry out the provisions of section 965, including regulations or other guidance to prevent the avoidance of the purposes of such section, including through a reduction in earnings and profits, through changes in entity classification or accounting methods, or otherwise. The Conference Report accompanying the Act states, "The conferees are also aware that certain taxpayers may have engaged in tax strategies designed to reduce the amount of post-1986 earnings and profits in order to decrease the amount of the inclusion required under this provision. Such tax strategies may include a change in entity classification, accounting method, <u>and taxable year</u> . . . ." H.R. Rep. No. 115-466, at 619 (2017) (emphasis added).

.12 A section 965 specified foreign corporation with a taxable year ending on December 31, 2017, could avoid the purposes of section 965 by changing its taxable year. For example, if a DFIC with the calendar year as its taxable year elected, effective for its taxable year beginning January 1, 2017, a taxable year closing on November 30, the election could defer by as much as 11 months a United States shareholder's inclusion with respect to the DFIC under section 965. Further, the election could, depending on the facts, reduce the amount of the tax liability of a United States shareholder of the DFIC by reason of section 965, including through the reduction of the post-1986 earnings and profits of the DFIC.

SECTION 3. SCOPE

This revenue procedure applies to a section 965 specified foreign corporation seeking to change its taxable year that ends on December 31, 2017. For purposes of applying this revenue procedure, a 52-53-week taxable year is deemed to begin on the first day of the calendar month nearest to the first day of the 52-53-week taxable year, and is deemed to end or close on the last day of the calendar month nearest to the last day of the 52-53-week taxable year, as the case may be. See §1.441-2(c).

SECTION 4. MODIFICATIONS

.01 *Inapplicability of Rev. Proc. 2006-45*. Section 4.02 of Rev. Proc. 2006-45 is modified to add a new paragraph (15) to read as follows:

"(15) *Certain specified foreign corporations.* Notwithstanding any other provision in this section 4, a specified foreign corporation (as defined in section 965(e)) if each of the following conditions is satisfied:

(a) The specified foreign corporation's taxable year (determined without regard to the requested change) ends on December 31;

(b) If the requested change were permitted, the first effective year of the corporation would begin on January 1, 2017, and would end on a date before December 31, 2017; and

(c) The specified foreign corporation has one or more United States shareholders that must include an amount in gross income under section 951(a)(1) by reason of section 965 with respect to the specified foreign corporation or any other specified foreign corporation (with such amount determined without regard to the requested change)."

.02 *Inapplicability of Rev. Proc. 2002-39.* Section 3 of Rev. Proc. 2002-39 is modified to add a new subsection 3.03 to read as follows:

".03 *Inapplicability for certain specified foreign corporations*. Notwithstanding any other provision of this revenue procedure, a request to change the annual accounting period of a specified foreign corporation (as defined in section 965(e)) pursuant to this revenue procedure will not be approved if:

(a) The specified foreign corporation's taxable year (determined without regard to the requested change) ends on December 31;

(b) If the requested change were permitted, the first effective year of the corporation would begin on January 1, 2017, and would end on a date before December 31, 2017; and

(c) The specified foreign corporation has one or more United States shareholders that must include an amount in gross income under section 951(a)(1) by reason of section 965 with respect to the specified foreign corporation or any other specified foreign corporation (with such amount determined without regard to the requested change)."

SECTION 5. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2002-39 and Rev. Proc. 2006-45 are modified.

SECTION 6. EFFECTIVE DATE

This revenue procedure applies with respect to any request to change an annual accounting period that ends on December 31, 2017, regardless of when such request was filed.

SECTION 7. DRAFTING INFORMATION

The principal author of this revenue procedure is Leni C. Perkins of the Office of Associate Chief Counsel (International). For further information regarding this revenue procedure, contact Ms. Perkins on (202) 317-6934 (not a toll free call).