Administrative, Procedural, and Miscellaneous

26 CFR § 601.105: Examination of returns and claims for refund, credit or abatement; determination of correct tax liability.

(Also: Part 1, §§ 951, 965, 4982)

Rev. Proc. 2018-47

SECTION 1. PURPOSE

This revenue procedure provides guidance under § 4982 of the Internal Revenue Code (Code) for regulated investment companies (RICs) on the treatment of amounts that § 965 requires to be included in gross income under § 951(a)(1) for the excise tax year ended on December 31, 2017.

SECTION 2. BACKGROUND

.01 Section 4982(a) imposes an excise tax on most RICs for each calendar year equal to 4 percent of the excess of the required distribution for the calendar year over the distributed amount for the calendar year. Under § 4982(b), a RIC's required distribution for a calendar year generally is the sum of 98 percent of the RIC's ordinary income for the calendar year (determined under § 4982(e)(1)), plus 98.2 percent of the RIC's capital gain net income for the one-year period ending on October 31 of the calendar year (determined under § 4982(e)(2)), plus any prior year shortfall (determined under § 4982(b)(2)). Under § 4982(c), the distributed amount for a calendar year generally is the sum of the RIC's deductions for dividends paid during the calendar year (subject to limitations described in § 4982(c)(3)), plus any amount on which tax is imposed under § 852(b)(1) or (3)(A) for a taxable year ending in the calendar year, plus any prior year overdistribution (determined under § 4982(c)(2)).

.02 Many items of ordinary income, such as dividends and interest, are periodic and relatively predictable in amount. When § 4982 was added to the Code by the Tax Reform Act of 1986, P.L. 99-514, 100 Stat. 2085, it provided that a RIC's required distribution for a calendar year was based in part on the RIC's ordinary income for the entire calendar year. Capital gains and losses are more likely to arise from sales or exchanges, and their tax consequences may be affected by subsequent transactions. Section 4982, as originally enacted, provided an October 31 year-end for computing the portion of the required distribution that is based on capital gain net income, which allows time for a RIC to make the required distribution by December 31 after the amount of its capital gain net income is known.

.03 Section 4982 has been amended several times to provide an October 31 year-end for measuring various non-periodic items of ordinary income. The Technical and Miscellaneous Revenue Act of 1988, P.L. 100-647, 102 Stat. 3342, added § 4982(e)(5), which provided that any post-October foreign currency gain or loss attributable to a § 988 transaction is taken into account in computing the following calendar year's ordinary income of the RIC. The Taxpayer Relief Act of 1997, P.L. 105-34, 111 Stat. 788, added § 4982(e)(6), which provided for a deemed October 31 year-end for applying § 1296 (relating to a mark-to-market election for marketable stock in a passive foreign investment company (PFIC)) and for deferral of any post-October gain or loss from an actual disposition of stock in a PFIC with respect to which a § 1296 election has been made to the next year for purposes of computing the ordinary income of the RIC under § 4982(e)(1). The RIC Modernization Act of 2010, P.L. 111-325, 124 Stat. 3537, expanded the scope of § 4982(e)(5) beyond foreign currency gain and loss attributable to § 988 transactions to include other "specified gains and losses" as discussed under section 2.04 of this revenue procedure and expanded the scope of § 4982(e)(6) beyond § 1296 to include other "specified mark to market provisions" described in § 4982(e)(6)(B).

.04 Section 4982(e)(5) defers ordinary income from "specified gains and losses" that occur after October 31 of a calendar year to January 1 of the following calendar year for purposes of § 4982. Specified gains and losses are defined as ordinary gain or loss from the sale, exchange, or other disposition of property (including the termination of a position with respect to such property). The term includes any foreign currency gain or loss attributable to a § 988 transaction (within the meaning of § 988) and any gain or loss on marketable shares of a PFIC that are marked to market under § 1296.

.05 Section 965 was amended by "An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018," P.L. 115-97, 131 Stat. 2054 (2017) (Act). Section 965(a), as amended, provides that for the last taxable year of a deferred foreign income corporation (DFIC) (as defined in § 965(d)(1)) that begins before January 1, 2018, the subpart F income of the corporation (as otherwise determined for such taxable year under § 952) will be increased by the greater of (1) the accumulated post-1986 deferred foreign income (as defined in § 965(d)(2)) of such corporation determined as of November 2, 2017, or (2) the accumulated post-1986 deferred foreign income of such corporation determined as of December 31, 2017. Section 965(b) may cause the amount of the inclusion under § 965(a) to be reduced, and § 965(c) provides a deduction to a United States shareholder of a DFIC in the year that the United States shareholder has an inclusion under § 951(a)(1) by reason of § 965.

.06 If the taxable year of a DFIC is the calendar year, the subpart F income of the DFIC will be increased by the amount described in § 965(a) for the taxable year of the DFIC ended December 31, 2017. Under §§ 951(a)(1)(A) and 965(e)(2), a RIC that is a United States shareholder (as defined in § 951(b)) of such DFIC must include in gross income its pro rata share of the DFIC's subpart F income for its taxable year that includes or ends on December 31, 2017. Section 4982(e)(1)(C) provides that for excise tax purposes, the ordinary income portion of the required distribution is determined by treating the calendar year as a RIC's taxable year. As a result, amounts included in a RIC's income under § 951(a)(1), by reason of § 965, from a calendar-year DFIC, increase the RIC's 2017 required distribution under § 4982.

.07 The Act was enacted on December 22, 2017, and contained provisions that required certain RICs both to compute the amount of a new type of inclusion and to make corresponding distributions by December 31, 2017. The Internal Revenue Service (Service) received requests for relief from taxpayers who cited the administrative burden of obtaining information from a DFIC, computing the required amounts, and making the required distributions in a brief amount of time. An inclusion under § 951(a) by reason of § 965 is not a specified gain under § 4982(e)(5) because it is not an ordinary gain from the sale, exchange, or other disposition of property. The inclusion is, however, a non-periodic item of ordinary income required to be computed as of November 2, 2017, and December 31, 2017. Thus, the period during which a RIC could pay dividends in respect of an inclusion under § 951(a)(1) by reason of § 965 with respect to a calendar-year DFIC ended very shortly after the amendment of § 965 and on the same date that the amount of any inclusion could be computed. The Department of the Treasury and the Service have determined that, in such cases, it is in the interest of sound tax administration to allow additional time for a RIC to make the required distribution under § 4982.

SECTION 3. SCOPE

This revenue procedure applies to any amount that § 965 would (but for this revenue procedure) require a RIC to include in gross income under § 951(a)(1) for the RIC's excise tax year ended on December 31, 2017 (a 2017 Inclusion).

SECTION 4. APPLICATION

The Service will not challenge a RIC's treatment of a 2017 Inclusion if the RIC (1) treats the 2017 Inclusion in the same manner as a specified gain (within the meaning of § 4982(e)(5)(B)(i)) that (but for § 4982(e)(5)) would be properly taken into account during the portion of the RIC's 2017 excise tax year that is after October 31; and (2) treats any deduction under § 965(c) attributable to the 2017 Inclusion in the same manner as a specified loss (within the meaning of § 4982(e)(5)(B)(ii)) that (but for § 4982(e)(5)) would be properly taken into account during the portion of the RIC's 2017 excise tax year that is after October 31.

SECTION 5. DRAFTING INFORMATION

The principal author of this revenue procedure is Grace Cho of the Office of Associate Chief Counsel (Financial Institutions & Products). For further information regarding this revenue procedure contact Ms. Cho at (202) 317-6945 (not a toll-free call).