IRS Provides Guidance on Basis of Property Sold at a Gain for Section 4968

In Notice 2018-55, the Treasury Department and the IRS said they plan to issue proposed regulations addressing the basis of property sold at a gain for purposes of calculating the new excise tax on investment income of colleges and universities under Section 4968. Notice 2018-55 provides that property held on 12/31/17 and continuously through the date of sale will have a basis equal to its fair market value at 12/31/17 for purposes of figuring the amount of gain subject to tax. Normal basis rules will continue to apply for calculating any loss. These rules will be similar to the rules found in section 4940(c) related to the calculation of net investment income of private foundations.

The notice requests public comment on other issues addressed in the notice, as well as any other matters that should be addressed in future guidance. See the notice for details on submitting comments.
**IRS Updates Section 965 FAQs**
The Internal Revenue Service announced on June 4, 2018 that it will waive certain late-payment penalties relating to the Section 965 transition tax, and provided additional information for individuals subject to the Section 965 transition tax regarding the due date for relevant elections. Information was provided as part of an update to the previously released [FAQs about Reporting related to Section 965 on 2017 Tax Returns](https://www.irs.gov/individuals/article/0,,id=253912,00.html).

The following questions were added to the FAQs:

- **Q15.** If a taxpayer that has made a section 965(h) election for 2017 filed a 2017 income tax return that calculated an overpayment without including the taxpayer’s total net tax liability under section 965, and the taxpayer attempted to elect to credit the calculated overpayment to its estimated tax liability for 2018, will the IRS determine an addition to tax for an underpayment of taxpayer’s 2018 estimated taxes because the credit elect won’t be available for the first required 2018 estimated tax installment?
- **Q16.** If an individual fails to timely pay his or her first installment of tax due under section 965(h), will the IRS assess an addition to tax for failure to pay? Will the taxpayer’s requirement to pay all subsequent installments be accelerated under section 965(h)(3)?
- **Q17.** If an individual has filed his or her 2017 tax return, but has not made the section 965(h) election, may the individual file another 2017 return on which he or she makes the election?

**IRS Advisory Committee on Tax-Exempt and Government Entities Releases its Annual Report**
The Internal Revenue Service (“IRS”) Advisory Committee on Tax Exempt and Governmental Entities (“ACT”) released its annual report on June 7, 2018. The ACT is a group of external stakeholders who advise the IRS on operational policy, programs and procedural improvements in each of the tax exempt and governmental entities (“TE/GE”) five functional areas: employee plans, tax-exempt organizations, tax-exempt bonds, and federal, state, local, and Indian Tribal governments. The ACT also enables the IRS to receive regular input on the development and implementation of IRS policy concerning these communities. This year, the ACT’s 2018 Report of Recommendations focused on the following topics:

- **Employee Plans:** Recommendations Regarding Re-Opening the Determination Letter Program
- **Employee Plans:** Recommendations Regarding Missing Participants
- **Exempt Organizations:** Recommendations Regarding Incentivizing E-Filing for Form 990
- **Indian Tribal Governments:** Recommendations Regarding IRS Sharing of Taxpayer Information with Tribal Government Tax Programs
- **Tax Exempt Bonds:** Recommendations to Encourage Self-Compliance by Issuers of Tax-Advantaged Obligations

The Exempt Organizations section of the report addresses recommendation for incentivizing universal e-filing for Form 990. In the 2015 ACT report, the ACT listed the benefits that could be realized by universal e-filing for Form 990 which lead the ACT in 2015 to recommend that the IRS proactively encourage e-filing. For fiscal year 2017, nearly 200,000 Forms 990 or 43% of all Forms 990 are still being paper filed. In its current report, the ACT states that it should be the goal of the IRS to encourage e-filing and provided the following recommendations:

1. Support government-wide efforts to provide open data and IT modernization
2. Mandate electronic filing
3. Eliminate the $10 million asset threshold
4. Encourage and provide incentives for voluntary e-filing
5. Prioritize the development of online accounts for organizations

A full copy of the annual report is available on the IRS website.

**U.S. Supreme Court Issues Wayfair Decision; Physical Presence Sales/Use Tax Nexus Standard Overruled**
On June 21, 2018, the U.S. Supreme Court issued its opinion in *Wayfair et. al.* In a 5-4 decision, the majority held that the physical presence rule established in its previous decisions in *Quill* (1992) and *National Bellas Hess* (1967) for purposes of sales/use tax nexus “is unsound and incorrect.” As a result, the U.S. Supreme Court reversed the lower court decisions and upheld the constitutionality of the 2016 South Dakota law establishing a sales/use tax nexus standard based on the existence annually of more than $100,000 of in-state sales or 200 or more transactions involving in-state deliveries of goods or services. Please click the link [here](https://www.irs.gov/individuals/article/0,,id=254064,00.html) to read the decision of the majority (authored by Justice Kennedy) and the dissenting opinion (authored by Chief Justice Roberts in which he stated that he would “let Congress decide whether to depart from the physical-presence rule.”)

For additional details regarding the underlying South Dakota law as well as the potential technical and logistical implications for remote sellers, please see our February 21, 2018 tax alert available [here](https://www.irs.gov/individuals/article/0,,id=253275,00.html). Applicability/impact of this decision will depend on whether purchases and/or sales of taxable services or tangible personal property are being made online. Some examples may include gift shop sales or sales of medical equipment or devices directly to consumers for use at home. Please reach out to your Deloitte contact for additional information.

**Did you know?**

**IRS Provides Guidance on Reporting Amounts Taxable under Section 512(a)(7)**
The IRS posted on its website that taxpayers required to increase unrelated business income for qualified transportation fringe benefits provided pursuant to Section 512(a)(7) should report the increase on Form 990-T, Line 12 - Other Income. This guidance applies to tax year 2017 returns. To see the release, [click here](https://www.irs.gov/individuals/article/0,,id=253447,00.html).

**IRS Working to Update Form 990-T and Form 4720**
According to comments made by Margaret Von Lienen, IRS Exempt Organizations Director, on June 18, the IRS is working to update Form 990-T and Form 4720 to incorporate changes brought about by the Tax Cuts and Jobs Act. These updates have a target completion date of January 2019.
Deloitte Dbriefs

Deloitte Dbriefs are live webcasts that give you valuable insights on important developments affecting your business. Register for the following webcasts or view archived recordings by clicking on the respective hyperlinked button below.

**Global Mobility, Talent, & Rewards**

**Cooperative compliance: Tax reporting advantages for all stakeholders**

*July 10 | 2 p.m. ET | 18:00 GMT*

Global businesses operate in an increasingly borderless environment with workforces shifting from traditional long-term, expat assignments to short-term, mobile employees. Yet many companies lack a tax structure that supports compliance with local regulations. Participants will gain insights on what cooperative compliance is, how it can be used to address compliance requirements, and what it might mean for global businesses.

Register

**Federal Tax**

**US tax reform and permanent cash tax impact: The clock is ticking**

*July 11 | 2 p.m. ET | 18:00 GMT*

As year one of US tax reform unfolds, the window is closing to generate potential permanent cash savings from tax planning. Participants will explore potential opportunities to generate cash, defer tax payments, and gain insights on future guidance and reporting positions.

Register

**Life Sciences & Health Care**

**On-demand health care: Ready to embrace virtual care?**

*July 12 | 1 p.m. ET | 17:00 GMT*

As the health care industry continues its focus on outpatient services to decrease costs and improve care, a shift to virtual care may seem obvious. But are physicians embracing this trend, and how do consumers feel about it? Participants will learn results of a new Deloitte study on the anytime, anywhere trend of virtual care.

Register

**Transfer Pricing**

**Transfer pricing spotlight on the Commonwealth of Independent States**

*July 18 | 11 a.m. ET | 15:00 GMT*

Transfer pricing tax legislation and regulations are evolving across the Commonwealth of Independent States (CIS) region in the wake of the OECD BEPS initiative. What should multinational companies operating there know? Participants will gain new insights on BEPS-related changes in transfer pricing tax legislation, regulations, and enforcement activities across the CIS region and beyond.

Register

**Tax Operations**

**Migration to SAP S/4HANA: A rare opportunity for tax**

*July 26 | 2 p.m. ET | 18:00 GMT*

SAP’s client base is or will be migrating from legacy versions of SAP to S/4HANA. As companies develop their migration road maps, tax departments have the rare opportunity to provide input for a tax-enabled SAP implementation. Participants will learn ways tax departments can leverage the broader organization’s move to the SAP S/4HANA.

Register
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