



FACTCOALITION

Financial Accountability & Corporate Transparency

October 9, 2018

The Honorable Charles Rettig
Commissioner
Internal Revenue Service
1111 Constitution Ave., N.W.
Washington, D.C. 20224

Re: Proposed Regulations Under Section 965 (REG-104226-1)

Dear Commissioner Rettig,

We are writing on behalf of the Financial Accountability and Corporate Transparency (FACT) Coalition to share our views on the IRS's proposed guidance regarding the transition tax under Section 965 and related provisions (REG-104226-18). While the proposed rule generally strikes the right balance between competing interests, if any changes are made, they should strengthen the rules rather than weaken them as some other commentators argue.

The FACT Coalition is a non-partisan alliance of more than 100 state, national, and international organizations working toward a fair tax system that addresses the challenges of a global economy and promoting policies to combat the harmful impacts of corrupt financial practices.¹

Looking at the new Section 965 rules from a big picture perspective, the provision provides companies with a substantial tax break compared to the taxes they previously owed on their accumulated foreign earnings. According to estimates from the Institute on Taxation and Economic Policy (ITEP), the transition tax represents a tax break for multinational companies of more than \$400 billion compared to what they would have owed under the previous system.²

The discounted rate on accumulated foreign earnings creates effective rates of 15.5 and 8 percent on cash or cash equivalent and all other earnings respectively. In addition to a substantial discount in the applicable tax rate, Congress exempted corporations from the interest charges normally paid when tax payments are delayed. The law also gave companies the option to delay full payment of the amount of tax owed on their foreign earnings for eight years. That is a significant benefit that effectively provides an even greater discount.

In light of the transition tax's unusually generous terms benefiting some of the wealthiest taxpayers in America, it is appropriate — and fair to other taxpayers who never had the option to defer paying taxes, hoping for a lower rate — for the IRS to use inclusive determinations of what counts as foreign accumulated earnings subject to the transition tax. Similarly, the determination of what counts as cash

¹ For a full list of FACT Coalition members, visit <https://thefactcoalition.org/about/coalition-members-and-supporters/>

² Institute on Taxation and Economic Policy, "Multinational Corporations Would Receive \$413 Billion in Tax Breaks from Congressional Repatriation Proposal," December 12, 2017. <https://itep.org/multinational-corporations-would-receive-over-half-a-trillion-in-tax-breaks-from-the-house-repatriation-proposal/>

or cash equivalents, and thus is taxed at the marginally higher rate of 15.5 percent (rather than 8 percent), should be as inclusive as possible to ensure that the favored taxpayers pay a reasonable rate of tax on what may be millions, hundreds of millions, or even billions of dollars in earnings.

While we support more inclusive rules to prevent gaming, the current rules represent a reasonable compromise between competing interests. We oppose further weakening of the rules as proposed by several commenters. The discounts already tilt the scales strongly in favor of multinational enterprises over small and wholly domestic ones or individual taxpayers. The rules should err on the side of leveling the playing field for all taxpayers.

Thank you for taking into consideration our concerns. Should you have any questions, please feel free to contact Clark Gascoigne at +1 (202) 810-1334 or cgascoigne@thefactcoalition.org.

Sincerely,

Gary Kalman
Executive Director
The FACT Coalition

Clark Gascoigne
Deputy Director
The FACT Coalition

Richard Phillips
Tax Policy Co-Chair
The FACT Coalition

FACTCOALITION