



Feedback for Notice 2018-26 (Repatriation) as of 5/18/2018

NOTICE 2018-26, SECTION NUMBER	SECTION TITLE or ISSUE TOPIC	RECOMMENDATION	ADDITIONAL EXPLANATION /QUERIES
Section 3.04	Prevention of the Reduction of the §965 ¹ Tax Liability of a United States Shareholder	Require net reduction in U.S. tax liability in §965 inclusion year and amount of income included pursuant to §965 for application of rule.	Limit application of rule to instances in which the reduction in the §965 tax liability of a U.S. shareholder results in a net decrease in the U.S. tax liability of the U.S. shareholder and/or related parties, such that if a transaction reduces a U.S. shareholder's §965 tax liability but creates an offsetting increase in other U.S. tax liability of, or in the total amount of income included by, the U.S. shareholder or related parties, such transaction is not subject to the anti-avoidance rule.
Section 3.04(a)(i)	Anti-Avoidance Rule: Transactions Undertaken with a Principal Purpose of Reducing §965 Tax Liability	Create de minimis exception.	In order to reduce the administrative burden of analyzing individual transactions' effect on a U.S. shareholder's §965 tax liability, the Treasury should consider creating an exception to the application of the anti-abuse rule presumptions for transactions that would otherwise result in a de minimis reduction in §965 tax liability.
Section 3.04(a)(ii)	Anti-Avoidance Rule: Application of the Anti-Avoidance Rule to Cash Reduction Transactions	Exempt ordinary course transactions from the anti-avoidance rule.	Rather than requiring a facts and circumstances test, designation of a transaction as occurring in the "ordinary course" should result in treatment of the

¹ Unless otherwise noted, all section references are to the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.



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			transaction as per se outside the scope of the anti-avoidance rule.
Section 3.04(a)(iii)	Anti-Avoidance Rule: Application of the Anti-Avoidance Rule to E&P Reduction Transactions	Exempt ordinary course transactions from the anti-avoidance rule.	Rather than requiring a facts and circumstances test, designation of a transaction as occurring in the “ordinary course” should result in treatment of the transaction as per se outside the scope of the anti-avoidance rule.
Section 3.04(a)(iv)	Anti-Avoidance Rule: Application of the Anti-Avoidance Rule to Pro Rata Share Transactions	Exempt ordinary course transactions from the anti-avoidance rule.	Designation of a transaction as occurring in the “ordinary course” should result in treatment of the transaction as per se outside the scope of the anti-avoidance rule. “Ordinary course” transactions should be defined.
Section 3.04(b)	Disregard of Certain Changes in Method of Accounting and Entity Classification Elections	Provide that: <ol style="list-style-type: none"> (1) accounting method changes from an impermissible to a permissible method should not be subject to the anti-avoidance rule; and (2) a principal purpose test should apply to all other accounting method changes and entity classification elections such as: <ol style="list-style-type: none"> (a) Where election causes an offsetting increase in U.S. tax liability outside of §965; (b) The decision to make accounting change or classification election is documented prior to 11/2/2017; or 	The rule disregarding certain changes in method of accounting and entity classification elections in Section 3.04(b) should not apply without regard to whether the change was made with a principal purpose of reducing the amount of income included pursuant to §965 and the §965 tax liability of a U.S. shareholder. Such a per se rule denying a method change from an impermissible method to a permissible method may exceed the IRS’s authority to exercise its discretion to determine which method most clearly reflects income and may require use of an otherwise impermissible method. The



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		(c) Classification election achieves results substantially the same as the §962 election.	legislative history (Conference Report, p. 619) shows clear legislative intent for a principal purpose test.
Section 3.05(b)	United States Persons Eligible to Make Elections Under §965 in the Case of a United States Shareholder that is a Domestic Pass-Through Entity		
Section 3.05(d)	Application of §965(n) to Losses Arising in the Year in Which the Inclusion Year of a DFIC Ends	The Chamber supports the application of §965(n) in the manner proscribed in this section of the Notice.	
Section 6	Penalty Relief Under §§6654 and 6655 in Connection with the Amendment of §965 and the Repeal of §958(b)(4)	Election for 2017 should not apply to 2018.	Clarify that an election to pay in installments (as well as the §965(n) election to not take NOLs into account) applies for the taxable year of inclusion. Taxpayers who have two taxable years of inclusion (2017 and 2018) as a result of different fiscal year ends for their DFICs can make different elections for each year.