

# IRC Section 953(d) Election Changes and Issues

F&I Reinsurance and Product Conference

by

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## 953(d) Election Background

- Allows a controlled foreign corporation engaged in the insurance business to elect to be treated as a domestic corporation for U.S. tax purposes
- Once approved, the election generally remains effective for each subsequent taxable year

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## 953(d) Election Background

- The Commissioner may terminate the election, if the electing corporation fails to file a return, pay the tax due, or comply with any other requirements
- For tax years with no valid IRC Section 953(d) election, income is picked up by Shareholders under subpart F (Form 5471)

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## 953(d) Election Background

### Election Requirements

1. Foreign corporation in which 25% or more of the vote or value is owned by U.S. shareholder(s)
2. Would qualify as an insurance company under Subchapter L of the IRC, if it was domiciled domestically
3. Meets all other requirements of the Secretary

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## Asset Calculation Sheet (Rev. Proc. 2003-47)

Taxable year upon which this calculation is based: \_\_\_\_\_

This calculation based upon full year actual or annualized figures.

(See Section 4.04 (4) (c) of this revenue procedure)

Gross Premiums		_____
Less return premiums and premiums paid for reinsurance	(	_____)
Investment income		_____
Total gross income of electing corporation		_____
10% of gross income of electing corporation		_____
Total assets of (electing corporation of U.S. Affiliate) held in the United States		_____

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## 953(d) Approvals Often Encounter Processing Issues

- Problems may occur with receipt of application, breakdown of communications, unresolved questions
- Can lead to situations where issuance of approval is unclear
- Sometimes not detected when customer changes programs or only noticed when reviewing a departed employee's files
- Recent examples

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## IRS 953(d) Procedures Overview

- Process was handled by Collections
- Collections asked for help from Exam Units based on volume
- Exam did not have access to the Collections Unit databases
- Appears that Collections receives applications in Plantation, Florida, but Exam now handles review of the applications in various offices around the country

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## Processing

- Processing times are generally running 6-8 weeks
- The applications are being checked for:
  - Social Security Numbers
  - Employer Identification Numbers
  - Asset calculation sheet accuracy
- Processing agents have also communicated with ARC shareholders regarding delinquent personal taxes

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## Processing

In some cases, there is additional information requested:

- Draft of Annual Statement Pages 2, 3 & 4
- Draft of page 1 of the Tax Return
- Copy of the 7004 and related proof of delivery
- Certificate of Incorporation and Insurance License, if the company is 2 or more years old and hasn't filed 953(d) (i.e. because it hadn't begun its business)

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## IRS Staffing Changes

- Staff assigned to reviewing the 953(d) election applications changes based on IRS workload
- Once received, IRS designates an Exams staff member to review the application
- The current IRS internal record keeping system allows IRS staff to provide more information regarding the status of a 953(d) application

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## Practical Issues Due to Variations in IRS Procedures

- Applications may not be handled in the same manner
- Greater risk of paperwork being lost
- Some IRS 953(d) processors will call the company's representative or do additional research to obtain information, while others will only communicate by letter and may not do any additional research
- Situation where taxpayer has copy of approval letter but IRS has no record

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## 953(d) Approvals Handled by Various IRS Offices

Internal Revenue Service  
SB/SE, PSP, MS 7  
10715 David Taylor Drive  
Charlotte, NC 28262

**APPROVED**

Internal Revenue Service  
7850 S.W. 6th CT  
Plantation, FL 33324  
Stop 5780 Technical Support

**APPROVED**

**APPROVED**

~~Internal Revenue Service~~  
Title  
Advisory Group  
955 S. Springfield Avenue, 2nd Floor  
Springfield, NJ 07081

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## IRS 953(d) Records

- Approval does not appear on taxpayer account transcripts
- Paper copies of approval letters appear to be stored in the Plantation office
  - IRS has been able to provide copies of some approval letters, when Taxpayer could not locate approval letter

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## Form 2848 Power of Attorney

Form 2848 is being questioned when:

- Electronic signatures by representatives. They are now requiring original wet pen and ink signatures (this comes from an internal IRS memo, which is not publicly-available guidance)
- IRS fails to send Form 2848 submitted with EIN request to Central Authorization File (CAF) personnel
- Most current version of the Form 2848 (January 2018) is not used

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## Standard Reminders

- 953(d) submissions should be actively monitored to confirm IRS receipt and processing of the application
- Administrators should always keep several copies of the 953(d) approval letter
  - Paper copy
  - Electronic copy
  - Consider sending copy to taxpayer

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## Internal Revenue Manual Procedure

- 953(d) procedure outlined in IRM 5.6.1.10.3
- Procedure allows IRS to treat 953(d) application as timely if certain conditions are met
- Check IRM for various scenarios

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## Internal Revenue Manual Procedure

### Overview of applicable situations

- Election statement submitted to Service Center attached to timely filed tax return, but not filed separately with designated office
- Separate election statement was not submitted or statement was not attached to timely filed return, but block next to IRC 953(d) was checked
- Taxpayer claims that election statement was submitted, but office has no record of receiving election

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## Internal Revenue Manual Procedure 953(d) Box Checked

Form <b>1120-PC</b> Department of the Treasury Internal Revenue Service	<b>U.S. Property and Casualty Insurance Company</b> <b>Income Tax Return</b> For calendar year 2018, or tax year beginning _____, 2018, ending _____, 20____ ▶ Go to <a href="http://www.irs.gov/Form1120PC">www.irs.gov/Form1120PC</a> for instructions and the latest information.	OMB No. 1545-0123 <div style="font-size: 2em; font-weight: bold; margin-top: 5px;">2018</div>												
<b>A</b> Check if: 1 Consolidated return (attach Form 851) <input type="checkbox"/> 2 Life-nonlife consolidated return <input type="checkbox"/> 3 Schedule M-3 (Form 1120-PC) attached <input type="checkbox"/>	<b>Please print or type</b>	<b>B</b> Employer identification number _____ <b>C</b> Date incorporated _____ <b>D</b> Check applicable box if an election has been made under section(s): <input type="checkbox"/> 831(b) <input type="checkbox"/> 953(c)(3)(C) <input checked="" type="checkbox"/> 953(d)												
<b>E</b> Check if:   (1) <input type="checkbox"/> Final return   (2) <input type="checkbox"/> Name change   (3) <input type="checkbox"/> Address change   (4) <input type="checkbox"/> Amended return														
1 Taxable income (Schedule A, line 37) . . . . . 2 Taxable investment income for electing small companies (Schedule B, line 21) . . . . . 3 Check if a member of a controlled group (attach Schedule O (Form 1120)) . . . . . ▶ <input type="checkbox"/>		<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 5%; text-align: center;">1</td> <td style="width: 15%;"></td> <td style="width: 15%;"></td> <td style="width: 15%;"></td> <td style="width: 15%;"></td> <td style="width: 15%;"></td> </tr> <tr> <td style="text-align: center;">2</td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> </table>	1						2					
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## IRM Procedure

- For first year of election where IRM procedures satisfied, submit a letter and supporting 953(d) application documents to the Plantation office
- Request 953(d) approval under IRM Procedures

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## IRM Procedure Success

- We are aware of approximately thirty-five (35) 953(d) applications that have been approved using the IRM procedure
- Appears that multiple IRS revenue agents understand how to use the procedure

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## IRM Procedure Logistics

If Administrator does not have records to confirm timely filing and timely payment of taxes, Administrator should consider requesting taxpayer's account transcript

- IRS has recently changed account transcript procedures
- Time is lost if IRM procedure is used and Administrator then learns of late returns or late payments
- Note – 953(d) may be denied if any taxes are due, not just application year.

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## Section 9100 Relief

- If taxpayer did not respond to a request from the IRS for additional information, Section 9100 Relief may be possible
- 9100 relief can be expensive and time-consuming
- Annual Revenue Procedure (e.g., Rev. Proc. 2019-01) is followed
- 2019 Cost for each submission - \$2,800 - \$10,900 (based on taxpayer's revenue) – *Cost can change annually*
- These PLRs discuss 9100 relief - 201017010, 201037018, 201037021, 201303005, 201451012, 201539006, 201612007 and 201744009

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## Additional Reasons for 953(d) Approval Letters

- IRS Excise Tax Audits
  - May request copy of 953(d) approval letters
- Banks
  - When opening accounts, banks familiar with the auto F&I industry may request 953(d) letters
  - New bank compliance teams often request additional information when opening accounts

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## Additional Reasons for 953(d) Approval Letters

- Accounting or Legal Service Providers
  - Taxpayers have been assessed the excise tax when the 953(d) letter could not be produced
  - We have heard that Allstate is now collecting excise tax on ARC accounts that cannot produce a 953(d) approval letter
  - Recent Excise Tax Audit - Taxpayer received no change letter, because 953(d) letter was immediately provided to auditor
- Due Diligence during a Provider Acquisition
  - Inability to produce 953(d) letters may be used to reduce price offered

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## Takeaways

- Consider IRM Procedure if 953(d) approval letter cannot be located and IRM criteria apply
- Evaluate 9100 relief option, if IRM procedure cannot be used
- When you accept a transferred client, DON'T ASSUME
- Since laptops or other mobile devices may be used in the 953(d) application process, **store multiple copies of the application documents and the approval letter!!!**

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## Polling Question

What are the 953(d) elections being checked for?

- A. Social Security Numbers
- B. Employer Identification Numbers
- C. Asset calculation sheet accuracy
- D. All of the above

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# Questions



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