

New IRS Form 965 Line-by-Line: Reporting Section 965 Transition Tax Inclusions, Deductions, and Deferrals

TUESDAY, NOVEMBER 12, 2019, 1:00-2:50 pm Eastern

IMPORTANT INFORMATION FOR THE LIVE PROGRAM

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WHO TO CONTACT DURING THE LIVE PROGRAM

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Tips for Optimal Quality

FOR LIVE PROGRAM ONLY

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New IRS Form 965 Line-by-Line

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The information contained herein is of a general nature and based on authorities that are subject to change. Applicability of the information to specific situations should be determined through consultation with your tax adviser.

Section 965 – The Transition Tax

⌘ How did we get here?

- Former Code Section 965
- Taxpayers still were sheltering non-US earnings offshore
- Subpart F and 956 investment in US property not broad enough

⌘ Section 965 requires that in the last taxable year of a deferred foreign income corporation (DFIC) that begins before January 1, 2018, the subpart F income of the corporation increases by the greater of:

- The corporation's accumulated post-1986 deferred foreign income as of November 2, 2017, or
- The corporation's accumulated post-1986 deferred foreign income as of December 31, 2017 (measurement dates)

⚡ A specified foreign corporation is:

- Any CFC, and
- Any foreign corporation with respect to which one or more domestic corporations is a United States shareholder (10% ownership)

⚡ Types of specified foreign corporations:

- deferred foreign income corporation (DFIC)
 - A DFIC is a specified foreign corporation that has accumulated post-1986 deferred foreign income, as of the relevant measurement date, greater than zero
- E&P deficit foreign corporation
 - If as of November 2, 2017:
 - the specified foreign corporation has an E&P deficit,
 - the corporation was a specified foreign corporation, and
 - the taxpayer was a United States shareholder of the corporation

- ⚡ Amount included in a United States shareholder's gross income is taxed at 8% for non-cash assets, and 15.5% for cash assets
- ⚡ The rule is **not** a pro rata allocation of E&P between cash and noncash assets
- ⚡ If the cash position is greater than the income inclusion, then the tax rate equals 15.5%
- ⚡ Applicable tax rates are arrived at by a mechanical formula which is tied into the tax rates in effect in the year of inclusion
 - Differs for 2017 vs. 2018 and for individuals vs. corporations

- ✦ Aggregate foreign cash position is the greater of
 - the aggregate of the shareholder's pro rata share of the cash position of each specified foreign corporation determined as of the end of the last taxable year of such specified foreign corporation which begins before January 1, 2018, or
 - the average of the aggregate determined as of the close of the last two taxable years of each specified foreign corporation ending before November 2, 2017
- ✦ Cash position includes cash, accounts receivable and FMV of other cash-like asseys

- ⚡ A United States shareholder may elect to pay the net tax liability in eight annual backloaded installments
- ⚡ The election must have been made by the due date of the tax return for the transition year
- ⚡ The first installment was due on the due date of the tax return for the transition year, determined without regard to extensions
 - For many corporations, this date was April 17, 2018

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Appendix: Q&A3

IRC 965 Transition Tax Statement (Portable Document Format with a filename of '965 Tax')

Taxpayer Name: [REDACTED] SSN/EIN: [REDACTED]

Item Amount

Total amount required to be included in income by reason of section 965(a). Line 1 \$ 2,094,674

Aggregate foreign cash position, if applicable. Line 2 \$ 2,541,038

Total deduction under section 965(c). Line 3 \$

Total deemed paid foreign taxes associated with the total amount required to be included in income by reason of section 965(a). Line 4a \$

Total deemed paid foreign taxes disallowed pursuant to IRC 965(g)(1). Line 4b \$

Total net tax liability under section 965 (as determined under section 965(h)(6), without regard to whether such paragraph is applicable), if applicable, which will be assessed. Line 5 \$

Amount of the net tax liability under section 965 to be paid in installments under section 965(h), if applicable. Line 6 \$

Amount of the net tax liability under section 965, the payment of which has been deferred, under section 965(i), if applicable. Line 7 \$

Listing of applicable elections under section 965 or the election provided for in Notice 2018-13 that the taxpayer has made, if applicable.

Provision Under Which Election is Made	Title	Attached (Y or N)
Section 965(h)(1)	Election to Pay Net Tax Liability Under Section 965 in Installments Under Section 965(h)(1)	Y
Section 965(i)(1)	S Corporation Shareholder Election to Defer Payment of Net Tax Liability Under Section 965 Under Section 965(i)(1)	N
Section 965(m)(1)(B)	Statement for Real Estate Investment Trusts Electing Deferred Inclusions Under Section 951(a)(1) By Reason of Section 965 Under Section 965(m)(1)(B)	N
Section 965(n)	Election Not to Apply Net Operating Loss Deduction under section 965(n)	N
Notice 2018-13, Section 3.02	Election Under Section 3.02 of Notice 2018-13 to Use Alternative Method to Compute Post-1986 Earnings and Profits	N

Taxpayer Name: [REDACTED]
Taxpayer ID Number: [REDACTED]

STATEMENT ATTACHED TO AND MADE PART OF
FORM: 1040

Taxpayer Tax Form: U.S. INDIVIDUAL INCOME TAX RETURN

ELECTION TO PAY NET TAX LIABILITY UNDER SECTION 965 IN INSTALLMENTS UNDER SECTION 965(h)(1)

[REDACTED] elects to pay the Net 965 Tax Liability eligible for installments (as defined herein), for the taxable year ended 12/31/2017 in 8 installments.

TAXPAYER'S NET 965 TAX LIABILITY ELIGIBLE FOR INSTALLMENTS:

(a) Taxpayer's net tax liability for the taxable year with all 965 related amounts	404,848.
(b) Taxpayer's net tax liability for the taxable year without 965 related amounts	37,502.
(c) Net 965 Tax Liability (excess of (a) over (b))	367,346.
(d) If applicable, S Corporation shareholder deferred Net 965 Tax Liability for the taxable year, otherwise zero	NONE
(e) Net 965 Tax Liability eligible for installment payments (excess of (c) over (d))	367,346.

ANTICIPATED INSTALLMENT PAYMENT SCHEDULE:

1. Current tax year (8% of amount on line (e))	29,388.
2. Second tax year (8% of amount on line (e))	29,388.
3. Third tax year (8% of amount on line (e))	29,388.
4. Fourth tax year (8% of amount on line (e))	29,388.
5. Fifth tax year (8% of amount on line (e))	29,388.
6. Sixth tax year (15% of amount on line (e))	55,102.
7. Seventh tax year (20% of amount on line (e))	73,469.
8. Eighth tax year (25% of amount on line (e))	91,835.

Forms 965, 965-A, and 965-B



Form 965

- Purpose of Form
 - Compute section 965(a) inclusion amounts and section 965(c) deductions
 - Compute foreign tax credits associated with the transition tax
- Who must file
 - Anyone who included amounts under section 965 for 2017 and/or 2018 or anyone who would have had an inclusion absent foreign E&P deficit offsets
 - Includes direct U.S. shareholders and indirect owners/beneficiaries through partnerships, S Corps, and other pass-through entities
- File with taxpayers 2018 tax return



Form 965

Form 965 - Schedules

- Schedule A - Section 965(a) inclusion amount
- Schedule B - Deferred Foreign Income Corporation E&P
- Schedule C - U.S. shareholders aggregate earnings and deficits
- Schedule D & E - U.S. shareholders aggregate foreign cash position
- Schedule F - Foreign taxes paid for the 2018 tax year
- Schedule G - Foreign taxes paid for the 2017 tax year
- Schedule H, Section 1 - Amounts reported on forms 1116 and 1118 and disallowed foreign taxes
- Schedule H, Section 2 - Other disallowances of foreign tax credits

Form 965

Part I -

- Determination of total inclusion amount
- Ties to Schedules A, B, and C - Specified Foreign Corporation detail
 - Note that Schedules B and C must be filled out for each separate category of income

Part I Section 965(a) Inclusion			
1	2018 tax year section 965(a) inclusion amounts from Schedule A. Enter the sum of column (k) of Schedule A	1	
2	2018 tax year section 965(a) inclusions from pass-throughs. Attach schedule	2	
3	Total 2018 tax year section 965(a) inclusion. Add lines 1 and 2. Enter the sum here and on your tax return as follows. Corporations: Enter the line 3 total on Form 1120, Schedule C, line 15, column (a), or the corresponding line of other corporate tax returns. All others: See instructions ▶	3	
4	2017 tax year section 965(a) inclusion amounts from Schedule A. Enter the sum of column (j) of Schedule A	4	
5	2017 tax year section 965(a) inclusions from pass-throughs. Attach schedule	5	
6	Total 2017 tax year section 965(a) inclusion. Add lines 4 and 5 ▶	6	

Form 965

Part II, Section 1 -

- Determination of total deduction (by year)
- Ties to Schedules D & E- Detail of foreign cash position

Part II Section 965(c) Deduction	
SECTION 1—Section 965(c) Deduction by Tax Year	2018 Tax Year
7 Enter the amount from Part I, line 1. If -0-, skip to line 16	7
8 Aggregate Foreign Cash Position. Enter the sum from Schedule D, line 21	8
9 Enter the smaller of line 7 or 8	9
10 Enter the 2018 15.5% Rate Equivalent Percentage from Part II, Section 2. Enter amount from Section 2, line 1a	10
11 Section 965(c) Deduction Related to 15.5% Rate Equivalent Percentage. Multiply line 9 by line 10	11
12 Subtract line 9 from line 7	12
13 Enter the 2018 8% Rate Equivalent Percentage from Part II, Section 2. Enter amount from Section 2, line 1b	13
14 Section 965(c) Deduction Related to 8% Rate Equivalent Percentage. Multiply line 12 by line 13	14
15 2018 tax year section 965(c) deduction not from pass-throughs. Add lines 11 and 14	15
16 2018 tax year section 965(c) deduction from pass-throughs. Attach schedule	16
17 Total 2018 tax year section 965(c) deduction. Add lines 15 and 16. Enter the sum here and on your tax return as follows. Corporations: Enter the line 17 total on Form 1120, Schedule C, line 15, column (c), or the corresponding line of other corporate tax returns. All others: See instructions	17

For Privacy Act and Paperwork Reduction Act Notice, see the separate instructions.

Cat. No. 71279D

Form **965** (1-2019)

Form 965

Part II, Section 2 -

- Determination of applicable tax rates

SECTION 2—Rate Equivalent Percentages		
1 Calendar Year Persons	2017 Calendar Year	2018 Tax Year
a 15.5 Percent Rate Equivalent Percentage		
b 8 Percent Rate Equivalent Percentage		
2 2017 Fiscal Year Persons		
a Enter the section 15 blended rate calculated in accordance with section 965(c)(2) (see instructions) 15.5 Percent Rate Equivalent Percentage	2a	
b Subtract 15.5% from line 2a	2b	
c Divide line 2b by line 2a 8 Percent Rate Equivalent Percentage	2c	
d Subtract 8% from line 2a	2d	
e Divide line 2d by line 2a	2e	



Form 965

Part III -

- Disclosure of any elections made

Part III Elections		Yes	No
A	Was an election made to pay the net tax liability over 8 years as provided for in section 965(h)?	<input type="checkbox"/>	<input type="checkbox"/>
B	Complete if a shareholder in an S corporation. Was an election made to defer payment of net tax liability as provided for in section 965(i)?	<input type="checkbox"/>	<input type="checkbox"/>
C	Complete if a Real Estate Investment Trust. Was an election made to include income over 8 years as provided for in section 965(m)?	<input type="checkbox"/>	<input type="checkbox"/>
D	Was an election made not to apply a net operating loss deduction as provided in section 965(n)?	<input type="checkbox"/>	<input type="checkbox"/>
E	Was the election provided for in Regulations section 1.965-2(f)(2) made?	<input type="checkbox"/>	<input type="checkbox"/>

Form **965** (1-2019)





Form 965-A

- Purpose of Form
 - For individuals or taxpayers taxed as individuals to report section 965 tax liability
- Who must file
 - Any individual who has a net 965 tax liability for any tax year or has any net 965 tax liability unpaid at any time during the tax year
- When to file
 - With the reporting year income tax return.
- Note: Even if the transition tax was fully paid in 2017, Form 965-A must be completed for the 2018 tax return



Form 965-B

- Purpose of Form
 - For C Corporations and REITs to report section 965 tax liability
- Who must file
 - Any corporate taxpayer who has a net 965 tax liability for any tax year or has any net 965 tax liability unpaid at any time during the tax year
- When to file
 - With the reporting year income tax return.
- Note: Even if the transition tax was fully paid in 2017, Form 965-B must be completed for the 2018 tax return