

Instructions for Form 965-D



Department of the Treasury
Internal Revenue Service

(December 2019)

Transfer Agreement Under Section 965(i)(2)

Section references are to the Internal Revenue Code unless otherwise noted.

Future Developments

For the latest information about developments related to Form 965-D and its instructions, such as legislation enacted after they were published, go to [IRS.gov/Form965D](https://www.irs.gov/Form965D).

Background

On December 22, 2017, section 965 of the Code (section 965) was amended. As a result of the amendment, certain taxpayers are required to include in income an amount (a section 965(a) inclusion amount) based on the accumulated post-1986 deferred foreign income of certain foreign corporations (specified foreign corporations) they own either directly or indirectly through other entities. Taxpayers that are S corporation shareholders may have inclusions in income under section 951(a) by reason of section 965 due to ownership of deferred foreign income corporations (DFICs) through S corporations that are themselves U.S. shareholders of the DFICs.

For each section 965(i) net tax liability (as defined later in these instructions), the taxpayer may elect to defer payment of such liability until a triggering event occurs. Each section 965(i) net tax liability is calculated and the section 965(i) election is made on an S corporation-by-S corporation basis. If a covered triggering event (defined below) occurs, such event will not be considered to trigger the section 965(i) net tax liability if the transferee enters into an agreement to be liable for the section 965(i) net tax liability with respect to the stock transferred in the same manner as if the transferee were the original electing taxpayer. Partial triggering events may occur if not all of the stock of the S corporation is transferred. In the case of multiple partial transfers, an agreement must be entered into for each partial transfer treated as a covered triggering event.

General Instructions

Definitions

Covered triggering event. A covered triggering event is, with respect to a shareholder's section 965(i) net tax liability with respect to an S corporation, the transfer of any share of stock of the S corporation (including by death or otherwise) by the shareholder that results in a change of ownership for federal income tax purposes.

Eligible section 965(i) transferee. An eligible section 965(i) transferee is a single U.S. person (including a person listed in Regulations section 1.1362-6(b)(2) with respect to a trust or estate, but not a domestic pass-through entity itself) that becomes a shareholder of an S corporation due to a transfer from an eligible section 965(i) transferor in a transaction that is a covered triggering event. References in Part VI and Part VII (including the signature block area) to the "transferee" are references to the "eligible section 965(i) transferee" filing the form.

Eligible section 965(i) transferor. An eligible section 965(i) transferor is a shareholder of an S corporation who has a section 965(i) net tax liability with respect to the S corporation and who transfers stock of the S corporation in a transaction that is a

covered triggering event. References in Part IV, Part V, and Part VII (including the signature block area) to the "transferor" are references to the "eligible section 965(i) transferor" filing the form.

Section 965(i) net tax liability. The section 965(i) net tax liability is, with respect to an S corporation and a shareholder of the S corporation that has made a section 965(i) election, the excess (if any) of the S corporation shareholder's net income tax for the taxable year in which the S corporation shareholder includes a section 965(a) inclusion in income, determined as if the only section 965(a) inclusions included in income by the S corporation shareholder are domestic pass-through entity shares of section 965(a) inclusions by the S corporation with respect to DFICs of which the S corporation is a U.S. shareholder, over the S corporation shareholder's net income tax for the taxable year determined without regard to section 965, and without regard to any income, deduction, or credit properly attributable to a dividend received (directly or through a chain of ownership described in section 958(a)) by the S corporation from, or an inclusion under sections 951(a)(1)(B) and 956 with respect to, a DFIC and paid during, or included with respect to, the DFIC's inclusion year.

Purpose of Form

Form 965-D should be used by an eligible section 965(i) transferor and an eligible section 965(i) transferee to enter into a transfer agreement under section 965(i)(2).

This form sets forth the information and representations that must be provided to meet the requirements of Regulations section 1.965-7(c)(3)(iv)(B)(4) in order to enter into a transfer agreement under section 965(i)(2). If an eligible section 965(i) transferor and an eligible section 965(i) transferee properly complete and file this Form 965-D with respect to a covered triggering event in accordance with these instructions, they will be considered to have properly entered into a transfer agreement under section 965(i)(2). However, the Commissioner may review the transfer agreement and may ask additional questions or require additional information, including, for example, information about the eligible section 965(i) transferee's ability to pay the outstanding section 965(i) net tax liability. If the Commissioner determines that the transfer agreement contains a material misrepresentation or material omission, or if the additional information requested is not provided within a reasonable timeframe (as communicated by the Commissioner), then the transfer agreement may be rejected as of the date of the original triggering event. Alternatively, the Commissioner may determine that a triggering event has occurred as of the date the transfer agreement was found to have a material misrepresentation or material omission.

Who Must File

The eligible section 965(i) transferor and the eligible section 965(i) transferee with respect to a covered triggering event must file Form 965-D to meet the requirements for the eligible section 965(i) transferee exception under Regulations section 1.965-7(c)(3)(iv). Form 965-D may only be filed by an eligible section 965(i) transferor and eligible section 965(i) transferee.

Note. Where there are multiple partial transfers, separate transfer agreements must be filed for each partial transfer

treated as a covered triggering event. In addition, an S corporation cannot file Form 965-D on behalf of its shareholders.

When and Where To File

Except in the case of a covered triggering event that is the death of the eligible section 965(i) transferor, within 30 days of the covered triggering event, the original Form 965-D must be mailed to the IRS's Memphis Compliance Service Collection Operations at the following address.

Memphis CSCO
5333 Getwell Road MS 81
Memphis, TN 38118

In addition, both the eligible section 965(i) transferor and the eligible section 965(i) transferee must attach a duplicate copy of Form 965-D to their tax returns for the tax years during which the covered triggering event occurs, filed by the due date for the returns (with regard to any extension of time to file).



Except in the case of death, Form 965-D will be considered timely filed only if filed within 30 days of the date that the covered triggering event occurs. No extension of time to file Form 965-D will be granted, and relief is not available under Regulations section 301.9100-2 or 301.9100-3 to enter into a transfer agreement late.

A copy of the eligible section 965(i) transferor's most recent Form 965-A is required to be included with Form 965-D.

Special Rules in the Case of Death of the Eligible Section 965(i) Transferor

If the covered triggering event is the death of the eligible section 965(i) transferor, certain special rules apply regarding the due date of the transfer agreement and the identity of the eligible section 965(i) transferee.

Due date of transfer agreement. If the covered triggering event is the death of the eligible section 965(i) transferor, the transfer agreement must be filed by the unextended due date for the eligible section 965(i) transferor's final income tax return.

Eligible section 965(i) transferee. Except in the case of transfers to trusts, if the covered triggering event is the death of the eligible section 965(i) transferor and the identity of the beneficiary or beneficiaries (in the case of multiple partial transfers) is determined as of the due date for the eligible section 965(i) transferor's final income tax return, then the transfer may be treated as a transfer directly from the eligible section 965(i) transferor to the beneficiary or beneficiaries (provided the beneficiary or beneficiaries are themselves eligible section 965(i) transferees).

If, however, the identity of the beneficiary or beneficiaries is not determined as of the due date for the eligible section 965(i) transferor's final income tax return, then the transfer must be treated as two transfers: first, a transfer from the eligible section 965(i) transferor to his or her estate that occurs at the time of death; and second, a transfer from the estate to the beneficiary or beneficiaries that occurs when the shares are actually transferred. Separate transfer agreements must be filed for each transfer.

Note. Where the transfer is treated as two transfers, the transfer from the eligible section 965(i) transferor to his or her estate is treated as a transfer resulting from a covered triggering event that is the death of the eligible section 965(i) transferor, and the transfer agreement must be filed by the due date for the eligible section 965(i) transferor's final income tax return (with regard to any extension of time to file). The transfer from the estate to the beneficiary or beneficiaries is not a transfer resulting from a

covered triggering event that is the death of the eligible section 965(i) transferor, and the transfer agreement must be filed within 30 days of the covered triggering event (that is, the transfer of shares to the beneficiary or beneficiaries).

Specific Instructions

Part I — Transferor Information

Use Part I to provide the identifying information of the transferor. Enter the transferor's complete legal name, taxpayer identification number, and street address or post office box.

Part II — Transferee Information

Use Part II to provide the identifying information of the transferee. Enter the transferee's name, taxpayer identification number, and street address or post office box.



A transferee that is a foreign entity or a domestic pass-through entity is not an eligible section 965(i) transferee. If a transfer consists of multiple partial transfers, a transfer agreement must be entered into by the eligible section 965(i) transferor and each eligible section 965(i) transferee for each partial transfer treated as a covered triggering event.

Part III — Identifying Information of the S Corporation (With Respect to Which the Section 965(i) Election Was Effective)

Use Part III to provide identifying information of the S corporation with respect to which a section 965(i) election was in effect and with respect to which the covered triggering event occurred. Enter the name and taxpayer identification number of the S corporation.

Part IV — Triggering Event Leading to Transfer Agreement

Line 1. Provide the date on which the covered triggering event for which the transfer agreement is being filed occurred.

Line 2. Check the "Yes" box if the covered triggering event for which the transfer agreement is being filed is the death of the eligible section 965(i) transferor. Otherwise, check the "No" box.



A transfer from an estate to the original eligible section 965(i) transferor's beneficiary or beneficiaries is not a covered triggering event that is the death of the eligible section 965(i) transferor.

Line 3. If the covered triggering event is a partial transfer, provide the percentage of the section 965(i) net tax liability attributable to the stock being transferred. If the covered triggering event is the transfer of all of the stock of the S corporation, enter 100.00%.

Line 4. Describe in detail the covered triggering event for which the transfer agreement is being filed. For example, indicate whether the covered triggering event is a transfer pursuant to a sale, gift, or other disposition, or whether the covered triggering event is the death of the eligible section 965(i) transferor.

Part V — Report of Unpaid Section 965(i) Net Tax Liability or Portion Thereof Attributable to Transferred Stock

Line 5. Enter the dollar amount of the eligible section 965(i) transferor's section 965(i) net tax liability being assumed by the eligible section 965(i) transferee.

Note. The Commissioner may adjust the amount of the eligible section 965(i) transferor's section 965(i) net tax liability.

Part VI — Transferee's Ability To Pay Remaining Liability

Line 6. Check the "Yes" box to confirm that the transferee is able to pay the section 965(i) net tax liability being assumed by the transferee. If you check the "No" box, you do not meet the requirements to enter into a valid transfer agreement.

Line 7. Check the "Yes" box if the leverage ratio of the eligible section 965(i) transferee exceeds three to one. Otherwise, check the "No" box. The leverage ratio means the ratio that the total indebtedness of the eligible section 965(i) transferee bears to the sum of its money and all other assets reduced, but not below zero, by the total indebtedness. See Regulations section 1.965-7(c)(3)(iv)(B)(6) for more information.

Note. The leverage ratio of the eligible section 965(i) transferee is a factor the Commissioner uses to determine whether the eligible section 965(i) transferee has the ability to pay the outstanding section 965(i) net tax liability. A leverage ratio in excess of three to one does not by itself determine whether or not a transfer agreement is valid.

Line 8. Provide any other pertinent information regarding the eligible section 965(i) transferee's ability to pay the section 965(i) net tax liability being assumed. This information may include, but is not limited to, the adequacy of the transferee's income, the value of the transferee's assets, and the transferee's access to capital.

Part VII — Terms of Agreement

By signing this transfer agreement, the eligible section 965(i) transferor and the eligible section 965(i) transferee agree to the terms set forth in Part VII of Form 965-D.

Transferor Signature

This transfer agreement must be signed by a person who is authorized to sign a return on behalf of the eligible section 965(i) transferor. By signing this transfer agreement, you declare, under penalties of perjury, that you have examined the form, and to the best of your knowledge and belief, Parts I, III, IV, and V are true, correct, and complete. You also certify that you have the authority to execute this transfer agreement.

Transferee Signature

This transfer agreement must be signed by a person who is authorized to sign a return on behalf of the eligible section 965(i) transferee. By signing this transfer agreement, you declare, under penalties of perjury, that you have examined the form, and to the best of your knowledge and belief, Parts II, III, IV, V, and VI are true, correct, and complete. You also certify that you have the authority to execute this transfer agreement.

Paperwork Reduction Act Notice

We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated burden for individual taxpayers filing this form is approved under OMB control number 1545-0123 and is included in the estimates shown in the instructions for their business income tax return.