

SUPPORTING STATEMENT
(Notice 2005-38)

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

This document provides guidance under new section 965 enacted by the American Jobs Creation Act of 2004 (P.L. 108-357). In general, section 965(a) provides that a corporation that is a U.S. shareholder of a controlled foreign corporation (CFC) may elect, for one taxable year, an 85 percent dividends received deduction (DRD) with respect to certain cash dividends it receives from its CFCs. Section 965(f) provides that taxpayers may elect the application of section 965 for either the taxpayer's last taxable year which begins before October 22, 2004, or the taxpayer's first taxable year which begins during the one-year period beginning on October 22, 2004. In general, a taxpayer will elect to apply section 965 to a taxable year by filing Form 8895 with its timely-filed tax return (including extensions) for such taxable year. Form 8895 also will include certain calculations relevant to determining the maximum amount of a U.S. shareholder's section 965 DRD. If, however, a taxpayer filed its tax return for the taxable year to which the taxpayer intends to elect section 965 to apply prior to the issuance of Form 8895, its election is made on a statement that is attached to its timely-filed tax return (including extensions) for such taxable year. In addition, because the taxpayer must establish to the satisfaction of the Commissioner that it has satisfied the conditions to take the DRD, the taxpayer is required under this guidance to report specified information and provides specified documentation.

This notice informs taxpayers that under certain circumstances, a member of a consolidated group may be eligible to make more than one election under section 965 (see section 5.02); clarifies reporting requirements under Notice 2005-10 with respect a domestic reinvestment plan that is described in section 965(b)(4) where a former member of a consolidated group contributes to the fulfillment of such plan (section 8.05); modifies reporting requirements in connection with section 5.06 of Notice 2005-10, regarding the valuation of certain asset acquisitions, with respect to which a taxpayer may make an election on its annual report of implementation of its domestic reinvestment plan (see

section 9.05); provides new reporting requirements in connection with corporate transactions that under this notice give rise to adjustments related to the limitations under section 965(b) and that are treated in the same manner as certain tax attributes (section 10); and describes additional circumstances under which a taxpayer may be required to amend its section 965 domestic reinvestment plan or file an amended federal income tax return (section 11).

2. USE OF DATA

The collection of information is required to elect to apply section 965 and for audit and examination purposes. In particular, this information is required to provide the IRS sufficient information to determine whether a taxpayer has properly elected to apply section 965 to a taxable year, to determine whether the maximum amount of cash dividends under section 965(a) subject to limitations under sections 965(b) (1), (b)(2), and (b)(3) has been properly determined. The collections of information are required to obtain the benefit of section 965 for a taxable year. The likely respondents will be U.S. corporations that directly, indirectly, or constructively own 10 percent or greater interests in the voting stock of foreign corporations.

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

There are no plans to provide electronic filing because electronic filing is not appropriate for the collection of information in this submission.

4. EFFORTS TO IDENTIFY DUPLICATION

We have attempted to eliminate duplication within the agency wherever possible.

5. METHODS TO MINIMIZE BURDEN ON SMALL BUSINESSES OR OTHER SMALL ENTITIES

Not applicable.

6. CONSEQUENCES OF LESS FREQUENT COLLECTION ON FEDERAL PROGRAMS OR POLICY ACTIVITIES

Not applicable.

7. SPECIAL CIRCUMSTANCES REQUIRING DATA COLLECTION TO BE

INCONSISTENT WITH GUIDELINES IN 5 CFR 1320.5(d)(2)

Not applicable.

8. CONSULTATION WITH INDIVIDUALS OUTSIDE OF THE AGENCY ON AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, CLARITY OF INSTRUCTIONS AND FORMS, AND DATA ELEMENTS

Notice 2005-38 was published in the Internal Revenue Bulletin (2005-22 IRB 1100), on May 31, 2005.

In response to the **Federal Register Notice** dated **August 21, 2008 (73 FR 49539)**, we received no comments during the comment period regarding Notice 123059-05.

9. EXPLANATION OF DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS

Not applicable.

10. ASSURANCE OF CONFIDENTIALITY OF RESPONSES

Generally, tax returns and tax return information are confidential as required by 26 USC 6103.

11. JUSTIFICATION OF SENSITIVE QUESTIONS

Not applicable.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

The collection of information in this notice is based upon section 965(b) and 965(f) of the Internal Revenue Code. The collection of information relates to the requirement that qualifying taxpayers may elect to deduct 85 percent of certain dividends received from their CFCs, subject to the limitations under section 965(b)(1) (regarding the amount of earnings permanently reinvested outside the United States or, alternatively, \$500 million), are extraordinary dividends as defined in section 965(b)(2), and are not subject to limitation under or section 965(b)(3) (regarding limitations imposed where related party indebtedness of a U.S. shareholder's CFCs increases between October 4, 2003, and the last day of taxable year for which the U.S. shareholder elects to apply section 965). This collection of information is necessary for the proper performance of the function of the IRS because it notifies the IRS whether

taxpayers have claimed and are entitled to the deduction. The likely respondents will be U.S. corporations that directly, indirectly, or constructively own 10 percent or greater interests in the voting stock of foreign corporations.

A taxpayer elects to apply section 965 to a taxable year by filing Form 8895 with its timely-filed tax return (including extensions) for such taxable year. If, however, a taxpayer files its tax return for the taxable year to which the taxpayer intends to elect section 965 to apply prior to the issuance of Form 8895, the election must be made on a statement that is attached to its timely-filed tax return (including extensions) for such taxable year. In addition, because the taxpayer must establish to the satisfaction of the Commissioner that it has satisfied the conditions to take the dividends received deduction, the taxpayer is required under this guidance to report specified information and provide specified documentation regarding investments of the amount of the dividends. In Notice 2005-10, 2005-6 I.R.B. 1, we estimated that approximately 25,000 taxpayers will elect to deduct their dividends under section 965 and that it will take each taxpayer approximately 150 hours to prepare the documentation. The total reporting burden was estimated to be 3,750,000 hours. We believe that the additional reporting burden necessitated by this notice is approximately 1,250,000 hours (50 hours per taxpayer, 25,000 taxpayers).

Estimates of the annualized cost to respondents for the hour burdens shown are not available at this time.

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

As suggested by OMB, our **Federal Register Notice** dated **August 21, 2008 (73 FR 49539)**, requested public comments on estimates of cost burden that are not captured in the estimates of burden hours, i.e., estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. However, we did not receive any response from taxpayers on this subject. As a result, estimates of the cost burdens are not available at this time.

14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

Not applicable.

15. REASONS FOR CHANGE IN BURDEN

Not applicable.

16. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION

Not applicable.

17. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE

We believe that displaying the OMB expiration date is inappropriate because it could cause confusion by leading taxpayers to believe that the notice sunset as of the expiration date. Taxpayers are not likely to be aware that the Service intends to request renewal of the OMB approval and obtain a new expiration date before the old one expires.

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT ON OMB FORM 83-I

Not applicable.

Note: The following paragraph applies to all of the collections of information in this submission:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.