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Questions and Answers about Reporting Related to Section 965 on 2017 Returns

Q1. Who is required to report amounts under section 965 reported on a 2017 return?

A1. A person that is required to include amounts in income under section 965 in its 2017 taxable year, whether because it is itself a United States shareholder of a deferred foreign income corporation or because it is a direct or indirect partner in a domestic partnership or a shareholder in an S corporation that is a United States shareholder of a deferred foreign income corporation, is required to report amounts under section 965 on a 2017 return.

Q2. How should amounts under section 965 be reported on a 2017 return?

A2. Such amounts should be reported on the return as reflected in the table included in Appendix: Q&A1.

Q3. Who can make an election with respect to section 965 on their 2017 return?

A3. Section 965 permits multiple elections related to amounts included in income by reason of section 965 or the payment of a taxpayer's net tax liability under section 965 (as determined under section 965(h)(6)). See, e.g., section 965(h), (i), (m), and (n). The elections under section 965 are limited to taxpayers with a net tax liability (in the case of section 965(h) and (i)), taxpayers that are REITs (in the case of section 965(m)), or taxpayers with an NOL (in the case of section 965(n)). Thus, a domestic partnership or an S corporation that is a United States shareholder of a deferred foreign income corporation may not make any of the elections under section 965. The Treasury Department and the IRS intend to provide further guidance concerning the availability of the elections under section 965 to direct and indirect partners in domestic partnerships and shareholders in S corporations that are United States shareholders of deferred foreign income corporations.

Furthermore, the Treasury Department and the IRS have announced another election to be made in connection with the determination of the post-1986 earnings and profits of a specified foreign corporation. See Notice 2018-13, 2018-6 I.R.B. 341, Section 3.02. This election may be made on behalf of a specified foreign corporation pursuant to the rules of §1.964-1(c)(1)(vi)(3).

In the case of a consolidated group (as defined in §1.1502-1(h)), in which one or more members are United States shareholders of one or more specified foreign corporations, the agent for the group (as defined in §1.1502-77) must make an election on behalf of its members.

Q4. How is an election with respect to section 965 made on a 2017 return?

A4. A person makes an election under section 965 or the election provided for in Notice 2018-13, Section 3.02, by attaching a statement signed under penalties of perjury [(as a pdf in case of an electronically filed return)] for each such election to a 2017 return including the person's name and taxpayer identification number and any other information relevant to the election, such as the net tax liability under section 965 with respect to which the installment election under section 965(h)(1) applies, the name and taxpayer identification number of the S corporation with respect to which the deferral

election under section 965(i)(1) is made, the section 965(a) inclusion amount with respect to which the election under section 965(m)(1)(B) applies, and the name and taxpayer identification number of the specified foreign corporation with respect to which the election under Notice 2018-13, Section 3.02 is made. Each election statement should have the applicable header reflected in the following table:

Provision Under Which Election is Made	Header of Election Statement
Section 965(h)(1)	Election to Pay Net Tax Liability Under Section 965 in Installments under Section 965(h)(1)
Section 965(i)(1)	S Corporation Shareholder Election to Defer Payment of Net Tax Liability Under Section 965 Under Section 965(i)(1)
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)
Section 965(n)	Election Not to Apply Net Operating Loss Deduction under section 965(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

Q5. Is a Form 5471 with respect to all specified foreign corporations with respect to which a person is a United States shareholder required to be filed with the person's 2017 return, regardless of whether the specified foreign corporations are controlled foreign corporations?

A5. Yes. In order to collect information relevant to the calculation of a United States shareholder's section 965(a) inclusion amount, the IRS intends to modify the instructions to Form 5471 to provide that a person that was a United States Shareholder of a specified foreign corporation during its 2017 year and owned stock of the specified foreign corporation on the last day of the of the specified foreign corporation's year that ended during the person's year must file a Form 5471 with respect to the specified foreign corporation completed with the identifying information on page 1 of Form 5471 above Schedule A, as well as Schedule J. The exceptions to filing in the instructions to Form 5471 will continue to apply. See also Notice 2018-13, Section 5.02. A person that was a United States shareholder of a specified foreign corporation during its 2017 tax year should file a Form 5471 with a 2017 return accordingly.

Q6. Is there any other reporting in connection with section 965 required on a 2017 return?

A6. Yes, a person that includes an amount in income under section 965 for its 2017 tax year is required to include a statement with its return that includes the following information:

- The person's total amount required to be included in income by reason of section 965(a).
- The person's aggregate foreign cash position, if applicable.
- The person's total deduction under section 965(c).

- A listing of applicable elections under section 965 or the election provided for in Notice 2018-13 that the taxpayer has made, if applicable.
- The total net tax liability under section 965 (as determined under section 965(h)(6), without regard to whether such paragraph is applicable), if applicable.
- The amount of the net tax liability under section 965, the payment of which has been deferred, if applicable.

Adequate records must be kept to support the calculations of the section 965(a) inclusion amount, deduction under section 965(c), and net tax liability under section 965. Moreover, additional reporting may be required when filing returns for subsequent tax years, and the manner of reporting may be different.

Q7. Are domestic partnerships and S corporations required to report any additional information to their partners or shareholders in connection with section 965?

A7. Yes, a domestic partnership or S corporation should attach a whitepaper statement to its Schedule K-1s that includes the following information:

- The partner's distributive share or shareholder's pro rata share of the partnership's or S corporation's section 965(a) inclusion amount.
- The partner's distributive share or shareholder's pro rata share of the partnership's or S corporation's deduction under section 965(c).
- The amount of foreign taxes attributable to the partner's distributive share or shareholder's pro rata share of the partnership's or S corporation's section 965(a) inclusion amount.
- The amount of foreign taxes attributable to the partner's distributive share or shareholder's pro rata share of the partnership's or S corporation's section 965(a) inclusion amount for which a credit would not be allowed pursuant to section 965(g), determined basket-by-basket.

Appendix: Q&A1

Form	965(a) Amount¹	965(c) Deduction²	Net 965 Amount³	Disallowed Foreign Tax Credit⁴	Reporting of Net Tax Liability Under Section 965⁵ to Be Paid in Installments Under Section 965(h) or Deferred Under Section 965(i), If Applicable
1040	N/A	N/A	Page 1, Line 21	Form 1118, Page 9, Schedule G Part I, Line F	Report in brackets to the left of entry space on Page 2, Line 63. Subtract from the total of Lines 56 through 62, and enter the difference on Line 63.
1040 NR	N/A	N/A	Page 1, Line 21	Form 1118, Page 9, Schedule G Part I, Line F	Report in brackets to the left of entry space on Page 2, Line 61. Subtract from the total of Lines 54 through 60, and enter the difference on Line 61.
1120 REIT	N/A	N/A	Page 1, Part 1, Line 7	Form 1118, Page 9, Schedule G Part I, Line F	Subtract from the amount that would otherwise be included on Schedule J, Line 7, and enter the difference there. Attach a statement showing [the computation of each item] added or subtracted in determining Line 7 [other than Lines 4 through 6].
1120 RIC	N/A	N/A	Page 1, Part 1, Line 7	Form 1118, Page 9, Schedule G Part I, Line F	Subtract from the amount that would otherwise be included on Schedule J, Line 7, and enter the difference there. Attach a statement showing [the computation of each item] added or subtracted in determining Line 7 [other than Lines 4 through 6].
1120 PC	N/A	N/A	Page 4, Schedule C, Line 11	Form 1118, Page 9, Schedule G Part I, Line F	Subtract from the amount that would otherwise be included on Page 1, Line 13, and enter the difference there. Attach a statement showing [the computation of each item] added or subtracted in determining Line 13 [other than Lines 9 through 12].

¹ This includes section 965(a) inclusion amounts of a United States shareholder of a deferred foreign income corporation and distributive shares and pro rata shares of section 965(a) inclusion amounts of domestic partnership and S corporations.

² This includes deductions under section 965(c) of a United States shareholder of a deferred foreign income corporation and distributive shares and pro rata shares of deductions under section 965(c) of domestic partnership and S corporations.

³ This is the difference between the sum of section 965(a) inclusion amounts of a United States shareholder of a deferred foreign income corporation and distributive shares and pro rata shares of section 965(a) inclusion amounts of domestic partnership and S corporations and the sum of deductions under section 965(c) of a United States shareholder of a deferred foreign income corporation and distributive shares and pro rata shares of deductions under section 965(c) of domestic partnership and S corporations.

⁴ See section 965(g).

⁵ See section 965(h)(6) and Q&A6.

DRAFT

Form	965(a) Amount	965(c) Deduction	Net 965 Amount	Disallowed Foreign Tax Credit	Reporting of Net Tax Liability Under Section 965 ⁶ to Be Paid in Installments Under Section 965(h) or Deferred Under Section 965(i), If Applicable
1120 L	N/A	N/A	Page 2, Schedule A, Line 14	Form 1118, Page 9, Schedule G Part I, Line F	Subtract from the amount that would otherwise be included on Page 6, Schedule K, Line 10, and enter the difference there. Attach a statement showing [the computation of each item] added or subtracted in determining Line 10 [other than Lines 7 through 9].
990 T	N/A	N/A	Page 1, Part 1, Line 12, Column (C)	Form 1118, Page 9, Schedule G Part I, Line F	Subtract from the amount that would otherwise be included on Page 2, Part IV, Line 44, and enter the difference there. Attach a statement showing [the computation of each item] added or subtracted in determining Line 44 [other than Lines 42 and 43].
1041⁷	N/A	N/A	Page 1, Line 8	Form 1118, Page 9, Schedule G Part I, Line F	Subtract from the amount that would otherwise be included on Page 2, Schedule G, Line 7, and enter the difference there. To the left of Line 7 entry space, write 'Sec 965(h)' and the amount in brackets.
1120 S	Page 3, Schedule K, Line 10	Page 3, Schedule K, Line 12d	N/A	N/A	N/A
1065	Page 4, Schedule K, Line 11	Page 4, Schedule K, Line 13d	N/A	N/A	N/A
1120	Page 2, Schedule C, Line 17	Page 2, Schedule C, Line 8	N/A	Form 1118, Page 9, Schedule G Part I, Line F	Report in brackets to the left of entry space on Page 2, Schedule J, Line 11. Subtract from the total of Lines 7, 8, and 10, and enter the difference on Line 11.

⁶ See section 965(h)(6) and Q&A6.

⁷ A filer of a Form 1041 should also write 'IRC 965 Inclusion' on the header of Page 1.