

Form 926 Instructions Inserts – Draft 3/27/2018

INSERT A

What's New

For transfers after December 31, 2017, P.L. 115-97, section 14102 repealed the active trade or business exception under section 367. Transfers of tangible property (other than certain stock transfers) are subject to full gain recognition under the general rule of section 367(a)(1). In addition, section 91 of the Internal Revenue Code was added to provide rules on transfers of foreign branch assets to foreign corporations requiring the transferor to include a “Transferred Loss Amount” as income. For transfers in taxable years beginning after December 31, 2017, section 14221 of P.L. 115-97 revised the definition of intangible property under section 936(h)(3)(B) subject to section 367(d) treatment on the transfer of such property to include goodwill, going concern value, workforce in place and any other item the value or potential value of which is not attributable to tangible property or the services of an individual. The definition in section 936(h)(3)(B) was subsequently redesignated (without substantive change) as section 367(d)(4) by section 401(d)(1)(D)(viii)(I) of the Consolidated Appropriations Act, 2018, P.L. 115-141.

INSERT B

See specific instructions for lines 20a and 20b in Part IV – *Additional Information Regarding Transfer of Property* for more information, later.

INSERT C

See specific instructions for line 21 in Part IV – *Additional Information Regarding Transfer of Property* for more information, later.

INSERT D

Line 1. Check the “Yes” box on line 1 if the transferor is a shareholder in a specified 10-percent owned foreign corporation that is not a controlled foreign corporation (as defined in section 957(a)).

A specified 10 percent owned foreign corporation is defined in section 245A(b)(1) as any foreign corporation with respect to which any domestic corporation is a United States shareholder with respect to such corporation. A controlled foreign corporation is defined in section 957(a) as any foreign corporation if more than 50 percent of 1) the total combined voting power of all classes of stock of such corporation entitle to vote, or 2) the total value of the stock of such corporation, is owned (within the meaning of section 958(a), or is considered owned by applying the rules of ownership of section 958(b), by United States shareholders on any day during the taxable year of such foreign corporation.

Check the “No” box on line 1 and check the “Yes” box in Part II, line 9 if the transferee foreign corporation is a controlled foreign corporation.

INSERT E – Section B (after Type of Property. Stock and securities.)

Property with built-in loss. Complete columns (a) through (d) including the description of each item transferred that realized a built-in loss, but not recognized. Section 367(a)(1) requires gain recognition attributed to transferred property (other than intangible property subject to section 367(d) or certain stock transfers under section 367(a) if certain conditions are met), however, such gain recognized on the transferred property may not be reduced or netted by realized losses attributed to built-in loss transferred property. No loss is allowed under section 367(a)(1) for transferred built-in loss property.

If the transfer was a distribution of property in complete liquidation under section 332, you must complete columns (a) through (d) as described above. Any built-in losses may be used under section 367(e)(2) to reduce the overall recognized gain from the liquidating distribution, but not below zero, for purposes of determining the amount entered on line 20b in Part IV. See Regulations section 1.367(e)(2) (B) for the overall loss limitation.

Insert F – Section B (after line 11 instructions).

Line 12a. Check “Yes,” to line 12a if any of the transferred property consisted of assets of a foreign branch (or a branch that is a foreign disregarded entity (FDE)) to a foreign corporation. If “Yes,” continue to line 12b, otherwise skip lines 12b through d.

Line 12b. Check “Yes,” to line 12a if the U.S. person transferred property consisted of substantially all of the assets of a foreign branch (or a branch that is a FDE) to a specified 10-percent owned foreign corporation. If “Yes,” to line 12b, the U.S. transferor must complete lines 12c. See definition of specified 10-percent owned foreign corporation in the instructions to line 1 (without regard to whether the corporation is a CFC), earlier.

Line 12c. Check “Yes,” to line 12c if the transferor was a domestic corporation and immediately after the transfer the domestic corporation was a U.S. shareholder (10 percent or more shareholder) with respect to the transferee foreign corporation. If “Yes,” continue to line 12d, otherwise skip line 12d.

Line 12d. Under section 91, the U.S. transferor must include in gross income an amount equal to the transferred loss amount, if any, as defined in section 91(b) upon a transfer of substantially all of the assets of a foreign branch (including a foreign branch that is a FDE) to a foreign corporation. The transferred loss amount is the sum of losses incurred by the foreign branch or FDE after December 31, 2017 and before the transfer and with respect to which a deduction was allowed to the U.S. transferor reduced by the sum of 1) any taxable income of such branch for a tax year after the tax year in which the loss was incurred and through the close of the taxable year of the transfer and 2) any amount recognized under section 904(f)(3) resulting from the transfer. See also P.L. 115-97, section 14102(d)(4) for the transition rule of section 91.

Enter the amount of the transferred loss amount included in gross income as a positive number on Line 12d. If the amount is below zero, enter zero and no transferred loss amount is required to be recognized by the U.S. transferor on the transfer under section 91. If the amount is greater than zero,

enter the amount on line 12d and report this amount as other income applicable Form 1120 (for Form 1120 filers, Page 1, Line 10, Other Income) and identify the amount as "Section 91 Transferred Loss Amount". See also Line 12d instructions under the *Supplemental Part III Information Required to be Reported* section, later, for additional information that must be reported.

INSERT G

Type of property.

Property described in sec. 367(d)(4). Complete columns (a) through (f) for each identified transferred section 367(d)(4) intangible. See related instructions for Section C under the *Supplemental Part III Information Required to be Reported* section at the end of Part III of the form, later, for additional information that must be reported.

INSERT H – Under Section C, Column (b), Description of property.

; (vi) any goodwill, going concern value, or workforce in place (including its composition and terms and conditions (contractual or otherwise) of its employment); or (vii) any other item the value or potential value of which is not attributable to tangible property or the services of any individual.

INSERT I – Supplemental information for lines 12b-d

Lines 12b-d. If the answer to lines 12b and 12c is "Yes":

- Describe the foreign branch the property of which is transferred.
- Describe the property of the foreign branch, including its adjusted basis and fair market value.
- Set forth a detailed calculation of the transferred loss amount reflecting amounts of the losses generated by such foreign branch after December 31, 2017 by year and any income amounts by year generated after such loss year.
- Provide the amount, if any, recognized under section 904(f)(3) on account of the transfer.
- Set forth a detailed summary of the gain recognized (other than section 91) by the transferor, including any section 367(a)(1) gain on the transfer of property.
- Set forth a calculation of the net sum of the previously deducted losses incurred by such foreign branch for tax years prior to January 1, 2018 that would have been recaptured under section 367(a)(3)(C), as determined without regards to the repeal of the section 367(a)(3) active trade or business exception by P.L. 115-97, section 14102.

INSERT J

Line 20b. If the answer is "Yes" for line 20a, enter the total amount of gain or loss recognized pursuant to Regulations section 1.367(e)-2(b). Under section 367(e)(2), loss in excess of gain on the distribution is not recognized. If realized losses exceed recognized losses on transferred property, the loss is recognized on a pro rata basis and used to offset recognized gain on other transferred property in the category of assets (i.e., capital or ordinary), but not below zero. Enter the net amount on line 20b.

Line 20c. If the answer is “Yes” for line 20c, see Regulation section 1.367(e)-2(b)(2)(i) for further guidance on the conditions for nonrecognition for distributions of certain qualifying property and additional reporting documentation that is required. Distributions of section 936(h)(3)(B) intangible property does not qualify for nonrecognition and thus is subject to gain recognition.

Line 21. Check “Yes,” to line 21 if the transferor is a domestic corporation that makes a section 355 (or so much of section 356 as relates to section 355) of stock in a foreign controlled corporation to a foreign corporation. Section 367(e)(1) and Regulations section 1.367(e)-1 requires the distributing domestic corporation to recognize gain (not loss) on the distribution. See Regulations section 1.367(e)-1(b) for the computation of recognized gain.