

SUPPORTING STATEMENT  
Internal Revenue Service  
REG-104226-18(NPRM)- Guidance Regarding the Transition Tax Under Section 965 and Related  
Provisions  
OMB #1545-XXXX

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

Under section 965, United States shareholders of certain specified foreign corporations are required to pay a transition tax on the untaxed foreign earnings of those specified foreign corporations as if the earnings had been repatriated to the United States. In calculating the section 965 inclusion, the United States shareholder must determine the specified foreign corporation's post-1986 earnings and profits as of two measurement dates, November 2, 2017, and December 31, 2017, and the shareholder may reduce the amount of the inclusion based on deficits in earnings and profits in other specified foreign corporations. The proposed regulations allow taxpayers to make an election to determine their post-1986 earnings and profits as October 31, 2017, and prorate to November 2, 2017, or, in the case of a 52-53-week taxpayer, as of the closest fiscal month end to either date. In certain cases, under the proposed regulations, a United States shareholder that takes into account the deficits in earnings and profits in some of its specified foreign corporations must document the portion of the deficit that is taken into account. United States shareholders are also allowed, under the proposed regulations, to elect to make adjustments to the basis in their specified foreign corporations corresponding to adjustments made to earnings and profits.

Section 965(h), (i), (m), and (n) allow certain taxpayers to make elections to defer payment or inclusion of their section 965 tax liability or to avoid offsetting net operating losses with their section 965 inclusions. The election under section 965(h) allows a taxpayer to pay its section 965 tax liability in installments over 8 years, unless an acceleration event occurs, in which case the remaining liability becomes due. However, in the case of certain acceleration events, the remaining liability can be assumed by another taxpayer if the two taxpayers file a transfer agreement. The election under section 965(i) allows a taxpayer who is a shareholder in an S corporation to defer the inclusion of its liability until a triggering event occurs, in which case the deferred liability becomes due, unless the taxpayer makes an election under section 965(h) to pay the liability in installments or the taxpayer transfers its S corporation shares to another taxpayer, and the second taxpayer assumes the liability when both taxpayers file a transfer agreement.

The collection of information requirements in the proposed regulations correspond to these elections, the allocation of deficits, and the transfer agreements.

2. USE OF DATA

The information collected by the IRS will be used for audit and examination purposes, and it will be used to allow taxpayers to make elections or file agreements to continue deferring the payment of the section 965 tax liability. The information collected will enable taxpayers and the IRS to keep track of the deferred payments/liabilities until fully paid.

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 due to the requirement to attach the document of affirmative election. IRS publication, regulations, notices and letters are to be electronically enabled on an as practicable basis in accordance with the IRS Reform and Restructuring Act of 1998.

4. EFFORTS TO IDENTIFY DUPLICATION

The information obtained through this collection is unique and is not already available for use or adaptation from another source.

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

The collection of information requirement will not have a significant economic impact on a substantial number of small entities.

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

Consequences of less frequent collection will not allow the IRS to collect information to be used for audit and examination purposes hindering the IRS from meeting its mission. The collection of information will be used to allow taxpayers to make elections or file agreements to continue deferring the payment of the section 965 tax liability and failure to collect this information will create detriment to the process. The information collected will enable taxpayers and the IRS to keep track of the deferred payments/liabilities until fully paid.

7. SPECIAL CIRCUMSTANCES REQUIRING DATA COLLECTION TO BE INCONSISTENT WITH GUIDELINES IN 5 CFR 1320.5(d)(2)

There are no special circumstances requiring data collection to be inconsistent with Guidelines in 5 CFR 1320.5(d)(2).

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

This notice of proposed rulemaking is published in the Federal Register 83 FR 39514 dated August 9, 2018 to provide the public a 60-day period in which to review and provide public comments relating to any aspect of the proposed regulation. A public hearing will be held with respect to this NPRM if any person who has submitted written comments requests one.

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

No payment or gift has been provided to any respondents.

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

No sensitive personally identifiable information (PII) is collected.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

It is anticipated that the annual burden per respondent would be 5 hours, resulting in an annual burden of 500,000 hours based on an estimated 100,000 respondents.

Authority	Description	# of Respondents	# Responses per Respondent	Annual Responses	Hours per Response	Total Burden
IRC 965	Election Transition Tax	100,000	1	100,000	5	500,000
Totals				100,000		500,000

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

At an estimated cost of \$95 per hour for reporting and recordkeeping, the annualized costs to respondents for the hour burdens discussed would be \$47,500,000. There are no anticipated capital or start-up costs related to the reporting and recordkeeping requirements.

14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

To ensure more accuracy and consistency across its information collections, IRS is currently in the process of revising the methodology it uses to estimate burden and costs. Once this methodology is complete, IRS will update this information collection to reflect a more precise estimate of burden and costs.

15. REASONS FOR CHANGE IN BURDEN

This is a proposed regulation.

16. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION

There are no plans for tabulation, statistical analysis and publication.

17. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE

IRS believes that displaying the OMB expiration date is inappropriate because it could cause confusion by leading taxpayers to believe that the regulation sunsets 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

There are no exceptions to the certification statement.

**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.