

**SUPPORTING STATEMENT**  
Internal Revenue Service  
Guidance Regarding the Transition Tax Under Section 965  
and Related Provisions  
OMB# 1545-2280

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

The Tax Cuts and Jobs Act, Section 14103 (P.L. 115-97), provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018, amended section 965 of the Internal Revenue Code. Because of the amendment, certain taxpayers are required to include in income an amount based on the accumulated post-1986 deferred foreign income of certain corporations that they own either directly or indirectly through other entities.

In general, newly enacted section 965 of the Internal Revenue Code imposes a transition tax on untaxed foreign earnings of foreign subsidiaries of U.S. companies by deeming those earnings to be repatriated. Foreign earnings held in the form of cash and cash equivalents are taxed at a 15.5 percent rate, and the remaining earnings are taxed at an 8 percent rate. The transition tax generally may be paid in installments over an eight-year period.

Notice 2018-07, published in IRB 2018-04 on Jan. 22, 2018, described regulations that the Treasury Department and the IRS intended to issue, including rules for determining the amount of cash and cash equivalents for purposes of applying the 15.5 percent rate and rules for determining the amount of foreign earnings subject to the transition tax. These rules will assist taxpayers by providing certain additional information needed for computing their transition tax. The IRS issued additional guidance and modifications through Notice 2018-13, Notice 2018-26, and Notice 2018-78.

REG-104226-18, published August 9, 2018 (83 FR 39514), contains proposed regulations implementing section 965 of the Internal Revenue Code (“Code”) as amended by the Tax Cuts and Jobs Act, which was enacted on December 22, 2017. The proposed regulations would affect United States persons with direct or indirect ownership interests in certain foreign corporations.

RP 2018-47, published September 24, 2018 (2018-39 I.R.B. 518), provides guidance under section 4982 of the Internal Revenue Code (Code) for regulated investment companies (RICs) on the treatment of amounts that section 965 requires to be included in gross income under section 951(a)(1) for the excise tax year ended on December 31, 2017.

TD 9846, published February 5, 2019 (84 FR 1838), contains final regulations implementing section 965 of the Internal Revenue Code (the “Code”). Section 965 was amended by the Tax Cuts and Jobs Act, which was enacted on December 22, 2017. This document finalizes the proposed regulations published on August 9, 2018. The final

regulations affect United States persons with direct or indirect ownership interests in certain foreign corporations.

The Form 965-C will be used by taxpayers to file a transfer agreement with the IRS pursuant to section 1.965-7(b)(3)(iii)(B) and section 1.965-7(c)(3)(v)(D). The Form will be used in lieu of taxpayers creating their own transfer agreement.

2. USE OF DATA

The information is required to be provided by taxpayers that make an election or rely on taxpayer-favorable rules. The information provided will be used by the IRS for tax compliance purposes. The information will be used by IRS to verify that United States persons are properly reporting the transfer of their 965 net tax liability per 965(h)(3), to establish joint and several liability with the transferee, and for general statistics.

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

Many forms used to comply with these regulations can be submitted electronically.

4. EFFORTS TO IDENTIFY DUPLICATION

We have attempted to eliminate duplication within the agency wherever possible and we are not aware of any other information already available that could be used to be provided by taxpayers that make an election or rely on taxpayer-favorable rules.

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

This collection of information will not have a significant impact on a substantial number of small businesses or other small entities.

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

Consequences of less frequent collection on federal programs or policy activities, could result in insufficient information provided by taxpayers that make an election or rely on taxpayer-favorable rules. The information provided will be used by the IRS for tax compliance purposes. Failure to verify information will affect proper reporting of tax.

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

On August 9, 2018, the Treasury Department and the IRS published proposed regulations (REG-104226-18) under sections 962, 965, and 986 in the Federal Register (83 FR 39514) (the “proposed regulations”). The proposed regulations were issued following guidance announcing and describing regulations intended to be issued under section 965, which was amended by section 14103 of the Tax Cuts and Jobs Act, Pub. L. 115-97 (2017) (the “Act”). See Notice 2018-07, 2018-4 I.R.B. 317; Notice 2018-13, 2018-6 I.R.B. 341; and Notice 2018-26, 2018-16 I.R.B. 480. Additional guidance describing certain provisions included in these regulations (the “final regulations”) was published on October 15, 2018. See Notice 2018-78, 2018-42 I.R.B. 604.

A public hearing was held on October 22, 2018. The Treasury Department and the IRS also received written comments with respect to the proposed regulations. Comments received before the final regulations were substantially developed, including all comments received on or before the deadline for comments on October 9, 2018, were carefully considered in developing the final regulations. Several comments were received that do not pertain to the rules in the proposed regulations or that are otherwise outside the scope of this rulemaking. For example, certain comments regarding the payment and reporting of net tax liability under section 965 as addressed in the document containing Questions and Answers about Reporting Related to Section 965 on 2017 Tax Returns (available at <https://www.irs.gov/newsroom/questions-and-answers-about-reporting-related-to-section-965-on-2017-tax-returns>) are beyond the scope of the final regulations.

Comments that were outside the scope of this rulemaking are generally not addressed in the preamble. The Treasury Department and the IRS will consider these comments in connection with any future guidance projects addressing the issues discussed in the comments. All written comments received in response to the proposed regulations are available at [www.regulations.gov](http://www.regulations.gov) or upon request.

The final regulations retain the basic approach and structure of the proposed regulations, with certain revisions. The *Summary of Comments and Explanation of Revisions* section of TD 9846 discusses those revisions as well as comments received in response to the solicitation of comments in the notice of proposed rulemaking accompanying the proposed regulations

Periodic meetings are held between IRS personnel and representatives of the American Bar Association, the National Society of Public Accountants, the American Institute of Certified Public Accountants, and other professional groups to discuss tax law and tax forms. During these meetings, there is an opportunity for those attending to make comments regarding the various 965 forms related to these regulations.

## 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

Respondents will not be required to file the collection of information with the Internal Revenue Service, though may be requested to provide the information on audit. If requested on audit, the information is confidential as required by 26 USC 6103.

11. JUSTIFICATION OF SENSITIVE QUESTIONS

A privacy impact assessment (PIA) has been conducted for information collected under this request as part of the “Business Master File (BMF)” system and a Privacy Act System of Records notice (SORN) has been issued for this system under IRS 24.046-Customer Account Data Engine Business Master File. The Internal Revenue Service PIAs can be found at <http://www.irs.gov/uac/Privacy-Impact-Assessments-PIA>.

Title 26 USC 6109 requires inclusion of identifying numbers in returns, statements, or other documents for securing proper identification of persons required to make such returns, statements, or documents and is the authority for social security numbers (SSNs) in IRS systems.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

The burden estimate is as follows:

Authority	Description	# of Respondents	# Responses per Respondent	Annual Responses	Hours per Response	Total Burden
1.965-2, 1.965-3, 1.965-4, 1.965-7, 1.965-8	transition tax on untaxed foreign earnings of foreign subsidiaries of U.S. companies by deeming those earnings to be repatriated	100,000	1	100,000	5	500.000
Totals				100,000		500.000

The time burden estimate relates solely to the making of elections, filing of transfer agreements, and reporting of positions concerning the application of anti-abuse rules, which are the collection of information requirements imposed by the regulations. The IRS believes that the reporting of positions concerning the application of anti-abuse rules is likely to be rare and the time burden minimal relative to that of making an election. Moreover, the burden of filing a transfer agreement only exists if a taxpayer has made certain elections (elections under section 965(h) and (i)) and certain events have subsequently occurred and thus is expected to affect a very small subset of the taxpayers that made those elections. In addition, the time for filing an agreement is expected to be minimal. Thus, the IRS based the time burden estimate on the maximum amount of time that it expected that a taxpayer would expend on making the elections. The time burden

estimate is based on the maximum of five elections (the section 965(h) election, the section 965(i) election, the section 965(n) election, the alternative E&P computation election, and the basis adjustment election) that would potentially be made by a single taxpayer, understanding that that number exceeds the number that the IRS would expect to likely be made by a taxpayer, as it would be uncommon for a taxpayer to make both a section 965(h) election and a section 965(i) election, and many taxpayers will not make a section 965(n) election. Moreover, the IRS assumed that that each election would require one hour to complete the election statement, as each election statement is no more than one page long and requires less than a half dozen unique data points.

The burden estimates are based on the number of people estimated to be required to include amounts in income under sections 951 and 965, whether because they own stock in specified foreign corporations directly or indirectly through other foreign entities, or because they own such stock through domestic pass-through entities. With regard to other reporting required by the same population (i.e. people required to include amounts in income under sections 951 and 965) under new or existing forms, rather than these regulations, the following summary numbers of types of form filers were prepared:

**Related New or Revised Tax Forms**

	New Forms	Revision of Existing Form	Number of Respondents (Estimated)
Form 965	X		50,000 - 100,000
Form 965-A	X		35,000-70,000
Form 965-B	X		15,000-30,000
Form 990-PF		X	<1,000
Form 990-T		X	<1,000
Form 1040		X	27,000-57,000
Form 1041		X	<1,000
Form 1065		X	8,000-10,000
Form 1120		X	12,000-20,000
Form 1120-C		X	<1,000
Form 1120-L		X	<1,000
Form 1120-PC		X	<1,000
Form 1120-REIT		X	<1,000
Form 1120-RIC		X	<1,000
Form 1120-S		X	3,000-5,000

The associated form(s) will be submitted under a different OMB number. The Form 965-C is still in development and has not been determined which OMB number (taxpayer segment) to which it will be associated. The draft form will be released on the IRS draft forms page in September 2019.

The following regulations impose no additional burden. Please continue to assign OMB number 1545-2280 to these regulations.

1.965-2  
1.965-7

1.965-3  
1.965-8

1.965-4

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

A valuation of the burden hours at \$95/hour (2017) times the 500,000 hours leads to a PRA-based estimate of the reporting costs to taxpayers of \$47,500,000. This is a one-time paperwork burden.

The IRS assigns individuals and entities monetization rates based on the respective individual or entity's observed level of economic activity. The \$95.02 monetization rate is the maximum rate the IRS assigns an individual or firm. This rate represents the upper bound of the costs to employ an accountant earning wages at the 90% according to the BLS Occupational Employment Statistics. It also incorporates the cost to provide benefits from the Employer Costs for Employee Compensation Historical Listing (National Compensation Survey) as well a 10% adjustment for overhead.

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 new request for approval. The collection of information in these regulations is contained in §§1.965-2(d)(2)(ii)(B), 1.965-2(f)(2)(iii)(B), 1.965-3(b)(2), 1.965-3(c)(3), 1.965-4(b)(2)(i), 1.965-4(b)(2)(iii)(B), 1.965-7(b)(2), 1.965-7(b)(3)(iii)(B), 1.965-7(c)(2), 1.965-7(c)(3)(iv)(B), 1.965-7(c)(3)(v)(D), 1.965-7(c)(6)(i), 1.965-7(d)(3), 1.965-7(e)(2), 1.965-7(f)(5), and 1.965-8(c).

The Treasury Department and the IRS anticipate substantially all paperwork burdens related to the final regulations to be incurred only with respect to the inclusion year. Any subsequent reporting (such as in connection with a transfer of a section 965(h) net tax liability or section 965(i) net tax liability) would be negligible burdens that implement elections made and payments calculated in the inclusion year. These burden estimates capture only those burdens imposed by the final regulations and do not include burden estimates for forms associated with the statute.

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 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 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.