

Instructions for Form 965-B



Department of the Treasury
Internal Revenue Service

(Rev. January 2021)

Corporate and Real Estate Investment Trust (REIT) Report of Net 965 Tax Liability and Electing REIT Report of 965 Amounts

Section references are to the Internal Revenue Code unless otherwise noted.

Future Developments

For the latest information about developments related to Form 965-B and its instructions, such as legislation enacted after they were published, go to [IRS.gov/Form965B](https://www.irs.gov/Form965B).

What's New

In Parts I, II, and III of the form, line 4 is now designated for use for 2020 reporting.

Changes to the carryback of net operating losses. The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) added section 172(b)(1)(D)(i), which provides for a carryback of any net operating loss (NOL) arising in a taxable year beginning after December 31, 2017, and before January 1, 2021, to each of the five taxable years preceding the taxable year in which the loss arises, including those years in which a taxpayer had a section 965(a) inclusion (section 965 years). A taxpayer applying for a tentative refund resulting from the carryback of an NOL to a section 965 year must include with the Form 1139 an amended Form 965-B to record the amount of the change in the section 965 net tax liability, if any, caused by the NOL carryback, and a statement of explanation to explain the change in the section 965 net tax liability. See [Rev. Proc. 2020-24](#), 2020-18 I.R.B. 750, and [Frequently asked questions about carrybacks of NOLs for taxpayers who have had Section 965 inclusions](#) for additional information regarding the consequences of carrying back an NOL to a section 965 year, including limitations on refunds for taxpayers that carry back NOLs to section 965 years.

Reminders

The IRS has developed Form 965-C, Transfer Agreement Under Section 965(h)(3). The instructions for this form contain information that may be useful to filers of Form 965-B. As such, references to the instructions for Form 965-C have been added to Part I of these instructions for Form 965-B.

Background

On December 22, 2017, section 965 of the Code was amended. As a result of the amendment, certain taxpayers are required to include in income an amount (a section 965(a) inclusion amount) based on the accumulated post-1986 deferred foreign income of certain foreign corporations (specified foreign corporations) that are deferred foreign income corporations (DFICs) that they own either directly or indirectly through other entities. Other taxpayers may have inclusions in income under section 951(a) by reason of section 965 due to ownership of DFICs through domestic pass-through entities that are U.S. shareholders of the DFICs. When referring to both amounts in the preceding two sentences, these instructions use the term "section 965(a) inclusion." Section 965 also allows for a deduction (section 965(c) deduction). Section 965(a) inclusions and corresponding section 965(c) deductions are taken into account based on the last tax year of the DFIC that begins before January 1, 2018.

Certain taxpayers may make certain elections with respect to section 965. Relevant to this form, these elections include (i) an

election to pay a net 965 tax liability over 8 years, and (ii) an election by real estate investment trusts (REITs) to take into account a section 965(a) inclusion and section 965(c) deduction over an 8-year time period beginning in the year such amounts would otherwise have been taken into account. An electing REIT must complete Part III of Form 965-B.

General Instructions

Purpose of Form

This form should be used by corporate taxpayers and REITs. This form is used to report a taxpayer's net 965 tax liability for each tax year in which a taxpayer must pay or include section 965 amounts. In addition, this form is used to report the determination of a taxpayer's net 965 tax liability, whether or not it is to be paid in installments; the payments of a net 965 tax liability; and adjustments of any net 965 tax liabilities outstanding, including any net 965 tax liability of the taxpayer that has been assumed by another taxpayer or any net 965 tax liability that the taxpayer has assumed. For an electing REIT, this form also is used to report the section 965 amounts it elects to take into account over an 8-year time period; the portion of the amounts taken into account for each reporting year; and the amount remaining to be taken into account after a reporting year. In summary, this form is intended to be a cumulative report of a taxpayer's net 965 tax liabilities through payment in full, and for an electing REIT, a report of section 965 amounts taken into account over time until such amounts are fully taken into account. This form must be completed by a taxpayer for every tax year for which the taxpayer has any net 965 tax liability outstanding and not fully paid at any point during the tax year. Furthermore, this form must be completed by an electing REIT for every tax year for which the REIT has any section 965 amounts taken into account in accordance with section 965(m) or not fully taken into account at any point during the tax year.

Definitions

Deferred foreign income corporation (DFIC). A DFIC is, with respect to any U.S. shareholder, any specified foreign corporation (as defined under section 965(e)) of a U.S. shareholder that has accumulated post-1986 deferred foreign income (as defined under section 965(d)(2)) as of November 2, 2017, or December 31, 2017, that is greater than zero.

U.S. shareholder. For tax years of foreign corporations beginning before January 1, 2018, a U.S. shareholder is a U.S. person who owns (directly, indirectly, or constructively) 10% or more of the total combined voting power of all classes of stock of a foreign corporation. A U.S. person for this purpose is defined in section 957(c) of the Code.

Net income tax liability. The taxpayer's regular income tax liability reduced by the credits allowed under subparts A, B, and D of part IV of subchapter A (generally non-refundable credits; specifically, those credits allowed under sections 21 through 30D and sections 38 through 45T).

Net 965 tax liability. The excess of the taxpayer's net income tax liability computed with all section 965 amounts included ("with calculation") over the taxpayer's net income tax liability

without regard to section 965 ("without calculation"). See Regulations section 1.965-7(g)(10) for rules for computing the net 965 tax liability.

Reporting year. The tax year of the return with which this form is being filed.

Who Must File

Any corporate taxpayer who has a net 965 tax liability for any tax year or has any net 965 tax liability remaining unpaid at any time during a tax year, or an electing REIT with any section 965 amount taken into account in accordance with section 965(m) or not taken into account at any time during a tax year, must file this form.

When and Where To File

File Form 965-B with the income tax return of the taxpayer for the reporting year by the due date (taking into account extensions, if any) of the return.

Electronic Filing of Form 965-B

If you file your income tax return electronically, Form 965-B is filed with the electronic income tax return. See the instructions for your income tax return for general information about electronic filing.

Specific Instructions

Amended Report

Check the amended report box at the top of page 1 of the form if Form 965-B is filed with an amended return that is filed to change any reporting related to section 965, regardless of whether a Form 965-B has previously been filed. The amended return box must also be checked for any amended Form 965-B filed with a Form 1139 applying for a tentative refund resulting from the carryback of an NOL to a section 965 year pursuant to section 172(b)(1)(D)(i).

Part I – Report of Net 965 Tax Liability and Election To Pay in Installments

Lines 1 through 8. Report in Part I net 965 tax liability amounts as follows.

On lines 1, 2 and 3, you must continue to report 2017, 2018, and/or 2019 amounts for all columns, including the original computation of net 965 tax liability reported in columns (b) through (g) on a prior-year Form 965-B. Report in column (h) any current tax year net 965 tax liability transferred out (that is, for which you filed a valid transfer agreement as the transferor) or any current tax year subsequent adjustments. Also complete column (i) if applicable.

For 2020 tax years, use line 4 to report section 965(a) inclusions derived solely through interests in pass-through entities that are U.S. shareholders of DFICs.

Use lines 5 through 8 to report other amounts of net 965 tax liability of the taxpayer, such as:

- **Installment liability transfers in.** The taxpayer may, in certain circumstances, and by agreement with the Secretary, assume as transferee the installment payment liability for the transferor's remaining net 965 tax liability and pay it in the same manner as if the taxpayer were the transferor. (See instructions for Form 965-C for more details.) If this occurs, the transferee should complete one of lines 5 through 8 in Part I as follows:
 - In column (a), enter the tax year of the net 965 tax liability for which the installment payment liability is being assumed. For example, if a net 965 tax liability incurred in tax year 2017 (with respect to which an installment payment election was made)

was transferred to a taxpayer (transferee) in 2022, in 2022 the taxpayer (transferee) reports "2017" in column (a).

- Skip columns (b) through (g).
- In column (h), report, as a positive number, the remaining installment payment liability assumed by the taxpayer as transferee. Then report the tax identification number of the transferor in column (i). Payments of such liability would then be reported on the corresponding line of Part II in the same manner as if the taxpayer were the transferor.

For example, assume Transferor had an original net 965 tax liability of \$100 in year 1, when an installment payment election was made. In years 1 through 5, Transferor reports payments of five 8% installments. Then, in year 6, the liability to pay the remaining installments (15%, 20%, and 25%) totaling \$60 is transferred to Taxpayer as transferee. Taxpayer would report on a line in Part I the tax year of the net 965 tax liability for which the installment payment liability is being assumed in column (a); the \$60 amount of the transfer as a positive number in column (h); and the tax identification number of Transferor in column (i). In addition, on the corresponding line in Part II, Taxpayer would report the \$15 installment payment made in column (g), Paid for Year 6 (the installment year as if Taxpayer were paying as Transferor). In the next reporting year, Taxpayer would report all the same information in Part II, plus the payment of \$20 (20% of the original \$100 liability) in column (h), Paid for Year 7. In the following reporting year, Taxpayer would report all the same information as in year 7, plus the final payment of \$25 (25% of the original \$100 liability) in column (i), Paid for Year 8.

Note. If lines 5 through 8 do not provide enough lines to report all the taxpayer's transactions described above, an additional Form 965-B should be used.

Note. Even if a net 965 tax liability was reported on a taxpayer's income tax return and fully paid, because no elections were made, the taxpayer must complete the appropriate line in Part I and report the related payment in Part II, column (b).

Note. If an installment election under section 965(h) was made, the taxpayer must complete the appropriate line in Part I as well as the corresponding line in Part II to report the status of the net 965 tax liability and any related adjustments for the reporting year.

Column (b). Report the taxpayer's net income tax liability for the tax year reported in column (a), with all section 965 amounts included ("with calculation").

Column (c). Report the taxpayer's net income tax liability for the tax year reported in column (a), without regard to section 965 ("without calculation").

Column (d). Report the excess of the taxpayer's "with calculation" reported in column (b) over the "without calculation" reported in column (c). This is the taxpayer's net 965 tax liability for the tax year reported in column (a).

For tax year 2020, corporations are required to enter the amount from Form 965-B, Part I, column (d), line 4, on Form 1120, Schedule J, Part III, line 22, or on the corresponding line of other corporate income tax returns.

Column (e). If the taxpayer made an election to pay a net 965 tax liability in installments over 8 years as provided for in section 965(h) and in the manner described in Regulations section 1.965-7(b)(2), enter a check mark in the "Yes" column. If "Yes," skip column (f) and enter the amount from column (d) in column (g). Otherwise, enter a check mark in the "No" column. If "No," enter the amount from column (d) in column (f) and skip column (g).



The actual payment of the first installment is due no later than the due date of the return for the tax year without extension, even if the election is made on a return filed by the extended due date.

A REIT electing to account for its section 965 amounts over 8 years may not make an installment election for any net 965 tax liability for a tax year in which a portion of such section 965 amounts is taken into account. If an election is made to account for a REIT's section 965 amounts over 8 years, the portion of the net 965 tax liability attributable to the section 965 amounts included in each year must be paid in full for that year.

Column (h). Report the following in column (h):

- Report, as a negative number, any net 965 tax liability for the year reported in column (a) that has been transferred out to a transferee by agreement with the Secretary, under which the transferee becomes liable for the remaining installments due on the liability in the same manner as if such transferee were the taxpayer. (See instructions for Form 965-C for more details.) In addition, provide the tax identification number of the transferee in column (i). For example, if the taxpayer (transferor) incurred a net 965 tax liability in tax year 2017, for which an installment payment election was made, then properly transferred the liability net of payments previously made to a transferee in 2022, the taxpayer (transferor) would report, on line 1, column (h), as a negative number, the amount of the net liability transferred out. The making and reporting of payments on such liability should generally cease. However, reporting with respect to the net 965 tax liability is still required for the reporting year if any net 965 tax liability of the taxpayer remains unpaid at any time during the reporting year.
- Report any transfer in of a net 965 tax liability from a transferor by a transferee (see instructions for [lines 1 through 8](#), earlier).
- Report subsequent adjustments to the net 965 tax liability for the tax year reported in column (a) for which no amended return was required to be filed, such as an audit adjustment. A liability increase should be reported as a positive number and a decrease as a negative number.

Note. An adjustment of a net 965 tax liability elected to be paid in installments generally is prorated to all installments.

For example, for tax year 2017, a taxpayer (TP) reported a \$100 net 965 tax liability for which an installment election was made. For each of years 1 through 5, TP pays and reports an \$8 installment. Also, in year 5, an audit adjustment increases the 2017 net 965 tax liability to \$150, a \$50 positive adjustment. No amended return was required and there was no negligence, intentional disregard, or fraud on the part of TP. This adjustment would be prorated to all the installments. TP would report the \$50 adjustment in Part I, line 1, column (h) as a positive number, so the reported adjusted liability would be \$150. In addition, TP would pay and report (in addition to the original \$8 installment reported for year 5) \$20 on Part II, line 1, column (f), representing 8% of the adjustment prorated to each of years 1 through 5, for which the installment due date had already arrived. For year 6, TP would pay and report \$22.50 (15% of the adjusted liability); for year 7, \$30 (20% of the adjusted liability); and for year 8, \$37.50 (25% of the adjusted liability).

In a case in which a net 965 tax liability for a tax year is both adjusted and transferred, report the net adjustment/transfer number in column (h), a transferee tax identification number in column (i), and provide a statement attached to this form which includes details of the amounts netted in column (h).

Part II – Record of Amount of Net 965 Tax Liability Paid by the Taxpayer

Part II is intended to be a cumulative record of the actual payments the taxpayer has made with respect to the net 965 tax liabilities reported in Part I.

Line 1. This line records the actual payments with respect to the net 965 tax liability reported on line 1 of Part I for the tax year 2017.

The general installment payment schedule for a net 965 tax liability subject to an election to pay in installments is:

1. 8% of the net 965 tax liability payable in year 1, the year of the section 965(a) inclusion,
2. 8% of the net 965 tax liability payable in year 2,
3. 8% of the net 965 tax liability payable in year 3,
4. 8% of the net 965 tax liability payable in year 4,
5. 8% of the net 965 tax liability payable in year 5,
6. 15% of the net 965 tax liability payable in year 6,
7. 20% of the net 965 tax liability payable in year 7, and
8. 25% of the net 965 tax liability payable in year 8.

If, for any reason, the actual payment differs from the schedule, report the actual payment made.

Example. If the reporting year is 2020 and the taxpayer is reporting a 2017 net 965 tax liability for which an installment payment election was made, because the 2020 reporting year is "Year 4" with respect to a 2017 net 965 tax liability being paid in installments, installment payments reported in Part II on line 1, the line for 2017, should generally be:

- In column (b), Paid for Year 1, report 8% of the 2017 net 965 tax liability;
- In column (c), Paid for Year 2, report 8% of the 2017 net 965 tax liability;
- In column (d), Paid for Year 3, report 8% of the 2017 net 965 tax liability; and
- In column (e), Paid for Year 4, report 8% of the 2017 net 965 tax liability.

Column (a). For lines 5 through 8, report the tax year of the section 965(a) inclusion or the net 965 tax liability for which an installment payment liability is being assumed, as reported on the corresponding line of Part I, column (a).

Columns (b) through (i). These columns are used to record the taxpayer's cumulative payments, made each reporting year, for the net 965 tax liability reported on the corresponding line in Part I.

If no installment election is made, the net 965 tax liability reported in Part I, column (f), should be paid and reported on the corresponding line of Part II, column (b), Paid for Year 1, and the remaining payment columns (c) through (i) left blank.

If an installment election is made, and no transfers, acceleration events, or adjustments occur during the 8-year installment period, then:

- 8% of the net 965 tax liability should be paid and reported in column (b), Paid for Year 1 (the year of the installment payment election).
- In the next reporting year, the relevant information from the prior reporting year should be carried forward, plus 8% of the net 965 tax liability should be paid and reported in column (c), Paid for Year 2.
- In future reporting years, the payments and payment reporting should continue similarly in accordance with the general installment payment schedule described above.

If the taxpayer transfers out a net 965 tax liability, then the making and reporting of installment payments should generally

cease for the transferred net 965 tax liability in the year of transfer. However, reporting with respect to the net 965 tax liability is still required for the reporting year if any net 965 tax liability of the taxpayer remains unpaid at any time during the reporting year.

If an acceleration event occurs, then the unpaid portion of all remaining installments is generally due on the date of the acceleration event and should be paid and reported in the column for the year in which the acceleration event occurs. However, reporting with respect to the net 965 tax liability is still required for the reporting year if any net 965 tax liability of the taxpayer remains unpaid at any time during the reporting year.

If an adjustment occurs to a net 965 tax liability for which an installment election has been made, including on an amended return, the adjustment generally should be prorated over all the installment payments. For the part of the adjustment prorated to installments whose payment date has already arrived, adjust the payment for the reporting year in which the adjustment is made and report accordingly. For the part of the adjustment prorated to installments for which the payment date has not yet arrived, pay and report in accordance with the installment schedule.

Payments should include both actual installment payments made and excess payments of other income tax liabilities applied to the taxpayer's net 965 tax liability.

Column (j). Report the net 965 tax liability remaining unpaid after the payment for the reporting year. This amount should equal the amount reported on the corresponding line in Part I, column (d), plus or minus any amount reported on the corresponding line in Part I, column (h), less any payments reported in Part II, columns (b) through (i).

Column (k). For each line, report only the payment made (if any) for the reporting year.

For tax year 2020, corporations are required to enter the amount from Form 965-B, Part II, column (k), line 4, on Form 1120, Schedule J, Part II, line 12, or on the corresponding line of other corporate income tax returns.

Part III – Electing REIT Report of Section 965 Amounts Accounted for Over Time

Column (b). Report the amount of the section 965(a) inclusion and the section 965(c) deduction to which the election relates.

Columns (c) through (j). Report the portion of the section 965(a) inclusion and 965(c) deduction taken into account for the year to which the election relates and subsequent years in the elected 8-year time period. The reporting should generally follow the schedule immediately below.

The general schedule for taking into account the section 965(a) inclusion and section 965(c) deduction is:

- 8% of the amounts are taken into account in year 1 (year to which the election relates),
- 8% of the amounts are taken into account in year 2,
- 8% of the amounts are taken into account in year 3,
- 8% of the amounts are taken into account in year 4,
- 8% of the amounts are taken into account in year 5,
- 15% of the amounts are taken into account in year 6,
- 20% of the amounts are taken into account in year 7, and
- 25% of the amounts are taken into account in year 8.

For example, if the reporting year is 2020, and a REIT is reporting a 2017 section 965(a) inclusion and section 965(c)

deduction for which an election was made to report the section 965 amounts over time, because the 2020 reporting year is "Year 4" with respect to the 2017 section 965 amounts, the portions of the amounts taken into account should generally be reported as:

- Column (c), Portion Accounted for in Year 1, report 8% of the 2017 section 965(a) inclusion and 8% of the section 965(c) deduction,
- Column (d), Portion Accounted for in Year 2, report 8% of the 2017 section 965(a) inclusion and 8% of the section 965(c) deduction,
- In column (e), Portion Accounted for in Year 3, report 8% of the 2017 section 965(a) inclusion and 8% of the section 965(c) deduction, and
- In column (f), Portion Accounted for in Year 4, report 8% of the 2017 section 965(a) inclusion and 8% of the section 965(c) deduction.

In future reporting years, report the amounts taken into account in prior years in the appropriate columns plus the amounts taken into account in the reporting year in the appropriate column in accordance with the above general schedule for taking into account the section 965 amounts, assuming no acceleration events occur.

If an acceleration event occurs, the section 965(a) inclusion and 965(c) deduction remaining to be taken into account must be taken into account as of the day before the acceleration event occurs and reported for the year in which the acceleration event occurs. An acceleration event is a liquidation, sale, exchange, or other disposition of substantially all of the assets of the REIT (including in a bankruptcy proceeding or similar case), or a cessation of business by the REIT.

Column (k). Report the amount of the section 965(a) inclusion and section 965(c) deduction remaining to be taken into account at the end of the reporting year. This should equal the amount reported in column (b) less any amounts reported in columns (c)-(j).

Column (l). For each line, report only the portion of the section 965(a) inclusion and section 965(c) deduction taken into account for the reporting year.

Paperwork Reduction Act Notice

We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated burden for business taxpayers filing this form is approved under OMB control number 1545-0123 and is included in the estimates shown in the instructions for their business income tax return.