



LARGE BUSINESS AND  
INTERNATIONAL DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
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MEMORANDUM FOR ALL LB&I AND SB/SE EMPLOYEES ASSIGNED TO IRC 965  
EXAMINATIONS

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SUBJECT: Interim Guidance for BBA Partnership Examinations (the Centralized  
Partnership Audit Regime of 2015) with IRC 965 Issues - Statute  
Considerations, Examination and Classification

The purpose of this memorandum is to provide guidance for examiners regarding special statute rules while conducting BBA (Bipartisan Budget Act) Partnership Examinations with an [IRC 965](#): Treatment of Deferred Foreign Income Upon Transition to a Participation Exemption System of Taxation transition tax issue identified. See [LBI-04-1120-0020](#) for guidance for other cases with an IRC 965 transition tax issue identified.

**Background/Source(s) of Authority:** This memorandum provides additional guidance to employees regarding the six-year statute of limitations for BBA partnership returns with an [IRC 965](#) transition tax adjustment. More specifically, this additional guidance applies to all BBA partnership cases within the IRC 965 Campaign, IRC Section 965 for Individuals Campaign and any other cases where available information indicates that a BBA partnership incorrectly reported or failed to report an IRC 965 inclusion and/or deduction.

**Procedural Change:** The updated procedures are found on Attachment 1.

**Effect on Other Documents:** This guidance will be incorporated into [IRM 4.31.9](#), Centralized Partnership Audit Regime (BBA) Field Examination Procedures, within two years of the date of this memo.

**Contact:** For IRC 965 Campaign contact: [Bharati.Shenoi@irs.gov](mailto:Bharati.Shenoi@irs.gov). For the IRC Section 965 for Individuals Campaign contact: [LBI.IIC.Fgn.Entities.ipn@irs.gov](mailto:LBI.IIC.Fgn.Entities.ipn@irs.gov).

Attachment

Distribution: [www.irs.gov](http://www.irs.gov)

## **Attachment 1** – IG LB&I-04-0821-0009

### **IRM 4.31.9.xx (MM-DD-YYYY)**

Guidance for Examiners Regarding the IRC 965(k) Six-Year Statute of Limitations on Assessment for Returns with IRC 965 Issues.

### **Scope of Examination**

The [IRC 965](#) net tax liability is generally applicable in the 2017 and/or 2018 tax years and IRC 965(k) generally provides that the statute of limitations on assessment will not expire before six-years after the return for that tax year is filed. The IRC 965(k) six-year statute is limited to assessment of the IRC 965 net tax liability, the calculation of which includes (but is not limited to) the IRC 965(a) inclusion and IRC 965(c) deduction. An election under IRC 965(h) allows a taxpayer to pay the IRC 965(h) net tax liability in installments over an eight-year period. The amounts deferred under IRC 965(h) are liabilities for and assessed in the original year of inclusion, not the year of payment, accordingly, the IRC 965(k) statute only applies to the IRC 965 inclusion year (that is, **the IRC 965(k) six-year statute does not apply to years after the initial calculation of the net tax liability in which only the IRC 965(h) installment payment is reported**).

The BBA regime is applicable to 2018 partnership returns by default (unless a partnership makes a valid election out of BBA with a timely filed 2018 partnership return). A 2017 partnership is NOT subject to BBA unless they make a timely and valid early election into the centralized partnership audit regime in accordance with the regulations.

Local counsel should be consulted early in the examination to help determine the relevant tax years and whether any special statute of limitations provisions apply. However, it is ultimately the responsibility of the examination group to determine which tax years to open for examination. The purpose of this memorandum is to provide several necessary deviations from the IRM for BBA partnerships.

### **Statute of Limitations – Bipartisan Budget Act of 2015 (BBA) returns**

Under BBA, any adjustment to a partnership-related item (PRI) must be determined at the partnership level. [IRC 6221\(a\)](#). A PRI is any item or amount with respect to the partnership that is relevant in determining the tax liability of any person under chapter 1. [IRC 965](#) amounts are PRIs.

IRC 6235 provides the period in which adjustments (not assessments) to PRIs can be made. Any tax attributable to a PRI adjustment is a tax liability for the adjustment year (if the partnership is paying the imputed underpayment) or the reporting year (if the partnership has elected to push out the adjustments to its partners). IRC 6226(b)(1), 6232(a); Treas. Reg. 301.6226-3(a). The adjustment year is the year in which the adjustment becomes final, and the reporting year is

the year for which the partner is required to report any additional tax attributable to a PRI adjustment and not the year to which the adjustments relate. Treas. Reg. 301.6241-1(a)(1); 301.6226-3(a). As [IRC 6235](#) is a period of limitations on making adjustments to the partnership and not a period of limitations on making assessments, IRC 6235 does not affect the time to assess any tax attributable to a PRI adjustment. Likewise, because IRC 6235 is a period of limitations on making adjustments, a suspension or extension of the time to assess tax for the year to which the adjustments relate does not affect the period of limitations to make the adjustments under BBA.

IRC 965(k) provides a minimum period to assess the net tax liability under [IRC 965](#) and, therefore, does not affect the period of limitations on making adjustments under [IRC 6235](#). Even if IRC 965(k) extended a partner's period of limitations on assessment for a particular year with respect to a net tax liability under IRC 965, this would not extend the IRS's ability to make adjustments with respect to the partnership if the IRC 6235 period was closed.

Under BBA procedures, examiners and their managers who are assigned a BBA case must control the [IRC 6235\(a\)\(1\)](#) date. This is generally the date by which the Notice of Proposed Partnership Adjustment (NOPPA) must be mailed. IRC 6231(b)(1). Timely issuance of a NOPPA is a prerequisite to the IRS's ability to subsequently issue a Notice of Final Partnership Adjustment (FPA) and eventual assessment. Therefore, examiners control the IRC 6235(a)(1) date when working BBA cases in order to keep open the period of limitations on making adjustments and so a NOPPA can be mailed proposing adjustments to PRIs before the expiration of the 6235(a)(1) date.

The [IRC 6235\(a\)\(1\)](#) date is generally three years from when the return is filed (or the return due date, if later) or three years from the date an administrative adjustment request is filed<sup>1</sup>. The IRC 6235(a)(1) date can be extended by agreement (IRC 6235(b)) or in special circumstances. Pursuant to the authority under IRC 6235(c)(2), the period of limitations on making adjustments under BBA is extended from three years to six years "if any partnership omits from gross income an amount properly includible therein and such amount is described in subparagraph (A) or (C) of [IRC 6501\(e\)\(1\)](#)." If this special rule applies, the IRS has six years to make adjustments to any of the PRIs for that taxable year, not just the ones that relate to amounts described in subparagraph (A) or (C) of IRC 6501(e)(1). IRC 6501(e)(1)(A) generally applies if the taxpayer omits from gross income an amount greater than 25 percent of the amount of gross income stated in the return, and [IRC 6501\(e\)\(1\)\(C\)](#) applies if the taxpayer omits from gross income an amount properly includible under [IRC 951\(a\)](#). IRC 951(a) provides that U.S. shareholders of controlled foreign corporations (CFCs) (and other specified foreign corporations (SFCs) that are treated as CFCs for

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<sup>1</sup> If updating the [IRC 6235\(a\)\(1\)](#) statute due to the filing of an AAR, the examiner must make a mandatory BBA POC referral. Also see [Interim Guidance of April 1, 2020 for AARs under the BBA](#).

purposes of [IRC 951](#) pursuant to IRC 965(e)(2)) must include in their gross income their pro rata share of [IRC 965](#) taxable income amounts.

[IRC 6235\(c\)\(2\)](#) gives the IRS a minimum of six years to adjust any PRI of the partnership for a taxable year if the partnership excludes an amount that is properly includible under [IRC 951\(a\)](#). The following provides an analysis of each of the broad categories of adjustments.

- [IRC 965\(a\) inclusion amounts and IRC 965\(a\) inclusions](#). [IRC 965\(a\)](#) inclusion amounts and IRC 965(a) inclusions are gross income required to be included under [IRC 951\(a\)](#). Accordingly, if any adjustments are needed to such amounts reported by a BBA partnership, the IRS would have six years under [IRC 6235\(c\)\(2\)](#) to make adjustments as opposed to three years.
- [IRC 965\(c\) deduction amounts and IRC 965\(c\) deductions](#). Because [IRC 965\(c\)](#) deduction amounts and IRC 965(c) deductions are not gross income, they are not required to be included under [IRC 951\(a\)](#). Therefore, if the partnership fails to properly include a IRC 965(c) deduction amount or IRC 965(c) deduction, such failure would not result in the application of the special rule under [IRC 6235\(c\)\(2\)](#) which would mean that the IRS would have three years to make adjustments to the partnership for that taxable year (assuming no other special rules applied).
- [Foreign tax amounts](#). Foreign tax amounts are currently not items required to be reported by an [IRC 958\(a\)](#) U.S. shareholder partnership and, therefore, are not PRIs governed by BBA and [IRC 6235](#). However, the partnership is required to report amounts necessary to determine foreign tax amounts, including [IRC 965\(a\)](#) inclusion amounts and IRC 965(c) deduction amounts.

As discussed above, the IRS may adjust [IRC 965\(a\)](#) inclusion amounts and IRC 965(c) deduction amounts required to be reported by a partnership. These amounts would be PRIs of the partnership for the taxable year in which they are required to be reported, as they are required to be shown on the return of the partnership or maintained in its books and records and are relevant in determining the liability of any person under chapter 1 (i.e. the corresponding IRC 965(a) inclusions, IRC 965(c) deductions, and foreign tax amounts reported by the partners). Treas. Reg. 301.6241-1(a)(6)(ii). Accordingly, the IRC 965(a) inclusion amounts and IRC 965(c) deduction amounts required to be reported by the partnership may only be adjusted for the taxable year for which the items were reported or required to be reported if the [IRC 6235](#) period of limitations on making adjustments is open for the partnership for that taxable year. Before updating or relying on an IRC 6235(a)(1) expansion per IRC 6235(c) always contact Counsel and make a contemporaneous [BBA point of contact \(POC\)](#) mandatory referral before relying upon or updating the IRC 6235(a)(1) date.

To protect the government’s interest, the field group should request an extension to the [IRC 6235\(a\)\(1\)](#) date within 14 months of expiration. To solicit an extension for the 6235(a)(1) date use a [Form 872-M](#). See [Interim Guidance on the Centralized Partnership Audit Regime Field Exam Procedures](#) and utilize [Form 15271, Bipartisan Budget Act \(BBA\) Partnership Adjustment Statute Extension Check Sheet](#).

Ensure that cases transferred from the team/group are received by Technical Services with the following periods of time remaining on the [IRC 6235\(a\)\(1\)](#) date.

<b>Types of Cases</b>	<b>Time Remaining on Statute</b>
No change (no adjustment)	6 months
With adjustments (no Appeals)	12 months
With adjustment (to Appeals)	18 months

If the case cannot be transferred out of the field exam group and received by Technical Services according to the timeframes shown above, you must contact a [BBA POC](#) for imminent statute procedures.

For IRC 965 Campaign or IRC Section 965 for Individuals Campaign cases Form 3999 is not required for a BBA return if the entity level three-year [IRC 6235\(a\)\(1\)](#) statute expires within 180 days of the assignment of the associated BBA return to the field manager’s group and the field manager documents either the return will be no changed or reliance upon the IRC 6235(c)(2) statute.

An alpha statute code, such as RR, cannot be used for BBA partnerships that are being opened under [IRC 6235\(c\)\(2\)](#). Instead of using an alpha statute, all BBA partnerships that are being examined under the IRC 6235(c)(2) statute will have a numeric statute date equal to the 6235(c)(2) statute date of the partnership. Use Tracking Code 0464 for 965 Campaign Partnerships that are subject to BBA.