

## **IRM PROCEDURAL UPDATE**

**DATE: 02/06/2026**

**NUMBER: 26U0210**

**SUBJECT: Added Information for IRC 965 Employees Regarding the IRC 965 (i) Penalties and CP 234 Accounts**

**AFFECTED IRM(s)/SUBSECTION(s): 21.5.13**

**CHANGE(s):**

**IRM 21.5.13.2.12 Added new subsection (12) regarding IRC 965 (i) Election Information and Penalties.**

(1) IRC 965 was amended by P.L. 115-97 (Tax Cuts and Jobs Act) and requires certain taxpayers to pay a transition tax on the untaxed foreign earnings of certain specified foreign corporations as if those earnings had been repatriated to the United States. P.L. 115-97 was signed into law December 22, 2017.

(2) A shareholder of an S corporation that is a United States shareholder of a deferred foreign income corporation can elect under IRC 965(i) to defer the assessment and payment of the IRC 965 net tax liability with respect to the S corporation (the "IRC 965(i) net tax liability" or the "S corporation-related net 965 tax liability") until a triggering event occurs. See Treas. Reg. 1.965-7(c).

(3) A penalty under IRC 965(i)(7)(C) is assessed to shareholders who fail to annually report the amount of the unpaid S corporation-related net 965 tax liability.

(4) If a taxpayer fails to report an intact 965(i) liability annually by not attaching a complete Form 965-A, Individual Report of Net 965 Tax Liability, to their income tax return reflecting the amount of the 965(i) deferred liability for the reporting year, then refer the case to SBSE Brookhaven for penalty assessment.

(5) The penalty under IRC 965(i)(7)(C) is 5% of the deferred S corporation-related net 965 tax liability that is not timely reported.

**Note:** First Time Abatement and Reasonable Cause exceptions are not available for this penalty. AM assistors will only be sending out the no consideration letters and explaining the penalty and providing information regarding the penalty. The SBSE Brookhaven 965 Team will be assessing the penalty and considering any timely requests that are sent to them.

(6) If the taxpayer requests abatement of the 965(i) penalty (TC 240 PRN 707), see the chart below for handling instructions.

**Note:** Refer to IRM 20.1.9.16, IRC 965(i)(7)(C) - Failure to Annually Report Deferred S Corporation-Related Net 965 Tax Liability.

<b>If</b>	<b>And</b>	<b>Then</b>
965(i) liability was not un/underreported because the liability triggered that year (or prior),	The 965 tax was paid or entered into 965(h) installment plan,	Route correspondence (or complete Form 4442 if phone call) to CSCO 965 Team for TC 240 PRN 707 correction.
965(i) liability was not un/underreported because a transfer agreement was in place to reduce their 965(i) liability in part or in full,	The TC 240 PRN 707 was based on the full liability without regard to the transfer agreement,	Route correspondence (or complete Form 4442 if phone call) to CSCO 965 Team for TC 240 PRN 707 correction.
965(i) liability was not un/underreported because a transfer agreement was in place to reduce their 965(i) liability in part,	The TC 240 PRN 707 was based on the adjusted liability considering transfer agreement(s),	The TC 240 PRN 707 is correct and cannot be removed because there was an un/underreported 965(i) liability.
965(i) liability was properly reported on amended return,	The amended return was filed PRIOR to the return due date (or extended return due date),	Route correspondence (or complete Form 4442 if phone call) to CSCO 965 Team for TC 240 PRN 707 correction.
Request to abate TC 240 PRN 707 based on reasonable cause,	BLANK	There is no reasonable cause exception for this penalty. Do NOT abate penalty, see paragraph 7 below for handling instructions.

(7) For Reasonable Cause or First Time Abatement requests, send the taxpayer a Letter 916C and input a TC 290 for 0.00 with RC 190 following IRM 21.5.3.4.6.3 No Consideration Procedures. Insert the following text in an open paragraph depending on the type of abatement requested.

- For Reasonable Cause: There is no reasonable cause exception for this penalty. If the Form 965-A was filed reporting the liability, send documentation showing the Form 965-A was filed with your original tax return.

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- For First Time Abatement: First Time Abatement is not applicable to this penalty. If the Form 965-A was filed reporting the liability, send documentation showing the Form 965-A was filed with your original tax return.

### **IRM 21.5.13.3 Updated link to the E-4442 IRM.**

(1) The IMF transition tax program is centralized at the Brookhaven Accounts Management Campus (BAMC). Correspondence referencing IRC 965/Repatriation tax / loose transition tax statement, or internal transcripts (category code 965C), or an amended return referencing the same as above (category code 965X), should be reassigned per the AM Site Specialization Temporary Holding Numbers. Phone calls are centralized in Brookhaven. If not IRC 965 trained to answer these calls, transfer the caller to 1171/1172. Advise the taxpayer to have the notice, payment information or any pertinent information available before transferring the call. Provide the IRC 965 IMF telephone number of 855-223-4017, Ext 729 and the hours of 7:00 a.m. to 7:00 p.m. local time. If the taxpayer refuses to be transferred, research for an open control or open IRC 965 CII Case. If an open control is located, follow paragraph (1)(c) or if an open IRC 965 CII Case is located, then follow paragraph 2 of IRM 21.3.5.4.1 , When to Prepare a Referral. If there is no open control or IRC 965 CII case, follow the instructions in paragraph 2 to create a Form E-4442 .

(2) If a Puerto Rico IRC 965 employee trained for phone calls only receives an IRC 965 call that they are not able to resolve, research for an open control or open IRC 965 CII Case. If an open control is located, follow paragraph (1)(c) or if an open IRC 965 CII Case is located, then follow paragraph 2 of IRM 21.3.5.4.1, When to Prepare a Referral. If there is no open control or IRC 965 CII case, prepare a Form 4442 to BSC for all adjustment and credit transfer actions and provide a timeframe of 60 days. Fax the Form 4442 to the number shown in the Form 4442 Referral Fax Numbers. The fax number is located under Accounts Management for Brookhaven. Include any relevant information the taxpayer provides such as a notice, payment information and any pertinent information to the issue. For further information on preparing an E-4442, please see IRM 21.3.5.4.2.1.1, Preparing an e-4442/4442, paragraph 5 or IRM 21.3.5.4.1, When to Prepare a Referral.

(3) After the Puerto Rico IRC 965 Leads or AM P&A Analyst approves the e-4442, they are authorized to create the CII Case.

- Create a CII case and use Work Type IMF, Doc Type 4442, Category 965C, and Function/Program Code 710-85371.
- Attach Form 4442 to the new CII case and reassign per the AM Site Specialization Temporary Holding Numbers.
- For sites that do not have access to CII, prepare e-4442 and e-fax directly to Brookhaven to the number shown in the Form 4442 Referral Fax Numbers.

#### **IRM 21.5.13.4 Updated link to the E-4442 IRM.**

(1) The BMF IRC 965 transition tax program is centralized at the Ogden Accounts Management Campus (OAMC). For correspondence referencing IRC 965/Repatriation tax/loose transition tax statement (category code 965C), or an amended return referencing IRC 965/Repatriation tax/transition tax statement (category code 965X), reassign per AM Site Specialization Temporary Holding Numbers. If a Cincinnati IRC 965 employee trained for phone calls only receives an IRC 965 call that they are not able to resolve, research for an open control or open IRC 965 CII case. If an open control is located, follow paragraph (1)(c) or if an open IRC 965 CII Case is located then follow paragraph 2 of IRM 21.3.5.4.1 , When to Prepare a Referral. If there is no open control or CII case, then prepare Form 4442, Inquiry Referral , to OAMC for all adjustment and credit transfer actions and provide a timeframe of 60 days. Include any relevant information the taxpayer provides such as a notice, payment information and any pertinent information to the issue. For further information on preparing an E-4442, please see IRM 21.3.5.4.2.1.1 , Preparing an e-4442/4442, paragraph 5 or IRM 21.3.5.4.1 , When to Prepare a Referral. After the Cincinnati/Ogden IRC 965 Leads or AM P&A Analyst approves the e-4442, they are authorized to create the CII Case:

- Create a CII case with Doc Type 4442, Category 965C, and Function/Program Code 710-85376.
- Attach Form 4442 to the new CII case and reassign to IDRS number 0437386882.
- For sites that do not have access to CII, prepare e-4442 and e-fax directly to Ogden at # [REDACTED] # . The IRC 965 team will create the CII case.

(2) If not IRC 965 trained to answer these calls, transfer to Ext 1038. Advise the taxpayer to have the notice, payment information or any pertinent information available before transferring the call. Provide the IRC 965 BMF telephone number of 800-830-5215, Ext 708 and the hours of 7:00 a.m. to 7:00 p.m. local time. If the taxpayer refuses to be transferred, research for an open control or open IRC 965 CII case. If there is no open control or IRC 965 CII case, follow the instructions in paragraph 1 to prepare a Form E-4442.

#### **IRM 21.5.13.4.9 Added new subsection (9) with instructions for working CP 234's on IRC 965 accounts.**

(1) Per Notice 2018-26, no underpayment (estimated tax) penalty will be imposed under IRC 6654 or IRC 6655, with respect to a taxpayer's net tax liability under IRC 965. Only include the taxpayer's regular tax into the estimated tax penalty calculation. The tax reported under IRC 965 is not subject to the estimated tax penalty calculation.

(2) Refer to IRM 21.7.11.4.8, CP 234, Potential ES Penalty on Transcript on Forms 1120, 1120F, 1120L, 1120M, 1041, 990C, for further information on processing the CP 234.

**Note:** Only IRC 965 trained employees should be working these cases. All non-trained employees should reassign the case to the IRC 965 subject matter experts.