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Instructions for Form 965-C

(December 2019)

Transfer Agreement Under Section 965(h)(3)

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

Future Developments

For the latest information about developments related to Form 965-C and its instructions, such as legislation enacted after they were published, go to IRS.gov/Form965C.

Background

On December 22, 2017, section 965 of the Code (section 965) 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) they own either directly or indirectly through other entities.

Taxpayers may make an election under section 965(h) to pay the section 965(h) net tax liability (as defined later in these instructions) in installments over a term of 8 years. However, if an acceleration event (as defined in section 965(h)(3) and Regulations section 1.965-7(b)(3)) occurs, the unpaid portion of all remaining installments is generally due on the date of the acceleration event. If a covered acceleration event (as defined below) occurs, such event will not be considered to accelerate payment of the section 965(h) net tax liability if the transferee enters into an agreement to be liable for the remaining installments due on the liability in the same manner as if such transferee were the original electing taxpayer.

General Instructions

Purpose of Form

Form 965-C should be used by an eligible section 965(h) transferor and an eligible section 965(h) transferee to enter into a transfer agreement under section 965(h)(3). This form sets forth the information and representations that must be provided to meet the requirements of Regulations section 1.965-7(b)(3)(iii)(B)(4) in order to enter into a transfer agreement under section 965(h)(3). If an eligible section 965(h) transferor and an eligible section 965(h) transferee properly complete and file this Form 965-C with respect to a covered acceleration event in accordance

with these instructions, they will be considered to have properly entered into a transfer agreement under section 965(h)(3). However, the Commissioner may review the transfer agreement and may ask additional questions or require additional information, including, for example, information about the eligible section 965(h) transferee's ability to pay the outstanding section 965(h) net tax liability. If the Commissioner determines that the transfer agreement contains a material misrepresentation or material omission, or if the additional information requested is not provided within a reasonable time frame (as communicated by the Commissioner), then the transfer agreement may be rejected as of the date of the original acceleration event. Alternatively, the Commissioner may determine that an acceleration event has occurred as of the date the transfer agreement was found to have a material misrepresentation or material omission.

Definitions

Eligible section 965(h) transferee. An eligible section 965(h) transferee is a single U.S. person that is not a domestic pass-through entity and that meets any one of the six requirements listed in Regulations section 1.965-7(b)(3)(iii)(B)(1) (i) through (vi).

Eligible section 965(h) transferor. An eligible section 965(h) transferor is a U.S. person with respect to which a covered acceleration event occurs. See the instructions for Part III, line 1, for when a covered acceleration event occurs.

Section 965(h) net tax liability. In general, the section 965(h) net tax liability with respect to any U.S. shareholder is the excess (if any) of the U.S. shareholder's net income tax liability computed with all section 965 amounts included over the U.S. shareholder's net income tax liability without regard to section 965. For details, see section 965(h)(6). Also see Regulations section 1.965-7(g)(10) for rules for computing the net 965 tax liability.

Who Must File

The eligible section 965(h) transferor and the eligible section 965(h) transferee with respect to a covered acceleration event must file Form 965-C to meet the requirements of the eligible section 965(h) transferee exception under Regulations section 1.965-7(b)(3)(iii). Form 965-C may

only be filed by an eligible section 965(h) transferor and eligible section 965(h) transferee.

When and Where To File

Within 30 days of the covered acceleration event, the original Form 965-C must be mailed to the IRS's Memphis Compliance Service Collection Operations at the following address:

Memphis CSCO
5333 Getwell Road MS 81
Memphis, TN 38118

In addition, both the eligible section 965(h) transferor and the eligible section 965(h) transferee must attach a duplicate copy of Form 965-C to their tax returns for the taxable years during which the covered acceleration event occurs, filed by the due date for the returns (with regard to any extension of time to file).



No extension of time to file Form 965-C will be granted, and relief is not available under Regulations section 301.9100-2 or 301.9100-3 to enter into a transfer agreement late.

A copy of the eligible section 965(h) transferor's most recent Form 965-A or Form 965-B, as applicable, is required to be included with Form 965-C.

Note. If the section 965(h) net tax liability is adjusted or changed on an amended return after the due date for filing the transfer agreement, an amended transfer agreement is not required and should not be filed.

Specific Instructions

Part I – Transferor Information

Use Part I to provide the identifying information of the eligible section 965(h) transferor. Enter the transferor's complete legal name, taxpayer identification number, and street address or post office box.

Part II – Transferee Information

Use Part II to provide the identifying information of the eligible section 965(h) transferee. Enter the transferee's complete legal name, taxpayer

identification number, and street address or post office box.

Part III – Acceleration Event

Line 1. Indicate the type of acceleration event leading to this transfer agreement by checking box a, b, or c.

Check box a if the acceleration event leading to this transfer agreement is described in Regulations section 1.965-7(b)(3)(iii)(A)(1)(i) or (ii). If you check box a, answer the three questions below box a.

Check box b if the acceleration event leading to this transfer agreement is described in Regulations section 1.965-7(b)(3)(iii)(A)(1)(iii).

Check box c and box c(1) if the acceleration event leading to this transfer agreement is described in Regulations section 1.965-7(b)(3)(iii)(A)(1)(iv). Also answer the question below box c(1).

Check box c and box c(2) if the acceleration event leading to this transfer agreement is described in Regulations section 1.965-7(b)(3)(iii)(A)(1)(v). Also answer the question below box c(2).

Check box c and box c(3) if the acceleration event leading to this transfer agreement is described in Regulations section 1.965-7(b)(3)(iii)(A)(1)(vi). Also answer the question below box c(3).

Covered acceleration event. A person satisfies the requirement to have a covered acceleration event if that person is able to check box a, b, or c based on the above instructions.

Line 2. Enter the date of the covered acceleration event in the space provided.

Line 3. Provide a detailed description of the covered acceleration event in the space provided.

Part IV – Report of Unpaid Section 965(h) Net Tax Liability Being Assumed

Line 4. Enter the dollar amount of the transferor's section 965(h) net tax liability remaining unpaid.

Note. The amount of the transferor's section 965(h) net tax liability is subject to adjustment by the Commissioner. See Regulations section 1.965-7(b)(3)(iii)(B)(4)(iv).

Line 5. Enter the date the next installment payment is due by the transferee in the space provided. The transferee must make an annual installment payment for the section 965(h) net tax liability they assume by the due date of their income tax return. See Regulations section 1.965-7(b)(3)(iii)(D) for details.

Part V – Eligible Section 965(h) Transferee's Ability To Pay Remaining Liability

Line 6. Check the "Yes" box to confirm that the eligible section 965(h) transferee is able to make the remaining payments required under section 965(h) with respect to the section 965(h) net tax liability being assumed. If you check the "No" box, you do not meet the requirements to enter into a valid transfer agreement.

Line 7. Check the "Yes" box if the leverage ratio of the eligible section 965(h) transferee exceeds three to one. Otherwise, check the "No" box. The leverage ratio means the ratio that the total indebtedness of the transferee bears to the sum of its money and all other assets reduced, but not below zero, by the total indebtedness. See Regulations section 1.965-7(b)(3)(iii)(B)(6) for more information.

Note. The leverage ratio of the eligible section 965(h) transferee is a factor the Commissioner uses to determine whether the eligible section 965(h) transferee has the ability to pay the outstanding section 965(h) net tax liability. A leverage ratio in excess of three to one does not by itself determine whether or not a transfer agreement is valid.

Line 8. Provide any other pertinent information regarding the eligible section 965(h) transferee's ability to pay the section 965(h) net tax liability being assumed. This information may include, but is not limited to, the adequacy of the transferee's income, the value of the transferee's assets, and the transferee's access to capital.

Part VI – Terms of Agreement

By signing this transfer agreement, the eligible section 965(h) transferor and the eligible section 965(h) transferee agree to the terms set forth in Part VI of Form 965-C.

Transferor signature. This transfer agreement (Form 965-C) must be signed by a person who is authorized to sign a return on behalf of the eligible section 965(h) transferor listed in Part I. By signing Part VI, you declare, under penalties of perjury, that you have examined the form, and to the best of your knowledge and belief, Parts I, III, and IV are true, correct, and complete. You also certify that you have the authority to execute this transfer agreement.

Transferee signature. This transfer agreement (Form 965-C) must also be signed by a person who is authorized to sign a return on behalf of the eligible section 965(h) transferee listed in Part II. By signing Part VI, you declare, under penalties of perjury, that you have examined the form, and to the best of your knowledge and belief, Parts II, III, IV, and V are true, correct, and complete. You also certify that you have the authority to execute this transfer agreement.

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 individual 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.