



# Instructions for Form 926

(Rev. December 2017)

## Return by a U.S. Transferor of Property to a Foreign Corporation

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

### What's New

The regulations addressing the active trade or business (ATB) exception and the transfer of intangible property under section 367(a), 367(d), and 6038B have been finalized and are generally effective for transfers occurring on or after September 14, 2015. See *Part III, Information Regarding Transfer of Property*, later.



*For transfers after December 31, 2017, P.L. 115-97, section 14102 modifies the rules pertaining to transfers of loss amounts from foreign branches to certain foreign corporations and repeals the active trade or business exception. If a revised Form 926 is unavailable at the time a taxpayer is required to file Form 926 for such transfers, see [IRS.gov/Form926](http://IRS.gov/Form926) for instructions for filing the December 2017 Form 926 for these transfers.*

## General Instructions

### Future Developments

For the latest information about developments related to Form 926 and its instructions, such as legislation enacted after they were published, go to [IRS.gov/Form926](http://IRS.gov/Form926).

### Purpose of Form

Use Form 926 to report certain transfers of tangible or intangible property to a foreign corporation required by section 6038B.

### Who Must File

Generally, a U.S. citizen or resident, a domestic corporation, or a domestic estate or trust must complete and file Form 926 to report certain transfers of property to a foreign corporation that are described in section 6038B(a)(1)(A), 367(d), or 367(e). See section 6038B, and Regulations sections 1.6038B-1 and 1.6038B-1T for more information.

### Special Rules

• **Transfers by a partnership.** If the transferor is a partnership (domestic or foreign), the domestic partners of the

partnership, not the partnership itself, are required to comply with section 6038B and file Form 926. Each domestic partner is treated as a transferor of its proportionate share of the property. See the instructions for line 2 for additional information.

• **Transfers by spouses.** Spouses may file Form 926 jointly, but only if they file a joint income tax return.

• **Transfers of cash.** A U.S. person that transfers cash to a foreign corporation must report the transfer on Form 926 if (a) immediately after the transfer, the person holds directly or indirectly, at least 10% of the total voting power or the total value of the foreign corporation, or (b) the amount of cash transferred by the person to the foreign corporation during the 12-month period ending on the date of the transfer exceeds \$100,000. See Regulations section 1.6038B-1(b)(3).

• **Transfers of stock or securities for which a gain recognition agreement (GRA) is filed.** A U.S. transferor must file a Form 926 with respect to a transfer of stock or securities in all cases in which a GRA is filed under Regulations section 1.367(a)-8. Provided that the initial GRA is timely filed (determined without regard to Regulations section 1.367(a)-8(p)), then, with respect to the transfer of the stock or securities, the U.S. transferor should (1) complete Part I and Part II of the Form 926, (2) complete columns (a) through (e) of the "Stock and securities" line in Part III, Section A, of the form, and check the "Yes" box on line 10, and (3) complete the *Supplemental Part III Information Required To Be Reported* section at the end of Part III of the form using the *Line 10* instructions under the *Supplemental Part III Information Required To Be Reported* section, later. In addition, the U.S. transferor must comply in all material respects with the terms of a GRA (determined without regard to Regulations section 1.367(a)-8(p)) in order to satisfy its section 6038B reporting obligations. See Regulations section 1.6038B-1 for further information.

• **Distributions by domestic liquidating corporations.** A domestic liquidating corporation must file a Form 926 with respect to a distribution of property in complete liquidation under

section 332 to a foreign distributee corporation that meets the stock ownership requirements of section 332(b). If the distribution qualifies for the exception in Regulations section 1.367(e)-2(b)(2)(i) or (iii) then, provided that all initial liquidation documents are timely filed (determined without regard to Regulations section 1.367(e)-2(f)), the domestic liquidating corporation should (1) complete Part I and Part II of the Form 926, (2) in the *Supplemental Information Required To Be Reported* section at the end of Part III of the form, note that the information required by Form 926 is contained in the statement required by Regulations section 1.367(e)-2(b)(2)(i)(C)(2) or (iii)(D), as the case may be, and (3) complete Part IV. In addition, the domestic liquidating corporation must comply in all material respects with the terms of a liquidation document (determined without regard to Regulations section 1.367(e)-2(f)) in order to satisfy its section 6038B reporting obligations. See Regulations section 1.6038B-1 for further information.

### Exceptions to Filing

- For exchanges described in section 354 or 356, a U.S. person does not have to file Form 926 if:
  - The U.S. person exchanges stock of a foreign corporation in a recapitalization described in section 368(a)(1)(E), or
  - The U.S. person exchanges stock of a domestic or foreign corporation for stock of a foreign corporation under an asset reorganization described in section 368(a)(1) that is not treated as an indirect stock transfer under Regulations section 1.367(a)-3(d).
- Generally, a domestic corporation that distributes stock or securities of a domestic corporation under section 355 is not required to file Form 926. However, this exception does not apply if the distribution is of stock or securities of a foreign controlled corporation to a distributee shareholder who is not a U.S. citizen or resident or a domestic corporation.
- A U.S. person that transfers stock or securities under section 367(a) does

not have to file Form 926 if either **a** or **b** below applies.

**a.** The U.S. transferor owned less than 5% of both the total voting power and the total value of the transferee foreign corporation immediately after the transfer and:

- The U.S. transferor qualified for nonrecognition treatment with respect to the transfer, or
- The U.S. transferor is a tax-exempt entity and the income was not unrelated business income, or
- The transfer was taxable to the U.S. transferor under Regulations section 1.367(a)-3(c) and such person properly reported the income from the transferor on its timely filed return (including extensions) for the tax year that includes the date of transfer, or
- The transfer is considered to be to a foreign corporation solely by reason of Regulations section 1.83-6(d)(1) and the fair market value of the property transferred did not exceed \$100,000.

**b.** The U.S. transferor owned 5% or more of the total voting power or the total value of the transferee foreign corporation immediately after the transfer and:

- The U.S. transferor is a tax-exempt entity and the income was not unrelated business income, or
- The transfer was taxable to the U.S. transferor and such person properly reported the income from the transfer on its timely filed return, or
- The transfer is considered to be to a foreign corporation solely by reason of Regulations section 1.83-6(d)(1) and the fair market value of the property transferred did not exceed \$100,000.

## When and How To File

Form 926 must be filed with the U.S. transferor's income tax return (or, if applicable, exempt organization return) for the tax year that includes the date of the transfer.



*The Form 926 filed with the IRS must include the additional information required in Regulations sections 1.6038B-1(c) through (e) and Temporary Regulations sections 1.6038B-1T(c) and (d).*

## Other Forms That May Be Required

Persons filing this form may be required to file FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR).

A U.S. transferor that is required to enter into a GRA under section 367 to

qualify for nonrecognition treatment must file Form 8838, Consent To Extend the Time To Assess Tax Under Section 367—Gain Recognition Agreement, to extend the statute of limitations with respect to the gain realized but not recognized on the transfer.

## Penalties for Failure To File

If a taxpayer fails to comply with section 6038B, the penalty equals 10% of the fair market value of the property at the time of the transfer. The penalty will not apply if the failure to comply is due to reasonable cause and not to willful neglect. The penalty is limited to \$100,000 unless the failure to comply was due to intentional disregard. Moreover, the period of limitations for assessment of tax upon the transfer of that property is extended to the date that is 3 years after the date on which the information required to be reported is provided.

## Section 6662(j) Penalty

For tax years beginning after March 18, 2010, a 40% penalty may be imposed on any underpayment resulting from an undisclosed foreign financial asset understatement. No penalty will be imposed with respect to any portion of an underpayment if the taxpayer can demonstrate that the failure to comply was due to reasonable cause with respect to such portion of the underpayment and the taxpayer acted in good faith with respect to such portion of the underpayment. See sections 6662(j) and 6664(c) for additional information.

## Specific Instructions

**Important:** All information reported on Form 926 must be in English. All amounts must be stated in U.S. dollars. If the information required in a given section exceeds the space provided within that section, do not write "see attached" in the section and then attach all of the information on additional sheets. Instead, complete all entry spaces in the section and attach the remaining information on additional sheets. The additional sheets must conform with the IRS version of that section.

## Part I—U.S. Transferor Information

**Identifying number.** The identifying number of an individual is his or her social security number (SSN). The

identifying number of all others is their employer identification number (EIN).

**Line 1a.** If you answered "Yes" to question 1a and the asset is a tangible asset, section 367(a)(5) may require basis adjustments. If you answered "No" to question 1a and the asset is a tangible asset, the transfer is taxable under sections 367(a)(1) and (a)(5). If the asset transferred is an intangible asset, see section 367(d) and its regulations.

If you answered "No" to question 1a: If the U.S. transferor is owned directly by more than five domestic corporations immediately before the reorganization, but some combination of five or fewer domestic corporations controls the U.S. transferor, the U.S. transferor must designate the five or fewer domestic corporations that comprise the control group. List these designated corporations on Form 926, line 1b.

**Line 1b.** If the transferor went out of existence pursuant to the transfer (for example, as in a reorganization described in section 368(a)(1)(C)), list the controlling shareholders and their identifying numbers.

**Line 1c.** If the transferor was a member of an affiliated group filing a consolidated tax return (see sections 1501 through 1504), but was not the parent corporation, list the name and EIN of the parent corporation and file Form 926 with the parent corporation's consolidated return.

**Line 1d.** If the answer to line 1d is "Yes," and if the asset is transferred in an exchange described in section 361(a) or (b), attach the following.

- A statement that the conditions set forth in the second sentence of section 367(a)(5) and any regulations under that section have been satisfied.
- An explanation of any basis or other adjustments made pursuant to section 367(a)(5) and any regulations thereunder.

**Line 2.** If a partnership (whether foreign or domestic) transfers property to a foreign corporation in an exchange described in section 367(a)(1), then a U.S. person that is a partner in the partnership shall be treated as having transferred a proportionate share of the property in an exchange described in section 367(a)(1). A U.S. person's proportionate share of partnership property shall be determined under the rules and principles of sections 701 through 761 and the regulations thereunder. See Temporary Regulations section 1.367(a)-1T(c)(3).

**Line 2d.** For definition of “regularly traded on an established securities market,” see Temporary Regulations section 1.367(a)-1T(c)(3)(ii)(D). If the answer to line 2d is “Yes,” the rules of Temporary Regulations section 1.367(a)-1T(c)(3)(ii)(C) apply.

## Part II—Transferee Foreign Corporation Information

**Line 4b, Reference ID number.** A reference ID number is required on line 4b only in cases where no EIN was entered on line 4a for the transferee foreign corporation. However, filers are permitted to enter both an EIN and a reference ID number. If applicable, enter on line 4b the reference ID number (defined below) you have assigned to the transferee foreign corporation.

A “reference ID number” is a number established by or on behalf of the U.S. transferor identified at the top of page 1 of the form that is assigned to the transferee foreign corporation with respect to which Form 926 reporting is required. These numbers are used to uniquely identify the transferee foreign corporation in order to keep track of the entity from tax year to tax year. The reference ID number must meet the requirements set forth below.

**Note.** Because reference ID numbers are established by or on behalf of the U.S. person filing Form 926, there is no need to apply to the IRS to request a reference ID number or for permission to use these numbers.

**Note.** In general, the reference ID number assigned to a transferee foreign corporation on Form 926 has relevance only to Form 926 and should not be used with respect to the transferee foreign corporation on other IRS forms.

**Requirements.** The reference ID number must be alphanumeric (defined below) and no special characters or spaces are permitted. The length of a given reference ID number is limited to 50 characters.

For these purposes, the term “alphanumeric” means the entry can be alphabetical, numeric, or any combination of the two.

The same reference ID number must be used consistently from tax year to tax year with respect to a given transferee foreign corporation. If for any reason a reference ID number falls out of use (for example, the transferee foreign corporation no longer exists due to

disposition or liquidation), the reference ID number used for that transferee foreign corporation cannot be used again for another transferee foreign corporation for purposes of Form 926 reporting.

There are some situations that warrant correlation of a new reference ID number with a previous reference ID number when assigning a new reference ID number to a transferee foreign corporation. For example:

- In the case of a merger or acquisition, a Form 926 filer must use a reference ID number which correlates the previous reference ID number with the new reference ID number assigned to the transferee foreign corporation.
- In the case of an entity classification election that is made on behalf of a transferee foreign corporation on Form 8832, Regulations section 301.6109-1(b)(2)(v) requires the transferee foreign corporation to have an EIN for this election. For the first year that Form 926 is filed after an entity classification election is made on behalf of the transferee foreign corporation on Form 8832, the new EIN must be entered on line 4a and the old reference ID number must be entered on line 4b. In subsequent years, the Form 926 filer may continue to enter both the EIN and the reference ID number, but must enter at least the EIN on line 4a.

You must correlate the reference ID numbers as follows: New reference ID number [space] Old reference ID number. If there is more than one old reference ID number, you must enter a space between each such number. As indicated above, the length of a given reference ID number is limited to 50 characters and each number must be alphanumeric and no special characters are permitted.

**Note.** This correlation requirement applies only to the first year the new reference ID number is used.

**Line 5, Address.** Enter the information in the following order: city, province or state, and country. Follow the country’s practice for entering the postal code, if any. Do not abbreviate the country name; however, if you file electronically, please follow the convention specified.

**Line 6.** Enter the two-letter country code (from the list at [IRS.gov/countrycodes](http://IRS.gov/countrycodes)) of the transferee foreign corporation’s country of incorporation or organization.

**Line 7.** List the entity classification (for example, partnership, corporation, etc.) of the transferee foreign corporation

under the laws of the country of incorporation or organization.

**Line 8.** See section 957(a) to determine whether the corporation is a controlled foreign corporation immediately after the transfer.

## Part III—Information Regarding Transfer of Property

Information in Part III is reported in four sections. Collectively, the four sections capture information with regard to all of the properties transferred. The properties covered by each section, respectively, are:

- Cash, stock, and securities (“Section A”).
- Property qualifying for Active Trade or Business exception under Regulations sections 1.367(a)-2(a)(2)(i) and (ii) (“Section B”).
- Property not qualifying for Active Trade or Business exception (other than intangible property subject to section 367(d)) (“Section C”).
- Intangible property under Regulations section 1.367(a)-1(d)(5) (“Section D”).

For information that must generally be included for a transfer described in section 6038B(a)(1)(A), see the beginning of the *Supplemental Part III Information Required To Be Reported* section, later.

If additional row(s) are needed to enter information for a property category in a Section in Part III, provide the information in the same format as required for the row in the Section at issue in the *Supplemental Part III Information Required To Be Reported* section. For each property category with such additional row(s), in the Section enter “See Supplemental” under column (b), Description of Property, on the last row of the property category and enter in the remaining columns on that last row the aggregated amounts from the corresponding columns on the additional rows.

For distributions covered by section 367(e)(2), see the instructions for line 21a, later.

### Section A

Section A captures information regarding cash and certain stock and securities transferred.

**Column (a), Date of transfer.** Enter the first date on which title to, possession of, or rights to the use of the property passed for U.S. income tax purposes. See Temporary Regulations

section 1.6038B-1T(b)(4) for additional information.

**Column (b), Description of property.** For each stock or security, provide the class or type and the name of the issuing corporation. See the *Line 10* instructions in the *Supplemental Part III Information Required To Be Reported* section, later, for additional reporting requirements.

**Column (c), Fair market value on date of transfer.** Enter the fair market value of the property transferred (measured as of the date of transfer).

**Column (d), Cost or other basis.** Enter the adjusted basis in the property transferred on the date of the transfer. See sections 1011 through 1016 for more information for the determination of adjusted basis.

**Column (e), Gain recognized on transfer.** Enter the gain recognized on the transfer of each property.

**Note.** Do not report in Section A any information for stock or securities transferred that are described in Regulations sections 1.367(a)-2(a)(2)(i) and (ii). Instead, report the information for such stock or securities in Section B.

**Line 9.** If cash was the only property transferred, skip the remainder of Part III and proceed to Part IV.

**Line 10.** Indicate whether a gain recognition agreement was filed pursuant to Regulations section 1.367(a)-8 for a transfer of stock or securities. If "Yes," complete the *Supplemental Part III Information Required To Be Reported* section at the end of Part III of the form using the *Line 10* instructions under the *Supplemental Part III Information Required To Be Reported* section, later.

## Section B

Section B captures information regarding property that is eligible property under Regulations section 1.367(a)-2(a)(2)(i) that is transferred for use by the foreign corporation in the active conduct of a trade or business outside of the United States under Regulations section 1.367(a)-2(a)(2)(ii). Generally, if the property is used in the active conduct of a foreign trade or business under Regulations sections 1.367(a)-2(d) through (h), and the U.S. transferor complies with the reporting requirements of section 6038B and its regulations for the transfer of such property, the active trade or business exception (at section 367(a)(3)) to the

general rule of section 367(a)(1) will apply.

**Column (a), Date of transfer.** Enter the first date on which title to, possession of, or rights to the use of the property passed for U.S. income tax purposes. See Temporary Regulations section 1.6038B-1T(b)(4) for additional information.

**Column (b), Description of property.** Provide a description of the property transferred. See Regulations section 1.6038B-1(c)(4)(i) for identifying and describing items of property within a particular property category in Section B.

**Column (c), Fair market value on date of transfer.** Enter the fair market value of the property transferred (measured as of the date of transfer).

**Column (d), Cost or other basis.** Enter the adjusted basis in the property transferred on the date of the transfer. See sections 1011 through 1016 for more information for the determination of adjusted basis.

**Column (e), Gain recognized on transfer.** Enter the gain recognized on the transfer of each property. Include in this column any recapture of depreciation under Regulations section 1.367(a)-4. If the transferor transferred property of a foreign branch with previously deducted losses, such losses generally must be recaptured by the recognition of gain realized on the transfer, regardless of whether any of the property of the foreign branch satisfies the active trade or business exception. See Regulations sections 1.367(a)-6 and -6T.

**Important.** Do not enter any such foreign branch loss recapture in Section B. See the instructions for line 12c below for information on how to report foreign branch loss recapture.

**Note.** Only report information under the property category "Tangible Property (not listed under another category)" with respect to tangible property for which information is not reportable under another property category of Section B.

## Section C

Section C captures information with respect to property to which the active trade or business exception does not apply (other than intangible property subject to section 367(d)). Section 367(a)(1) applies to the transfer of property reported in Section C.

**Column (a), Date of transfer.** Enter the first date on which title to, possession of, or rights to the use of the property passed for U.S. income tax purposes. See Temporary Regulations section 1.6038B-1T(b)(4) for additional information.

**Column (b), Description of property.** Provide a description of the property transferred. See, in general, final and temporary Regulations section 1.6038B-1(c)(4).

**Column (c), Fair market value on date of transfer.** Enter the fair market value of the property transferred (measured as of the date of transfer).

**Column (d), Cost or other basis.** Enter your adjusted basis in the property transferred on the date of the transfer. See sections 1011 through 1016 for more information for the determination of adjusted basis.

**Column (e), Gain recognized on transfer.** Enter the gain recognized under section 367 and its regulations on the transfer of each property. Include in this column any recapture of depreciation under Regulations section 1.367(a)-4. If the transferor transferred property of a foreign branch with previously deducted losses, such losses generally must be recaptured by the recognition of gain realized on the transfer. See Regulations sections 1.367(a)-6 and -6T.

**Important.** Do not enter any such foreign branch loss recapture amount in Section C. See the instructions for line 12c below for information on how to report foreign branch loss recapture.

**Certain property to be retransferred (see Regulations section 1.367(a)-2(g)).** This property category is for property to which Regulations sections 1.367(a)-2(g)(1)(i) and (ii) apply, taking into account Regulations section 1.367(a)-2(g)(2).

**Property described in Regulations section 1.6038B-1(c)(4)(iv).** This category captures information regarding property that is eligible property under Regulations section 1.367(a)-2(b) taking into account the application of Regulations section 1.367(a)-2(c) (certain property that does not constitute eligible property) that was transferred to the foreign corporation but not for use in the active conduct of a trade or business outside the United States. Do not report in this category information regarding property which would be reported under the category "Certain property to be retransferred

(see Regulations section 1.367(a)-2(g)).”

**Property described in Regulations section 1.6038B-1(c)(4)(vii).** This category includes any property (a) other than property described in Regulations section 1.367(a)-2(c); (b) that cannot qualify under Regulations section 1.367(a)-2(a)(2) regardless of its use in the active conduct of a trade or business outside of the United States; and (c) that is not subject to the rules of section 367(d) under Regulations section 1.367(a)-1(b)(5) (treatment of certain property as subject to section 367(d)). Each item of property must be separately identified. This category would include, for example, information regarding:

- property described in section 1221(a)(3),
- a working interest in oil and gas not reported in Section B, and
- property for which the transferor could have applied section 367(d) pursuant to Regulations section 1.367(a)-1(b)(5) but did not.

**Note.** Do not report in Section C any information for stock or securities transferred. Instead, report this information in Section A or Section B.

**Note.** Do not report in Section C any information for intangible property subject to section 367(d). Instead, report this information in Section D.

**Line 11.** If the answer to the question on line 11 is "Yes," complete the *Supplemental Part III Information Required To Be Reported* section at the end of Part III of the form using the *Line 11* instructions under the *Supplemental Part III Information Required To Be Reported* section, later.

**Lines 12a-e.** See Final and Temporary Regulations sections 1.367(a)-2 through 1.367(a)-7 for instances in which a transferor must recognize income on the transfer of property. If the answer to line 12b, 12c, or 12e is "Yes," complete the *Supplemental Part III Information Required To Be Reported* section at the end of Part III of the form using the *Line 12b, 12c, or 12e* instructions under the *Supplemental Part III Information Required To Be Reported* section, later.

**Line 12c.** If the answer to line 12c is "Yes," enter on line 12d the total amount of the foreign branch loss recapture under Regulations sections 1.367(a)-6 and -6T. Do not enter this amount in any Section of Part III of the form. See the instructions for Part III, Section B,

column (e), and Part III, Section C, column (e).

## Section D

Section D captures information regarding transfers of intangible property as defined under Regulations section 1.367(a)-1(d)(5) and subject to section 367(d). Therefore, the category "Property described in section 936(h)(3)(B)" does not include property described in section 1221(a)(3) or a working interest in oil and gas property.

**Column (a), Date of transfer.** Enter the first date on which title to, possession of, or rights to the use of the property passed for U.S. income tax purposes. See Temporary Regulations section 1.6038B-1T(b)(4) for additional information.

**Column (b), Description of property.** Provide a separate description for each identified intangible, including each identified (i) patent, invention, formula, process, design, pattern, or know-how; (ii) copyright, literary, musical, or artistic composition; (iii) trademark, trade name, or brand name; (iv) franchise, license, or contract; and (v) method, program, system, procedure, campaign, survey, study, forecast, estimate, customer list, or technical data. If an identified intangible is similar to any of the intangibles described in the preceding sentence (either individually or collectively), provide a brief explanation.

**Column (c), Useful life.** Enter the useful life for each intangible. The useful life of intangible property is defined under Regulations section 1.367(d)-1(c)(3)(i). If the useful life of intangible property is indefinite, enter "indefinite." Regulations section 1.367(d)-1(c)(3)(ii) is not relevant to the determination of the useful life entered in column (c).

**Column (d), Arm's length price on date of transfer.** Generally, if a U.S. person transfers intangible property subject to section 367(d), such person shall, over the useful life of the property, annually include in gross income an amount that represents an appropriate arm's length charge for use of the property. The appropriate charge is determined in accordance with the provisions of section 482 and regulations thereunder. See Temporary Regulations section 1.367(d)-1T(c)(1). For each intangible reported in Section D, provide the arm's length price on the date of transfer. See instructions below for information that must be included in the *Supplemental*

*Part III Information Required To Be Reported* section.

## Column (e), Cost or other basis.

Enter the adjusted basis in the property transferred on the date of the transfer. See sections 1011 through 1016 for more information for the determination of adjusted basis.

**Column (f), Income inclusion for year of transfer.** A U.S. person who transfers property subject to section 367(d) is treated as having sold such property in exchange for payments which are contingent upon the productivity, use or disposition of such property and receiving amounts annually over the useful life of the property that represent an appropriate arm's length charge for use of the property. For each intangible transferred, enter the amount included in income under section 367(d) on the income tax return for the year of the transfer. If the amount reported in column (d) as the arm's length price for intangible property is an allocation of an amount determined based on an aggregate analysis, enter the inclusion amount in column (f) that corresponds to the allocated amount reported in column (d). If no amount is so included, enter "0." The amount entered in column (f) should reflect the application of Regulations section 1.367(d)-1(c)(3)(ii), if properly chosen. See line 15c and related instructions, below. See also the *Line 15c* instructions under the *Supplemental Part III Information Required To Be Reported* section, later, for additional information that must be reported.

**Line 13a.** For purposes of answering line 13a, "property described in section 936(h)(3)(B)" does not include property described in section 1221(a)(3) or a working interest in oil and gas property. See Regulations section 1.367(a)-1(d)(5).

**Line 13b.** If the amount requested on line 13b is zero, enter "0." The amount entered on line 13b should reflect the application of Regulations section 1.367(d)-1(c)(3)(ii), if properly chosen. See line 15c and related instructions. Include in the amount entered on line 13b gain recognized as a result of making an election to treat a transfer of certain intangible property as a sale under Temporary Regulations section 1.367(d)-1T(g)(2). See also the *Line 13b* instructions under the *Supplemental Part III Information Required To Be Reported* section, later,

for additional information that must be reported.

**Line 14a.** Under Regulations section 1.367(a)-1(b)(5), a U.S. transferor may apply section 367(d) to certain property that otherwise would be subject to section 367(a).

**Line 14b.** If the amount requested on line 14b is zero, enter "0." The amount entered on line 14b should reflect the application of Regulations section 1.367(d)-1(c)(3)(ii), if properly chosen. If the answer to line 14b is "Yes," see the *Line 14b* instructions under the *Supplemental Part III Information Required To Be Reported* section, later, for additional information that must be reported.

**Line 14d.** If the amount requested on line 14d is zero, enter "0." See the *Line 14d* instructions under the *Supplemental Part III Information Required To Be Reported* section, later, for additional information that must be reported.

**Line 15c.** In cases where the useful life of the transferred intangible property is indefinite or reasonably anticipated to exceed 20 years, a taxpayer may, instead of including amounts in income during the entire useful life of the intangible property, choose in the year of transfer to increase annual inclusions during the 20-year period beginning with the first year in which the U.S. transferor takes into account income pursuant to section 367(d), to reflect amounts that, but for the choice to increase annual inclusions, would have been required to be included following the end of the 20-year period. To apply this 20-year inclusion period, a taxpayer must attach a statement titled "Application of the 20-year Inclusion Period to Section 367(d) Transfer" to a timely filed original federal income tax return (including extensions) for the year of the transfer. See Regulations section 1.367(d)-1(c)(3)(ii). If the answer to line 15c is "Yes," see the *Line 15c and Line 15d* instructions below for information that must be included in the *Supplemental Part III Information Required To Be Reported* section at the end of Part III of the form.

### **Supplemental Part III Information Required To Be Reported**

**Information to be generally reported for a transfer described in section 6038B(a)(1)(A):** Provide a general description of the transfer, and any wider transaction of which it forms a

part, including a chronology of the transfers involved and an identification of the other parties to the transaction to the extent known. See Temporary Regulations section 1.6038B-1T(c)(2)(ii).

Provide a description of the consideration received by the U.S. person making the transfer. The description should identify:

- The property comprising the consideration and the total fair market value of the items, and
- In the case of stock or securities, the class, type, amount, and characteristics of the interest received.

See Temporary Regulations sections 1.6038B-1T(c)(3) and 1.6038B-1T(d)(1)(iii).

**Information to be reported.** When providing any information in the *Supplemental Part III Information Required To Be Reported* section, indicate the Section, column, row, and line for which the information is being provided.

**Additional Section rows.** If additional rows are needed to enter information for a property category on a Section in Part III, provide the information in the same format as required for the row on the Section at issue in the *Supplemental Part III Information Required To Be Reported* section. See the beginning of the Part III instructions, earlier, for how to incorporate the information from the additional rows.

**Line 10.** If the answer to the line 10 question is "Yes," for any stock or securities transferred, provide a general description of the corporation issuing the stock or securities. See Regulations section 1.6038B-1(c)(4)(ii).

**Line 11.** If the answer to the line 11 question is "Yes," provide a general description of the business conducted (or to be conducted) by the transferee, including:

- The location of the business;
- The number of its employees; and
- The nature of the business.

See Regulations section 1.6038B-1(c)(4)(i).

**Line 12b.** If the answer to line 12b is "Yes":

- Describe any property that is subject to depreciation recapture under Regulations section 1.367(a)-4(a). See Regulations section 1.6038B-1(c)(4)(iii).
- Specify with respect to each such property:

1. The relevant recapture provision;

2. The number of months the property was in use;

3. The fair market value of the property;

4. A schedule of the depreciation deduction with respect to the property; and

5. A calculation of the amount of depreciation to be recaptured.

See Regulations section 1.6038B-1(c)(4)(iii).

**Line 12c.** If the answer to line 12c is "Yes":

- Describe the foreign branch the property of which is transferred. See Temporary Regulations section 1.6038B-1T(c)(5)(i).
- Describe the property of the foreign branch, including its adjusted basis and fair market value. See Temporary Regulations section 1.6038B-1T(c)(5)(ii).
- Set forth a detailed calculation of the sum of the losses incurred by the foreign branch before the transfer and a detailed calculation of any reduction of such losses. See Temporary Regulations section 1.6038B-1T(c)(5)(iii).
- Set forth a statement of the character of the gain required to be recognized. See Temporary Regulations section 1.6038B-1T(c)(5)(iv).
- List any intangible property subject to section 367(d) the transfer of which gives rise to foreign branch recapture under Regulations sections 1.367(a)-6 and -6T and provide a calculation of the gain required to be recognized. See Regulations section 1.6038B-1(d)(1)(vii).

**Line 12e.** If the answer to line 12e is "Yes":

- Describe any property transferred for which gain is required to be recognized under a provision of Regulations sections 1.367(a)-2 through -7 other than the provisions at issue on lines 12a-d and
- For each such property described, provide the specific regulation provision under which gain is required to be recognized.

**Section D, column (d).** Provide a brief explanation of how the arm's length price on the date of transfer for each intangible was determined.

**Section D, column (f).** If an amount greater than zero was included, provide a brief explanation of how the income inclusion for the year of the transfer was determined.

**Line 13b.** Provide and explain the calculation of the annual deemed payment. See Temporary Regulations section 1.6038B-1T(d)(1)(v). If applicable, provide a calculation of the gain required to be recognized on the transfer of intangible property with respect to which an election has been made to treat the transfer as a sale under Temporary Regulations section 1.367(d)-1T(g)(2). See Temporary Regulations section 1.6038B-1T(d)(1)(vi).

**Line 14b.** Provide and explain the calculation of the annual deemed payment. See Temporary Regulations section 1.6038B-1T(d)(1)(v).

**Line 14d.** Provide a description of the property and the amount of gain, if any, reported under section 367(a)(1) with respect to the property.

**Line 15c.** If the answer to the line 15c question is "Yes," describe the property for which the transferor chose to apply the 20-year inclusion period. See Regulations sections 1.6038B-1(d)(1)(iv) and 1.367(d)-1(c)(3)(ii).

Explain how the increase to the deemed payment rate was calculated for property transferred. See Regulations sections 1.6038B-1(d)(1)(iv) and 1.367(d)-1(c)(3)(ii). The explanation should include how the deemed payment rate was calculated for each period of the useful life of the intangible property and the 20-year inclusion period.

**Line 15d.** If the answer to the question on line 15c is "Yes," explain how the

anticipated income or cost reduction attributable to the property's (or properties') use beyond the 20-year period was estimated. See Regulations section 1.6038B-1(d)(1)(iv).

## Part IV— Additional Information Regarding Transfer of Property

**Line 18.** List the type of nonrecognition transaction that gave rise to the reporting obligation (for example, section 332, 351, 354, 356, or 361).

**Line 19a.** If gain recognition was required with respect to any transfer reported in Part III under section 904(f)(3), attach a statement identifying the transfer and the amount of gain recognized.

**Line 19b.** If gain recognition was required with respect to any transfer reported in Part III under section 904(f)(5)(F), attach a statement identifying the transfer and the amount of gain recognized.

**Line 19c.** If recapture was required with respect to any transfer reported in Part III under section 1503(d) (dual consolidated loss), attach a statement identifying the transfer and the amount of recapture. See section 1503(d) and the regulations thereunder.

**Line 19d.** If exchange gain recognition was required with respect to any transfer reported in Part III under section 987, attach a statement identifying the transfer and the amount of exchange

gain recognized. See Regulations section 1.987-5.

**Line 20.** If this transfer resulted from a change in entity classification (a deemed transfer resulting from a classification change on Form 8832, Entity Classification Election, or a termination of a section 1504(d) election), check the "Yes" box. If the transfer was an actual transfer of property to a foreign corporation, check the "No" box.

**Line 21a.** Check the "Yes" box on line 21a if the domestic corporation (domestic liquidating corporation) made a distribution of property in complete liquidation under section 332 to a foreign corporation that meets the stock ownership requirements of section 332(b) with respect to stock in the domestic liquidating corporation.

If the answer to line 21a is "Yes," provide the following information in the *Supplemental Part III Information Required To Be Reported* section. Preface this supplemental information on the form with the heading "Section 367(e)(2) Information."

- A description, including the adjusted tax basis and fair market value, of all property distributed by the distributing corporation (regardless of whether the distribution of the property qualifies for nonrecognition treatment).
- An identification of the items of property for which nonrecognition treatment is claimed under Regulations section 1.367(e)-2(b)(2)(ii) or (iii), as applicable.

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<b>Recordkeeping</b> . . . . .	7 hr., 48 min.
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<b>Preparing and sending the form to the IRS</b> . . . . .	4 hr., 57 min.

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