

Instructions for Form 965-E



Department of the Treasury
Internal Revenue Service

(December 2019)

Consent Agreement Under Section 965(i)(4)(D)

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

Future Developments

For the latest information about developments related to Form 965-E and its instructions, such as legislation enacted after they were published, go to [IRS.gov/Form965E](https://www.irs.gov/Form965E).

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 that are S corporation shareholders may have a section 965(a) inclusion amount due to ownership of deferred foreign income corporations (DFICs) through S corporations that are themselves U.S. shareholders of the DFICs. A taxpayer that is a shareholder in an S corporation that is a U.S. shareholder of a DFIC and that has a section 965(i) net tax liability (as defined later in these instructions) with respect to the S corporation may make a deferral election under section 965(i) (section 965(i) election). A shareholder's section 965(i) net tax liability with respect to an S corporation is calculated on an individual S corporation basis, and the section 965(i) election is also made on an S corporation-by-S corporation basis and on a shareholder-by-shareholder basis. A section 965(i) election allows a shareholder in an S corporation to defer payment of its section 965(i) net tax liability until a triggering event occurs. In addition, when a triggering event occurs, the shareholder may then make an election under section 965(h) (section 965(h) election) to pay the section 965(i) net tax liability with respect to which the triggering event occurred in installments over 8 years. However, when the triggering event is a liquidation, sale, exchange, or other disposition of substantially all the assets of the S corporation (including in a title 11 or similar case), a cessation of business by the S corporation, or the S corporation ceasing to exist, then the shareholder must obtain the consent of the Commissioner in order to make the section 965(h) election.

General Instructions

Definitions

Section 965(i) net tax liability. The section 965(i) net tax liability is, with respect to an S corporation and a shareholder of the S corporation that has made a section 965(i) election, the excess (if any) of the S corporation shareholder's net income tax for the tax year in which the S corporation shareholder includes a section 965(a) inclusion in income, determined as if the only section 965(a) inclusions included in income by the S corporation shareholder are domestic pass-through entity shares of section 965(a) inclusions by the S corporation with respect to DFICs of which the S corporation is a U.S. shareholder, over the S corporation shareholder's net income tax for the tax year determined without regard to section 965, and without regard to any income, deduction, or credit properly attributable to a dividend received (directly or through a chain of ownership described in section 958(a)) by the S corporation

from, or an inclusion under sections 951(a)(1)(B) and 956 with respect to, a DFIC and paid during, or included with respect to, the DFIC's inclusion year.

Section 965(i)(2)(A)(ii) triggering event. A section 965(i)(2)(A)(ii) triggering event is, with respect to an S corporation with one or more shareholders that have made section 965(i) elections, the liquidation, sale, exchange, or other disposition of substantially all of the assets of the S corporation (including in a title 11 or similar case), the cessation of business of the S corporation, or the S corporation ceasing to exist.

Purpose of Form

Form 965-E should be used by a shareholder in an S corporation who has an outstanding section 965(i) net tax liability with respect to which a section 965(i)(2)(A)(ii) triggering event has occurred to obtain consent to make a section 965(h) election as required by section 965(i)(4)(D) and Regulations section 1.965-7(c)(3)(v)(D)(1).

This form requests the information and representations that must be provided to meet the requirements of Regulations section 1.965-7(c)(3)(v)(D)(1) in order to enter into a consent agreement under section 965(i)(4)(D). If the shareholder properly completes and files Form 965-E in accordance with these instructions, the shareholder will be considered to have properly obtained consent under section 965(i)(4)(D). However, the Commissioner may review the consent agreement and may ask additional questions or require additional information, including, for example, about the shareholder's ability to make the payments required under section 965(h) with respect to the outstanding section 965(i) net tax liability covered by the consent agreement. If the Commissioner determines that the consent agreement contains a material misrepresentation or material omission, or if the additional information is not provided within a reasonable timeframe (as communicated by the Commissioner), then the consent agreement may be rejected as of the date of the triggering event. If the consent agreement is rejected, the entire amount of the section 965(i) net tax liability with respect to which the triggering event occurred will be due and payable for the year the triggering event occurred.



Form 965-E is only the consent agreement under section 965(i)(4)(D) required by Regulations section 1.965-7(c)(3)(v)(D)(1). It does not include the section 965(h) election for which consent is requested. You must separately make the section 965(h) election in accordance with the requirements in Regulations section 1.965-7(c)(3)(v)(b)(2). If you do not properly make the section 965(h) election, you will be required to pay the full amount of the section 965(i) net tax liability with respect to which the triggering event occurred for the year the triggering event occurred.

Who Must File

An S corporation shareholder with an outstanding section 965(i) net tax liability with respect to which a section 965(i)(2)(A)(ii) triggering event has occurred must file Form 965-E to obtain consent to make a section 965(h) election.

Note. Each shareholder must file its own Form 965-E to obtain consent to make a section 965(h) election, and each shareholder must make its own section 965(h) election. An S corporation cannot file Form 965-E or make section 965(h) elections on behalf of its shareholders.

When and Where To File

Within 30 days of the section 965(i)(2)(A)(ii) triggering event, the original Form 965-E 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, the shareholder must attach a duplicate copy of Form 965-E to its tax return for the tax year during which the section 965(i)(2)(A)(ii) triggering event occurs, filed by the due date for such return (with regard to any extension of time to file).



Form 965-E will be considered timely filed only if filed within 30 days of the date the section 965(i)(2)(A)(ii) triggering event occurs. No extension of time to file Form 965-E will be granted, and relief is not available under Regulations section 301.9100-2 or 301.9100-3 to file a consent agreement late.

Specific Instructions

Part I — Shareholder Information

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

Part II — S Corporation Information

Use Part II to provide identifying information of the S corporation with respect to which a section 965(i) election was in effect and with respect to which the section 965(i)(2)(A)(ii) triggering event occurred. Enter the name and taxpayer identification number of the S corporation.

Part III — Triggering Event Under Section 965(i)(2)(A)(ii) Giving Rise to Need for Consent

Line 1. Provide the date on which the section 965(i)(2)(A)(ii) triggering event for which the consent agreement is being filed occurred.

Line 2. Describe in detail the section 965(i)(2)(A)(ii) triggering event for which the consent agreement is being filed. For example, if the transfer is the disposition of substantially all of the assets of the S corporation, provide a description of the type of disposition, including any steps involved in the transaction.

Part IV — Report of Unpaid Section 965(i) Net Tax Liability for Which Consent Is Requested Under Section 965(i)(4)(D) for a Section 965(h) Election To Be Made

Line 3. Enter the dollar amount of the outstanding section 965(i) net tax liability for which the shareholder intends to make a section 965(h) election.

Note. The Commissioner may adjust the amount of the section 965(i) net tax liability.

Line 4. Enter the date on which the first installment payment will be due for the section 965(i) net tax liability after the section 965(h) election is made.

Part V — Shareholder's Ability To Make Payments Required Under Section 965(h)

Line 5. Check the "Yes" box to confirm that the shareholder is able to make the payments required under section 965(h) and Regulations section 1.965-7(b) for the outstanding section 965(i) net tax liability with respect to which the section 965(h) election is intended to be made. If you check the "No" box, you do not meet the requirements to enter into a valid consent agreement.

Line 6. Check the "Yes" box if the leverage ratio of the shareholder immediately after the triggering event exceeds three to one. Otherwise, check the "No" box.

The leverage ratio means the ratio that the total indebtedness of the shareholder 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(c)(3)(iv)(D)(6) for more information.

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

Line 7. Provide any other pertinent information regarding the shareholder's ability to pay the outstanding section 965(i) net tax liability. This information may include, but is not limited to, the adequacy of the shareholder's income, the value of the shareholder's assets, and the shareholder's access to capital.

Part VI — Terms of Agreement

By signing this consent agreement, you agree to the terms set forth in Part VI of Form 965-E.

Shareholder Signature

The consent agreement must be signed by the shareholder or a person authorized to sign for the shareholder. By signing this consent agreement, you declare, under penalties of perjury, that you have examined the form and, to the best of your knowledge and belief, it is true, correct, and complete. You also certify that you have the authority to execute this consent 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.