



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

SMALL BUSINESS/SELF-EMPLOYED DIVISION

March 23, 2020

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MEMORANDUM FOR: DIRECTOR, SPECIALTY COLLECTION OFFER IN COMPROMISE

FROM: Nikki Johnson
DIRECTOR, COLLECTION POLICY

Nikki C. Johnson


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SUBJECT: Interim Guidance on Offers in Compromise Involving Internal Revenue Code (IRC) §965 (Repatriation Tax or Transition Tax)

This memorandum issues guidance for employees of Specialty Collection, Offer in Compromise, when a Form 656, Offer in Compromise or Form 656-L, Offer in Compromise (Doubt as to Liability), is received for processing and the taxpayer is requesting to compromise tax periods which include assessed and/or deferred taxes attributable to IRC §965 - Repatriation Tax or Transition Tax (IRC 965) until the impacted IRMs are published. The effective date of this memorandum is March 30, 2020.

Purpose

There are unique issues involving IRC 965 liabilities, including the ability of the taxpayer to pay in installments or defer the assessment under certain circumstances which may affect the processing and investigation of offers. Additionally, consideration of a taxpayer's ability to repatriate the foreign earnings that are the basis for the IRC 965 liabilities may require the assistance of an Abusive Tax Avoidance Transaction (ATAT) Revenue Officer (RO) to evaluate financial information and assist in conducting research relative to income/assets.

If Form 656 includes any modules in the liability section that involve IRC 965, these procedures provide guidance regarding the processability of the offer and the impact IRC 965 may have on the resolution of the offer investigation.

Background

In general, beginning with the tax year ended 12/31/2017 or 12/31/2018, taxpayers may be liable for taxes under IRC 965. This IRC section provides that certain taxpayers must 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. Provisions of IRC 965 allow a taxpayer to elect to pay the net tax liability in installments over eight years (IRC 965(h)) or if the taxpayer is a shareholder in an S corporation to elect to defer the assessment until a triggering event occurs under (IRC 965(i)), at which point the taxpayer can elect to pay the net tax liability in installments over eight years.

Identification

Offer employees may identify IRC 965(h) and IRC 965(i) election accounts by the following transaction codes:

TC 971 AC 114 - the total IRC 965 tax that is included in the TC 150 amount. If the TC 971, AC 114 amount is \$0.00, the 965 deferral may be under IRC 965(i), meaning the tax is deferred until a triggering event occurs.

TC 971 AC 115 - the IRC 965(h) *deferred* tax amount as reported by the taxpayer. There should only be a TC 971, AC 115 if an 965(h) election was made, otherwise there will only be a TC 971, AC 114 on the module.

TC 766 CRN 263 – The amount of the net tax liability under IRC 965 payment of which the taxpayer is deferring. Taxpayers who make an IRC 965(h) election may make installment payments for up to 8 years. For the first year, this credit amount could be up to 92% of the net tax liability under IRC 965 that is included in the TC 150.

Example:

The taxpayer owes \$100,000 and has elected to defer the payments under 965(h). They are electing to defer the maximum 92% to future years. IDRS will appear as follows:

971 07032018 0.00 20182802 xxxx-xxx-xxxxx-8 971-CD>114

MISC>100000

766 04152018 92000- 20183005 xxxx-xxx-xxxxx-8 CR-ID-NUM>263

570 08132018 0.00 20183005 xxxx-xxx-xxxxx-8

Additionally, if a TC 670 DPC 64 (designated payment of 965 tax) is on the tax module, it indicates an assessment under IRC 965 is present.

Procedural Change

The processing, investigation, and resolution of any offer which involves IRC 965 liabilities is dependent upon the following, (1) whether the taxpayer made an IRC 965(h) or IRC 965(i) election when filing an income tax return (Form 1040/Form 1041/Form 1120), and (2) whether there is a current assessment under IRC 965 and the tax payment is deferred under IRC 965(h), or an IRC 965 assessment will not occur until a triggering event in accordance with IRC 965(i).

The following table provides guidance for the process examiners (PE), offer examiners (OE), and offer specialists (OS) on the processing of offers involving IRC 965 liabilities.

IF	THEN PE Action	THEN OE/OS Actions	REMARKS
<p>Form 656 is received for processing which only includes tax years ending 12/31/2017 and/or 12/31/2018, and/or tax years ending within the year ended 12/31/2018.</p> <p>NOTE: A fiscal year filing may also occur.</p>	<p>The PE will review the IDRS tax module for codes involving IRC 965 liabilities to see if any deferral elections have been made.</p> <p>If there is an IRC 965(i) net tax liability, (TC 971 AC 114 \$0), yet there is currently no tax assessment on the module, the offer is not processable.</p> <p>If the Form 656 includes both 12/31/2017 and 12/31/2018, yet only one year has issues relating to IRC 965 (h) or (i), the offer is processable.</p>	<p>If the offer is determined to be processable, the OE/OS will complete the initial compliance screening prior to transfer.</p>	<p>All offers which include IRC 965 liabilities will be forwarded to the NEH-ETA group in Austin, TX via Form 3210. The OE/OS should include a statement that IRC 965 liabilities are included on the Form 656.</p>
<p>Form 656 received for processing which has tax periods in addition to tax years ending 12/31/2017 and/or 12/31/2018 and/or tax years ending within the year ended 12/31/2018.</p>	<p>The PE will complete normal processability determination.</p>	<p>If not conducted during case building, include in the <i>Initial Compliance Screening</i>, a review of tax modules 12/31/2017 and/or 12/31/2018, and/or tax modules for tax years ending within 12/31/2018 to see if it includes (i) an assessment of IRC 965 tax or (ii) a deferral of the</p>	<p>All offers which include IRC 965 liabilities will be forwarded to the NEH-ETA group in Austin, TX via Form 3210. The OE/OS should include a statement that IRC 965 liabilities are included on the Form 656.</p>

		<p>assessment or payment of any IRC 965 liabilities.</p> <p>If the 2017 and/or 2018 years do not include any IRC 965 liabilities continue normal offer processing and investigation.</p>	
Form 656-L received involving tax years ending 12/31/2017 and/or 12/31/2018 and/or tax years ending within the year ended 12/31/2018.	If a TC 971 AC 114 is posted, the case does not qualify for consideration under DATL. The offer should be returned as not processible.	<p>DATL Tax Examiner should review the tax module to see if the potential for future assessments under IRC 965 exists.</p> <p>Refer to IRM 3.14.2.7.5 IRC 965 Transition Tax for additional information on the identification of deferred or potential IRC 965 liabilities.</p>	A request for consideration under DATL involving tax years in which there is no election to defer the assessment of IRC 965 tax liability or in which a transfer agreement has not been executed may be reviewed under current DATL criteria. If the tax year includes a deferral of an IRC tax liability, the DATL offer is not processible.

Procedural Change - OE/OS Actions

Initial Review

The OE/OS will take initial investigative actions on offers having IRC 965 liabilities or deferred IRC 965 liabilities. This includes IRM 5.8.4.6 - [Initial Compliance Screening](#).

Verification of Financial Information (NEH-ETA OS)

While verifying the taxpayer's financial information, the NEH-ETA OS may consider submitting a request to an ATAT RO for assistance in determining if the taxpayer is retaining any foreign assets and if applicable, valuing those foreign assets.

NOTE: Prior to recommending acceptance of an offer involving IRC 965 liabilities, the NEH-ETA OS must verify the IRC 965 tax amount was calculated correctly by contacting the current IRC 965 coordinator in Collection Policy and request a review of the taxpayer's financial information by an ATAT RO to verify that all available resources have been utilized and all assets/income are included in the determination of reasonable collection potential. Any request for assistance from an ATAT RO should be in accordance with IRM 5.1.8.2 - [Courtesy Investigation](#).

Additionally, Federal Account Tax Compliance Act (FATCA) research should be conducted prior to any acceptance recommendation.

Other Considerations/Addenda

If after a thorough investigation, there is a determination that acceptance of the taxpayer's offer would be in the government's best interest, the OS may proceed with completing the necessary documents to process an acceptance.

There are unique issues to address when there are IRC 965 liabilities assessed or pending on a tax period that will be included in an accepted offer. These include when the taxpayer has elected to defer payment under IRC 965(h) or defer assessment under IRC 965(i).

Form 656 (rev 2020) will include the statement, "The IRS will not compromise any liability for which an election under IRC § 965(i) is made; such liabilities are excluded from this offer. Furthermore, any liability for which payment is being deferred under IRC § 965(h)(1) will be compromised only if an acceleration of payment under section 965(h)(3) and the regulations thereunder has occurred and no portion of the liability to be compromised resulted from entering into a transfer agreement under section 965(h)(3)."

If the taxpayer elected to defer payments under IRC 965(h) when the return was filed and the offer is going to be recommended for acceptance, the tax liability may be included in the offer, if acceleration has taken place under IRC 965(h)(3) such that the entire amount of the IRC 965(h) net tax liability is currently due and the taxpayer had not previously entered into a transfer agreement and assumed another taxpayer's IRC 965(h) net tax liability which is now included in the offer.

Income tax assessments, other than IRC 965 liabilities, on tax years which also include deferred assessments pursuant to IRC 965(i) may be compromised, yet the taxpayer must be specifically advised of the language on the Form 656 which states IRC 965(i) liabilities are not included in the compromise proposal. The offer case file must be clearly documented relative to this discussion with the taxpayer or their representative.

NOTE: Any acceptance to compromise a tax period which includes an IRC 965 liability must be approved by the Territory Manager or Operations Manager.

If the taxpayer has included a tax year which only includes a tax liability which has been deferred under IRC 965(i) or the payment of which has been deferred under IRC 965(h), but which has not been accelerated, the taxpayer should be requested to remove the tax year from the offer. If the taxpayer refuses to remove such a tax year, the offer should be closed as a processable return.

Open Offers Involving IRC 965 Liabilities

If an acceptance is being recommended prior to the publication of Form 656 (rev 2020) which includes IRC 965 language, the OS must secure a collateral agreement from the taxpayer. The OS should discuss with Collection Policy the language required on the agreement which must include a statement, "the offer will not compromise any liabilities relating to IRC 965(h) or IRC 965(i)". An amended offer with appropriate IRC 965 language or a collateral agreement must be secured on any offer currently under investigation which includes IRC 965 liabilities. As discussed in the previous section, if the taxpayer refuses to provide a collateral agreement, the amended offer and/or remove a tax year involving IRC 965 deferred liability, the offer should be closed as a processable return.

Summary

The unique nature of these assessments requires a thorough review of any tax periods in which the taxpayer has reported or may be required to report Repatriation or Transition taxes under IRC 965. The reviewer must determine if the potential exists for a tax liability based on a qualifying event or deferral of payments due. Any compromise determination must document this review and include information on the elections the taxpayer has made to ensure proper resolution to the taxpayer's account.

Effect on Other Documents: This memorandum will be incorporated into IRM 5.8.1, *Overview*; 5.8.2, *Centralized Offer in Compromise Initial Processing and Processability*; 5.8.4, *Investigation*; 5.8.10, *Special Case Processing*; and 5.19.24, *Doubt as to Liability Offer in Compromise* within two years of the effective date.

Contact: You may direct any questions to Diana Estey, National Offer in Compromise Program Manager, or a member of your staff may contact Senior OIC Analyst, Thomas B. Moore.

cc: Director, Field Collection
Office of Chief Counsel
Chief, Appeals

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