

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

▶ Attach to your income tax return.

**Part I U.S. Transferor Information** (see instructions)

Name of transferor	Identifying number (see instructions)
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- 1** If the transferor was a corporation, complete questions 1a, 1b, and 1c.
- a** If the transfer was a section 361(a) or (b) transfer, was the transferor controlled (under section 368(c)) by 5 or fewer domestic corporations? . . . . .  Yes  No
- b** Did the transferor remain in existence after the transfer? . . . . .  Yes  No
- If not, list the controlling shareholder(s) and their identifying number(s):

Controlling shareholder	Identifying number

- c** If the transferor was a member of an affiliated group filing a consolidated return, was it the parent corporation? . . . . .  Yes  No
- If not, list the name and employer identification number (EIN) of the parent corporation:

Name of parent corporation	EIN of parent corporation

- 2** If the transferor was a partner in a partnership that was the actual transferor (but is not treated as such under section 367), list the name and EIN of the transferor's partnership:

Name of partnership	EIN of partnership

**Part II Transferee Foreign Corporation Information** (see instructions)

<b>3</b> Name of transferee (foreign corporation)	<b>4</b> Identifying number, if any
<b>5</b> Address (including country)	
<b>6</b> Country of incorporation or organization	
<b>7</b> Foreign law characterization (see instructions)	
<b>8</b> Is the transferee foreign corporation a controlled foreign corporation? . . . . . <input type="checkbox"/> Yes <input type="checkbox"/> No	

**Part III** Information Regarding Transfer of Property (see instructions)

**9** Date of transfer

**10** Type of nonrecognition transaction (see instructions)

**11** Description of property transferred:

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**12** Did this transfer result from a change in the classification of the transferee to that of a foreign corporation?  **Yes**  **No**

**13** Was the transferor required to recognize income under Temporary Regulations sections 1.367(a)-4T through 1.367(a)-6T (e.g., for tainted property, depreciation recapture, branch loss recapture, etc.)? . .  **Yes**  **No**

**14a** Was intangible property (within the meaning of section 936(h)(3)(B)) transferred as a result of the transaction? . . . . .  **Yes**  **No**

**b** If yes, describe the nature of the rights to the intangible property that was transferred in the transfer:

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## General Instructions

### 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 file Form 926 to report transfers of property described in section 6038B(a)(1)(A) to a foreign corporation.

### 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.
- **Transfers by a husband and wife.** A husband and wife 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).

### Exceptions to Filing

1. For exchanges described in section 354, a U.S. person does not have to file Form 926 if:
  - a. The U.S. person exchanges stock of a foreign corporation in a reorganization described in section 368(a)(1)(E) or
  - b. 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)(C), (D), or (F), that is not treated as an indirect stock transfer under section 367(a).
2. 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.
3. 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 either:
    - 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
  - 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 either:
    - The transferor (or one or more successors) properly entered into a gain recognition agreement, 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 and such person properly reported the income 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.

- The transfer was taxable to the U.S. transferor and such person properly reported the income 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.

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 either:

- The transferor (or one or more successors) properly entered into a gain recognition agreement, 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 and such person properly reported the income 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 (and the additional information required under Regulations section 1.6038B-1(c) and Temporary Regulations sections 1.6038B-1T(c)(1) through (5) and 1.6038B-1T(d)) must be filed with the U.S. transferor's income tax return for the tax year that includes the date of the transfer.

### Other Forms That May Be Required

Persons filing this form may be required to file **Form TD F 90-22.1**, Report of Foreign Bank and Financial Accounts.

A U.S. transferor that is required to enter into a gain recognition agreement 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, or a similar statement, 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.

## Specific Instructions

### 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).

**Lines 1 and 2**

**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.

**Line 1b.** If the transferor went out of existence pursuant to the transfer (e.g., as in a reorganization described in section 368(a)(1)(C)), list the controlling shareholders.

**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 2.** If the actual transferor was a partnership, the domestic partners of the partnership, not the partnership itself, are deemed to be the transferors. See Temporary Regulations section 1.367(a)-1T(c)(3). List the name and identification number of the partnership.

**Part II—Transferee Foreign Corporation Information**

**Line 7.** List the entity classification (e.g., 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**

**Line 10.** List the type of nonrecognition transaction that gave rise to the reporting obligation (e.g., section 332, 351, 354, 356, or 361).

**Line 11.** Give a brief description of the property transferred and attach to Form 926 the information required under Regulations sections 1.6038B-1(c) and Temporary Regulations sections 1.6038B-1T(c)(1) through 1.6038B-1T(c)(5) and 1.6038B-1T(d).

**Line 12.** If this transfer resulted from a change in the classification of the transferee to that of a foreign corporation (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 13.** See Temporary Regulations sections 1.367(a)-4T through 1.367-6T for instances in which a transferor must recognize income on the transfer of tangible property that qualifies for nonrecognition treatment (see section 367(a)(3) and Temporary Regulations section 1.367(a)-2T). Additional information is required to be attached to this form. See Temporary Regulations sections 1.6038B-1T(c)(4)(iii) and (vii), and 1.6038B-1T(c)(5).

**Line 14a.** If you checked the "Yes" box, additional information is required to be attached to this form. See Temporary Regulations section 1.6038B-1T(d).

**Line 14b.** See Temporary Regulations section 1.6038B-1T(d).

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**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 average time is:

- Recordkeeping** . . . . . 5 hr., 30 min.
- Learning about the law or the form** . . . . . 4 hr., 10 min.
- Preparing and sending the form to the IRS** . . . . . 4 hr., 26 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. See the instructions for the tax return with which this form is filed.

