

# Instructions for Form 926

(Rev. December 2011)

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



Department of the Treasury  
Internal Revenue Service

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

### What's New

- T.D. 9525, 2011-23 I.R.B. 837, finalizes regulations that affect U.S. persons that transfer property subject to lease of aircraft or vessels in foreign commerce to a foreign corporation. Such transfers are reported on the "property to be leased" line of Form 926, Part III. Furthermore, such U.S. persons would also be required to complete Form 926, Part IV, line 13.
- Section 512 of the Hiring Incentives to Restore Employment Act of 2010 provided a new penalty for underpayments attributable to undisclosed foreign financial asset understatements. For more information, see *Section 6662(j) Penalty* below.

### 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 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 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 or 356, 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 recapitalization 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) that is not treated as an indirect stock transfer under Regulations section 1.367(a)-3(d).

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:

- 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 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 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 (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 (or, if applicable, exempt organization 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.

#### 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.

#### 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 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 Regulations section 1.367(a)-1T(c)(3)(ii)(C) apply.

### Part II—Transferee Foreign Corporation Information

**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 [www.irs.gov/countrycodes](http://www.irs.gov/countrycodes)) of the transferee foreign corporation’s country of incorporation or organization.

**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

**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. With respect to section 6038B(a)(1)(A) transfers, see Temporary Regulations section 1.6038B-1T(c)(4) for specific information that must be reported in column (b) (or, if necessary, under the

Supplemental Information section or on attached sheets). With respect to section 367(d) transfers, see Temporary Regulations section 1.6038B-1T(d). With respect to section 367(e) transfers, see Regulations section 1.6038B-1(e).

**Column (c). Fair market value.** 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.

### Supplemental information required to be reported

Enter any information from Part III that is required to be reported in greater detail. Identify the applicable column number next to the information entered in this section. In addition, if you contributed property to a foreign corporation as a part of a wider transaction, briefly describe the entire transaction.

### Part IV—Additional 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 11a.** 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 11b.** 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 11c.** 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 11d.** 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 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 final and temporary Regulations sections 1.367(a)-4 through 1.367(a)-6 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 17a.** 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 17b.** 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 burden for individual taxpayers filing this form is approved under OMB control number 1545-0074 and is included in the estimates shown in the instructions for their individual income tax return. The estimated burden for all other taxpayers who file this form is shown below.

- Recordkeeping .....23 hr., 12 min.
- Learning about the law or the form .....6hr., 52min.
- Preparing and sending the form to the IRS .....14hr., 44 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.

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