

April 2009

Title

Stricter Reporting Requirements for U.S. Transferors of Property to Foreign Corporations

Subject

The Internal Revenue Service has issued revised Form 926, *Return by a U.S. Transferor of Property to a Foreign Corporation*, to report exchanges of property with or transfers of property to a foreign corporation. The updated form requires greater detail regarding the property transferred and the tax consequences associated with the transfer.

Affecting

Form 926 is required for any United States person, corporation, estate, or trust that has exchanged property with, or transferred property to, a foreign corporation during the transferor's taxable year in a transaction described in section 6038B(a), 367(d), or 367(e). Among others, affected transfers include transfers of cash (special rules may apply), stock, accounts receivable, intangible property, inventory, and depreciable assets.

Effective Date

Revised Form 926 was released by the Service in February 2009 and contains a revision date of December 2008.

Changes From Previous Version Of Form

Form 926 was updated to reflect changes under Treas. Reg. § 1.6038B-1 and Temp. Reg. § 1.6038B-1T. More specifically, Section III of Form 926 provides for the transferor to report the specific class of asset(s) transferred, description of the property transferred, fair market value on the date of transfer, basis of the asset, and any gain recognized on the transfer. Also, Form 926 provides a new Schedule IV. Schedule IV requires the filer to disclose if the transfer is subject to certain provisions of the Internal Revenue Code or Treasury Regulations.

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INTERNATIONAL TAX ALERT

The required information includes, but is not limited to, the following:

- f* Gain recognition under the overall foreign loss recapture rules of section 904(f);
- f* Recapture under the section 1503(d) dual consolidated loss regulations;
- f* Section 987 foreign currency exchange;
- f* Percentage of ownership changes resulting from the transfer;
- f* Income recognition under Temp. Reg. § 1.367(a)-1, including branch loss recapture and depreciation recapture; and
- f* Type of non-recognition transaction.

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 file Form 926. Each domestic partner should report the partner's proportionate share of property transferred.

Transfers Of Cash

Cash transfers must be reported if, immediately after the transfer, the United States person directly or indirectly owns at least ten percent of the total voting stock of the foreign transferee or if the amount transferred during the twelve-month period ending the date of transfer exceeds \$100,000.

Penalties

If a taxpayer fails to comply with its requirement to file Form 926, the Service may impose a penalty equal to ten percent of the fair market value of the property at the time of the transfer. The penalty does not apply if the failure to file is due to reasonable cause rather than willful neglect. The penalty is limited to \$100,000 unless the failure to comply was due to intentional disregard of the filing requirements. Note that the statute of limitations does not close until three years after date on which the required Form 926 is filed.

Observations

- f* If cash is transferred, it is likely that Form TD F 9022.1, *Report of Foreign Bank and Financial Accounts*, will also be required.
- f* When transfers are made to a controlled foreign corporation, filers should take care to ensure that Form 926 is consistent with reporting on Form 5471, *Information Return of U.S. Persons with Respect To Certain Foreign Corporations*.

To ensure compliance with Treasury Department regulations, we wish to inform you that any tax advice that may be contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding tax-related penalties under the Internal Revenue Code or applicable state or local tax law provisions or (ii) promoting, marketing or recommending to another party any tax-related matters addressed herein.

Material discussed in this tax alert is meant to provide general information and should not be acted on without professional advice tailored to your firm's individual needs.