

Instructions for 8865

Return of U.S. Persons With Respect to Certain Foreign Partnerships

Volume 1 of 2



Department of the Treasury
Internal Revenue Service

Instruction for Form 8865 (Rev 2023) Catalog Number 49498A
Department of the Treasury **Internal Revenue Service** www.irs.gov



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Future Developments

What's New

See *What's New* in the Instructions for Form 1065 for changes and new Internal Revenue Code sections that may affect foreign partnerships with fiscal years, corporate partners, or certain impacted activities.

Reminders

Schedules K-2 (Form 8865) and K-3 (Form 8865) for partnerships. For tax years beginning after 2020, most items of international tax relevance are reported on Schedules K-2 and K-3, replacing prior reporting on Form 8865, Schedules K and K-1, line 16, Foreign transactions, and certain reporting on Form 8865, Schedules K and K-1, line 20, Other information.

The schedules are designed to provide greater clarity for partners on how to compute their U.S. income tax liability regarding items of

international tax relevance, including claiming deductions and credits. Go to [IRS.gov](https://www.irs.gov) for the schedules and the Instructions for Schedules K-2 and K-3 (Form 8865) for more information. Form 8865, Schedules K and K-1, retain line 16 for the partnership to check a box indicating that it has items of international tax relevance and that it completed Schedules K-2 and K-3. For purposes of basis adjustments and to reconcile income, Form 8865 retains total foreign taxes paid or accrued but moves this reporting to Schedule K, line 21. See the Instructions for Form 1065 for amounts to report on line 21.

Important: Foreign taxes paid or accrued must be reported on Schedules K-2 and K-3 for purposes of reporting information necessary for an eligible partner to claim a foreign tax credit.

General Instructions

Only the general instructions for Schedules B, K, K-1, M-1, and M-2 are included later in these instructions. If you are required to complete these schedules for Form 8865, use the specific instructions for the corresponding schedules of Form 1065, U.S. Return of Partnership Income.

For the latest information about developments related to Form 8865, its schedules, and its instructions, such as legislation enacted after they were published, go to [IRS.gov/Form8865](https://www.irs.gov/Form8865).

**IF you are
completing Form
8865...**

**THEN use the
instructions for
Form 1065...**

Schedule B

page 1 (income and
deductions).

Schedules K and K-1

Schedules K and K-1.

Schedule K-3

Schedule K-3.

Schedule L

Schedule L.

Schedule M-1

Schedule M-1.

Schedule M-2

Schedule M-2.

Note. If you are reporting capital gains and losses, use Schedule D (Form 1065). See the Instructions for Schedule D (Form 1065).

Purpose of Form

Use Form 8865 to report the information required under section 6038 (reporting with respect to controlled foreign partnerships), section 6038B (reporting of transfers to

foreign partnerships), or section 6046A (reporting of acquisitions, dispositions, and changes in foreign partnership interests).

Who Must File

A U.S. person qualifying under one or more of the Categories of Filers (see below) must complete and file Form 8865. These instructions and the *Filing Requirements for Categories of Filers* chart, later, explain the information, statements, and schedules required for each category of filer. If you qualify under more than one category for a particular foreign partnership, you must submit all the items required for each category under which you qualify.

Example. If you qualify as a Category 2 and a Category 3 filer, you must submit all the schedules required of Category 2 filers (page 1 of Form 8865, and Schedules A, A-2, N, K-1, and K-3) plus any additional schedules that

Category 3 filers are required to submit (Schedules A-1 and O).

Complete a separate Form 8865 and the applicable schedules for each foreign partnership.

File the 2023 Form 8865 with your income tax return for your tax year beginning in 2023.

If a Form 8832, Entity Classification Election, was filed for this entity for the current tax year, see *When To File* and *Where To File* in the instructions for Form 8832 to determine if you are required to attach a copy of the Form 8832 to the tax return to which the Form 8865 is being attached.

If a domestic section 721(c) partnership is formed on or after January 18, 2017, and the gain deferral method is applied, then a U.S. transferor must file Form 8865 for that partnership. See Regulations section 1.721(c)-6(b)(4). See *Section 721(c)*

partnership, Gain deferral method, and U.S. transferor, later.

A U.S. transferor that is required to provide information for a partnership under Regulations sections 1.721(c)-6(b)(2)(iv) and 1.721(c)-6(b)(3)(xi) must file a separate Form 8865 (along with all necessary schedules and attachments) for each partnership treated as a U.S. transferor under Regulations sections 1.721(c)-3(d) and 1.721(c)-6(c)(2). See U.S. transferor, later.

Categories of Filers

Category 1 filer. A Category 1 filer is a U.S. person who controlled the foreign partnership at any time during the partnership's tax year. Control of a partnership is ownership of more than a 50% interest in the partnership. See the definition of 50% interest, later. There may be more than one Category 1 filer for a partnership for a particular partnership tax

year. See U.S. person and Foreign partnership, later.

A Category 1 filer also includes a U.S. transferor who must report certain information for a section 721(c) partnership for the tax year of contribution and subsequent years, pursuant to Regulations section 1.721(c)-6. A Category 1 filer fulfills this reporting requirement by filing Schedule G and, in certain circumstances, Schedule H. See Section 721(c) partnership and U.S. transferor, later.

Category 2 filer. A Category 2 filer is a U.S. person who at any time during the tax year of the foreign partnership owned a 10% or greater interest in the partnership while the partnership was controlled by U.S. persons each owning at least a 10% interest. However, if the foreign partnership had a Category 1 filer at any time during that tax year, no person will be considered a Category

2 filer. See the definition of a 10% interest, later.

Category 3 filer. A Category 3 filer is a U.S. person who contributed property during that person's tax year to a foreign partnership in exchange for an interest in the partnership (a section 721 transfer), if that person either:

1. Owned directly or constructively at least a 10% interest in the foreign partnership immediately after the contribution, or
2. The value of the property contributed (when added to the value of any other property contributed to the partnership by such person, or any related person, during the 12-month period ending on the date of transfer) exceeds \$100,000.

If a domestic partnership contributes property to a foreign partnership, the domestic partnership's partners are considered to have

transferred a proportionate share of the contributed property to the foreign partnership. However, if the domestic partnership files Form 8865 and properly reports all the required information for the contribution, its partners will not be required to report the transfer.

A Category 3 filer includes a U.S. transferor who (a) contributes section 721(c) property to a section 721(c) partnership, and (b) has reporting requirements pursuant to Regulations section 1.721(c)-6(b)(2). The Category 3 filer fulfills this reporting requirement by filing Schedule G, in addition to Schedule O, and, in certain circumstances, Schedule H. See Section 721(c) property, later.

Filing Requirements for Categories of Filers

Filing Requirements	Category of Filers			
	1	2	3	4
Identifying information—page 1 of Form 8865	✓	✓	✓	✓
Schedule A—Constructive Ownership of Partnership Interest	✓	✓	✓	✓
Schedule A-1—Certain Partners of Foreign Partnership	✓		✓	
Schedule A-3—Affiliation Schedule	✓	✓	✓	✓
Schedule B—Income Statement—Trade or Business Income	✓			
Schedule G (Form 8865)—Statement of Application of the Gain Deferral Method Under Section 721	✓		✓	✓
Schedule H (Form 8865)—Acceleration Events and Exceptions Reporting Relating to Gain Deferral Method Under Section 721(c)	✓		✓	✓
Schedule K—Partners' Distributive Share Items	✓			
Schedule K-1 (Form 8865)—Partner's Share of Income, Deductions, Credits, etc. (direct partners only)	✓	✓		
Schedule K-2 (Form 8865)—Partners' Distributive Share Items—International	✓			
Schedule K-3 (Form 8865)—Partner's Share of Income, Deductions, Credits, etc.—International	✓	✓		
Schedule L—Balance Sheets per Books	✓			
Schedule M-1—Reconciliation of Income (Loss) per Books With Income (Loss) per Return	✓			
Schedule M-2—Analysis of Partners' Capital Accounts	✓			
Schedule N—Transactions Between Controlled Foreign Partnership and Partners or Other Related Entities	✓	✓		
Schedule D—Schedule D (Form 1065), Capital Gains and Losses	✓			
Schedule O (Form 8865)—Transfer of Property to a Foreign Partnership			✓	
Schedule P (Form 8865)—Acquisitions, Dispositions, and Changes of Interests in a Foreign Partnership				✓

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Category 3 also includes a U.S. person that previously transferred appreciated property to the partnership and was required to report that transfer under section 6038B, if the foreign partnership disposed of such property while the U.S. person remained a direct or indirect partner in the partnership.

Category 4 filer. A Category 4 filer is a U.S. person that had a reportable event under section 6046A during that person's tax year. There are three categories of reportable events under section 6046A: acquisitions, dispositions, and changes in proportional interests.

Acquisitions. A U.S. person that acquires a foreign partnership interest has a reportable event if:

- The person didn't own a 10% or greater direct interest in the partnership and, as a result of the acquisition, the person owns a 10% or greater direct interest in the partnership (for example, from 9% to

10%). For purposes of this rule, an acquisition includes an increase in a person's direct proportional interest (see Changes in proportional interests, later); or

- Compared to the person's direct interest when the person last had a reportable event, after the acquisition the person's direct interest has increased by at least a 10% interest (for example, from 11% to 21%). An acquisition of a section 721(c) partnership interest may be an acceleration event exception under the gain deferral method. See Regulations section 1.721(c)-5. In this case, the acquirer may become a successor U.S. transferor and may have a reporting requirement under Regulations section 1.721(c)-6. See the specific instructions for Schedule H, later.

Dispositions. A U.S. person that disposes of a foreign partnership interest has a reportable event if:

- The person owned a 10% or greater direct interest in the partnership before the disposition and, as a result of the disposition, the person owns less than a 10% direct interest (for example, from 10% to 8%). For purposes of this rule, a disposition includes a decrease in a person's direct proportional interest; or
- Compared to the person's direct interest when the person last had a reportable event, after the disposition the person's direct interest has decreased by at least a 10% interest (for example, from 21% to 11%).

A disposition of a section 721(c) partnership interest may be an acceleration event for purposes of applying the gain deferral method. The U.S. transferor may be required to recognize gain in an amount equal to the

remaining built-in gain on the section 721(c) property previously contributed to the section 721(c) partnership. See Regulations section 1.721(c)-4. For acceleration events exceptions, see Regulations section 1.721(c)-5. See the specific instructions for Schedule H, later.

Changes in proportional interests. A U.S. person has a reportable event if compared to the person's direct proportional interest the last time the person had a reportable event, the person's direct proportional interest has increased or decreased by at least the equivalent of a 10% interest in the partnership.

Special rule for a partnership interest owned on December 31, 1999. If the U.S. person owned at least a 10% direct interest in the foreign partnership on December 31, 1999, then comparisons should be made to the person's direct interest on December 31, 1999. Once the person has a reportable

event after December 31, 1999, future comparisons should be made by reference to the last reportable event.

Exceptions to Filing

Multiple Category 1 filers. If during the tax year of the partnership more than one U.S. person qualifies as a Category 1 filer, only one of these Category 1 partners is required to file Form 8865. A U.S. person with a controlling interest in the losses or deductions of the partnership isn't permitted to be the filer of Form 8865 if another U.S. person has a controlling interest in capital or profits; only the latter may file the return. The U.S. person that files the Form 8865 must complete item F on page 1.

The single Form 8865 to be filed must contain all of the information that would be required if each Category 1 filer filed a separate Form 8865. Specifically, separate Schedules N, K-1, and K-3 (if applicable) must be attached to

the Form 8865 for each Category 1 filer. Also, items B, C, and D on page 1 and Schedule A on page 2 of Form 8865 must be completed for each Category 1 filer not filing the form. Attach a separate statement listing this information to the single Form 8865.

A Category 1 filer not filing Form 8865 must attach a statement entitled "Controlled Foreign Partnership Reporting" to that person's income tax return. The statement must include the following information.

- A statement that the person qualified as a Category 1 filer, but is not submitting Form 8865 under the multiple Category 1 filers exception.
- The name, address, and identifying number (if any) of the foreign partnership of which the person qualified as a Category 1 filer.
- A statement that the filing requirement has been or will be satisfied.

- The name and address of the person filing Form 8865 for this partnership.
- The Internal Revenue Service Center where the Form 8865 must be filed (or indicate “electronic filing” if the Form 8865 has been or will be filed electronically).



A U.S. person who qualifies for this exception to the Category 1 filing requirement would still have to file a separate Form 8865 if that person is also subject to the filing requirements of Category 3 or 4. This separate Form 8865 would include all the information required for a Category 3 filer, a Category 4 filer, or a U.S. transferor who must report certain information for a section 721(c) partnership for the year of contribution and subsequent years, pursuant to Regulations section 1.721(c)-6, in addition to the “Controlled Foreign Partnership Reporting” statement.

Constructive owners. See Constructive ownership, later. A Category 1 or 2 filer that doesn't own a direct interest in the partnership and that is required to file this form solely because of constructive ownership from a U.S. person(s) isn't required to file Form 8865 if:

1. Form 8865 is filed by the U.S. person(s) through which the indirect partner constructively owns an interest in the foreign partnership,
2. The U.S. person through which the indirect partner constructively owns an interest in the foreign partnership is also a constructive owner and meets all the requirements of this constructive ownership filing exception, or
3. Form 8865 is filed for the foreign partnership by another Category 1 filer under the multiple Category 1 filers exception.

To qualify for the constructive ownership filing exception, the indirect partner must file with its income tax return a statement entitled “Controlled Foreign Partnership Reporting.”

This statement must contain the following information.

1. A statement that the indirect partner was required to file Form 8865, but isn’t doing so under the constructive owners exception.
2. The names and addresses of the U.S. persons whose interests the indirect partner constructively owns.
3. The name and address of the foreign partnership for which the indirect partner would have had to have filed Form 8865 but for this exception.
4. If the indirect partner is a domestic corporation, a statement setting forth all the information that the indirect partner would have had to provide in

response to questions G8a and G8b on Form 8865. See Item H10. Separate Units Note, later, for more information.

Members of an affiliated group of corporations filing a consolidated return.

If one or more members of an affiliated group of corporations filing a consolidated return qualify as Category 1 or 2 filers for a particular foreign partnership, the common parent corporation may file one Form 8865 on behalf of all of the members of the group required to report. Except for group members who also qualify under the constructive owners exception, the Form 8865 must contain all the information that would have been required to be submitted if each group member filed its own Form 8865.

Exception for certain trusts. Trusts relating to state and local government employee retirement plans that otherwise would have Forms 8865 reporting requirements with

regard to foreign partnerships aren't required to file Form 8865.

Exception for certain Category 4 filers. If you qualify as a Category 3 and 4 filer because you contributed property to a foreign partnership in exchange for a 10% or greater interest in that partnership, you aren't required to report this transaction under both Category 3 and 4 filing requirements. If you properly report the contribution of property under the Category 3 rules, you aren't required to report it as a Category 4 filer. However, the acquisition will count as a reportable event to determine if a later change in your partnership interest qualifies as a reportable event under Category 4.

Example. Partner A doesn't own an interest in FPS, a foreign partnership. Partner A transfers property to FPS in exchange for a 15% direct interest. Partner A qualifies as a Category 3 filer because he transferred property to a foreign partnership and owned

at least a 10% interest in FPS immediately after the contribution. Partner A is also a Category 4 filer because he didn't own a 10% or greater direct interest in FPS and as a result of the acquisition now owns a 10% or greater direct interest in FPS. If Partner A properly reports the contribution on Form 8865 as a Category 3 filer, Partner A isn't required to report his acquisition of the 15% interest in FPS as a Category 4 filer.

Relief for Category 1 and 2 Filers When the Foreign Partnership Files Form 1065

If a foreign partnership files Form 1065 for its tax year, Category 1 and 2 filers may use a copy of the completed Form 1065 schedules in place of the equivalent schedules of Form 8865.

If you file Form 8865 with an electronically filed income tax return, see the electronic filing publications identified in the instructions for your income tax return for more information.

See the first paragraph under *General Instructions*, earlier, for the Form 1065 schedules that are equivalent to the Form 8865 schedules.

Example. Partner A is a Category 1 filer with respect to FPS, a foreign partnership, during the 2023 tax year. FPS completes and files a Form 1065 for its 2023 tax year.

Instead of completing Schedules B, K, K-2, L, M-1, M-2, K-1 and K-3 of Form 8865, Partner A may attach to its Form 8865 page 1 of Form 1065 and Form 1065 Schedules K, K-2, L, M-1, M-2, K-1 and K-3 (including the Schedules K-1 and K-3 for Partner A and all other U.S. persons owning 10% or greater direct interests in FPS). Partner A must complete the following items and schedules on Form 8865.

- The first and second pages.
- Schedule A.
- Schedule A-1.

- Schedule A-2.
- Schedule A-3.
- Schedule G (Form 8865).
- Schedule H (Form 8865).
- Schedule M.
- Schedule N.

Example. Partner A is a Category 2 filer with respect to FPS, a foreign partnership. If FPS completes and files a Form 1065 for its 2023 tax year, Partner A may file with Form 8865 the Schedules K-1 and K-3 (Form 1065) that it receives from the partnership instead of Schedules K-1 and K-3 (Form 8865). Partner A must complete the following items and schedules on Form 8865.

- The first and second pages.
- Schedule A.
- Schedule A-2.
- Schedule N.

When and Where To File

Attach Form 8865 to your income tax return (or, if applicable, partnership or exempt organization return) and file both by the due date (including extensions) for that return. If you don't have to file an income tax return, you must file Form 8865 separately with the IRS at the time and place you would be required to file an income tax return (or, if applicable, a partnership or exempt organization return). See below for penalties that may apply if you don't file Form 8865 on time.

Definitions

Partnership. A partnership is the relationship between two or more persons who join to carry on a trade or business, with each person contributing money, property, labor, or skill and each expecting to share in the profits and losses of the business whether or not a formal partnership agreement is made.

The term “partnership” includes a limited partnership, syndicate, group, pool, joint venture, or other unincorporated organization, through or by which any business, financial operation, or venture is carried on, that isn’t, within the meaning of the regulations under section 7701, a corporation, trust, estate, or sole proprietorship.

A joint undertaking merely to share expenses isn’t a partnership. Mere co-ownership of property that is maintained and leased or rented isn’t a partnership. However, if the co-owners provide services to the tenants, a partnership exists.

Foreign partnership. A foreign partnership is a partnership that isn’t created or organized in the United States or under the law of the United States or of any state or the District of Columbia. If a domestic section 721(c) partnership is formed on or after January 18, 2017, and the gain deferral

method is applied, then the section 721(c) partnership is treated as a foreign partnership for purposes of Form 8865 and these instructions. See Regulations section 1.721(c)-6(b)(4).

Section 721(c) partnership. A partnership (domestic or foreign) is a section 721(c) partnership if there is a contribution of section 721(c) property to the partnership and, after the contribution (and all transactions related to the contribution), (a) a related foreign person with respect to the U.S. transferor is a direct or indirect partner in the partnership; and (b) the U.S. transferor and related persons own 80% or more of the interests in partnership capital, profits, deductions, or losses. See Regulations section 1.721(c)-1(b)(14).

U.S. transferor. A U.S. transferor is a U.S. person other than a domestic partnership. See Regulations section 1.721(c)-1(b)(18).

Section 721(c) property. Section 721(c) property is property (other than excluded property) with built-in gain that is contributed to a partnership by a U.S. transferor, including pursuant to a contribution described in Regulations section 1.721(c)-2(d) (partnership look-through rule). See Regulations section 1.721(c)-1(b) (15).

Gain deferral contribution. A gain deferral contribution is a contribution of section 721(c) property to a section 721(c) partnership for which the recognition of gain is deferred under the gain deferral method. See Regulations section 1.721(c)-1(b)(7).

Gain deferral method. The gain deferral method is the method described in Regulations section 1.721(c)-3(b) applied to avoid the immediate recognition of gain upon a contribution of section 721(c) property to a section 721(c) partnership under Regulations section 1.721(c)-2(b).

50% interest. A 50% interest in a partnership is an interest equal to:

- 50% of the capital,
- 50% of the profits, or
- 50% of the deductions or losses. For purposes of determining a 50% interest, the constructive ownership rules described below apply.

10% interest. A 10% interest in a partnership is an interest equal to:

- 10% of the capital,
- 10% of the profits, or
- 10% of the deductions or losses. For purposes of determining a 10% interest, the constructive ownership rules described below apply.

Constructive ownership. For purposes of determining an interest in a partnership, the constructive ownership rules of section 267(c)

(excluding section 267(c)(3)) apply, taking into account that such rules refer to corporations and not to partnerships.

Generally, an interest owned directly or indirectly by or for a corporation, partnership, estate, or trust shall be considered as being owned proportionately by its owners, partners, or beneficiaries.

Also, an individual is considered to own an interest owned directly or indirectly by or for their family. The family of an individual includes only that individual's spouse, siblings, ancestors, and lineal descendants.

An interest will be attributed from a nonresident alien individual under the family attribution rules only if the person to whom the interest is attributed owns a direct or indirect interest in the foreign partnership under section 267(c)(1) or (5).

U.S. person. A U.S. person is a citizen or resident of the United States, a domestic partnership, a domestic corporation, and any

estate or trust that isn't foreign. See section 7701(a)(30).

Control of a corporation. For purposes of Schedule N, control of a corporation is ownership of stock possessing more than 50% of the total combined voting power, or more than 50% of the total value of shares of all classes of stock of the corporation. For rules concerning indirect ownership and attribution, see Regulations section 1.6038-2(c).

Change in a proportional interest. A partner's proportional interest in a foreign partnership can change as a result of changes in other partners' interests, for example, when another partner withdraws from the partnership. A partner's proportional interest can also change, for example, by operation of the partnership agreement (for example, if the partnership agreement provides that a partner's interest in profits will change on a set date or when the partnership has earned

a specified amount of profits, then the partner's proportional interest changes when the set date or specified amount of profits is reached).

Penalties

Failure to timely submit all information required of Category 1 and 2 filers.

- A \$10,000 penalty is imposed for each tax year of each foreign partnership for failure to furnish the required information within the time prescribed. If the information isn't filed within 90 days after the IRS has mailed a notice of the failure to the U.S. person, an additional \$10,000 penalty (per foreign partnership) is charged for each 30-day period, or fraction thereof, during which the failure continues after the 90-day period has expired. The additional penalty is limited to a maximum of \$50,000 for each failure.

- Any person who fails to furnish all of the information required within the time prescribed will be subject to a reduction of 10% of the foreign taxes available for credit under sections 901 and 960. If the failure continues 90 days or more after the date the IRS mails notice of the failure, an additional 5% reduction is made for each 3-month period, or fraction thereof, during which the failure continues after the 90-day period has expired. See section 6038 (and the underlying regulations) for the maximum reduction, the exception due to reasonable cause, and the limits on the amount of these penalties.
- Criminal penalties under sections 7203, 7206, and 7207 may apply for failure to file or for filing false or fraudulent information.

Additionally, any person that files under the constructive owners exception may be subject

to these penalties if all the requirements of the exception aren't met. Any person required to file Form 8865 who doesn't file under the multiple Category 1 filers exception may be subject to the above penalties if the other person doesn't file a correctly completed form and schedules. See *Exceptions to Filing*, earlier.

Failure to file information required of Category 3 filers. Any person that fails to properly report a contribution to a foreign partnership that is required to be reported under section 6038B and the regulations under that section is subject to a penalty equal to 10% of the fair market value (FMV) of the property at the time of the contribution. This penalty is subject to a \$100,000 limit, unless the failure is due to intentional disregard. In addition, the transferor must recognize gain on the contribution as if the contributed property had

been sold for its FMV. See section 6038B for the exception due to reasonable cause.

Failure to file information required of Category 4 filers. Any person who fails to properly report all the information requested by section 6046A is subject to a \$10,000 penalty, in addition to the section 7203 criminal penalty, unless it is shown that such failure is due to reasonable cause. If the failure continues for more than 90 days after the IRS mails notice of the failure, an additional \$10,000 penalty will apply for each 30-day period (or fraction thereof) during which the failure continues after the 90-day period has expired. The additional penalty shall not exceed \$50,000.

Treaty-based return positions. File Form 8833, Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b), to report a return position that a treaty of the United States (such as an income tax treaty;

an estate and gift tax treaty; or a friendship, commerce, and navigation treaty):

- Overrides or modifies any provision of the Internal Revenue Code, and
- Causes (or potentially causes) a reduction of any tax incurred at any time.

Failure to make such a report may result in a \$1,000 penalty (\$10,000 in the case of a C corporation). See section 6712.

Section 6662(j). Penalties may be imposed for underpayment attributable to undisclosed foreign financial asset understatements. The term “undisclosed foreign financial asset” for any tax year includes any asset for which required information was not provided. An “undisclosed foreign financial asset understatement” means for any tax year, the portion of the understatement for that tax year which is attributable to any transaction involving an undisclosed foreign financial asset. No penalty will be imposed for any

portion of an underpayment if the taxpayer can demonstrate that the failure to comply was due to reasonable cause for such portion of the underpayment and the taxpayer acted in good faith for such portion of the underpayment. See sections 6662(j) and 6664(c) for additional information.

Failure to comply with a requirement of the gain deferral method. Failure to comply with a requirement of the gain deferral method, including a failure to comply with the procedural and reporting requirements imposed under Regulations sections 1.721(c)-3 and 1.721(c)-6 and section 6038B, may result in an acceleration event under Regulations section 1.721(c)-4(b)(2) and a penalty under section 6038B. See the specific instructions for Schedule G and Schedule H, later.

Corrections to Form 8865

If you file a Form 8865 that you later determine is incomplete or incorrect, file a corrected Form 8865 with an amended tax return following the instructions for the return with which you originally filed Form 8865. Enter “corrected” at the top of the form and attach a statement identifying and explaining the changes.

Specific Instructions

Important: All information 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, attach a separate statement(s) to provide the remaining information, using the same size and format as the printed forms.

Fill in all applicable lines and schedules.

All categories of filers must complete all items

on pages 1 and 2, with three exceptions. Complete item E only if, in addition to filing the form on your own behalf, you are reporting information about other Category 1 filers under the multiple Category 1 filers exception, or you are reporting information about members of your affiliated group of corporations under the consolidated return exception. Only Category 1 and 2 filers are required to complete item H8. See Exceptions to Filing, earlier.

Answer items H10 and H11 only if you are a Category 1 filer.

Tax Year

Enter in the space below the title of Form 8865 the tax year of the foreign partnership that ended with or within the tax year of the person filing this form. Category 1 or 2

filers must report information for the tax year of the foreign partnership that ends with or within their tax years. A Category 3 or 4 filer

must report on Schedule O or P, respectively, transactions that occurred during that filer's tax year (rather than during the partnership's tax year).

Identifying Numbers and Addresses

Enter the identifying number of the person filing this return. Use an employer identification number (EIN) to identify partnerships, corporations, and estates or trusts. For individuals, use a social security number (SSN) or other identification number.

Include the suite, room, or other unit number after the street address. If the post office doesn't deliver mail to the street address and the U.S. person has a P.O. box, show the box number instead.

Foreign address. Enter the information in the following order: city or town, state or province, and country. Follow the country's practice for entering the postal code, if any. Don't abbreviate the country name.

Item A. Category of Filer

Check the box for each category that describes the person filing the form. If more than one category applies, check all boxes that apply. See *Categories of Filers*, earlier.

Item C

Enter the filer's share of nonrecourse liabilities, partnership-level qualified nonrecourse financing, and other liabilities. Nonrecourse liabilities are those liabilities of the partnership for which no partner bears the economic risk of loss. The extent to which a partner bears the economic risk is determined under the rules of Regulations section 1.752-2.

"Qualified nonrecourse financing" generally includes financing:

- For which no one is personally liable for repayment;

- That is borrowed for use in an activity of holding real property; and
- That is borrowed from a qualified person (defined in section 49(a)(1)(D)(iv)) or is lent or guaranteed by a federal, state, or local government.

See section 465(b)(6) for more information on qualified nonrecourse financing.

Item D. Identification of Common Parent

If the person filing the form is a member of a consolidated group, but not the parent, list the name, address, and EIN of the filer's common parent.

Item E

Check the item E checkbox only if the Form 8865 filer also files Form 8938, Statement of Specified Foreign Financial Assets, for the tax year and includes this form in the total number of Forms 8865 reported on Form 8938, Part IV, line 19. For more information,

see the Instructions for Form 8938, generally, and in particular, *Duplicative reporting* and *Part IV. Excepted Specified Foreign Financial Assets*.

Item F

Information about certain partners. If you are reporting information about other persons under the multiple Category 1 filers exception, or are reporting information about members of your affiliated group of corporations under the consolidated return exception (see *Exceptions to Filing*, earlier), identify each such person in item F. List their names, addresses, and identifying numbers. Also, indicate whether each person is a Category 1 filer or Category 2 filer, and whether such person constructively owned an interest in the foreign partnership during the tax year of the partnership listed at the top of Form 8865, page 1. See *Constructive ownership*, earlier.

Item G1

For the foreign partnership's address, enter the city or town, the state or province, and the foreign country in that order. Follow the foreign country's practice in placing the postal code in the address. Don't abbreviate the country name. If the partnership receives its mail in care of a third party (such as an accountant or attorney), enter "C/O" followed by the third party's name and street address or P.O. box.

Item G2(a)

If the foreign partnership has an EIN, enter it here. Don't enter "FOREIGNUS" or "APPLIED FOR." If the partnership has no EIN, item G2(b) must be completed.

Item G2(b)

A reference ID number (defined below) is required on item G2(b) only in cases where no EIN was entered on item G2(a) for the foreign partnership. However, filers are

permitted to enter both an EIN on item G2(a) and a reference ID number on item G2(b). If applicable, enter the reference ID number you have assigned to the foreign partnership identified on item G1.

A “reference ID number” is a number established by or on behalf of the U.S. person identified at the top of page 1 of the form that is assigned to a foreign partnership for which Form 8865 reporting is required. These numbers are used to uniquely identify the foreign partnership in order to keep track of the partnership from tax year to tax year.

The reference ID number must meet the requirements below. Don’t enter “FOREIGNUS” or “APPLIED FOR” with respect to the reference ID number.

Note. Because reference ID numbers are established by or on behalf of the U.S. person filing Form 8865, there is no need to apply to the IRS to request a reference ID number or for permission to use these numbers.

Note. Generally, the reference ID number assigned to a foreign partnership on Form 8865 has relevance only on Form 8865, its schedules, and any other form that is attached to or associated with Form 8865, and should not be used for that foreign partnership on other IRS forms. However, the foreign partnership's reference ID number should also be entered on Form 8858, Information Return of U.S. Persons With Respect to Foreign Disregarded Entities, if the foreign partnership is listed as a tax owner of a foreign disregarded entity on Form 8858. See the instructions for Form 8858, line 3c(2), for more information.

Requirements

The reference ID number that is entered on item G2(b) must be alphanumeric (defined below) and no special characters or spaces are permitted. The length of a given reference ID number is limited to 50 characters.

For these purposes, the term “alphanumeric” means the entry can be alphabetical, numeric, or any combination of the two.

The same reference ID number must be used consistently from tax year to tax year for a given foreign partnership. If for any reason a reference ID number falls out of use (for example, the foreign partnership no longer exists due to disposition or liquidation), the reference ID number used for that foreign partnership cannot be used again for another foreign partnership for purposes of Form 8865 reporting.

There are some situations that warrant correlation of a new reference ID number with a previous reference ID number when assigning a new reference ID number to a foreign partnership. For example:

- In the case of a merger or acquisition, a Form 8865 filer must use a reference ID number which correlates the previous reference ID number with the new

reference ID number assigned to the foreign partnership; or

- In the case of an entity classification election that is made on behalf of the foreign partnership on Form 8832, Regulations section 301.6109-1(b)(2)(v) requires the foreign partnership to have an EIN for this election. For the first year that Form 8865 is filed after an entity classification election is made on behalf of the foreign partnership on Form 8832, the new EIN must be entered on item G2(a) of Form 8865 and the old reference ID number must be entered on item G2(b). In subsequent years, the filer may continue to enter both the EIN on item G2(a) and the reference ID number on item G2(b), but must enter at least the EIN on item G2(a).

You must correlate the reference ID numbers as follows: New reference ID number (space)
Old reference ID number. If there is more

than one old reference ID number, you must enter a space between each such number. As indicated above, the length of a given reference ID number is limited to 50 characters and each number must be alphanumeric and no special characters are permitted.

Note. This correlation requirement applies only to the first year the new reference ID number is used.

Item G6. Principal Business Activity Code

If the foreign partnership filed Form 1065. Enter the business code number (principal business activity code) shown in item C of the Form 1065 filed by the partnership.

If the foreign partnership did not file Form 1065.

Enter the applicable principal business activity code from Codes for Principal Business Activity and Principal Product or Service at the end of these instructions. If the information necessary to apply the total receipts test is not available, pick a principal business activity code using the information you have about the partnership.

Item G8a. Functional Currency

Enter the foreign partnership's functional currency. See sections 985 through 989 and the regulations thereunder. If the partnership had more than one qualified business unit (QBU), described in Regulations section 1.989(a)-1(b)(2)(ii), attach a statement identifying each QBU, its country of operation, and its functional currency. A QBU under Regulations section 1.989(a)-1(b)(2)(ii) is any separate and clearly identified unit of a trade or business of the partnership which maintains separate books and records.

Hyperinflationary exception. A partnership that has a hyperinflationary currency as its functional currency is subject to special rules set forth in Regulations section 1.985-3. Generally, under these rules, a partnership must use the U.S. dollar as its functional currency.

Item G8b. Exchange Rate

When translating functional currency to U.S. dollars, you must use the method specified in sections 985 through 989 and the regulations thereunder. But, regardless of the specific method required, all exchange rates must be reported using a “divide-by convention” rounded to at least four places. That is, the exchange rate must be reported in terms of the amount by which the functional currency amount must be divided in order to reflect an equivalent amount of U.S. dollars. As such, the exchange rate must be reported as the units of foreign currency that equal one U.S. dollar, rounded to at least four places.

Don't report the exchange rate as the number of U.S. dollars that equals one unit of foreign currency.

Note. You must round the result to more than four places if failure to do so would materially distort the exchange rate or the equivalent amount of U.S. dollars.

Item H2

If the foreign partnership was required to file Form 1065 for the partnership's tax year listed at the top of page 1 of Form 8865, check the applicable box and enter the Internal Revenue Service Center where the form was or will be filed (or enter "electronic filing" if the form was or will be filed electronically). Also, check the applicable box(es) if the foreign partnership was required to file (for its tax year) Form 8804, Annual Return for Partnership Withholding Tax (Section 1446); or (for the calendar year ending with or within the foreign partnership's tax year) Form 1042, Annual Withholding Tax

Return for U.S. Source Income of Foreign Persons.

Item H5

Section 267A disallows a deduction for certain interest or royalty paid or accrued in agreement with a hybrid arrangement, to the extent that, under the foreign tax law, there isn't a corresponding income inclusion (including long-term deferral). In the case of a filer that is a tax resident of the United States (for example, a domestic corporation or citizen of the United States), report in item H5 the total amount of interest and royalty paid or accrued by the foreign partnership for which your distributive share of deductions is disallowed under section 267A. In the case of a filer that isn't a tax resident of the United States (for example, a domestic partnership), only report in item H5 the portion of your distributive share of interest and royalty paid or accrued by the foreign partnership for which you know, or have reason to know,

that one or more of your owners aren't allowed a deduction under section 267A. For additional information about section 267A, including the application of section 267A in the case of payments by a partnership, see [IRS.gov/businesses/ partnerships/faqs-for-form-1065-schedule-b-otherinformation-question-22](https://www.irs.gov/businesses/partnerships/faqs-for-form-1065-schedule-b-otherinformation-question-22).

Item H6

Answer "Yes" to item H6 if the partnership is a section 721(c) partnership. If the answer is "Yes," see the specific instructions for Schedules G and H, relating to the gain deferral method, and, if applicable, Schedule O, relating to the contribution of property during the tax year. See Section 721(c) partnership, earlier.

Item H8

Note. Only Category 1 and 2 filers are required to complete item H8.

Enter the number of Forms 8858 attached to Form 8865. A disregarded entity is an entity that is disregarded as an entity separate from its owner under Regulations section 301.7701-2(c)(2). The partnership is the tax owner of the foreign disregarded entity if it is treated as owning the assets and liabilities of the foreign disregarded entity for purposes of U.S. income tax law.

If the foreign partnership is the tax owner of a foreign disregarded entity or operates a foreign branch and you are a Category 1 or 2 filer of Form 8865, complete and attach Form 8858 to Form 8865. For more information, see the Instructions for Form 8858. In addition, if the foreign partnership is required to attach Form 8858 to Form 8865, the amounts reported on certain schedules on Form 8858 must be included in determining the amounts reported on the equivalent schedules as follows.

IF amounts were reported on the following Schedule on Form 8858...	THEN take those amounts into account (converting from GAAP to tax as necessary) when determining the amounts to be reported on this Schedule on Form 8865...
Schedule C	Schedule B.
Schedule F	Schedule L.
Schedule J	Section 4, Part III, Schedule K-2.
Schedule M	Schedule N.

Item H10. Separate Units

Note. Only Category 1 filers (or indirect partners that are filing the constructive ownership exception statement) are required to answer items H10a and H10b, if applicable.

Answer "Yes" to item H10a if the filer is a domestic corporation and (a) the partnership is a hybrid entity; or (b) the filer, through its interest in the partnership, indirectly owns an interest in a hybrid entity or indirectly carries on a business operation outside the United States that, if carried on by a U.S. person, would constitute a foreign branch (as defined in Regulations section 1.367(a)-6T(g) (1)). Under Regulations section 1.1503(d)-1(b)(3), a hybrid entity means an entity that isn't taxable as an association for U.S. federal tax purposes, but is subject to an income tax of a foreign country as a corporation (or otherwise at the entity level) either on its worldwide income or on a residence basis. If the answer to item H10a is "No," skip item H10b.

See Regulations section 1.1503(d)-1(b)(4) for more information on separate units, including information on when two or more individual separate units are combined and treated as one separate unit. If you answer "Yes" to item

H10b, then, for each separate unit that has a dual consolidated loss, attach a statement that sets forth (a) the identity and country of operation of the separate unit or, in the case of a combined separate unit, the identity and country of operation of each individual separate unit that is treated as part of the combined separate unit; and (b) the amount of the dual consolidated loss. See Regulations section 1.1503(d)-5 for rules on determining the amount of a dual consolidated loss attributable to a separate unit.

Item H11

Note. Only Category 1 filers are required to answer item H11.

Answer “Yes” to item H11 if the partnership meets both of the requirements shown on the form. Total receipts is defined as the sum of gross receipts or sales (Schedule B, line 1a); all other income reported on Schedule B (lines 4 through 7); income reported on Schedule K, lines 3a, 5, 6a, and 7; income or net gain

reported on Schedule K, lines 8, 9a, 10, and 11; and income or net gain reported on Form 8825, Rental Real Estate Income and Expenses of a Partnership or an S Corporation, lines 2, 19, and 20a.

Item H12

Check the "Yes" box on item H12a if the filer of this Form 8865 is claiming a deduction under section 250 for foreign-derived intangible income (FDII), and enter the amounts requested on items H12b, H12c, and H12d. Enter U.S. dollar amounts on items H12b, H12c, and H12d, translated from functional currency at the average exchange rate for the foreign partnership's tax year (see section 989(b)).

The reported amounts should provide information for transactions between the filer of the Form 8865 and the foreign partnership. See Form 8993 and its instructions for information on the section 250 deduction. If no deduction is being claimed, check the "No" box.

Item H14

Answer “Yes” if at any time during the year there were transfers between the partnership and its partners subject to the disclosure requirements of Regulations section 1.707-8. For certain transfers that are presumed to be sales, the partnership or the partners must comply with the disclosure requirements in Regulations section 1.707-8. Generally, disclosure is required when:

1. Certain transfers to a partner are made within 2 years of a transfer of property by the partner to the partnership;
2. Certain debt is incurred by a partner within 2 years of the earlier of (a) a written agreement to transfer, or (b) a transfer of the property that secures the debt, if the debt is treated as a qualified liability; or

3. Transfers from a partnership to a partner occur which are the equivalent to those listed in (1) or (2) above.

The disclosure must be made on the transferor partner's return using Form 8275, Disclosure Statement, or on an attached statement providing the same information. When more than one partner transfers property to a partnership under a plan, the disclosure may be made by the partnership rather than each partner.

Signature

Filer. Don't sign Form 8865 if you are filing it as an attachment to your income tax return. Sign the return only if you are filing Form 8865 separately because you aren't required to file a U.S. income tax return. See *When and Where To File*, earlier, for more information.

Paid preparer. Don't sign Form 8865 or complete the paid preparer section at the

bottom of the form if Form 8865 is filed as an attachment to an income tax return. Sign Form 8865 and complete the paid preparer section only if Form 8865 is filed separately.

Schedule A. Constructive Ownership of Partnership Interest

All filers must complete Schedule A. Check box a if the person filing the return owns a direct interest in the foreign partnership. Check box b if the person filing the return constructively owns an interest in the foreign partnership. See *Constructive ownership*, earlier.

Category 1 and 2 filers. Category 1 and 2 filers must list the persons (U.S. and foreign) whose interests in the foreign partnership they constructively owned during the partnership's tax year.

Category 3 filers. Category 3 filers must list the persons (U.S. and foreign) whose interests in the foreign partnership they

constructively owned during the filer's tax year that the reportable transfer occurred. See Schedule A-2. Foreign Partners of Section 721(c) Partnership, later.

Schedule A-1. Certain Partners of Foreign Partnership

All Category 1 and certain Category 3 filers must complete Schedule A-1. Any person already listed on Schedule A isn't required to be listed again on Schedule A-1.

Category 1 filers. Category 1 filers must list all U.S. persons who owned at least a 10% direct interest in the foreign partnership during the partnership's tax year listed at the top of page 1 of Form 8865. **Category 3 filers.** Category 3 filers must list:

- Each U.S. person that owned a 10% or greater direct interest in the foreign partnership during the Category 3 filer's tax year, and

- Any other person related to the Category 3 filer that was a direct partner in the foreign partnership during that tax year.

See Regulations section 1.6038B-2(i)(4) for the definition of a related person.

Exception. Category 3 filers who only transferred cash and didn't own a 10% or greater interest in the transferee partnership after the transfer aren't required to complete Schedule A-1.

Schedule A-2. Foreign Partners of Section 721(c) Partnership

Schedule A-2 must be completed if (1) item H6 is answered "Yes" (that the partnership is a section 721(c) partnership); and (2) during the current tax year, a gain deferral contribution occurred, or (3) a gain deferral contribution occurred in a prior tax year (including before 2021) and, during the current tax year, the gain deferral method is applied to section 721(c) property contributed

in the prior gain deferral contribution. See Section 721(c) partnership, Gain deferral contribution, and Gain deferral method, earlier.

Country of organization. Insert the 2-letter country code for the country of organization for any foreign partner, other than an individual. See country codes on [IRS.gov/CountryCodes](https://www.irs.gov/CountryCodes).

Check if related to U.S. transferor. Check the box if the partner is directly or indirectly related to the U.S. transferor (within the meaning of section 267(b) or 707(b)(1)) and isn't a U.S. person.

Percentage interest. Include the foreign partner's percentage of interest in the partnership's capital and profits immediately after the gain deferral contribution. If multiple gain deferral contributions occurred during the tax year, enter the percentages immediately after the last gain deferral

contribution. See *Gain deferral contribution*, earlier.

Schedule A-3. Affiliation Schedule

All filers must complete Schedule A-3. List on Schedule A-3 all partnerships (foreign or domestic) in which the foreign partnership owned a direct interest, or a 10% indirect interest (under the rules of sections 267(c)(1) and (5)) during the partnership tax year listed at the top of page 1 of Form 8865.

Category 1 filers. Only Category 1 filers must complete the Total ordinary income or loss column. In that column, report the foreign partnership's share of ordinary income (even if not received) or loss from partnerships in which the foreign partnership owns a direct interest. The total amount of ordinary income or loss from each partnership must also be included on Schedule B, line 4.

Schedule B. Income Statement— Trade or Business Income

Important: All Category 1 filers in partnerships engaged in a domestic or foreign trade or business must complete Form 8865, Schedule B.

If the partnership is a section 721(c) partnership and the gain deferral method is applied, Schedule B must include any remedial items for section 721(c) property, including an offsetting remedial item relating to contributed section 197(f)(9) property. See Regulations sections 1.704-3(d) and 1.704-3(d)(5)(iii). The total net amount of remedial allocations should be included on line 7, Other income (loss). Attach a detailed statement describing the remedial items allocated to each partner during the tax year for section 721(c) property. See Regulations section 1.721(c)-3. See Section 721(c) partnership, Section 721(c) property, and Gain deferral method, earlier.

Specific Instructions for Schedule B

For specific instructions for Form 8865, Schedule B, use the instructions for Form 1065, lines 1a through 21 (income and deductions).



You can view or download the Instructions for Form 1065 at [IRS.gov/Form1065](https://www.irs.gov/Form1065). Also, these instructions can be ordered by calling 800-829-3676 (800-TAX-FORM).

Schedule D. Capital Gains and Losses

Important: All Form 8865 Category 1 filers in partnerships having partnership items described in the Instructions for Schedule D (Form 1065), Capital Gains and Losses, must complete that schedule.



You can view or download the Schedule D (Form 1065) and the Instructions for Schedule D (Form

1065) at [IRS.gov/ScheduleD\(Form1065\)](https://www.irs.gov/ScheduleD(Form1065)). Also, the form and its instructions can be ordered by calling 800-829-3676 (800-TAX-FORM).

Schedule G (Form 8865). Statement of Application of the Gain Deferral Method Under Section 721(c)

A U.S. transferor uses Schedule G to comply with the reporting requirements that must be satisfied in applying the gain deferral method. If the gain deferral method is applied to section 721(c) property, a U.S. transferor must file Schedule G for the tax year of a gain deferral contribution, as well as for each subsequent tax year to which the gain deferral method is applied to section 721(c) property, even if the gain deferral contribution for that property occurred before 2018. See Regulations sections 1.721(c)-6(b)(2) and (3). See Gain deferral method,

Gain deferral contribution, and Section 721(c) property, earlier.

Filing Year

Check the box for “Tax year of gain deferral contribution” if your tax year is a year in which a gain deferral contribution occurred (a gain deferral contribution year). Check the “Annual reporting” box if a gain deferral contribution occurred in a year prior to the current tax year and, in the current tax year, the gain deferral method applies to section 721(c) property contributed in the prior gain deferral contribution (an annual reporting year). If the tax year is both a gain deferral contribution year and an annual reporting year, both boxes should be checked.

General Instructions

On Schedule G, information must be provided for section 721(c) property that was (a) contributed to the partnership in a gain deferral contribution that occurred during the current tax year; or (b) contributed to the

partnership in a gain deferral contribution that occurred during a prior tax year, provided that the gain deferral method is applied to the property in the current tax year. Collectively, section 721(c) property for which information must be reported on Schedule G is referred to as “reportable section 721(c) properties.” See Section 721(c) property, earlier.

In Parts I through V, information must be provided on a property-by-property basis. In Part I, reportable section 721(c) properties and accompanying information must be listed in descending order of FMV (measured at the time of contribution). Thus, the reportable section 721(c) property with the highest FMV should be listed on line 1, the reportable section 721(c) property with the second highest FMV should be listed on line 2, and so on.

In Parts II through IV, the line on which information is provided for a reportable section 721(c) property must correspond to

the line on which the property is listed in Part I. Thus, in Parts II through IV, line 1 corresponds to Part I, line 1, and line 2 corresponds to Part I, line 2, and so on.

If there are more than four reportable section 721(c) properties, in Parts I through IV, attach a statement using the same format as in Parts I through IV, listing properties, or information for properties, in the same manner as described in the preceding two paragraphs. For example, the first line on the statement for Part I must be labeled "5" and contain columns with the same information as those in Part I, and must list the reportable section 721(c) property with the fifth-highest FMV. The statements for Parts I through IV may be combined in a single attached statement, provided that the format described above is followed.

A U.S. transferor should complete and file only one Schedule G for each partnership. See U.S. transferor, earlier.