

Form 8865: Foreign Partnership Income

Navigating Rules for Reporting Allocable Share of Foreign Income

WEDNESDAY, NOVEMBER 13, 2013, 1:00-2:50 pm Eastern

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Form 8865: Foreign Partnership Income

November 13, 2013

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Today's Program

International Information Reporting Overview
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[Alison Dougherty]

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Considerations in Preparing Form 8865
[Khiem Ting]

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Charles Kolstad, Venable

INTERNATIONAL INFORMATION REPORTING OVERVIEW

International Information Reporting

- US business now have extensive international business operations
- To assure compliance with US tax rules, the IRS has adopted a large number of information reporting forms
- Form 5471 (Foreign Corporations)
- Form 8858 (Disregarded Foreign Entities)
- Form 8865 (Foreign Partnerships)
- Form 90-22.1 (Foreign Financial Accounts)

International Information Reporting

- The IRS is now aggressively enforcing the international information reporting requirements
- International examiners assigned more often to tax audits
- Increasingly difficult to avoid penalties for late filed information returns

International Information Reporting

- Failure to file the required forms can have several adverse effects:
 - Significant monetary penalties for failure to file Form 8865 on a timely basis
 - Possible IRS argument that the income tax return is incomplete if the necessary information returns are not attached
1. Statute of limitations does not start to run if income tax return is incomplete
 2. Deutsche Bank case

Prerequisite to Filing Form 8865

Foreign Partnership Classification

- Form 8865 must be filed to report certain interests in a foreign partnership
 - Actual general or limited foreign partnership
 - Check the box foreign partnership

Prerequisite to Filing Form 8865

Foreign Default Classification Rule

- Certain foreign entities are on the per se list of foreign corporations under the Section 7701 regulations
- All other foreign entities can elect their classification for US tax purposes
- Foreign eligible entity default classification will be as a foreign partnership if it has more than one owner and at least one owner does not have limited liability

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Charles Kolstad focuses his practice on international tax, corporate, and partnership matters. He assists clients in tax and corporate planning relating to the acquisition, disposition and restructuring of businesses, corporations and partnerships both domestically and internationally.

He has advised numerous clients, accountants and business managers on dealing with unreported foreign financial accounts and foreign trusts, as well as the reporting requirements for U.S. tax payers with international business operations. Charles also advises foreign individuals moving to the U.S. on pre-immigration, income, gift and estate tax planning opportunities.

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Form 8865 Return of U.S. Persons with Respect to Certain Foreign Partnerships

Alison N. Dougherty

November 13, 2013

Form 8865 Foreign Partnership Reporting

Form 8865		Return of U.S. Persons With Respect to Certain Foreign Partnerships Attach to your tax return.		OMB No. 1545-1068 2012 Attachment Sequence No. 118	
Department of the Treasury Internal Revenue Service					
Information about Form 8865 and its separate instructions is at www.irs.gov/form8865 . Information furnished for the foreign partnership's tax year beginning _____, 2012, and ending _____, 20____.					
Name of person filing this return _____			Filer's identifying number _____		
Filer's address (if you are not filing this form with your tax return) _____					
A Category of filer (see Categories of Filers in the instructions and check applicable box(es)) 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/>					
B Filer's tax year beginning _____, 20____, and ending _____, 20____					
C Filer's share of liabilities: Nonrecourse \$ _____ Qualified nonrecourse financing \$ _____ Other \$ _____					
D If filer is a member of a consolidated group but not the parent, enter the following information about the parent: Name _____ EIN _____ Address _____					
E Information about certain other partners (see instructions)					
(1) Name		(2) Address		(3) Identifying number	
				(4) Check applicable box(es) Category 1 Category 2 Constructive name	
F1 Name and address of foreign partnership _____				2(a) EIN (if any) _____	
				2(b) Reference ID number (see instr.) _____	
				3 Country under whose laws organized _____	
4 Date of organization	5 Principal place of business	6 Principal business activity code number	7 Principal business activity	8a Functional currency	8b Exchange rate (see instr.)
G Provide the following information for the foreign partnership's tax year:					
1 Name, address, and identifying number of agent (if any) in the United States _____			2 Check if the foreign partnership must file: <input type="checkbox"/> Form 1042 <input type="checkbox"/> Form 8804 <input type="checkbox"/> Form 1065 or 1065-B Service Center where Form 1065 or 1065-B is filed.		
3 Name and address of foreign partnership's agent in country of organization, if any _____			4 Name and address of person(s) with custody of the books and records of the foreign partnership, and the location of such books and records, if different _____		
5 Were any special allocations made by the foreign partnership? <input type="checkbox"/> Yes <input type="checkbox"/> No					
6 Enter the number of Forms 9865, Information Return of U.S. Persons With Respect To Foreign Disregarded Entities, attached to this return (see instructions) _____					
7 How is this partnership classified under the law of the country in which it is organized? _____					
8 Did the partnership own any separate units within the meaning of Regulations section 1.1503-2(c)(2), (4), or 1.1503(d)-1(b)(4)? <input type="checkbox"/> Yes <input type="checkbox"/> No					
9 Does this partnership meet both of the following requirements? • The partnership's total receipts for the tax year were less than \$250,000 and • The value of the partnership's total assets at the end of the tax year was less than \$1 million. If "Yes," do not complete Schedules L, M-1, and M-2. <input type="checkbox"/> Yes <input type="checkbox"/> No					
Sign Here Only if You Are Filing This Form Separately and Not With Your Tax Returns. Under penalty of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than general partner or limited liability company member) is based on all information of which preparer has any knowledge.					
Signature of general partner or limited liability company member _____			Date _____		
Print/Type preparer's name _____		Preparer's signature _____		Check <input type="checkbox"/> if PTIN	
Firm's name _____		Firm's EIN _____		Firm's address _____	
Firm's address _____		Phone no. _____		Date	

For Privacy Act and Paperwork Reduction Act Notice, see the separate instructions. Cat. No. 25852A Form 8865 (2012)



Prerequisite to Filing Form 8865

Check-the-Box Election

- **Foreign eligible entity that is classified as a foreign partnership with Form 8832 check-the-box election in effect**
- **Foreign eligible entity is a foreign company that is not on the per se list of foreign corporations.**



Prerequisite to Filing Form 8865

Foreign Default Classification Rule

- **Foreign eligible entity default classification as foreign partnership with more than one owner and at least one owner does not have limited liability**

Form 8865 – Category 1 Filer

- **Category 1 Filer – U.S. person who controlled a foreign partnership at any time during the partnership’s tax year**
- **Control means owning more than a 50% interest in the partnership.**



Form 8865 – Category 2 Filer

- **Category 2 Filer – U.S. person who at any time during the foreign partnership’s tax year owned a 10% or greater interest while the partnership was controlled by U.S. persons each owning at least 10% interests.**
- **If partnership has Category 1 filer then no person is considered a Category 2 filer.**



Form 8865 – Category 3 Filer

- **Category 3 Filer – U.S. person who contributed property to a foreign partnership in exchange for a partnership interest and:**
 - 1. owned directly or constructively at least a 10% interest immediately after the contribution, or**
 - 2. The value of property contributed exceeds \$100,000 taking into account the value of all property contributed by the person or any related person during the 12 month period ending on the date of the transfer.**



Form 8865 – Category 4 Filer

- **Category 4 Filer – U.S. person who had a reportable event during that person’s tax year including:**
 - 1. Acquiring an interest that results in a 10% or greater direct interest in the foreign partnership;**
 - 2. Disposing of an interest that results in a decrease of the direct interest below 10%; or**
 - 3. 10% increase or decrease in direct proportional ownership interest.**



Form 8865 Filing Exceptions

- 1. Multiple Category 1 filers**
- 2. Constructive owners**
- 3. Members of affiliated group of corporations filing consolidated return**
- 4. Certain trusts**
- 5. Certain Category 4 filers**
- 6. Relief for Category 1 and 2 filers when foreign partnership files Form 1065 or 1065-B**



Form 8865 – Constructive Owners

- **Constructive Category 1 or 2 filer – Not required to file Form 8865 if no direct interest and:**
 - 1. U.S. direct owner files Form 8865;**
 - 2. U.S. owner is indirect and is not required to file Form 8865; or**
 - 3. Form 8865 is filed by another Category 1 filer under multiple filers exception.**



Form 8865 Constructive Ownership Exception

- **Indirect partner must file statement with U.S. Federal tax return.**
 - 1. Controlled Foreign Partnership Reporting statement**
 - 2. Indirect partner is required to file Form 8865 but is not filing under the constructive ownership exception.**
 - 3. Name and address of U.S. persons whose interests the indirect partner constructively owns**
 - 4. Name and address of foreign partnership**



Form 8865 Filing Requirements for Filer Categories

Filing Requirements for Categories of Filers

Filing Requirements for Categories of Filers	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-2—Affiliation Schedule	✓	✓	✓	✓
Schedule B—Income Statement—Trade or Business Income	✓			
Schedule K—Partners' Distributive Share Items	✓			
Schedule L—Balance Sheets per Books	✓			
Schedule M—Balance Sheets for Interest Allocation	✓			
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 K-1—Partner's Share of Income, Deductions, Credits, etc. (direct partners only)	✓	✓		
Schedule O—Transfer of Property to a Foreign Partnership			✓	
Schedule P—Acquisitions, Dispositions, and Changes of Interests in a Foreign Partnership				✓



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Form 8865 Page One

- **Filer information**
- **Filer category**
- **Filer's share of partnership liabilities**
- **Information about other partners – multiple Category 1 filers exception and consolidated returns exception**
- **Foreign partnership information**
- **Reference ID required if no FEIN**
- **Date of formation**
- **Principal business activity and code list in Form 8865 instructions**
- **Functional currency**
- **Signature block – sign only if filing separately from tax return**

Form 8865 Page Two

Form 8865 (2012) Page **2**

Schedule A **Constructive Ownership of Partnership Interest.** Check the boxes that apply to the filer. If you check box **b**, enter the name, address, and U.S. taxpayer identifying number (if any) of the person(s) whose interest you constructively own. See instructions.

a Owns a direct interest **b** Owns a constructive interest

Name	Address	Identifying number (if any)	Check if foreign partner	Check if direct partner

Schedule A-1 **Certain Partners of Foreign Partnership** (see instructions)

Name	Address	Identifying number (if any)	Check if foreign partner

Does the partnership have any other foreign person as a direct partner? Yes No

Schedule A-2 **Affiliation Schedule.** List all partnerships (foreign or domestic) in which the foreign partnership owns a direct interest or indirectly owns a 10% interest.

Name	Address	EIN (if any)	Total ordinary income or loss	Check if foreign partnership

Schedule B **Income Statement—Trade or Business Income**

Caution. Include only trade or business income and expenses on lines 1a through 22 below. See the instructions for more information.

Income	1a Gross receipts or sales	1a	1c
	b Less returns and allowances	1b	
	2 Cost of goods sold		2
	3 Gross profit. Subtract line 2 from line 1c		3
	4 Ordinary income (loss) from other partnerships, estates, and trusts (attach statement)		4
	5 Net farm profit (loss) (attach Schedule F (Form 1040))		5
	6 Net gain (loss) from Form 4797, Part II, line 17 (attach Form 4797)		6
7 Other income (loss) (attach statement)		7	
8 Total income (loss). Combine lines 3 through 7		8	
Deductions (see instructions for limitations)	9 Salaries and wages (other than to partners) (less employment credits)		9
	10 Guaranteed payments to partners		10
	11 Repairs and maintenance		11
	12 Bad debts		12
	13 Rent		13
	14 Taxes and licenses		14
	15 Interest		15
	16a Depreciation (if required, attach Form 4562)	16a	16c
	b Less depreciation reported elsewhere on return (Do not deduct oil and gas depletion.)	16b	17
	18 Retirement plans, etc.		18
	19 Employee benefit programs		19
	20 Other deductions (attach statement)		20
21 Total deductions. Add the amounts shown in the far right column for lines 9 through 20		21	
22 Ordinary business income (loss) from trade or business activities. Subtract line 21 from line 8		22	

Form 8865 (2012)

Form 8865 Page Two

- Schedule A – Direct or constructive ownership interest
- Schedule A-1
 - Category 1 filer – List each U.S. person who owned 10% direct interest
 - Category 3 filer – List each U.S. person who owned 10% direct interest
 - Category 3 filer – List any direct partner related to the Category 3 filer
 - Category 3 filer – Schedule A-1 not required if only transferred cash and did not own 10% after the transfer
- Schedule A-2 – All filers must list all U.S. or foreign partnerships in which foreign partnership owned a direct interest or 10% indirect interest.
- Schedule A-2 – Category 1 filer must provide foreign partnership's share of ordinary income or loss from direct interest in other partnership.



Form 8865 Page Two Income Statement

- Follow instructions for Form 1065 Income and Deductions
- Trade or business income
- Do not report rental activity income or portfolio income
- Translation of foreign currency into US dollars based on divide by convention at average exchange rate for the year
- www.oanda.com currency converter



Form 8865 Page Three Schedule K

Form 8865 (01/12)		Page 3	
Schedule K Partners' Distributions			Total amount
Income (Loss)	1	Ordinary business income (loss) (page 2, line 22)	1
	2	Net rental real estate income (loss) (attach Form 8820)	2
	3a	Other gross rental income (loss)	3a
		b Expenses from other rental activities (attach statement)	3b
		c Other net rental income (loss). Subtract line 3b from line 3a	3c
	4	Guaranteed payments	4
	5	Interest income	5
	6	Dividends: a Ordinary dividends	6a
		b Qualified dividends	6b
	7	Royalties	7
	8	Net short-term capital gain (loss) (attach Schedule D (Form 1065))	8
9a	Net long-term capital gain (loss) (attach Schedule D (Form 1065))	9a	
	b Collectibles (28%) gain (loss)	9b	
	c Unrecaptured section 1221 gain (attach statement)	9c	
10	Net section 1221 gain (loss) (attach Form 4797)	10	
11	Other income (loss) (see instructions) Type ▶	11	
Deductions	12	Section 179 deduction (attach Form 4500)	12
	13a	Contributions	13a
		b Investment interest expense	13b
		c Section 64(e)(2) expenditures: (1) Type ▶ (2) Amount ▶	13(c)
d	Other deductions (see instructions) Type ▶	13d	
Self-employment	14a	Net earnings (loss) from self-employment	14a
	b	Gross farming or fishing income	14b
	c	Gross nonfarm income	14c
Credits	15a	Low-income housing credit (section 42(j)(2))	15a
	b	Low-income housing credit (other)	15b
	c	Qualified rehabilitation expenditures (rental real estate) (attach Form 3468)	15c
	d	Other rental real estate credits (see instructions) Type ▶	15d
	e	Other rental credits (see instructions) Type ▶	15e
	f	Other credits (see instructions) Type ▶	15f
Foreign Transactions	16a	Name of country or U.S. possession ▶	16a
	b	Gross income from all sources	16b
	c	Gross income sourced at partner level	16c
	Foreign gross income sourced at partnership level		
	d	Passive category ▶ e General category ▶ f Other (attach statement) ▶	16f
	Deductions allocated and apportioned at partner level		
	g	Interest expense ▶ h Other ▶	16h
	Deductions allocated and apportioned at partnership level to foreign source income		
	i	Passive category ▶ j General category ▶ k Other (attach statement) ▶	16i
	l	Total foreign taxes (check one): <input type="checkbox"/> Paid <input type="checkbox"/> Accrued	16l
	m	Reduction in taxes available for credit (attach statement)	16m
n	Other foreign tax information (attach statement)		
Alternative Minimum (AMT) Items	17a	Post-1986 depreciation adjustment	17a
	b	Adjusted gain or loss	17b
	c	Depletion (other than oil and gas)	17c
	d	Oil, gas, and geothermal properties—gross income	17d
	e	Oil, gas, and geothermal properties—deductions	17e
	f	Other AMT items (attach statement)	17f
Other Information	18a	Tax-exempt interest income	18a
	b	Other tax-exempt income	18b
	c	Nondeductible expenses	18c
	19a	Distributions of cash and marketable securities	19a
	b	Distributions of other property	19b
20a	Investment income	20a	
b	Investment expenses	20b	
c	Other items and amounts (attach statement)		

Form 8865 (01/12)



Form 8865 Page Three Schedule K

- Only Category 1 filers complete Schedule K
- Schedule K is a summary of all partners' distributive shares of income, gain, loss, deductions and credits
- Line 1 ordinary trade or business income from the income statement
- Rental activity income or loss and portfolio items reflected on Schedule K
- Schedule K is the same on Form 8865 as Form 1065

Form 8865 Page Four Schedule L Balance Sheet

Form 8865 (2012) Page **4**

Schedule L Balance Sheets per Books. (Not required if item G9, page 1, is answered "Yes.")

	Beginning of tax year		End of tax year	
	(a)	(b)	(c)	(d)
Assets				
1 Cash				
2a Trade notes and accounts receivable				
b Less allowance for bad debts				
3 Inventories				
4 U.S. government obligations				
5 Tax-exempt securities				
6 Other current assets (attach statement)				
7a Loans to partners (or persons related to partners)				
b Mortgage and real estate loans				
8 Other investments (attach statement)				
9a Buildings and other depreciable assets				
b Less accumulated depreciation				
10a Depletable assets				
b Less accumulated depletion				
11 Land (net of any amortization)				
12a Intangible assets (amortizable only)				
b Less accumulated amortization				
13 Other assets (attach statement)				
14 Total assets				
Liabilities and Capital				
15 Accounts payable				
16 Mortgages, notes, bonds payable in less than 1 year				
17 Other current liabilities (attach statement)				
18 All nonrecourse loans				
19a Loans from partners (or persons related to partners)				
b Mortgages, notes, bonds payable in 1 year or more				
20 Other liabilities (attach statement)				
21 Partners' capital accounts				
22 Total liabilities and capital				

Form 8865 (2012)



Form 8865 Page Four Schedule L Balance Sheet

- Only Category 1 filers complete Schedule L
- Foreign partnership's balance sheet is prepared and translated from foreign currency into US dollars in accordance with U.S. GAAP
- Convert the balance sheet from foreign currency to US dollars based on the divide by convention with the 12/31 year end exchange rate
- www.oanda.com currency converter



Form 8865 Page Five Schedules M, M-1 & M-2

Form 8865 (2012) Page 5

Schedule M Balance Sheets for Interest Allocation		(a) Beginning of tax year	(b) End of tax year
1	Total U.S. assets		
2	Total foreign assets:		
a	Passive category		
b	General category		
c	Other (attach statement)		

Schedule M-1 Reconciliation of Income (Loss) per Books With Income (Loss) per Return. (Not required if Item G9, page 1, is answered "Yes.")			
1	Net income (loss) per books		6 Income recorded on books this year not included on Schedule K, lines 1 through 11 (itemize):
2	Income included on Schedule K, lines 1, 2, 3c, 5, 6a, 7, 8, 9a, 10, and 11 not recorded on books this year (itemize):		a Tax-exempt interest \$
3	Guaranteed payments (other than health insurance)		7 Deductions included on Schedule K, lines 1 through 13d, and 16l not charged against book income this year (itemize):
4	Expenses recorded on books this year not included on Schedule K, lines 1 through 13d, and 16l (itemize):		a Depreciation \$
a	Depreciation \$		
b	Travel and entertainment \$		
5	Add lines 1 through 4		8 Add lines 6 and 7
			9 Income (loss). Subtract line 8 from line 5

Schedule M-2 Analysis of Partners' Capital Accounts. (Not required if Item G9, page 1, is answered "Yes.")			
1	Balance at beginning of year		6 Distributions: a Cash
2	Capital contributed:		b Property
a	Cash		7 Other decreases (itemize):
b	Property		
3	Net income (loss) per books		
4	Other increases (itemize):		8 Add lines 6 and 7
			9 Balance at end of year. Subtract line 6 from line 5
5	Add lines 1 through 4		

Form 8865 (2012)

Form 8865 Page Five Schedule M

- Only Category 1 filers complete Schedule M
- Schedule M is prepared in US dollars
- Schedule M reflects book value of the foreign partnership's assets
- Assets are separated into U.S. and foreign assets
- Assets are identified as passive, general or other limitation category per Temp Treas. Reg. Section 1.861-9T(g)(3) and 1.861-12T.



Form 8865 Page Five Schedule M-1

- Only Category 1 filers complete Schedule M-1
- Schedule M-3 is not required with Form 8865
- Schedule M-1 is a reconciliation of book net income per financial statements to taxable income per return
- Schedule M-1 reflects book to tax differences based on the partnership's method of accounting
- Different book to tax differences depending on cash or accrual method of accounting for tax

Form 8865 Page Five Schedule M-2

- Only Category 1 filers complete Schedule M-2
- Schedule M-2 is a reconciliation of beginning to ending capital
- Schedule M-2 for partnership is similar to a retained earnings reconciliation for a corporation
- Schedule M-2 reflects increases or decreases to beginning capital for partners' capital contributions, net income or loss per books, distributions and other adjustments for the year



Form 8865 Page Six Schedule N

Form 8865 (2012) Page **6**

Schedule N Transactions Between Controlled Foreign Partnership and Partners or Other Related Entities

Important: Complete a separate Form 8865 and Schedule N for each controlled foreign partnership. Enter the totals for each type of transaction that occurred between the foreign partnership and the persons listed in columns (a) through (d).

Transactions of foreign partnership	(a) U.S. person filing this return	(b) Any domestic corporation or partnership controlling or controlled by the U.S. person filing this return	(c) Any other foreign corporation or partnership controlling or controlled by the U.S. person filing this return	(d) Any U.S. person with a 10% or more direct interest in the controlled foreign partnership (other than the U.S. person filing this return)
1 Sales of inventory				
2 Sales of property rights (patents, trademarks, etc.)				
3 Compensation received for technical, managerial, engineering, construction, or like services				
4 Commissions received				
5 Rents, royalties, and license fees received				
6 Distributions received				
7 Interest received				
8 Other				
9 Add lines 1 through 8				
10 Purchases of inventory				
11 Purchases of tangible property other than inventory				
12 Purchases of property rights (patents, trademarks, etc.)				
13 Compensation paid for technical, managerial, engineering, construction, or like services				
14 Commissions paid				
15 Rents, royalties, and license fees paid				
16 Distributions paid				
17 Interest paid				
18 Other				
19 Add lines 10 through 18				
20 Amounts borrowed (enter the maximum loan balance during the year). See Instructions				
24 Amounts loaned (enter the maximum loan balance during the year). See Instructions				

Form **8865** (2012)



Form 8865 Page Six Schedule N

- Schedule N must be completed by Category 1 and 2 filers
- Schedule N reports transactions between a controlled foreign partnership and partners or other related parties
- Schedule N reports transactions between the foreign partnership and:
 1. The U.S. filer of the Form 8865
 2. Any U.S. corporation or partnership controlling or controlled by the U.S. filer
 3. Any other foreign corporation or partnership controlling or controlled by the U.S. filer
 4. Any other U.S. person with a 10% or more direct interest in the foreign partnership
- IRS looks at Schedule N to identify transfer pricing issues



Form 8865 Schedule D

SCHEDULE D (Form 1065)		Capital Gains and Losses			OMB No. 1545-0049
Department of the Treasury Internal Revenue Service		Attach to Form 1065 or Form 8865. Use Form 8949 to list your transactions for lines 1, 2, 3, 8, 9, and 10. Information about Schedule D (Form 1065) and its separate instructions is at www.irs.gov/form1065 .			2012
Name of partnership		Employer identification number			
Part I Short-Term Capital Gains and Losses—Assets Held One Year or Less					
Complete Form 8949 before completing line 2, 3, or 8. This form may be easier to complete if you round off cents to whole dollars.		(d) Proceeds (sales price) from Form(s) 8949, Part I, line 2, column (d)	(e) Cost or other basis from Form(s) 8949, Part I, line 2, column (e)	(f) Adjustments to gain or loss from Form(s) 8949, Part I, line 2, column (f)	(h) Gain or (loss). Subtract column (e) from column (d) and combine the result with column (f)
1	Short-term totals from all Forms 8949 with box A checked in Part I				
2	Short-term totals from all Forms 8949 with box B checked in Part I				
3	Short-term totals from all Forms 8949 with box C checked in Part I				
4	Short-term capital gain from installment sales from Form 6252, line 26 or 37				4
5	Short-term capital gain or (loss) from like-kind exchanges from Form 8824				5
6	Partnership's share of net short-term capital gain (loss), including specially allocated short-term capital gains (losses), from other partnerships, estates, and trusts				6
7	Net short-term capital gain or (loss). Combine lines 1 through 6 in column (h). Enter here and on Form 1065, Schedule K, line 8 or 11; or Form 8865, Schedule K, line 8 or 11				7
Part II Long-Term Capital Gains and Losses—Assets Held More Than One Year					
Complete Form 8949 before completing line 8, 9, or 10. This form may be easier to complete if you round off cents to whole dollars.		(d) Proceeds (sales price) from Form(s) 8949, Part II, line 4, column (d)	(e) Cost or other basis from Form(s) 8949, Part II, line 4, column (e)	(f) Adjustments to gain or loss from Form(s) 8949, Part II, line 4, column (f)	(h) Gain or (loss). Subtract column (e) from column (d) and combine the result with column (f)
8	Long-term totals from all Forms 8949 with box A checked in Part II				
9	Long-term totals from all Forms 8949 with box B checked in Part II				
10	Long-term totals from all Forms 8949 with box C checked in Part II				
11	Long-term capital gain from installment sales from Form 6252, line 26 or 37				11
12	Long-term capital gain or (loss) from like-kind exchanges from Form 8824				12
13	Partnership's share of net long-term capital gain (loss), including specially allocated long-term capital gains (losses), from other partnerships, estates, and trusts				13
14	Capital gain distributions (see instructions)				14
15	Net long-term capital gain or (loss). Combine lines 8 through 14 in column (h). Enter here and on Form 1065, Schedule K, line 9a or 11; or Form 8865, Schedule K, line 9a or 11				15

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Form 8865 Schedule D

- Only Category 1 filers complete Schedule D
- Schedule D Capital Gains and Losses from Form 1065
- Schedule D reports the foreign partnership's sales or exchanges of capital assets, capital gain distributions and nonbusiness bad debts.

Form 8865 Schedule K-1

Schedule K-1
(Form 8865)
Department of the Treasury
Internal Revenue Service

2012
For calendar year 2012, or tax year beginning ending 2012 ending 20

Final K-1 Amended K-1 OMB No. 1545-1068

Part III Partner's Share of Current Year Income, Deductions, Credits, and Other Items

Part I Information About the Partnership

A1 Partnership's employer identification number

A2 Reference ID number (see Instr.)

B Partnership's name, address, city, state, and ZIP code

Part II Information About the Partner

C Partner's identifying number

D Partner's name, address, city, state, and ZIP code

E Partner's share of profit, loss, capital, and deductions: (see Partner's Instr. Form 1065)

	Beginning	Ending	
Profit	%		%
Loss	%		%
Capital	%		%
Deductions	%		%

F Partner's capital account analysis:

Beginning capital account	\$	
Capital contributed during the year	\$	
Current year increase (decrease)	\$	
Withdrawals & distributions	\$	
Ending capital account	\$	

Tax basis GAAP Section 704(b) book
 Other (explain)

Part III Partner's Share of Current Year Income, Deductions, Credits, and Other Items

	1	15
1 Ordinary business income (loss)		Credits
2 Net rental real estate income (loss)		
3 Other net rental income (loss)		
4 Qualified payments		
5 Interest income		16 Foreign transactions
6a Ordinary dividends		
6b Qualified dividends		
7 Royalties		
8 Net short-term capital gain (loss)		
9a Net long-term capital gain (loss)		
9b Unrecaptured section 1250 gain		17 Alternative minimum tax (AMT) items
10 Net section 1251 gain (loss)		
11 Other income (loss)		
		18 Tax-exempt income and nondeductible expenses
	12 Section 179 deduction	19 Distributions
	13 Other deductions	
		20 Other information
	14 Self-employment earnings (loss)	

For IRS Use Only

* See attached statement for additional information.

For Paperwork Reduction Act Notice, see Instructions for Form 8865. Cat. No. 25996B Schedule K-1 (Form 8865) 2012

Form 8865 Schedule K-1

- Category 1 and 2 filers complete Schedule K-1 for any direct interest in the foreign partnership
- Category 1 filers complete Schedule K-1 for each U.S. person that owns 10% or greater direct interest
- Schedule K-1 reflects beginning and ending ownership percentages including constructive interests of the filer
- Schedule K-1 items of partner's share of partnership income, gain, loss, deduction and credit reported on lines 1-20 for direct interest



Form 8865 Schedule K-1

- U.S. partner is liable for U.S. tax on Schedule K-1 items from foreign partnership.
- U.S. partner claims deduction on U.S. Federal tax return for losses to extent of outside basis and at-risk basis in the foreign partnership interest same as U.S. partnerships.



Form 8865 Schedule O

SCHEDULE O
(Form 8865)
Department of the Treasury
Internal Revenue Service

Transfer of Property to a Foreign Partnership
(under section 6038B)
▶ Attach to Form 8865. See instructions for Form 8865.

OMB No. 1545-1668
2012

Name of transferor _____ Filer's identifying number _____
 Name of foreign partnership _____ EIN (if any) _____ Reference ID number (see instructions) _____

Part I Transfers Reportable Under Section 6038B

Type of property	(a) Date of transfer	(b) Number of items transferred	(c) Fair market value on date of transfer	(d) Cost or other basis	(e) Section 174(f) allocation method	(f) Gain recognized on transfer	(g) Percentage interest in partnership after transfer
Cash							
Stock, note, receivable and payable, and other securities							
Inventory							
Tangible property used in trade or business							
Intangible property							
Other property							

Supplemental information required to be reported (see instructions):

Part II Dispositions Reportable Under Section 6038B

(a) Type of property	(b) Date of original transfer	(c) Date of disposition	(d) Number of disposition	(e) Gain recognized by partnership	(f) Depreciation recapture recognized by partnership	(g) Gain allocated to partner	(h) Depreciation recapture allocated to partner

Part III Is any transfer reported on this schedule subject to gain recognition under section 804(f)(3) or section 904(f)(5)(C)? Yes No

For Paperwork Reduction Act Notice, see the Instructions for Form 8865. Cat. No. 25090U Schedule O (Form 8865) 2012



Form 8865 Schedule O

- Only Category 3 filers complete Schedule O.
- Schedule O reports Transfers of Property to a Foreign Partnership.
- Reportable transfers include cash, securities, tangible and intangible property.
- Report dispositions of property by foreign partnership of appreciated property that filer contributed to partnership.
- Report dispositions of property in a nonrecognition transaction for which the foreign partnership received substituted basis property.



Form 8865 Schedule P

- Only Category 4 filers complete Schedule P
- Schedule P reports acquisitions, dispositions and changes of interests in a foreign partnership
- Report acquisitions that increase interest to 10% or greater
- Report dispositions that decrease interest below 10%
- Report increase or decrease of 10%
- Report date of acquisition or disposition, basis and FMV of interest, % before and after transaction



Form 8865 Filing Requirements and Penalties

- Form 8865 Filing requirements
 - Form 8865 is attached to the U.S. filer's annual U.S. Federal tax return
 - Due by the due date including extensions of the U.S. person's tax return
 - If U.S. person does not file a return, Form 8865 must be filed separately
- Form 8865 Penalties
 - \$10,000 for each failure to file (continued failure may result in penalty increasing to \$50,000)
 - Reduction of 10% of foreign taxes available for credit (continued failure may result in additional reductions)
 - Category 3 failure to file penalty 10% of fair market value of property transferred up to \$100,000
 - Criminal penalties
 - Statute of limitations does not begin to run until Form 8865 is filed



Alison N. Dougherty

Tax Manager Aronson LLC



Alison N. Dougherty is a Tax Manager with Aronson LLC. Her responsibilities include Federal and multi-state tax compliance for C corporations, S corporations, partnerships and individuals. She specializes in international tax compliance and planning as part of the international tax practice. She also provides transactional tax planning and structuring services.

Alison completed the LL.M. in Securities and Financial Regulation in 2004 with academic distinction at Georgetown University Law Center. She completed the LL.M. in Taxation in 2000 and the Juris Doctor in 1999 at the University of Denver College of Law. She completed the Bachelor of Arts in Foreign Language in 1995 at Virginia Commonwealth University.

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Khiem Ting, KPMG

CONSIDERATIONS IN PREPARING FORM 8865

Form 8865 Basic Considerations

A. Form 8865 reporting is predicated on the presence of a foreign partnership.

Thus:

1. The threshold issue - Is the entity the U.S. person needs to report on a partnership?

B. Once it is ascertained that the entity is a partnership:

1. The Subchapter K substantive rules should be considered to determine the US person's Form 8865 reporting obligations.

2. Issues to consider, for instance, would include: What if a foreign partnership is deemed to have undergone a technical termination? Subsequent to a technical termination, do the U.S. partners have Form 8865, Cat. 3 and Cat. 4 filing obligations? What is the annual accounting period that needs to be reported on the Form 8865 by the U.S. partners subsequent to the partnership's technical termination?

Form 8865 Basic Considerations (Cont.)

A. Whether a US partner of a foreign partnership needs to file a Form 8865 is contingent upon its share in the foreign partnership's capital, profits, income or losses/deduction.

1. Treas. Reg. Sec. 6038-3(b)(5) requires that the determination whether one is a Cat.1 or Cat. 2 filer is made annually “by reference to the agreement of the partners relating to such interests during that tax year.”

B. Issues to consider in determining a U.S. person's ownership interest in a partnership may include:

1. Is the determination to be made on the sharing of book profits/losses or tax-basis profits/losses?

2. What if the entity's partnership status resulted from a “check-the-box” election to treat an eligible foreign entity as a partnership for US tax purposes? In this case, there is no partnership agreement to refer to.

Form 8865 - Cat. 1 Filing: Exception for Multiple Cat.1 Filers

A. Two considerations regarding the multiple Cat. 1 filers exception to a Form 8865, Cat. 1 filing:

1. Only a Cat. 1 capital/profits partner is permitted to file on behalf of other Cat. 1 partners. A Cat. 1 loss/deductions partner may not file on behalf of another Cat. 1 capital/profits partner. See Treas. Reg. Sec.1.6038-3(3(c)(1)(i).

2. One should be cautious in relying upon the multiple Cat. 1 filers exception for if the Cat. 1 partner agreeing to file properly the Form 8865, Cat. 1 filing fails to do so, all the other non-filing Cat. 1 partners are deemed not to have complied with their respective Form 8865, Cat. 1 filing obligations even though they expressly indicated that they relied upon the multiple Cat. 1 filers exception.

Form 8865 – Cat. 3 Filing

A. The Form 8865, Cat. 3 filing requirements apply to certain dispositions by the foreign partnerships also. Under Treas. Reg. Sec. 6038B- 2(a)(4), a Form 8865, Cat. 3 filing will generally be triggered, if a Cat. 3 partner:

1. Previously transferred appreciated property to the foreign partnership;
2. Such transfer was subject to Form 8865, Cat. 3 filing; and
3. The foreign partnership subsequently disposes of the transferred property while the Cat. 3 partner remained a partner.

Form 8865 – Cat. 3 Filing (Cont.)

B. Form 8865, Cat.3 filing's 10% partnership interest threshold:

1. The at least 10% partnership interest threshold required to trigger a Form 8865, Cat. 3 filing is defined by reference to Code Sec. 6038 and the regulations thereunder. See Treas. Reg. Sec. 1.6038B-2(a)(1)(i).
2. Thus, the Form 8865, Cat. 1 and Cat. 2 filings requirements apply to a Form 8865, Cat. 3 filing also.

Form 8865 – Cat. 3 Filing (Cont.)

C. Under the Form 8865, Cat. 3 filing rules, if a U.S. person:

1. Is a partner in a U.S. partnership and the U.S. partnership properly reports a transfer of property to a foreign partnership, then the U.S. partner need not undertake a Form 8865, Cat. 3 filing as to such an indirect transfer. See Treas. Reg. Sec. 1.6038B-2(a)(2).

Form 8865 – Cat. 3 Filing (Cont.)

2. Is a partner in a foreign partnership and the foreign partnership transfers property to another foreign partnership, then the U.S. partner is currently not required to file a Form 8865, Cat. 3 filing with respect to such an indirect transfer. Although the provision of Treas. Reg. Sec. 1.6038B-2(a)(3) dealing with “indirect transfer through a foreign partnership” states that it is “reserved,” this regulation’s preamble expressly states that “if a foreign partnership transfers property to another foreign partnership, a U.S. person that is a partner of the transferor partnership is not required to report that transfer until such time the IRS and Treasury implement rules requiring such reporting.” See TD 8817 (2/5/1999).

Form 8865 – Cat. 4 Filing

A. The two attributes of Form 8865, Cat. 4 filings are:

1. Direct ownership interest in a foreign partnership; and
2. Presence of a “reportable event” (as defined in the Code Sec. 6046A regulations).

B. What constitutes interest in a foreign partnership for purposes of Form 8865, Cat. 4 filing?

1. The “reportable event” threshold of at least 10% interest in a foreign partnership is defined by reference to Code Sec. 6038. See 6046A(d) and Treas. Reg. Sec. 1.6046A-1(b)(4).
2. Thus, the rules determining what constitutes ownership interest in a foreign partnership applicable to Form 8865 Cat. 1 and Cat. 2 filings apply to a Form 8865, Cat. 4 filing also.

Form 8865 – Cat. 4 Filing (Cont.)

C. The “reportable event” concept:

1. Due to the definition of a “reportable event,” any transfer, no matter how small, could potentially trigger a Form 8865, Cat. 4 filing.
2. A U.S. partner may experience a “reportable event” even though:
 - a. It has not acquired or disposed of its partnership interest; or
 - b. The terms of the partnership agreement were not altered.

See Treas. Reg. Sec. 1.6046AA-1(b)(3) stating that “a partner’s proportional interest in a foreign partnership may change for a number of reasons, for example, the change may be caused by changes in other partners’ interests resulting from a partner withdrawing from the partnership. A proportional change may also occur 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 and one of those events occurs.”

Form 8865 – Reporting Periods

A. Cat. 1 and Cat. 2 filers:

1. Must undertake their Form 8865 reporting for the foreign partnership's tax year that ends with or within the US person's tax year. See Treas. Reg. Sec. 1.6038-3(f).
2. Should pay attention to reporting period issues if the foreign partnership's and its U.S. partners do not have the same annual accounting period (what needs to be reported on the Form 8865 for which year?). Reporting period issues will be especially thorny in cases of tiered flow-through entities with differing tax years.

Form 8865 – Reporting Periods (Cont.)

B. Cat. 3 filers:

1. Need to file the Form 8865 for Code Sec. 721 contributions or certain dispositions by the foreign partnership occurring within the Cat. 3 filer's tax year. See Treas. Reg. Sec. 1.6038B-2(a)(5).

C. Cat. 4 filers:

1. Must file Form 8865 for a “reportable event” taking place within the Cat. 4 filer's tax year. See Treas. Reg. Sec. 1.6046A-1(d).

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Function and Specialization

Khiem provides US international tax services to a broad range of clients.

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- JD – Loyola University of Chicago School of Law
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Professional and Industry Experience

Khiem provides US international tax services to a broad range of clients including US and foreign multinational corporations, private equity firms and other alternative investment funds.

Khiem has seven years of Big Four accounting firm experience in practicing US international tax. He also has in-house tax experience. Before embarking on a career in public accounting, he served as MasterCard's International Tax Director.

Khiem's tax practice covers all areas of US international tax including:

- US anti-deferral rules (Subpart F and PFICs);
- Cross-border transactions and restructurings;
- Tax treaties;
- Cash repatriations; and
- Foreign tax credits.

He also is assisting clients on all aspects of US foreign tax reporting.