

[4830-01-u]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-209060-86]

RIN 1545-AK75

Return Requirement for United States Persons Owning Interests in Foreign Partnerships

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations under section 6046A of the Internal Revenue Code relating to return requirements for certain United States persons who acquire or dispose of an interest in a foreign partnership, or whose interest in a foreign partnership changes substantially. These proposed regulations would provide guidance to United States persons who must file such a return. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments must be received by November 9, 1998. Outlines of topics to be discussed at the public hearing scheduled for November 10, 1998, at 10 a.m., must be received by October 20, 1998.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG-209060-86), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to CC:DOM:CORP:R (REG-209060-86), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option of the IRS Home Page, or by submitting comments directly to the IRS Internet site at: [http://www.irs.ustreas.gov/prod/tax\\_regis/comments.html](http://www.irs.ustreas.gov/prod/tax_regis/comments.html).

A public hearing has been scheduled to be held in room 2615, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Christopher Kelley, 202-622-3860; concerning the hearing and submissions of written comments, Michael Slaughter, 202-622-7190 (not toll-free calls).

## SUPPLEMENTARY INFORMATION:

**Paperwork Reduction Act**

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the **Office of Management and Budget**, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the **Internal Revenue Service**, Attention: IRS Reports Clearance Officer OP:FS:FP, Washington, DC 20224. Comments on the collection of information must be received by November 9, 1998. Comments are specifically requested on:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of the capital or start-up costs of operation, maintenance, and purchase of services to provide information.

The collection of information in these regulations is in §1.6046A-1. This information is required by the IRS to identify United States persons with significant interests in foreign partnerships and to ensure the correct reporting of items with respect to these interests. The collection of information is mandatory. The likely respondents will be individuals and businesses or other for-profit organizations.

The burden of complying with the proposed collection of information required to be reported on Form 8865 is reflected in the burden for Form 8865.

The burden of complying with the proposed collection of information in §1.6046A-1(f)(1)(ii) is as follows:

Estimated total annual reporting burden: 250 hours.

Estimated annual burden per respondent: .25 hours to 1 hour, with an average of .5 hours.

Estimated number of respondents: 500.

Estimated frequency of responses: On occasion.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

#### **Background**

##### Taxpayer Relief Act of 1997

In the Taxpayer Relief Act of 1997 (TRA 1997), Public Law 105-34 (111 Stat. 983 (1997)), Congress significantly modified the information reporting requirements with respect to foreign partnerships under sections 6038, 6038B and 6046A (and also amended section 6501(c)(8) to provide that the statute of limitations on the assessment of tax under section 6038, 6038B and 6046A does not expire until three years after the information required under those sections is reported). These regulations under section 6046A are being proposed along with regulations under sections 6038 (reporting with respect to certain foreign partnerships) and 6038B (reporting of certain transfers to foreign partnerships). The IRS is also developing a comprehensive form (Form 8865) for reporting under all of these provisions. A draft version of the form will be issued for public comment while the proposed regulations are outstanding.

##### Section 6046A

Section 6046A was added to the Internal Revenue Code (Code) by section 405 of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), Public Law 97-248 (96 Stat. 669 (1982)), and, prior to amendment by TRA 1997, required reporting of acquisitions and dispositions of interests in foreign partnerships

as well as of substantial changes in proportional interests in such partnerships. Section 1143 of TRA 1997, Public Law 105-34 (111 Stat. 983 (1997)), amended section 6046A, to provide that reporting is required only when the interest acquired, disposed of, or substantially changed is at least a 10-percent interest in the partnership.

### **Explanation of Provisions**

#### Filing Requirement

The proposed regulations require a United States person to report the information required under section 6046A with respect to a "reportable event" on Form 8865, "Information Return of U.S. Persons With Respect To Certain Foreign Partnerships". The proposed regulations follow the statute and define a reportable event to mean (1) an acquisition by a United States person of at least a 10-percent interest in a foreign partnership, (2) a disposition by a United States person of at least a 10-percent interest in a foreign partnership, or (3) a change in a United States person's proportional interest in a foreign partnership that is equivalent to at least a 10-percent interest in the partnership. However, the proposed regulations exclude from the definition of a reportable event any acquisition of an interest in, or change in proportional interest in a foreign partnership resulting from a transfer by a partner also subject to the reporting requirements under section 6038B.

Under section 6046A(d), a 10-percent interest is defined by cross-reference to section 6038(e)(3)(C) and regulations issued under that provision, and means direct or indirect ownership of a interest equal to 10 percent of the capital interest or profits interest in a partnership, and an interest to which 10 percent of the deductions or losses of a partnership are allocated.

#### Partnerships Excluded From Application of Subchapter K

The reporting requirements of this section shall not apply in respect of any foreign partnership which is an eligible partnership described in §1.761-2(a) that has validly elected pursuant to §1.761-2(b)(2)(i) to be wholly excluded from the application of subchapter K. Nor shall the reporting requirements of these proposed regulations apply to any foreign partnership validly deemed to have wholly elected out of the provisions of subchapter K as specified in §1.761-2(b)(2)(ii). Taxpayers are reminded, however, that a precondition to being an

"electing-out" partnership is that, as provided in §1.761-2(a)(1), "[t]he members of such organization must be able to compute their income without the necessity of computing partnership taxable income." The IRS and Treasury are concerned that in certain cases the necessary books and records are not being maintained to allow verification that such computations can indeed be made without regard to the partnership. If it appears that, in the absence of a reporting requirement under this section, the members of the "electing-out" partnership cannot make such separate computations, this exception to the reporting requirements will be reconsidered.

#### Exception for Certain International Satellite Partnerships

The proposed regulations contain an exception to the filing requirement for certain international satellite partnerships. Section 406 of TEFRA provides that section 6031 and 6046A do not apply to the International Telecommunications Satellite Organization, the International Maritime Satellite Organization, or any organization which is a successor of either organization. Although the International Maritime Satellite Organization has been subsequently renamed the International Mobile Satellite Organization, no legislation has been enacted that would eliminate the exception provided by section 406 of TEFRA.

#### Time and Place for Filing Return

Section 6046A(c) provides that any return required by section 6046A(a) must be filed on or before the 90th day after the day on which the United States person becomes liable to file it, or on or before a later day prescribed in regulations. After section 6046A was enacted, the IRS announced that the regulations would provide that any return would be considered timely filed if filed on or before the 90th day following the date of publication of the regulations, even if the date of filing was more than 90 days after a reportable event. Announcement 83-5 (1983-2 I.R.B. 31). Thus, no returns under section 6046A have been required to be filed to date.

Rather than require a return to be made within a specified period after a reportable event, under the proposed regulations a return under section 6046A would generally be required to be filed with the United States person's income tax return for the taxable year during which a reportable event occurs (or on the Form 8865 for the foreign partnership's taxable year in which the reportable

event occurs (filed in accordance with §§1.6038-3(e) and (h)) if the United States person is also required to report under proposed regulation §1.6038-3(a)). However, a return for a reportable event would not be required to be filed before the 90th day after the event. A reportable event occurring within 90 days of the due date for a taxpayer's return may be reported on a Form 8865 filed with that return, or may be reported on a separate Form 8865 filed with the taxpayer's return for the next taxable year. If required by the instructions to Form 8865, a duplicate return under section 6046A must also be filed.

In certain circumstances, the proposed regulations would also eliminate the need for two or more United States persons to file Form 8865 with respect to the same reportable event in the case of attribution of ownership.

#### **Effective Dates**

The proposed regulations are generally effective for reportable events occurring on or after January 1, 1998. The proposed regulations would relieve a United States person from having to file a return under section 6046A for reportable events occurring prior to January 1, 1998. Furthermore, the return period for reportable events occurring on or before the date that final regulations are published in the **Federal Register** would generally be extended for one taxable year.

#### **Special Analyses**

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these proposed regulations. It is hereby certified that the collection of information contained in these proposed regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the amount of time required to complete the form and file the information required under these regulations is brief and will not have a significant impact on those small entities that are required to provide notification. Furthermore, the number of small entities that will be required to file the form is not significant. Accordingly, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required.

Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

#### **Comments and Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (preferably a signed original and eight (8) copies) that are submitted timely to the Internal Revenue Service. All comments will be made available for public inspection and copying.

A public hearing has been scheduled for Tuesday, November 10, 1998, at 10 a.m., in room 2615, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments and an outline of the topics to be discussed (preferably a signed original and eight (8) copies) by October 20, 1998.

A period of 10 minutes will be allotted for each person making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

#### **Drafting Information**

The principal author of these proposed regulations is Christopher Kelley of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

#### **List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

#### **Proposed Amendments to the Regulations**

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

##### **PART 1--INCOME TAXES**

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Section 1.6046A-1 also issued under 26 U.S.C. 6046A. \* \* \*

Par. 2. Section 1.6046A-1 is added to read as follows:

§1.6046A-1 Return requirement for United States persons owning interests in foreign partnerships.

(a) Return requirement--(1) General rule. If a reportable event occurs with respect to the interest of a United States person in a foreign partnership, the United States person is required to report the event on Form 8865, "Information Return of U.S. Persons With Respect To Certain Foreign Partnerships", except as provided in paragraphs (b)(1)(ii), (e), (g) or (h) of this section.

(2) Separate return for each partnership. If a United States person is required under section 6046A and this section to report an event with respect to an interest in more than one foreign partnership, the United States person must file a separate return for each partnership.

(b) Definitions--(1) Reportable event--(i) General rule. For purposes of section 6046A and this section, a reportable event means--

(A) An acquisition by a United States person of at least a 10-percent interest in a foreign partnership;

(B) A disposition by a United States person of at least a 10-percent interest in a foreign partnership; or

(C) Any change in a United States person's proportional interest in a foreign partnership that is equivalent to at least a 10-percent interest in the partnership.

(ii) Exception. If a United States person acquires an interest in a foreign partnership (or the amount of such interest changes) as a result of a transfer subject to the reporting requirements under section 6038B, the United States person will not be required to also report the acquisition (or change) under section 6046A(a).

(2) 10-percent interest. Under section 6046A and this section, a 10-percent interest in a partnership is an interest described in section 6038(e)(3)(C) and the regulations thereunder.

(3) United States person. United States person means a person described in section 7701(a)(30).

(4) Foreign partnership. Foreign partnership means any partnership that is



a foreign partnership under sections 7701(a)(2) and (5).

(c) Content of return. In respect of acquisitions and dispositions of, and changes in interest described in section 6046A(a), the return must contain information in such form or manner as Form 8865 (and its accompanying instructions) prescribes with respect to reportable events, including--

(1) The name, address, and taxpayer identification number of the United States person required to file the return;

(2) The name, address, and taxpayer identification number, if any, of the foreign partnership;

(3) The name of the country under the laws of which the foreign partnership was organized, and the date of formation;

(4) For each reportable event, the date of the event, the type of event (acquisition, disposition, or change in partnership interest), and the United States person's percentage interest in the foreign partnership before and after the event; and

(5) For an acquisition, disposition or change affecting the United States person's interest in partnership capital, profits, losses, or deductions, the fair market value of the interest acquired, disposed of, or changed.

(d) Time and manner for filing returns--(1) General rule. Except as provided in paragraph (d)(2) of this section, the Form 8865 must be filed with the income tax return (including a partnership return of income) of the United States person for the taxable year in which the reportable event occurs, and must be filed by the due date (including extensions) of the income tax return.

(2) Exceptions--(i) United States person also required to file under §1.6038-3(a). If the United States person required to file under this section is also required to file under §1.6038-3(a) for the period in which the reportable event occurred, then the United States person must report under this section on the Form 8865 for the foreign partnership's annual accounting period in which the reportable event occurred (not its own taxable year) and file with its income tax return for that year as provided in §1.6038-3(e) and (h).

(ii) Reportable event less than 90 days before the due date of the United States person's income tax return. If the date of a reportable event is less than 90 days before the due date of the United States person's income tax return

for the taxable year in which the reportable event occurred, the United States person may file the Form 8865 in respect of that reportable event with its income tax return for that taxable year, or may file a separate Form 8865 in respect of that reportable event with its income tax return for the next taxable year.

(3) Duplicate returns. If required by the instructions to Form 8865, a duplicate Form 8865 (including attachments and schedules) must also be filed.

(e) Persons excepted from filing return--(1) Requirements. A United States person otherwise required to file a return under this section with respect to a foreign partnership need not file a return provided all of the following conditions are met--

(i) The person does not directly own an interest in the foreign partnership;

(ii) The person is required to file a return solely by reason of attribution of ownership from a United States person (as determined under the rules of section 6038(e)(3) and the regulations thereunder); and

(iii) A person from whom ownership is attributed furnishes all of the information required under this section with respect to the reportable event.

(2) Statement required. A United States person who does not furnish an information return under the provisions of paragraph (e)(1) of this section must file a statement with the person's income tax return--

(i) Indicating that the filing requirement has been or will be satisfied;

(ii) Identifying the person who has or will file the return;

(iii) Identifying the IRS Service Center where the return was or will be filed; and

(iv) Providing any additional information as Form 8865 and the accompanying instructions may require.

(f) Method of Reporting. Except as otherwise provided on Form 8865, or the accompanying instructions, any amounts required to be reported under section 6046A and this section must be expressed in United States dollars, with a statement of the exchange rates used. All statements required on or with Form 8865 pursuant to this section must be in the English language.

(g) Reporting under this section not required of partnerships excluded from the application of subchapter K--(1) Election to be wholly excluded. The

reporting requirements of this section will not apply to any United States person in respect of an eligible partnership as described in §1.761-2(a) in which that United States person is a partner, if such partnership has validly elected to be excluded from all of the provisions of subchapter K of chapter 1 of the Internal Revenue Code in the manner specified in §1.761-2(b)(2)(i).

(2) Deemed excluded. The reporting requirements of this section will not apply to any United States person in respect of an eligible partnership as described in §1.761-2(a) in which that United States person is a partner, if such partnership is validly deemed to have elected to be excluded from all of the provisions of subchapter K of chapter 1 of the Internal Revenue Code in accordance with the provisions of §1.761-2(b)(2)(ii).

(h) Exclusion for satellite organizations. The return requirement of section 6046A does not apply to the International Telecommunications Satellite Organization (or a successor organization) or the International Mobile Satellite Organization (or any other organization that is a successor to the International Maritime Satellite Organization).

(i) Failure to comply with reporting requirements--(1) Failure to comply. A failure to comply with the requirements of section 6046A includes--

(i) The failure to report at the proper time and in the proper manner any information required to be reported under the rules of this section; and

(ii) The provision of false or inaccurate information in purported compliance with the requirements of this section.

(2) Penalties. For penalties for failure to comply with the reporting requirements of section 6046A and this section, see sections 6679 and 7203.

(3) Statute of limitations. For exceptions to the limitations on assessment and collection in the event of a failure to provide information under section 6046A, see section 6501(c)(8).

(j) Effective date--(1) General rule. This section applies to reportable events occurring on or after January 1, 1998.

(2) Reportable event prior to issuance of final regulations. If a reportable event occurs on or before the date final regulations on this subject are published in the **Federal Register**, the Form 8865 may be filed with the United States person's timely filed (including extensions) income tax return for the taxable year immediately following the taxable year in which the reportable event occurs.

Michael P. Dolan

Deputy Commissioner of Internal Revenue