INFORMATION REPORTING PROGRAM ADVISORY COMMITTEE

INTERNATIONAL REPORTING AND WITHHOLDING SUBGROUP REPORT

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International Reporting and Withholding Subgroup Report

The following are the principal issues that have been discussed between the International Reporting and Withholding Subgroup (IRW) of IRPAC and the Treasury Department and IRS. Section I contains recommendations on the regulations and other non-form guidance. Section II contains recommendations on the IRS forms and their instructions. Appendix D to this report lists 15 other recommendations the IRW has made this year with respect to Chapter 3 and Chapter 4.

SECTION I – RECOMMENDATIONS ON THE REGULATIONS AND OTHER NON-FORM GUIDANCE

A. Notice 2015-10 – Guidance on Refunds and Credits Under Chapter 3 and Chapter 4

Recommendation

IRPAC believes that the pro rata approach to denying refund claims of payees whose withholding agents have a deposit shortfall is not a viable approach to combatting fraudulent withholding tax refund claims. Not only does IRPAC believe this approach may exceed Treasury's authority under the statutory regime, but the approach would create extreme administrative hardship for thousands (if not millions) of refund claimants, as well as the IRS. Assuming Treasury believes that it does have the authority to limit refunds where there is a withholding agent deposit shortfall, IRPAC recommends that Treasury pay these refund claims on a first in- first out (FIFO) basis. Further, IRPAC recommends that the IRS maintain lists of withholding agents whose payees would be exempt from the deposit shortfall rule (e.g., established withholding agents and withholding agents otherwise willing to post bond to assure the IRS that it will be able to collect shortfalls). Finally, IRPAC recommends that the IRS include an exception to the deposit shortfall rule where the amount of the withholding agent's apparent deposit shortfall is less than 10% of the amount reported as withheld on all Forms 1042-S, Foreign Person’s US Source Income Subject to Withholding filed by the withholding agent.

Discussion

In Notice 2015-10, the IRS announced rules under which it will reject (either in whole or in part) certain withholding tax refund claims filed by payees if the total amount of a withholding agent's required deposit for a calendar year is less than the amount actually deposited by that withholding agent ("shortfall"). Under this Notice, "Pro-rata" refunds will be allowed based on the ratio of the amount actually deposited by the withholding agent to the total amount required to be deposited. For example, if a withholding agent has a withholding tax liability of $100,000 with respect to payments made to all payees, but has only deposited $95,000 to its deposit account for the year, under these announced rules the IRS would deny a proportional 5% of refunds claims made by any and all payees from whom that withholding agent withheld tax.

The IRS is pursuing this initiative as a result of its concern about increasing numbers of fraudulent withholding tax refund claims and the IRS's inability (in certain circumstances) to recoup funds due from foreign withholding agents after the IRS refunds taxes to payees.

IRPAC lauds the IRS's proactive efforts to counteract fraudulent refund claims. Fraudulent claims not only pose a risk to the federal fiscal system, but also pose a substantial drain to IRS resources. Thus, to combat these concerns, IRPAC agrees that the IRS should take appropriate steps to ensure that reported withholding taxes and deposits are legitimate before refund claims are processed and paid. IRPAC submitted comments in June of 2015 (Appendix E) addressing this Notice.[1] Since sending those comments, IRPAC has met with administration officials regarding the problem and IRPAC's suggestions. The recommendations and discussion set forth herein reflect these continued discussions.

(a) The Pro Rata Approach:

IRPAC continues to believe that the pro rata approach suggested by Notice 2015-10 has fundamental flaws. To begin with, the approach arguably exceeds the IRS's legal authority under IRC § 1462, which requires the IRS to credit the amount of tax withheld against the payee's tax paid without regard to whether the withholding agent in fact deposited the withheld taxes. Although IRC § 6402(a) allows the IRS to credit overpaid taxes against the payee's other tax liabilities, there is no authority within the Code that allows the IRS to hold the *payee* liable for a *withholding agent's* failure to deposit taxes actually withheld.[2] This is appropriate in the case of legitimate transactions because when the withholding agent withholds from a payment made to the payee, the withholding agent is acting as the agent of the IRS, not the payee. Depending on the contractual arrangement between the withholding agent and the payee, the withholding agent may not have any legal duty to the payee to deposit the taxes withheld, but instead has a duty to the IRS to deposit those withheld taxes with the IRS.[3]

Because the withholding agent has no legal duty to the payee, the Notice creates unprecedented legal and administrative issues for *payees* who seek to obtain legitimate withholding tax refunds. For example, can such payee seek recourse from the withholding agent, or will the IRS eventually pay the refund in full once it has resolved the shortfall with the withholding agent? Does the payee have to file a second claim to recoup the denied portion of its refund or will the IRS automatically make this payment once it resolves the issue with the withholding agent. What, if any, recourse does the

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[1] This letter was reprinted in the Daily Tax Report on July 7, 2015, and can be found at: http://news.bna.com/dtln/DTLNWB/split_display.adp?fedfid=72113806&vname=dtrnot&wsn=499000500&searchid=25823617&doctypeid=1&type=date&mode=doc&split=0&scm=DTLNWB&pg=0

[2] Indeed, Code section 1461 insulates the withholding agent from liability to the payee for amounts withheld in accordance with the provisions of Chapter 3.

[3] I.R.C. §1461.

payee have where the IRS and the withholding agent remain at odds with respect to the appropriateness of the deposit? Finally, how is the statute of limitations impacted by these disputes? Who can the payee sue for the denied portion of its refund claim and by what date must that suit be brought? Forcing payees to navigate these issues will cause potentially irreconcilable customer relations problems for withholding agents.

The Notice's pro rata approach would negatively impact legitimate refund claims for which the likelihood of fraudulent activity is low and will cause significant administrative problems for both the IRS and withholding agents, the latter of which may have proven track records in reporting and making deposits. There are many reasons why a withholding agent's tax deposit account for a year might not reflect the total deposits due for that year. For example, in certain circumstances, the IRS might unilaterally debit a withholding agent's Chapter 3 (1042) tax deposit account in order to settle a tax liability associated with another account of that agent (e.g., backup withholding or payroll tax account). A withholding agent might intentionally deposit less than the full amount of tax withheld in a particular year if it had made excessive deposits in the prior year and was anticipating a corresponding credit on the current year's return. Finally, despite a withholding agent's best efforts, a shortfall could arise as a result of a legitimate (and unintentional) mistake that was made by the withholding agent (such as wrongly coding a deposit – e.g., 941 instead of 1042) or a ministerial error made by the Service (such as funds being wrongly deposited into a different account of the withholding agent).

Under the proposed rules suggested by the Notice, a shortfall created by any of these above circumstances would result in a refund denial or reduction for *all* of the withholding agent's payees without regard to whether the particular payee's withholding payment gave rise to the shortfall. By denying all or a portion of a payee's refund claim as a result of a shortfall in the 1042 account of a withholding agent, the IRS proposal would penalize payees for withholding agent practices over which the payee has no control.

The Notice appears to be conflating the legitimate problem of fraudulent refund claims with collection of shortfalls in withholding deposits. Fraudulent withholding claims (and associated phantom deposits) are unlikely to be related to a legitimate withholding agent's deposit shortfall. To the extent that a fraudulent scheme somehow does target a legitimate withholding agent's deposits (e.g., by claiming that a portion of such agent's deposit should be refunded to the fraudulent claimant), the IRS's approach of denying only a pro rata portion of that claimant's refund claim does not eliminate the overall problem (indeed the claimant will still obtain an undeserved refund under these rules diminished only by the pro rata portion of the overall shortfall). Moreover, the IRS's approach inappropriately shifts the burden of the fraud to the withholding agent's legitimate payees, notwithstanding that these recipients are wholly unable to defend themselves against the perpetration of such a fraud.

For these reasons, IRPAC believes that a pro rata allocation of a withholding agent's deposit account shortfall to all payees is an inappropriate way to combat potential fraudulent withholding tax refund claims.

(b) The FIFO Approach:

To the extent the IRS believes it has the authority under the existing statutory regime to deny refunds to payees from whom withholding agents withheld amounts but failed to pay to the IRS its full liability, IRPAC believes it would be more appropriate to pay these claims on a first in- first out (FIFO) basis. That is, refunds should be paid from the withholding agent's deposits (even if there is a shortfall) until the requested refund exceeds the funds deposited by that withholding agent. Shifting to a FIFO method of denying refund claims would ensure that the overwhelming majority of refund claims made by payees of large and established withholding agents will be processed without incident. IRPAC believes that this FIFO rule would likely reduce the number of refund claim denials down to a significantly smaller number than that which would result under a pro rata approach. More importantly, IRPAC believes that there would be a greater likelihood that denying refund claims on a FIFO basis would more directly target fraudulent withholding agents, as opposed to withholding agents that have inadvertent shortfalls for the above described administrative reasons.

(c) Exceptions:

Another way to avoid the administrative Armageddon that would likely result from denying a pro rata portion of *every* refund claim with respect to a withholding agent with a shortfall, would be to exempt certain withholding agents from an IRS maintained list of withholding agents. As an initial matter, IRPAC recommends that the following categories of withholding agents be exempt from any shortfall rule:

- US withholding agents, Qualified Intermediaries (QIs), and other withholding agents that have a significant US tax nexus should be excepted from the Notice as the IRS should have sufficient recourse against such parties to collect any identified tax shortfall; and
- Withholding agents that have an established history of compliance with their tax withholding, deposit and reporting obligations and withholding agents that generally deposit a significant dollar amount of withholding. These agents are far less likely to be involved in fraudulent behavior and should be responsive to IRS collection efforts.

IRPAC also recommends that the IRS maintained list include companies that do not meet the above criteria (e.g., either an entirely new business or a new business entity that is a division of one of the above exempted agents) if they agree to provide assurance for any shortfall that the IRS is unable to collect using reasonable collection methods.

Finally, IRPAC recommends that the IRS create an exception if the amount of the under-deposit of tax is less than 10% of the amount reported as withheld on all Forms 1042-S filed by the withholding agent.

B. Treatment of Negative Interest for US Tax Information Reporting and Withholding Purposes

Recommendation

IRPAC recommends that guidance be issued promptly regarding the proper treatment of so-called "negative interest" for purposes of US tax information reporting and withholding requirements under Chapter 3 and Chapter 4, since existing US tax rules do not address either the character or source of such payments. Consequently, IRPAC believes that taxpayers are not treating such payments consistently for US reporting and withholding purposes – e.g., as interest, fees or some other type of payment. IRPAC also recommends that this guidance address under what circumstances, if any, a withholding agent may offset (or net) negative payments with positive interest payments.

Discussion

Under a number of scenarios, examples of which are described below, parties to commercial transactions that would normally call for the payment of interest are required to pay what has become known as "negative interest," a phenomenon due to the recent decline in prevailing interest rates – which in some cases are below 0%, particularly in many European markets.

Examples of Negative Interest Scenarios

1. ***Payment on Cash Deposits*** In a normal interest rate environment, a bank typically pays interest on deposit balances. In a negative rate environment, the bank charges clients an amount to hold cash deposits based on the negative rate.

2. ***Collateral on Derivatives Transactions*** Cash is often pledged as collateral to secure derivatives transactions. The cash collateral accrues positive or negative interest (the rate of which is tied to the currency posted) that, if negative, could require the party posting the collateral to pay additional cash to the secured party.

3. ***Margin Loans*** Client borrows from a broker to purchase securities. In a normal interest rate environment, the client pays interest to the broker on borrowed

money, and the securities are used as collateral. In a negative rate environment, the broker/lender might be required to pay the client based on the negative rate.

Negative interest does not appear to be interest as that term is traditionally defined for US tax purposes, as it is not a payment for the use of funds. Beyond that, the proper treatment/sourcing of negative interest remains unclear. A number of possible alternative treatments of negative interest, each having its own logic, have been put forward. These include the following:

- Source the payment by reference to the residence of the recipient, such as payments made under most notional principal contracts, purchase price adjustments, and payments for services.

- Source the payment by reference to the residence of the payor, such as interest.

IRPAC recommends a payee-based sourcing rule. Such a rule would put US payors and non-US payors on an equal playing field. IRPAC recommends that the guidance cover the above three scenarios and potentially other scenarios that fit defined conditions. In principle, the guidance should cover payments by a person who deposits cash, posts cash as collateral or lends cash the payments of which would not be made and, instead, interest of which would be paid to such person under a normal interest rate environment. Finally, to the extent that guidance treats these payments as US source fixed or determinable annual or periodic (FDAP) income or otherwise as subject to US withholding when paid to a foreign payee, IRPAC recommends that there be an adequate transition period for implementation. That is, the effective date of such guidance should be such that withholding agents can make appropriate modifications to their systems to provide for such withholding, and the guidance should apply only to transactions entered into, or payments made, after that date.

Finally, in view of the long-standing uncertainty as to the proper US tax characterization of negative interest, it is recommended that guidance provide that taxpayers that have taken a reasonable position regarding the source of such payments prior to the issuance of the guidance will not be challenged on audit.

C. NFFEs Should Have a Single FATCA Status

Recommendation

IRPAC recommends that the IRS issue guidance that permits non-financial foreign entities (NFFEs) to ascertain their “FATCA status” using the definitions contained in Annex 1 of the intergovernmental agreement (IGA) applicable to the NFFE’s country of organization and to certify such status on a Form W-8BEN-E, Certificate of Entities Status of Beneficial Owner for United States Tax Withholding and

Reporting (Entities) that is provided to any person within or without such IGA jurisdiction. In addition, the Form W-8BEN-E and the applicable certifications pertaining to the relevant NFFE categories should be modified to effect this change.

Discussion

Presently, NFFEs are obligated to ascertain their FATCA status based on the applicable Treasury Regulations. However, partner jurisdiction foreign financial institutions (FFIs) are obligated to ascertain the FATCA status of an NFFE based on the application of Annex 1 of the applicable IGA. Consequently, in cases where NFFEs provide a W-8BEN-E to an FFI located in an IGA jurisdiction, the NFFE may certify that it is a passive or active NFFE pursuant to the requirements of the applicable IGA. On the other hand, if the same NFFE provides a W-8BEN-E to a non-IGA financial institution (FI) or a US financial institution (USFI), it must ascertain its status under the applicable regulations. Thus, IRPAC recommends that the IRS issue guidance that permits NFFEs to determine their "FATCA status" using the definitions contained in Annex 1 of the IGA applicable to the NFFE's country of organization and to certify such status on a Form W-8BEN-E that is provided to any person within or without such IGA jurisdiction. IRPAC is unable to determine any reasoned basis why an NFFE cannot be permitted to undertake a single analysis and provide that status to all persons. If the Treasury Department has determined that the procedures contained in Annex 1 of an applicable IGA are sufficient to identify NFFEs, an NFFE should be permitted to utilize those procedures in the same manner as an FFI in that jurisdiction.

Adoption of this recommendation will greatly enhance tax administration and eliminate the confusion currently surrounding the preparation of Form W-8BEN-E by NFFEs.

D. Can FFI in an "in substance" Model 1 IGA Jurisdiction Be Treated as a PFFI?

Recommendation

IRPAC recommends that guidance be issued (preferably in the form of an FAQ to facilitate a prompt response) specifying whether an FFI in an "in-substance" Model 1 country (i.e., a country that has agreed in principal to enter into an IGA with the US, but has not yet negotiated and signed that IGA) can claim participating FFI (PFFI) status, and be treated as such by withholding agents and FIs, including after the applicable partner country signs the IGA. It is also recommended that any guidance in this regard be prospective, thus allowing withholding agents and FIs that have previously agreed to treat account holders located in "in substance" Model 1 IGA jurisdictions as PFFIs to continue such PFFI treatment until either (i) the applicable form on which PFFI status was claimed expires under Treas. Reg. §1.1471-3(c)(6)(ii), or (ii) the account holder notifies the withholding agent of a change in circumstances in the form of new documentation establishing Model 1 FFI status.

Discussion

Under the Model 1 IGA, the term “FATCA Partner Financial Institution” is generally defined to include (i) any Financial Institution resident in or organized under the laws of the partner jurisdiction, but excluding any branch of such Financial Institution that is located outside of the partner country, and (ii) any branch of a Financial Institution not resident in or organized under the laws of the partner jurisdiction, if the branch is located in the partner jurisdiction. This has been interpreted to bring within the scope of the Model 1 IGA all FIs that fall under that definition, and to essentially preclude any FATCA Partner Financial Institution from “opting out” of the particular IGA by entering into a separate FFI Agreement with the IRS. *Announcement 2014-38* provides, in relevant part, that FFIs resident in, or organized under the laws of, or are a branch located in, a jurisdiction that is included on the Treasury and IRS list as having reached an agreement "in substance" are permitted to register on the FATCA registration website, and certify their FATCA status to requesters, consistent with their treatment under the relevant Model IGA.

It is unclear to withholding agents how to deal with account holders located in “in substance” countries that apparently entered into a FFI Agreement with the IRS before the release of *Announcement 2014-38,* and subsequently claimed PFFI status with such withholding agents on Forms W-8. While either designation (PFFI and Model 1 FFI) represents a compliant status for Chapter 4 purposes, there may be differences in both the FFI’s and the withholding agent’s compliance requirements associated with each. For example, tax information reporting by, and for, a PFFI may be different from such reporting required by, and for, a Model 1 FFI. For these reasons, among others, IRPAC believes the IRS should promptly clarify how to address the transition between PFFI and “in substance” IGA status.

As stated above, IRPAC recommends that IRS clarify (a) whether an FFI in an “in-substance” Model 1 country can claim PFFI status, and be treated as such by withholding agents and FIs, and (b) withholding agents and FIs that have previously agreed to treat account holders located in “in substance” Model 1 IGA jurisdictions as PFFIs may continue such PFFI treatment, even after the applicable jurisdiction signs the IGA, until either (i) the applicable form on which PFFI status was claimed expires, or (ii) the account holder notifies the withholding agent of a change in circumstances in the form of new documentation establishing Model 1 FFI status.

E. Certain Controlling Persons of Non-US Trusts

Recommendation

IRPAC recommends that Treasury modify the Model IGA and utilize the “Most Favored Nation” provisions of existing IGAs to conform IGA reporting requirements with respect to controlling persons of non-US trusts with the reporting requirements for such persons under US law.

Discussion

IGAs presently contain terms that are not consistent with US law and regulations resulting in disparate treatment compared to entities subject to US information reporting obligations. For instance, under an applicable IGA, all US persons that are trustees, trust protectors, beneficiaries and certain other parties are subject to information reporting whether the related trust is an FFI or passive NFFE. On the other hand, under US law and applicable regulations, only US persons considered to hold an equity interest in a trust would be subject to information reporting. Applicable regulations generally provide that a grantor of a grantor trust, a beneficiary that is entitled to a mandatory distribution from a trust or a beneficiary that actually receives a discretionary distribution from the trust (in the current tax year, in the case of an FFI or in the prior tax year in the case of a passive NFFE) hold an equity interest in a trust. To be clear, under US regulations, a US trust protector has absolutely no information reporting obligations. A US trustee of a non-US trust has no personal information reporting obligations, unless the trust has an obligation to file Form 3520, Annual Return to Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts or Form 3520A, Annual Information Return of Foreign Trust With a US Owner. Similarly, a US beneficiary of a non-US trust who is not considered a grantor of the trust and who receives no distribution from such trust has no information reporting obligations.

IRPAC recommends that Treasury modify the Model IGA and utilize the "Most Favored Nation" provisions of existing IGAs to conform IGA reporting requirements with respect to controlling persons of non-US trusts with US law. This can be accomplished by: (1) clarifying the term "controlling person" to exclude (a) trust protectors, (b) trustees, and (c) persons identified as beneficiaries or potential beneficiaries of a trust and who are not entitled to receive a mandatory distribution from the trust in the current year and who do not receive any discretionary distributions from the trust during the current year, and (2) clarifying the term "equity interest" to read, in part, "A Specified US Person shall be treated as being a beneficiary of a foreign trust if such Specified US Person has the right to receive directly or indirectly (for example, through a nominee) a mandatory distribution or receives, in the current year, a discretionary distribution from the trust."

If IRPAC's recommendation is not adopted, the information provided by an IGA jurisdiction or Model 2 FI to the IRS with respect to a trust protector, trustee or discretionary beneficiary that receives no actual distribution will be identical to the information relating to any holder of a US reportable account. Consequently, the IRS will be presented with the burdensome task of ascertaining why it received information reporting pursuant to an IGA or FFI Agreement with respect to such account but did not receive any individual information return from the identified parties. To forestall the inevitable waste of limited IRS resources, it would be practical to conform IGA information reporting obligations to existing domestic information reporting practices.

F. Eliminate "Reason to Know" Standard for FATCA Reporting Exemption Claims

Recommendation

IRPAC recommends that the “reason to know” standard in Treas. Reg. §1.1471-3T(d)(2)(i) dealing with documented claims to be exempt from FATCA reporting be eliminated. Alternatively, IRPAC recommends that Treasury add to this regulation a complete list of the circumstances under which a withholding agent will be considered to have reason to know that a FATCA exemption code for an entity payee is incorrect.

Discussion

Under the Chapter 4 status documentation requirements, a withholding agent must generally treat a payee as a US person if it has a valid Form W-9, Request for Taxpayer Identification Number and Certification associated with the payee or – if it does not have a valid Form W-9 – it must presume the payee is a US person under the presumption rules of Treas. Reg. §1.1471-3T(f).

For a payee that has provided a valid Form W-9 certifying that it is not a specified US person and therefore is exempt from FATCA reporting, the withholding agent must respect that certification unless the withholding agent "knows" or has "reason to know" that the payee's claim is incorrect. Treas. Reg. §1.1471-3T(d)(2)(i). The regulation provides an example for this principle involving a withholding agent who receives a Form W-9 from an individual claiming not to be a specified US person. Since individuals are never exempt from being specified US persons, the withholding agent must reject this certification and treat the payee as a specified US person since the withholding agent knows that the payee is an individual.

The example provided by the regulations appropriately demonstrates the application of the rule in a circumstance in which the withholding agent has “actual knowledge” that the person submitting the Form is an individual. Where, in contrast, the person submitting the Form is an entity, it is unclear what circumstances would constitute “reason to know” where the withholding agent doesn’t already have actual knowledge.

It is unclear how a withholding agent would have "reason to know" that a FATCA exemption code for an entity is incorrect without the dedication of significant time and resources to researching publicly and other available information to determine whether such a claim could be false. Even after dedicating such resources, the withholding agent may be uncertain as to whether the “reason to know” standard has been met given the breadth and vagueness of this standard. If Treasury has specific examples of how the “reason to know” standard is to be applied in this context, IRPAC recommends that an exhaustive list of these examples be added to the regulation dealing with an entity payee. Given the uncertainty, in the absence of such clarifying examples, IRPAC recommends that the “reason to know” standard in Treas. Reg. 1.1471-3T(d)(2)(i) be eliminated.

G. Meaning of “provided together” Regarding Circumstances Under Which a Form W-8 Remains Valid Indefinitely When Accompanied by Documentary Evidence

Recommendation

IRPAC recommends the IRS change Treas. Reg. §§1.1441-1T(e)(4)(ii)(B)(1)-(2), 1.1471-3(c)(6)(ii)(B)(2), and 1.1471-3T(c)(6)(ii)(B)(3) regarding the meaning of the phrase "provided together" to clarify that a Form W-8 described in these sections remains valid indefinitely so long as supporting documentary evidence is received before the Form W-8 would otherwise expire under the general 3+ year validly period.

Discussion

The language contained in Reg. §§1.1441-1T(e)(4)(ii)(B)(1)-(2), 1.1471-3(c)(6)(ii)(B)(2) and 1.1471-3T(c)(6)(ii)(B)(3) appears to provide that documentary evidence must be received contemporaneously with the corresponding Form W-8 in order for the form to remain valid indefinitely. Contemporaneous receipt is often not feasible since, as a practical matter, these documents are often solicited, reviewed and retained by disparate areas within a withholding agent's operations. For example, tax-related documentation (including Forms W-8) may be obtained by a branch or front office group, while documentary evidence may be the purview of a totally separate anti-money laundering or know your customer (AML/KYC) area. In many instances these areas are largely independent from one another, and operate under distinct solicitation schedules. Further, requiring documentary evidence to be provided with the Form W-8 at account opening would appear to be counterproductive as it would effectively deter obtaining documentary evidence later, such later documentation to result in seemingly more current information about the account holder.

Accordingly, IRPAC believes these provisions would be far more useful if documentary evidence could be provided any time before the Form W-8 would otherwise expire under the general 3+ year validity period.

H. Glitch in "paid and received" Requirement for Foreign Source Services Income

Recommendation

IRPAC recommends the IRS revise the Treas. Reg. §1.6041-4T(a)(2) cross reference to Treas. Reg. §1.6049-4T(f)(16) to ensure that the clause (iii) test of Treas. Reg. §1.6049-4T(f)(16) also applies to payors making payments of amounts otherwise subject to IRC § 6041.

Discussion

Under Treas. Reg. §1.6041-4T(a)(2), information returns are not required for payments of amounts from sources outside the United States (e.g., payments for services performed outside the United States) paid by a non-US payor or non-US middleman and *paid and received* outside the United States. The regulation continues

that Treas. Reg. §1.6049-4T(f)(16) details the circumstances in which an amount is considered to be *paid and received* outside the United States.

Under Treas. Reg. §1.6049-4T(f)(16), except as provided in clauses (ii) and (iii) of that provision, the term *paid and received* outside the United States generally means an amount that is *paid* by a payor or middleman outside the United States as described in Treas. Reg. §1.6049-5(e). Treas. Reg. §1.6049-5(e) directs payors to Treas. Reg. §1.6049-5T(e), which provides that an amount is generally considered to be *paid* outside the United States if the payor or middleman completes the acts necessary to effect payment outside the United States. Thus, unless one of exceptions set forth in clause (ii) or (iii) of Treas. Reg. §1.6049-4T(f)(16) applies to the hypothetical, the *received* requirement of Treas. Reg. §1.6041-4T(a)(2) is read out of the regulations.

Clause (ii) of Treas. Reg. §1.6049-4T(f)(16) provides that an amount paid by the transfer to an account maintained by the payee in the United States or by mail to a US address (i.e., receipt has US connections) is not considered to be *paid and received* outside the United States if: (A) the amount is paid by an issuer (or the paying agent of the issuer) with respect to an obligation that is issued by a US payor, registered under the Securities Act of 1933, or listed on a specified exchange (or included in a specified interdealer quotation system); or (B) the amount is paid by a US middleman that, as a custodian, nominee, or other agent of the payee, collects the amount for or on behalf of the payee. Clause (iii) of Treas. Reg. §1.6049-4T(f)(16) provides that an amount paid by a bank or other financial institution with respect to a deposit or an account that otherwise would be considered paid at a branch or office outside the United States as described in Treas. Reg. §1.6049-5(e)(2) will not be considered *paid and received* outside the United States if the institution has knowledge that the customer has transmitted instructions concerning the deposit or account from inside the United States.

Thus, under this regulatory language, the *received* portion of the *paid and received* requirement in Treas. Reg. §1.6041-4T(a)(2) appears to be read out of the requirement for amounts: (1) not paid by banks or other financial institutions (and thus not falling within the scope of clause (iii) of Treas. Reg. §1.6049-4T(f)(16)) or (2) paid to the payee directly and not interest income of type listed in Treas. Reg. §1.6049-4T(f)(16)(ii)(A) (and thus not falling within the scope of clause (ii) of Treas. Reg. §1.6049-4T(f)(16)).

As a concrete example of the application of this rule, consider the following: The facts involve a payment for foreign source services by a non-US payor (not a bank or financial institution) to a US payee, who has provided a Form W-9 to the payor. The payment is made via wire transfer from outside the US to the US bank account of the US payee. The question is the extent to which the language of the regulations requires that a Form 1099-MISC, Miscellaneous Income be filed (assuming the amount is $600 or more) with respect to this payment. Notwithstanding that IRPAC believes that the Treasury/IRS likely would WANT the Form 1099-MISC to be filed for this payment in this hypothetical, the language of the regulation does not provide for that result.

This result is not a function of the revised regulations under T.D. 9658. Indeed, prior to the revision of these regulations in T.D. 9658, the regulatory language pointed to the same outcome. Under the former regulations – there was no explicit "received" requirement in the IRC § 6041 regulations. Former Treas. Reg. §1.6041-4(a)(2) provided that amounts from sources outside the United States if paid by a non-US payor or non-US middleman outside the United States. These regulations then cross referenced former Treas. Reg. §1.6049-5(e) for the rules regarding what was considered *paid* outside the United States. Those cross-referenced regulations, however, not only included the same US connections test as included in the new Treas. Reg. §1.6049-4T(f)(16) regulations, but they also similarly limited that test to interest-type payments, payments received by US middlemen collected on behalf of payees, and payments by banks with respect to deposits where the customer has transmitted instructions from within the US with respect to the payment.

Notwithstanding that the IRS/Treasury regulation drafters likely did not intend the Treas. Reg. §1.6041-4T(a)(2) cross reference to Treas. Reg. §1.6049-4T(f)(16) to limit the *paid and received* requirement to only banks or other financial institution payors or to certain other *interest-type* payments, that appears to be the result for payments made by non-banks to which section 6041 applies. To remedy this problem, IRPAC recommends that Treasury revise the Treas. Reg. §1.6041-4T(a)(2) cross reference to Treas. Reg. §1.6049-4T(f)(16) to ensure that the clause (iii) test of Treas. Reg. §1.6049-4T(f)(16) applies also to payors making payments of amounts otherwise subject to section 6041.

I. Application of US Indicia Rules at Reg. §1.1441-7T(b)(5) to Forms W-8ECI

Recommendation

IRPAC recommends that the regulations be modified to clarify that Forms W-8ECI, Certificate of Foreign Person’s Claim That Income Is Effectively Connected With the Conduct of a Trade or Business in the United States are not beneficial owner withholding certificates for purposes of Treas. Reg. §1.1441-7T(b)(5).

Discussion

Treas. Reg. §1.1441-7T(b)(5) provides that a withholding agent has reason to know a beneficial owner withholding certificate (as defined in §1.1441-1(e)(2)) of a direct account holder is unreliable or incorrect for purposes of establishing the account holder's foreign status if certain US indicia are reflected either on the withholding certificate itself, or as part of the account holder records. For this purpose, a current residence or mailing address inside the US would constitute US indicia and, unless cured, would essentially invalidate a withholding certificate.

Treas. Reg. §1.1441-1(e)(2) defines "beneficial owner withholding certificate" for this purpose and includes -

"For example, if a beneficial owner claims that some but not all of the income it receives is effectively connected with the conduct of a trade or business in the United States, it may be required to submit two separate withholding certificates, one for income that is not effectively connected and one for income that is so connected."

Based on this statement one can suppose that Form W-8ECI is included in the definition of beneficial owner withholding certificate and, therefore, is covered by the US address due diligence requirements described above. However, in order for a Form W-8ECI to be valid it must include a US business address on line 6, a requirement that is supported by the instructions for the form. This creates an inconsistency which, unless corrected in the regulations, could result in the unintended invalidation of many properly completed Forms W-8ECI. Accordingly, IRPAC recommends that the regulations be modified to clarify that Forms W-8ECI are not beneficial owner withholding certificates for purposes of Treas. Reg. §1.1441-7T(b)(5), i.e., that US indicia in connection with a Form W-8ECI will not constitute reason to know for due diligence purposes.

SECTION II – RECOMMENDATIONS ON IRS FORMS AND INSTRUCTIONS

J. Form W-8BEN-E, Part III, Line 15 – Treaty Claims (Special Rates and Conditions)

Recommendation

IRPAC recommends that Line 15 of Form W-8BEN-E – on which a beneficial owner claiming certain treaty benefits is required to "Explain the reasons the beneficial owner meets the terms of the treaty article" – be eliminated given that in most instances a withholding agent will not know with any certainty what reasons are acceptable, and is, therefore, unable to apply any reliable due diligence review to the claims made. IRPAC believes that other information already required on Line 15 (including the treaty Article, withholding rate and type of income) provides sufficient support for a withholding agent to evaluate treaty eligibility, and recommends that the Form W-8BEN-E instructions for Line 15 be changed to further require the claimant cite the specific paragraph(s) of the article of the treaty applicable to the particular claim.

Discussion

Form W-8BEN-E, Part III, Line 15, Special rates and conditions, must be completed by persons claiming treaty benefits that require the beneficial owner to meet conditions not covered elsewhere on the form. This section may be completed, for example, by persons claiming benefits under a "business profits" treaty article (which requires the income not be attributable to a permanent establishment in the US), or by persons claiming a preferential withholding rate applicable to dividends that are predicated on their ownership of a specific percentage of stock in the entity paying the dividend.

In addition to requiring the claimant to identify the specific treaty article, applicable withholding rate and type of income involved, Line 15 also requires the claimant to explain the reasons the beneficial owner meets the terms of the treaty article. This might be, for example, in the case of a business profits article claim, a statement that the income is not attributable to a permanent establishment in the US, or, in the case of a dividends article claim regarding real estate investment trust (REIT) dividends, a statement that the claimant owns not more than 5% or 10%, as applicable, of the outstanding shares of the REIT paying the dividend, and thus satisfies the conditions to be eligible for a preferential rate of withholding. The statement on line 15 will often be an abridged repetition of the text of the specific paragraph of the relevant article. Such a statement provides no information that could not be surmised from the specific paragraph(s) of the relevant article, which we recommend the Form W-8BEN-E instructions for Line 15 clarify be cited. Further, given the current free format line on which the explanatory statements are entered, the statements vary widely, which commonly results in disputes between withholding agents and form providers on what constitutes an acceptable statement. These disputes cannot be settled with certainty because of the lack of IRS guidance of what is an acceptable "reason" the beneficial owner meets the terms of the treaty article.

Accordingly, IRPAC recommends that the "Explain the reasons the beneficial owner meets the terms of the treaty article:" on line 15 of the Form W-8BEN-E be eliminated and the instructions for this line be changed to require the claimant to cite the specific paragraph(s) of the relevant article of the treaty applicable to the particular claim. For the above examples regarding business profits and certain dividends, if our recommendations are adopted, applying the 2006 Model Income Tax Convention for illustrative purposes, the line 15 claim on the Form W-8BEN-E would need to cite (i) Article 7 (Business Profits) (as well as claim a zero rate of withholding and specify the type of income) in the case of business profits (the income would be presumed to not be effectively connected with a US trade or business as that is a condition of the zero rate of withholding under this article), and (ii) Article 10(4)(a)(i), 10(4)(a)(ii) or 10(4)(a)(iii), as applicable, in the case of REIT dividends, and also include the relevant rate of withholding (15% or 0%) and specify the type of income (REIT dividends). If the beneficial owner is a pension fund eligible from a withholding exemption on the dividends, Article 10(3) would also need to be cited. Similar citations to specific paragraph(s) would be required for other special treaty claims, such as claims of lower rates on certain types of royalties and withholding exemptions under treaties that include an "exempt organizations" article.

K. New Limitation on Benefits Certification on 2016 Draft Form 1042-S

Recommendation

IRPAC recommends that a treaty Limitation on Benefits (LOB) certification be added to Form W-8BEN-E, so as to enable withholding agents to answer the same question on Line 13j of the 2016 Draft Form 1042-S. Until such certification can be added to the Form W-8BEN-E, IRPAC recommends that the requirement to answer this

question on Line 13j of the 2016 Draft Form 1042-S be contingent on the payee having answered that same question on the Form W-8BEN-E. Finally, IRPAC recommends that the standard for rejecting the Form W-8BEN-E with respect to the response to this question be limited to responses that are contrary to the withholding agent's "actual knowledge" and without regard to whether the withholding agent might have "reason to know" that the response is incorrect.

Discussion

On the 2016 Draft Form 1042-S, Line 13j requests the payee's LOB Code. The instructions state that the withholding agent should enter the LOB category that qualifies the recipient for the requested treaty benefits.[4] With the exception of Code #1 (individual) and possibly Code #2 (Government – contracting state/political subdivision/local authority), this question requires that the withholding agent know the facts surrounding the payee's receipt of the income that under normal business circumstances are not within the withholding agent's ability to know. Accordingly, IRPAC recommends that if Treasury/IRS intend to keep this question on the Form 1042-S, that it add exactly the same question to the Form W-8BEN-E to provide a basis for the withholding agents' response.

Finally, because (with the exception of Code #1 and possibly Code #2) this question requires that the withholding agent know facts the withholding agent is typically unequipped to know, IRPAC also recommends that the standard for rejecting the Form W-8BEN-E with respect to this response be limited to responses that are contrary to facts of which the withholding agent has "actual knowledge" (and not for which the withholding agent might have a "reason to know").

L. Account by Account Reporting on Form 1042-S

Recommendation

IRPAC recommends that the IRS modify the 2015 Form 1042-S instructions with respect to the requirement for US financial institutions to report on an account by account basis, to clarify what is meant by “account” in such context, and to provide additional guidance.

Discussion

For amounts paid on or after January 1, 2016 by a US financial institution, the instructions to Form 1042-S provide that a US financial institution will be required to report payments of the same type of income (as determined by the income code in box

[4] The following Codes are provided: 01–Individual; 02-Government – contracting state/political subdivision/local authority; 03-Tax exempt pension trust/Pension fund; 04-Tax exempt/Charitable organization; 05-Publicly-traded corporation; 06-Subsidiary of publicly-traded corporation; 07-Company that meets the ownership and base erosion test; 08-Company that meets the derivative benefits test; 09-Company with an item of income that meets the active trade or business test; 10 - Discretionary determination; 11–Other.

1) made to multiple financial accounts held by the same beneficial owner on separate Forms 1042-S for each account. In addition, the instructions to box 16 of Form 1042-S indicate that the recipient's account number is required when payments are made to a direct account holder with respect to an account maintained at a US office or US branch.

We understand that the account by account filing requirement is related to the reciprocal reporting requirement that the US Government has under its FATCA intergovernmental agreements with Partner Countries with respect to financial accounts held by US financial institutions for residents of such Partner Countries.

To that end, we believe that additional clarifying instructions would be helpful to US financial institutions in undertaking this additional burden. Accordingly, IRPAC recommends that the 2016 instructions to Form 1042-S be modified to include the following language:

> An account for this purpose has the same meaning as the term "financial account" under US Treasury Regulations for FATCA purposes. If the payment is not made in connection with a financial account, an account number need not be entered. The account number to be reported with respect to an account is the identifying number assigned by the withholding agent for purposes other than to satisfy the reporting requirements in these instructions. If the withholding agent does not have an identifying number for an account, a functional equivalent of an identifying number must be entered. This may include a non-unique identifier that relates to a class of interests and which, when combined with the account owner's name, will uniquely describe the account.

M. Substitute Form 1042-S Recipient Copies

Recommendations

IRPAC recommends that the use of substitute Form 1042-S payee statements be retained and that IRS Publication 1179, General Rules and Specifications for Substitute Forms 1096, 1098, 1099, 5498 and Certain Other Information Returns be updated to reflect how such statements can deviate from the official Form 1042-S payee statements. IRPAC also recommends that if the IRS ultimately eliminates the use of all substitute Form 1042-S payee statements (which is essentially what is being mandated in Pub. 1179 dated June 29, 2015), IRS provide a reasonable transition period within which withholding agents can adopt the exclusive use of the official IRS form, and modify current practices. This period should be no less than two full years, thus making the new practice effective for filing calendar year 2017 returns, due to be filed in 2018.

Discussion

The most current version of IRS Pub. 1179 (dated June 29, 2015) states "As of 2015 paper substitutes for Form 1042-S may no longer contain multiple income types

for the same recipient (except Copy E retained by the withholding agent). Copies B, C, and D must be identical to the IRS form." We understand that, for these purposes, "identical" means that the content, font size and form layout of a substitute form may not differ in any manner from the official IRS version, and that only one Form 1042-S may be displayed on a single page.

These Pub. 1179 pronouncements, in particular the requirement that substitute versions of Form 1042-S payee statements be identical to the IRS form, represent a dramatic departure from form specifications that have existed for many years and, in IRPAC's opinion, have served the filer community and payees extremely well. That is, the use of substitute Forms 1042-S (and many other tax information returns, such as Form 1099) that contain the essential substance of the official form, but that are tailored to accommodate the practical and business needs of a particular withholding agent (while in full conformity with Pub. 1179 standards), have been in use for decades. There appear to be few substantive reasons to no longer permit the use of such substitute Form 1042-S payee statements. Based on recent discussions with IRS executives on this matter, IRPAC understands that such changes were largely attributable to the difficulty of Service Center tax return processors to identify and readily transcribe key information from substitute payee statements attached to income tax returns, due to such reasons as confusion over rearranged form boxes and illegibly small font sizes.

Based on this rationale, and initial reactions from financial services industry members that file large volumes of substitute versions of Forms 1042-S, IRPAC believes that IRS's views about the inadequacy of substitute forms and the harsh solution mandated in Pub. 1179 need to be seriously reconsidered. That is, the concept of a substitute form must have more meaning than an exact replica of the official form.

The ability to use substitute versions of payee statements has been in place for decades, and offers many practical advantages to form filers as well as to payees. For example, customized payee statements may eliminate portions of information returns that are not applicable to particular payees, and may also display multiple forms on a single page (for payees that receive more than one type of income in a single year) in a logical manner - thus resulting in more streamlined and easier to read forms. IRPAC is not convinced that operational issues experienced at IRS Service Centers warrant the total elimination of substitute payee statements.

- If *large* numbers of filers are using substitute payee statements with either (i) illegibly small typefaces or fonts that cannot be easily processed by IRS operators, (ii) multiple Forms 1042-S displayed on a single page that are confusing IRS Service Center transcribers, or (iii) other repeated patterns of deviations from the official form that make it difficult for IRS operators to process the statements, IRPAC believes that more specific, focused amendments to the substitute form specifications would be a more appropriate approach than the elimination of substitute forms. For example, the IRS could limit (or eliminate) the use of substitute payee statements with multiple Forms 1042-S on a single page.

Finally, if the IRS ultimately decides to eliminate the use of all substitute Form 1042-S payee statements , the filer community and their software developers must be given a reasonable transition period within which they can adopt the exclusive use of official IRS form, and modify current practices. This period should be no less than two full years, thus making the new practice effective for filing calendar year 2017 returns, due to be filed in 2018.

N. Can an Entity Listed in Annex II of an IGA Check Comparable Chapter 4 Status Under the Regulations?

Recommendation

IRPAC recommends that the IRS issue guidance to clarify that a Form W-8 provided by an FFI located in an IGA jurisdiction will be considered valid if it claims to be a deemed compliant FFI or exempt beneficial owner as described within US Treasury Regulations in lieu of identifying itself as a Non-reporting IGA FFI, so long as the withholding agent does not know or have reason to know that such claimed status is incorrect. For purposes of satisfying this standard, guidance should note that the withholding agent's knowledge that the entity is located is an IGA jurisdiction does not constitute knowledge or reason to know that an FFI's claim that it is a deemed compliant FFI pursuant to US Treasury Regulations is invalid.

Discussion

Preparation of a Form W-8 is a complex undertaking, particularly for non-US entities. Accordingly, it is not surprising that non-US entities located in IGA jurisdictions, including jurisdictions that have an in-substance agreement, may provide a withholding agent with a Form W-8 that claims to be a deemed compliant FFI or an exempt beneficial owner based on the US Treasury Regulations in lieu of the comparable non-reporting IGA FFI status provided for in the applicable IGA. While such a characterization may be technically incorrect, an inadvertent error such as this should not be reason to invalidate the correct underlying representation that such entity is not a nonparticipating FFI, subject to FATCA withholding tax. In order to facilitate the orderly implementation of FATCA, withholding agents that have no reason to know that an FFI is unable to claim that it is a deemed compliant FFI pursuant to the US Treasury Regulations (other than the fact that the FFI is located in an IGA jurisdiction) should be permitted to rely on such form rather than be obligated to treat the form as invalid. Accordingly, IRPAC requests that appropriate guidance be issued to permit withholding agents to rely on a Form W-8 provided by such an FFI under the circumstances described above.

O. Clarify Level of Precision Required for Annex II Claims on Forms W-8 (W-8BEN-E, line 26; W-8EXP, line 15; W-8IMY, line 29)

Recommendation

IRPAC recommends that guidance be issued to clarify the level of precision required for nonreporting IGA FFIs making Annex II claims on the Forms W-8 and make the requirement consistent across all Forms W-8.

Discussion

The instructions for Form W-8BEN-E state, in relevant part, "You must also provide the withholding agent with the **specific category** of FFI described in Annex II of the IGA application to your status" (bold added). In contrast, the corresponding instructions for Form W-8EXP, Certificate of Foreign Government or Other Foreign Organization for United States Tax Withholding and Reporting and Form W-8IMY, Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding provide the text "the **class of entity** described in Annex II". The phrase "class of entity" appears to be at a higher level than "specific category".

The following examples, as seen by an IRPAC member, illustrate the impact of this inconsistent language:

1. A governmental entity claimed to be an "Exempt Beneficial Owner other than Funds" on line 26 of a Form W-8BEN-E. "Exempt Beneficial Owner other than Funds" is a broad heading that covers, among others, "Governmental Entities." Annex II of the applicable IGA states "[The Governmental Entity] **category** is comprised of the integral parts, controlled entities, and political subdivisions of [the IGA Partner jurisdiction]" (emphasis added). Accordingly, query whether "Exempt Beneficial Owner other than Funds" satisfies the "specific category" requirement in the instructions for Form W-8BEN-E or if, instead, line 26 must state "Governmental Entities." Similarly, query whether "Exempt Beneficial Owner other than Funds" would have satisfied the apparently broader "class of entity" requirement in the instructions for Forms W-8EXP and W-8IMY had one of those two forms been provided.

2. A Canadian entity claimed to be an "investment entity, a type of exempt beneficial owner" on Line 26 of a Form W-8BEN-E. Arguably, "investment entity" is not a "type of exempt beneficial owner." The Canadian entity presumably qualifies as an "Investment Entity Wholly Owned by Exempt Beneficial Owners," Query whether that phrase, and not the text provided by the Canadian entity, is required on Line 26.

To eliminate the above described uncertainties, IRPAC recommends that the IRS clarify in instructions precisely how a nonreporting IGA FFI must make its Annex II claim on a Form W-8. These instructions should include an example to illustrate the rule.

P. Tax Form to be Provided to IGA FFI by Foreign Disregarded Entity Owned by US Person

Recommendation

IRPAC recommends that guidance be issued to clarify the tax certification that must be provided to an IGA FFI by an account holder that is a foreign disregarded entity owned by a US person. The instructions to Form W-8BEN-E are inconsistent with the IGA requirements for disregarded entities. They should be changed to accommodate the disregarded entity's need to give the IGA FFI a Form W-8 to document its FATCA status.

Discussion

Consider an IGA FFI that maintains a financial account of a non-US entity that is disregarded for US tax purposes and owned by a US person. The non-US entity provides a Form W-9 for its single owner to the IGA FFI. The single owner is a C corporation and a specified US person (because it is not a publicly traded entity). The disregarded entity followed the instructions for the Form W-8BEN-E, "Do not use Form W-8BEN-E if you are described below…You are a disregarded entity with a single owner that is a US person and you are not a hybrid entity claiming treaty benefits. Instead, the single owner should provide Form W-9."

The IGAs do not take into account the disregarded entity concept and appear to require that FFIs document the person named on the account, i.e., the disregarded entity in the above example. Continuing with this example, the Form W-9 provided by the disregarded entity does not give the IGA FFI the disregarded entity's FATCA status because the official Form W-9 template is not designed to do so. Accordingly, it appears that the IGA FFI does not have the documentation necessary to satisfy its due diligence requirements under the IGA. Presumably the IGA FFI would need documentation for the disregarded entity itself, and only look through the disregarded entity to its US owner if the disregarded entity is a passive NFFE. To resolve this conundrum, IRPAC recommends that the IRS enable a foreign disregarded entity owned by a US person to complete a Form W-8 for itself when providing such a form to document its status as an account holder at an IGA FFI.

Q. Must Form 8655 Be Filed when Agent is Withholding Agent in its Own Right?

Recommendation

IRPAC recommends that the IRS clarify that in cases where a principal utilizes an agent to effect payment and withhold tax, that the principal need not file a Form 8655, Reporting Agent Authorization to designate the agent as a reporting agent when the agent is by definition a withholding agent.

Discussion

Under Treas. Reg. §1.1441-7(a)(1), a withholding agent is defined in part, as any person, US or foreign, that has the control, receipt, custody, disposal, or payment of an item of income of a foreign person subject to withholding. Moreover, any person who

meets the definition of a withholding agent is required to deposit any tax withheld and to make returns as required under the regulations.[5] Where several persons qualify as withholding agents with respect to a single payment, only one tax is required to be withheld and deposited.[6] The definition of withholding agent and the rules regarding multiple withholding agents with respect to withholdable payments under FATCA are similar.[7]

Thus, where a principal utilizes a paying agent to effect payments and withhold tax, both the principal and the paying agent are withholding agents. The principal generally makes cash available to the paying agent (e.g., through an account the principal holds with the paying agent), and the paying agent effects income payments to the underlying investors/payees. Generally, as only one party is required to withhold and deposit, under this arrangement the paying agent – who is actually making payment to the foreign investors/payees – will typically withhold any tax required to be withheld, and will perform any Form 1042-S reporting that is required with respect to the payments made to such foreign persons. This reporting is generally performed by the paying agent showing the paying agent as the withholding agent and would include the Employer Identification Number (EIN) of the paying agent. Additionally, tax would be deposited under the name and EIN of the paying agent.

The instructions to Form 1042-S[8] provide that a party is an authorized agent for purposes of filing Form 1042, Annual Withholding Tax Return for US Source Income of Foreign Persons and withholding and making tax deposits only where the following conditions are met:

1. There is a written agreement between the withholding agent and the person acting as agent;
2. A Form 8655 is filed with the IRS;
3. The books and records, and relevant personnel of the agent are available to the withholding agent;
4. The withholding agent is fully liable for the acts of its agent and does not assert any defenses that otherwise may be available; and
5. If the agent is making tax deposits and tax payments, or filing Forms 1042-S on behalf of its principal, the authorized agent should be reported as the withholding agent on Form 1042-S boxes 12a through 12i.

Thus, under the facts presented it would appear that the IRS would anticipate that the principal would be filing Form 8655 to appoint the paying agent as a reporting agent. However, given that the paying agent is by definition a withholding agent, it already has withholding, deposit and Form 1042-S/1042 filing requirements even if

[5] Treas. Reg. §1.1441-7(a)(1);
[6] Id.
[7] See Treas. Reg. §§ 1.1473-1(d)(1) and (d)(5);
[8] 2015 Instructions to Form 1042-S Foreign Persons U.S. Source Income Subject to Withholding

Form 8655 is not executed by the principal. We do not see how under these facts Form 8655 would impose any additional burdens upon the paying agent than it already has at law, or relieve the principal of any burdens.

If Form 8655 was simply intended to make the IRS aware of who, as between the principal and paying agent, were taking on the withholding responsibility, it would seem that since the paying agent typically takes on this responsibility, then the Form need only be completed when the arrangement is atypical. Additionally, the IRS would be aware of the connection between the principal and paying agent through the inclusion of the principal information in boxes 18 through 20 of the Forms 1042-S filed by the paying agent as withholding agent.

Accordingly, IRPAC recommends that the IRS clarify that a principal need not file Form 8655 to appoint a reporting agent where the principal utilizes an agent that is itself a withholding agent on the payments it makes on behalf of the principal.

R. Provision of an Option to Principals and Authorized Reporting Agent to Determine Which Party Will be Identified as Withholding Agent on Forms 1042-S

Recommendation

IRPAC recommends that the IRS permit principals and reporting agents to make their own determination as to which of the two parties will be identified as the withholding agent on Form 1042-S where the agent carries out the withholding and deposit of tax on payments made to foreign persons on behalf of the principal.

Discussion

Where a principal completes Form 8655 to designate a party to act as a reporting agent on behalf of principal, the instructions to Form 1042-S[9] require the reporting agent to be shown as the withholding agent in boxes 12a through 12i of the form, and the principal to be shown as the payer in boxes 18 through 20 on the form, where the agent's responsibilities include the withholding and deposit of tax. Presumably, these instructions assume that when the agent withholds and deposits tax it will do so under its own EIN. These instructions are logical given that the agent is a withholding agent by definition, and is in line with typical business practice.

However, there are situations where for one reason or another the principal would prefer to have the agent withhold and deposit tax under the principal's EIN, and issue Forms 1042-S showing the principal as withholding agent in boxes 12a through 12i, rather than having the agent deposit and report under its EIN. It would seem so long as the tax was deposited under the EIN of the party shown as the withholding agent on Forms 1042-S/1042, that there should be no issue on the part of the IRS.

[9] 2015 Instructions to Form 1042-S Foreign Persons U.S. Source Income Subject to Withholding

Accordingly, IRPAC recommends that the IRS permit principals and reporting agents to make their own determination as to which of the parties will identified as the withholding agent on Form 1042-S where the agent carries out the withholding and deposit of tax on behalf of the principal, so long as the tax withheld is deposited under the EIN of the party identified as the withholding agent on Form 1042-S.

S. Box 14e of Form W-8IMY when QI Maintains no Accounts of US Non-exempt Recipients

Recommendation

IRPAC recommends that IRS update the Instructions to Form W-8IMY to clarify that box 14(e) (requesting the QI to certify that the entity identified in Part I of this form does not assume primary Form 1099 reporting and backup withholding responsibility and is using this form to transmit Forms W-9 with respect to each account(s) held by a US non-exempt recipient) need not be checked if the QI does not maintain accounts held by US non-exempt recipients.

Discussion

A QI that does not assume primary Form 1099 reporting and backup withholding tax responsibility is obligated to provide to its withholding agent sufficient information regarding its US non-exempt recipients to permit the withholding agent to comply with the applicable Form 1099 reporting obligations. This requirement is consistent with the existing wording of box 14(e) of the Form W-8IMY. However, the Form W-8IMY can be reasonably read to provide that box 14(e) need not be checked if the QI does not have any US non-exempt recipients. This interpretation is logical, since the QI would not be obligated to provide a withholding agent with any Form W-9s if it had no US non-exempt recipient clients. If, in the future, circumstances change such that the QI did have US non-exempt recipients for which it did not assume primary Form 1099 reporting and backup withholding tax responsibility, it would be obligated to transmit a new Form W-8IMY to its withholding agent, check box 14(e) and provide the required Forms W-9 to the withholding agent.

IRPAC understands, however, that certain withholding agents have refused to accept a Form W-8IMY as valid if the entity providing the form claims to be a QI that has not assumed primary Form 1099 reporting and backup withholding tax responsibility does not check box 14(e) when such QI maintains no accounts for US non-exempt recipients.

In order to ensure a consistent interpretation among withholding agents and to ensure that QIs are treated consistently, IRPAC requests that the following clarifying language be included within the instructions for box 14e of Form W-8IMY:

> “You are not required to check box 14e if you do not have any U.S. account holders (i.e., you are not providing Forms W-9 or other information regarding U.S. account holders and you are not providing an allocation to a withholding rate

pool of U.S. payees). Note, however, that if you do not check box 14e because you do not have any U.S. account holders at the time you complete the form, but later acquire a U.S. account holder, you will need to provide an updated Form W-8IMY to your withholding agent with box 14e properly completed."

T. Eliminate "(other than section 501(c) organization)" from Instructions for Line 36 of Form W-8BEN-E

Recommendation

IRPAC recommends the IRS change the instructions to Form W-8BEN-E to permit a section 501(c) organization (including a private foundation) to check the nonprofit organization box as its Chapter 4 status and, as such, avoid the need to produce a tax-exempt determination letter ("TDL") or (iii) an opinion from counsel certifying that the organization qualifies as a section 501(c) organization (and not a foreign private foundation) ("Counsel Opinion").

Discussion

Under Chapter 3, a tax exempt organization is exempt from withholding if it provides a withholding agent with a Form W-8EXP and either: (i) a TDL or (ii) a Counsel Opinion. Treas. Reg. §1.1441-9(b). Alternatively, a tax exempt entity or a private foundation can avoid, or be subject to reduced, withholding by claiming treaty benefits under the general provisions of Chapter 3 by providing the withholding agent with a W-8BEN-E checking "tax-exempt organization" or "private foundation" on Line 4. *See* Treas. Reg. §1.1441-6. Thus, a tax-exempt entity claiming treaty benefits does not necessarily need to provide the withholding agent with a TDL or Counsel Opinion to avoid withholding under Chapter 3.

Line 5 of the new Form W-8BEN-E, setting forth the entity's Chapter 4 status, seemingly provides two boxes for tax exempt entities: one labeled "501(c) organization" and the other labeled "nonprofit organization." Entities choosing the "501(c) organization" box are directed to complete Part XXI (which is line 35 on the Form), and entities choosing the "nonprofit organization" box are directed to complete Part XXII (which is line 36 on the Form).

The instructions for line 35 (i.e., applicable to entities choosing the "501(c) organization" box), however, state that the entity checking this box must obtain a TDL or Counsel Opinion. The instructions for line 36 (i.e., applicable to entities choosing the "nonprofit organization" box), in contrast, does not require a TDL or Counsel Opinion, but it does indicate that this "nonprofit organization" box applies to organizations "(other than section 501(c) organizations)." Thus, the instructions to Form W-8BEN-E appear to require that an entity which checks "tax-exempt organization" or "private foundation" on Line 4, i.e., a 501(c) organization, obtain a TDL or Counsel Opinion for FATCA status purposes, even though a TDL/Counsel Opinion is not required for claiming treaty benefits under Chapter 3.

The regulations do not mandate this disparate treatment. Indeed, there does not appear to be any policy reason why a TDL/Counsel Opinion should be required for Chapter 4 status purposes, when it is not required for Chapter 3 purposes. Accordingly, IRPAC requests a change to the instructions to Form W-8BEN-E that would permit a 501(c) organization (including a private foundation) to check the "nonprofit organization" box as its Chapter 4 status and, as such, avoid the need to produce a TDL/Counsel Opinion. This change could be accomplished by removing the "(other than section 501(c) organizations)" language from the line 36 instructions.

Appendix A:

Notice 2015-27 Recommendations for items that should be included on the 2015-2016 Priority Guidance Plan

Appendix B:

2014 IRPAC Public Report: De Minimis Threshold for Form 1099 Corrections

Appendix C:

Questions and Answers about Reporting Social Security Numbers to Your Health Insurance (page from IRS.gov)

Appendix D:

Additional IRPAC recommendations made in connection with Chapters 3 and 4

Appendix E:

Notice 2015-10 Guidance on Refunds and Credits Under Chapter 3, Chapter 4 and Related Withholding Provisions

Appendix A

Notice 2015-27
Recommendations for items that should be included on the 2015-2016
Priority Guidance Plan

1111 Constitution Avenue, NW, Room 7563, Washington, D.C. 20224

Internal Revenue Service
Attn: CC:PA:LPD:PR (Notice 2015-27)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

May 12, 2015

RE: Notice 2015-27
Recommendations for items that should be included on the 2015-2016 Priority Guidance Plan

Dear Commissioner Koskinen:

This letter responds to Notice 2015-27 by listing items which the Information Reporting Program Advisory Committee (IRPAC) recommends be included in the 2015-2016 Priority Guidance Plan. These are recommendations for guidance through regulations, revenue rulings, revenue procedures, notices or other appropriate guidance methods that will improve tax administration and reduce administrative burdens on taxpayers and the Internal Revenue Service.

IRPAC was established in 1991 in response to an administrative recommendation in the final Conference Report of the Omnibus Budget Reconciliation Act of 1989. IRPAC works closely with the IRS on a wide range of information reporting issues, but being aware of the heavy demand for new guidance necessitated by legislation including FATCA and the ACA, we are this year furnishing only a short list of projects that rank highest due to their broad impact and great likelihood of increasing voluntary compliance.

General Recommendations

IRPAC continues to recommend that for new information reporting requirements of newly enacted legislation, the development of new guidance should take into consideration the lead times needed by the information reporting community to develop and implement new programs or changes to existing programs, the costs associated with the collection of data not previously required to be tracked or calculated or reported, and the usefulness of the data required to be reported to the IRS. In several annual Public Reports, IRPAC has advised that typically a withholding agent needs 18 months to 24 months to update its systems for new reporting requirements, including time to study the requirements, plan and obtain budget for the

project, develop business requirements and systems logic, code, and test, then implement.

IRPAC urges the Department of Treasury to strongly pursue the Administration's fiscal year 2016 recommendation for legislation amending IRC § 6103(k) "to permit the IRS to disclose to any person required to provide the TIN of another person to the Secretary whether the information matches the records maintained by the Secretary." [Treasury "Green Book" Fiscal Year 2016] The benefits to the IRS and taxpayers of expanding the TIN Matching Program, to include filers of all nonwage information returns to which incorrect-TIN penalties under IRC §§ 6721 and 6722 apply, were presented in detail in the 2014 IRPAC Public Report. Expanded use of TIN Matching will reduce IRS administrative costs, increase the amount of valid data available to match against income tax returns to prevent tax return fraud and identity theft, and eliminate a significant burden on information return filers who have been barred from performing TIN validation prior to IRS filing. Until TIN Matching is broadly available prior to information return filing, the IRS is deprived of data needed for timely cross-verification of income on tax returns. Information return types for which TIN matching currently is prohibited, and the projected number of these returns to be filed for 2015, include Forms 1098 (73.8 million), 1098-T (32.9 million), 1099-R (91 million), 5498 (119 million), 1099-G (90 million), 1099-S (2.5 million), 1042-S (4.3 million) and will include a yet unknown but multi-million number of 1095-series returns (newly required under the Affordable Care Act) for which the inability to TIN match prior to filing is a concern noted in the Taxpayer Advocate Service 2014 Annual Report to Congress.

Specific Guidance Recommendations

1) De minimis threshold for information return corrections.
IRPAC again recommends establishing under regulations a de minimis dollar threshold for corrections to original information returns which will reduce the overall burden to taxpayers, IRS tax administration and information return filers. Regulations under §§ 6721 and 6722 provide exceptions for inconsequential errors or omissions, such that an inconsequential error or omission is not considered a failure to include correct information. In §301.6721-1(c)(2)(iii) "any monetary amounts" [on the information return] and in §301.6722-1(b)(2) "a dollar amount" [on the recipient statement] are never inconsequential errors. However, these inconsequential error definitions are within regulations, not in the language of IRC §§6721 or 6722. IRPAC recommends new regulations changing the "inconsequential error" definition of §301.6721-1(c)(2)(iii) and §301.6722-1(b)(2) to "any monetary amount more than $50." This will be a safe harbor such that no penalty will apply for failure to file or furnish a recipient statement for net changes of $50 or less (up or down) in the reported amount. This will relieve significant burdens on taxpayers and the IRS for the cost and use of resources to report and process corrections that

generally are not the result of payer error and do not increase taxable income of the recipients.

Additional information can be found in the 2013 and 2014 IRPAC Public Reports, including information about the high volume and processing costs incurred by the IRS, information return filers and individual taxpayers as a result of small-dollar-amount corrections attributable to late change notifications from mutual funds and corporations. One common example: a fund reclassifies dividends after the Form 1099 deadline and as a result brokers must file corrected 1099s to the IRS (each subject to penalty against the broker solely due to being a corrected form) and send corrected 1099 statements to customers. For just one broker for one change in the ordinary dividend amount this required 456,559 corrected Forms 1099-DIV at a production and mailing cost of $413,520.75; many individual taxpayers would have faced costs to amend their income tax returns; the IRS had the cost of processing the corrected filings and administering the lengthy § 6721 penalty process against the broker; and 59% of the corrections (270,275) were for changes less than $50.

<u>2) Identity theft deterrence: Additional guidance enabling TIN truncation on information returns as a means of preventing identity theft, and additional furnishing of electronic information return recipient statements as a means of preventing identity theft.</u>

a) TIN truncation on recipient statements should be specifically extended to the recipient copies of all Forms 1042-S (not just Forms 1042-S that report bank deposit interest paid to certain nonresident aliens), to reduce opportunities for identity theft and tax fraud. IRPAC recommends amending § 1.1461-1T(c)(1)(i) to confirm that recipient TINs can be truncated on Form 1042-S recipient statements. Identity theft of ITINs and SSNs from Form 1042-S recipient statements is as great a threat as identity theft of other types of TINs on other types of information return recipient statements for which truncation of the payee TIN is already permitted under regulations issued in T.D. 9675. The information returns at risk are over 4.3 million Forms 1042-S that are projected to be issued for 2015 [per Publication 6961] and that number is projected to increase to over 5 million by 2021.

Regulations § 1.1461-1T(c) does not specifically require the use of a TIN on Form 1042-S recipient statements, but the form instructions are silent on the broad issue and draft 2015 instructions merely indicate “if you are reporting bank deposit interest paid to certain nonresident aliens you may truncate the recipient’s TIN on a substitute form.” Specific regulatory authority for recipient TIN truncation on 1042-S recipient statements for all types of income and without limitation to substitute statements should be issued so withholding agents are assured that truncation is permitted and they can implement this important protective measure.

b) Electronic delivery of recipient statements should be extended to the recipient copies of Forms 1042-S to reduce opportunities for identity theft and tax fraud. IRPAC recommends amending § 1.1461-1T(c) to permit electronic furnishing of Form 1042-S recipient statements in a procedure comparable to what was established for Forms W-2 in § 31.6051-1 and subsequently extended to Form 1099 series, 1098 series, 1095 series, 5498 series and other information returns. Identity theft of ITINs and SSNs from Form 1042-S recipient statements is as great a threat as identity theft of other types of TINs on other types of information return recipient statements, and it is possible that threats of kidnapping or bodily harm could arise in some geographic areas to which Form 1042-S recipient statements must, under current rules, be sent by mail which can be intercepted in the foreign country and used to identify individuals with U.S. income. As stated in 2a above, the number of Form 1042-S recipient statements issued annually is projected to be over 4.3 million for 2015 and to grow to over 5 million by 2021.

c) Issuers should be specifically permitted to truncate employer EINs on Form 1095-B statements furnished to individual policy holders ("responsible individuals") as a preventive measure against business taxpayer identity theft. IRPAC recommends amending § 1.6055-1(g) to provide that a truncated employer identification number may be used as the identification number for the employer on recipient statements of Form 1095-B. Form 1095-B is issued by health insurers and box 11 requires reporting of the EIN of a third party that is the employer of the policy holder. This identity theft protection would protect all employers that provide minimum essential coverage.

<u>3) Guidance under §6055 and §6724 to clarify TIN solicitation requirements for reporting under §6055 that will establish reasonable cause under §6724 regulations.</u>

IRPAC recommends amending the regulations under §6055 to clarify that an enrollment form for minimum essential coverage required to be reported under IRC §6055 is an initial solicitation. Treasury and the IRS anticipated a need for clarification in this area by stating in the TD 9661 preamble that, "Treasury and the IRS recognize that the existing solicitation rules under section 6724 may not address certain circumstances that may arise with respect to reporting under section 6055. Although the final regulations do not revise the regulations under section 6724 to specifically address these circumstances, Treasury and the IRS will continue to study the issue and may provide additional clarification if appropriate through guidance or forms and instructions."

In addition, IRPAC recommends new regulations under IRC §6055 such that health insurance companies may rely upon TIN solicitation performed by the sponsor of an employer-sponsored group health plan. This will avoid duplicate efforts to obtain TINs. Group health insurance enrollments usually occur by electronic processes between the employer and the insurance company, and the employer is often the party soliciting social security numbers of the employees and dependents. The avoidance of the burden of duplicate efforts is consistent with the spirit of IRC §6056(d) which provides, "To the

maximum extent feasible, the Secretary may provide that (1) any return or statement required to be provided under this section may be provided as part of any return or statement required under section 6051 or Section 6055."

4) Guidance under §6050W, as added by §3091 of the Housing Assistance Act of 2008, to clarify terms used to determine information reporting on payment card and third-party payment transactions.

This is a Tax Administration project in the 2014-2015 Priority Guidance Plan and IRPAC recommends that it remain in the 2015-2016 plan as a high-priority guidance issue for clarification of essential terms in amended regulations to be issued in the very near term. It has been projected that 9.4 million Forms 1099-K will be filed for 2015 [IRS Publication 6961] and the lack of essential definitions is an impediment to accurate reporting.

Key terms integral to the meaning of "third party payment network" must be defined in official guidance in order for reporting organizations to reasonably apply the rules. The unclear terms include "central organization," "guarantee," and "substantial number of providers of goods or services." IRPAC's detailed recommendations relating to the definition of these terms can be found in the March 28, 2011, comment letter which is included as Appendix D of the IRPAC 2011 Public Report, and in the 2014 IRPAC Public Report. Guidance should be issued that allows a reasonably informed reader to understand when IRC § 6050W reporting is required and delineate between three-party arrangements that are subject to reporting under IRC § 6050W and ones that involve three parties but are not subject to reporting under IRC §6050W.

In addition, guidance is needed to identify the entity deemed to be the payment settlement entity when there are multiple payment settlement entities. Clarification of the scope and application of rules related to "aggregated payees" and "third party payment networks" is also needed. In current guidance these rules appear to overlap; a "third party settlement organization" (TPSO) is not required to report transactions for a payee whose aggregate transactions do not exceed $20,000 and 200 transactions, whereas the aggregated payee rules do not include a de minimis rule. IRPAC has recommended clarification that the de minimis rules applicable to TPSOs also apply to an aggregated payee that also meets the definition of a TPSO.

5) Guidance under §6050S to clarify terms that are used by educational institutions to determine whether certain amounts are reportable in box 5 of Form 1098-T, Tuition Statement.

This is a Tax Administration project in the 2014-2015 Priority Guidance Plan and IRPAC recommends that it remain in the 2015-2016 plan.

Additional guidance is needed to clarify terms in IRC §6050S(b)(2)(B)(ii) that are used by colleges and universities to determine whether or not to report certain amounts in box 5 of Form 1098-T, Tuition Statement. Specifically, colleges and universities need clarification regarding the meaning of "costs of

attendance" and "administered and processed." These terms are not defined in the Internal Revenue Code or Treasury Regulations, causing confusion within the college and university community and resulting in possible inconsistent reporting from institution to institution. This inconsistency may result in additional burden to the millions of taxpayers who receive Form 1098-T; in particular, those taxpayers who receive the form from different institutions who may report differing costs due to the ambiguity of the terms. This guidance would promote sound tax administration by providing consistent definitions of terms used by colleges and universities in the preparation of Form 1098-T.

The term "cost of attendance" is defined in section 472 of Title IV of the Higher Education Act of 1965. The IRS should adopt this definition to provide clarity to colleges and universities that the IRS acknowledges this as the official designation. Further, the IRS should provide a definition of "administered and processed" with specific examples of what is considered as falling within this term. A uniform definition understood by colleges and universities and the IRS will bring the regulations up to date and will reduce the burden on taxpayers and the IRS in understanding what is required to be reported in box 5.

6) FATCA guidance.
IRPAC urges the IRS and Treasury Department to continue to issue guidance on FATCA. IRPAC has identified, and discussed with IRS and Treasury, numerous topics on which correcting, clarifying, and/or new FATCA guidance is needed.

7) Free filing of Forms 1099-MISC on irs.gov.
IRPAC recommends that a free e-Services program be authorized through which small businesses can enter and electronically file up to 100 Forms 1099-MISC and up to 50 corrected Forms 1099-MISC. This electronic filing of 1099-MISC forms by small-volume, small business filers will increase the accuracy and timeliness of data available to the IRS for matching against income tax returns for the prevention of tax fraud. Small business filers are presently more likely to file paper returns to the IRS but a free on-line manual-entry 1099-MISC filing program would if adequately publicized lead to increased electronic filing.

The Electronic Tax Administration Advisory Committee to the IRS has made a similar recommendation for 1099-MISC electronic filing, and the Social Security Administration provides a similar free on-line electronic filing service for small business filers of Forms W-2.

8) Electronic delivery to U.S. Treasury of monies withheld pursuant to an IRS levy.
IRPAC recommends allowing employers to transmit federal tax levy proceeds electronically to the U.S. Treasury. The current procedure, as instructed by Form 668-W, is to mail a check payable to the U.S. Treasury on the employee's payday and on the face of the check show the taxpayer's name,

taxpayer's SSN, tax type and the words "proceeds of levy." The 668-W directs where the check is to be sent and many times this is to a local IRS office.

The current paper check and mail procedure creates delay and confusion because payroll departments receive the levy deduction amount only a day or two prior to the employee's pay date and then must forward the information to an accounts payable department where the check will be prepared; accounts payable departments cut checks on a weekly, biweekly or semimonthly processing cycle but not every day; checks prepared by accounts payable often go to a different department for mailing; accounts payable systems do not have the capability of showing the required notations on the face of the check (so detail is on an attachment which often is separated from the check before it is processed by the IRS); without the detail from the face of the check the amount is often misapplied to the employer's account (creating an inaccurate overpayment) and not to the taxpayer's account (subjecting the taxpayer to levy deductions continuing longer than necessary); some of the IRS offices to which checks are to be mailed have closed and employers receive telephone calls from the IRS directing them to start mailing to a different office (but checks already mailed to the closed office are delayed). Electronic deposit of levy proceeds will enable timely deposits to the correct taxpayer accounts and eliminate much time-consuming reconciliation and correction work for the IRS and employers.

IRPAC looks forward to continuing to work with the IRS on creating a more efficient and effective tax administration system. We will be glad to furnish additional information relating to each of the above recommendations, upon request.

Respectfully submitted,

Mary Kallewaard
2015 IRPAC Chairperson

Appendix B

2014 IRPAC Public Report: De Minimis Threshold for Form 1099 Corrections

2014 IRPAC Public Report: De Minimis Threshold for Form 1099 Corrections

Recommendation

IRPAC recommends establishing under regulations a de minimis dollar threshold for corrections to original information returns and original recipient statements, creating a safe harbor to provide that no penalty will apply for failure to correct net changes of $50 or less in the reported amount. This will relieve significant burdens on taxpayers and the IRS for the cost and use of resources to report and process corrections that generally are not the result of payer error and do not increase taxable income of the recipients.

Discussion

IRPAC again recommends that a failure to correct a de minimis amount of $50 or less previously reported to the IRS should be defined in Reg. §301.6721-1(c) and Reg. §301.6722-1(b) as an "inconsequential error" not subject to the penalty provisions of IRC §§ 6721 and 6722.

Regulations currently require a payer to issue a corrected information return if the reported amount is incorrect in "any monetary amount" or "any dollar amount," depending on the regulatory language used. Up to 10 corrected forms (or one and one-half percent of the filer's total information returns for the year) can be filed without penalty. Above that number, each corrected information return triggers a penalty under IRC §6721(a)(2)(B) for having included incorrect information on the original return. The penalty under IRC §6721(a)(1) is $100 for each such return, up to $1.5 million for any calendar year. When corrected information returns are filed with the IRS, corrected recipient statements must be furnished and under IRC §6722 each triggers a separate $100 penalty, up to $1.5 million for any calendar year, for having included incorrect information on the original statement. However, Treas. Reg. §§ 301.6721-1(c) and 301.6722-1(b) provide for penalty exceptions for inconsequential errors and it is in these sections that IRPAC recommends the creation of a safe harbor for de minimis dollar amount corrections of $50 or less (up or down).

Restatements of investment earnings are a high-volume example of corrections that are required under current rules and cause burden on Form 1099, Information Returns, filers and the IRS and the reported taxpayers, yet do not necessarily increase tax liabilities or government revenue. The filers of information returns often receive late notifications of reportable amounts from mutual funds and corporations, generally because those entities did not have the information they needed in time to pass along to 1099 filers or because a fiscal year-end after the 1099 filing deadline revealed that restatement was necessary due to insufficient accumulated earnings and profits to support dividend treatment. The volume of information returns requiring correction for small amounts has also increased significantly due to wash sales and changes on Form 8937, Report of Organizational Actions Affecting Basis of Securities. The amount of the change is often immaterial and has no impact on the recipient's tax liability, or often results in a reduction in the recipient's taxable income when changes are due to

reclassification of dividend distributions to return of capital.

The $50 de minimis threshold recommended by IRPAC for information return and recipient statement corrections will significantly reduce the burden on taxpayers (who receive corrected statements after having filed their income tax returns and then face new costs for the preparation and filing of amended returns), reduce the burden on the IRS (which must process all of the corrections, then handle a higher volume of resulting penalty notices and the prolonged process of reasonable cause review and appeal) and reduce the burden on information return filers (who must reprocess, create a new IRS filing and print and mail new statements).

The cost to the IRS to handle corrections and penalties is not disclosed to IRPAC. The cost to information return filers was illustrated in the 2013 IRPAC Public Report by an example of one common type of correction: a filer issued 456,559 corrected Forms 1099-DIV, Dividends and Distributions, for tax year 2012 to retail brokerage customers to report changes in the ordinary dividend amount (box 1a) due to dividend reclassification announcements received after the original information returns were created; 59% of these (270,275) were for changes less than $50; each recipient statement correction cost the Form 1099 filer $1.53 to print and mail so the cost of statements for changes less than $50 was $413,520.75; the filer also incurred the use of resources to produce the corrected IRS file and later will incur costs to deal with IRS proposed penalties (additional illustrations were furnished in the 2012 IRPAC Public Report). The cost to individual taxpayers relates to their concern about filing amended income tax returns which for many would mean additional fees to accountants or other tax preparers.

The closing agreement process offered under IRC §7121 is not a sufficient answer to these problems because it does not reduce the burdens described above on the IRS, taxpayers or information return filers. Many months are consumed in the process at the end of which there may be no agreement, leaving the payer to issue even later corrected information returns and taxpayers facing the same burden of amended tax returns. Moreover, the closing agreement for Forms 1099 addresses underreporting of income, while most of these high-volume, small-amount restatements reduce reportable income and are not the result of 1099 filer error.

Appendix C

Questions and Answers about Reporting Social Security Numbers to Your Health Insurance (page from IRS.gov)

Affordable Care Act Topics

- Individuals and Families
- Employers
- ALE Info Center
- Tax Professionals
- What's Trending
- News
- Health Care Tax Tips
- Questions and Answers
- List of Tax Provisions
- Legal Guidance and Other Resources
- **Affordable Care Act Tax Provisions Home**

Questions and Answers about Reporting Social Security Numbers to Your Health Insurance Company

Q1. My health insurance company has requested that I provide them with my social security number and the social security numbers of my spouse and children. Is there some new reason why they need our social security numbers?

A1. Your health insurance company will be required to provide Form 1095-B to you and to the Internal Revenue Service. You will use the form to prepare your individual income tax return. The law requires SSNs to be reported on Form 1095-B.

Q2 Why is my health insurance company asking for this information now?

A2 The new reporting requirement will begin for the 2015 tax year and health insurance companies need advance time to program and test systems to make certain that this new reporting is done correctly and efficiently.

Q3 Is there a specific Internal Revenue Service form that will be mailed to me to provide the information to my health insurance company?

A3 No. Your health insurance company may mail you a written request which discusses these new rules.

Q4 How will I use this new Form 1095-B to prepare my return?

A4 Form 1095-B provides information needed to report on your income tax return that you, your spouse, and individuals you claim as dependents had qualifying health coverage (referred to as “minimum essential coverage”) for some or all months during the year. Individuals who do not have minimum essential coverage and do not qualify for an exemption may be liable for the individual shared responsibility payment. You do not have to attach Form 1095-B to your tax return.

Q5 What if I refuse to provide this information to my health insurance company?

A5 The information received by the Internal Revenue Service will be used to verify information on your individual income tax return. If the information you provide on your tax return cannot be verified, you may receive an inquiry from the Internal Revenue Service. You also may receive a notice from the Internal Revenue Service indicating that you are liable for a shared responsibility payment.

Page Last Reviewed or Updated: 25-Mar-2015

Appendix D

Additional IRPAC recommendations made in connection with Chapters 3 and 4

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Additional IRPAC recommendations made in connection with Chapters 3 and 4

International Reporting and Withholding Subgroup Report

Below are IRPAC recommendations made in connection with Chapter 3 and 4 that are not included in the International Reporting and Withholding Subgroup Report itself:

Forms W-8:

1. Add a Qualified Securities Lender (QSL) certification to the Form W-8BEN-E to accommodate QSLs acting in a principal capacity.
2. Clarify whether trustees of a trustee-documented trusts, sponsoring entities, and entities that are non-reporting IGA FFIs by reason of qualifying as registered deemed-compliant FFIs under relevant US Treasury Regulations are required to enter their Global Intermediary Identification Number (GIIN) on line 9a of Form W-8BEN-E (or the corresponding line of other Forms W-8).
3. Clarify that if a disregarded entity is listed on Line 3 of a Form W-8BEN-E or W-8IMY and the disregarded entity is located in the same jurisdictions as its owner, it is acceptable for the disregarded entity to provide its information (including its GIIN) in Part II of the form.
4. Clarify whether an owner-documented FFI in an IGA jurisdiction should identify itself as an owner-documented FFI or as a nonreporting IGA FFI on a Form W-8BEN-E or W-8IMY.
5. Eliminate the checkboxes for the GIIN and TIN on Form W-8BEN-E (lines 9a and 9b) and W-8EXP (lines 8a and 8b) as the GIIN and TIN themselves are sufficient.

Form 1042-S:

6. Align the Chapter 4 status codes on Forms W-8 and 1042-S.
7. Regarding new income code 53 (Substitute payments-dividends from certain actively traded or publicly offered securities), add corresponding income codes for substitute interest payments and securities lending fees with respect to loans of publicly traded stocks and debt obligations.
8. Describe the intended use of Income Code “Gross income – Other” versus “Other income.”
9. The 2015 Instructions for Form 1042-S instruct the filer to use the list of country codes at irs.gov to show the recipient’s country in Box 13e. Clarify whether this is the list at http://www.irs.gov/Tax-Professionals/e-File-Providers-&-Partners/Foreign-

Country-Code-Listing-for-Modernized-e-File. The Form 1042-S instructions should provide the relevant link, and until such time these instructions are so updated, this link should be included at http://www.irs.gov/uac/About-Form-1042S.

10. Provide instructions on which recipient Chapter 4 status code to enter for FFIs with a US branch entered in Part II of a Form W-8BEN-E or Form W-8IMY.

11. Clarify whether foreign TINs can be truncated on Form 1042-S recipient copies.

Regulations:

12. Add withholding certificates provided for a foreign simple trust or a foreign grantor trust to the list of certificates at Treas. Reg. §1.1441-1T(e)(4)(ii)(B) that have an indefinite validity period.

13. Eliminate the words "foreign" in Treas. Reg. §1.1441-7T(c)(2)(i) and "U.S." in Treas. Reg. §1.1441-7T(c)(2)(iv).

Other Guidance:

14. Issue guidance that if a PFFI mergers with and into another FFI intra-year, the PFFI reports on Form 8966, Foreign Account Tax Compliance Act (FATCA) Report for the pre-acquisition portion of the acquisition year and the successor FFI reports for the post-acquisition portion of the acquisition year, unless the PFFI and successor FFI agree that the successor will report for both the pre-acquisition and post-acquisition portions of the acquisition year.

15. Clarify in Publication 1187, Specifications for Electronic Filing of Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding which value to enter in Field Position 384 (Withholding Indicator) in the "W" record if the withholding agent reports under both Chapter 3 and Chapter 4. The choices are "3 - Withholding Agent reporting under Chapter 3" or "4 - Withholding agent reporting under Chapter 4."

Appendix E

Notice 2015-10 Guidance on Refunds and Credits Under Chapter 3, Chapter 4 and Related Withholding Provisions

Internal Revenue Service
Attn: CC:PA:LPD:PR (NOT-2015-10)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

June 25, 2015

RE: Notice 2015-10 – Guidance on Refunds and Credits Under Chapter 3, Chapter 4 and Related Withholding Provisions

Dear Commissioner Koskinen:

On behalf of the Information Reporting Program Advisory Committee (IRPAC)[1], this letter responds to the request for comments in Notice 2015-10, regarding the allocation of a withholding agent's withholding deposits to the accounts of foreign payee recipients ("Payees") for purposes of refund and credit claims made by such Payees under Chapter 3 and Chapter 4.

1. BACKGROUND

In Notice 2015-10, the IRS announced rules under which it will reject (either in whole or in part) certain withholding tax refund claims filed by Payees if the total amount of the withholding agent's required deposit for a calendar year is less than the amount actually deposited by that withholding agent ("shortfall"). "Pro-rata" refunds will be allowed, however, based on the ratio of the amount actually deposited by the withholding agent to the total amount required to be deposited. For example, if a withholding agent has a withholding tax liability of $100,000 with respect to payments made to all Payees, but has only deposited $95,000 to its deposit account for the year, under these announced rules, the IRS would deny a proportional 5% of refund claims made by any and all Payees from whom that withholding agent withheld tax.

We understand the IRS is pursuing this initiative as a result of its concern about increasing numbers of fraudulent withholding tax refund claims and the IRS's inability

[1] IRPAC was established in 1991 in response to an administrative recommendation in the final Conference Report of the Omnibus Budget Reconciliation Act of 1989. IRPAC works closely with the IRS on a wide range of information reporting issues, including those rules and procedures associated with reporting for and making withholding deposits under Chapter 3 and Chapter 4 as well as backup withholding deposits.

(in certain circumstances) to recoup funds due from foreign withholding agents after the IRS refunds taxes to Payees.

2. COMMENTS REQUESTED BY NOTICE 2015-10

IRPAC lauds the IRS's proactive efforts to counteract fraudulent refund claims. Fraudulent claims not only pose a risk to the federal fiscal system, but also pose a substantial drain to IRS resources. Thus, to combat these concerns, IRPAC agrees that the IRS should take appropriate steps to ensure that reported withholding taxes and deposits are legitimate before refund claims are processed and paid.

(a) The Pro Rata Approach

IRPAC believes that the pro rata approach suggested by Notice 2015-10 has fundamental flaws. To begin with, the approach arguably exceeds the IRS's legal authority under section 1462, which requires the IRS to credit the amount of tax withheld against a Payee's tax paid without regard to whether the withholding agent in fact deposited the withheld taxes. Although section 6402(a) allows the IRS to credit overpaid taxes against the Payee's other tax liabilities, there is no authority within the Code that allows the IRS to hold the *Payee* liable for a *withholding agent's* failure to deposit taxes actually withheld.[2] This is appropriate in the case of legitimate transactions because when the withholding agent withholds from a payment made to the Payee, the withholding agent is acting as the agent of the IRS, not the Payee. Depending on the contractual arrangement between the withholding agent and the Payee, the withholding agent may not have any legal duty to the Payee to deposit the taxes withheld, but instead has a duty to the IRS to deposit those withheld taxes with the IRS.[3]

Because the withholding agent has no legal duty to the Payee, the Notice creates unprecedented legal and administrative issues for *Payees* who seek to obtain legitimate withholding tax refunds. For example, can such Payee seek recourse from the withholding agent, or will the IRS eventually pay the refund in full once it has resolved the shortfall with the withholding agent? Does the Payee have to file a second claim to recoup the denied portion of its refund, or will the IRS automatically make this payment once it resolves the issue with the withholding agent? What, if any, recourse does the Payee have when the IRS and the withholding agent remain at odds with respect to the appropriateness of the deposit? Finally, how is the statute of limitations impacted by these disputes? Who can the Payee sue for the denied portion of its refund claim, and by what date must that suit be brought? Forcing Payees to navigate these issues will cause potentially irreconcilable customer relations problems for withholding agents and the IRS.

The Notice's pro rata approach would negatively affect legitimate refund claims for which the likelihood of fraudulent activity is low, and will cause significant administrative problems for both the IRS and withholding agents - most of

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[2] Indeed, Code section 1461 insulates the withholding agent from liability to the Payee for amounts withheld in accordance with the provisions of Chapter 3.

[3] I.R.C. §1461.

which have a proven track record in making accurate and timely deposits. There are many reasons why a withholding agent's tax deposit account for a year might not reflect the total deposits due for that year. For example, in certain circumstances the IRS might unilaterally debit a withholding agent's Chapter 3 (Form 1042) tax deposit account in order to settle a tax liability associated with another account of that agent (e.g., backup withholding or payroll tax account). A withholding agent might intentionally deposit less than the full amount of tax withheld in a particular year if it had made excessive deposits in the prior year, and was anticipating a corresponding credit on the current year's return. Finally, despite a withholding agent's best efforts, a shortfall could arise as a result of a legitimate (and unintentional) mistake that was made by the withholding agent (such as wrongly coding a deposit – e.g., 941 instead of 1042) or a ministerial error made by the Service (such as funds being wrongly deposited into a different account of the withholding agent).

Under the proposed rules of the Notice, a shortfall created by any of these circumstances would potentially result in a refund denial or reduction for *all* of the refund claims made by the withholding agent's Payees without regard to whether the withholding from a particular Payee's payment gave rise to the shortfall. By denying all or a portion of a Payee's refund claim as a result of a shortfall in the 1042 account of a withholding agent, the IRS proposal would penalize Payees for a withholding agent’s practice over which the Payee has no control.

The Notice appears to be conflating the legitimate problem of fraudulent refund claims with collection of shortfalls in withholding deposits. Fraudulent withholding claims (and associated phantom deposits) are unlikely to be related to a legitimate withholding agent's deposit shortfall. To the extent that a fraudulent scheme somehow does target a legitimate withholding agent's deposits (e.g., by claiming that a portion of such agent's deposit should be refunded to the fraudulent claimant), the IRS's approach of denying only a pro rata portion of that claimant's refund claim does not eliminate the overall problem (indeed the claimant will still obtain an undeserved refund under these rules, diminished only by the pro rata portion of the overall shortfall). Moreover, the IRS's approach inappropriately shifts the burden of the fraud to the withholding agent's legitimate Payees, notwithstanding that these recipients are wholly unable to defend themselves against the perpetration of such a fraud.

For these reasons, among others, IRPAC believes that a pro rata allocation of a withholding agent's deposit account shortfall to all Payees is an inappropriate way to combat potential fraudulent withholding tax refund claims.

(b) Tracing

The Notice specifically requests comments regarding the feasibility of developing and implementing a more precise tracing methodology in lieu of allocating a withholding agent's shortfall pro rata to all Payees.

Under the existing system, withholding agents are often asked by IRS Service Centers to show proof that the withholding agent actually deposited amounts withheld from a

particular Payee of the withholding agent, as reflected on Forms 1042-S. Given the number of Payees of a withholding agent that are subject to NRA withholding, and the magnitude and frequency of tax deposits, tracing deposits to taxes withheld from specific Payees is not administratively practical.

Moreover, given the operation of the set-off and reimbursement rules, the tax withheld from a particular Payee may not actually be deposited at all – even though the tax was properly withheld and the Payee is entitled to a full credit for the tax withheld. For example, a withholding agent might withhold (and deposit with the IRS) an excess amount of tax from Payee A, but later use its own funds to refund that excess tax to Payee A. To recoup that over-deposit of tax, the withholding agent might use the tax appropriately withheld from Payee B to reimburse itself for the tax it refunded to Payee A. Thus, although the tax withheld from Payee B was not in fact deposited, the tax withheld and deposited from Payee A has been effectively credited to Payee B. Given these administrative considerations, IRPAC believes that a tracing system would also not be an appropriate measure to combat fraudulent refund claims.

(c) Exceptions

The Notice also requests comments regarding whether exceptions to the proposed pro rata shortfall allocation should apply where the potential for fraud or intentional under-deposit of withholding taxes are unlikely. Notwithstanding the concerns expressed above, to the extent the IRS believes it still appropriate to allocate (or trace) a withholding agent's shortfall to refund claims, IRPAC recommends that the following categories of withholding agents be exempt from any shortfall rule:

- Payees of U.S. withholding agents, Qualified Intermediaries, and other withholding agents that have a significant U.S. tax nexus, as the IRS should have sufficient recourse against such parties to collect any identified tax shortfall;
- Withholding agents that have an established history of compliance with their tax withholding, deposit and reporting obligations, and withholding agents that generally deposit a significant dollar amount of withholding. These agents are far less likely to be involved in fraudulent behavior, and should be responsive to IRS inquiries and collection efforts;
- Refund claims that are de minimis in relation to the total amount of tax that has been deposited should be granted, in spite of a shortfall in the withholding agent’s deposit account. For example, a $1,000 refund claim should not be denied or prorated when the withholding agent made deposits of $9 million – even though the IRS believes there to be a $1 million shortfall.

3. ALTERNATIVE APPROACHES

Notwithstanding IRPAC's view that the above exceptions to a pro rata or tracing rule would be appropriate, IRPAC remains concerned with an approach that makes use of broad exceptions without first determining if those exceptions themselves can be used by wrongdoers as a roadmap for the next fraudulent refund scheme. Thus, rather than promulgate an unworkable approach with broad exceptions for fact patterns that today reflect legitimate transactions, IRPAC recommends that Treasury and the IRS consider more targeted approaches to combating perceived withholding tax refund fraud. IRPAC would welcome the opportunity to work with the IRS in creating a more efficient and effective withholding tax refund system that can withstand the challenges raised by fraudulent activity.

* * * *

In sum, IRPAC believes that neither the pro rata nor the tracing approaches to withholding tax refunds are viable options in combating fraudulent activity in this area. IRPAC remains committed to helping the IRS craft more appropriate options to tackle this very real threat to the federal fiscal system. We would be glad to furnish additional information, upon request.

Respectfully submitted,

Mary Kallewaard
2015 IRPAC Chairperson

Information Reporting Program Advisory Committee
2015 Member Biographies

Paul Banker

Mr. Banker is Vice President of Global Accounts at Convey, a Sovos Compliance Company in Minneapolis, Minn. He has over 22 years of experience within the tax information reporting sector. Mr. Banker led tax information reporting activities at US Bank and United Health Group, before joining Convey, a tax information reporting and withholding provider which services over 3,500 financial and corporate clients with annual filings of more than 300 million tax reports. In his work with clients, Mr. Banker has extensive experience with all 10 series forms as well as full direct tax filing for all the applicable states, US territories and the IRS. He currently works with global banking organizations on implementing firm-wide FATCA, CDOT, CRS, and ACA tax reporting initiatives. He has been a speaker at several Tax Information Reporting conferences. Mr. Banker received his BA in Accounting from the University of St. Thomas. (**Emerging Compliance Issues Subgroup**)

Robert Birch

Mr. Birch is Director of Corporate Tax at Wellmark, Inc., in Des Moines, Iowa. Wellmark Blue Cross and Blue Shield is an independent Licensee of the Blue Cross and Blue Shield Association doing business in Iowa and South Dakota. He has over 35 years of experience with tax information reporting. He advises senior management on all corporate income tax and information reporting matters and is leading an internal project to implement the new information reporting that will be required of health insurance companies. He is a former member of the Board of Directors of the Tax Executives Institute, Inc. (TEI) and was the former Chair of the TEI Employee Benefits and Payroll Committee, former Region V Vice President and the first president of the Iowa TEI Chapter and the 2006 recipient of the Iowa Chapter Meritorious Service Award. Mr. Birch, a CPA, received an AA from North Iowa Community College and a BBA in Accounting from the University of Iowa. **(Co-Chair, Employer Information Reporting/Burden Reduction Subgroup)**

Frederic M. Bousquet

Mr. Bousquet, a CPA, is Vice President in the Product Tax Department of State Street Bank and Trust Company in Boston, Mass. He has been with State Street for over 20 years and advises business areas globally on tax matters with an emphasis on US withholding and information reporting. He is a member of the Securities Industry and Financial Markets Association (SIFMA) Tax Compliance Committee. Mr. Bousquet has a MST and an MBA from Suffolk University and a BSBAfrom Stonehill College. (Chair, International Reporting and Withholding Subgroup)

Beatriz Castaneda

Ms. Castaneda is a Managing Director of Client Reporting, Tax Reporting and Escheatment at Charles Schwab & Co., Inc. in San Francisco, Calif. She has over 16 years of tax reporting experience at Charles Schwab. She is responsible for ensuring that the firm correctly implements information reporting requirements for all new tax and cost

basis legislation. She is a member of the Financial Information Forum (FIF) Cost Basis Working Group and FATCA Group. She is also a member of the Securities Industry and Financial Markets Association (SIFMA) Tax Compliance Committee and Cost Basis Working Group. Ms. Castaneda received her BA from Dominican College of San Rafael. **(Emerging Compliance Issues Subgroup**)

Ernesto S. Castro

Mr. Castro is Manager, Government Relations, of Ultimate Software Group Inc., in Santa Ana, Calif.. He has over 20 years of experience working with tax information reporting with a concentration in compliance and problem resolution. The Ultimate Software Group is a leading human resources management system services provider in the U.S. Mr. Castro has regularly attended the IRS Reporting Agents' Forum, was a private industry representative on an IRS penalty and industry task force and was a Tax Law Specialist at the IRS National Office. He is a founding member of the National Association of Tax Reporting and Payroll Management. He has also been a contributing writer for the Bureau of National Affairs (BNA). He received a BA and a JD in Comparative Law from Tulane University. **(Employer Information Reporting/Burden Reduction Subgroup)**

Roseann M. Cutrone

Ms. Cutrone, an attorney, is a Counsel at Skadden, Arps, Slate, Meagher & Flom LLP in Washington, D.C. Her practice includes advising clients, including large domestic and foreign commercial banks, investment funds, multi-national corporate groups and other entities with respect to all aspects of their information reporting and withholding obligations under Chapter 3, Chapter 4 (FATCA) and Chapter 61 of the Internal Revenue Code. Ms. Cutrone also represents clients in achieving voluntary disclosures agreements with the IRS for previous non-compliance with respect to information reporting/withholding obligations. Ms. Cutrone received a BA in psychology from Bucknell University and a JD from Harvard Law School. **(International Reporting and Withholding Subgroup)**

Carolyn Diehl

Ms. Diehl is Tax Compliance Officer and Vice President with National Financial Services LLC, a Division of Fidelity Investments, in Jersey City, N.J. She has worked in the financial industry for over 35 years as both a tax preparer and compliance officer for a leading financial services firm specializing in high net worth clients and as a compliance officer for a large broker/dealer organization. She has interpreted laws and regulations including identification of the impact of Foreign Account Tax Compliance ACT (FATCA) and the cost basis regulations on the institutional brokerage business. Ms. Diehl is a member of the Securities Industry and Financial Markets Association (SIFMA) tax compliance committee and participates in dialogue on cost basis and FATCA with the Financial Information Forum (FIF). Ms. Diehl received a BS in Economics from the Wharton School, University of Pennsylvania, and an

MBA from the University of Delaware. **(International Reporting and Withholding Subgroup)**

Mark Druckman Mr. Druckman is an Executive Director at JPMorgan Chase in New York, N.Y. He has over 20 years of experience in the JPMorgan Chase Corporate Tax Department and provides oversight and monitoring of tax information reporting and withholding matters, including Form 1099 and Form 1042-S filing requirements and Foreign Account Tax Compliance ACT (FATCA) implementation efforts. He previously served on IRPAC in 1996-1997, and has been a guest speaker at industry association seminars and conferences on tax information withholding and reporting. He is a founding member of the TINs Subcommittee of the New York Clearing House Association and a member of the Securities Industry and Financial Markets Association (SIFMA). **(International Reporting and Withholding Subgroup)**

Michael W. Gangwer Mr. Gangwer is Associate Tax Advisor, Legal Department, of The Vanguard Group, Inc. in Valley Forge, Pa. He has worked at Vanguard in information reporting for over 10 years. He currently serves as the lead technical consultant for information reporting and tax withholding for Vanguard's retail, institutional retirement, brokerage and cost basis departments. These departments annually produce information returns for millions of investor accounts and retirement plan subaccounts. He also monitors legislative, regulatory and judicial developments related to information reporting and tax withholding matters, as well as advises Vanguard's tax reporting departments as they implement new tax law. He is a member of the Society of Financial Service Professionals, Investment Company Institute and the Securities Institute and Financial Markets Association (SIFMA). Mr. Gangwer received a BS in Economics from West Chester University and a Masters of Taxation & Financial Planning from Widener University. **(IRPAC Vice-Chair, Employer Information Reporting/Burden Reduction Subgroup)**

Darrell D. Granahan Mr. Granahan, CISA and CRISC, is a Senior Director of Implementation of Tax Information Reporting Technology for the Tax & Accounting business of Thomson Reuters. In this role he works closely with customers to help them leverage technology as effectively and efficiently as possible to address the challenges of tax information reporting in the wake of ACA and other new tax reporting requirements. Before Thomson Reuters, Mr. Granahan held the role of Vice President, Controls Officer, at First Data Corporation, working in payments processing and electronic commerce solutions. Mr. Granahan is a member of Information Systems Audit and Control (ISACA) and Institute of Internal Auditors (IIA). He received a BS in Electronics Management from Southern Illinois University and an MA in Management from Bellevue University. **(Emerging Compliance Issues Subgroup)**

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Lynne Gutierrez

Ms. Gutierrez, CIP, is a Manager of Operations at Hilltop Securities Inc.. in Dallas, Texas. She has been in the securities business for over twenty-five years. She leads teams focusing on retirement plans and government reporting. She has been involved in the implementation of Form 1099 DIV changes, the reporting of the Widely Held Fixed Investment Trust (WHFIT) products and the new Cost Basis regulations. She is a member of the Securities Industry and Financial Markets Association (SIFMA), holds a FINRA Series 99 License and is designated as a Certified IRA Professional (CIP) with Ascensus. Ms. Gutierrez has a Bachelor of Business Administration with a field of concentration in finance and accounting from the University of North Texas. **(Employer Information Reporting/Burden Reduction Subgroup)**

Mary C. Kallewaard

Ms. Kallewaard is a Principal and co-founder of COKALA Tax Information Reporting Solutions, LLC, in Ann Arbor, Mich.. She has focused on tax technical advisory services for information reporting compliance for the past 18 years. Working with clients in mid-and large-size industry and the service sector, colleges and universities, and nonprofit institutions, she has developed an understanding of how current business practices and technology integrate with tax reporting and withholding requirements. She is a member of the American Payroll Association (APA) and is co-author of the APA Guide to Accounts Payable. Ms. Kallewaard has a BA in American Studies from the University of Michigan. **(IRPAC Chairperson)**

Keith King

Mr. King is Senior Vice-President and Tax Executive of Bank of America in Charlotte, N.C. Mr. King has over 25 years of experience in the finance industry, having spent the last 16 years in the information reporting field. He currently co-leads Bank of America's Information Reporting and Withholding Advisory Group, which advises the bank's various lines of businesses on information and reporting regulations and its impact on their products and services. Mr. King is a current member of the American Bankers Association (ABA) Information Reporting Advisory Group and The Clearing House (TCH) Tax Withholding and Information Reporting Committee. He was also a past member of the Securities Industry and Financial Markets Association (SIFMA) Tax Compliance and Administration Committee. He holds a BS in Business Administration from the City University of New York and an MBA from Queens University of Charlotte. (Emerging Compliance Issues Subgroup).

Robert C. Limerick

Mr. Limerick is Managing Director for the Global information Reporting Group at PricewaterhouseCoopers in New York, N.Y. He is a tax attorney specializing in tax withholding and information reporting with

22 years of experience in the public and private sectors. He has assisted banking, capital markets and asset manager clients with FATCA, Chapter 3 (withholding and reporting for payments to non-U.S. persons) and Chapter 61 (withholding and reporting for payments to U.S. persons). He is a co-author of BNA Tax Management Portfolio 6565, FATCA – Information Reporting and Withholding Under Chapter 4, a former member and past chair of the Securities Industry and Financial Markets Association (SIFMA) Tax Compliance Committee, and a member of the New York, New Jersey and Florida Bar Associations. Mr. Limerick has a BA in Mathematics from the State University of New York at Binghamton, a JD from Nova Southeastern University School of Law and an LLM from the University of Florida School of Law. **(International Reporting and Withholding Subgroup)**

Marcia L. Miller

Ms. Miller is President & CEO of Financial Horizons, Inc. in Ft. Lauderdale, Fla. She is an Enrolled Agent working for 35 years in accounting, tax and management consulting with an emphasis on representing small business owners. She advises clients on taxes and of federal, state and foreign mandatory reporting requirements. She is an author and speaker focusing on tax management, planning and health care reform and a former adjunct professor at Nova Southeastern University, H. Wayne Huizenga School of Business. She is a recognized leader and speaker in the world of information reporting. Ms. Miller earned a BBA and an MBA from the University of Miami. **(Employer Information Reporting/Burden Reduction Subgroup)**

Emily Z. Rook

Ms. Rook is a Consultant with Circle Financial Services in Iverness, Ill. Ms. Rook has worked in the accounting and payroll industries for 40 years and currently consults with clients on payroll issues including processing, systems and accounting. She teaches courses for the American Payroll Association (APA) on processing and regulatory compliance. The training covers all payroll responsibilities including wage and payment deductions and tax depositing and reporting requirements. Ms. Rook is a past president of the APA, serves on its Board of Directors and co-chairs its Government Affairs Task Force Subcommittee on Federal Tax Forms and Publications. She is a Certified Payroll Professional and earned a BS in Commerce from Rider College**.** **(Employer Information Reporting/Burden Reduction Subgroup)**

Jonathan A. Sambur

Mr. Sambur, an attorney, is a Partner at Mayer Brown LLP in Washington, D.C. His practice includes advising non-US financial institutions regarding compliance with US information reporting and withholding tax rules. Mr. Sambur regularly speaks before a number of non-US national banking associations and US and non-US trade groups,

such as the American Bankers Association, the Association of Certified Anti-Money Laundering Specialists (ACAMS) and various Tax Executives Institute chapters. Prior to joining Mayer Brown LLP, Mr. Sambur was an attorney-advisor at the IRS Office of Associate Chief Counsel (International). Mr. Sambur received his B.A. in Politics from Brandeis University, a J.D. (with distinction) from Hofstra University School of Law, and an LL.M. from New York University School of Law. **(International Reporting and Withholding Subgroup)**

Patricia L. Schmick

Ms. Schmick, EA, recently sold her practice to Accounting & Tax Service, Inc., a practice that has three offices in the South Puget Sound area of Washington State. She works for Accounting & Tax Services part time and also volunteers for AARP Tax Aide, preparing and reviewing tax returns at the Puyallup, Wash., library. She has been an accountant and tax professional for over 40 years, working with small businesses and individual taxpayers. She served on a Small Business Focus committee in Seattle that was formed to reduce the burden placed upon small business owners by governmental regulating agencies. Ms. Schmick is a founding member of the Washington Small Business Fair (Biz Fair) Planning Committee and has been actively involved since 1997. The Biz Fair is a free educational event for new and existing businesses drawing 500 – 900 participants each year. She is a member of the Washington State Society of Enrolled Agents and National Association of Enrolled Agents (NAEA). She was on NAEA's board of directors (1990-1999) and was NAEA President (1997-1998). She was NAEA Education Foundation Trustee (2000 – 2002) and Chair (2001 – 2002). She is a Fellow of the National Tax Practice Institute, NAEA. **(Co-Chair, Employer Information Reporting/ Burden Reduction Subgroup)**

Julia Shanahan

Ms. Shanahan, an attorney, is the Executive Director, Tax, at Columbia University in the City of New York. She advises campus departments on all tax matters. Her work includes advising on international, federal, and state and local tax issues and ensuring compliance with both US and international information reporting requirements. She is a member of the Tax Council of the National Association of College and University Business Officers, a member of the Washington State Bar Association, and a former Board Member of Washington Women Lawyers. Ms. Shanahan has a BA in International Studies from Manhattanville College, a Master in International Business from Ecole Nationale Des Ponts Et Chausees, a JD from Seattle University School of Law and an LLM in Taxation from the University of Washington. **(Chair, Emerging Compliance Issues Subgroup)**

Nina Tross

Ms. Tross accepted the positon as Executive Director for the National Society of Tax Professionals (NSTP) after serving for 3 years on their Board of Directors. Currently, she also teaches NSTP sponsored tax seminars for tax professionals and writes several tax newsletters. She

represents the NSTP on IRPAC and participates in the monthly National Public Liaison (NPL) committee meetings. For many years Ms. Tross owned a tax and accounting practice serving individuals and the business community. The practice was sold in 2011 but she still maintains a small client base preparing individual and business tax returns. She is a member of the National Society of Accountants, the National Federation of Independent Business, and the Arizona Association of Accounting & Tax Professionals. Ms. Tross earned her Enrolled Agent credential in 1993 and graduated with a BS in Business Administration and an MBA from Western International University. (Emerging Compliance Issues)

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