

## **Executive Summary of Issues**

### **General IRPAC Recommendations**

#### **A. 972CG Penalty Abatement Process**

To minimize the burden on taxpayers and the IRS, IRPAC recommends that the IRS take suitable action to rectify systemic issues that prevent 972CG penalty abatement requests from being judged properly and addressed timely. In addition, until such action can be implemented, IRPAC recommends that the IRS temporarily suspend the assessment of further 972CG proposed penalties for information returns showing mismatched name and TINs and for which pre-submission TIN/name matching ("TIN Matching") is not permitted.

#### **B. Form W-9**

IRPAC views Form W-9 as one of the building blocks of the information reporting process and recommends continued improvements that both simplify and bring clarity to the form. Specifically, IRPAC recommends that the fourth certification of Form W-9, Part II (regarding the FATCA code) be removed. If this recommendation is not adopted, IRPAC recommends the IRS issue guidance specifying that, for accounts maintained in the United States, a substitute version of Form W-9 is not required to include the fourth certification. In addition, IRPAC recommends the Instructions for the Requester of Form W-9 be modified to clarify that the exempt payee code and the exemption from FATCA reporting code are not required fields, and do not affect the validity of the form for purposes of withholding.

#### **C. Improving Frequently Asked Questions**

IRPAC recommends that the IRS implement a process to archive past FAQs so that payors who rely on an FAQ in filing information returns can later demonstrate the basis for the position taken. In addition, where practical, IRPAC recommends that the IRS enunciate the reasons supporting any changes to or deletions of prior FAQs to enhance transparency.

### **Employer Information Reporting and Burden Reduction**

New recommendations this year would be to allow employers to establish electronic delivery of Forms W-2 and 1095-C as the default option, while allowing employees to retain the right to 'opt-out' of the default and request paper Forms W-2 and or 1095-C. Due to the decrease in satisfactory customer service provided to employers, service providers and tax practitioners as a result of the IRS budget cuts, IRPAC also recommends reactivation of the Electronic Account Resolution online tool that provided authorized practitioners the ability to efficiently and securely communicate with IRS to resolve a variety of tax issues. With the first full year of Affordable Care Act (ACA) reporting completed, IRPAC applauds IRS for implementing several of our prior year recommendations.

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IRPAC also appreciates IRS' outreach and education efforts through webinars and the IRS' ACA team participating in meetings with the tax practitioner community. IRPAC also had additional recommendations for the Tax Tips, and continuing education regarding error messages, and on guidance for the responses to inconsequential errors. IRPAC continues to be concerned with Business Identity Theft and recommended measures that may help combat this type of theft. IRPAC continued to work with IRS on recommendations made in 2015 regarding improvements to Form W4-P and Form 1120-S k-1, as well as recommendations made in 2014 and 2015 regarding qualified plan payments to nonresident alien plan participants and guidance on gaps in withholding when IRA assets are escheated to State Governments.

### **A. Reporting by Insurance Companies and Applicable Large Employers under IRC §6055 and §6056**

IRPAC would like to thank the IRS for adopting several of our prior year recommendations dealing with IRC §§ 6055 and 6056 in 2016. With a full year of reporting under these new requirements, IRPAC has several recommendations which will help filers to further understand the reporting requirements which, in turn, will improve the accuracy and reliability of the reporting that IRS receives. Specifically, IRPAC recommends continued education on first year problems with the AIR system with new webinars addressing detailed information focused on the most common errors so that actions can be taken by filers to reduce errors. In order to reduce confusion by recipients, IRPAC recommends adding a Tax Tip to instructions advising taxpayers to not request correction of Form 1095-B or Form 1095-C with properly truncated SSNs or date of birth reporting properly missing. IRPAC recommends that "good faith efforts" penalty relief for reporting of incorrect or incomplete information reported on returns be extended at least to 2016 Forms 1095-B and Forms 1095-C filed in 2017. IRPAC further recommends that IRS provides specific guidance to Applicable Large Employers who undergo corporate transactions as that is an area that is particularly confusing and unclear. Finally, IRPAC recommends that the IRS consider guidance specific to what constitutes "inconsequential" errors with respect to reporting under IRC §§ 6055 and 6056.

### **B. Electronic Furnishing of Forms W-2 and 1095-C**

IRPAC recommends that Treasury Regulations be amended to allow an employer to electronically deliver Forms W-2 and 1095-C to all employees, and, if an employee prefers paper delivery, the employee may request such and the employer will deliver the W-2 or 1095-C on paper to that employee. This recommendation would allow an employer to establish electronic delivery as the default, the employees would then retain the option to 'opt-out' and get a paper Form W-2 and or Form 1095-C.

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### **C. Theft of Business Taxpayer's Identity**

IRPAC applauds the IRS and the Security Summit in their expanding efforts to combat business identity theft, in addition to personal data breaches. However, the business community continues to be overwhelmingly concerned with all the confidential information that is shared with the IRS. To help combat Business Identity Theft, IRPAC recommends Federal Employer Identification Number truncation on payee information returns, and a revision of the procedures relative to address changes reported on Form 8822-B and the information stored in the Business Master File.

### **D. Reactivation of the online Electronic Account Resolution Tool**

IRPAC recommends that the Electronic Account Resolution online tool be reactivated, or a substitute tool or system be made available to employers, tax practitioners and service providers to provide an efficient and secure method of communicating and resolving tax issues with the IRS. This recommendation would provide the IRS and the Tax Practitioners a short term solution to the burdens created by the IRS budget cuts.

### **E. Information Reporting for IRA Assets Escheated to State Governments and 60-Day Rollover Relief**

IRPAC recommends that the IRS provide specific rollover relief by adding "The distribution was escheated to a state agency" to the list of self-certification reasons for missing the 60-day rollover in Revenue Procedure 2016-47. This recommendation would provide essential relief to taxpayers whose IRA assets were distributed without their knowledge and sent to state abandoned property divisions.

## **Emerging Compliance Issues**

### **A. IRC § 6050S and Form 1098-T Reporting**

IRPAC recommends the Proposed Regulations included in Notice of Proposed Rulemaking (REG-131418-14) be amended to allow educational institutions subject to 1098-T reporting to remain exempt from Form 1098-T reporting for students who are either non-resident aliens or for whom qualified tuition and related expenses are paid entirely with scholarships or formal billing arrangements.

Additionally, the NPRM should be updated to remove the requirement to report the number of months a student was a full-time student, allow institutions to report on Form 1098-T how payments are actually applied to students' accounts, and allow institutions to report on Form 1098-T how reimbursements or refunds are actually applied to students' accounts.

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### **B. Hard to Value Assets**

IRPAC recommends that the IRS should update the 2016 Form 5498 and Form 1099-R instructions to clarify for the industry how or whether to report hard to value assets on the 1/31 account statements to participants and recommends that if reporting is required on the 1/31 statement trustees do not need to issue a separate 5498 if there have been no contributions to the account. In addition, IRPAC would like to know what codes, if any, should be used to report distributions of hard to value assets from Roth accounts. It is imperative that this clarification is made quickly as we are fast approaching year end.

### **C. 529 Accounts**

IRPAC has recommended that the IRS provide guidance clarifying how the industry can implement a new PATH Act reporting rule that eliminated the aggregation of distribution from multiple 529 accounts belonging to the same owner and beneficiary.

### **D. Form 1098 Mortgage Interest Reporting**

IRPAC recommends in the case where multiple properties secure a mortgage loan, the lender should be able to designate at their discretion one of the properties as the principal property securing the loan and use the address of that property for reporting purposes to complete Boxes 7, 8 and/or 9, as applicable. In the case where a lender originated the mortgage loan during the year or the lender or servicer of a mortgage loan did not hold the loan as of the beginning of the year, the outstanding mortgage principal as of the beginning of the year should not be required to be reported.

### **E. IRS Publication 1179 Substitute 1099-B Specifications**

IRPAC recommends that the IRS update Publication 1179 to specify how to report transactions that have the ordinary checkbox marked in Box 2 of the 1099-B on a substitute form. The current instructions only specify how to report transactions with short-term gains or losses and long-term gains and losses but don't provide direction on reporting transactions with ordinary income.

### **F. 2016 Form 8949 Instructions**

IRPAC recommends that the IRS provide instruction for taxpayers on where to report transactions that only have the ordinary checkbox marked in Box 2 of the 1099-B as it may be confusing to them on where to report transactions that do not fall into either the short-term or long-term gains and losses category.

### **G. IRC §6050W and Form 1099-K Reporting**

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Guidance under section 6050W has been on the Treasury Priority Guidance Plan for the last several years and IRPAC was pleased to see that this project has remained on that Plan for 2016-2017. Notwithstanding this prioritization, however, the IRS declined to discuss this issue with IRPAC during 2016. IRPAC hopes that progress on this very important guidance project at the IRS has not stalled and remains committed to working with the IRS on these issues.

At a very minimum, the IRS should address the definitional issues associated with which entities qualify as Third Party Settlement Organizations eligible to avail themselves of the de minimis rules which *eliminate* reporting on otherwise reportable amounts if either the amount paid within a year doesn't exceed \$20,000 or the aggregate number of such transactions does not exceed 200. Because these de minimis rules can completely eliminate the obligation to issue Forms 1099-K to payees, IRPAC believes that guidance is urgently needed regarding the rules for determining which payors can qualify for TPSO status.

### H. Complex Debt Reporting Requirements

IRPAC partnered with the IRS on several initiatives related to the 1099-B for Tax Year 2016. As a result of our discussions the IRS published an amendment to the 2016 Instructions for Form 1099-B on August 16, 2016, clarifying the use of the ordinary check box. IRPAC thanks those involved with providing the industry with needed guidance quickly.

### International Reporting and Withholding

IRPAC made 31 recommendations on international reporting and withholding matters, including the following:

- A. IRS publicly acknowledge that withholding agents will not be held liable with respect to section 305(c) events occurring prior to 2016.
- B. Several changes to the qualified securities dealer rules, including a delay of the effective date of such rules to January 1, 2018.
- C. Several changes to the proposed qualified intermediary (QI) agreement, including a delay of the effective date of the new QI agreement to January 1, 2018.
- D. Streamline withholding statements that accompany Forms W-8IMY.
- E. Expand usage of Form W-9 as FATCA documentation for certain disregarded entities.

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- F. Changes to the IRS FATCA Timeline.
- G. Changes to the partnership lag-method of reporting.
- H. Issue guidance on the escrow procedures.
- I. Delay the date on which the April 2016 version of Form W-8BEN-E becomes mandatory until January 1, 2017.
- J. Issue transitional relief regarding the new limitation on benefits boxes on Form W-8BEN-E.
- K. Numerous changes to the February 2016 draft Form W-8BEN-E and its instructions.
- L. Issue clarifying guidance regarding when a U.S. TIN is required on a Form W-8BEN-E submitted by a foreign 501(c) organization.
- M. Create a flowchart depicting the placement of GIINs on Forms W-8.
- N. Modify the Instructions for Form W-8ECI to clarify that a business address in the U.S. need not be included on a Form W-8ECI if form provider does not have a business address in the U.S.
- O. Issue clarifying guidance allowing withholding agents to accept a Form W-8 with an electronic signature that was not executed on the withholding agent's electronic systems.
- P. Resurrect substitute Form 1042-S payee statements under certain conditions.
- Q. Modify the Instructions for Form 1042-S to clarify that truncated TINs are permitted for all substitute Form 1042-S payee statements.
- R. Modify the Instructions for Form 8966 to provide more detail regarding a withholding agent's Form 8966 reporting obligations with respect to passive NFFEs with substantial U.S. owners, where the passive NFFE is an indirect payee of the withholding agent.
- S. Provide guidance on the Form 8966 and/or Form 1099 reporting requirements for a foreign branch of a U.S. financial institution in a Model 2 IGA country regarding account holders which are specified U.S. persons for Form 8966 reporting purposes and U.S. exempt recipients for Form 1099 reporting purposes.

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- T. Issue guidance highlighting under what circumstances a Form 8655, "Reporting Agent Authorization," must be filed.
- U. Add a new sentence to the end of the instructions for line 64 of Form 1040 to clarify that such line should include federal income tax withheld and reported on a Form 1042-S.

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