IRPAC PUBLIC REPORT

Table of Contents

INFORMATION REPORTING PROGRAM
ADVISORY COMMITTEE

General Report

KEITH KING, CHAIR
DANA FLYNN, VICE- CHAIR
LISA ALLEN
LAURA BURKE
RANDALL CATHELL
TERRY EDWARDS
ALAN ELLENBY
DARRELL D. GRANAHAN
JOEL LEVENSON
ROBERT LIMERICK
RYAN LOVIN
MARCIA MILLER
JAMES PAILLE
THOMAS PREVOST
EMILY ROOK
CLARK SELLS
KEVIN SULLIVAN
NINA TROSS
KELLI WOOTEN

IRPAC Public Report Letter from the Chair

Dear Commissioner Koskinen:

Today my Information Reporting Program Advisory Committee (IRPAC) colleagues and I are very excited to present you and your leadership team our 2017 annual report.

At its core, IRPAC was established as a forum that brings diverse information reporting professionals and other industry stakeholders together with the Internal Revenue Service. This partnership and its ongoing dialogue plays a significant role in helping to simplify and clarify rules and regulations, which improves and creates policies that promote effective tax administration, leads to wider acceptance by the industry and may reduce the implementation cost and other burdens caused when rules are too complex.

Before I get to the details of the report, I would like to acknowledge and recognize some of the folks whose leadership and contributions to the report were invaluable. First, I would like to thank my IRPAC colleagues, for the long hours, hard work and their unwavering commitment to enhancing the information reporting and withholding process. I want to especially thank the subcommittee chairs, Emily, Kelli and Darrell and of course, Vice Chair Dana. Next, I wish to thank you Commissioner. Three years ago, when you spoke at our orientation, you said that you were going to be engaged, and I honestly thought then that all Commissioners must say that. But, I am here to tell you that by your actions, I know that you have kept your word. You can probably personally provide an update for several of the issues listed in this report. So, Commissioner, thank you for not only acknowledging IRPAC's contributions, but for always asking how you can help. Finally, I would like to publicly express how impressive the level of service provided by our new National Public Liaison (NPL) team has been. The transition was seamless and their institutional knowledge and IRS contacts were priceless.

This year, the three IRPAC subcommittees:

- Emerging Compliance Issues,
- Employer Information Reporting and Burden Reduction, and
- International Reporting and Withholding,

addressed many issues within their sub-teams and as you will see documented later in the report, many of our recommendations were accepted by the Service and are already benefiting the industry. There are also others, which unfortunately, are still awaiting final signoffs and therefore, we are unable to publicly identify them at this time. In addition, there were some other, currently very news worthy, however we believed they were not developed or flushed out for this committee to fully address, such as Executive Order 13789, which required the Treasury Department to identify in an interim report to the President, significant tax regulations issued after January 1, 2016 that met the following criteria:

- Imposed an undue financial burden on U.S. taxpayers;

- Added undue complexity to Federal Laws; or
- Exceeded statutory authority of the IRS.

Now I will like to briefly address three issues that we thought were important enough to be considered all IRPAC issues.

The first issue I would like to cover is 972CG Penalties. As you know, payers are basically deputized as tax collectors. In this role, there are certain data and documents that payers must capture from the payees. If they don't obtain the documents, there are procedures they are required to undertake. However, there are many occasions where the payers have fully complied with all instructions, but may still be assessed a penalty for the payees' failure. In those situations, payers are generally able to rely on the reasonable cause guidance in Section 6724, or so we thought. It appears that with the increase in the penalty cap to well over $3.1 million, revenue officers may be reluctant to abate or waive these penalties even given reasonable cause. It is not uncommon for payers actively working these penalties to wait more than a year for resolution. This causes undue financial burdens on these entities and in some cases, leads to levies and garnishments. We believe this issue can be easily resolved, if the IRS takes a reasonable person approach and follows their own well-established rules.

The second issue is very important, because it can directly lead to fraud and customer privacy issues. It generally starts innocently enough, let say a customer of a financial institution, mistakenly using the institution's taxpayer identification number (TIN) on the individual's tax return or deposit. The IRS then updates the financial institution's address of record to the customer's address as listed on the return or deposit. This results in future IRS mailings, including B Notices, penalties and/or levy notices being sent to the customer's home address.

The customer did not have to hack into IRS systems or commit fraud to obtain other taxpayers' personally identifiable information; rather the IRS freely mailed it to them. We believe that the solution is simple; the IRS should not change an established business address until a Form 8822-B (Change of Address or Responsible Party – Business) is received from that financial institution.

The third and final all IRPAC issue, is related to probably the most widely used form in our industry. Yes, I am referring to Form W-9. The industry receives more Forms W-9 than all of the series of Forms W-8 combined and by all accounts, Forms W-8 carry greater risk. Yet the IRS is comfortable with allowing the withholding agents to accept Forms W-8 with electronic signatures provided certain controls are in place, yet the same is not allowed for Forms W-9. The IRS also allows for Forms W-8 to be relied upon when acquired via a third-party repository, while the same is not generally allowed with Forms W-9. IRPAC believes that these enhancements would significantly improve the efficiency and effectiveness of tax administration and recommends that these policies be extended to the Forms W-9.

Finally, I wish to again thank the NPL Team for their extraordinary support. Director of NPL Mel Hardy, Program Manager Tonjua Menefee and Designated Federal Official Brianne Wilner, I am truly indebted to you. Kim Lawson, De Chandra Whitley and Terri Sincox at crunch time, you were life savers. Special thanks to our subgroup liaisons, Carolyn Sanders-Walsh, Martha Tobias and Michael Bess. I also want to recognize and express appreciation to our IRS partners in all division and levels of the IRS, who worked so hard on following up with the various subcommittees and doing all they could to help implement our recommendations.

On behalf of the 2017 IRPAC committee, Commissioner I wish to thank you for your calm collaborative leadership style and your unwavering support to the IRPAC committee. I truly enjoyed the opportunity to serve this committee.

Respectfully,

/signed/

Keith King

2017 IRPAC Chairman

2017 Executive Summary of Issues

General IRPAC Recommendations

A. Improve the Penalties, Abatement Request and Levies Process

Over the past several years, the cap on 972CG penalties has increased from $250,000 to $3,196,000. Also within this same timeframe the IRS has lost a significant number of experienced agents who were previously responsible for reviewing reasonable cause abatement requests. This has resulted in an increased number of rejected claims as well as expedited levies and garnishment activities that have placed an increased financial burden on the industry. To reduce this burden on both payers and the IRS, IRPAC recommends that the IRS utilize the reasonable cause guidance provided in Section 6724 and Publication 1586 Reasonable Cause Regulations and Requirements for Missing and Incorrect Name/TINs (including instructions for reading CD/DVDs). While there are a number of factors which complicate the penalty process, IRPAC believes this is a perfect opportunity for the industry and IRS to engage and proactively address these issues, before small errors become major financial disasters for payers.

B. Business Master File Entity Addresses

IRPAC continues to be informed of scenarios where financial institution addresses are being unilaterally changed by the IRS absent any type of request from the financial institution. Specific scenarios of which IRPAC is aware include address changes being made to a bowling alley as well as to individual customer's home addresses. The IRS then uses this incorrect address for communications such as B-Notices, 972CG Penalty Notices, Garnishment, and Levy Notices personally identifiable information of underlying clients is being disclosed by the IRS to third parties and potentially increases the risk of identity theft and other forms of fraud.

IRPAC recommends that the IRS immediately implement procedures that require the receipt of a completed IRS Form 8822-B (Change of Address or Responsible Party – Business), prior to any action being taken to update a filer's address. The IRS should no longer rely on the address used on previously filed returns to update the filer's address, especially when that filer has no previous history of filing these types of forms.

C. Form W-9 Enhancements

IRPAC is pleased that the IRS has provided guidance allowing withholding agents to increasingly leverage technology as part of their account onboarding

processes. Specifically, IRPAC is appreciative that withholding agents can accept Forms W-8 with an electronic signature. IRPAC is also appreciative that the IRS now allows the use of Forms W-8 collected and maintained by a third-party repository. IRPAC believe these policies go a long way towards creating efficiencies and permits effective tax administration. With this in mind, IRPAC would like to strongly recommend that the IRS also extend these policies to Form W-9, which is the most commonly used Form and the one that carries the least risk. It is also important to note, that for certain types of income, such as vendor payments, the Form W-9 is not even required to be signed. Additionally, a number of payers utilize the IRS Tin Matching System, which adds another level of security and helps ensure that the industry is obtaining valid names and taxpayer identification numbers for information reporting purposes.

Employer Information Reporting and Burden Reduction

The EIRBR subgroup continued to work on existing issues this year such as the Affordable Care Act in regard to "good faith efforts" penalty relief and recommending an extension of the 30-day delay for furnishing 2017 Forms 1095-B and 1095-C. We made recommendations regarding several forms intended to assist the efficiency and administration of those forms as well as recommended that a Tax Professional Online Account system be established. We made recommendations on updating the Combined Federal State Filing Program, and requested modification of the Form W-2 instructions to allow for truncation of Social Security numbers based upon the PATH Act. We requested addition guidance on timing requirements for deposits related to vesting of Restricted Stock Units. We also made recommendations on shrinking the tax gap related to underreported cash income. We also continued to work on previous year recommendations regarding payments to nonresident alien plan participants, where IRPAC believes there are gaps in the withholding and information reporting guidance and the IRS is not receiving accurate and complete information as well as 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 §§ 6055 and 6056. In addition, IRPAC would like to recommend that "good faith efforts" penalty relief and a 30-day delay for furnishing forms under those sections be extended to 2017 Forms 1095-B and Forms 1095-C filed in 2018.

B. Electronic submission and verification of specific forms

IRPAC recommends that the IRS takes steps to digitize the receipt, confirmation of acceptance and other processes involved with Form 2553, Form 2848, and Form

8655 to assist the efficiency and administration on behalf of both the IRS and tax professionals.

C. Enhance Availability of the Combined Federal State Filing (CF/SF) Program

IRPAC recommends the IRS make updates into the Combine Federal State Filing Program by making federal returns available to the states on a more real-time basis.

D. Truncation of SSNs on Form W2

IRPAC recommends the prompt finalization of proposed regulations allowing for truncation of the social security number on Form W-2 in the wake of Section 409 of the PATH Act requirements.

E. Restricted Stock Units

IRPAC recommends that specific guidance be provided on the timing requirements for deposits of employment and income taxes related to income on vesting of Restricted Stock Units.

F. Underreported Cash Income

IRPAC recommends that the IRS attempt to reduce the underreporting of cash income by reinvigorating and promoting education awareness.

G. Online Tax Professional Account

IRPAC recommends that a Tax Professional Online Account be established. An online account for tax professionals will enable Tax Professionals to manage authorizations online and provide tax professionals access to some of their client's information.

International Reporting and Withholding

The following are the principal issues that have been discussed between the International Reporting and Withholding (IRW) Subgroup of IRPAC and the IRS. For convenience, the recommendations have been grouped according to topic.

A. Qualified Intermediary Agreement (Rev. Proc. 2017-15)

Recommendation A.1 - Validity Period of Documentary Evidence

IRPAC recommends that the IRS provide further details regarding its consideration of applying a three-year validity period to documentary evidence obtained by a Qualified Intermediary (QI) in support of an account holder's claim for treaty benefits to allow industry time for further comment regarding appropriate recommendations.

Recommendation A.2 - Validity Period of Treaty Statement

IRPAC recommends that the IRS provide further details regarding its consideration of applying a three-year validity period to treaty statements provided by entities so that there is greater understanding as to the reasoning of the IRS for imposing such a timeframe and the opportunity to comment further regarding appropriate recommendations.

Recommendation A.3 – Interbranch Transactions

IRPAC requests clarification of the treatment of interbranch transactions for a QI acting as a Qualified Derivatives Dealer (QDD) and recommends the aggregation of separate branch liabilities for purposes of calculating the QDD tax liability.

Recommendation A.4 - Event of Default

IRPAC recommends that the IRS revise the language of Section 11.06(C) of the QI Agreement which speaks to when the "QI makes excessive refund claims," in order to allow for necessary refund claims due to the implementation of IRC §871(m).

Recommendation A.5 – QI Reliance on Electronically Provided Documentary Evidence

IRPAC recommends that the IRS review the various QI Attachments to consider whether the requirement that documentary evidence provided remotely by an account holder be a certified copy is still necessary; and to modify the QI Attachments to incorporate the electronic delivery provisions included in the

B. IRC §871(m)

Recommendation B.1 - Elimination or Delay for Non-Delta 1 Transactions

IRPAC recommends that the IRS revise IRC §871(m) regulatory requirements to limit withholding to delta 1 transactions and those transactions captured by the anti-abuse rule in the regulations. Absent elimination of withholding on non-delta 1 transactions, IRPAC recommends that the IRS provide other relief in the regulations to make the implementation less costly to implement and maintain on an ongoing basis.

Recommendation B.2 - MLP Withholding

In light of the complexities in determining dividend equivalent amounts (DEAs) with respect to derivatives referencing master limited partnerships (MLPs), IRPAC recommends that the IRS amend the appropriate regulations to extend the time allowed to perform withholding and reimbursement / setoff procedures with respect to these transactions to September 15th of the year following the year the DEA is determined (i.e., September 15, 2018 for 2017 DEAs) for all withholding agents, including QDDs. In addition, IRPAC recommends that the IRS ensure that interest or penalties will not be charged on any withholding payments made by September 15th.

C. Foreign Taxpayer Identification Number Requirements

Recommendation C.1 – Foreign Taxpayer Identification Number Relief

IRPAC thanks the IRS for the publication of transitional relief on foreign taxpayer identification number (FTIN) requirements. Over the course of the year, IRPAC had numerous discussions with the IRS regarding FTIN requirements where IRPAC recommended that the IRS provide the following relief and guidance with respect to the FTIN requirements included in Temp. Reg. §1.1441-1T(e)(2)(ii)(B):

1. Only Forms W-8 received on or after January 1, 2018 are required to have an FTIN, or reasonable explanation for the absence of an FTIN;
2. FTINs can be received separately from the Form W-8 either orally or in writing and FTINs currently in account files can be relied upon;
3. A checklist can be utilized to obtain a reasonable explanation for the absence of an FTIN and this checklist can either be attached to the Form W-8 or separately provided including by email or facsimile;
4. A withholding agent can accept an FTIN or a reasonable explanation for the absence of an FTIN absent actual knowledge exists that the FTIN or explanation is not valid; and
5. Eliminate the requirement to obtain a reasonable explanation for not having provided an FTIN where the payee's country of residence is known to not issue FTINs.

D. IRC §305(c)

Recommendation D.1 – IRC §305(c) Retroactive Application

IRPAC recommends that the IRS publicly announce that it will not impose withholding tax liability, penalties, or interest on withholding agents for IRC §305(c) events occurring in tax years prior to 2016.

Recommendation D.2 - Reporting IRC §305(c) Deemed Dividends:

IRPAC recommends that the regulations under IRC §6042 be amended to include coordination rules under which the timing and amount of an IRC §305(c) deemed dividend reported on Form 1099-DIV (Dividends and Distributions) would be governed by the issuer's reporting of the timing and amount of the IRC §305(c) deemed dividend on Form 8937 (Report of Organizational Actions Affecting Basis of Securities), as required by IRC §6045B.

IRPAC further recommends that the IRS defer Form 1099-DIV reporting for IRC §305(c) deemed dividends until such time as regulations are issued and adequate time is provided to implement the new reporting requirements.

E. Form W-9

Recommendation E.1 – Third-Party Repositories

IRPAC recommends that the IRS expand the use of the third-party repository concept as included in Treas. Reg. §1.1441-1(e)(4)(iv)(E) to include Forms W-9 (Request for Taxpayer Identification Number (TIN) and Certification). IRPAC recognizes that given the introductory language of Treas. Reg. §1.1441-1(e)(4) modification of IRC §3406 regulations would be required to incorporate the third-party repository concept.[1]

Recommendation E.2 – Electronic Signatures

IRPAC recommends that the IRS extend the electronic signature provisions included in Treas. Reg. §1.1441-1T(e)(4)(i)(B) to include Forms W-9. IRPAC recognizes that given the introductory language of Treas. Reg. §1.1441-1(e)(4), this change would require modification to IRC §3406 regulations.[2]

Recommendation E.3 – FATCA Jurat

IRPAC recommends that the IRS provide a limited exception to the substitute Form W-9 guidance included in the Instructions for the Requester of Form W-9 to allow onshore withholding agents providing payees with a substitute Form W-9 to remove the fourth jurat which states "The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct."

F. Withholding Statements:

Recommendation F.1 – Chapter 4 Status Code Requirement

[1] Treas. Reg. §1.1441-1(e)(4) provides that "These provisions do not apply to Forms W-9 (or their substitutes). For corresponding provisions regarding Form W-9 (or a substitute form), see section 3406 and the regulations under that section."

[2] See id.

IRPAC recommends that the IRS eliminate the requirement that an FFI withholding statement, a chapter 4 withholding statement, and an exempt beneficial owner withholding statement that includes payee specific information for purposes of chapter 4, include the chapter 4 status code used for Form 1042-S (Foreign Person's U.S. Source Income Subject to Withholding) reporting; or alternatively, publish a mapping of the chapter 4 statuses on the several Forms W-8 to the chapter 4 status codes used for Form 1042-S reporting.

Recommendation F.2 – Incorporating Nonqualified Intermediary Certifications into Form W-8IMY

IRPAC recommends that the IRS incorporate the alternative withholding statement certification language into the nonqualified intermediary (NQI) certifications as part of the next update to the Form W-8IMY (Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding and Reporting).

Recommendation F.3 – Alternative Withholding Statement and Minor Inconsistencies

IRPAC recommends additional language to the Requestor of Forms W-8 Instructions to clarify the use of an alternative withholding statement with minor inconsistencies that do not substantially affect the rate of withholding.

G. Additional Topics

Recommendation G.1 – Treaty Rates for Pension Distributions

IRPAC recommends that the IRS provide guidance on specific countries with which the U.S. has an income tax treaty where pension payments are subject to a specialized treatment depending upon the type of payment. IRPAC further recommends that Publication 515 (Withholding of Tax on Nonresident Aliens and Foreign Entities) be updated to reflect this specialized treatment for the specific payment types; or at a minimum be updated to include a footnote highlighting that the rate of withholding may vary depending upon whether the pension payment is a periodic payment or a lump sum distribution.

Recommendation G.2 – Sponsored Investment Entities in Model I IGA Jurisdictions

IRPAC recommends that the IRS revise the proposed FATCA regulations on sponsored entities to allow Foreign Financial Institutions (FFIs) claiming a FATCA status of Sponsored Investment Entity per the FATCA regulations to report to their local tax authority as would normally be the case for FFIs located in a FATCA Model 1 Intergovernmental Agreement (IGA) jurisdiction.

Recommendation G.3 – Professional Management Standard

IRPAC recommends that the IRS modify the FATCA regulations to allow certain professionally managed investment entities to be treated as a Passive Nonfinancial Foreign Entity (PNFFE), rather than a Foreign Financial Institution (FFI). IRPAC recommends that these entities be treated consistently as PNFFE's and that the FI's holding accounts for the PNFFE's perform the required reporting to the IRS with respect to the substantial U.S. owners or controlling U.S. persons of the PNFFE.

Recommendation G.4 – Extension of Time to File Form 1042 Where Reimbursement Procedure is applied across Calendar Years

IRPAC recommends that the IRS modify Treas. Reg. §1.1461-2(a)(2)(i)(B) to remove the limitation on obtaining an extension of time to file Form 1042 (Annual Withholding Tax Return for U.S. Source Income of Foreign Persons) where the withholding agent applies the reimbursement procedure to make itself whole following a refund of over withheld tax to a payee in the year following the year in which the tax was withheld.

IRPAC further recommends that IRS clarify the Form 1042-S instructions (whether the regulations are modified for our first point or not) in regard to the time for filing Form 1042 when using the reimbursement or set-off procedure across calendar years, and in regard to the need for an attachment to Form 1042 in order to claim a credit for over-withheld tax.

Recommendation G.5 – Liability Calculations for Form 1042 Audits

IRPAC understands that the IRS is currently in the process of reviewing its policies with respect to the disallowance of remediation efforts and application of cure documentation to extrapolated liability calculations as part of statistical samples in both QI audits as well as U.S. withholding agent audits. IRPAC recommends that the IRS allow for consultation with industry prior to finalizing any directives regarding the disallowance of cure documentation in an extrapolated audit liability calculation resulting from a statistical sample.

Recommendation G.6 – Form 1042-S Income Codes – Interest Related Dividends and Short-term Capital Gain Dividends

IRPAC recommends that the IRS provide guidance as to the proper income codes to be used in reporting interest related dividends described in IRC §871(k)(1) and short-term capital gain dividends described in IRC §871(k)(2) on Form 1042-S.

Recommendation G.7 – Form 1042-S Income Codes – IRC §305(c) Deemed Distributions

IRPAC recommends that the IRS provide guidance as to the proper income code to be used in reporting deemed distributions described in IRC §305(c) on Form 1042-S.

Recommendation G.8 – Loan Syndication Fees

IRPAC requests the IRS issue written guidance on the source and character of cross border fee payments such as securities loans, repo, and loan syndication transactions.

Recommendation G.9 – Extension of Qualified Securities Lender Regime

IRPAC recommends maintaining a modified version of the current QSL regime for entities engaging in traditional agency lending.

Recommendation G.10 – Reinstatement of Substitute Form 1042-S Payee Statements

IRPAC recommends that the use of substitute Form 1042-S payee statements be reinstated but with additional minimum requirements added to assist IRS Service Center personnel in processing. Alternatively, IRPAC recommends that these substitute statements be reinstated with any prohibition to the use of such statements being confined only to those statements on which withholding is shown. Finally, assuming the IRS would reinstate the use of these statements, IRPAC recommends that the IRS take steps to develop the capability to use the newly required Form 1042-S unique identifying number ("UIN") to match substitute payee statements to information returns electronically submitted.

Recommendation G.11 – FATCA Gross Proceeds Withholding

IRPAC requests a delay in the implementation of the Treas. Reg. §1.1473-1(a)(1)(ii) requirement to deduct and withhold tax on gross proceeds for two years following the issuance of guidance on FATCA gross proceeds withholding.

Recommendation G.12 – FATCA Foreign Passthru Payment Withholding

IRPAC requests a delay in the Treas. Reg. §1.1471-4(b)(4) requirement to deduct and withhold tax on foreign passthru payments for a minimum of two years following the issuance of guidance defining the term foreign passthru payment.

Emerging Compliance Issues

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

IRPAC would like to thank the IRS for updating IRS Publication 1220 to provide clarity on the TIN solicitation checkbox. The updated description provides needed clarity on the frequency and legislative intent of the checkbox.

IRPAC makes the following recommendations concerning Internal Revenue Code §6050S, the related Treasury Regulations and their effect on IRS Form 1098-T reporting:

1. As noted in the 2016 IRPAC Public Report, the Committee continues to recommend the following amendments to the Proposed Regulations included in the Notice of Proposed Rulemaking (REG-131418-14):

    a. Retain the exemption to reporting Form 1098-T, Tuition Statement, for students whom are non-resident aliens by reinstating Treasury Regulation § 1.6050S-1(a)(2)(i).

    b. Remove the requirement to report the number of months a student was a fulltime student by deleting Proposed Treasury Regulation §1.6050S-1(b)(2)(ii)(I).

    c. Allow institutions to report on Form 1098-T how payments are actually applied to students' accounts by revising Proposed Regulation § 1.6050S-1(b)(2)(J)(v) to read, "Payments received for qualified tuition and related expenses determined. For purposes of determining the amount of payments received for qualified tuition and related expenses during a calendar year, institutions may choose to report payments applied to charges in a manner that reflects the payment application in the institution's student account system. Alternatively, institutions may utilize a safe harbor method and report payments received with respect to an individual during the calendar year from any source (except for any scholarship or grant that, by its terms, must be applied to expenses other than qualified tuition and related expenses, such as room and board) are treated first as payments of qualified tuition and related expenses up to the total amount billed by the institution for qualified tuition and related expenses for enrollment during the calendar year, and then as payments

of expenses other than qualified tuition and related expenses for enrollment during the calendar year. Payments received with respect to an amount billed for enrollment during an academic period beginning in the first 3 months of the following calendar year are treated as payment of qualified tuition and related expenses in the calendar year during which the payment is received by the institution. For purposes of this section, a payment includes any positive account balance (such as any reimbursement or refund credited to an individual's account) that an institution applies toward current charges."

2. Provide guidance to clarify that institutions which change their reporting method to "Payments received" do not have to complete box 4 "Adjustments Made for a Prior Year" until the institution reimburses or refunds an amount that was previously reported as an amount paid. Amounts that were previously reported as "Amounts Billed" will have no impact on reporting in box 4 if an institution is reporting on the "Payments received" basis.

B. IRC §6050W and Form 1099-K Reporting

IRPAC continues to recommend that further guidance is needed related to IRC § 6050W "Returns Relating to Payments Made in Settlement of Payment Card and Third Party Network Transactions." While past IRPAC reports highlight several areas of needed guidance, most importantly, IRPAC recommends that the key terms integral to the meaning of "third party payment network" be defined because entities making payments with respect to third party payment network transactions (called third party settlement organizations or TPSOs) are not subject to reporting under IRC § 6050W unless the payments made to any given recipient exceed a very broad de minimis threshold. Because of the broad definition of TPSO, this enables different interpretations of the de minimis rule and can impact the usefulness of the reporting data because of the potential underreporting.

IRPAC has also noted that many transactions are reported as result of an initialization submission to test out the point of sale device and then the merchant does not continue business with that payment processor. The industry suggests that tens of thousands of forms are reported that have a gross reportable sales (GRS) in the amount of $0.01 and hundreds of thousands of forms with GRS less than $1.00. This creates confusion for the taxpayer and a cost burden to the payer. IRPAC urges the IRS to prioritize this project.

C. Form 1042 and 1042-S Matching and Penalty Assessments

Recommendations

IRPAC recommends revising the penalty assessment and collection procedures where the IRS is still in the process of verifying the deposit of withholding taxes reported on Form 1042-S. To implement this recommendation, IRPAC advocates that the IRS adopt four specific changes.

First, the IRS should refrain from assessing penalties where the withholding deposit matching process has not yet been completed. The collection proceedings associated with such penalties should likewise be postponed.

Second, the IRS should send a letter informing the taxpayer when additional time is needed to match deposits with credit and refund claims. Such letters should provide an estimate of the additional time required to resolve the matter.

Third, IRPAC recommends the IRS provide a provisional credit in the amount of the claimed withholding, until the matching process has been completed. Where delays are protracted, taxpayers should receive interest on their delayed refunds.

Fourth, IRPAC recommends that IRS Service Centers adopt policies and procedures that implement the instructions provided by Program Managers with respect to the non-assessment of penalties in voluntary disclosure cases.

These recommended changes are expected to result in a more efficient use of IRS resources, in addition to increased taxpayer satisfaction regarding efficient resolution of tax liabilities.

General IRPAC Recommendations

A. Improve the Penalties, Abatement Request and Levies Process

Over the past several years, the cap on 972CG penalties has increased from $250,000 to $3,196,000. Also within this same timeframe the IRS has lost a significant number of experienced agents who were previously responsible for reviewing reasonable cause abatement requests. This has resulted in an increased number of rejected claims as well as expedited levies and garnishment activities that have placed an increased financial burden on the industry. To reduce this burden on both payers and the IRS, IRPAC recommends that the IRS utilize the reasonable cause guidance provided in Section 6724 and Publication 1586 Reasonable Cause Regulations and Requirements for Missing and Incorrect Name/TINs (including instructions for reading CD/DVDs). While there are a number of factors which complicate the penalty process,

IRPAC believes this is a perfect opportunity for the industry and IRS to engage to and proactively address these issues, before small errors become major financial disasters for payers.

B. Business Master File Entity Addresses

IRPAC continues to be informed of scenarios where financial institution addresses are being unilaterally changed by the IRS absent any type of request from the financial institution. Specific scenarios of which IRPAC is aware include address changes being made to a bowling alley as well as to individual customer's home addresses. When the IRS then uses this incorrect address for communications such as B-Notices, 972CG Penalty Notices, Garnishment, and Levy Notices personally identifiable information of underlying clients is being disclosed by the IRS to third parties and potentially increases the risk of identity theft and other forms of fraud.

IRPAC recommends that the IRS immediately implement procedures that require the receipt of a completed IRS Form 8822-B (Change of Address or Responsible Party – Business), prior to any action being taken to update a filer's address. The IRS should no longer rely on the address used on previously filed returns to update the filer's address, especially when that filer has no previous history of filing these types of forms.

C. Form W-9 Enhancements

IRPAC is pleased that the IRS has provided guidance allowing withholding agents to increasingly leverage technology as part of their account onboarding processes. Specifically, IRPAC is appreciative that withholding agents can accept Forms W-8 with an electronic signature. IRPAC is also appreciative that the IRS now allows the use of Forms W-8 collected and maintained by a third-party repository. IRPAC believe these policies go a long way towards creating efficiencies and permits effective tax administration. IRPAC would like to strongly recommend that the IRS also extend these policies to Form W-9, which is the most commonly used Form and the one that carries the least risk. It is also important to note, that for certain types of income, such as vendor payments, the Form W-9 is not even required to be signed. Additionally, a number of payers utilize the IRS Tin Matching System, which adds another level of security and helps ensure that the industry is obtaining valid names and taxpayer identification numbers for information reporting purposes.

Information Reporting Program Advisory Committee

Employer Information Reporting and Burden Reduction Subgroup Report

EMILY ROOK, SUBGROUP CHAIR

JAMES PAILLE

MARCIA MILLER

LAURA BURKE

LISA ALLEN

CLARK SELLS

ALAN ELLENBY

Employer Information Reporting and Burden Reduction Subgroup Report

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 §§ 6055 and 6056 during 2017 which include:

- Continued education about AIR system requirements. We note that the 2017 filing season was much smoother than the initial year.
- Updating recipient notes and Tax Tips on Forms 1095-B and 1095-C which helped reduce recipient requests relating to forms not needing corrections.
- The extension of "good faith efforts" penalty relief for reporting of incorrect or incomplete information reported on returns to 2016 Forms 1095-B and Forms 1095-C filed in 2017. While not specifically requested by IRPAC we also welcomed the extension of the deadline for furnishing the Forms to recipients for 30 days from January 31, 2017.

In addition, IRPAC would like to remind IRS that there are two open recommendations from our 2016 recommendations that we would like addressed:

(1) Guidance on reporting in situations in which an Applicable Large Employer group member undergoes a corporate transaction in a calendar year and
(2) Guidance on which corrections to Form 1095-C might be considered inconsequential to the recipient as there are clearly elements on that form that only apply to the potential liability for employer shared responsibility payments and have no bearing on the recipient's tax return.

Recommendations

IRPAC recommends that "good faith efforts" penalty relief for reporting of incorrect or incomplete information reported on returns as well as a 30-day delay for furnishing forms from January 31, 2018 be extended to 2017 Forms 1095-B and Forms 1095-C filed in 2018.

Discussion

IRS announced in issued Notice 2016-70 that it was providing an automatic extension of the due dates to comply with the Affordable Care Act (ACA) reporting requirements. The due date to furnish individuals the 2016 Form 1095-B, Health Coverage, and the 2016 Form 1095-C, Employer-Provided Health Insurance Offer and Coverage, was extended for 30 days from January 31, 2017 to March 2, 2017. In addition, this notice provided that penalties would not be imposed on health insurers and employers that make a good faith effort to comply with the reporting requirements, provided statements were furnished to individuals and filings were made with the IRS on a timely basis. Penalties for future years are to be evaluated under a more rigorous "reasonable cause" standard which is explained in Treas. Reg. §301.6724-1.

There are several reasons for recommending that a similar extension and penalty relief be extended for the current year's filings. First, these ACA forms are fundamentally different than many information returns that report income to recipients and are required for completion of individual tax returns. These other income-reporting returns are providing information that taxpayers need to complete their Forms 1040. However, the ACA information returns report "status". As the IRS, has observed many times in many forums, including FAQs on its website, most individuals will have knowledge and alternate documentation which will permit them to complete their tax returns without receipt of these ACA forms. The fact is that only a very small percentage of the employed population will need the information on a Form 1095-C to claim or certify eligibility for premium tax credits for coverage secured through the Marketplace. The individual should have knowledge of which months, if any; he or his dependents were enrolled in coverage to address the individual shared responsibility requirements of his Form 1040.

Moreover, due to the nature of the information, it is often burdensome to get the necessary data for the final months of the calendar year in time to populate a form due January 31. In fact, given the requirements around providing health care coverage, there can be information and elections in February that impact reporting for the prior December. Unlike the information reporting systems that have been built up over the years to support the timely filing of the income-reporting information returns, the information necessary to accurately complete the ACA forms are still not that advanced and are subject to the retroactivity already discussed that, for the most part, does not impact the income reporting to individuals who are cash-basis taxpayers. The requested furnishing delay will mean that the forms provided will be more accurate and reduce the number of corrections that issuers would otherwise need to provide.

In the absence of another universal extension to the furnishing deadline, the IRS should expect to be inundated with requests for extensions. This request will be in writing and require manual review by IRS. While the IRS may not feel that in the third year of reporting it would be inclined to grant very many of such requests, we would expect many filers, especially large employers to request these extensions. Filing for these extensions by large corporate conglomerates will be especially burdensome to both filers and IRS as although the information is usually housed at the group level, each legal entity in the large group will need to file its own request. This will create burden for both the filers and IRS.

As to the request for penalty relief, IRPAC notes that, based on our anecdotal experience, the preponderance of errors being identified on these ACA forms continue to be in the area of name/TIN mismatches. Some employers have experienced these errors for employees whose name/SSN combination are not being flagged for the same combination when submitted on Forms W-2 for the same calendar year.

Proposed regulations were published on August 2, 2016 which explain a newly designed process by which solicitations must be done to allow filers to demonstrate

reasonable cause for missing or incorrect TINs. Due to the change in administration and new constraints on issuing regulations, it appears highly unlikely that these regulations will be finalized by the end of 2017.

Especially in light of number of these name/TIN errors, filers are understandably nervous about the potential imposition of penalties. It is especially difficult to address these errors without TIN matching capability. For these reasons, we recommend that the good faith standard be extended until ACA-reporting specific TIN solicitation rules are finalized. At the very least, we would recommend that such relief be extended to these specific TIN/name matching errors if broader relief is not forthcoming.

B. Electronic Submission and Verification of Specific Forms

Recommendations

IRPAC recommends that the IRS takes steps to digitize the receipt, confirmation of acceptance and other processes involved with several filings to assist the efficiency in administration on behalf of both the IRS and tax professionals.

1. IRPAC recommends a central look up location for confirmation of acceptance of Form 2553 Election by Small Business.

2. IRPAC recommends the IRS allow Form 2848 (Power of Attorney and Declaration of Representative) to be electronically filed and IRS receipt confirmed.

3. Form 8655 (Reporting Agent Authorization); IRPAC recommends that the Internal Revenue Service (IRS) modernizes its system to allow a portal-like environment where a Payroll Service Provider (PSP) can:
   - Electronically file the Form 8655;
   - Revoke a previously filed Form 8655;
   - If and when necessary, be able to verify in real time the acceptance of the Form 8655 by the IRS by viewing a complete list of FEIN's assigned to the PSP.
   - We would further recommend that this system be designed to return the proper name control and tax deposit frequency for each FEIN so the PSP can properly have tax payments posted.

Discussion

1. Confirmation of Accepted or Rejected Form 2553 Election by a Small Business Corporation:

Form 2553 Election by Small Business is either mailed or faxed into the IRS on behalf of a small business electing to be recognized as an S Corporation. Currently, taxpayers and practitioners have no efficient means to confirm receipt of this form by the IRS. Currently acceptance letters are often mailed by the IRS to the corporation making the request; however, the letters are not always received by the corporation or tax professional making the request. It is burdensome for the corporation to wait for the confirmation letter in the mail, and if it is not received, the corporation or tax professional must call again to follow up. If there was a main data base maintained as to the status; accepted or declined by Corporate name and EIN number, either the business or their tax professional could look up to confirm the timely acceptance of said election.

The ability to look up the denied elections would allow for less stress and proper tax reporting during the corporation's initial tax year, thus reducing extra work and discussions required to be held with an IRS agent.

2: Electronic Form 2848 Power of Attorney for Individuals and Business:

The current process for filing Form 2848 is for it to be mailed or faxed to the IRS. Currently, the IRS accepts both faxed signatures and paper Forms 2848 with signatures. Our recommendation will reduce the burden of paper forms mailed or faxed to the IRS and allow a more safe and secure electronic system to supplement the current outdated system.

An electronic filing system could also permit a tax professional to check on the status of the form as well as allow the taxpayer to revoke the power of attorney or permit the tax professional to file its withdrawal more efficiently. It would also eliminate manual processes by IRS employees, increasing efficiencies for the agency.

Return receipts or fax confirmations do not guarantee that these Forms 2848 are properly and timely entered into the system by the IRS. Often when a qualified tax professional calls in on the Tax Professional Hot Line, a repeat of the already faxed Form 2848 must be sent a second time directly to the IRS agent who is handling the call. This causes the IRS agent and the tax professional to waste valuable time repeating a process that may have already been done. If the form was allowed to be entered in electronically IRPAC believes it would reduce time and save money for the IRS while providing an easier time representing the taxpayer by the tax professional.

Since its inception, electronic filing has eliminated the loss of documents needed for practitioners and taxpayers' representatives to accurately and efficiently respond to IRS inquiries and settle cases in an expeditious manner. It is recognized that digitizing filing processes increases security of personally identifiable information. Electronic signatures are already allowed for the processing of numerous requests to the IRS for information. A prime example is the allowance of electronic signatures on Form 4506-T (Request for Transcript of Tax Return). Accordingly, we recommend the design of a system that would be beneficial and add efficiencies for the IRS, taxpayers and tax professionals.

3. Electronic Portal for Form 8655 Reporting Agent Authorization:

Today the submission of Form 8655 (Reporting Agent Authorization) requires a paper submission for the vast majority of payroll service bureaus and anyone filing payroll tax returns (94X series) or remitting payments on behalf of businesses. In order to file a Form 8655, the payroll service provider (PSP) must fax the document (the form can be electronically signed) to 855-214-7523. The IRS then has a manual task of return faxing the processed Form 8655 and hand writing the name control on the Forms 8655 it processes.

If the PSP wants to revoke the Form 8655, the PSP will send a manual list to the IRS to the same fax number. There is no verification of receipt other than the IRS does send monthly lists to the PSP of any revocation of 8655 status – the list appears to only show businesses that change PSP and does not include the revocation list the PSP sends.

This recommended portal system would eliminate the need for 2 IRS manual processes and streamline the entire program. The IRS would eliminate the need for faxing the Form 8655 with the name control and the sending of the revocation letter as these processes would be automated, real time, within the portal.

Currently, the PSP has no way to verify if the IRS has processed all the Forms 8655 submitted and also has no way to check on what Forms 8655 are assigned to the PSP. This can result in delays when the PSP attempts to discuss tax related issues with the service, or attempts to run transcripts. Any illegible Form 8655 submission or missing forms are not reconciled. The result is when the PSP attempts to contact the IRS on behalf of its client or try to run a transcript if the Form 8655 was not processed, the PSP must stop and contact the business to get a new Form 8655 as the one they have will most likely be out of date and need to be redone. The efficiencies for both IRS and PSPs would benefit all concerned.

C. Enhance Availability of the Combined Federal State Filing (CF/SF) Program

Recommendation

IRPAC recommends the IRS make updates into the Combine Federal State Filing Program by making federal returns available to the states on a more real-time basis.

Discussion

Currently, the Combined Federal State Filing Program is an information sharing service the IRS offers to payors of form 1099-B, 1099-DIV, 1099-G, 1099-INT, 1099-K, 1099-MISC, 1099-OID, 1099-PATR, 1099-R, and 5498. The service, defined in Publication 1220 sec. 11, states that the IRS will electronically forward information returns for both originals and corrections to participating states.

In recent years, states have been ending their participation in this program for a variety of reasons. This has created two primary problems for payors:

1. The emergence of decentralized state filing requirements. Because states are leaving the CF/SF program in favor of their own unique filing requirements, payors are forced to maintain a separate process and procedure in order to comply with numerous deadlines and formatting requirements. The reporting practices implemented by states can also be far less secure, leaving data susceptible to stolen identity refund fraud. One such practice includes reporting returns with un-masked TINs on paper directly to states, which increases the risk for fraud in our tax system.

2. The list of participating states in IRS publication 1220 Sec. 11 Table 1 does not get updated to reflect the state change. This creates ambiguity for payors looking to comply with state requirements. Payors who treat the IRS as their source of truth for information returns get inaccurate guidance about their state filing obligations.

States have cited a primary reason for ending their participation in the CF/SF program is that the information forwarded from the IRS is not available quickly enough to effectively process state returns. Working with the IRS, IRPAC has learned the 1099 information returns are scheduled to be shared by the IRS to the states six times a year. However, only four distributions occurred in tax year 2016. Increasing the frequency of updates to a monthly basis would entice states to continue participation in the CF/SF program.

Investment in the CF/SF program by way of increasing data availability to the states would:

- For the IRS: Reduce the risk of stolen identity refund fraud
- For States: Make state information returns more readily available
- For Payors: Reduce the number of unique state information reporting requirements

IRPAC wants to stress that, in a time of accelerating information reporting return deadlines, payors need a simplistic process to accurately comply with both federal and state regulations. More importantly, there is an opportunity to draw states back to a federal reporting standard and eliminate a risk-based approach to information reporting.

D. Truncations of SSNs on form W-2

Recommendation

IRPAC would like to thank IRS for the proposed regulations allowing for the truncation of social security numbers on Form W-2 in the wake of Section 409 of the PATH Act. We recommend that the proposed regulations be finalized with a modification to the instructions for form W-2 to permit all returns submitted electronically

be provided to the employee with a truncated social security number. Returns that will be filed on paper could be issued in a non-truncated format.

Discussion

Instructions for form W-2 state that filers are not to truncate social security numbers shown on form W-2. Section 409 of the PATH Act extends authority to allow truncated social security numbers on form W-2.

Now that the IRS has the authority, it is in the best interest of form recipients and the filing community, from a security perspective, to permit the masking of social security numbers on the furnished Forms W2

Section 409 of the PATH Act has confused many filers who now think SSN truncation is allowed; however, it is still in direct violation of the form instructions. Nonetheless, we believe that the truncations should be optional because requiring truncated SSNs would create processing problems for any returns filed on paper.

The primary benefit to providing truncated only W-2s is the increased security that comes with masked social security numbers. With more than 250 million W-2s processed in tax year 2016 (per Publication 6961), every possible security measure should be taken to protect tax payer's personally identifiable information.

E. Restricted Stock Units: Guidance on Timing and Withholding of Deposits and Penalties

Recommendation

IRPAC recommends that specific guidance be provided on the timing requirements for deposits of employment and income taxes related to income on vesting of restricted stock units ("RSUs"). In addition, IRPAC recommends that the IRS specifies that an administrative waiver be provided on the failure to deposit penalty on the same terms that operate with respect to the exercise of Nonqualified stock options ("NQSOs"). Moreover, IRPAC recognizes that IRS might want to update guidance to be in line with changes in the SEC rule on stock settlement.

Discussion

The IRS has not provided specific guidance on timing rules with respect to income associated with the vesting of stock-settled restricted stock units that are paid on vesting. Our concern is that there is no specific guidance or relief for employers who are faced with typical timing in settlement with respect to RSUs.

While there are many variations, the most common fact pattern involves the transfer of stock on the vesting of RSUs. In such cases, the employer generally issues a DWAC (Deposit/withdrawal at custodian) instruction to the company's transfer agent to transfer shares to the employee's account on the vesting date with settlement occurring thereafter. Deposit/withdrawal at custodian (DWAC) method is a way of electronically transferring new shares or paper share certificates from the Depository Trust Company

(DTC), which performs as a clearinghouse for settling trades in corporate and municipal securities.

The Deposit/Withdrawal at Custodian (DWAC) is one of two ways of transferring between broker/dealers and the DTC; the other way of transferring is known as the Direct Registry System (DRS) method. Both systems enable investors to hold securities in registered form on the books of the transfer agent, rather than in a paper physical form. DRS is different from DWAC in that shares in DRS have already been issued and are held electronically on the books of the transfer agent.

With the change in the SEC rules shortening the settlement cycle from three to two business days, T+2, IRPAC wanted to once again request specific guidance and relief in this area.

The rules applicable to the treatment of RSUs should be applied similarly to that applicable to the exercise of NQSOs as the settlement of shares on vesting of the typical RSU is very similar to that of the exercise of NQSOs. With respect to NQSOs, a Field Directive dated March 14, 2003 provided that "[w]hile I.R.C. Sec. 83 and the Regulations thereunder generally point to exercise date as the trigger for inclusion of income from exercise of nonqualified stock options, the FICA and income tax withholding provisions do not impose a withholding obligation on the employer until wages are actually or constructively paid…." The directive went on to instruct examiners not to challenge the timeliness of employment tax deposits attributable to the exercise of NQSOs, provided that the deposits are made within one day of the settlement date provided the settlement date is no more than three days after the date of exercise. IRM 20.1.4.26.2.6 operationalizes that rule with respect to the application and calculation of failure to deposit penalty on income arising on the exercise of NQSOs.

As the income tax rules, employment tax rules and impediments to withholding apply equally to the settlement of shares on the vesting of RSUs, IRPAC is recommending similar specific guidance be issued on RSUs relative to the timing of employment tax deposits and the associated penalty relief. Of course, IRPAC recognizes that IRS would likely want to update the guidance to two days from three to remain in alignment with the SEC rule.

F. Shrink the "tax gap" due to underreported cash income

Recommendation

IRPAC recommends that the IRS attempt to reduce the underreporting of cash income by reinvigorating and promoting education awareness. IRPAC recommends that the IRS continue to increase awareness of the current trend of underreporting cash income by assisting in promoting education awareness. This can be accomplished by reaching out to numerous industry organizations such as the National Restaurant

Association and the American Association of Cosmetology Schools, and others that encompass millions of cash paid taxpayers.

The promotion of current IRS training videos online like Small Business Taxes: The Virtual Workshop should be used in the quest to build educational tax awareness. IRPAC recommends that these video training programs be revised and updated. The "business income" segment was updated five years ago; IRPAC also recommends adding a special segment "Reporting Cash Income" to be included in this component of online training videos. In addition to the benefit to the IRS of collecting additional revenue, we believe that the videos should stress the benefits to the individual taxpayers which could include the potential for increased Social Security benefits, qualifying for the Earned Income Tax Credit as well as increased access to credit.

Discussion

Currently, the underreporting of cash income leads to the "tax gap" due to improperly underreported cash income amongst numerous key professions/individuals known for cash income such as bail bonds, car washes, check cashing establishments, coin operated amusements, cosmetologist hair salons, laundromats, massage salons, nail shops, scrap metal, restaurants, taxicab services, and waiters/waitresses.

During 2005-2007 IRPAC made a recommendation to shrink the tax gap by addressing the cash economy. As a result, reporting on Form 1099K Payment Card and Third-Party Network Transactions was instituted. IRPAC is aware of the growing tax gap and recommends updating and revising IRS current online training Small Business Taxes: The Virtual Workshop.

IRPAC believes this to be a useful tool and a source of training available to small business owners and individuals getting paid predominantly in cash. The program needs to be brought up to date. Once the program has been brought up to date a simple reach out to the many industry organizations via an IRS NPL public announcement, along with directly targeted emails to key industry organizations that contain businesses and income paid in cash can be used to bring new awareness of the training revisions.

IRPAC believes that this will build communication with small businesses and individuals who receive much of their income in cash. Due to IRS budget constraints, this will allow for cost-effective, continued and much needed education and training that could influence a reduction of non-reported cash income.

G. Online Tax Professional Account

Recommendations

IRPAC recommends that a Tax Professional Online Account be established. An online account for tax professionals will enable Tax Professionals to manage

authorizations online and provide tax professionals access to some of their client's information.

Discussion

Currently there is no website where a tax professional can view and manage their client authorizations and their client's accounts. A Tax Professional Online Account could provide the authorized tax professional access to:

- View the accounts for which the tax professional has authorization;
- Request holds on accounts, which would prevent the mailing of subsequent notices and provide time to respond to notices before being escalated into Collections;
- Address tax levies electronically;
- Move an erroneous payment from one tax module to the correct module;
- Transmit pertinent information for consideration in determining whether penalty relief was merited; and
- Provide transcripts on the Business Master File to verify all wages in addition to taxes to help in resolving civil penalty notices and responding to Combined Annual Wage Report mismatch notices and preparing Form 941Xs.

The call wait time during the 2015 fiscal year was up to 1 ½ to 2 hours for the Practitioner Priority Service lines. The Commissioner's public remarks at several forums anticipated that the average person who tries to call the IRS will get through approximately 50% of the time as opposed to 64% of the time in fiscal year 2014; indeed the percentage of calls that are getting through was down to 40% for 2015.

This recommendation is being proposed with the intention of providing the IRS, employers, tax practitioners and service providers a digital solution to the burdens created by the IRS budget cuts. Implementation of this recommendation would free up customer service resources at the IRS and provide practitioners a secure and streamlined method in meeting their client's needs.

INFORMATION REPORTING PROGRAM

ADVISORY COMMITTEE

International Reporting and Withholding Subgroup Report

KELLI WOOTEN, SUBGROUP CHAIR

ROBERT LIMERICK

DANA FLYNN -VICE CHAIR

KEVIN SULLIVAN

THOMAS PREVOST

TERRY EDWARDS

International Reporting and Withholding Subgroup

The following are the principal issues that have been discussed between the International Reporting and Withholding (IRW) Subgroup of IRPAC and the IRS. For convenience, the recommendations have been grouped according to topic.

A. Qualified Intermediary Agreement (Rev. Proc. 2017-15)

Recommendation A.1 - Validity Period of Documentary Evidence

IRPAC recommends that the IRS provide further details regarding its consideration of applying a three-year validity period to documentary evidence obtained by a Qualified Intermediary (QI) in support of an account holder's claim for treaty benefits to allow industry time for further comment regarding appropriate recommendations.

Discussion

Section 4.08 of the preamble to the QI Agreement provides, "The Treasury Department and the IRS are considering applying the same three-year validity period to documentary evidence obtained (by) QIs supporting an account holder's claim for treaty benefits to align with the validity period of the treaty statement."

To support an account holder's claim for treaty benefits, a QI may obtain either documentary evidence detailed on the KYC jurisdiction attachment to the QI agreement or under Treas. Reg. §1.1441-6. Such documentary evidence includes passports or other governmental issued identification documents for individuals and formation documents for entities.

Certain forms of documentary evidence, such as certificates of incorporation, lack natural expiration dates, while other forms of documentary evidence, such as passports, have extended periods of validity. For example, a passport is generally valid for ten years. Under the existing QI Agreement, the treaty statement is only valid for three years.

It is unclear as to the benefit the IRS would obtain by requiring the account holder to resubmit, every three years, new copies of the documentary evidence previously provided to the withholding agent in scenarios where such documentary evidence either does not have a prescribed expiration period or where such expiration date has not been reached. In addition, under Treas. Reg. §1.1441-1(e)(4)(ii)(B), there are certain circumstances where documentary evidence will remain valid indefinitely. It would seem contradictory to apply an expiration period to documentary evidence within the QI agreement when the regulations specifically provide indefinite validity for those forms of documentary evidence lacking a natural expiration date. Expiring otherwise valid documentation creates an undue burden on both the account holder and the withholding agent. As such, IRPAC recommends that the IRS provide additional insight

into its consideration of applying a three-year validity period to documentary evidence and further requests the opportunity to make additional recommendations as applicable.

Recommendation A.2 - Validity Period of Treaty Statement

IRPAC recommends that the IRS provide further details regarding its consideration of applying a three-year validity period to treaty statements provided by entities so that there is greater understanding as to the reasoning of the IRS for imposing such a timeframe and the opportunity to comment further regarding appropriate recommendations.

Discussion

Section 5.11(A) of the QI Agreement provides that a three-year validity period is established for treaty statements associated with documentary evidence. Specifically,

> "QI may only rely on statements regarding entitlement to treaty benefits described in §1.1441-6(c)(5)(i) or the representations described in section 5.03 of this Agreement until the validity expires under §1.1441-1(e)(4)(ii)(A)(2)."

Generally, it is not expected that an entity's claim of treaty benefits would change once initially collected by the QI. If there is a change which would impact an entity's claim for treaty benefits, existing regulatory requirements for managing changes in circumstance require the solicitation of updated documentation to resolve the change. While the preamble to the QI Agreement indicates that the establishment of a three year validity period is necessary to maintain consistency with the validity period of a withholding certificate including a claim of treaty benefits, it is confusing as to why the IRS is looking for such consistency as the QI Agreement has traditionally made fairly significant distinctions between the use of withholding certificates containing treaty claims versus the use of treaty statements associated with documentary evidence.

In consideration of the above, IRPAC requests further details to understand why the treaty statement associated with documentary evidence would require being renewed every three years.

Recommendation A.3 – Interbranch Transactions

IRPAC requests clarification of the treatment of interbranch transactions for a QI acting as a Qualified Derivatives Dealer (QDD) and recommends the aggregation of separate branch liabilities for purposes of calculating the QDD tax liability.

Discussion

As part of calculating its QDD tax liability, a QDD may use its net delta exposure for purposes of such calculation. The QI agreement defines net delta exposure in Section 2.47 specifically stating,

> "Each QDD must determine its net delta exposure separately only taking into account transactions that exist and are attributable to that QDD for U.S. federal income tax purposes."

Based on this language in Section 2.47, it would appear that interbranch transactions would be disregarded for purposes of calculating the QDD liability. Disregarding interbranch transactions for purposes of calculating the QDD tax liability will result in the net delta component of the QDD tax liability being distorted because when net delta is calculated for business purposes interbranch transactions are recognized. Therefore, disregarding interbranch transactions would force a QDD to distort the net delta it typically uses for business purposes in order to calculate a net delta that disregards interbranch transactions specifically for the QDD tax liability calculation.

In addition, disregarding interbranch transactions for purposes of the QDD tax liability would also create a different standard for purposes of the combination rule. Interbranch transactions would be recognized for purposes of the combination rule but not for net delta purposes which creates an operational contradiction for QDDs and becomes more difficult to implement systemic logic within the QDD's systems. Disregarding interbranch transactions for the combination rule seems to be inconsistent with the intent of the combination rule.

IRPAC requests that the IRS provide additional clarification regarding the calculation of QDD tax liability in relation to interbranch transactions. Specifically, IRPAC recommends that QDD tax liability is allowed to be consolidated for an entity as a whole such that the separate branch QDD liabilities will be aggregated. With regards to aggregation, IRPAC recommends that Section 7.01(C) of the QI Agreement is adjusted to read as follows:

> "In addition to its requirements under section 7.01(A) of this Agreement, a QI that is acting as a QDD (other than a foreign branch of a U.S. financial institution) also must report its QDD tax liability on the appropriate U.S. tax return (to be prescribed by the IRS) and for purposes of calculating and reporting such QDD tax liability, may aggregate the amounts which would otherwise be considered separately for the home office and each branch that is acting as a QDD (if applicable). A QDD must also report any other information required by the appropriate return with respect to its QDD tax liability (including any part thereof)."

Recommendation A.4 - Event of Default

IRPAC recommends that the IRS revise the language of Section 11.06(C) of the QI Agreement which speaks to when the "QI makes excessive refund claims," in order to allow for necessary refund claims due to the implementation of IRC §871(m).

Discussion

The implementation of IRC §871(m) for exchange traded notes has created several challenges for QIs. Many issuers are contemplating what the industry has begun referring to as an "issuer solution" to address challenges in applying the required IRC §871(m) withholding tax to exchange traded notes held through a foreign Central Securities Depository such as Euroclear or Clearstream.

Transactions involving exchange traded notes can include multiple parties such as principals and agents, as well as intermediaries such as clearing organizations and custodians, (all of whom meet the definition of withholding agent), on behalf of the long party to the transaction. In certain cases, custodians for the long party may be QIs.

Given the multiple parties as well as insufficient communication channels to orchestrate accurate withholding (including the application of treaty benefits) on each beneficial owner in a timely manner, issuers anticipate having insufficient details to withhold appropriately. Therefore, industry has effectively developed an "issuer solution" whereby issuers retain withholding responsibility and assess 30% withholding on each payment made to a foreign payee with respect to underlying U.S. equities paying dividends.

While the issuer would perform the withholding, custodians who directly face the underlying beneficial owners will be required to offer a refund mechanism to their eligible account holders. As mentioned previously, a number of these custodians will be acting as QIs. However, Section 11.06(C) of the QI Agreement provides that making an "excessive refund claim" is an event of default of the QI Agreement.

Thus, if the QI applies for a collective refund due to this "issuer solution" for multiple consecutive years, there is a risk that this could be considered "excessive" and as such trigger an event of default. However, the QI will of necessity be required to provide account holders with a refund solution given the over-withholding of tax. In consideration of this point, IRPAC recommends that the IRS revise the language of Section 11.06(C) to read, "…QI makes excessive and unnecessary refund claims."

Recommendation A.5 – QI Reliance on Electronically Provided Documentary Evidence

IRPAC recommends that the IRS review the various QI Attachments to consider whether the requirement that documentary evidence provided remotely by an account holder be a certified copy is still necessary; and to modify the QI Attachments to incorporate the electronic delivery provisions included in the regulations.

Discussion

Treas. Reg. §1.1441-1T(e)(4)(iv)(D) generally permits a withholding agent to rely on a Form W-8 and/or documentary evidence that is provided by facsimile or email.

With respect to documentary evidence obtained from account holders by a QI, the rules associated with the receipt and reliance of such documentary evidence for purposes of the QI Agreement are governed by the applicable QI Attachment for the specific country in which the QI operates.

While each QI Attachment is country specific, the various attachments generally contain similar requirements in regard to collection and reliance on documentary evidence provided by an account holder other than in person. For example, item 5(ii) of the QI Attachment for the United Kingdom reads as follows:

> "QI may obtain a photocopy of the specific documentary evidence listed in item 4 by mail or otherwise remotely from the account holder or a person acting on behalf of the account holder, provided that the photo copy has been certified as a true and correct copy by a person whose authority to make such certification appears on the photocopy, and provided that the laws and regulations listed in item 1 permit QI to rely on the certified photocopy to identify the account holder."

The phrase, "by mail or otherwise" could possibly be interpreted to permit electronic delivery in a manner consistent with the regulations, though it would be helpful to have greater clarity on the point. Moreover, the requirement for a certified copy of the documentary evidence seems to go beyond the requirements of the regulations, and thereby impose a greater burden on a QI in regard to the collection of documentary evidence than for other withholding agents. While IRPAC realizes that a modification of the provisions may be limited by local law, our understanding is that there may have been modifications to local law and local practice since the time that the QI Attachments were originally issued and/or subsequently modified.

Given this passage of time, IRPAC recommends that the IRS review the QI Attachments to consider whether the certified copy requirement is still necessary; and to modify the QI Attachments to incorporate the electronic delivery provisions of the regulations.

B. IRC §871(m)

Recommendation B.1 - Elimination or Delay for Non-Delta 1 Transactions

IRPAC recommends that the IRS revise IRC §871(m) regulatory requirements to limit withholding to delta 1 transactions and those transactions captured by the anti-abuse rule in the regulations. Absent elimination of withholding on non-delta 1 transactions, IRPAC recommends that the IRS provide other relief in the regulations to make the implementation less costly to implement and maintain on an ongoing basis.

Discussion

IRPAC would like to thank the IRS for responding to IRPAC's request for delay in the implementation of certain IRC §871(m) requirements by issuing Notice 2017-42,

Extension of the Phase-in Period for the Enforcement and Administration of Section 871(m).

This Notice was extremely helpful in allowing withholding agents to spend 2017 focusing on implementing withholding on delta 1 transactions which are expected to generate the overwhelming majority of withholding tax due under the IRC §871(m) regulations. Even though the majority of withholding will be collected on these transactions, withholding agents will need to spend significant resources both upfront and ongoing to implement the delta 0.8 standard required by the regulations, primarily in order to be able to prove on audit that no withholding tax was due on the thousands of transactions entered into each year. Given the cost to withholding agents is expected to exceed the benefit to the IRS, IRPAC recommends that the IRS should eliminate the delta 0.8 standard.

If the IRS is unwilling to eliminate withholding on trades covered by the delta 0.8 standard, IRPAC recommends that the IRS should provide other relief for withholding agents to make the implementation less costly to implement and maintain on a go forward basis. Potential relief measures the IRS should consider include: a) elimination of the combination rule for listed transactions for withholding agents and maintenance of the current combination rule approach for over the counter transactions (for listed transactions, taxpayers should only have to combine trades done on the same day and with the same maturity); b) given withholding agents normally run risk systems at the end of the day, allow withholding agents to run end of the day processes with a delta 0.75 or other reasonable standard, and only review those trades above the lower delta threshold using real time data to test for substantial equivalence or delta 0.8 standard; and c) allow withholding agents to set upfront parameters for a product structure to conclude that transactions won't meet the substantial equivalence test or delta 0.8 standard and use this analysis as proof that no withholding is required.

Another relief item that applies to delta 1 and delta 0.8 standard transactions is withholding on cash equities held by a Qualified Derivatives Dealer (QDD). IRPAC recommends that QDD's continue to be able to avoid withholding on cash equities held in their dealer business provided the QDD is able to show that, in aggregate, the QDD withheld an equal or greater amount from client transactions. Thus, the QDD would determine the aggregate amount of withholding it would have been subject to on its cash equities positions, and would only pay withholding to the extent that sum is greater than the sum of all IRC §871(m) withholding the QDD collected from clients and paid over to the IRS.

Recommendation B.2 - MLP Withholding

In light of the complexities in determining dividend equivalent amounts (DEAs) with respect to derivatives referencing master limited partnerships (MLPs), IRPAC recommends that the IRS amend the appropriate regulations to extend the time allowed to perform withholding and reimbursement / setoff procedures with respect to these transactions to September 15th of the year following the year the DEA is determined

(i.e., September 15, 2018 for 2017 DEAs) for all withholding agents, including QDDs. In addition, IRPAC recommends that the IRS ensure that interest or penalties will not be charged on any withholding payments made by September 15th.

Discussion

Treas. Reg. §1.871-15(m) treats derivatives on covered partnerships as having a DEA on a look-through basis to the extent the covered partnership is holding investments that receive a payment of a dividend or a DEA. The most common derivatives linked to covered partnerships are derivatives referencing MLP units. Unfortunately, it will often not be possible for withholding agents to determine the proper DEA amount with respect to a derivative on an MLP by the March 15th withholding deadline in the current regulations.[3] Withholding agents are expecting to rely on MLP K-1 data to make the DEA determination, and this data will not be received in time to do the necessary calculations required by March 15th. IRPAC understands that K-1's are often not issued until March 15th or shortly beforehand, which is not enough time for withholding agents to complete the complex calculations required to determine the DEA amount for each MLP derivative transaction the withholding agent has entered into. The K-1 data is only the starting point of a very complex allocation process that has to take place to allocate the K-1 result among the various trades the withholding agent had outstanding during the year.

Without the proper data, withholding agents simply cannot withhold the proper amount by the March 15th deadline. This results in either under-withholding or over withholding on taxpayers; however unintentional. Consequently, IRPAC recommends extending the withholding and reimbursement/setoff deadline from March 15th to the extended Form 1042 filing deadline of September 15th. The 2016 Form 1042 appears to accommodate this change as an operational matter.

C. Foreign Taxpayer Identification Number Requirements

Recommendation C.1 – Foreign Taxpayer Identification Number Relief

IRPAC thanks the IRS for the publication of transitional relief on foreign taxpayer identification number (FTIN) requirements. Over the course of the year, IRPAC had numerous discussions with the IRS regarding FTIN requirements where IRPAC recommended that the IRS provide the following relief and guidance with respect to the FTIN requirements included in Temp. Reg. §1.1441-1T(e)(2)(ii)(B):

6. Only Forms W-8 received on or after January 1, 2018 are required to have an FTIN, or reasonable explanation for the absence of an FTIN;
7. FTINs can be received separately from the Form W-8 either orally or in writing and FTINs currently in account files can be relied upon;

[3] See Treas. Reg. §1.1441-2(e)(7)(vii).

8. A checklist can be utilized to obtain a reasonable explanation for the absence of an FTIN and this checklist can either be attached to the Form W-8 or separately provided including by email or facsimile;
9. A withholding agent can accept an FTIN or a reasonable explanation for the absence of an FTIN absent actual knowledge exists that the FTIN or explanation is not valid; and
10. Eliminate the requirement to obtain a reasonable explanation for not having provided an FTIN where the payee's country of residence is known to not issue FTINs.

Discussion

Effective January 1, 2018, Temp. Reg. §1.1441-1T(e)(2)(ii)(B) requires an FTIN, or a reasonable explanation in its absence, be provided with a Form W-8 documenting an account holder of an account maintained at a U.S. office or branch of a financial institution that is a withholding agent, in order for the Form W-8 to be valid after December 31, 2017. Both IRPAC and the financial services industry have provided extensive commentary to the IRS with respect to the significant burdens that this FTIN requirement imposes given the limited implementation time, system and operational impacts, as well as the potential for substantial over-withholding on payments to otherwise documented foreign customers that are only noncompliant with respect to the FTIN requirements.

As a result of the significant implementation issues and impacts, IRPAC recommends that only new Forms W-8 received on or after January 1, 2018 be required to have an FTIN, or reasonable explanation for its absence. Valid Forms W-8 received prior to January 1, 2018 (pre-existing Forms W-8) should not be treated as invalid after December 31, 2017 due solely to a missing FTIN or reasonable explanation for the absence of an FTIN. IRPAC further recommends that pre-existing Forms W-8 should remain valid until they expire under the normal validity period or change in circumstance rules, and FTINs or a reasonable explanation for the absence of an FTIN, should only be required for Forms W-8 received after Dec. 31, 2017 as renewals occur for expiring pre-existing Forms W-8s.

Based on discussions with the IRS, IRPAC understands that Treasury and the IRS plan to provide transition relief and additional time to obtain FTINs or reasonable explanations for the absence of an FTIN for pre-existing Forms W-8 and intends to only require an FTIN or reasonable explanation for new Forms W-8 received on or after January 1, 2018. IRPAC would like to thank the IRS for this planned action and much needed relief. However, currently it is unclear how much additional time the IRS will provide withholding agents to obtain an FTIN or reasonable explanation for pre-existing Forms W-8. IRPAC requests that the IRS not require any accelerated receipt of an FTIN or reasonable explanation for pre-existing Forms W-8 and the IRS clarify that FTINs or explanations are only required for new Forms W-8 received on or after January 1, 2018

for new accounts or for renewals of pre-existing Forms W-8 as they expire under existing rules.

IRPAC understands the purpose of the new FTIN requirement is to allow the U.S. Government to satisfy reciprocal reporting obligations under the FATCA Intergovernmental Agreements (IGAs). Accordingly, IRPAC believes there should be a great deal of flexibility in the method in which the FTIN or explanation for its absence is obtained. IRPAC recommends that the IRS clarify that a withholding agent can obtain the FTIN separately from the Form W-8, not only on a written statement or via email, as outlined in the FATCA General Compliance FAQs #22, but that the FTIN can also be obtained orally (similar to the rule for obtaining a global intermediary identification number (GIIN) as outlined in Notice 2015-66). Further, IRPAC requests that the IRS continue to allow a withholding agent to rely on an FTIN that is currently in its account files as provided in the existing guidance for FTIN requirements on Form W-8BEN-E, found on page 7 of the "Instructions for the Requester of Forms W-8BEN, W-8BEN-E, W-8ECI, W-8EXP, and W-8IMY (Rev. July 2014)."

The methods for obtaining a reasonable explanation for the absence of an FTIN should likewise be flexible. IRPAC appreciates the IRS's guidance in the Forms W-8 instructions that indicate an explanation may be either written on the form in the line provided for the FTIN, written in the margins of the form, or provided on a separate attached statement associated with the form. In addition, FATCA General Compliance FAQs #22 provides that the explanation can be provided on a written statement via email. IRPAC recommends that the IRS also confirm that a withholding agent can utilize a checklist for a reasonable explanation for the absence of the FTIN, similar to the current allowance of a checklist for a reasonable explanation supporting a claim of foreign status as provided in Treas. Reg. §1.1441-7(b) (12). Furthermore, IRPAC recommends that the IRS confirm that withholding agents are allowed to provide non-U.S. customers with a checklist to complete in the absence of an FTIN similar to that included as Appendix B. IRPAC views the reasonable explanation checklist template included in Appendix B as being consistent with the reasonable explanations contained in the Form W-8 instructions and in Temp. Reg. §1.1441-1T(e)(2)(ii)(B).

Withholding agents are currently uncertain of their obligations with respect to the validation requirements of an FTIN or an acceptable reasonable explanation for the absence of an FTIN. IRPAC recommends that the IRS confirm a withholding agent can rely on an FTIN or reasonable explanation for the absence of an FTIN absent actual knowledge that the FTIN or explanation is not valid. Withholding agents are not in a position to know the composition or length of FTINs issued by the large number of foreign countries. Likewise, withholding agents do not know which countries do and do not issue FTINs, and the numerous laws that may exist in foreign countries that would require a resident to obtain an FTIN or would provide for an exception from obtaining an FTIN.

IRPAC also recommends that the IRS eliminate the requirement for a withholding agent to obtain a reasonable explanation from a payee that does not provide an FTIN where the payee resides in a country that is known not to issue FTINs. For example, it is well known that the Cayman Islands does not issue taxpayer identification numbers to its residents. IRPAC believes that it would be a tremendous waste of time and resources to require withholding agents to obtain an explanation from each payee resident in the Cayman Islands that simply provides what is already common knowledge – that the Cayman Islands does not issue taxpayer identification numbers. It would be helpful for the IRS to provide guidance identifying those countries that are well known not to provide taxpayer identification numbers where an explanation for a missing FTIN would not be required. The reasonable explanation requirement would remain in place for those countries that have not been so identified by the IRS.

IRPAC understands and supports the purpose of the new FTIN requirement to satisfy U.S. reciprocal reporting obligations under the IGAs. However, the FTIN requirements as currently applicable create substantial challenges and costs for withholding agents with substantial consequences for noncompliance for both non-U.S. customers and withholding agents. Accordingly, IRPAC very much appreciates the IRS's guidance to date and informal indication of additional planned transition relief and requests that the recommendations outlined above be incorporated in this additional planned IRS transition relief or subsequent guidance.

D. IRC §305(c)

Recommendation D.1 – IRC §305(c) Retroactive Application

IRPAC recommends that the IRS publicly announce that it will not impose withholding tax liability, penalties, or interest on withholding agents for IRC §305(c) events occurring in tax years prior to 2016.

Discussion

As part of the October 2016 IRPAC report, IRPAC recommended that the IRS "publicly announce that it will not impose withholding tax liability, penalties, or interest on withholding agents for section 305(c) events occurring in tax years prior to 2016." This recommendation was presented as proposed IRC §305(c) regulations were only released in April 2016. As such, it would be unfair to penalize withholding agents for events occurring prior to the release of these proposed regulations by applying withholding tax liability, penalties, or interest on a retroactive basis.

As indicated in the October 2016 IRPAC report, IRPAC appreciates the IRS efforts to clarify the applicable rules by issuing the 2016 Proposed Regulations. However, the proposed regulations serve as an acknowledgment by the IRS that additional guidance was needed in order to appropriately administer the IRC §305(c) withholding obligations. Accordingly, IRPAC does not believe withholding agents can

reasonably be expected to have put a withholding process in place for years prior to 2016. Therefore, IRPAC again requests public acknowledgement from the IRS that withholding agents will not be held liable with respect to IRC §305(c) events occurring prior to 2016.

Recommendation D.2 - Reporting IRC §305(c) Deemed Dividends:

IRPAC recommends that the regulations under IRC §6042 be amended to include coordination rules under which the timing and amount of an IRC §305(c) deemed dividend reported on Form 1099-DIV (Dividends and Distributions) would be governed by the issuer's reporting of the timing and amount of the IRC §305(c) deemed dividend on Form 8937 (Report of Organizational Actions Affecting Basis of Securities), as required by IRC §6045B.

IRPAC further recommends that the IRS defer Form 1099-DIV reporting for IRC §305(c) deemed dividends until such time as regulations are issued and adequate time is provided to implement the new reporting requirements.

Discussion

IRC §6042 generally requires Form 1099-DIV reporting when a dividend is paid. Currently, it does not appear that reporting on Form 1099-DIV would be required under IRC §6042 for deemed dividends under IRC §305(c), because while a deemed dividend constitutes a "dividend" for this purpose, there is no "payment" of the dividend that triggers reporting. The preamble to the proposed regulations under IRC §305(c) requests comments on the implementation of Form 1099-DIV reporting of deemed dividends under IRC §305(c) and indicates that "similar principles" for reporting deemed dividends under Treas. Reg. §1.6045B-1 with respect to reporting of deemed dividends that affect the basis of a security are to be applied in reporting IRC §305(c) deemed dividends on Form 1099-DIV under IRC §6042.

IRPAC recommends that the regulations under IRC §6042 be amended to include coordination rules under which the timing and amount of a IRC §305(c) deemed dividend reported on Form 1099-DIV would be governed by the issuer's reporting of the timing and amount of the IRC §305(c) deemed dividend on Form 8937 (Report of Organizational Actions Affecting Basis of Securities), as required by IRC §6045B.

In addition, IRPAC further recommends that the IRS defer Form 1099-DIV reporting for IRC §305(c) deemed dividends until such time as regulations are issued and adequate time is provided to implement the new reporting requirements. Likewise, similar coordination would be required with respect to Form 1099-B reporting under Treas. Reg. §1.6045-1(d) in regard to the required basis adjustment resulting from the deemed dividend.

E. Form W-9

Recommendation E.1 – Third-Party Repositories

IRPAC recommends that the IRS expand the use of the third-party repository concept as included in Treas. Reg. §1.1441-1(e)(4)(iv)(E) to include Forms W-9 (Request for Taxpayer Identification Number (TIN) and Certification). IRPAC recognizes that given the introductory language of Treas. Reg. §1.1441-1(e)(4) modification of IRC §3406 regulations would be required to incorporate the third-party repository concept.[4]

Discussion

Treas. Reg. §1.1441-1(e)(4)(iv)(E) provides that a withholding agent may rely on an otherwise valid Form W-8 received electronically from a third-party repository provided there are processes in place to ensure that the withholding certificate can be reliably associated with a specific request from the withholding agent and a specific authorization from the person (or agent) providing the certificate.

While the third-party repository is a relatively recent construct, withholding agents have found these repositories to be useful tools for efficiently and effectively documenting large volumes of account holders and / or remediating existing documentation through the collection of documentary evidence such as formation documents. Third-party repositories generally validate documentation on its face; with withholding agents being ultimately responsible for validating documentation against their own books and records. As such, account holders have also found the third-party repository concept useful as it enables them to provide one set of documentation which can be permissioned out across multiple withholding agents. This is particularly useful in the asset management space where one fund may be invested with hundreds, if not thousands, of various withholding agents. Likewise, it benefits withholding agents as they can obtain documentation which is valid on its face versus having to conduct extensive back and forth discussions with account holders to cure various foot faults which would otherwise invalidate the withholding certificate.

On its face, there are no clear explanations for why it is not acceptable for withholding agents to collect Forms W-9 from a third-party repository. Certain repositories have attempted to manage this by entering into agency agreements whereby the repository functions as an agent and is therefore able to provide the Form W-9 to the withholding agent. Identity theft should not be a consideration given withholding agents must be permissioned access to a particular form by a client as opposed to being granted blanket access to all collected documentation. Furthermore, entity documentation predominates over individual documentation included to date in third-party repositories and is expected to continue to do so.

[4] Treas. Reg. §1.1441-1(e)(4) provides that "These provisions do not apply to Forms W-9 (or their substitutes). For corresponding provisions regarding Form W-9 (or a substitute form), see section 3406 and the regulations under that section."

Essentially, the Form W-9 is a U.S. person's confirmation, under penalties of perjury, that it is providing its correct taxpayer identification number. If the IRS has concerns regarding the quality of the data collected, there are means in place to help police this such as the IRS TIN Matching system. Likewise, name and taxpayer identification number mismatches are also subject to information return penalties as well as the CP-2100 and CP-2011A "B" Notice process which would ultimately ensure the data being provided can be relied upon.

Information returns function as the bedrock of the U.S. tax system. These filings increase voluntary compliance and assist the IRS in verifying the accuracy of tax returns.[5] In order for tax administration to function as intended, withholding agents must have efficient means for collecting and validating the information which underlies these information returns – e.g., Forms W-8 and W-9. For these reasons, IRPAC recommends the IRS expand the use of the third-party repository concept as included in Treas. Reg. §1.1441-1(e)(4)(iv)(E) to include Forms W-9 via amending IRC §3406 regulations.

Recommendation E.2 – Electronic Signatures

IRPAC recommends that the IRS extend the electronic signature provisions included in Treas. Reg. §1.1441-1T(e)(4)(i)(B) to include Forms W-9. IRPAC recognizes that given the introductory language of Treas. Reg. §1.1441-1(e)(4), this change would require modification to IRC §3406 regulations.[6]

Discussion

The IRS has traditionally allowed withholding certificates to be provided electronically if the withholding agent maintained an electronic collection system meeting the requirements of Treas. Reg. §1.1441-1(e)(4)(iv)(B). These requirements included the ability for the system to authenticate the user and for the user to sign the form electronically under penalties of perjury.

In 2016, IRPAC recommended the IRS 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. IRPAC would like to thank the IRS for its action on the recommendation as well as the burden relief this has provided withholding agents as in Treas. Reg. §1.1441-1T(e)(4)(i)(B), the IRS clarified that such

[5] When queried, 62% of the public indicated that information reporting has either a great deal of influence or somewhat of an influence on whether they honestly report and pay their taxes, according to the IRS Oversight Board 2014 Taxpayer Attitude Survey. Similarly, as per TAX REFUNDS - IRS Is Exploring Verification Improvements, but Needs to Better Manage Risks, GAO-13-515, Report to the Committee on Finance, U.S. Senate (June 2013), "An IRS study of individual tax compliance found that in tax year 2006, taxpayers accurately reported over 90 percent of income with substantial information reporting requirements, such as interest and dividend income. In contrast, the same study found taxpayers accurately reported only 44 percent of income subject to little or no information reporting, such as nonfarm sole proprietor income."

[6] See id.

electronically signed forms may be accepted by the withholding agent, provided that the form reasonably demonstrates that the person whose name is on the form has signed it electronically via a signature block or other means including a time and date stamp and statement to the effect that the form has been electronically signed and the name of the signatory.

IRPAC would now recommend that the IRS extend this acceptance of electronic signatures to the Form W-9. For various reasons, but primarily driven by client demand and various sustainability initiatives, institutions are prioritizing online account opening channels where the end to end account onboarding process can be managed by a client sitting at his or her computer, tablet, or other mobile device. Furthermore, even in more traditional account opening channels, account holders are looking to provide a digitally signed Form W-9 electronically via scan or facsimile.

Accepting a digitally signed Form W-9 poses minimal risk to the IRS particularly given initiatives such as IRS TIN Matching which can validate that the name and taxpayer identification number provided on the Form is correct. Likewise, CP2100 and 2100A "B" Notices will flag those situations where there is a mismatch between the name and the taxpayer identification number. For these reasons, IRPAC recommends the IRS extend the electronic signature provisions included in Treas. Reg. §1.1441-1T(e)(4)(i)(B) to include Forms W-9 via amending IRC §3406 regulations.

Recommendation E.3 – FATCA Jurat

IRPAC recommends that the IRS provide a limited exception to the substitute Form W-9 guidance included in the Instructions for the Requester of Form W-9 to allow onshore withholding agents providing payees with a substitute Form W-9 to remove the fourth jurat which states "The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct."

Discussion

The FATCA exemption code field and associated fourth jurat debuted with the August 2013 version of the Form W-9 in anticipation of the reporting required by the Foreign Account Tax Compliance Act (FATCA). However, U.S. withholding agents do not complete Form 8966 (FATCA Report) or local Intergovernmental Agreement (IGA) reporting, rather they continue to complete Form 1099 reporting for certain payments made to U.S. persons. Therefore, the FATCA exemption code field is not applicable to accounts maintained onshore in the U.S. This is clearly noted in the instructions to the Form W-9 which state "These codes apply to persons submitting this form for accounts maintained outside of the United States by certain foreign financial institutions. Therefore, if you are only submitting this form for an account you hold in the United States, you may leave this field blank."

The Instructions for the Requester of Form W-9 were updated with the publication of the December 2014 version to provide "If you are not collecting a FATCA

exemption code by omitting that field from the substitute Form W-9 (see Payees and Account Holders Exempt from FATCA Reporting, later), you may notify the payee that item 4 does not apply." Thus, while a withholding agent can inform a payee completing the Form W-9 that this fourth jurat is not applicable; the withholding agent cannot remove the jurat as a change to any of the penalties of perjury certifications would render the substitute form invalid.

IRPAC would therefore request the IRS allow this jurat to be removed from substitute Forms W-9 being used to document accounts maintained in the U.S., particularly given the IRS' documented position that this field is not relevant for these accounts.

F. Withholding Statements:

Recommendation F.1 – Chapter 4 Status Code Requirement

IRPAC recommends that the IRS eliminate the requirement that an FFI withholding statement, a chapter 4 withholding statement, and an exempt beneficial owner withholding statement that includes payee specific information for purposes of chapter 4, include the chapter 4 status code used for Form 1042-S (Foreign Person's U.S. Source Income Subject to Withholding) reporting; or alternatively, publish a mapping of the chapter 4 statuses on the several Forms W-8 to the chapter 4 status codes used for Form 1042-S reporting.

Discussion

Treas. Regs. §§1.1471-3(c)(3)(iii)(B)(2), (3) provide generally that an FFI withholding statement, a Chapter 4 withholding statement, or an exempt beneficial owner withholding statement with payee specific information provided by a nonqualified intermediary or flow-through entity to a withholding agent must include the chapter 4 status of the underlying payees using the applicable status codes for Form 1042-S reporting.

While the requirement to include the Form 1042-S status codes would seem a sensible one on its face, in practice this requirement creates issues in regard to the validity of the withholding statement as it is often difficult for the nonqualified intermediary or flow-through entity to accurately determine the applicable status codes to be used for purposes of filing Form 1042-S, even though it is aware of the chapter 4 status of the underlying payee.

As it stands now, there is no document published by the IRS that maps the chapter 4 statuses available on the several Forms W-8 to the chapter 4 status codes used for Form 1042-S reporting. Withholding agents that file Forms 1042-S have had to make their own determinations in regard to this mapping. However, a nonqualified intermediary or flow-through entity that is passing up Forms W-8 and a withholding statement to another withholding agent generally isn't issuing Forms 1042-S, and thus is unlikely to have the same level of experience or have spent as much time as its

withholding agent in considering the mapping of chapter 4 statuses on the several Forms W-8 to the status codes used for Form 1042-S reporting. Consequently, as between the nonqualified intermediary or flow-through entity and its withholding agent, it is the withholding agent that would be in a better position to determine the applicable chapter 4 status code to use when preparing Forms 1042-S.

Requiring the intermediary or flow-through entity to provide the status codes used for Form 1042-S reporting creates the potential for situations where the nonqualified intermediary of flow-through entity provides the correct chapter 4 status, but fails to provide the correct Form 1042-S status code. From a reporting perspective, since the withholding agent is also receiving the Form W-8 for the underlying payee it can determine the chapter 4 status code without having it included on the withholding statement. However, the question then becomes whether a withholding agent that receives a withholding statement with an incorrect chapter 4 status code must treat the withholding statement as invalid when the Form 1042-S status code would be obvious to the withholding agent based upon the chapter 4 status on the Form W-8? Moreover, as there have been many changes to the numbering of the chapter 4 status codes for Form 1042-S reporting purposes in recent years, presumably a nonqualified intermediary or flow-thru entity would be required to update its withholding statement when such changes occur even if correct when provided.

Accordingly, IRPAC recommends that the IRS eliminate the status code requirement for an FFI withholding statement, Chapter 4 withholding statement and exempt beneficial owner withholding statement; or alternatively, publish a mapping of the chapter 4 statuses on the several Forms W-8 to the chapter 4 status codes used for Form 1042-S reporting.

Recommendation F.2 – Incorporating Nonqualified Intermediary Certifications into Form W-8IMY

IRPAC recommends that the IRS incorporate the alternative withholding statement certification language into the nonqualified intermediary (NQI) certifications as part of the next update to the Form W-8IMY (Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding and Reporting).

Discussion

IRPAC thanks the IRS for its response to IRPAC's 2016 recommendation in allowing the use of an alternative withholding statement. The Temporary and Final chapter 3, 4 and 61 regulations allow withholding agents to rely on a simplified alternative withholding statement from a NQI (including a non-withholding foreign partnership or trust). The alternative withholding statement must contain enough information for a withholding agent to meet its information reporting and withholding requirements under chapters 3, 4 and 61. The alternative withholding statement is not required to include information that is also included on the tax forms and is not required

to specify the rate of withholding applicable to each payee for each type of income it receives as long as the withholding agent is able to determine the appropriate rate from the information on the withholding certificate. The alternative withholding statement must also be accompanied by Forms W-8 and/or W-9 for all of the underlying beneficial owners. Additionally, the alternative withholding statement is required to contain a certification from the intermediary that none of the information on the underlying payees withholding certificates is inconsistent with the information in the intermediary's files. While IRPAC appreciates the IRS allowance for the alternative withholding statement, IRPAC requests the inclusion of such certification language on the Form W-8IMY; thereby signed under penalties of perjury by the intermediary.

Recommendation F.3 – Alternative Withholding Statement and Minor Inconsistencies

IRPAC recommends additional language to the Requestor of Forms W-8 Instructions to clarify the use of an alternative withholding statement with minor inconsistencies to address the questions raised below:

Q: When can an alternative withholding statement for an NQI be used despite inconsistencies between the NQI's files and the underlying beneficial owner documentation?

A: An alternative withholding statement for an NQI can be used despite current, inconsequential inconsistencies that do not substantially affect the rate of withholding provided the following statement appears on the withholding statement, "Except as otherwise noted on this withholding statement, the information contained herein is consistent with the information contained in the records of the nonqualified intermediary providing this withholding statement."

Discussion

The regulations addressing the alternative NQI withholding statement provide that "the withholding statement must contain a representation from the nonqualified intermediary that the information on the withholding certificates is not inconsistent with any other account information the nonqualified intermediary has for the beneficial owners for determining the rate of withholding with respect to each payee."

In addition, the preamble to the regulations also provide an example of the alternative withholding statement rule by citing to a non-withholding foreign partnership that provides an inconsistent Form W-8 in relation to the information contained in the foreign partnerships files. The example states that due to the inconsistency, the foreign partnership would not be able to provide the representation and the withholding agent would not be allowed to rely on an alternative withholding statement.

The preamble example and language in the regulations seem to counter the initial intent of an alternative withholding statement being widely used by NQIs. As the preamble example and regulatory language are written, the language suggests that even historical information is subject to causing the NQI to not use the alternative withholding statement because the historical information would cause an inconsistency. If none of the underlying beneficial owners' tax documentation can contain information that conflicts with the NQI's files, then an NQI, for example, with 100 different beneficial owners would not be able to use the alternative withholding statement which could be helpful to them.

IRPAC believes allowance for such minor non-material inconsistencies poses no harm to the government and should not prohibit the NQI from using the alternative withholding statement.

G. Additional Topics

Recommendation G.1 – Treaty Rates for Pension Distributions

IRPAC recommends that the IRS provide guidance on specific countries with which the U.S. has an income tax treaty where pension payments are subject to a specialized treatment depending upon the type of payment. IRPAC further recommends that Publication 515 (Withholding of Tax on Nonresident Aliens and Foreign Entities) be updated to reflect this specialized treatment for the specific payment types; or at a minimum be updated to include a footnote highlighting that the rate of withholding may vary depending upon whether the pension payment is a periodic payment or a lump sum distribution.

Discussion

Withholding agents rely heavily upon the tax treaty tables associated with Publication 515 in order to develop their withholding logic. The current treaty tables associated with Publication 515 indicate a 0% or other reduced treaty withholding rate on pension payments without any footnote or caveat regarding whether the payment is a periodic payment or a lump-sum distribution. However, the IRS examination teams are raising as an issue on U.S. withholding agent Form 1042 audits that the liability to withhold on pension payments where a treaty exists is based in some countries, such as the United Kingdom, the Netherlands, and Italy, on whether the payment is a periodic payment or a lump-sum distribution as defined by the applicable treaty. IRPAC recommends that the IRS provide written guidance on which specific countries have specialized treatment of withholding on pension payments depending upon the type of payment or distribution.

In notable cases, such as the UK, Netherlands, and Italy the Publication 515 treaty table withholding rate indicated is 0%, when the actual treaty withholding rate on

certain lump-sum distributions is 30%. The Publication 515 treaty tables are misleading and could result in U.S. withholding agents withholding at 0% or other applicable treaty rate when 30% withholding is required on lump-sum distributions. Footnotes should be added to the Publication 515 treaty tables to indicate when 0% or reduced treaty withholding rates do not apply to lump-sum distributions. Form 1042 audits have included substantial debate over treaty language and withholding agents have generally been unable to obtain confirmation from the IRS as to which countries do require specialized treatment. In the interest of effective, efficient, and transparent tax administration, IRPAC recommends that the IRS provide written guidance on the effective withholding rates. As such, IRPAC has provided the IRS with suggested language for the Publication 515 treaty tables in Appendix C.

Recommendation G.2 – Sponsored Investment Entities in Model I IGA Jurisdictions

IRPAC recommends that the IRS revise the proposed FATCA regulations on sponsored entities to allow Foreign Financial Institutions (FFIs) claiming a FATCA status of Sponsored Investment Entity per the FATCA regulations to report to their local tax authority as would normally be the case for FFIs located in a FATCA Model 1 Intergovernmental Agreement (IGA) jurisdiction.

Discussion

The preamble to the proposed FATCA regulations on sponsored entities includes the following statement "Thus, a financial institution covered by a Model 1 or Model 2 IGA may choose to qualify as a sponsored investment entity, controlled foreign corporation, or closely held investment vehicle pursuant to §1.1471-5(f) instead of Annex II of the Model 1 or Model 2 IGA. In such a case, the financial institution must satisfy all of the requirements applicable to such an entity in the regulations, including the requirement for the sponsoring entity to report information directly to the IRS, even in the case of a financial institution covered by a Model 1 IGA."[7]

This issue arises due to the fact that some of the early IGAs (e.g., the UK and Ireland) do not have Sponsored Investment Entity ("SIE") provisions in their Annex II which outlines non-reporting local jurisdiction institutions and products. Consequently, SIE's from those countries can get that status only under the IRS FATCA regulation, §1.1471-5(f). This IRS requirement is causing confusion in the marketplace as the local governments think the SIE's should report directly to them. Moreover, there should not be a compliance concern for the IRS given reporting would be happening to their local government like all other Model 1 FFI's, and to have these sponsored entities report to the IRS creates the same problems in regard to local law prohibitions on information sharing that the IGAs were designed to address in the first place. IRPAC recommends

[7] See Preamble to Chapter 4 Regulations Relating to Verification and Certification Requirements for Certain Entities and Reporting by Foreign Financial Institutions, 82 FR 1629 (Jan. 6, 2017).

that the IRS eliminate this requirement in the proposed regulations so that these SIE's located in Model 1 jurisdictions are not required to report information directly to the IRS, provided the FFI properly reports to their local jurisdiction.

Recommendation G.3 – Professional Management Standard

IRPAC recommends that the IRS modify the FATCA regulations to allow certain professionally managed investment entities to be treated as a Passive Nonfinancial Foreign Entity (PNFFE), rather than a Foreign Financial Institution (FFI). IRPAC recommends that these entities be treated consistently as PNFFE's and that the FI's holding accounts for the PNFFE's perform the required reporting to the IRS with respect to the substantial U.S. owners or controlling U.S. persons of the PNFFE.

The recommendation applies to situations where the following requirements are met by the entity: 1) the entity's equity is closely-held by a family or limited number of individuals (if the entity is a trust without an FI trustee, the trust beneficiaries are a family or limited number of individuals); 2) the entity's equity or trust certificates are not offered to the public for investment; and 3) the management of the entity's corporate/trustee activities (such as deciding where to open a bank account, ability to authorize a power of attorney, or make decisions about distributions) are not managed by a Financial Institution (FI), such as a FI trustee of a trust.

These requirements to maintain PNFFE status will also be met if the entity's equity is held by one or more commonly controlled entities that collectively meet all 3 requirements. The controlling entity has to meet all 3 requirements and the controlled entities have to meet requirements 2 & 3. For example, this rule would be met if individuals' A and B collectively own 100% of controlling entity 1, which owns 100% of controlled entity 2 (which has the financial account at the FI) and both entity 1 and entity 2 meet requirements 2 & 3 above. Requirement 1 is met because individuals' A and B collectively own 100% of the commonly controlled entities.

Discussion

Treasury Regulation §1.1471-5(e)(4) seems to define an Investment Entity FFI as any PNFFE that has part or all of its assets managed by a professional money manager. FI's routinely sell investment products to personal investment company clients where the FI has discretionary authority to trade for the client's account after the client has picked the investment structure they are interested in owning. These agreements are sometimes referred to as discretionary mandates (DM). Similar to mutual fund investments, clients have the ability to terminate the DM on very short notice. Thus, it is quite possible that an entity could flip between being professionally managed and not being professionally managed more than once during a year, depending on whether the client cancels a DM or cancels a DM and then enters into a new DM at a later date. A legal entity's FATCA status should not hinge on whether the legal entity has entered into or terminated a DM. Rather, IRPAC recommends that a legal entity's FATCA status be based on more permanent facts. The operational

complexity of changing the reporting status of a legal entity based on transitory facts is very difficult to implement for FI's. In addition, these personal investment company entities typically don't have any employees or infrastructure to do reporting and register as an FFI, so this approach creates operational complexity for the entity as well.

Besides the operational complexity of changing an entity's FATCA status based on transitory facts, IRPAC believes the IRS has a serious compliance risk with allowing these personal investment company entities to report on themselves for FATCA. Personal investment companies are the types of entities that historically created the need for FATCA because they were sometimes used to avoid QI reporting on the beneficial owners and some beneficial owners didn't properly report their income to the IRS. Allowing these entities to decide whether they need to report to the IRS and what the amount should be is much riskier than having a third party FI do the reporting.

Moreover, local governments are going to be challenged to enforce the reporting requirement because they may not know that the entity is professionally managed so the local government may accept PNFFE status for the entity. In fact, the entity may be giving different tax forms to the various FI's where it holds accounts, and FI's where the entity doesn't have a DM won't know to challenge the client's claim of PNFFE status. For these reasons, all parties involved are better off operationally if these entities are treated consistently as PNFFE's and the FI's holding accounts for the PNFFE's do the required reporting to the IRS with respect to the PNFFE's substantial U.S. owners or controlling U.S. persons.

Recommendation G.4 – Extension of Time to File Form 1042 Where Reimbursement Procedure is applied across Calendar Years

IRPAC recommends that the IRS modify Treas. Reg. §1.1461-2(a)(2)(i)(B) to remove the limitation on obtaining an extension of time to file Form 1042 (Annual Withholding Tax Return for U.S. Source Income of Foreign Persons) where the withholding agent applies the reimbursement procedure to make itself whole following a refund of over withheld tax to a payee in the year following the year in which the tax was withheld.

IRPAC further recommends that IRS clarify the Form 1042-S instructions (whether the regulations are modified for our first point or not) in regard to the time for filing Form 1042 when using the reimbursement or set-off procedure across calendar years, and in regard to the need for an attachment to Form 1042 in order to claim a credit for over-withheld tax.

Discussion

Under Treas. Reg. §1.1461-2(a)(2)(i), a withholding agent that repays over-withheld tax to a beneficial owner or payee, may reimburse itself for the amount repaid by reducing future deposits to the IRS. However, a reduction of a deposit in the calendar year subsequent to the calendar year of withholding is only permitted if: 1) the

repayment to the beneficial owner or payee is made before the due date (without extensions) for filing Form 1042-S for the calendar year of the over-withholding (or prior to actual filing of Form 1042-S if earlier); and 2) the withholding agent states on a timely filed (not including extensions) Form 1042 for the calendar year of over-withholding, that the filing of Form 1042 constitutes a claim for credit in accordance with Treas. Reg. §1.6414-1. Consequently, a withholding agent that wishes to utilize the reimbursement procedure across calendar years is prohibited from obtaining an extension of time to file Form 1042, and thus must file the form by March 15th. In contrast, the regulations do not provide the same limitation for filing Form 1042 when the set-off procedure is utilized across calendar years, and therefore a withholding agent is permitted to obtain an extension of time to file Form 1042 when using the set-off procedure across calendar years.

It is unclear as to why a withholding agent would be denied the opportunity to extend the due date for filing Form 1042 when utilizing the reimbursement procedure across calendar years – particularly when such a limitation does not apply when utilizing the set-off procedure across calendar years. The beneficial owner or payee will have been made whole prior to the filing of Form 1042-S, and the repayment would be reflected on the Form 1042-S provided to the beneficial owner/payee and filed with the IRS. Likewise, the withholding agent would have been made whole. There doesn't seem to be any obvious reason as to why it would be critical for the withholding agent to file its Form 1042 by March 15th as opposed to filing by the extended due date.

Withholding agents are often in need of the extension of time to file Form 1042 in order to accurately complete the form and properly reconcile its withholding, reporting, and deposits. Accordingly, IRPAC recommends that the IRS modify the regulations to remove the limitation on obtaining an extension of time to file Form 1042 when the withholding agent utilizes the reimbursement procedure across calendar years.

In addition, the instructions to box 11 in the 2017 Instructions for Form 1042-S provide that in order to claim a refund where the withholding agent applied the reimbursement or set-off procedure across calendar years, the withholding agent must: 1) timely file a Form 1042; and 2) attach a statement that the filing of Form 1042 constitutes a claim for credit.

The instructions do not include the "without extension" language in regard to the reimbursement procedure, and consequently the instructions read as if the Form 1042 filing requirement is the same when both reimbursement and set-off are used. Moreover, the instructions require an attachment to Form 1042 in order to claim the credit, when it would seem clear from the face of Form 1042 that the withholding agent is claiming a credit.

Accordingly, IRPAC further recommends that IRS clarify the Form 1042-S instructions (whether the regulations are modified for our first point or not) in regard to the time for filing Form 1042 when using the reimbursement or set-off procedure across

calendar years, and in regard to the need for an attachment to Form 1042 in order to claim a credit for over withheld tax.

Recommendation G.5 – Liability Calculations for Form 1042 Audits

IRPAC understands that the IRS is currently in the process of reviewing its policies with respect to the disallowance of remediation efforts and application of cure documentation to extrapolated liability calculations as part of statistical samples in both QI audits as well as U.S. withholding agent audits. IRPAC recommends that the IRS allow for consultation with industry prior to finalizing any directives regarding the disallowance of cure documentation in an extrapolated audit liability calculation resulting from a statistical sample.

Discussion

As part of the 2016 report, IRPAC recommended that the IRS remove the restriction on extrapolating cures in finalizing the Proposed QI agreement as well as allow for sub-stratification when required to reach an equitable result. IRPAC further recommended that the IRS not extend this disallowance of remediation efforts and cure documentation broadly to U.S. withholding agent audits. As part of the final QI Agreement as published in Rev. Proc. 2017-15, the IRS scaled back these provisions to provide that a QI will "pay any under-withheld tax without regard to projection and that the IRS will determine if a projection of any under-withholding from a sample is required at the time of the IRS's review of the QI's periodic certification (and, if so, will direct the reviewer in performing the projection)." IRPAC thanks the IRS for its consideration of this recommendation.

Given this issue is still in discussion within the IRS, it is an ideal opportunity for the IRS to consult with industry on the implications. The projection of errors has historically been utilized by IRS auditors when the error made is a fungible item which can reasonably be extrapolated across a broader population such as the use of an invalid substitute Form W-8 or W-9 by a specific business line. However, not all withholding errors are fungible as some can be cured with the collection of additional documentation. For example, a single documentation foot fault where a formation document was not collected to cure a U.S. mailing address on a Form W-8BEN-E (Certificate of Status of Beneficial Owner for United States Tax Withholding and Reporting (Entities)) is not fungible. Importantly, in the majority of cases curable errors do not result in actual loss of revenue to the IRS, but rather are technical errors where the taxpayer is not subject to tax but the withholding agent is being penalized for having missing or incomplete documentation. Therefore, while projection does make sense for errors that are not curable, it does not make sense for those which have been cured. If a full review had taken place and the errors actually identified (assuming they even exist), they indeed could have been cured. Thus, to the extent a sample is cured the cure must also be extrapolated as otherwise the projection methodology is inherently inequitable to a withholding agent.

Furthermore, IRPAC recommends that any guidance allow for different resolutions for different issues, not just extrapolation, as an equitable solution to most accurately reflect the under-withholding that the IRS is owed. For example, in regard to errors that are not curable, there are times when it is more accurate to determine the actual amount of under-withheld tax. If, for example, the review indicates that sampled items provided for a 15% rate of withholding for dividends paid to Cayman Islands accounts, it is likely that the withholding agent's withholding table included an incorrect withholding rate for Cayman and every Cayman Islands payee receiving dividend income was likely withheld at this incorrect rate. Thus, in these scenarios, it would make more sense to sub-stratify these accounts to determine the actual amount of under-withholding. In contrast, where the error appears to be sporadic or inadvertent (e.g., a Cayman Islands payee incorrectly shows the Canadian country code of CA versus the Cayman Islands code of CJ and is inappropriately granted treaty benefits due to an input error) then projection is appropriate. Furthermore, U.S. withholding agent audits are already inherently inequitable to the withholding agent given accounts already subjected to 30% withholding are excluded from the population subject to random sampling.

Given this, IRPAC recommends that the IRS provide sufficient time to allow for adequate consultation with industry on the implications of disallowing cures to be extrapolated as part of a liability projection on audit.

Recommendation G.6 – Form 1042-S Income Codes – Interest Related Dividends and Short-term Capital Gain Dividends

IRPAC recommends that the IRS provide guidance as to the proper income codes to be used in reporting interest related dividends described in IRC §871(k)(1) and short-term capital gain dividends described in IRC §871(k)(2) on Form 1042-S.

Discussion

There is no specific income code listed or guidance provided in the Form 1042-S instructions for reporting interest-related dividends or short-term capital gain dividends exempt from withholding under IRS §871(k). Consequently, there is inconsistency among withholding agents in the manner in which these income payment types are reported. Some withholding agents report these payments using income code "06 – Dividends paid by U.S. corporations – general," (under the rationale that they payments are dividends), while others are using code "01 - Interest paid by U.S. obligors – general" (similar to reporting for exempt interest dividends). Publication 515 has a brief discussion of interest-related dividends and short-term capital gain dividends under the heading for income code "06 – Dividends paid by U.S. corporations – general," which would seem to suggest that such payments should be reported as dividends, but does not provide any specific direction on how such payments should be reported. Given the disparate approach by withholding agents, it would be helpful for the IRS to clarify which code(s) should be used.

Recommendation G.7 – Form 1042-S Income Codes – IRC §305(c) Deemed Distributions

IRPAC recommends that the IRS provide guidance as to the proper income code to be used in reporting deemed distributions described in IRC §305(c) on Form 1042-S

Discussion

There is no specific income code listed or guidance provided in the Form 1042-S instructions for reporting deemed distributions under IRS §305(c). Consequently, there is uncertainty and inconsistency among withholding agents in regard to the manner in which this income is being reported. Some withholding agents report these payments using income code "06 – Dividends paid by U.S. corporations – general," while others use code "34 – Substitute payment – dividends," based upon the definitional language in Treas. Reg. §1.861-3(a)(6). Given the disparate approach by withholding agents, it would be helpful for the IRS to clarify which code should be used.

Recommendation G.8 – Loan Syndication Fees

IRPAC requests the IRS issue written guidance on the source and character of cross border fee payments such as securities loans, repo, and loan syndication transactions.

Discussion

The IRS and withholding agents have a unique partnership in which the IRS heavily relies on withholding agents to ensure proper tax collection and administration. As part of this partnership, withholding agents require clear guidelines to effectively administer withholding on outbound payments. Lack of clear guidance and ambiguity pose both audit risk and competitive disadvantage to a withholding agent as well as a loss of revenue to the Treasury.

In order to ensure compliance with IRS requirements, withholding agents have requested that the IRS issue guidance on fee payments for several years, specifically with respect to securities loan and repo fees such borrow fees and rebate fees as well as the many fees involved in loan syndication transactions. However, the IRS has not provided such guidance which has resulted in inconsistent treatment of similar transactions by both withholding agents and IRS examiners.

These fees have become a focus area on recent IRS audits, particularly in the area of loan syndication. Given this, the IRS must have a view on the treatment of these fees. Therefore, IRPAC requests written guidance and additional transparency on the

proper treatment of these fees so as to enable withholding agents to continue to effectively support the IRS in the collection and administration of these taxes.

Recommendation G.9 – Extension of Qualified Securities Lender Regime

IRPAC recommends maintaining a modified version of the current QSL regime for entities engaging in traditional agency lending.

Discussion

In the 2016 IRPAC report, IRPAC recommended maintaining a modified version of the current Qualified Securities Lender (QSL) regime for entities engaging in traditional agency lending. At the time, the Proposed QI Agreement as published in Notice 2016-42 stated that a QI cannot act as a QDD when acting in an intermediary capacity, which appeared to indicate that entities acting as agent lenders in a securities loan transaction do not qualify for QDD status as they are acting in an agent capacity rather than principal. While this language was further clarified in Rev. Proc. 2017-15, the complex requirements of QDD compliance continue to place an undue burden on these agency lenders engaged in traditional stock loan and repo transactions in an intermediary capacity. Agency lenders engaging in such transactions should be allowed to simply match the stock borrows with stock loans, as they currently do under the QSL regime, without having to perform the more complex QDD tax liability calculation. As such, IRPAC recommends the continuation of the QSL regime for this type of intermediary activity where there is generally a one to one correlation between loans and borrows.

Recommendation G.10 – Reinstatement of Substitute Form 1042-S Payee Statements

IRPAC recommends that the use of substitute Form 1042-S payee statements be reinstated but with additional minimum requirements added to assist IRS Service Center personnel in processing. Alternatively, IRPAC recommends that these substitute statements be reinstated with any prohibition to the use of such statements being confined only to those statements on which withholding is shown. Finally, assuming the IRS would reinstate the use of these statements, IRPAC recommends that the IRS take steps to develop the capability to use the newly required Form 1042-S unique identifying number ("UIN") to match substitute payee statements to information returns electronically submitted.

Discussion

As part of its 2016 report, IRPAC highlighted the dialogue between its membership and the IRS as related to the use of substitute Form 1042-S payee statements. As noted by IRPAC, withholding agents are resistant to using the official Form 1042-S because the form is confusing and inefficient and, as such, negatively

impacts communications to customers. The IRS, in turn, explained that its effective elimination of the use of substitute Form 1042-S statements was based on the difficulty that IRS Service Center processors were having identifying and transcribing key information from all the substitute Form 1042-S statements in processing refund or credit claims. To address the IRS concerns, IRPAC proposed a more standardized substitute form, which would allow for the elimination of irrelevant boxes in a standardized manner.

IRPAC continued this dialogue during 2017. As a result, IRPAC recommends that the IRS at a minimum allow withholding agents to furnish substitute Form 1042-S payee statements on which no withholding is shown. Many Form 1042-S payee statements report no withholding due to numerous exemptions from withholding for various types of income (e.g., portfolio interest, bank deposit interest, etc.). As a result, those statements in these cases are not used to make refund or credit claims, but rather used merely to report certain payments made to payees. This recommendation would be particularly helpful with respect to bank deposit interest paid to nonresident alien (NRA) individuals. The required Form 1042-S reporting of bank deposit interest paid to NRA individuals has been greatly expanded given reciprocal reporting obligations under FATCA.

Moreover, allowing substitute Form 1042-S payee statements in the case of payments that are not subject to withholding would greatly enhance the ability of withholding agents to deliver a simpler payee statement that can be easily understood by its customers. The substitute form would be able to eliminate irrelevant information and would allow for the combination of a single customer's reportable accounts onto a single payee statement.

Finally, regardless of the IRS position with respect to the above requests, withholding agents are required to assign a UIN to each filed Form 1042-S beginning with tax year 2017. IRPAC recommends that the IRS develop the ability to use this UIN to allow Service Center processors to match refund claims to electronically submitted information reports by withholding agents detailing the tax that has been withheld. This matching method of processing refund claims should eliminate the need to read any information from payee statements other than the UIN. This would minimize both the time and expense required for the IRS to process such claims, as well as minimize refund fraud.

Recommendation G.11 – FATCA Gross Proceeds Withholding

IRPAC requests a delay in the implementation of the Treas. Reg. §1.1473-1(a)(1)(ii) requirement to deduct and withhold tax on gross proceeds for two years following the issuance of guidance on FATCA gross proceeds withholding.

Discussion

Treas. Reg. §1.1473-1(a)(1)(ii) provides that a withholdable payment includes "for any sales or other dispositions occurring after December 31, 2018, any gross proceeds from the sale or other disposition of any property of a type that can produce interest or dividends that are U.S. source FDAP income." Industry standard generally holds that withholding systems require approximately two years to design, build, test, and implement. Given it is less than two years until this December 31, 2018 date, IRPAC requests the IRS delay the implementation of FATCA gross proceeds withholding for a minimum of two years following the issuance of applicable guidance.

Recommendation G.12 – FATCA Foreign Passthru Payment Withholding

IRPAC requests a delay in the Treas. Reg. §1.1471-4(b)(4) requirement to deduct and withhold tax on foreign passthru payments for a minimum of two years following the issuance of guidance defining the term foreign passthru payment.

Discussion

Treas. Reg. §1.1471-4(b)(4) provides that "A participating FFI is not required to deduct and withhold tax on a foreign pass-thru payment made by such participating FFI to an account held by a recalcitrant account holder or to a nonparticipating FFI before the later of January 1, 2019, or the date of publication in the Federal Register of final regulations defining the term foreign pass-thru payment." Industry standard generally holds that withholding systems require approximately two years to design, build, test, and implement. Given it is less than two years until this January 1, 2019 date, IRPAC requests the IRS delay the implementation of foreign pass-thru payment withholding for a minimum of two years following the issuance of guidance further defining the term foreign pass-thru payment.

INFORMATION REPORTING PROGRAM

ADVISORY COMMITTEE

Emerging Compliance Issues Subgroup Report

DARRELL D. GRANAHAN, SUBGROUP CHAIR

TENESHA CARTER

RANDALL CATHELL

KEITH KING-CHAIR

RYAN LOVIN

NINA TROSS

JOEL LEVENSON

Emerging Compliance Issues

The ECI Subcommittee would like to thank the IRS for great progress this year. In the 2017 IRPAC report, the committee reported eight open issues and we are pleased to report that five of those issues were successfully remediated. The IRS and the committee worked hard together to clear out the issues on the following topics:

A. Form 1099-R Hard to Value Assets

B. Aggregation of distribution from multiple 529 plans

C. Form 1098 Mortgage Interest Reporting multiple properties

D. IRS updated Publication 1179

E. Form 1099-B Box 2 clarification

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

IRPAC would like to thank the IRS for updating IRS Publication 1220 to provide clarity on the TIN solicitation checkbox. The updated description provides needed clarity on the frequency and legislative intent of the checkbox.

IRPAC makes the following recommendations concerning Internal Revenue Code §6050S, the related Treasury Regulations and their effect on IRS Form 1098-T reporting:

3. As noted in the 2016 IRPAC Public Report, the Committee continues to recommend the following amendments to the Proposed Regulations included in the Notice of Proposed Rulemaking (REG-131418-14):

    a. Retain the exemption to reporting Form 1098-T, Tuition Statement, for students whom are non-resident aliens by reinstating Treasury Regulation § 1.6050S-1(a)(2)(i).

    b. Remove the requirement to report the number of months a student was a fulltime student by deleting Proposed Treasury Regulation §1.6050S-1(b)(2)(ii)(I).

    c. Allow institutions to report on Form 1098-T how payments are actually applied to students' accounts by revising Proposed Regulation § 1.6050S-1(b)(2)(J)(v) to read, "Payments received for qualified tuition and related expenses determined. For purposes of determining the amount of payments received for qualified tuition and related expenses during a calendar year, institutions may choose to report payments applied to

charges in a manner that reflects the payment application in the institution's student account system. Alternatively, institutions may utilize a safe harbor method and report payments received with respect to an individual during the calendar year from any source (except for any scholarship or grant that, by its terms, must be applied to expenses other than qualified tuition and related expenses, such as room and board) are treated first as payments of qualified tuition and related expenses up to the total amount billed by the institution for qualified tuition and related expenses for enrollment during the calendar year, and then as payments of expenses other than qualified tuition and related expenses for enrollment during the calendar year. Payments received with respect to an amount billed for enrollment during an academic period beginning in the first 3 months of the following calendar year are treated as payment of qualified tuition and related expenses in the calendar year during which the payment is received by the institution. For purposes of this section, a payment includes any positive account balance (such as any reimbursement or refund credited to an individual's account) that an institution applies toward current charges."

4. Provide guidance to clarify that institutions which change their reporting method to "Payments received" do not have to complete box 4 "Adjustments Made for a Prior Year" until the institution reimburses or refunds an amount that was previously reported as an amount paid. Amounts that were previously reported as "Amounts Billed" will have no impact on reporting in box 4 if an institution is reporting on the "Payments received" basis.

Discussion

IRC § 6050S and the related Treasury Regulations require the reporting of information to assist taxpayers in claiming an education credit or deduction. This information is reported on IRS Form 1098-T. Qualified tuition and related expenses for Form 1098-T reporting purposes mirrors the definition found under the education credits of IRC § 25A. Generally, qualified tuition and related expenses means tuition and fees required for the enrollment or attendance at an eligible educational institution for courses of instruction at such institution.

For transactions occurring during calendar year 2016, information required to be reported in 2017 and in subsequent years includes:

- The name, address and Taxpayer Identification Number (TIN) of any individual who is or has been enrolled at an eligible educational institution;

- The aggregate amount of payments received for qualified tuition and related expenses;

- The aggregate amount of grants received by such individual for payments of costs of attendance that are administered and processed by the institution;

- The amount of any adjustments to the aggregate amounts of previously reported payments received for qualified tuition and related expenses or grants; and

- The Employer Identification Number (EIN) of the eligible educational institution.

Prior to calendar year 2016, institutions had the option of reporting the aggregate amount billed for qualified tuition and related expenses or the aggregate amount of payments received for qualified tuition and related expenses. Protecting Americans from Tax Hikes of 2015; P.L. 114-113; removed the option for institutions to report the aggregate amount billed for qualified tuition and related expenses. The Higher Education Industry and IRPAC are grateful to the IRS for penalty relief granted under IRS Announcements 2016-17; 2016-42 for institutions whom continue to report on the amounts billed basis. Educational Institutions and IRPAC understand that the amounts billed reporting basis will no longer be an option for the 2018 calendar year to be reported in 2019.

Notice of Proposed Rulemaking (REG-131418-14) was published into the Federal Register on August 2, 2016. Included in this notice are multiple changes to Form 1098-T reporting. IRPAC's concerns with the proposed regulations are:

1a. By removing the exception to reporting on Form 1098-T for non-resident aliens, there will be a large increase in Forms 1098-T to be produced, which will not yield a materially higher number of correctly claimed education credits. Institutions, taxpayers and the IRS will face increased costs with processing and interpreting these forms, where there is generally no benefit. Currently, a nonresident alien may require an institution to report a Form 1098-T by requesting one. Non-resident aliens are only eligible for education credits when:

a. The non-resident alien is married and chose to file a joint return with a U.S. citizen or resident spouse.

b. The non-resident alien is a dual-status alien, and chose to be treated as a U.S. resident for the entire year.

1b. For many institutions, the office processing the information currently required on Form 1098-T operates as a billing / collections office. This office contains information on charge types, but does not have information on dates of semesters. By requiring the number of months that a particular student was a full-time student to be reported on Form 1098-T, institutions will be required to implement a manual process to report accurate information. Further, institutions will be required to update systems to ensure that accurate information is reported and shared between offices securely.

1c. By implementing a “payment application assumption,” institutions may be forced to have dual-student account information reporting. For example, if an institution did not program their payment application system to meet the IRS standards included in the notice of proposed rule-making, they would be forced to maintain one system for actual payment applications and one for tax reporting purposes. In this situation, if a student were to verify their Form 1098-T to the actual student account, there would be discrepancies between the sources of information.

2. The Protecting Americans from Tax Hikes Act of 2015, included in the Consolidated Appropriations Act of 2016 (P.L. 114-113) removed the option for educational institutions to report amounts billed for qualified tuition and related expenses (QTRE), thus requiring institutions to report amounts received for QTRE. Regulation §1.6050S-1(b) requires that institutions reporting payments received for QTRE also report any reimbursements or refunds made during the current calendar year that relate to payments of qualified tuition and related expenses that were reported by the institution for a prior calendar year. IRPAC recommends the IRS produce guidance that confirms institutions are not required to report amounts refunded or reimbursed that were previously reported as an amount billed for QTRE.

B. IRC §6050W and Form 1099-K Reporting Recommendations

IRPAC continues to recommend that further guidance is needed related to IRC § 6050W "Returns Relating to Payments Made in Settlement of Payment Card and Third Party Network Transactions." While past IRPAC reports highlight several areas of needed guidance, most importantly, IRPAC recommends that the key terms integral to the meaning of “third party payment network” be defined because entities making payments with respect to third party payment network transactions (called third party settlement organizations or TPSOs) are not subject to reporting under IRC § 6050W unless the payments made to any given recipient exceed a very broad de minimis threshold. Because of the broad definition of TPSO, this enables different interpretations of the de minimis rule and can impact the usefulness of the reporting data because of the potential underreporting.

IRPAC has also noted that many transactions are reported as result of an initialization submission to test out the point of sale device and then the merchant does not continue business with that payment processor. IRPAC feels that tens of thousands of forms are reported that have a gross reportable sales (GRS) in the amount of $0.01 and hundreds of thousands of forms with GRS less than $1.00. This creates confusion for the taxpayer and a cost burden to the payer. IRPAC urges the IRS to prioritize this project.

Discussion

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 does not appear to have made any progress in making any changes. IRPAC hopes that advancement on this very important guidance project will take place soon.

While IRPAC understands that the IRS has had serious budget constraints placed on the organization, IRPAC believes that further prioritizing the IRC § 6050W guidance project would not only help the tax reporting community, but also would help the IRS tax collection efforts. At a very minimum, the IRS should address the definitional issues associated with which entities qualify as TPSOs eligible to avail themselves of the de minimis rules which *eliminates* 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 payers can qualify for TPSO status.

C. Form 1042 and 1042-S Matching and Penalty Assessments Recommendations

IRPAC recommends revising the penalty assessment and collection procedures where the IRS is still in the process of verifying the deposit of withholding taxes reported on Form 1042-S. To implement this recommendation, IRPAC advocates that the IRS adopt four specific changes.

First, the IRS should refrain from assessing penalties where the withholding deposit matching process has not yet been completed. The collection proceedings associated with such penalties should likewise be postponed.

Second, the IRS should send a letter informing the taxpayer when additional time is needed to match deposits with credit and refund claims. Such letters should provide an estimate of the additional time required to resolve the matter.

Third, IRPAC recommends the IRS provide a provisional credit in the amount of the claimed withholding, until the matching process has been completed. Where delays are protracted, taxpayers should receive interest on their delayed refunds.

Fourth, IRPAC recommends that IRS Service Centers adopt policies and procedures that implement the instructions provided by Program Managers with respect to the non-assessment of penalties in voluntary disclosure cases.

These recommended changes are expected to result in a more efficient use of IRS resources, in addition to increased taxpayer satisfaction regarding efficient resolution of tax liabilities.

Discussion

In Notice 2015-10 the IRS announced that it would begin to match deposits of withholding taxes before processing refund claims. IRPAC understands that this policy

change is necessary in order to address fraudulent refund claims for taxes that were never remitted to the IRS. Thus, the general need for this change in policy is recognized and not at issue.

Various service providers report experiencing delays in receiving claimed refunds. Partial refunds and complete denials are also common. The reasoning behind the complete and partial denials is not always clear.

Accordingly, while the IRS is conducting its verification procedures regarding withholding deposits, there should be a commensurate delay regarding penalty assessments and collection efforts. The assessment of penalties, when the IRS has not completed its work with respect to the matching of credit claims to deposits, erodes taxpayer confidence in the tax collection and withholding process, and is an inefficient use of resources for the IRS, taxpayers, and their advisors.

IRPAC appreciates and applauds the IRS for the continuation of the voluntary disclosure process with respect to delinquent Forms 1042 and 1042-S, and the associated payment of taxes due. Nonetheless, taxpayers that have reached an agreement with IRS Program Managers with respect to the non-assessment of penalties in voluntary disclosure cases frequently find that when the delinquent returns are sent to IRS Service Centers for processing penalty assessments are nonetheless issued. The assessment of penalties by the processing Service Centers, in clear violation of the instructions provided by the Foreign Payments Practice Program Managers, is further exacerbating the inefficient utilization of resources for both the Service and taxpayers, and eroding trust placed in voluntary disclosure programs and the tax collection system generally.

Appendices

Appendix A:

Notice 2017-18 Recommendations for items that should be included on the 2017-2018 Priority Guidance Plan

Appendix B:

Foreign Taxpayer Identification Number Supplement

Appendix C:

Publication 515 Recommendations

Appendix A: Recommendations for 2017-2018 Priority Guidance Plan

Internal Revenue Service
Attn: CC:PA: LPD:PR (Notice 2017-28) Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

May 30, 2017

RE: Notice 2017-18
Recommendations for items that should be included on the 2017-2018 Priority Guidance Plan

Dear Commissioner Koskinen:

The Information Reporting Program Advisory Committee (IRPAC) is honored to respond to Notice 2017-28 and recommends the following list of items be included in the 2017-2018 Priority Guidance Plan. We believe our recommendations for guidance, through regulations, revenue rulings; revenue procedures or other appropriate guidance methods, would significantly improve tax administration and reduce the administrative burdens on both 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 members represent a wide cross section of the payer community and works closely with IRS on a wide range of information reporting issues impacting taxpayers and filers.

IRPAC recognizes the vital role information returns play in allowing taxpayers to comply with their filing obligation, while ensuring the IRS receives the correct information required to collect the proper amount of tax. For the reporting community to file accurate returns, it is imperative that Treasury provide timely and clear guidance that allows filers to implement new programs or modify existing programs.

In previous public reports, IRPAC has requested that when the IRS is developing new guidance, it should take into consideration the 18-24 months lead time the information reporting community needs to modify or enhance their current systems to comply. This time is needed so that a business implementation plan can be drafted, a budget for the project secured, systems and other technical resources acquired, with build out and

testing prior to implementation. This all occurs while the industry is simultaneously trying to implement other federal and state rules and regulations impacting their systems of record.

Therefore, it is important that the IRS work with the reporting community to establish "effective dates" that allow filers to build the appropriate infrastructure to support new or modified requirement s.

Below are IRPAC's specific recommendations for priority guidance:

Specific Recommendations for Guidance

1) FATCA guidance

IRPAC thanks the IRS and Treasury for the FATCA, qualified intermediary program (including qualified securities dealer rules), section 871_(m) withholding, and section 305(c) withholding guidance produced during

2016. However, IRPAC also recognizes that there are still a number of topics requiring clarification given the complexity of these rules as well as the evolution of these and other global tax transparency regimes. Therefore, IRPAC would continue to request the IRS to produce guidance in this space to mitigate inconsistent and inaccurate treatment by withholding agents.

Specifically, IRPAC would request additional guidance and I or the publication of additional FAQs regarding the collection and reporting of foreign taxpayer identification numbers, elimination or deferral of FATCA gross proceeds and foreign passthru payment withholding, and confirmation that certain discretionary mandates do not constitute professional management for purposes of determining foreign financial institution ("FFI") or non-financial foreign entity ("NFFE ") status. Likewise with respect to section 871(m), IRPAC would request consideration to the elimination of or postponement of .8 delta withholding in favor of existing delta 1 withholding with an anti-abuse rule, guidance related to net delta calculations including the treatment of interbranch transactions and index mismatches, continuation of QDD withholding tax relief on actual dividends post-2017 , and additional time to apply withholding and permit refunds with respect to derivatives referencing master limited partnerships.

2) Form W-9 guidance

IRPAC acknowledges a significant amount of guidance related to Forms W-8 has been released and would request similar guidance related to Forms W-9 including the use of electronic signatures and the ability to accept via a third-party repository.

3) IRA Escheatment to states

IRPAC recommends that guidance be issued to clearly define custodians reporting requirements, when IRA assets are escheated to states abandoned property departments. Given the current lack of guidance, some states are attempting to step in and provide state guidance. These states requirements, in some cases appear to directly conflict with IRS instructions. However, without proper guidance custodians may be forced to follow varying directions from a large number of state departments of revenue.

4) Pension Payments to NRA participants

IRPAC requests guidance regarding the proper tax treatment for applying withholding and reporting rules for NRA plan participants with certain taxable transactions processed within the U.S. and where current law and regulations overlap and leave a lot of uncertainty. Accordingly, IRPAC requests that the IRS provide standardized definitions for a periodic payment, non-periodic payment and lump sum payments. The lack of authoritative guidance creates confusion upon audits and inconsistencies when applying reduced treaty rates.

5) TIN matching

IRPAC recommends expanding the TIN Matching Program to include all filers of information returns for which incorrect TIN penalties under IRC 6721 and 6722 apply. IRPAC believes that the expanded use of the TIN Matching program will significantly reduce IRS administrative costs, while eliminating the burden and reducing the penalties on filers who are currently barred from performing TIN validation prior to IRS filings.

6) De minimis corrections, Notice 2017-09

IRPAC is very thankful for Notice 2017-09, which highlights ce1iain provisions related to implementing the de minimis error safe harbor from information reporting penalties under sections 6721 and 6722 of the IRC. However, the notice also indicated that Treasury intended to issue regulations that would allow filers to implement the de minimis safe harbor and allow payee elections to have safe harbor not apply. IRPAC believes these regulations should be prioritized, since these rules are effective for information returns filed and furnished after December 20 16 and filers need time to enhance their systems.

The implementation of earlier reporting deadlines for certain forms such as Form 1099-MISC box 7 transactions could also cause increased corrections as filers had little time to appropriately modify and test their systems.

7) Form 1098 capitalized interest pursuant to mortgage loan modifications

IRPAC recommends that guidance be provided for reporting on capitalized interest on modified loans, Form 1098 Mortgage Interest under Sec. 6050H. This issue was submitted by both the American Bankers Association (ABA) and Mortgage Bankers Association (MBA) to the IRS and was initially accepted into the Industry Issue Resolution (IIR) program. However, last fall the IRS dropped the issue from the IIR program, indicating they were starting a "reg." project on the needed guidance. Meanwhile the lack of guidance related to the reporting of mortgage interest on modified mortgage loans- continues to impact the borrower 's ability to timely claim a mortgage interest deduction, while mortgage lenders and mortgage servicers need clarity to properly report these amounts.

8) Penalty Abatement

As IRPAC has highlighted in their last four public reports, the payer community continues to have their reasonable cause abatement requests denied, although their reasonable cause claims appear valid and comply with regulations and IRS instructions. Therefore, IRPAC is asking, that when appropriate, the IRS should temporarily suspend the assessment and collection of 972G penalties until the systemic problems with the penalty abatements process are corrected.

IRPAC thanks the IRS for considering our recommendations for inclusion in the 2017-2018 Priority Guidance Plan. We look forward to continuing partnering with you to improve tax administration and reduce the burdens placed on the reporting community. IRPAC would be happy to furnish additional details related to the above recommendations upon request.

Respectfully submitted,

/signed/

Keith King /

2017 IRPAC Chairperson

Appendix B: Foreign Taxpayer Identification Number Supplement

Account(s) #: _____

First Name:	Middle Name:	Last Name:
Business Name *(if applicable):*		

I certify that I do not have a non-U.S. taxpayer identification number ("TIN") for the following reason:

☐ (1) I am not legally required to obtain a TIN in my jurisdiction of tax residence.

☐ (2) My jurisdiction of tax residence does not issue TINs.

☐ (3) Other:

_____
_____
_____

X Signature:	Date:

Appendix C: Publication 515 Recommendations

IRPAC recommends the following updates to the tax treaty tables as historically published in Publication 515 and as now included on IRS.gov:

1. Modification of the general footnote "d" for income code 15 Pensions and Annuities is necessary in treaty Table 1. IRPAC would suggest modifying the existing footnote "d" as follows - "In most cases, these rates refer to periodic payments on pensions not paid by a government. If making a lump sum distribution on a non-government plan you must review the actual text of the treaty to validate the rate applicable to lump sum distributions. See specific treaty rules for government pensions."
    a. IRPAC would also suggest this footnote "d" be added to the income code 15 header on other pages as well to confirm it is applicable to all countries.

2. Associate existing footnote "ii" with the Netherlands. Specifically, this existing footnote states "The exemption does not apply if (1) the recipient was a U.S. resident during the 5-year period before the date of payment, (2) the amount was paid for employment performed in the United States, and (3) the amount is not a periodic payment, or is a lump-sum payment in lieu of a right to receive an annuity."

3. Add footnote for the United Kingdom. IRPAC would suggest the language "The exemption does not apply to lump sum distributions."

4. Add footnote for Italy. IRPAC would suggest the language "The exemption does not apply to lump sum or severance payments received if the applicable past employment was performed in the United States while such person was a resident of the United States."

Member Biographies

Lisa Allen- Ms. Allen is Vice President of Regulatory Affairs for Relph Benefit Advisors, an Alera Group company in Fairport, NY. Allen has 25+ Years of Employee Benefit experience and is VP of Regulatory Affairs for Relph Benefit Advisors. Ms. Allen manages regulatory updates and provides clients with counsel regarding the Affordable Care Act and managing employee eligibility. Ms. Allen supervised the processing of over 40,000 1095-Cs in Q1 2017. Allen is the Chairman of the Compliance Committee of the Benefit Advisors Network, a member of the Employee Council on Flexible Compensation, SHRM, National Association of Health Underwriters and the International Foundation of Employee Benefit Plans. Ms. Allen is a frequent speaker nationally on subjects such as ACA and ERISA regulations. (**Employer Information Reporting/Burden Reduction**)

Laura Lynn Burke- Ms. Burke is the owner of Global Tax Masters; she is an Enrolled Agent, and a Certified Fraud Examiner. She provides tax resolution, strategic planning and tax preparation to her clients, as well as authoring/reviewing Corp Security Policies, Corp Strategic Planning, and assists business owner with start-up and new corporations. Ms. Burke has working knowledge of domestic production activities, deductions, sales & use, excise and GST tax. Ms. Burke is a member of the Illinois CPA Society, Past Treasurer of Women in Insurance & Finance, and a member of the Association for Fraud Examiners. Laura formerly managed one of the largest VITA sites in Illinois, for five consecutive years, over-seeing 100+ volunteers, and managing the review and electronic submission of 4000 tax returns. Burke is the founder of *"Enrolled Agents of America"* a LinkedIn tax group with nearly 5000 members; who are enrolled agents, tax attorneys, retired IRS, and tax preparers. Laura is a current doctoral student, studying for Ed D in Leadership and Non-profit-organizations. She received an MBA in Tax/Marketing, and an MS in Information Management Systems, a Certificate in Digital Forensics, BA and an AAS in Business Administration. (**Employer Information Reporting/Burden Reduction**)

Tenesha Carter- Ms. Carter is Senior Vice President of Tax Prep Services for the State Employees Credit Union in Raleigh, NC. Carter supervises and coordinates the tax preparation program for the credit union's 257 branches. She previously supervised daily operations of IRA services to ensure proper handling and reporting for the credit union in that area. Carter is an Enrolled Agent and holds a Bachelor of Arts from the University of North Carolina, Chapel Hill (**Emerging Compliance Issues**)

Randall Cathell- Tax Managing Director, International, Crowe Horwath, LLP, Fort Lauderdale, FL, and heads the firm's international information reporting practice. He also serves as the lead international tax professional for the firm across the state of Florida. He has more than 20 years of experience in federal, international and state tax matters. Cathell focuses on subchapter C corporations and partnerships in both the private and public sectors, in addition to foreign nationals with U.S. investments. He specializes in companies with international operations, from both a planning and compliance perspective. (**Emerging Compliance Issues**)

Terry W. Edwards-Mr. Edwards has worked in banking for over 27 years in the Corporate Tax Department of Wells Fargo Bank (and predecessor Wachovia Bank). He

leads a team of tax professionals that provide consulting to multiple and diverse business units on information reporting and withholding requirements. He has been a member of the American Bankers Association's Information Reporting Committee since 2009 and Chair of the committee in 2015 and 2016. He served on the Clearing House's Tax Reporting Committee from 2002-2013 and as Chair in 2011. Mr. Edwards is also a founding member of the Information Reporting Roundtable Committee (comprised of numerous U.S. Banks). Prior to joining Wells Fargo, he was employed as a tax consultant at Deloitte. He is a CPA with a Masters in Accounting from Virginia Tech and a BS in Business Administration from the University of Virginia's college at Wise. (**International Reporting and Withholding**)

Alan M. Ellenby- Mr. Ellenby is an executive director and an attorney serving as national tax technical advisory leader for EY's practice providing ACA compliance and reporting services to large employers. In addition, he has worked with qualified and non-qualified retirement plans, other types of compensation and employee benefit issues, assisting multinational corporations with the U.S. taxation of employees participating in foreign pensions. He is a member of the American Bar Association and was a member of the AICPA Tax Division's Employee Benefit Technical Resource Panel. Mr. Ellenby received a degree in actuarial science from the University of Illinois and a JD from the University of Chicago. (**Employer Information Reporting/Burden Reduction**)

Dana Flynn- Ms. Flynn is a Director in the group tax department at BNP Paribas and is the global head of U.S. Information Reporting & Withholding, FATCA, and QI Advisory. As U.S. tax advisory, she works with various local and global divisions of BNP Paribas relating to their policy planning, implementation and compliance issues pertaining to various areas of U.S. domestic and non-resident withholding and information reporting, including the Foreign Account Tax Compliance Act (FATCA) and Section 871(m) of the Internal Revenue Code. As the global head of QI advisory, she also works closely with the bank's QI entities developing and implementing global policy and procedure. Previously, she was a director within Group Tax at UBS where she was the Americas regional expert for FATCA. Ms. Flynn has been a guest speaker and Chairperson at tax information reporting and withholding conferences within the industry and is a member of the Securities Industry and Financial Markets Association (SIFMA) Tax Compliance Committee. She received her BA from Boston College and JD from Suffolk University Law School. (**IRPAC Vice Chair & International Reporting and Withholding**)

Darrell D. Granahan- Mr. Granahan, CISA and CRISC, is a Senior Director of Implementation and Customer Success Management 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. **(Chair, Emerging Compliance Issues Subgroup)**

Keith King- Mr. King is Senior Vice-President and Tax Executive of Bank of America in Charlotte, N.C. He has over 25 years of experience in the finance industry, having spent the last 17 years in the information reporting field. Mr. King is currently a senior advisor in Bank of America's Information Reporting and Withholding Advisory Group, which provides guidance to the bank's various lines of businesses on federal and state information reporting and withholding regulations and its impact on their products and services. Mr. King is the current Chairman of the IRS Information Reporting Program Advisory Committee. He is also a current member of the American Bankers Association (ABA) Information Reporting Advisory Group. He was also a past member of the Securities Industry and Financial Markets Association (SIFMA) Tax Compliance and Administration Committee and The Clearing House (TCH) Tax Withholding and Information Reporting Committee. He holds a BS in Business Administration from the City University of New York at Medgar Evers College and an MBA from Queens University of Charlotte, McColl Graduate School of Business. (**IRPAC Chair & Emerging Compliance Issues**)

Joel Levenson- Mr. Levenson, as associate Director of Tax Compliance at the University of Central Florida, considers information reporting a significant part of his role, working with taxpayers who receive information returns submitted by the university. He works with multiple departments to ensure accurate reporting including: student accounts for 1098-T; accounts payable for 1099-MISC; international studies for 1042-S; human resources for W-2; and the UCF card services for 1099-K. Mr. Levenson is a member of the Tax Council of the National Association of College & University Business Officers (NACUBO), the Inter-Institutional Committee on Finance & Accounting Officers (ICOFA), Tax Sub-Committee; and the University Tax Peer Group. He received his BS in Accounting from the University of Central Florida as well as a Master of Science, Taxation. (**Emerging Compliance Issues**)

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 25 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**)

Ryan Lovin- Mr. Lovin, Associate Counsel, Vanguard, Malvern, PA. Mr. Lovin is an associate counsel for Vanguard, where he leads the product tax legal team. His team

provides a range of domestic and foreign tax law advice to Vanguard and its mutual funds, ETFs, and other products. Mr. Lovin has over 10 years of experience in the tax industry and previously worked in Washington D.C. for the Investment Company Institute and the law firm Fried Frank. He has a Masters in Accounting from the University of North Carolina Chapel Hill and a Juris Doctorate from Georgetown University. **(Emerging Compliance Issues)**

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**)

James Paille- Mr. Paille is a Director of Compliance at Thomson Reuters in Ann Arbor, MI. Paille has been an executive manager in the payroll service industry for over 30 years. Paille is the Director of Compliance for myPay Solutions, the payroll division of Thomson Reuters. Paille is currently the Immediate Past President of the American Payroll Association and a member of the Board of Directors. Paille is also an active member of IPPA, NACHA and NACTP. He holds a BS in Accounting from St. John Fisher College. (**Employer Information Reporting/Burden Reduction**)

Thomas Prevost- Managing Directorat- FATCA Responsibility Officer for Credit Suisse in New York, NY. Thomas Prevost is a Managing Director at Credit Suisse and the FATCA Responsibility Officer for all Credit Suisse Group entities. Prevost is responsible for FATCA Advisory and the Compliance Framework, including IRS certifications for Credit Suisse globally. Prior to March1, 2015 Prevost was the Amériques Head of Tax for 13 years where he was responsible for all taxation issues for the amerriras region, including US information reporting issues. Provost served 15 years as ISDA North America Tax Chair and is a SIFMA Tax Compliance Group member. Prevost holds a Juris Doctorate from the University of Houston and a BSBA in Accounting from the University of Louisiana- Lafayette. (**International Reporting and Withholding**)

Emily Z. Rook - Ms. Rook is a Consultant with Circle Financial Services in Inverness, 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 is a member of the Government Relations Task Force. She is a Certified Payroll

Professional and earned a BS in Commerce from Rider College**. (Chair, Employer Information Reporting/Burden Reduction Subgroup)**

Kevin V. Sullivan Kevin V. Sullivan is Managing Director and Tax Executive at Bank of America where he is the Head of U.S. Information Reporting Advisory in the corporate tax department. In this capacity, he manages a team of tax advisors responsible for U.S. withholding and information reporting advisory throughout Bank of America Merrill Lynch. Prior to Bank of America, Kevin held various positions at BNP Paribas including Head of U.S. Information Withholding & Reporting, FATCA, and QI Advisory, Head of North American Tax Operations, and Head of North American FATCA. Kevin also worked at Deloitte Tax as a Senior Manager in the Global Information Reporting group where he advised foreign and domestic financial institutions as well as multinational corporations in properly addressing U.S. and NRA tax withholding and reporting obligations. He is a member of SIFMA's Tax Compliance Committee and the Institute of International Bankers (IIB). He has a B.S. in Political Science and Law & Society from the American University in Washington, D.C., and a JD from St. Thomas University School of Law, Miami. **(International Reporting and Withholding Subgroup)**

Clark Sells- Mr. Sells is Senior Product Manager at Sovos/Convey Compliance in Plymouth, MN. Clark Sells is a Principal for Sovos Compliance. Sells has experience in implementing and maintaining tax software for filers of all volumes. Sells manages emerging compliance platforms including the launch of new tax reporting systems to comply with healthcare and global reporting legislation. Sells serves as company liaison with federal and state government agencies. Sells attended the University of Wisconsin**. (Employer Information Reporting/Burden Reduction)**

Nina Tross- Ms. Tross accepted the position 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)**

Kelli Wooten- Ms. Wooten is an Executive Director with CTI Tax Solutions by IHS Markit. She advises both multinational corporations and financial institutions on their compliance with information reporting and withholding rules such as the Foreign Account Tax Account Compliance Act (FATCA) and the Common Reporting Standard (CRS). Ms. Wooten also works on designing, testing, and implementing tax software

solutions for tax due diligence, withholding, and information return reporting. Ms. Wooten was previously Of Counsel with Burt, Staples & Maner, LLP and also had an extensive career at Procter & Gamble There she served in many capacities, including domestic and international tax compliance, audit and litigation, and indirect tax. Ms. Wooten was previously a member of the IRS Electronic Tax Administration Advisory Committee ("ETAAC") where she was the 2015 – 2016 Vice-Chair. Ms. Wooten earned a B.S. in Accounting from The University of Tennessee, and a Juris Doctorate from the University of Cincinnati College of Law. **(Chair, International Reporting and Withholding Subgroup)**