Emerging Compliance Issues Subgroup Report

A. IRC § 6050W and Form 1099-K, Payment Card and Third Party Network Transactions, Reporting

Recommendations

As we explained in our 2012-2013 Guidance Plan IRPAC Comment Letter (See Appendix A), which references IRPAC's March 28, 2011, comment letter in Appendix D to the 2011 Report, IRPAC makes a number of recommendations related to IRC § 6050W and Form 1099-K, Payment Card and Third Party Network Transactions. Most of the recommendations relate to the need for additional guidance. These recommendations are set forth below as numbered items.

1. IRPAC recommends that the IRS provide additional official guidance (*e.g.*, revenue rulings, notices, revised regulations) to further address open questions regarding IRC § 6050W. Official guidance is necessary to address open questions regarding the meaning and scope of the terms in the statute and Treasury Regulations.

2. Key terms integral to the meaning of "third party payment network" must be defined in official guidance in order for reporting organizations to reasonably apply the rules. These terms include "central organization," "guarantee" and "substantial number of providers of goods or services." IRPAC's detailed recommendations related to the definition of these terms can be found in its March 28, 2011, comment letter in Appendix D to the 2011 Report. During meetings with the IRS in 2012, IRPAC redelivered its draft definitions of these key terms. IRPAC also suggested additional guidance regarding the meaning of "aggregated payee" is needed as well as whether the definition should be applied to third party payment networks that do not meet the reporting threshold.

3. The definition of "third party payment network" can be interpreted broadly to include transactions not apparently considered by Congress when it drafted the statute. Guidance should be issued to clearly set forth the IRS's understanding of the scope of the statutory and regulatory language to various arrangements that involve three parties but may not constitute a "third party payment network." For example, guidance should address whether certain common three-party arrangements involving the transfer of accounts receivable constitute third party payment networks for purposes of Form 1099-K reporting. Further, other third party arrangements are rapidly arising in the marketplace, such as new ways for sellers to accept payment using credit cards and three party transactions where one party facilitates the sale of goods or services as well as payment. It is not clear based upon the guidance provided to date whether certain arrangements are subject to IRC § 6050W reporting, and if so which reporting standards under IRC § 6050W apply. IRPRAC recommends that the IRS provide guidance that distinguishes when such arrangements must be reported under IRC §

6050W, including the promulgation of ordering rules when concepts such as third party payment networks and aggregated payees both apply to the same transactions.

4. IRPAC believes that certain three party transactions should remain reportable under IRC § 6041. These include transactions in which payments are made on behalf of another person under Treas. Reg. § 1.6041-1(e), such as accounts payable processing arrangements (both related-party shared-services arrangements and third-party total-outsourcing arrangements). The final IRC § 6050W regulations provide that in all instances in which transactions are otherwise subject to reporting under both IRC § 6041 and IRC § 6050W, the transaction must be reported under IRC § 6050W and not IRC § 6041. IRPAC recommends that Treasury and the IRS grant certain limited exceptions to this rule. See IRPAC's March 28, 2011, comment letter in Appendix D to the 2011 Report.

5. Guidance is necessary to address how the transaction-based reporting approach applicable in the payment card context applies to arrangements involving third party payment networks. The narrow scenarios applicable in the payment card context are not easily or readily applied to the varying scenarios that can arise in the context of third party network transactions. Guidance is needed to address reporting in this area.

6. The documentation requirements for U.S. payers to foreign merchants should be relaxed to conform to the current requirements for non-U.S. payers making payments under IRS § 6041.

7. Additional time to report on Form 1099-K should be permitted for the deemed participating payee under aggregated payee arrangements because the date on which reporting is due is the same date that the Form 1099-K is due to the deemed participating payee from the payment settlement entity.

8. Guidance is needed to identify the entity deemed to be the payment settlement entity when there are multiple payment settlement entities. There is tension between the language of the preamble under "payment settlement entity" and the language in Treas. Reg. § 1.6050W-1(a)(4)(ii). In particular, the last sentence of the second paragraph of the preamble provides, "[t]he final regulations clarify that the entity that makes a payment in settlement of a reportable payment transaction is the entity that actually submits the instruction to transfer funds to the account of the participating payee to settle the reportable payment transaction" whereas Treas. Reg. § 1.6050W-1(a)(4)(ii) provides "if two or more persons qualify as payment settlement entities . . . with respect to a reportable payment transaction, then only the payment settlement entity that in fact makes payment in settlement of the reportable payment transaction

must file the information return required by paragraph (a)(1) of this section." Stated differently, the preamble emphasizes "submitting the instruction to transfer funds" while the actual regulation emphasizes "in fact makes payment." This has caused confusion in certain arrangements in which the instruction to transfer funds and the actual transfer of the funds are performed by separate entities.

9. Guidance is needed to clarify whether an electronic payment facilitator can also be a payment settlement entity. Clarification is necessary because questions regarding which party is liable for reporting failures are arising when electronic payment facilitators are involved in processing transactions. There is overlap related to the rules regarding multiple payment settlement entities and electronic payment facilitators. Clarification regarding how these roles interact is necessary to address questions of liability related to proper reporting of transactions.

Discussion

IRC § 6050W and the related regulations require the reporting of two significant classes of transactions, payment card transactions and third party network transactions, on the Form 1099-K. Payment card transactions are any transactions in which a payment card (or any account number or other indicia associated with a payment card) is accepted as payment. Payment cards include credit cards and stored value cards, which are cards with a prepaid value including gift cards. Third party network transactions are any transactions settled through a third party payment network. A third party payment network is any agreement or arrangement that (a) involves the establishment of accounts with a central organization by a substantial number of providers of goods or services who are unrelated to the organization and who have agreed to settle transactions for the provision of the goods or services to purchasers according to the terms of the agreement or arrangement; (b) provides standards and mechanisms for settling the transactions; and (c) guarantees payment to the persons providing goods or services in settlement of transactions with purchasers pursuant to the agreement or arrangement.

Final regulations under IRC § 6050W were issued on August 16, 2010, and the reporting rules became effective on January 1, 2011. See T.D. 9246. Backup withholding in connection with transactions under IRC § 6050W became effective on January 1, 2012. In contrast to information reporting returns that have existed for many years (*e.g.*, Form 1099-MISC, Miscellaneous Income), the Form 1099-K requires a monthly breakdown of the amounts required to be reported and the reported amounts seem to be based upon a transactional approach rather than upon actual payments.

The transition to reporting rules under IRC § 6050W has been challenging for both the IRS and reporting organizations. The drafters of the regulations had to address an overwhelming number of challenging implementation issues, including very broad statutory language regarding third party networks. The IRS undoubtedly continues to grapple with these issues, and IRPAC urges the IRS to issue guidance to address these issues as expeditiously as possible. As mentioned in our recommendations, new multi-party transactions are arising with increasing frequency in the marketplace, and the IRS must issue guidance so reporting organizations will understand how to apply the rules. Guidance is especially important because it is not clear under various arrangements whether or not IRC § 6050W applies at all, and in certain instances multiple reporting mechanisms appear to apply to the same transactions (*e.g.*, aggregated payee rules, third party network rules, etc.). Accordingly, IRPAC recommends that the IRS issue guidance that better delineates arrangements subject to IRC § 6050W reporting and provide ordering rules when more than one IRC § 6050W reporting requirement applies to a particular arrangement. This additional guidance will help to provide much needed clarity to reporting organizations as they attempt to navigate this new and complex area of the law.

B. Form 1098-T, Tuition Statement

Recommendations

The table of contents on page 1 of IRS Publication 970, Tax Benefits for Education, should refer to a new section discussing Form 1098-T, Tuition Statement. Information about Form 1098-T should also be added to the instructions to Form 8863, Education Credits. Clarification that payments received from the Department of Veterans Affairs may be reportable in box 5 is needed in the instructions for Form 1098-T. IRPAC recommends the IRS communicate with companies providing Form 1040 preparation software regarding the appropriate use of amounts reported on Form 1098-T when calculating education tax credits.

Discussion

IRPAC believes there is confusion among taxpayers regarding the appropriate use of amounts reported on Form 1098-T when calculating education tax credits. Additional information about amounts reported on Form 1098-T should be added to publications and instructions as described below. Discussions between IRPAC and the IRS indicate the IRS agrees with IRPAC's suggestions and plans to make changes to the 2012 publications and instructions. The IRS recently posted a draft of the 2012 Form 8863 and IRPAC is hopeful that its suggestions will be incorporated in the instructions when they are issued.

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1. Publication 970 would benefit from the addition of a new section specifically addressing Form 1098-T that should be referenced in the table of contents on page 1. This section should include the following information:

> **Form 1098-T.** When figuring the credit, use only the amounts you paid or were deemed to have paid during the calendar year for qualified education expenses. You should receive Form 1098-T. Generally, an eligible educational institution (such as a college or university) must send Form 1098-T (or acceptable substitute) to each enrolled student by January 31. An institution may choose to report either payments received (box 1), or amounts billed (box 2), for qualified education expenses. However, the amounts in boxes 1 and 2 of Form 1098-T might be different than what you actually paid. In addition, your Form 1098-T should give you other information for that institution, such as adjustments made for prior years, the amount of scholarships or grants, reimbursements or refunds, and whether you were enrolled at least half-time or were a graduate student.
>
> The eligible educational institution may ask for a completed Form W-9S, Request for Student's or Borrower's Taxpayer Identification Number and Certification, or similar statement to obtain the student's name, address, and taxpayer identification number.

2. Instructions for Form 8863 should address Form 1098-T. IRPAC recommends the addition of the following information:

> **Form 1098-T.** When figuring the credit, use only the amounts you paid or were deemed to have paid during the calendar year for qualified education expenses. You should receive Form 1098-T, Tuition Statement. Generally, an eligible educational institution (such as a college or university) must send Form 1098-T (or acceptable substitute) to each enrolled student by January 31. An institution may choose to report either payments received (box 1), or amounts billed (box 2), for qualified education expenses. However, the amounts in boxes 1 and 2 of Form 1098-T might be different than what you actually paid. In addition, your Form 1098-T should give you other information for that institution, such as adjustments made for prior years, the amount of scholarships or grants, reimbursements or refunds, and whether you were enrolled at least half-time or were a graduate student.

3. Instructions for Form 1098-T should clarify that payments received from the Department of Veterans Affairs may be reportable in box 5. This could be accomplished

by the addition of “Department of Veterans Affairs” to the box 5 instructions. Instructions for 2012 mention the Department of Veterans Affairs as an exception from reporting on page 2; however, the exception only applies if the educational institution does not maintain a separate financial account for the student and qualified tuition and related expenses are covered by a formal billing arrangement between the institution and the student’s employer or governmental entity. Including the Department of Veterans Affairs in the list of payments from third parties that may be reportable in box 5 will help to alleviate confusion.

C. Withholding and Reporting on Payments for Freight, Shipping and Other Transportation Expenses under IRC §§ 1441 and 1442

Recommendations

The following recommendations are intended to reiterate and/or supplement the recommendations included in pages 13-14 and 61-64 related to this issue in the 2011 Report and pages 12 and 61-68 in the 2010 Report. A synopsis of this issue is included in the discussion section below.

1. The new Form W-8BEN-E, Certificate of Status of Beneficial Owner for United States Tax Withholding (Entities), should be revised to allow foreign corporations engaging in international shipping or air transportation to identify that they are either subject to the excise tax under IRC § 887(a) or qualify for the exclusions described under IRC §§ 883(a)(1) or (2) and Treas. Reg. § 1.883-1. Specifically, IRPAC proposes that Part III of Form W-8BEN-E should be retitled “Certain Chapter 3 Exceptions” and a second line (line 13) that provides as follows should be added under Part III below the line addressing notional principal contracts:

> 13 I certify that the beneficial owner identified in Part I and whose taxpayer identification number appears on line 7 qualifies for one of the two exceptions set forth below related to U.S. source income derived from the international operation of ships or aircraft (check appropriate box to certify):
>
> > 13a • The beneficial owner is subject to the 4% excise tax on U.S. Gross Transportation Income under IRC § 887.
> >
> > 13b • The beneficial owner qualifies for the exclusion of U.S. source income derived from the international operation of ships or aircraft under IRC § 883(a)(1) and (2) because the beneficial owner is resident in a foreign country that grants U.S. ships or aircraft an equivalent exemption from tax.

2. Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding, should be revised to add a specific income code for U.S. source income from international shipping or air transportation.

3. The current description of the international shipping and air transportation issue within Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities, does not accurately explain the law in this area and should be revised to reflect these changes and discussion of the law herein.

Discussion

The interplay of IRC §§ 871, 881, 882, 883, and 887 are confusing as they relate to the taxation of U.S. source gross transportation income (USGTI) and international transportation provided by ship or aircraft. Accordingly, we provide herein a brief recap of the salient statutory provisions regarding USGTI and a foreign corporation's eligibility for exemption from withholding for transportation by ship or aircraft under IRC §§ 1441 and 1442.

IRC §§ 1441 *et seq.* provides the mechanism for withholding and reporting items of income subject to the gross-basis tax set forth in IRC §§ 871 and 881. In general, a 30% withholding tax is imposed on the U.S. source fixed and determinable annual or periodical (FDAP) income of a nonresident alien individual or foreign corporation. FDAP income is broadly defined and includes income from the performance of services. Income from ship and air transportation and income from transportation over road or rail are services included within the meaning of FDAP income.

IRC § 887(a) imposes a 4% excise tax on USGTI. This 4% excise tax is self assessed by a foreign corporation that engages in shipping or air transportation. USGTI includes income from the international operation of ships and aircraft by foreign corporations. IRC § 887(a)(1); IRC § 883(a)(1) and (2). When the 4% excise tax imposed on USGTI applies, the gross-basis withholding tax imposed under IRC §§ 871 and 881 and carried out through IRC §§ 1441 and 1442 does not apply. Conversely, when the 4% excise tax under IRC § 887(a) does not apply, the ship or air transportation income of a foreign corporation is subject to 30% withholding under IRC §§ 881, 1441 and 1442.

An exclusion from income arising from the international operation of ships or aircraft is also provided under IRC § 883(a)(1) and (2) and Treas. Reg. § 1.883-1. In general, this exclusion applies for qualifying income derived by a qualified foreign

corporation from its international operation of ships or aircraft only if the foreign country grants an equivalent exemption from taxation for the international operation of ships or aircraft by corporations organized in the United States. IRC § 883(a)(1) and (2); Treas. Reg. § 1.883-1(h). This exclusion from gross income applies for purposes of both USGTI taxed under the 4% excise tax of IRC § 887(a) and the 30% withholding tax under IRC §§ 882, 1441 and 1442. Thus, the critical issues to be addressed by the IRS are as follows:

1. What documentation does a withholding agent need to obtain from a foreign corporation engaged in international transportation by ship or aircraft in order to establish that withholding under IRC §§ 1441 and 1442 does not apply?

2. What income code should be used to report U.S. source income to a foreign corporation engaged in international transportation by ship or aircraft on Form 1042-S?

IRPAC believes that the first issue is easily resolved by a modest change to the new Form W-8BEN-E and recommends that the IRS act as soon as possible to address this issue before Form W-8BEN-E is issued in final form. IRPAC understands that the draft Form W-8BEN-E is complicated and lengthy, but this proposed correction is important because it would provide clarity to withholding agents and shippers as to the correct application of the law in this area.

With respect to the reporting of payments of transportation income by ship or aircraft, IRPAC recommends that the IRS identify a specific income code on Form 1042-S for such income. Further, the current description of this issue within Publication 515 should be revised to better explain this issue, as the current language is misleading.

D. Electronic Furnishing to Recipients of Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding

Recommendations

IRPAC recommends that the IRS issue official guidance to expressly permit U.S. withholding agents to electronically furnish Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding, to recipients. No statute amendment or change to the regulations is required in order for the IRS to issue this guidance.

Discussion

Treasury Regulation § 1.1461-1(c) provides that any person that withholds or is required to withhold an amount under IRC §§ 1441, 1442, 1443 or Treas. Reg. § 1.1446-4(a) must file a Form 1042-S. The Form 1042-S must be prepared and furnished to each recipient in such manner as the regulations and form instructions prescribe. The regulations promulgated under IRC § 1461 do not specify the method in which the statements must be furnished to the recipients. The instructions to Form 1042-S do not specify the method in which the statements must be furnished to the recipients. However, Treas. Reg. § 1.1461-1(h) indicates that the penalties under IRC § 6722 apply to the Form 1042-S furnishing requirement. Treas. Reg. § 1.6722-1(a)(2) indicates that a failure to timely furnish includes a failure to furnish a written statement to the payee in a statement mailing. Treas. Reg. § 1.6722-1(b)(2) indicates that an error in the manner of furnishing a statement is never an inconsequential error.

Since neither the statute, regulations nor instructions specify how the Forms 1042-S should be furnished to beneficial owners, many withholding agents may have been furnishing these statements electronically in error. With the recently finalized regulations that require the reporting of U.S. bank deposit interest to non-U.S. persons, the Treasury and IRS have specified that Forms 1042-S must be furnished to the recipient either in person or by first class mail to the recipient's last known address. (T.D. 9584, Treas. Reg. § 1.6049-6(e)(4)).

The requirement of paper delivery of Form 1042-S has resulted and continues to result in complaints from payees about missing statements and identity theft, particularly from payees residing in unstable jurisdictions. U.S. withholding agents furnishing Forms 1042-S spend significant resources to sort and mail the paper statements, and then have to allocate resources to help customers with missing statements and identity theft. This poses significant burdens both to the business community and the payees receiving such statements. Administrative guidance from the IRS allowing for electronic furnishing of Form 1042-S to recipients should decrease the expenses and resources currently expended by withholding agents and taxpayers and make delivery more certain and consistent. The administrative costs and burdens associated with furnishing Forms 1042-S are increasing with the new requirement to report U.S. bank deposit interest. This new requirement is one of many new information reporting obligations initiated since 2008 and any administrative relief available to diminish the cost and burdens is needed.

In discussing this recommendation, the IRS expressed concern over the reliability and security of electronic transmission. In practice, however, many U.S.

withholding agents have found that payees in foreign jurisdictions frequently wish to avoid any use of the local postal service in their countries and prefer to use electronic transmission. The current realities of information security, identity theft and fraud compel the expanded use of electronic means of communication whenever possible. Electronic furnishing of information to payees in foreign jurisdictions where mail delivery is not always stable is commonly recognized as superior to paper delivery in terms of information security and would provide further support for payees' privacy considerations.

In addition, the IRS seems to want to avoid additional permitted areas of electronic furnishing because of its concern that U.S. withholding agents were not complying with the consent and notification requirements that apply to the electronic furnishing of other tax forms. IRPAC has expressed its view that the failure to comply with the consent and notification requirements in other areas should not be a reason for a refusal to act to permit electronic furnishing in other situations, such as for Form 1042-S, where it is in demand, makes sense and supports the IRS' own initiatives to become more paperless. The IRS should enforce the consent and notification requirements independently and not use rumored noncompliance with those rules as a reason for refusing to act in another area. IRPAC does not oppose the imposition of consent and notification requirements as a condition for the allowance of electronic furnishing of Form 1042-S to payees.

Yet another concern expressed by the IRS is its need to test whether compliance with the tax return filing requirements is impacted by permitting the electronic furnishing of Form 1042-S to payees. The IRS has indicated that it will only be able to do this by authorizing a trial period for electronic furnishing. IRPAC has explained that testing might not be possible since most non-U.S. persons who receive Form 1042-S have no tax return filing requirement or will not file unless there is over- or under-withholding on payments reported on Form 1042-S.

Finally, the IRS has suggested that the best course of action would be through the private letter ruling process. IRPAC respectfully disagrees with this approach because a much more expedient solution is available to the IRS through the issuance of formal guidance applicable to all taxpayers since there is no statute or regulation that requires the furnishing of paper Forms 1042-S. Further, a private letter ruling applies only to the taxpayer that receives the ruling and would not be able to be relied upon by other issuers of Form 1042-S. The IRS will not achieve efficient tax administration through the private letter ruling process in that hundreds of withholding agents could make this request, which would require the IRS to rule on the very same issue hundreds of times.

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E. Central Withholding Agreements: Addressing Needs of Venues and Foreign Artists Through a Mini-CWA Program and Problems Encountered by Foreign Artists when Applying for U.S. Social Security Numbers

Recommendations

IRPAC made the following recommendations in its 2010 and 2011 public reports and it continues to make these recommendations in 2012:

1. A smaller version of the Central Withholding Agreement (CWA) is needed to support single and limited venues. IRPAC recommends that the IRS develop a mini-CWA program that would apply to performers with annualized fees of $50,000 or lower. The program should allow the performer to apply directly for a lower withholding rate or a waiver from withholding based on disclosed fees and known expenses.

2. Allow the CWA Program to issue Individual Taxpayer Identification Numbers (ITINs) to performers who have applied for relief in the CWA Program so that the agreement can be finalized where a U.S. Social Security Number (SSN) has not yet been acquired or a denial letter received.

Discussion

During 2011, IRPAC and the IRS jointly developed the structure of a new simplified CWA for entertainers, that was intended to ultimately become part of a revenue procedure that IRPAC understood was being revised at that time. The mini-CWA changes outlined above would require a change to Revenue Procedure 89-47. IRPAC understood that Revenue Procedure 89-47 was under review and discussion with the Office of Chief Counsel, International during 2011. No designated target date was established for its completion, and no changes have yet been made to Revenue Procedure 89-47 to accommodate the simplified CWA. IRPAC understands that Treasury Inspector General for Tax Administration (TIGTA) audit report concerning CWAs, which was issued on September 30, 2011, delayed the implementation of IRPAC's recommendations. The Office of Chief Counsel is currently re-examining IRPAC's recommendations and has indicated that it will respond to IRPAC by the time of the 2012 Public Meeting, IRPAC will continue to support this endeavor and will renew its efforts in 2013.

The remaining issue is the challenge a foreign artist has in receiving either an SSN or an ITIN due to the artists' dependence on the timely action of the Social Security Administration (SSA), which is needed to allow the CWA to be finalized.

Individual artists frequently encounter problems in applying for SSNs while they are present in the U.S. The challenges performers face were set forth in the IRPAC 2011 Report.

The SSA continues to be inconsistent in its approach to the SSN application process and the IRS has indicated its hands are tied. IRPAC will renew its efforts in 2013 to work toward a solution.

F. Form 8938, Statement of Specified Foreign Financial Assets, and Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts, Requirements

Recommendations

IRPAC makes a number of recommendations to facilitate compliance with the reporting required on Form 8938, Statement of Specified Foreign Financial Assets, and Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts (FBAR). Most of the recommendations relate to the need to reduce the compliance burden generated by the requirement to report the same or similar information through two different reporting regimes.

1. IRPAC recommends that the "Comparison of Form 8938 and FBAR Requirements" chart that appears on the IRS website be added to the Form 8938 instructions.

2. IRPAC recommends that the IRS remove reporting requirements on Form 8938 that are already required on the FBAR.

3. IRPAC recommends conformity in filing/extension dates and methods for Form 8938 and the FBAR.

4. IRPAC recommends that language be added to the instructions to both Form 8938 and the FBAR to inform taxpayers that they might be required to file the other form.

Discussion

There has been confusion and duplication of effort in reporting foreign financial accounts and assets, as required by Form 8938 and the FBAR. This confusion and duplication has been documented in a General Accounting Office (GAO) report, which

identified various complexities, including, most notably, the involvement of separate statutory regimes under Titles 26 and 31 of the U.S. Code, and separate government offices responsible for administering each. The GAO report acknowledges duplicative information requested by both forms but the instructions for both forms lack any acknowledgement that duplicative reporting may exist. IRPAC echoes many of the comments documented in the GAO report but also makes a specific recommendation to the IRS that the comparison chart appearing on the IRS website be added to the instructions to Form 8938 in order to facilitate taxpayer compliance. The IRS response to this specific recommendation has been positive. IRPAC expects to see this addition in the near future.

Additionally, IRPAC noted during its discussion with the IRS that Form 8938 and the FBAR require taxpayers to file some information twice, with filings sent to two different areas of the U.S. Treasury Department. Simplification of the filing requirements is likely to increase compliance. The simplification issue is challenging because Form 8938 is within the purview of the IRS while the FBAR belongs to FinCEN. Although both operate within the U.S. Treasury Department, their respective objectives and authority differ. For this reason, the solution is not as simple as combining the forms. For example, information reported on the FBAR is not tax information and, therefore, is not protected from disclosure under IRC § 6103. Consequently, the IRS has indicated that it plans to review filing data and then assess whether or not cost-effective steps might be possible to reduce the filing burden to a single form while still obtaining all the appropriate information. No expected timeframe could be provided for the IRS to complete this review.

IRPAC also recommends that the IRS address the timing and method of filing these forms. The different due dates for the two regimes (June 30 for FBAR and April 15 for Form 8938 and individual income tax returns) is confusing. The ability to extend a due date is available for individual income tax returns (and, consequently, for Form 8938) but is not available for the FBAR. Thus, taxpayers who are diligently accumulating their income tax return information in time to file by the extended due date, may inadvertently miss the non-extendable due date for the FBAR. Although the individual income tax return does contain a question about the FBAR filing, this question might not be addressed until the otherwise fully compliant taxpayer is preparing his/her income tax return after the non-extendable due date for the FBAR has passed. Moreover, the individual tax return due date is determined by a postmark date while, in contrast, the FBAR due date is determined by the date the FBAR is received by the IRS. Additionally, Form 8938 is filed as part of the taxpayer’s annual income tax return filing with the IRS, whereas the FBAR requires yet another filing to a different address of the same agency, which is one more contact than most taxpayers probably prefer.

Finally, Form 8938 may be filed electronically, and the FBAR must be filed using paper. IRPAC believes that there are significant areas in which consistency would result in less confusion and would facilitate compliance.