

**Office of Chief Counsel  
Internal Revenue Service  
Memorandum**

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to: Kimberly Schoenbacher  
Director of Field Operations  
(Foreign Payments Practice & Automatic Exchange of Information)

from: Pamela W. Fuller  
Senior Technician Reviewer  
(Procedure & Administration)

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subject: Computation of Overpayment Interest on an Overpayment Claimed by a Foreign Corporation with no Filing Obligation

This memorandum responds to your request for assistance. This advice may not be used or cited as precedent.

LEGEND

Corporation X =  
YR1 =  
YR2 =  
YR6 =  
Date 1 =

ISSUE

Whether overpayment interest accrues from the original due date of Corporation X's return, June 15, YR2, for an overpayment claimed on the taxpayer's YR1 Form 1120-F, U.S. Income Tax Return of a Foreign Corporation.

CONCLUSIONS

It depends.

A. If Corporation X knew that its full withholding, at the time it occurred, would result in an overpayment for which it would seek a refund, Corporation X would be required to

file a timely income tax return. If Corporation X did so, overpayment interest accrues from June 15, YR2. If Corporation X's income tax return is not timely, overpayment interest accrues from the date it filed a processible return.

B. If Corporation X did not know that its full withholding, at the time it occurred, would result in an overpayment for which it would seek a refund, Corporation X's overpayment interest accrues from June 15, YR2, even though the return was filed after that date, because the provisions of Internal Revenue Code section 6611(b)(3) relating to the payment of interest on late returns would not apply.

### FACTS

The facts you have provided are as follows:

Taxpayer, Corporation X, a foreign corporation, sought a refund on its YR1 Form 1120-F for all of the withholding taxes (Chapter 3 withholding) on interest paid to Corporation X by a related U.S. corporation during YR1. The last date prescribed for filing Form 1120-F was June 15, YR2, but the IRS did not receive the return until later that year. Corporation X timely requested an extension, but it is not clear whether Corporation X filed a processible return by the extended due date. It is also not clear when Corporation X knew that its full withholding would result in an overpayment for which it would seek a refund.

The Service issued the claimed refund, which posted on Date 1, YR6, as well as overpayment interest that appears to run from the day after the return was received by the IRS in YR2.

You have asked whether overpayment interest should have accrued from the June 15 due date.

### LAW AND ANALYSIS

Generally, interest is paid on any overpayment of tax from the date of overpayment to a date that precedes the refund date by not more than 30 days. I.R.C. § 6611(a), (b)(2). Under section 6611(d), for income tax withholding, the provisions of section 6513 generally apply in determining the date of payment for purposes of section 6611(a). Pursuant to section 6513(b)(3),

Any tax withheld at the source under chapter 3 or 4 shall, in respect of the recipient of the income, be deemed to have been paid by such recipient on the last day prescribed for filing the return under section 6012 for the taxable year (determined without regard to any extension of time for filing) with respect to which such tax is allowable as a credit under section 1462 or 1474(b). For this purpose, any exemption granted under section 6012 from the requirement of filing a return shall be disregarded.

Here, the last day prescribed for filing the YR1 Form 1120-F is June 15, YR2, which is also the deemed date of payment for purposes of section 6611.

On the other hand, the Service appears to have started computing interest from the date it received the return because the return was treated as late under section 6611(b)(3), which provides an exception to the general rule that interest accrues from the date of overpayment. Under section 6611(b)(3), if a tax return “is filed after the last date prescribed for filing such return (determined with regard to extensions), no interest shall be allowed or paid for any day before the date on which the return is filed.” However, section 6611(b)(3) does not apply in this case if Corporation X does not have a filing obligation under Treas. Reg. § 1.6012-2(g)(2)(i)(a), and Corporation X did not know that it was owed a refund when the return was due.

In *MNOPF Trustees Limited (Merchant Navy) v. United States*, 123 F.3d 1460, 1464 (Fed. Cir. 1997), the Federal Circuit found that a party that has no filing obligation could not have filed a late return, and section 6611(b)(3) does not apply. Similarly, in *Overseas Thread Industries (OTI)*, 48 Fed. Cl. 221, 230 (2000), the Court of Federal Claims held that section 6611(b)(3) does not govern the accrual date for interest on a refund of overpayment that resulted from tax withheld at the source by a United States subsidiary of the foreign corporate taxpayer. The court reasoned that if a foreign corporation that meets the requirements of Treas. Reg. § 1.6012-2(g)(2)(i)(a) does not file a tax return, “but later discovers the existence of an overpayment after the close of the applicable income tax return filing period,” the foreign corporation is required to file a return to claim the refund under Treas. Reg. § 301.6402-3(a)(1). *Id.* at 230. The return is not considered late-filed because at the time the income tax return would have been due, the corporation qualified for the filing exception. *Id.* The Court of Federal Claims stated that it needed to harmonize the provisions into a coherent whole because the government’s interpretation of § 1.6012-2(g) led to an odd result: a foreign corporation that meets the requirements of the return-filing exception in § 1.6012-2(g)(2)(i)(a) nevertheless must file a return under § 1.6012-2(g)(2)(i)(b) when claiming a refund, thereby undermining the exception in § 1.6012-2(g)(2)(i)(a). *Id.* at 229-230. The court reasoned that the proper interpretation of § 1.6012-2(g) is that the foreign corporation must file a return when claiming a refund, but that the return will not be considered late for purposes of section 6611(b)(3) if the foreign corporation did not know that it was owed a refund when the return was due. *See Id.* at 230. Since the taxpayer was not aware of its right to a refund when the return was due, the court held that the taxpayer’s return should be considered timely and that the interest on the overpayment began to accrue from the date the return was due pursuant to section 6611(d), even though the return was not timely filed. *Id.* The court stated that if a taxpayer “knows that its full withholding, at the time it occurs, will result in an overpayment for which it will seek a refund, then the taxpayer would be required to file a timely income tax return for that taxable year. To find otherwise would nullify Treas. Reg. § 1.6012-2(g)(2)(i)(b)(2).”<sup>1</sup> 48 Fed. Cl. at 230 n.8. The court also distinguished *MNOPF*, finding that section 6513(b)(3) applies to a taxable foreign entity, rather than a tax-exempt foreign entity like *MNOPF*. *Id.* at 227-228. The Court pointed out that the language in section 6513(b)(3) and related Treas. Reg. § 301.6513-1(b)(3) expressly recognizes the last date

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<sup>1</sup> We assume the phrase “at the time it occurs” refers to the date the tax withholding is deemed to be a payment by the recipient under section 6513(b)(3). In this case, that date is June 15, YR 2.

prescribed for filing the return under section 6012 as the interest accrual date, even when a filing exception applies. See *Id.* at 230. So, section 6611(d) and 6513(b)(3) would set the interest accrual date, not section 6611(b)(3). *Id.*

Here, it is unclear when Corporation X knew that its full withholding would result in an overpayment for which it would seek a refund. If Corporation X knew about it at the time of the withholding, Corporation X was required to file a timely return. If it filed a timely return, section 6611(b)(3) is not applicable. If it did not file a timely return, overpayment interest runs from the date it filed a processible return. See I.R.C. §6611(b)(3) and (g). If Corporation X discovered the overpayment after June 15 YR2, the consequences are the same whether or not its return is filed after the due date for filing. That is, if Corporation X claimed a refund on a valid and processible return filed by the extended due date, the return is not late for purposes of section 6611(b)(3), which takes extensions into consideration. If, on the other hand, the return was filed after the extended due date, the return would not be late because the corporation has no filing requirement. Sections 6611(d) and 6513(b)(3) apply so that “the last day prescribed for filing the return under section 6012” (June 15, YR2, in this case) is the date interest begins to run. In this scenario, overpayment interest runs from June 15, YR2.

#### CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS



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Please call Han Huang at (202) 317-6844 if you have any further questions.