



Exempt Organizations Update

March 3, 2023



Welcome and Administrative Announcements

Time:	Topic:
10:00-10:05 ET 9:00-9:05 CT 8:00-8:05 MT 7:00-7:05 PT	Welcome and Administrative Announcements
10:05-11:35 ET 9:05-10:35 CT 8:05-9:35 MT 7:05-8:35 PT	IRS Exempt Organization Update and Q&A
11:35-12:35 ET 10:35-11:35 CT 9:35-10:35 MT 8:35-9:35 PT	IRS Chief Counsel and Treasury Update
12:35-1:00 ET 11:35-12:00 CT 10:35-11:00 MT 9:35-10:00 PT	Break
1:00-2:30 ET 12:00-1:30 CT 11:00-12:30 MT 10:00-11:30 PT	Private Foundation/DAFs
2:30-3:30 ET 1:30-2:30 CT 12:30-1:30 MT 11:30-12:30 PT	IRS Examinations Update
3:30-4:30 ET 2:30-3:30 CT 1:30-2:30 MT 12:30-1:30 PT	International Activities Tax and Non-Tax Considerations for Foreign Activities

Question/Comment Submission

Submit questions or comments for future speakers:

<https://www.eocouncil.org/question-submission.html>

For Council information – admin@eocouncil.org or visit www.eocouncil.org



Thanks to Our Producers and Sponsors:



Save the Date:

June 9, 2023 – Hybrid – Washington, DC & Virtual

IRS Exempt Organizations Update and Q&A

Robert Malone

Director, Exempt Organizations, IRS

Timothy Berger

Senior Technical Advisor to the Director, Exempt Organizations, IRS

Moderators: Preston Quesenberry, KPMG & Anne Fulton, Deloitte

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IRS Chief Counsel and Treasury Update

Lynne A. Camillo, Deputy Associate Chief Counsel, EEE/EOET, IRS

Seth J. Groman, IRS Chief Counsel, General Attorney, Tax

Casey Lothamer, Area Counsel (Mid-Atlantic), IRS, Office of Division Counsel (TEGEDC)

Amber Mackenzie, Attorney Advisor, US Department of Treasury (Invited)

Moderator: Ruth Madrigal, KPMG

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Break

Private Foundation/DAFs

Maura Whelan

Simpson, Thacher & Bartlett

Elinor Ramey

Steptoe & Johnson LLP

Chelsea Rubin

Morgan Lewis

Amber Mackenzie

Attorney Advisor, US Department of Treasury
(Invited)

IRS Examinations Update

Stephen Clarke, EY (Moderator)

Lynn Brinkley, IRS

Tim Berger, IRS

Gerald M. Griffith, Jones Day

Introductions

- Stephen Clarke (Managing Director, EY)
- Lynn Brinkley (Director, Exempt Organizations Examinations)
- Tim Berger (Senior Technical Advisor)
- Gerald Griffith (Partner, Jones Day)

Update from IRS EO Exam

IRS Roles in Exam

- Examiner(s)
- Group Manager
- Area Manager
- Area Counsel
- Other Resources
 - Chief Counsel
 - Knowledge Management Teams

Fiscal Year 2022 TE/GE Accomplishments Letter

Exempt Organizations			
	Exams Started	Exams Closed	Change %
Compliance Strategies	207	475	85.9%
Data-Driven	711	938	84.4%
Referrals, Claims and Other Casework	2,091	2,012	72.8%
Totals	3,009	3,425	77.5%

SOURCE: Fiscal Year 2022 TE/GE Accomplishments Letter

FY2023 Program Letter

- Compliance Strategies
- TE/GE Consolidated Exam IRM
- Taxpayer Digital Communications

ACA Community Benefit Reviews

- Overview
- Compliance Results

Section 4960 Executive Compensation

- Overview
- Compliance Results

Practitioner Viewpoint

Audit Selection

- Inconsistent or incomplete return
- Section 501(r) compliance for hospitals
- Referrals (complaint from public or a regulatory agency)
- IRS-wide examination initiative
- Related returns (e.g., intercompany transactions)
- Data matching (e.g., Forms W-2 and 1099)
- Refund or abatement claim verification
- Form 1023-EZ Filers (verification)
- Over \$1M compensation and no 4720
- Failure to file (e.g., no Form 990-T)
- “Rule of Two” ... Rhymes with LUQ (large, unusual or questionable items)

Type of Review

- Types of Review
 - Compliance Checks (e.g., 4960)
 - Background Review (community benefit/Schedule H)
 - Correspondence Exams
 - Field Exams (in-person)
- Scope of Review
 - Limited scope, issue-focused exams
 - Trend away from comprehensive exams
- Projects (e.g., Section 501(r) community benefit reviews every 3 years, Hospital Executive Compensation, Colleges and Universities)

Compliance Checks

- Purpose of Compliance Checks
 - Adherence to recordkeeping and reporting requirements
 - Activities consistent with exempt purposes
- Conduct of Compliance Checks
 - No review of books, records or tax liabilities
 - May ask question about understanding of filing obligations or activities
 - May turn into an examination
- No penalty for refusing to participate, but may increase chances of an exam
- Frequency – no limit, relates to filing cycle and form

Audit Resources

- IRM Part 4/Audit Guidelines [<https://www.irs.gov/irm/part4>]
- Issue Snapshots [<https://www.irs.gov/government-entities/tax-exempt-and-government-entities-issue-snapshots>]
- Audit Technique Guides (ATGs) and Technical Guides for Exempt Organizations [<https://www.irs.gov/charities-non-profits/audit-technique-guides-atgs-and-technical-guides-tgs-for-exempt-organizations>]
- Legal Advice Issued to Program Managers [<https://www.irs.gov/privacy-disclosure/legal-advice-issued-to-program-managers>]

Current Audit Issues

- UBIT
 - Allocation of expenses
 - Bad Debt
 - NOL/profit motive
- Executive Compensation
- Inurement and private benefit (small EOs, insider boards)
- 512(b)(17) and captives
- Record keeping and reporting
- Section 501(r) compliance
- Employment Tax
 - Worker Classification
 - Fringe Benefits (taxable or excluded)
 - Parking Tax Refund
- PF Excise Taxes
- Section 4960 (including failure to file Form 4720)
- Section 4958 (including auto EBT)
- Other Excise Taxes

Helpful Hints or Captain Obvious?

- **Prior to Audit**

- Keep your “receipts” writ large (expenses, allocations, returns, work papers – longer timeline for NOLs)
- Periodic review of 990-listed policies, including section 501(r) for hospitals
- Document turnaround efforts/long-term prospects for businesses with losses
- Compile database of valuations and opinions supporting transactions/comp
- Verify filing of Form 4720, if applicable
- Consider periodic mock audit and whether it should be done under privilege

- **During the Audit**

- Single point of contact
- Understanding of purpose of the exam, expected duration, site visits
- Use of the “fess up” Rev. Proc. 2022-39
- Tracking IDRs, deadlines, extensions
- Regular meetings/calls with audit team
- Discuss issues as they arise

Questions

Gerald M. Griffith
Partner, Jones Day

ggriffith@jonesday.com

110 North Wacker Drive
Suite 4800
Chicago, IL 60606

(P) 312.269.1507

Stephen Clarke
Managing Director, EY

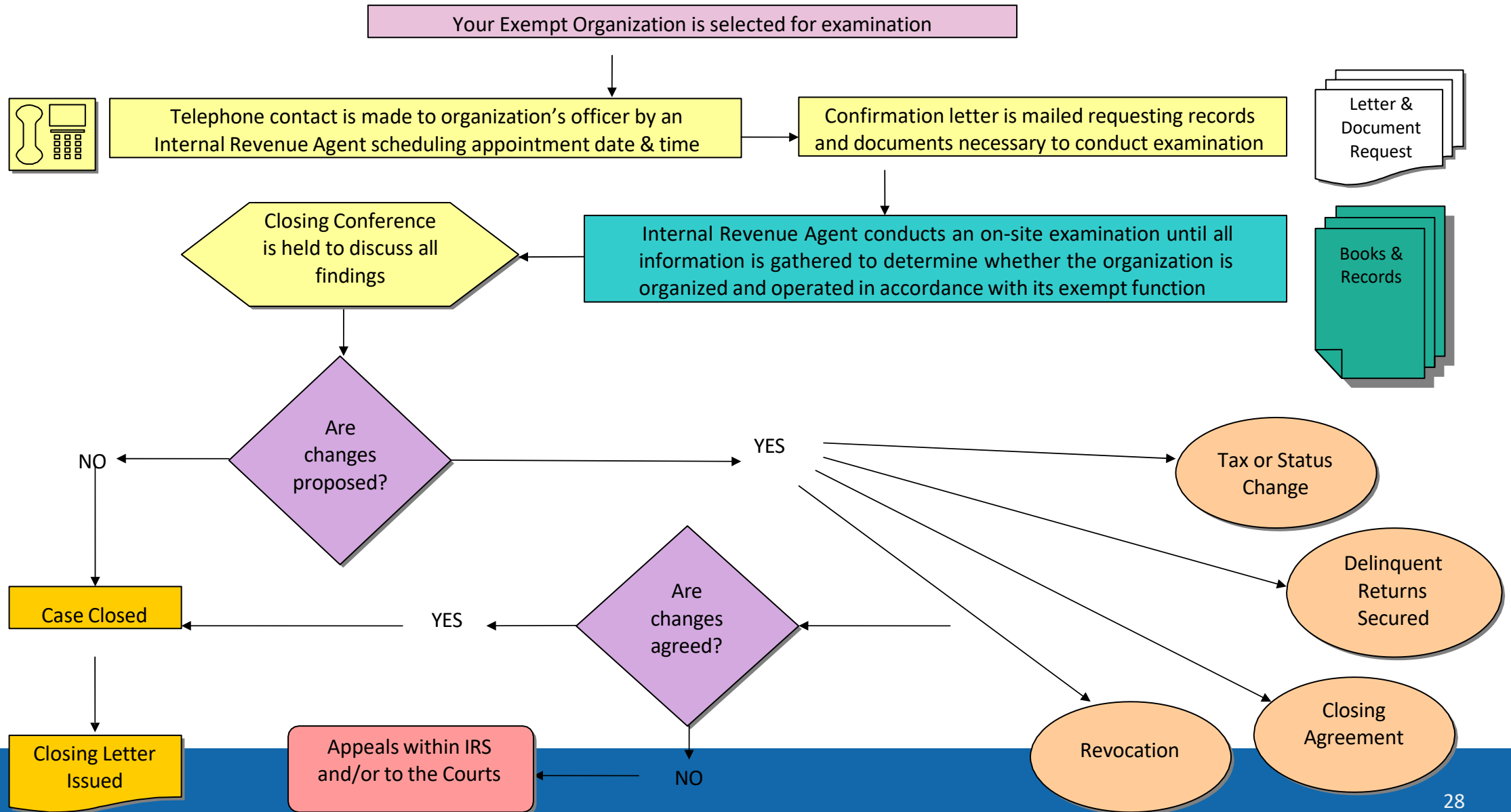
stephen.clarke@ey.com

1101 New York Avenue, N.W.,
Washington, D.C. 20005

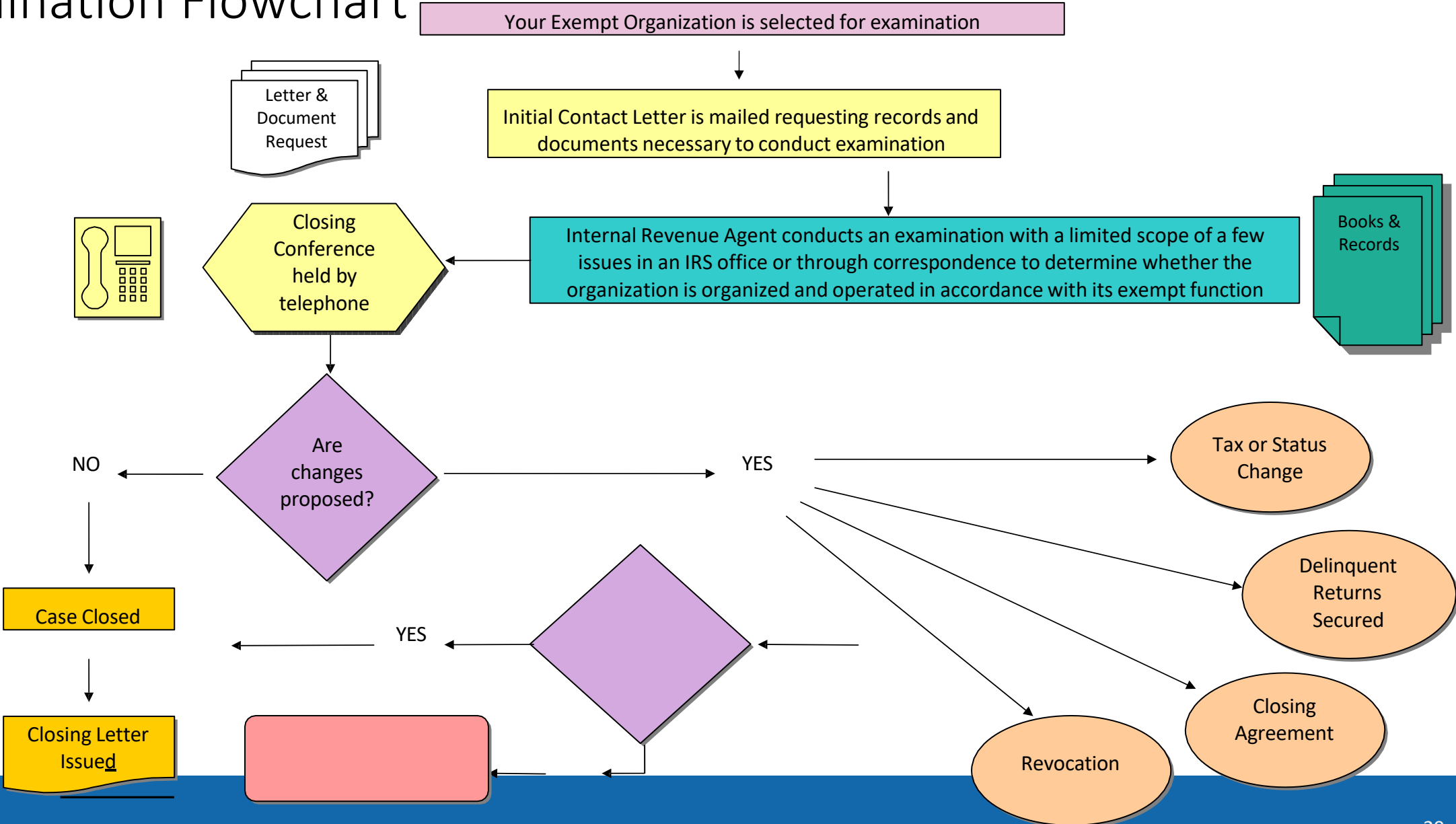
(P) 202.327.6064

Appendix

Exempt Organizations Field Examination Flowchart



Exempt Organizations Office/Correspondence Examination Flowchart



International Activities Tax and Non-Tax Considerations for Foreign Activities

Jennifer Richter

Ernst & Young, LLP

Matthew Sanderson

Member, Caplin & Drysdale

Chevanniese Smith

American Red Cross, National Headquarters

Safia Hussain

Associate Counsel, Islamic Relief USA

Moderator: Andrea T. AlAttar, Esq., The Law Office of Andrea T. Al-Attar, P.C.

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Foreign informational filings

Form	Purpose
Form 926	Return by a U.S. Transferor of Property to a Foreign Corporation
Form 5471	Information Return of U.S. Persons With Respect to Certain Foreign Corporations
Form 5713	International Boycott Report
Form 8621	Information Return by a Shareholder of a Passive Foreign Investment Company or a Qualified Electing Fund
Form 8858	Information Return of U.S. Persons With Respect to Foreign Disregarded Entities (FDEs) and Foreign Branches (FBs)
Form 8865	Return of U.S. Persons With Respect to Certain Foreign Partnerships

Triggers and penalties for foreign filings

- Triggers for filing
 - Direct or indirect ownership of 10% or more, or changes in ownership of 10% or more, on any day of the tax year
 - “Ownership” includes both vote and value
 - Transfers of 10% of capital or \$100,000
 - Debt-financed PFIC dividends
 - Investments in Iraq, Kuwait, Lebanon, Libya, Qatar, Saudi Arabia, Syria, Yemen and UAE (through April 8, 2021)
- Penalties for non-filing
 - Indefinite extension of statute of limitations
 - Monetary amounts – vary based on form and severity
 - Loss of foreign tax credit
 - Imprisonment
- Relief for noncompliance
 - IRS Delinquent International Information Return Submission Procedures

Foreign filing traps for the unwary

- As the first investor in a foreign corporation or partnership, high ownership percentages may trigger a filing.
- If other investors divest their ownership, your ownership could inadvertently rise above 10% or change by 10%.
- As additional investors are added, your ownership could inadvertently fall below 10% or change by 10%.
- If you invest in a foreign partnership that then invests in a foreign corporation, you could be required to file Form 5471 and/or Form 926.
- If you invest in “master-feeder” structures, there could be Form 5471 or 8865 filing requirements you aren’t aware of.
- Rule of thumb - always inquire about underlying partnerships and corporations when investing more than 10% in a foreign entity.

Lessons learned from 2020-21 compliance seasons

- Review all instruction changes (not just “What’s New” section)
- Understand filing requirements of all entities (category of filer)
- Keep an eye out for IRS guidance updates during the year (e.g., IRS provided revised 1118 examples midyear)
- Gather new data required early in the process
- Assess what your compliance software will and will not do, and where you need to bridge the gap with additional calculations
- Implement additional automation in the compliance process
- Evaluate and streamline the review process

Foreign withholding tax overview

- Types of relief available to US tax-exempt organizations:
 - Relief-at-source – filing of documents up front to prevent erroneous withholding
 - Reclaims – process to receive a refund of taxes previously withheld in error
- Many things depend on the country of investment:
 - Type of relief possible
 - Reclaim feasibility
 - Statute of limitations

Current challenges and changes

- “Foreign tax reclaims in the time of COVID-19”
 - Foreign withholding tax relief is still a very paper-driven process and can be a lengthy process
 - Obtaining US Form 6166 (Certificate of US Residency)
 - IRS processing delays
 - Potential European Union withholding tax harmonization
- Recent country-specific changes:
 - Switzerland:
Change in practice for refiling rejected reclaims
 - Germany:
Withholding tax “modernization”
 - Finland:
Tax at-source cards (TASCs) for nonresidents

OFAC's Jurisdiction

The U.S. Department of the Treasury, Office of Foreign Assets Control (OFAC) is responsible for administering and enforcing U.S. economic and trade sanctions based on U.S. foreign policy and national security goals.

- Currently administers 38 sanctions programs
 - Comprehensive sanctions programs: identified regions of Ukraine, Cuba, Iran, North Korea, and Syria
 - Significant sanctions with respect to Russia and Venezuela
 - Targeted sanctions against certain regimes, activities, and persons
- OFAC's [Sanctions List Search Tool](#) can search against all of OFAC's sanctions lists.

Prohibitions

- The following must comply with U.S. primary sanctions administered by OFAC:
 - Activities by “U.S. persons,” wherever they are located in the world;
 - Activities by “U.S.-owned or –controlled foreign entities” (in certain programs);
 - Activities by persons in the United States; and
 - Transactions occurring from, or routed through, the United States.
- Potential touchpoints: the U.S. financial system; U.S. origin goods, services, or technology; U.S. personnel; infrastructure based in the United States; back-office support functions (accounting, IT, etc.) housed in U.S; U.S. investments.
- U.S. secondary sanctions apply to non-U.S. persons for activities conducted outside the United States that the United States has targeted as posing a threat to the economy, national security, or foreign policy of the United States.

Key Terminology/Concepts

- Strict liability
- Facilitation
- Blocked property and interests in property
- Exemption
- General License
- Specific License

Additional Resources

- A Framework for OFAC Compliance Commitments
- Country/Program Specific Pages
- OFAC Frequently Asked Questions
- Published Guidance, NGO/Non-Profit and Other Industry Sectors
- OFAC Risk Matrix for the Charitable Sector as of March 2007
- OFAC Enforcement Guidelines

Save the Date:

June 9, 2023 – Hybrid – Washington, DC & Virtual