

U.S. Income Tax Compliance

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International Tax Forms

- Forms for US Entities
 - Form 926 -- Return by a U.S. Transferor of Property to a Foreign Corporation
 - Form 1042 – Annual Withholding Tax Return for U.S. Source Income of Foreign Persons
 - Form 1042-S -- Foreign Person's U.S. Source Income Subject to Withholding
 - Form 1042-T – Annual Summary and Transmittal of Forms 1042-S
 - Form 1118 -- Foreign Tax Credit -- Corporations
 - Form 1120-FSC -- U.S. Income Tax Return of a Foreign Sales Corporation
 - Form 1120-IC-DISC -- Interest Charge Domestic International Sales Corporation Return
 - Form 2032 -- Contract Coverage Under Title II of the Social Security Act
 - Form 4876-A -- Election to be Treated as an Interest Charge DISC
 - Form 5471 – Information Return of U.S. Persons with Respect to Certain Foreign Corporations
 - Form 5472 – Information Return of 25% Foreign-Owned U.S. or Foreign Corp Engaged in a U.S. Trade or Business
 - Form 5712 -- Election to be Treated as a Possessions Corporation Under Sec. 936
 - Form 5712-A -- Election and Verification of the Cost Sharing or Profit Split Method
 - Form 5713 -- International Boycott Report
 - Form 5735 – American Samoa Economic Development Credit
 - Form 8404 -- Interest Charge on DISC-Related Deferred Tax Liability

International Tax Forms

- More Forms for US Entities
 - Form 8621 -- Return by Shareholder of Passive Foreign Investment Co. or Qualified Electing Fund
 - Form 8802 – Application for United States Residency Certification
 - Form 8804 -- Annual Return for Partnership Withholding Tax
 - Form 8805 -- Foreign Partner's Information Statement of Section 1446 Withholding Tax
 - Form 8813 -- Partnership Withholding Tax Payment (Section 1446)
 - Form 8819 -- Dollar Election Under Section 985
 - Form 8832 -- Entity Classification Election
 - Form 8833 -- Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b)(2)
 - Form 8838 -- Consent to Extend the Time to Assess Tax Under Section 367
 - Form 8858 – Information Return of U.S. Persons With Respect to Foreign Disregarded Entities
 - Form 8865 – Return of U.S. Persons With Respect to Certain Foreign Partnerships
 - Form 8873 – Extraterritorial Income Exclusion
 - Form SS-4 – Application for Employer Identification Number
 - Form TD F 90-22.1 -- Report of Foreign Bank and Financial Accounts
 - Commerce Department Reporting Forms

International Tax Forms

- Forms for Foreign Entities
 - Form 1042 – Annual Withholding Tax Return for U.S. Source Income of Foreign Persons
 - Form 1042-S -- Foreign Person's U.S. Source Income Subject to Withholding
 - Form 1042-T – Annual Summary and Transmittal of Forms 1042-S
 - Form 1120-F – U.S. Income Tax Return of a Foreign Corporation
 - Form 5472 – Information Return of 25% Foreign-Owned U.S. or Foreign Corp Engaged in a U.S. Trade or Business
 - Form 8288 – U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interests
 - Form 8288-A -- Statement of Withholding on Dispositions by Foreign Person of U.S. Real Property Interests
 - Form 8288-B -- Application for Withholding Certificate for Dispositions By Foreign Persons of U.S. Real Property Interests
 - Form 8300 -- Report of Cash Payment over \$10,000 Received in a Trade or Business
 - Form 8804 -- Annual Return for Partnership Withholding Tax
 - Form 8805 -- Foreign Partner's Information Statement of Section 1446 Withholding Tax
 - Form 8813 -- Partnership Withholding Tax Payment (Section 1446)
 - Form 8833 -- Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b)
 - Form 8848 -- Consent to Extend the Time to Assess the Branch Profits Tax
 - Form TD F 90-22.1 -- Report of Foreign Bank and Financial Accounts
 - Form W-8BEN, ECI, EXP, IMY -- Certificate of Foreign Status
 - Commerce Department Reporting Forms

International Tax Forms

- Forms for Foreign Individuals
 - Form 1040-C -- U.S. Departing Alien Income Tax Return
 - Form 1040NR – U.S. Nonresident Alien Income Tax Return
 - Form 1042 – Annual Withholding Tax Return for U.S. Source Income of Foreign Persons
 - Form 1042-S -- Foreign Person's U.S. Source Income Subject to Withholding
 - Form 1042-T – Annual Summary and Transmittal of Forms 1042-S
 - Form 5472 – Information Return of 25% Foreign-Owned U.S. or Foreign Corp Engaged in a U.S. Trade or Business
 - Form 8223 -- Exemption from Withholding on Compensation for Independent Personal Services of a Nonresident Alien Individual
 - Form 8833 -- Treaty-Based Return Position Disclosure Under Section 6114 or 7701 (b)(2)
 - Form 8840 -- Closer Connection Exception Statement for Aliens
 - Form 8843 -- Statement for Exempt Individuals and Individuals With a Medical Condition
 - Form 8891 – U.S. Information Return for Beneficiaries of Certain Canadian Registered Retirement Plans
 - Form TD F 90-22.1 -- Report of Foreign Bank and Financial Accounts
 - Form W-7 -- Application for IRS Individual Taxpayer Identification Number
 - Form W-8BEN -- Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding

International Tax Forms

- Forms for US Individuals
 - Form 1116 -- Foreign Tax Credit (Individual, Estate or Trust)
 - Form 2063 – U.S. Departing Alien Income Tax Statement
 - Form 2555 -- Foreign Earned Income
 - Form 2555-EZ -- Foreign Earned Income Exclusion
 - Form 3520 – Annual Return to Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts
 - Form 3520-A -- Annual Return of Foreign Trust With a U.S. Owner
 - Form 4563 -- Exclusion of Income for Bona Fide Residents of American Samoa
 - Form 5074 -- Allocation of Individual Income Tax to Guam or the Commonwealth of the Northern Mariana Islands
 - Form 5471 – Information Return of U.S. Persons with Respect to Certain Foreign Corporations
 - Form 5713 -- International Boycott Report
 - Form 8404 -- Interest Charge on DISC-Related Deferred Tax
 - Form 8621 -- Return by Shareholder of Passive Foreign Investment Co. or Qualified Electing Fund
 - Form 8689 -- Allocation of Individual Income Tax to the U.S. Virgin Islands
 - Form 8833 -- Treaty-Based Return Position Disclosure Under Section 6114 or 7701 (b)(2)
 - Form 8854 – Initial and Annual Expatriation Information Statement
 - Form 8858 – Information Return of U.S. Persons With Respect to Foreign Disregarded Entities
 - Form 8865 – Return of U.S. Persons With Respect to Certain Foreign Partnerships
 - Form 8898 – Statement for Individuals Who Begin or End Bona Fide Residence in a U.S. Possession
 - Form TD F 90-22.1 -- Report of Foreign Bank and Financial Accounts

International Tax Forms

- Forms for Foreign Estates and Trusts and Gifts By Foreigners
 - Form 706NA – United States Estate (and Generation-Skipping Transfer) Tax Return for Estate of Nonresident Not a Citizen of the United States
 - Form 706QDT – U.S. Estate Tax Return for Qualified Domestic Trusts
 - Form 706 – United States Gift (and Generation-Skipping Transfer) Tax Return
 - Form 926 -- Return by a U.S. Transferor of Property to a Foreign Entity
 - Form 3520 – Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts
 - Form 3520-A – Annual Information Return of Foreign Trust With a U.S. Owner
 - Form TD F 90-22.1 -- Report of Foreign Bank and Financial Accounts

Form 926

- Who must file?

- A U.S. citizen or resident, a domestic corporation, or a domestic estate or trust must file Form 926 to report transfers of property described in section 6038B(a)(1)(A) to a foreign corporation.
- If the transferor is a partnership (domestic or foreign), the domestic partners of the partnership, not the partnership itself, are required to comply with section 6038B and file Form 926. Each domestic partner is treated as a transferor of its proportionate share of the property.
- A husband and wife may file Form 926 jointly, but only if they file a joint income tax return.
- A U.S. person that transfers cash to a foreign corporation must report the transfer on Form 926 if (a) immediately after the transfer the person holds directly or indirectly at least 10% of the total voting power or the total value of the foreign corporation or (b) the amount of cash transferred by the person to the foreign corporation during the 12-month period ending on the date of the transfer exceeds \$100,000

Form 926

- Exceptions – Various exceptions apply
- Where and when to file?
 - Filed with the U.S. transferor's income tax return for the tax year that includes the date of the transfer.
- Penalties
 - 10% of the fair market value of the property at the time of the transfer up to \$100,000.
 - The \$100,000 cap does not apply if the failure was due to intentional disregard
 - Reasonable cause exception may apply
 - Statute extended to the date that is 3 years after the date on which the information required to be reported is provided.

Form 3520-A

- Who must file?
 - A foreign trust with a U.S. owner.
- Where and when to file?
 - Due on the 15th day of the 3rd month after the end of the trust's tax year (March 15 for a calendar year trust).
 - Beginning with 2006 returns, filed with Internal Revenue Service Center, P.O. Box 409101, Ogden, UT 84409.
 - No longer filed in Philadelphia

Form 3520-A

- Copies of the Foreign Trust Owner Statement (page 3) and the Foreign Grantor Trust Beneficiary Statement (page 4) must be sent to the U.S. owners and U.S. beneficiaries by the 15th day of the 3rd month after the end of the trust's tax year.
 - Foreign Grantor Trust Beneficiary Statement need not be completed for a U.S. person for any portion of the trust of which that U.S. person is treated as the owner.
- Form 7004 may be used to request an automatic 6 month extension.

Form 3520-A

- Penalties
 - The U.S. owner is subject to a penalty equal to 5% of the gross value of the portion of the trust's assets treated as owned by the U.S. person at the close of that year if the foreign trust
 - Fails to file a timely Form 3520-A or
 - Does not furnish all of the required information or includes incorrect information.
 - Reasonable cause exception may apply

Form 3520

- Who must file?
 - A reportable event occurred during the current tax year. (complete part I)
 - A U.S. person is treated as the owner of any part of the assets of a foreign trust under the grantor trust rules (complete part II)
 - A U.S. person received (directly or indirectly) a distribution from a foreign trust during the current tax year or a related foreign trust held an outstanding obligation issued by a U.S. person (or a person related to a U.S. person) that was treated as a qualified obligation during the current tax year (complete part III)
 - A U.S. person during the current tax year received either (1) more than \$100,000 from a nonresident alien individual or a foreign estate treated as a gift or (2) more than \$12,760 from a foreign corporation or foreign partnership treated as a gift (complete part IV)

Form 3520

- **A reportable event** includes
 - the creation of a foreign trust by a U.S. person;
 - the transfer of any money or property, directly or indirectly to a foreign trust by a U.S. person; or
 - the death of a citizen or resident of the U.S. if the decedent was treated as the owner of any portion of a foreign trust under the grantor trust rules or any portion of a foreign trust was included in the gross estate of the decedent
- **Qualified obligation** is defined in the regulations and in the instructions to the form
- **If the filer is the US owner of a grantor trust that filed Form 3520-A and Part II is correctly completed, distributions need not be separately disclosed again in Part III**

Form 3520

- Where and when to file?
 - Due on the date that the income tax return is due, including extensions.
 - Beginning with 2006 returns, filed with Internal Revenue Service Center, P.O. Box 409101, Ogden, UT 84409.
 - No longer filed in Philadelphia

Form 3520

- **Penalties**

- 35% of the gross value of any property transferred to a foreign trust for failure by a U.S. transferor to report the transfer
- 35% of the gross value of the distributions received from a foreign trust for failure by a U.S. person to report receipt of the distribution, or
- 5% of the amount of certain foreign gifts for each month for which the failure to report continues (not to exceed a total of 25%)
- If a foreign trust has a U.S. owner and the trust fails to file the required annual reports on trust activities and income, the U.S. owner is subject to a penalty equal to 5% of the gross value of the portion of the trust's assets treated as owned by the U.S. person (the gross reportable amount).
- Reasonable cause exception may apply

Form 5471

- Who must file?
 - Category 2 - A U.S. citizen or resident who is an officer or director of a foreign corporation in which a U.S. person has acquired stock that meets the 10% stock ownership requirement or an additional 10% or more (in value or voting power) of the outstanding stock of the foreign corporation
 - Category 3 - A U.S. person that has had a significant ownership change
 - Category 4 - A U.S. person who had control of a foreign corporation for an uninterrupted period of 30 days during the annual accounting period of the foreign corporation
 - Category 5 - A U.S. shareholder who owns stock in a controlled foreign corporation for an uninterrupted period of 30 days or more during any tax year of the foreign corporation and who owned that stock on the last day of that year

Form 5471

- The **stock ownership requirement** is satisfied if a U.S. person owns 10% or more of the total value of the corporation's stock or 10% or more of the total voting power of the foreign corporation.
- A U.S. person has had a **significant ownership change** if
 - The U.S. person acquires stock in a foreign corporation, which when added to any stock owned on the date of acquisition, meets the stock ownership requirement.
 - The U.S. person acquires stock which, without regard to stock already owned on the date of acquisition, meets the stock ownership requirement
 - The person who became a U.S. person while meeting the stock ownership requirement
 - The U.S. person disposed of sufficient stock in the foreign corporation to reduce his or her interest to less than the stock ownership requirement

Form 5471

- A U.S. person has **control** of a foreign corporation if, at any time during the year, it owns stock possessing more than 50% of the total combined voting power of all classes of stock of the foreign corporation entitled to vote or more than 50% of the total value of shares of all classes of stock of the foreign corporation
- A **controlled foreign corporation** is a foreign corporation that is more than 50% owned by **U.S. shareholders** (U.S. persons that own at least 10% of the total combined voting power of all classes of stock entitled to vote)

Form 5471

- When and where to file?
 - Form 5471 is attached to the taxpayer's income tax return and is due when the income tax return is due, including extensions.
 - The requirement for filing a duplicate copy of the form and schedules has been eliminated.

Form 5471

- Penalties

- A \$10,000 penalty is imposed for each annual accounting period of each foreign corporation for failure to furnish the required information within the time prescribed

- If the information is not filed within 90 days after the IRS has mailed a notice of the failure to the U.S. person, an additional \$10,000 penalty (per foreign corporation) is charged for each 30-day period, or fraction thereof, during which the failure continues after the 90 day period has expired up to a maximum of an additional \$50,000 penalty.

Form 5471

- Penalties

- Any person who fails to file or report all of the information required within the time prescribed will be subject to a reduction of 10% of the foreign taxes available for credit.
 - If the failure continues 90 days or more after the IRS has mailed a notice of the failure to the U.S. person, an additional 5% reduction is made for each 30-day period, or fraction thereof, during which the failure continues after the 90 day period has expired.

Form 5471

- Penalties

- Any person who fails to file or report all of the information requested on Schedule O is subject to a \$10,000 penalty for each such failure for each reportable transaction.
 - If the failure continues 90 days or more after the IRS has mailed a notice of the failure to the U.S. person, an additional \$10,000 penalty will apply for each 30-day period, or fraction thereof, during which the failure continues after the 90 day period has expired up to a maximum of an additional \$50,000 penalty.

Form 8858

- Who must file?
 - A U.S. person who is a tax owner or that owns certain interests in foreign tax owners of foreign disregarded entities (FDEs) including
 - A U.S. person that is a direct tax owner of a FDE at any time during the year
 - A U.S. person that is required to file Form 5471 for a controlled foreign corporation that is a tax owner of a FDE
 - A U.S. person that is required to file Form 8865 for a controlled foreign partnership that is a tax owner of a FDE

Form 8858

- A **foreign disregarded entity** is an entity that is not created or organized in the U.S. and that is disregarded as an entity separate from its owner for U.S. income tax purposes.
- The **tax owner** of a FDE is the person that is treated as owning the assets and liabilities of the FDE for U.S. income tax purposes.

Form 8858

- When and where to file?
 - Form 8858 is due when the income tax return is due, including extensions.
 - The Form 8858 is attached to the appropriate return
 - If the U.S. person is the tax owner of the FDE, Form 8858 is attached to the income tax return
 - If the tax owner of the FDE is a CFC or CFP, attach Form 8858 to the Form 5471 or the Form 8865 for the tax owner
- Penalties
 - The new Form 8858 instructions apply the \$10,000 penalties for failure to file Forms 5471 and 8865
 - The foreign tax credit reduction is 10%.

Form 8865

- Who must file?
 - Category 1 - A U.S. person who controlled foreign partnership at any time during the partnership's tax year. Control of a partnership is ownership of more than a 50% interest in the partnership.
 - Category 2 - A U.S. person who at any time during the partnership's tax year owned 10% or more in the partnership while the partnership was controlled by U.S. persons, each owning at least 10% interests.
 - If the foreign partnership had a Category 1 filer at any time during that tax year, no person will be considered a Category 2 filer.

Form 8865

- Who must file?

- Category 3 - A U.S. person who contributed property to a foreign partnership in exchange for an interest in the partnership if that person either

- (1) owned directly or constructively at least a 10% interest in the foreign partnership immediately after the contribution or
 - (2) the value of the property contributed (when added to the value of any other property contributed to the partnership by such person, or any related person, during the 12-month period ending on the date of transfer) exceeds \$100,000.
 - For this purpose, if a domestic partnership that contributes property to a foreign partnership, the domestic partnership's partners are considered to have transferred a proportionate share of in the property contributed to the partnership. However, if the domestic partnership files Form 8865 and properly reports all the required information with respect to the contribution, its partners will not be required to report the transfer.

Form 8865

- Who must file?
 - Category 3 also includes a U.S. person who previously transferred appreciated property to the partnership and the foreign partnership disposed of such property while the U.S. person remained a direct or indirect partner
 - Category 4 - A U.S. person that had a reportable event during the tax year

Form 8865

- A U.S. person has had a **reportable event** if
 - The U.S. person acquired an interest in the partnership and, combined with his existing partnership interest, if any, his interest in the partnership went from less than 10% to more than 10%
 - The U.S. person acquired an additional 10% interest in the partnership, regardless of his existing interest
 - The U.S. person disposed of an interest in the partnership and, as a result of the disposition, his interest in the partnership went from more than 10% to less than 10%
 - The U.S. person disposed of a 10% interest in the partnership, regardless of his continuing interest

Form 8865

- When and where to file?
 - Form 8865 is attached to the taxpayer's income tax return and is due when the income tax return is due, including extensions.
 - If a return is not required, Form 8865 must be filed separately with the IRS at the time and place where the income tax return would be filed is required.

Form 8865

- Penalties – Category 1 and 2
 - A \$10,000 penalty is imposed for each foreign partnership for failure to furnish the required information within the time prescribed
 - If the information is not filed within 90 days after the IRS has mailed a notice of the failure to the U.S. person, an additional \$10,000 penalty (per foreign corporation) is charged for each 30-day period, or fraction thereof, during which the failure continues after the 90 day period has expired up to a maximum of an additional \$50,000 penalty.

Form 8865

- Penalties – Category 1 and 2
 - Any person who fails to furnish all of the information required within the time prescribed will be subject to a reduction of 10% of the foreign taxes available for credit.
 - If the failure continues 90 days or more after the IRS has mailed a notice of the failure to the U.S. person, an additional 5% reduction is made for each 30-day period, or fraction thereof, during which the failure continues after the 90 day period has expired.

Form 8865

- Penalties – Category 3
 - Any person who fails to report a contribution of property to a controlled foreign partners is subject to a penalty equal to 10% of the fair market value of the property at the time of the transfer up to \$100,000 unless the failure was due to intentional disregard.
 - In addition, the transferor must recognize gain on the contribution as if the contributed property had been sold for its fair market value.

Form 8865

- Penalties – Category 4
 - Any person who fails to file or report all of the information requested on Schedule O or P is subject to a \$10,000 penalty for each such failure for each reportable transaction.
 - If the failure continues 90 days or more after the IRS has mailed a notice of the failure to the U.S. person, an additional \$10,000 penalty will apply for each 30-day period, or fraction thereof, during which the failure continues after the 90 day period has expired up to a maximum of an additional \$50,000 penalty.

Form TDF 90-22.1

- Who must file?
 - Every U.S. person who has a financial interest in or signature authority, or other authority over any financial accounts in a foreign country if the aggregate value of these accounts exceeds \$10,000 at any time during the calendar year.

Form TDF 90-22.1

- A **financial account** includes any bank, securities, securities derivatives or other financial instruments accounts. The term also includes any accounts in which the assets are held in a commingled fund and the account owner holds an equity interest in the fund. The term also means any savings, demand, checking, deposit, time deposit, or any other account maintained with a financial institution or other person engaged in the business of a financial institution.

Form TDF 90-22.1

- **A financial interest includes**
 - ownership of record or holder of legal title whether the account is maintained for the U.S. person's benefit or for the benefit of others including non-U.S. persons.
 - ownership or partial interest in an account maintained in the name of multiple persons.
 - ownership of record or holder of legal title is
 - a person acting as an agent, nominee, attorney or in some other capacity on behalf of the U.S. person
 - a corporation in which the U.S. person owns directly or indirectly more than 50% of the total value of shares of stock
 - a partnership in which the U.S. person owns an interest in more than 50% of the profits or
 - a trust in which the U.S. person either has a present beneficial interest in more than 50% of the assets or from which such person receives more than 50% of the current income

Form TDF 90-22.1

- Signature Authority
 - A person has signature authority over an account if such person can control the disposition of money or other property in it by delivery of a document containing his or her signature to the bank or other person with whom the account is maintained.
- Where and when to file?
 - File on or before June 30 each calendar year with the Department of the Treasury, P.O. Box 32621, Detroit, MI 48232-0621.

Form TDF 90-22.1

- Penalties

- For a violation occurring after Oct. 22, 2004, the maximum civil penalty for a willful violation of the reporting and recordkeeping requirements is the greater of \$100,000 or 50% of the balance in the account at the time of the violation.
- Non-willful violations can result in a penalty as high as \$10,000 for each violation.
- Criminal violations of the rules can result in a fine and/or five years in prison.

From 5472

- Who must file?
 - Any reporting corporation that had a reportable transaction with a foreign or domestic related party
- A **reporting corporation** is either
 - A 25% foreign-owned US corporation or
 - A foreign corporation engaged in a US trade or business

From 5472

- A **reportable transaction** is any type of transaction for which monetary consideration was the sole consideration paid or received during the reporting corporation's tax year or
- A **related party** is
 - Any direct or indirect 25% foreign shareholder
 - Any person who is related (within the meaning of section 267(b) or 707(b)(1)) to the reporting corporation
 - Any person related (within the meaning of section 267(b) or 707(b)(1)) to a 25% foreign shareholder of the reporting corporation or
 - Any other person who is related to the reporting corporation within the meaning of section 482

From 5472

- Exceptions
 - No reportable transactions of the type listed on the form
 - A US person controls the related foreign corporation and files Form 5471 with Schedule M that shows the reportable transaction
 - The related corporation is a FSC
 - The reporting corporation is a foreign corporation that does not have a PE in the US and it files Form 8833
 - The reporting corporation's income is all exempt under section 883
 - Both the reporting corporation and the related party are foreign persons and the transaction does not give rise to US source income or income that is effectively connected with a US business

From 5472

- Other special rules
 - Do not complete Parts IV or V for transactions with a domestic related party
 - When actual amounts are not determinable, use reasonable estimates (at least 75% but not more than 125% of the actual amount)
 - Amounts may be reported as “\$50,000 or less.”

Form 5472

- When and where to file?
 - Form 5471 is attached to the taxpayer's income tax return and is due when the income tax return is due, including extensions.
 - A copy of Form 5472 must be filed with the Internal Revenue Service Center, P.O. Box 409101, Ogden, UT 84409.

Form 5472

- Penalties

- A penalty of \$10,000 will be assessed on any reporting corporation that fails to file Form 5472 when due and in the manner prescribed
- The penalty also applies for failure to maintain records as required by the regulations
- Filing a substantially incomplete Form 5472 constitutes a failure to file the form
- If the failure continues for more than 90 days after notification by the IRS, an additional \$10,000 penalty (per foreign corporation) is charged for each 30-day period, or fraction thereof, during which the failure continues after the 90 day period has expired.

Form W-7

- Who must file?
 - Any individual who is not eligible to obtain an SSN but who must furnish a taxpayer identification number
 - A NRA eligible to obtain the benefit of reduced withholding under an income tax treaty
 - A NRA who is required to file a US tax return or who is filing a US tax return only to claim a refund
 - A NRA who elects to file a joint US tax return with a spouse who is a US citizen or resident
 - A US resident alien (based on the substantial presence test) who files a US return
 - An alien spouse eligible to be claimed as an exemption on a US tax return
 - An alien individual eligible to be claimed as a dependent on a US tax return
 - A NRA student, professor, or researcher who is required to file a US return or who is claiming an exception to the tax return filing requirement
 - A dependent/spouse of a NRA holding a US visa

Form W-7

- Who must file?
 - Exceptions – Other situations where an ITIN may be applied for
 - Exception 1 -- Passive income – third party withholding or treaty benefits -- A NRA who is the recipient of partnership income, interest income, annuity income, etc. that is subject to third party withholding or covered by tax treaty benefits
 - Exception 2 -- Other income – A NRA claiming the benefits of a US income tax treaty who receives compensation for personal services (wages, salary etc.), scholarships, fellowships, grants, or gambling income or who receives taxable scholarship, fellowship, or grant income but is not claiming treaty benefits
 - Exception 3 -- Mortgage interest – third party reporting – If a NRA has a home mortgage loan on real property owned in the US that is subject to third party reporting of mortgage interest
 - Exception 4 -- Dispositions by a foreign person of US real property interests – third party withholding – If a NRA is a party to a disposition of a USRPI that is subject to withholding

Form W-7

- When and where to file
 - Form W-7 should be attached to the tax return for which the ITIN is needed
 - If one of the exceptions applies, the form should be filed as soon as possible after it is determined that the exception applies
 - Filing by mail – Internal Revenue Service, ITIN Operations, P.O. Box 149342, Austin, TX 78714
 - File in person – Form W-7 may be filed at any IRS Taxpayer Assistance Center or at most IRS offices abroad
 - File through an acceptance agent – Form W-7 may be filed with an authorized acceptance agent

Form 8832

- Who must file?
 - Any eligible entity that wishes to change its classification
 - Any newly-formed eligible entity making an initial classification
- Who should not file?
 - A tax exempt entity under section 501(a)
 - A real estate investment trust
 - An entity electing to be classified as an S corporation (only Form 2553 needs to be filed)

Form 8832

- When to file
 - An election may be made effective up to 75 days prior to the date the election is filed or up to 12 months after the date the election is filed
 - Rev Proc 2002-59 provides a procedure for a newly formed entities to make a late election if
 - The entity failed to obtain its desired classification solely because the election form was not filed
 - The due date for the entity's desired classification tax return (excluding extensions) for the tax year beginning with the entity's formation date has not passed and
 - The entity has reasonable cause for its failure to make a timely election
 - "FILED PURSUANT TO REV. PROC. 2002-59 is written at the top of the form

Form 8832

- Where to file
 - Internal Revenue Service, Ogden, UT 84201
 - Attach a copy of Form 8832 to the entity's federal tax return for the tax year of the election
 - If the entity is not required to file a return, a copy of its election must be attached to the federal tax returns of all direct or indirect owners of the entity for the tax year of the owner that includes the date on which the election took effect.
 - The copy of the election filed with the tax return need not be signed

Forms 8804, 8805, and 8813

- Who must file?
 - All partnerships with effectively connected gross income allocable to a foreign partner in any tax year
 - Filing is required even if no distributions were made during the partnership's tax year.
 - Filing is required even if the partnership has no withholding tax liability

Forms 8804, 8805, and 8813

- When to file?
 - Forms 8804 and 8805 are due on or before the 15th day of the 4th month following the close of the partnership's tax year (April 15 for calendar year partnerships)
 - For partnerships that keep their books and records outside the US, the due date is the 15th day of the 6th month following the close of the partnership's tax year (June 15 for calendar year partnerships)
 - Use Form 7004 to obtain a six-month extension
 - Form 8813 is due on or before the 15th day of the 4th, 6th, 9th, and 12th months of the partnership's tax year

Forms 8804, 8805, and 8813

- Where to file?
 - Internal Revenue Service Center, P.O. Box 409101, Ogden, UT 84409
- Interest
 - Interest is charged on taxes not paid by the due date, even if an extension is granted. Interest is also charged on penalties imposed for failure to file, negligence, fraud, and substantial understatements of tax

Forms 8804, 8805, and 8813

- Penalties

- The penalty for late filing of Form 8804 is 5% of the unpaid tax for each month or part of a month the return is late up to 25% of the unpaid tax
- The penalty for late filing of Form 8805 is \$15 per form if corrected within 30 days up to \$75,000 per year; \$50 per form if not corrected within 30 days up to \$250,000; greater of \$100 per form or 10% of the amount required to be reported for intentional disregard of the requirement with no maximum
- The penalty for failure to send Form 8805 to the foreign partner is \$50 per failure up to \$100,000 or the greater of \$100 per form or 10% of the amount required to be reported for intentional disregard of the requirement with no maximum
- The penalty for not paying tax when due is $\frac{1}{2}$ of 1% of the unpaid tax for each month or part of a month the tax is unpaid up to 25% of the unpaid tax

Forms 8288, 8288-A, and 8288-B

- Who must file Forms 8288 and 8288-A?
 - A buyer or other transferee of a USRPI, and a corporation, qualified investment entity, or fiduciary that is required to withhold tax
- Exceptions
 - Purchase of residence for \$300,000 or less
 - Transferor certifies that they are not a foreign person
 - Transferred property that is not a USRPI (a statement from a domestic corporation that is not a USRPHC)
 - Transferor's notice of nonrecognition transfer
 - Withholding certificate issued by the IRS

Forms 8288, 8288-A, and 8288-B

- When to file Forms 8288 and 8288-A
 - The form must be filed and the tax must be paid within 20 days after the date of the transfer
 - If a withholding certificate was applied for, the form and tax need not be filed until the 20th day after the day the IRS mails a copy of the withholding certificate or notice of denial
 - In the case of an installment sale, the full amount of the withholding should be made at the time of the first installment payment

Forms 8288, 8288-A, and 8288-B

- Where to file Forms 8288 and 8288-A?
 - Effective January 1, 2007, send Forms 8288 and 8288-A to the Ogden Service Center, P.O. Box 409101, Ogden, UT 84409
- Penalties
 - The penalty for late filing of Form 8288 is 5% of the unpaid tax for each month or part of a month the return is late up to 25% of the unpaid tax
 - The penalty for not paying tax when due is ½ of 1% of the unpaid tax for each month or part of a month the tax is unpaid up to 25% of the unpaid tax
 - If withholding is required but not made, the tax and interest may be collected from the withholding agent
 - The penalty for willful failure to collect and pay over the tax is \$10,000

Forms 8288, 8288-A, and 8288-B

- Who can file Form 8288-B?
 - Either the transferor or the transferee may apply for a withholding certificate if
 - The transferor is entitled to nonrecognition treatment or is exempt from tax
 - A calculation is made that shows the transferor's maximum tax liability is less than the tax otherwise required to be withheld or
 - A claim is made that the special installment sales rules described in Rev. Proc. 200-35 allow for reduced withholding

Forms 8288, 8288-A, and 8288-B

- When should Form 8288-B be filed?
 - The form should be filed prior to the transfer
 - A certificate issued before the transfer notifies the transferee that reduced withholding or no withholding is required
 - A certificate issued after the transfer may authorize an early or a normal refund
 - If, on the date of transfer, an application for a withholding certificate is or has been submitted to the IRS, the applicable withholding is not required to be paid over to the IRS until the 20th day after the day that the IRS mails the withholding certificate or notice of denial

Forms 8288, 8288-A, and 8288-B

- Where to file Form 8288-B?
 - Effective January 1, 2007, send Forms 8288-B to the Ogden Service Center, P.O. Box 409101, Ogden, UT 84409

Other Forms

- Where to file Form 8288-B?
 - Form 706-NR and 706-QDT - Internal Revenue Service, Cincinnati, OH 45999
 - Form 1040NR – Internal Revenue Service Center, Austin, TX 73301-0215
 - Forms 1042, 1042-S, and 1042-T – Internal Revenue Service, Ogden, UT 84409 if the business is located in the US or Internal Revenue Service, P.O. Box 409101, Ogden, UT 84409
 - Form 1120-F and 1120-FSC - Internal Revenue Service, P.O. Box 409101, Ogden, UT 84409
 - Form 8840 and 8843 (filed without a return) - Internal Revenue Service, Austin, TX 73301
 - <http://www.irs.gov/file/article/0,,id=111453,00.html>

Draft Form 1120-F

- Released April 30, 2007
- Requires Schedule M-3 for foreign corporations with assets of \$10 million or more for taxable years ending on or after December 31, 2007
 - A detailed reconciliation of book income per financial statements to taxable income on the return

Draft Form 1120-F

- Other new schedules
 - Schedule H – Deductions Allocated to Effectively Connected Income Under Regulations Section 1.861-8
 - Schedule I – Interest Expense Allocation Under Regulations Section 1.882-5
 - Schedule P – List of Foreign Partner Interests in Partnerships

US Tax Compliance Issues

- When is a partnership required to file a return?
- When is a foreign partner required to file a return?
- If returns are required, when are they due?
- Is the partnership engaged in a U.S. business?
- What income is effectively connected with that business?

When is a partnership required to file a return?

- General rule – every partnership is required to file a return stating its gross income, allowable deductions, and the names and addresses of its partners entitled to share in distributions of taxable income
- Exceptions
 - Domestic partnerships – the partnership has no items of income, deductions, or credits for the year
 - Foreign partnerships
 - The partnership has no U.S. source income and
 - The partnership has no ECI
 - De minimis U.S. source income (\$20,000 or less), no ECI, and U.S. partners entitled to less than 1% of items, and U.S. partners include activity on their returns

When is a partnership required to file a return?

- Foreign partnership modified filing requirements
 - U.S. source income, but no U.S. partners
 - Partnership is not required to file a U.S. return
 - U.S. source income, U.S. partners, but no ECI
 - Return required
 - Schedule K-1 required only for direct U.S. partners and pass-through partners (whether U.S. or foreign) through which U.S. partners hold an interest
 - Other requirements
 - Partnership is not a withholding foreign partnership under Reg. 1.1441-5(c)(2)(i)
 - Forms 1042 and 1042-S are filed by the partnership and amounts are properly reported AND
 - The tax liability of the foreign partners has been fully satisfied by withholding

When is a foreign partner required to file a return?

- General rule – every nonresident alien individual and foreign corporation is required to file a U.S. income tax return if
 - They have U.S. source income the tax on which is not fully satisfied by withholding
 - They are engaged in a U.S. trade or business at any time during the taxable year
 - Even if no ECI
 - Even if no U.S. source income
 - Even if all income is exempt under a treaty
- Section 875(1) provides that if a partnership is engaged in a U.S. business, its foreign partners are deemed to be engaged in such business

Examples

- FP1 and FP2 are 50/50 partners in LLC, a Delaware limited liability company treated as a partnership for U.S. income tax purposes. LLC operates a production company and all of its activity takes place outside the U.S.
- Is LLC required to file Form 1065 if either:
 - It does not have an office in the U.S. or
 - It has an office in the U.S.?
- Are FP1 and FP2 required to file?

Examples

- Every domestic partnership is required to file a return unless it has no activity. Even though LLC has no U.S. source income and no ECI, it is required to file a return
- If LLC is engaged in a U.S. business, FP1 and FP2 are deemed to be so engaged and would be required to file a return
 - In the first example, although it's a U.S. partnership, it's not engaged in a U.S. business
 - In the second example, since LLC has a U.S. office a U.S. trade or business likely exists
- What if LLC was foreign?

Examples

- USP and FP are 50/50 partners in LLC, a Delaware limited liability company treated as a partnership for U.S. income tax purposes. LLC purchases products outside the U.S. and sells them to customers in the U.S. All products are drop shipped directly to the U.S. customer. LLC maintains a U.S. bank account.
- Is LLC required to file Form 1065 if either:
 - It does not have an office in the U.S. or
 - It has an office in the U.S.?
- Is FP required to file?

Examples

- Answer depends on the source of the income and whether such income is ECI
 - The source of income from the sale of personal property is generally the place where the rights, title and interest of the seller in the property are transferred to the buyer (the “title passage” rule). Reg. 1.861-7(c).
 - Foreign source income from the sale of inventory can be ECI if
 - The seller has an office or other fixed place of business in the U.S.
 - The income is attributable to such office (under the rules of section 864(c)(5) and
 - If the property is sold for use, consumption or disposition outside the U.S., an office in a foreign country materially participated in such sale. Section 864(c)(4).

What are the due dates for the returns?

- General rule – the partnership return is due on the 15th day of the 4th month following the close of the partnership's taxable year (April 15)
 - If the partnership keeps its books and records outside the U.S. and Puerto Rico, there is an automatic extension to the 15th day of the 6th month (June 15)

What are the due dates for the returns?

- General rule – the return for a nonresident alien individual is due on the 15th day of the 6th month following the close of the partnership's taxable year (June 15)
 - Exceptions – if the NRA elected to be treated as a U.S. resident under section 6013 or if the NRA had wages subject to withholding under section 3401, the due date is the 15th day of 4th month (April 15)
 - Unlike the rule for partnerships, this is a change in the due date, not an extension

What are the due dates for the returns?

- General rule – the return for a foreign corporation that does not have an office in the U.S. is the 15th day of the 6th month following the close of the partnership's taxable year (June 15 for a calendar year corporation)
 - If the foreign corporation has an office in the US, the due date is the 15th day of the 3rd month (March 15)
 - Unlike the rule for partnerships, this is a change in the due date, not an extension

What are the due dates for the returns?

- Extensions
 - IR-2005-131 – Beginning with returns due after December 31, 2005 the old two-month and three-month extensions have been eliminated and all extensions for corporations, individuals and partnerships will be for 6 months
 - To September 15 for a partnership or a foreign corporation with a U.S. office
 - To December 15 for a NRA or a foreign corporation without a U.S. office
 - Partnerships will file Form 7004
 - Individuals will file Form 4868
 - The new 6-month extension are also available for other information reports including Forms 1042, 3520-A, and 8804.