

# **International Tax Compliance**

**Curtis L. Dean, Vice President,  
Tax Research and Special Projects**

**Allen, Gibbs & Houlik, L.C.**

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# Key International Tax Forms

926	Return by a U.S. Transferor of Property to a Foreign Corporation
1042	Annual Withholding Tax Return for U.S. Source Income of Foreign Persons
1042-S	2008 Foreign Person's U.S. Source Income Subject to Withholding
1116	Foreign Tax Credit – Individual, Estate, Trust
1117	Income Tax Surety Bond for Foreign Taxes Reported as Credit by an Individual or Domestic Corp.

# Key International Tax Forms

1118	Foreign Tax Credit – Corporations
1120-F	U.S. Return of a Foreign Corporation
3520	Return to Report Transactions With Foreign Trusts & Receipt of Certain Foreign Gifts
3520-A	Annual Information Return of Foreign Trust With a U.S. Owner
5471	Return of U.S. Persons Re: Certain Foreign Corporations

# Key International Tax Forms

5472	Info Return of a 25% Foreign-owned U.S. Corp. or a Foreign Corp. Engaged in a U.S. Trade or Business
8288	U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interests
8288-A	Statement of Withholding on Dispositions by Foreign Persons of U.S. Real Property Interests
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8804	Annual Return for Partnership Withholding Tax (Section 1446)

# Key International Tax Forms

8805	Foreign Partner's Information Statement of Section 1446 Withholding Tax
8813	Partnership Withholding Tax Payment Voucher
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8865	Return of U.S. Persons Re: Certain Foreign Partnerships
8832	Entity Classification Election

# Key International Tax Forms

8833	Treaty-based return position disclosure under Section 6114 or 7701(b)
8838	Consent to extend the time to assess tax under Section 367 – Gain recognition agreement
TD F 90- 22.1	Report of foreign bank and financial accounts

# Form 926

- U.S. persons transferring property from the United States to a foreign corporation, estate, trust, or partnership in specified transactions must report the transactions to the IRS on Form 926, Return by a U.S. Transferor of Property to a Foreign Corporation.
- Failure to file can lead to a penalty of 10% of the fair market value of the property up to a maximum of \$100,000.

# Form 926

- U.S. persons transferring property, including intangibles, to a foreign corporation must file Form 926 and attachments. The form must be filed with the transferor's tax return for the tax year that includes the date of the transfer.

# Form 926

- A U.S. person who transfers cash to a foreign corporation must report the transfer under these rules on Form 926 if:
  - (1) immediately after the transfer, the person holds directly, indirectly or by attribution at least 10% of the total voting power or the total value of the foreign corporation; or
  - (2) the amount of cash transferred by the U.S. person or any related person to the foreign corporation during the 12-month period ending on the date of the transfer exceeds \$100,000.

# Form 926 required information

- Transferor's name, address and taxpayer identification number (TIN);
- Transferee's name, address, TIN, if any, and country of incorporation of transferee foreign corporation;
- General description of the transfer and any wider transaction of which it forms a part, including a chronology of the transfers involved and an identification of the other parties to the transaction to the extent known;

# Form 926 required information

- If, after July 19, 1998, an asset is transferred in a corporate property for stock exchange pursuant to a reorganization, a statement that the transferor is controlled by five or fewer domestic corporations and regulations under this rule have been satisfied, and an explanation of any basis or other adjustment made accordingly

# Form 926 required information

- Description of the consideration received by the U.S. transferor, including its estimated fair market value and, for stock or securities, the class or type, amount, and characteristics of the interest received;
- Description of the property transferred, divided into categories, and the estimated fair market value and adjusted basis of the property; and

# Form 1042

- A withholding agent must file Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons, (or any other approved form) for income paid during the preceding calendar year that the withholding agent is required to report on an information return on Form 1042-S (or any other approved form).

# Form 1042

- The withholding agent must file the return on or before March 15 of the calendar year following the year in which the income was paid.
- The return must show the aggregate amount of income paid and tax withheld required to be reported on all the Forms 1042-S for the preceding calendar year by the withholding agent, in addition to any other information required by the form and accompanying instructions. Withholding certificates or other statements or information provided to a withholding agent are not required to be attached to the return.

# Form 1042

- A return must be filed even though no tax was required to be withheld during the preceding calendar year.

# Form 1042-S

- Persons making payments to nonresident aliens, foreign corporations and foreign partnerships must file Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding, to indicate the amount withheld on the payment.

# Form 1042-S

- The return must be filed by March 15 of the year following the year in which the withholding occurred. The person withholding the tax may request an extension to file, and penalties apply for late filing or failure to file.

# Form 1120-F

- Foreign corporations must file Form 1120-F, U.S. Income Tax Return of a Foreign Corporation.
- Foreign corporations with a place of business within the U.S. using a calendar tax year must file income tax returns no later than March 15 of the year following the relevant tax year.
- Foreign corporations using a fiscal year must file their returns by the 15th day of the third month following the end of the fiscal year.

# Form 1120-F

- Foreign corporations other than current and former foreign sales corporations that do not have a place of business in the U.S. must file returns no later than June 15 if they are calendar-year taxpayers or no later than the 15th day of the sixth month following the end of the tax year if they are fiscal-year taxpayers.

# Form 5471

- A U.S. person who controls a foreign corporation for an uninterrupted period of 30 days or more must file an information return on Form 5471, Information Return of U.S. Persons With Respect To Certain Foreign Corporations.

# Form 5471

- Failure to file the return can lead to a \$10,000 penalty and reductions in the taxpayer's allowable foreign tax credit.
- If the failure to file is not corrected within 90 days after the return is due, there is an additional \$10,000 penalty for each 30-day period for which the failure to file is not corrected, up to a maximum of \$50,000.

# Form 5471

- Officers, directors and 10% shareholders in foreign personal holding companies must file an information return on Form 5471.
- U.S. persons who acquire 10% of the shares of a foreign corporation and U.S. citizens who are officers and directors of foreign corporations in which a U.S. person is a 10% shareholder must also file returns on Form 5471. For transactions occurring before 1998, the reporting threshold was 5%.

# Form 5471

- Each shareholder of a foreign corporation who is required to file a return must provide the following information:
  - Name, address and taxpayer identification number of each shareholder for whom the return is filed;
  - A statement that the shareholder(s) either acquired 10% of the foreign corporation or acquired an additional 10% of the corporation; and
  - Date on which the shareholder acquired the interest.

# Form 5471

- Form 5471 must be filed on or before the due date of the person's income tax return.
- Ongoing filing requirement: No statute of limitations on obligation to file Form 5471.

# Form 5472

- A domestic or foreign corporation that is 25% owned by a foreign person must file a separate return on Form 5472 for each related party with whom it had specified transactions.
- Similar reporting requirements apply to a foreign corporation engaged in a trade or business in the U.S. These corporations must maintain records of their transactions with related parties. The failure to file or maintain records is subject to a \$10,000 penalty.

# Form 5472

- Form 5472 must be filed by the due date of the corporation's income tax return, including extensions.

# Form 8865

- Certain U.S. persons who own interests in controlled foreign partnerships are required to file Form 8865 (Return of U.S. Persons With Respect To Certain Foreign Partnerships), with respect to a foreign partnership that files Form 1065 (U.S. Return of Partnership Income), or Form 1965-B (Return for Electing Large Partnerships).

# Form 8865

- Transfers by U.S. persons to foreign partnerships as a contribution to capital must be reported if:
  - (1) The U.S. transferor holds at least a 10% interest in the partnership immediately after the transfer; or
  - (2) The value of the property transferred, when added to the value of the property transferred by the transferor or a related person to the partnership during the 12-month period ending on the date of the transfer, exceeds \$100,000.

# Form 8865

- Form 8865 must be attached to the transferor's timely filed (including extensions) income tax return for the tax year that includes the date of the transfer, subsequent disposition or taxpayer-initiated transfer pricing adjustment.
- Ongoing filing requirement similar to Form 5471 (no statute of limitations)

# Form TD F 90-22.1

- Every person subject to U.S. jurisdiction who has an interest in or authority over a foreign financial account files a report on Form TD F 90-22.1.
- U.S. citizens and residents (including individuals, corporations, partnerships, trusts and estates) who have a financial interest in or signature or other authority over any “financial accounts” in a foreign country are required to make a separate filing if the aggregate value of these accounts exceeded \$10,000 at any time during 2008.

# Form TD F 90-22.1

- Filing requirements also apply to those with direct or indirect control over a foreign or domestic entity with foreign financial accounts, even if the taxpayer does not have foreign financial accounts of its own.

# Form TD F 90-22.1

- Foreign “financial accounts” include a wide variety of items, such as:
  - Bank accounts
  - Securities
  - Mutual funds
  - Credit cards
  - Retirement plans
  - Life insurance

# Form TD F 90-22.1

- Because both persons with a financial interest and persons with signature authority are required to submit filings, a single account can require multiple filings.
- For example, a corporate-owned foreign account requires filings by the corporation and by corporate officers with signature authority and individuals with a greater than 50% ownership interest in the corporation (including attribution). One person cannot file on behalf of others.

# Form TD F 90-22.1

- Filings must be made by June 30; the deadline is not extended by a tax return extension.
  - Severe civil and criminal penalties for non-compliance
  - Even an inadvertent failure or incomplete filing can result in a \$10,000 civil penalty. IRS announced it intends to enforce these penalties.
- 6-year statute of limitations, unlike previous forms (i.e., 5471, 926), which have an ongoing filing requirement

# Form W-8 BEN

- This form should be provided to a withholding agent or payer by a beneficial owner to claim foreign status, claim beneficial ownership of income and, if applicable, claim a reduced rate of or exemption from withholding.

# Form W-8 IMY

- Used to establish foreign status
- Should be provided by a foreign intermediary (qualified or nonqualified), a foreign partnership, a foreign person who is a trustee or executor of a U.S. or foreign trust or estate, or a U.S. branch of certain foreign banks and insurance companies

# Form W-8 ECI

- Used to establish foreign status, claim beneficial ownership and claim that income is effectively connected with the conduct of a trade or business in the U.S.

# Form W-8 EXP

- Should be provided to a withholding agent or payor by a foreign government, international organization, foreign central bank of issue or foreign tax-exempt organization
- Used to establish foreign status, claim beneficial ownership and, if applicable, claim a reduced rate of or exemption from withholding

# Circular 230

*Pursuant to federal regulations imposed on practitioners who render tax advice ("Circular 230"), we are required to inform you that any discussion of tax matters contained herein (including any attachments unless expressly stated otherwise) is not intended or written to be tax advice, and cannot be relied upon as such, nor can it be used for the purpose of: (i) avoiding tax penalties that may be imposed by the IRS or states, or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein. If you seek definitive tax advice on a matter, please request a written tax memorandum from your AGH tax advisor.*

# Thank you!

Curtis L. Dean

[Curtis.Dean@aghlc.com](mailto:Curtis.Dean@aghlc.com)

(316) 267-7231

AGH