

UPDATES AND OTHER TIDBITS

Authors

Rusudan Shervashidze
Nina Krauthamer

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LIMITED RELIEF FOR TRANSITION TAX

In IR-2018-131, issued on June 4, 2018, the I.R.S. announced that it will waive certain late-payment penalties relating to the Code §965 transition tax and provided additional information for individuals subject to the transition tax regarding the due date for relevant elections.

The I.R.S. explained the relief in three new F.A.Q.'s, posted on the agency's tax reform page. These supplement 14 existing questions and answers that provide detailed guidance to taxpayers on reporting and paying the tax.

Code §965, enacted in December 2017, imposes a tax on previously untaxed earnings of foreign corporations owned by "U.S. Shareholders" of controlled foreign corporations and U.S. domestic corporations that were entitled to claim indirect foreign tax credits for foreign taxes paid by foreign corporations at the time dividends were received.

Under the transition tax, foreign earnings held in the form of cash and cash equivalents by those foreign corporations are included in income by their U.S. Shareholders or domestic corporations and are taxed at a 15.5% rate. Any earnings in excess of such cash and cash equivalents are taxed at an 8% rate. The transition tax generally may be paid in installments over an eight-year period when a taxpayer files a timely election under Code §965(h).

The newly issued F.A.Q.'s provide as follows:

- In some instances, the I.R.S. will waive the estimated tax penalty for taxpayers subject to the transition tax who improperly attempted to apply a 2017 calculated overpayment to their 2018 estimated tax, as long as they make all required estimated tax payments by June 15, 2018.
- For individual taxpayers who missed the April 18, 2018, deadline for making the first of the eight annual installment payments, the I.R.S. will waive the late-payment penalty if the installment is paid in full by April 15, 2019. Absent this relief, a taxpayer's remaining installments over the eight-year period would have become due immediately. This relief is only available if the individual's total transition tax liability is less than \$1 million. Interest will still be due. Later deadlines apply to certain individuals who live and work outside the U.S.
- Individuals who have already filed a 2017 return without electing to pay the transition tax in eight annual installments can still make the election by filing a 2017 Form 1040X with the I.R.S. The amended Form 1040 generally must be filed by October 15, 2018.

TAX PHISHING SAGA – NEW TWIST TO FAKE I.R.S. CALLS

While taxpayers are catching on to scam artists that pretend to be I.R.S. agents, the scammers themselves are coming up with a new twist on an old phone scam to scare taxpayers into paying non-existent tax bills. To update taxpayers on this new twist, on April 24, 2018, the I.R.S. issued IR-2008-103 advising taxpayers to stay alert to tax scams.

In the latest scheme, scam artists are claiming to call from a local I.R.S. Taxpayer Assistance Center (“T.A.C.”) office and demand a tax payment. They have programmed their computers to display the T.A.C. telephone number, which appears on the taxpayer’s caller I.D. when the call is made. If the taxpayer refuses to pay, the scam artist directs the taxpayer to www.IRS.gov to look up the local T.A.C. office telephone number to verify the phone number.

Once the taxpayer has had time to verify the call number, the scam artist calls back. When calling the second time, the scam artist again fakes or “spoofs” the caller I.D. to make it appear as though the I.R.S. office is calling. Once they have convinced the taxpayer that the call is coming from the I.R.S., they continue to demand payment, generally requesting payment through a debit card.

Taxpayers should be aware:

- **I.R.S. employees at T.A.C. offices do not make calls to taxpayers demanding payment of overdue tax bills.** I.R.S. agents usually communicate through mail that is delivered by the U.S. Postal Service.
- **There are limited circumstances in which an I.R.S. agent does an in-person investigation.** Even then, it is conducted after the taxpayer is informed about an I.R.S. inquiry by notice letter.
- **The I.R.S. does not demand that you use a specific payment method, such as a prepaid debit card, gift card, or wire transfer.** The I.R.S. will not ask for your debit or credit card numbers over the phone. If you owe taxes, payments should be directed to the U.S. Treasury or review www.IRS.gov/payments for I.R.S. online options.
- **The I.R.S. does not demand that you pay taxes without the opportunity to question or appeal the amount they say you owe.** Generally, the I.R.S. will first mail you a bill if you owe any taxes. You should also be advised of your rights as a taxpayer.
- **The I.R.S. will not threaten to bring in local police, immigration officers, or other law enforcement to arrest taxpayers for nonpayment.** The I.R.S. also cannot revoke your driver’s license, business licenses, or immigration status. Such threats like these are common tactics scam artists use to trick victims into buying into their schemes.

Taxpayers who receive a scam I.R.S. phone call should report it to the Treasury Inspector General for Tax Administration by emailing phishing@irs.gov with the subject line “I.R.S. Phone Scam.”

ENHANCED PHISHING TACTICS – BEWARE FORM 8-WBEN

I.R.S. phishing scams have evolved into a new racket in which phony I.R.S. agents target non-U.S. residents to solicit detailed personal identification and bank account information.

Unlike phone calls used in previous scams, in this case, the fake I.R.S. agents fax or mail a letter representing that, although individuals are exempt from withholding and reporting income tax, they still need to authenticate their information by filling out a phony version of Form W-8BEN, *Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding and Reporting*. Recipients of these scam letters are requested to fax the information back.

Generally, Form W-8 is used by nonresident individuals and foreign businesses to certify their foreign status when they have U.S.-source income. The form informs the U.S. payor that the receiver is not subject to the usual tax withholding in the U.S. and it is submitted to the withholding agent.

According to the I.R.S., this is not the first-time nonresidents have been targeted by fake I.R.S. agents seeking personal details such as passport numbers and PIN codes. The legitimate I.R.S. Form W-8BEN does not ask for any of that information. The phony letter or fax also refers to Form W9095, which does not exist. Furthermore, the I.R.S. does not require a recertification of foreign status.

Nonresidents should be vigilant of bogus letters and emails that appear to come from the I.R.S. or other tax professionals. Scam letters, forms, and e-mails are designed to trick taxpayers into thinking these are official communications from the I.R.S. or others in the tax industry, including tax software companies. These phishing schemes may seek personal information including mother's maiden name, passport, and other account information in order to steal the victim's identity and their assets.

If you believe that you are a victim of a scam, please report it to the I.R.S. Impersonation Scam Reporting site or email phishing@irs.gov with the subject line, "I.R.S. Impersonation Scam."

FINCEN: MONEY TRANSMITTER RULES APPLY TO I.C.O.'S

There is still no general consensus on what virtual (crypto) currency is; the I.R.S. treats it as a property, while the Financial Crimes Enforcement Network ("FinCEN") sees it "a medium of exchange that operates like a currency."

In a letter dated February 13, 2018, to Senator Ron Wyden (D-O.R.) FinCEN's assistant secretary for legislative affairs, Drew Maloney, explained the network's position on convertible virtual currency including I.C.O.'s (initial coin offerings). According to the letter:

Under existing regulations and interpretations, a developer that sells convertible virtual currency, including in the form of ICO coins or



tokens, in exchange for another type of value that substitutes for currency is a money transmitter and must comply with AML/CFT (anti-money laundering/combating the financing of terrorism) requirements that apply to this type of MSB (money services business). An exchange that sells ICO coins or tokens, or exchanges them for other virtual currency, fiat currency, or other value that substitutes for currency, would typically also be a money transmitter.¹

This indicates that both developers and exchangers involved in an I.C.O. could be treated as money transmitters and may be required to register as such to comply with the relevant statutes around anti-money laundering and know-your-customer (“K.Y.C.”) rules. This could mean that a group conducting an I.C.O. that has U.S. clients may have to register with FinCEN as a money transmitter and follow the K.Y.C. regulations.

The obligation to meet anti-money laundering/combating the financing of terrorism (“A.M.L./C.F.T.”) requirements to participate in an I.C.O. depends on the nature of the financial activity involved and the facts and circumstances of each case. Token sales structured as sales of securities or derivatives would fall under the U.S. Securities and Exchange Commission (“S.E.C.”) or the Commodity Futures Trading Commission (“C.F.T.C.”) regulations, respectively.

FinCEN, along with Office of Terrorism and Financial Intelligence (“T.F.I.”) has worked diligently to ensure that A.M.L./C.F.T. rules apply to virtual currency exchangers and administrators that are in the U.S. or conduct business within the U.S., even if they do not have a physical presence in the country. FinCEN maintains a team of analysts that proactively review the Bank Secrecy Act filings to identify trends and risks for money laundering and other financial crimes and provide this information to other U.S. law enforcement and other government agencies, including the S.E.C. and C.F.T.C.

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¹ Letter from Drew Maloney, FinCEN's assistant secretary for legislative affairs, dated February 3, 2018.