

THE ASSOCIATION OF GLOBAL CUSTODIANS

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March 30, 2018

Ms. Laurie Brimmer
Internal Revenue Service
1111 Constitution Avenue NW, Room 6526
Washington, DC 20224

Re: Request for Comments on Form 8802, Application for United States Residency Certification

Dear Ms. Brimmer,

We appreciate the opportunity to submit this letter on behalf of the members of the Association of Global Custodians ("AGC" or "Association")¹ to provide comments for the Internal Revenue Service's ("IRS") consideration in its review of Form 8802, Application for United States Residency Certification. Member banks of the AGC are major users of Form 8802, as they annually file many thousands of such forms on behalf of their investor clients. The AGC has previously submitted comment letters to the IRS and met with IRS tax processing department professionals to discuss the Form 8802 process in detail and provide recommendations ranging from administrative processes and form details to a long-term electronic solution. We look forward to continuing that dialogue with the IRS to improve Form 8802 and the process for issuing Certificates of Residency ("CoR"), as the process is so critical to the ability of US investors to obtain the treaty benefits to which they are entitled.

The attached submission sets forth the Association's comments, which focus specifically on (1) processing timeframes, (2) rejection of Form 8802 applications, (3) improving communications between filers and the IRS, and (4) establishing an electronic application and payment portal.

¹ The Association is an informal group of 12 member banks that provide securities safekeeping and asset servicing functions to cross-border institutional investors worldwide, including investment funds.

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Please do contact the undersigned should you wish to discuss the Association's comments.

Sincerely yours on behalf of the Association,



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COMMENTS OF THE ASSOCIATION OF GLOBAL CUSTODIANS FOR CONSIDERATION ON FORM 8802, APPLICATION FOR UNITED STATES RESIDENCY CERTIFICATION

The Association appreciates the opportunity to provide comments on Form 8802. In support of this effort, the AGC respectfully requests that the IRS take the following comments into consideration as it reviews Form 8802:

1. Reduce the amount of time necessary to process Forms 8802.
2. Reduce the number of Forms 8802 that are rejected and establish streamlined processes for correcting applications that contain errors or are incomplete.
3. Improve communications between filers and the IRS.
4. Establish an electronic application processing and payment portal.

Discussion

1. Reduce the amount of time necessary to process Forms 8802.

In the early 2017 season, the IRS Philadelphia unit was experiencing up to 8-week delays with the issue of the Forms 6166. Based on our members' experiences, these delays continue. The delay in issuing Forms 6166 causes a risk to investors that they may potentially fail to access tax relief across investment markets where a Certificate of Tax Residency is required for tax relief at source, as well as tax reclaims. A significant number of markets (e.g., including Egypt, Indonesia, Italy, Japan, Mexico, Philippines, Poland, Romania, Russia, Ukraine, and Venezuela) require current year Forms 6166 to be furnished to the withholding agent in advance of the date of payment of the income event in order to be able to obtain relief at source or refunds through tax reclaims, and in many of those markets it is not possible to obtain relief retroactively by tax reclaim. Accordingly, any delay in receiving a Form 6166 beyond January 1 of the year of the income event risks a permanent loss of treaty benefits for income received prior to the date on which the Form 6166 can be furnished to the withholding agent. Such a loss translates to a cost to the US Treasury where US investors claim foreign tax credits for the foreign tax withheld, or a cost to the US investors that are tax exempt.

In addition to the initial delay in issuing the Form 6166, the IRS continues to issue Forms 6166 with errors in taxpayers' names. When a Form 6166 is issued with an error in the taxpayer's name, the incorrect form typically cannot be used to obtain tax relief and a corrected form must be obtained, which results in additional delays with access to tax relief, especially in at-source-only markets, such as Italy and Indonesia.

The AGC continues to recommend that the IRS establish a submission date for Form 8802 that is earlier than December 1 to provide the IRS with additional processing time. We suggest

that a date in August or September would ensure that CoRs are processed in a timely manner for issuance in the following year as close to January 1 as possible.

2. Reduce the number of Forms 8802 that are rejected and establish streamlined processes for correcting applications that contain errors or are incomplete.

Members of the Association have seen a significant increase in the number of Forms 8802 that are rejected. Some of these Forms either should not have been rejected or the Form could have easily been supplemented to provide correct or missing information. For example, our members have experienced the following:

- A CoR has been issued the same way for several years using the same documents attached to Form 8802. Although nothing has changed, the IRS advises our members that they are unable to locate the client's name or TIN in the database of U.S. taxpayers that have filed returns or previously obtained CoRs.
- Although a CoR has been issued in previous years, the IRS advises that there is an issue with the client's name that prevents issuance of a CoR.
- The IRS has advised that Form 5500 must be filed, despite the fact that Form 8802 clearly indicates that the client is a governmental entity (and, thus, no Form 5500 is required) or a Catholic charity (and a supporting Catholic directory is provided).
- Despite having included required documentation in the initial submission of the Form 8802, members are advised by the IRS that required documentation (such as Form 8821 for partnerships) or supporting documentation (such as Form 5500) is missing. When the IRS advises that required documentation, such as Form 8821, is missing, our members must solicit original documents from clients again, have the client sign the form again, and then resubmit the same documentation to the IRS—all causing further delay in the client's timely receipt of a CoR.
- In some cases, the IRS has provided partnership CoRs where the names of partners are missing or client names are misspelled on the CoR.
- Our members have received CoRs from the IRS that are not for our members' clients, which requires our members to file an incident report and return the CoRs to the IRS.

The AGC continues to recommend that the IRS update the rejection letters that it issues to allow IRS personnel to tick a box indicating the predominant reason for the rejection on the form letter and add a free format field for IRS personnel to complete to communicate the reason for non-standard rejections. While the IRS has told our members in years past that its rejection letters would be modified to provide this information, our members' experience is that many rejection letters continue to lack this information or that the stated reason for the rejection is too vague to allow for follow-up without the need for a clarificatory telephone call with the IRS. Moreover, establishing an electronic application process should significantly reduce the number of times that the IRS requests that documents that were submitted with the original application be resubmitted.

3. Improve communications between filers and the IRS.

The system for communications between filers and the IRS is inefficient and does not take advantage of technology. For example, where a complete Form 8802 is submitted but neither a CoR nor a rejection is issued, a call to the IRS is required to determine the status of processing the Form 8802. Typically, where the IRS cannot confirm receipt of the Form 8802, a filer is required to resubmit the complete Form 8802, which essentially restarts the clock for receiving a CoR.

When a Form 8802 is rejected, filers are provided with a fax number to use when submitting necessary documentation. Issuing a CoR after the IRS receives the additional documentation may take two weeks. If a CoR is not received, the filer typically has to call the IRS and re-start the process of submitting documentation again. While the IRS has told the AGC in years past that it has introduced dedicated electronic fax numbers for the relevant processing team on its outgoing letters and members have been using those numbers, members' experiences have varied regarding the efficacy of the dedicated fax communications: some have experienced significant improvement in the processing of IRS reprints and rejections through use of these numbers, whereas others report that they are continuing to experience situations where the IRS is unable to locate documentation submitted through this system.

When a filer is working to resolve outstanding issues, IRS customer service representatives who handle incoming calls do not necessarily have complete information about all the steps that have been taken to resolve an outstanding issue, limiting their ability to effectively and efficiently work with filers to resolve outstanding issues.

The AGC recommends that the IRS establish a website where filers can check the status of a Form 8802 application (similar to "Where's My Refund?" for individual income tax filers) and receive information about the reasons for a rejection and status of efforts to resolve issues with a submitted Form 8802.

4. Establish an electronic application processing and improved payment portal.

Many of the challenges that we identify above could be significantly ameliorated by establishing an electronic application processing and improved payment portal. For example, if filers could submit Form 8802 electronically, that should speed processing time for the IRS by eliminating the need for manual processing. It would also reduce the number of errors that occur when information on a paper form is manually transcribed. An electronic application process would also make it easier for filers and the IRS to track the progress of an application and streamline efforts by filers to resolve any issues that lead to rejections, while providing customer service representatives with a more complete record of all steps that have been taken to resolve any outstanding issues. Electronic filing would also reduce costs for both filers and the IRS. For all of these reasons, an electronic application process, which includes an electronic payment feature, would allow the IRS to issue CoRs in a more efficient and timely manner.

Members also recommend that the existing electronic payment option available through www.pay.gov be improved. The current portal requires a separate payment to be made for each Form 8802 being submitted. Because AGC members make such high volume submissions of Form 8802 applications (often hundreds or thousands at a time), the need to separately log into the electronic payment portal and separately enter payment information for each individual application makes the use of that portal prohibitively time-consuming, versus the alternative of preparing a single check to accompany multiple applications. Members would be much more inclined to use the existing portal, and payment processing would be made much more efficient for both applicants and the IRS, if the portal would allow a single payment to be made for and associated with multiple Forms 8802.