

THE ASSOCIATION OF GLOBAL CUSTODIANS

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January 21, 2016

Internal Revenue Service
CC:PA:LPD:PR (Reg. 132075-14) Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Re: Comments on Proposed Regulations Regarding Automatic Extension of Time to File under Temporary Treasury Regulation section 1.6081-8T

Ladies and Gentlemen:

I am pleased to submit the attached comments prepared by the Association of Global Custodians ("Association" or "AGC")¹ in response to your invitation to comment on the proposed changes to 26 CFR section 1.6081-8T with respect to the automatic extension of time to file tax information returns. The AGC's comments focus on the impact of the proposals with respect to Form 1042-S (Foreign Person's U.S. Source Income Subject to Withholding) on its member banks.

If you have any questions concerning these comments or would like to discuss any of these issues further, please feel free to contact me. We are also happy to set up a meeting or conference call with AGC Tax Committee representatives at your request.

Sincerely yours on behalf of the Association,



Mary C. Bennett
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Counsel to the Association (202-452-7045)

¹ The Association is an informal group of 11 member banks that provide securities safekeeping and asset serving functions to cross-border institutional investors worldwide. Members provide custody-related services to most types of institutional investors, including investment funds, pension funds, and insurance companies.

COMMENTS OF THE ASSOCIATION OF GLOBAL CUSTODIANS ON PROPOSED CHANGES TO 26 CFR § 1.6081-8T
JANUARY 21, 2016

Current Rules Regarding Extensions

Under the current version of section 1.6081-8T, a withholding agent, including a qualified intermediary, required to file Form 1042-S may request an automatic 30-day extension of time to file the form with the Internal Revenue Service. In addition to the automatic extension, a further 30-day extension may be requested, subject to approval by the Internal Revenue Service. The second 30-day extension is granted only in unusual circumstances. These extensions to file the Form 1042-S with the Internal Revenue Service do not extend the due date for providing a copy of the Form 1042-S to the recipient of the income.

Proposed Change

The proposed change to section 1.6081-8T would eliminate the automatic 30-day extension of time to file the Form 1042-S with the Internal Revenue Service.

Consequences of Proposed Change

Each of the financial institutions that make up the Association of Global Custodians files thousands of Forms 1042-S each year to report U.S. source fixed or determinable, annual or periodic income earned by nonresident alien individuals and foreign legal entities that maintain custody accounts with either U.S. or foreign financial institutions. The vast majority of the Forms 1042-S filed report U.S. source dividend or interest income.

In most instances, U.S. source dividend income is presumed to be fully taxable and subject to withholding under chapter 3 or chapter 4 of the Internal Revenue Code at time of payment to the non-U.S. custody account holder. Subsequent to the end of the calendar year in which the dividend payment occurs, security issuers may reclassify the nature of the income distributed. Examples of such reclassifications that are common in the U.S. securities markets include:

- Capital gain distributions paid by real estate investment trusts;
- Return of capital distributions paid by C corporations, real estate investment trusts, or regulated investment companies;
- Interest-related dividend distributions paid by regulated investment companies; and
- Qualified short-term capital gain distributions paid by regulated investment companies.

The security issuers typically provide information regarding these income reclassifications to third-party data providers, who in turn make this information available to custodians to use. The information is used to reclassify income reportable on the Form 1042-S and in some cases to apply the reimbursement procedure with respect to overpaid chapter 3 withholding tax as described in 26 CFR section 1.1461-2T(a)(2). The information regarding reclassification of income for the preceding calendar year usually is not available to the third-party data providers or the custodians until mid-January at the earliest or the end of February at the latest.

In order to gather the information necessary to report the correct nature of the income paid by some C corporations and the majority of real estate investment trusts and regulated investment companies, custodians regularly apply for the 30-day automatic extension of time to file the Form 1042-S with the Internal Revenue Service and also apply for a 30-day extension of time to send a copy of the Form 1042-S to the recipient of the income.

If the proposed change becomes effective, custodians will have to adapt to the change by not making adjustments for reclassification of income by the security issuers in order to meet the March 15th deadline for filing the Form 1042-S. Custodians will then be put in the position of having to issue a large number of amended Forms 1042-S to take the income reclassifications into account. The issuance of an increased number of amended Forms 1042-S may result in a corresponding increase in the number of U.S. income tax returns filed by the nonresident alien individuals and foreign legal entities that are the recipients of the income and the amended Forms 1042-S.

While the proposed change appears to be targeted to reduce the incidence of fraudulent returns based on Form W-2 or Form 1099-MISC, the allowance of the automatic extension for Form 1042-S does not appear to give rise to an increased risk of fraudulent refund claims. Forms 1040-NR and 1120-F are already subject to an extensive review by the Internal Revenue Service prior to approval of the return and issuance of a refund. The proposed change will not reduce the risk to the Internal Revenue Service, but will result in a substantial increase in filings of amended Forms 1042-S.

Recommendation

The Association of Global Custodians respectfully requests that Form 1042-S remain eligible for a 30-day automatic extension of time to file with the Internal Revenue Service. Continuing the availability of the automatic extension will allow custodians to provide more accurate information reporting, reduce the number of amended forms to be filed, and potentially reduce the number of returns claiming refunds based on income reclassifications.