

IRS Foreign Payments Practice developments United States tax alert

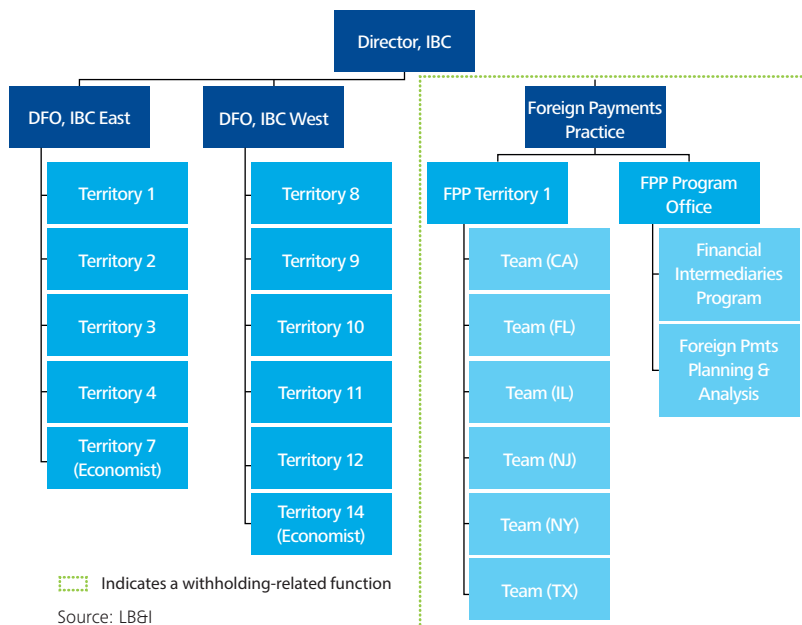
The Foreign Payments Practice is an integrated withholding tax program within the IRS's LB&I IBC division

The Internal Revenue Service (IRS) announced its intentions for a realignment of its foreign payments audit oversight activities in 2012 and began discussing the new structure in various professional forums during 2013. A new Foreign Payments Practice division and its impact on compliance for withholding agents was described by Theodore D. Setzer, the Program Manager for the IRS's Foreign Payments Practice, and other IRS officials at these 2013 forums.

The Foreign Payments Practice is an integrated withholding tax program within the IRS's Large Business and International (LB&I) International Business Compliance (IBC) division. The Foreign Payments Practice consists of six teams of withholding international examiners located in California, Florida, Illinois, New Jersey, New York, and Texas, as well as a Program Office responsible for coordinating international information reporting and withholding compliance strategy, planning, analysis, and training activities. The Foreign Payments Practice also encompasses the Financial Intermediaries Program, Foreign Account Tax Compliance Act (FATCA) implementation, and the Foreign Payments Planning & Analysis team.

The IRS provided a diagram of its new practice:

New LB&I Foreign Payments Practice



Impacts for withholding agents

Organizationally, the IRS formation of a withholding practice within the division is intended to implement a better audit approach relating to withholdings. This new approach is expected to have less focus on whether Form W-8 is correctly completed and more focus on processes and procedures that impact the proper classification of the payments. It is expected that the new Foreign Payments Practice will also focus on auditing filings for Forms 1042/1042-S as well as determination of compliance with withholding requirements.

Recent IRS audit activity

There has been a recent increase of targeted Form 4564 — Information Document Request (IDRs) issued to companies with foreign payments. The IDRs are being issued as part of ongoing audits as well as part of a targeted audit program. Two types of IDRs are being issued, one for procedures and one for document inspection.

Procedures IDR

Typically, the procedures IDR will request identification of systems utilized for foreign payments and copies of written procedures. The procedures request may include specific documentation of procedures used to determine if payments are i) made to a foreign person, ii) constitute Fixed, Determinable, Annual, or Periodical (FDAP), and iii) are U.S. sourced. The IDRs may also ask for information regarding foreign payments made outside of the accounts payable system (i.e., treasury payments or other disbursement systems). Additionally, the IDR may ask for details regarding withholding practices and examine actual deposits.

Inspection IDR

The inspection IDR may request copies of Forms 1042 (Annual Withholding Tax Return for U.S. Source Income of Foreign Persons) and Forms 1042-S (Foreign Person's U.S. Source Income Subject to Withholding) filed for the years under examination. Additionally, copies of withholding certificates are requested, including Forms 8233 (Exemption Form Withholding on Compensation for Independent (and Certain Dependent) Personal Services

of a Nonresident Alien Individual) and Forms W-8 (W8, W8-IMY, W8-ECI, W8-EXP). Also requested are copies of Forms 8288 (U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interests) and Forms 8288-A (Statement of Withholding on Dispositions by Foreign Persons of U.S. Real Property Interests), which were filed by the taxpayer as a buyer or other transferee of a U.S. real property interest that is acquired from a foreign person.

Conclusion

The new organization and focus of the IRS on foreign payments results in part from the expanded and renewed efforts to identify U.S. taxpayers with cross-border payments and foreign assets. The various reporting regimes include but are not limited to Section 1441, FATCA, and Report of Foreign Bank and Financial Accounts (FBAR) reporting. The Foreign Payments Practice has specially trained agents, and these agents are conducting targeted audits as well as being brought in as specialists as part of regular cycle audits of both financial services and nonfinancial services companies. It is likely that many more of our clients will receive these IDR's and will require assistance in this area.

For additional information please reach out to the Global Information Reporting group.

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