INTERNATIONAL TAX YEAR-END CONSIDERATIONS IN 2024

Critical tax issues for planning at the end of 2024 and entering 2025

RSM

More than six years have passed since the Tax Cuts and Jobs Act of 2017 (TCJA) brought sweeping changes to the U.S. international tax landscape. Congress continues to balance taxpayer demands for long-overdue guidance on TCJA provisions while focusing on how to address the Pillar Two initiative of the Organisation for Economic Co-operation and Development (OECD). Moreover, taxpayers continue to litigate Congress' rulemaking authority in the courts.

While the fiscal environment remains unclear, taxpayers should prepare for an increase in their global effective tax rate (ETR) and tighter reporting standards over the next couple of years. Less cash on hand and higher interest rates may inspire taxpayers to revisit basic international tax concepts to reduce their tax burden and increase their internal cash flow. Planning is key for companies to manage their tax profile effectively and support business objectives.

PLANNING CONSIDERATIONS

Foreign-derived intangible income (FDII)

The FDII regime in the tax code is an export incentive that allows a U.S. corporation to deduct export sales revenue exceeding a 10% return on tangible depreciable assets that constitute a qualified business asset investment.

The deduction is currently 37.5% of a corporation's FDII and will decrease to 21.875% beginning in 2026 unless it is repealed or amended. The deduction amount is limited to a corporation's taxable income, and it cannot create or extend a net operating loss.

The FDII deduction has come under scrutiny by the OECD as a harmful tax practice under base erosion and profit shifting (BEPS) Action 5, based in part on the low correlation required between the intangible related eligible income and research and development (R&D) activities that create intellectual property.

Some lawmakers have proposed increasing the FDII deduction, while others have advocated eliminating it by repealing Internal Revenue Code (IRC) section 250. The results of the 2024 U.S. general election may lead to additional guidance, but taxpayers that currently benefit from the FDII deduction should plan for a lower deduction in 2026 absent legislative action.

TAKE ACTION

Taxpayers should carefully consider whether they are eligible to claim the FDII deduction and, if so, model to maximize its potential benefits. Any modeling for 2025 should consider the current deduction limit as well as the expected decrease in the 2026 tax year.

Global intangible low-taxed income (GILTI)

The GILTI regime subjects the earnings of controlled foreign corporations (CFCs) to current U.S. tax if those earnings are not already taxed under IRC subpart F. A CFC's U.S. shareholders may exclude high-taxed earnings (income subject to an effective tax rate of 18.9%) from GILTI if the controlling domestic shareholders elect to allow the exclusion. Under current regulations, a U.S. partnership may be a controlling domestic shareholder and make the high-tax exception for its partners, even though the partners perform the GILTI calculation.

U.S. shareholders classified as corporations for U.S. tax purposes and U.S. individuals who make a section 962 election are generally entitled to a section 250 deduction on their GILTI inclusions. The deduction will remain at 50% for 2025 but is scheduled to be reduced to 37.5% starting in 2026.

Taxpayers may want to plan now to reduce GILTI inclusions for 2026—for example, taxpayers can consider making an entity classification election (i.e., a check-the-box election) on their CFCs to be treated as disregarded or as a partnership, and structuring the CFC to qualify for the high-tax exception.

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Taxpayers looking for additional planning opportunities to minimize the impact of GILTI can review **10 quick year-end reminders for GILTI.**

Base erosion and anti-abuse tax (BEAT)

BEAT is imposed on corporations making significant deductible payments to related foreign parties. The tax applies to U.S. corporations and foreign corporations earning effectively connected income (ECI) with average gross receipts of $500 million (determined at the aggregate group level) and a base erosion percentage exceeding 3%.

BEAT applies in addition to a corporation's regular income tax and functions in a similar manner as an alternative minimum tax. The current BEAT rate is 10% but is scheduled to increase to 12.5% starting in 2026. The tax generally cannot be reduced by foreign tax credits or an applicable tax treaty.

BEAT is often a concern for U.S. service providers that subcontract out the performance of services to foreign affiliates. It is normally less of a concern for manufacturers and distributors because the cost of goods sold is treated as a reduction in gross receipts rather than a base erosion payment.

Taxpayers potentially subject to BEAT may want to consider planning opportunities that can lower (or eliminate) their liability, such as:

- Structuring into an agency relationship with a U.S. affiliate rather than having the U.S. affiliate function as an entrepreneur that subcontracts services to foreign affiliates. This eliminates the outbound deductible payment and shifts gross receipts to a foreign affiliate, which may allow the group to fall below the $500 million threshold if the gross receipts are not ECI to the foreign affiliate.
- Applying the BEAT services cost method exception. This allows amounts paid (or accrued) for certain types of low-margin services to be excluded from the base erosion payment definition, which may put the taxpayer below the 3% base erosion threshold for applying BEAT.
- Utilizing the BEAT waiver election. This allows the taxpayer to reduce the amount of its base erosion tax benefits, which may put it below the 3% base erosion threshold for applying BEAT.

Foreign tax credit (FTC)

The many variables involved in calculating the FTC include eligibility, limitations, income/loss allocations, the effect of making or revoking certain elections, and the impact on the global ETR. Having a thorough understanding of all the variables and how they interact can help taxpayers make better decisions.

Over the past couple of years, the Treasury Department and the IRS have issued many FTC regulation packages (e.g., technical corrections and proposed regulations) and notices (e.g., Notices 2023-31, 2023-55 and 2023-80) setting forth transition rules and elections that may limit taxpayers' ability to use excess FTCs going forward.

Consider the following:

- Taxpayers with significant pre-TCJA carryforward or post-TCJA carryback credits should carefully consider how their unused FTCs may be limited and which election(s) may be available to allow for their efficient utilization.
- Taxpayers with significant interest expense should consider elective capitalization under IRC section 266 to reduce interest expense allocated to foreign source income.
- Taxpayers subject to the net investment income tax may benefit from the Christensen v. United States ruling by claiming an FTC against that tax, as the court recognized the U.S.-France income tax treaty provisions allowing FTCs.

LEARN MORE

Taxpayers looking for additional opportunities to maximize their FTCs can review **10 quick reminders for FTC.**

Transfer pricing

Taxpayers should consider a variety of important transfer pricing issues before year-end to mitigate risk, as well as leverage tax planning opportunities afforded by effective and proactive planning.

TAKE ACTION

- Reevaluate existing transfer pricing to account for any changes in the business or in the relationships of the related parties that engage in controlled transactions. **Changing existing transfer pricing policies** may help prevent losses from being trapped in one jurisdiction while income accumulates in another, or may provide other tax rate or cash repatriation planning opportunities.
- Perform year-end transfer pricing true-ups and reconcile financial statements with relevant transfer pricing documentation requirements.
- Consider transfer pricing in a broader, holistic review of the global business model, to ensure alignment of tax strategy and planning with the commercial objectives and needs of the company.
- Review and address any applicable country-by-country reporting (CbCR) requirements.
- Submit or renew advance pricing agreements in accordance with the **more robust screening process** introduced by the IRS last year. The demand for such agreements has continued to grow in recent years as multinational corporations seek greater certainty with respect to transfer pricing.

Pillar One and Pillar Two

The OECD's two-pillar global tax plan to combat tax avoidance, ensure consistency in international tax rules, and ultimately provide a more transparent tax environment is finally coming into effect.

Pillar One consists of two main elements: Amount A; and Amount B, also known as the simplified and streamlined approach.

Amount A aims to reallocate a portion of the profits of the largest and most profitable multinational enterprises (MNEs)—those with revenue of more than 20 billion euros and a profit margin of more than 10%—to the jurisdictions where they have significant consumer-facing activities, regardless of physical presence. Rights to tax profits would shift in part from countries of production (or development) to countries of consumption, based on a drafted formulaic approach.

Amount B aims to simplify and streamline the application of the arm's-length principle to baseline marketing and distribution activities, which particularly benefits low-capacity jurisdictions. Unlike Amount A, Amount B applies to a broader range of MNEs engaged in in-country baseline marketing and distribution activities, without a specific revenue threshold.

Pillar Two, referred to as the global anti-base erosion (GloBE) rules, affects all sectors in countries that have adopted it by requiring income taxation at a minimum effective rate of 15%. Pillar Two will affect companies with consolidated revenues above 750 million euros or the equivalent, as the OECD intends to mirror the revenue threshold set for CbCR obligations.

TAKE ACTION

As the Pillar Two GloBE rules take effect in stages, with the first rules applying to tax years beginning on or after Dec. 31, 2023 (e.g., for 2024 calendar year taxpayers), taxpayers should promptly assess the potential incremental tax and compliance costs.

Given that certain countries, including the U.S., have yet to adopt the GloBE rules, taxpayers should closely monitor forthcoming guidance, which could have a major impact on determining tax obligations. Even taxpayers that may initially take advantage of safe harbors to mitigate potential Pillar Two tax burdens should not underestimate the significant data and compliance challenges anticipated as a result of these new rules.

Payments between and from foreign subsidiaries

Payments made between foreign corporations characterized as CFCs may trigger income inclusions for a U.S. shareholder under subpart F, even if the U.S. shareholder receives no distributions. The Consolidated Appropriations Act of 2021 extended an exception (look-through rule) to subpart F.

Under the exception, dividends, interest, rents and royalties that a CFC receives from related CFCs might not be treated as subpart F income—and therefore might not be currently includable in the CFC's U.S. shareholder income—if the payments are attributable to active income of the related CFCs. This exception is now set to expire at the end of 2025.

CONSIDER THIS

Taxpayers should weigh their planning alternatives in order to mitigate potential income inclusions arising from payments between foreign subsidiaries.

Intercompany loans

Under current law, a loan to a U.S. shareholder by a related foreign subsidiary can result in income inclusion to the U.S. shareholder. Even a guarantee by a foreign subsidiary can trigger an income inclusion.

Many taxpayers are unaware of this rule and may have such U.S. investments in place at any given time. However, taxpayers can minimize the adverse impact of this rule by reducing or eliminating U.S. investments or guarantees by foreign subsidiaries before the end of the year.

Changes to the antideferral rules under the TCJA should result in fewer taxpayers having exposure to this rule. Further, a new exception allows U.S. corporate shareholders to obtain credit support from a related foreign subsidiary without incurring U.S. tax, provided certain conditions are met.

When planning for intercompany loans, taxpayers should focus on:

- Understanding the implications of U.S. property investments by CFCs, which can lead to income inclusions for U.S. shareholders under IRC section 956
- Exercising caution and vigilance before entering into transactions that could result in ownership or deemed ownership of U.S. property
- Considering the benefits of leveraging equity versus debt, and the role of intercompany agreements in minimizing section 956 inclusions

Foreign currency

The IRS and Treasury recently released proposed regulations under IRC section 987 regarding the taxation of foreign currency translation gains or losses with respect to qualified business units that operate in a currency other than the currency of their owner.

To date, multiple regulation packages have been issued to implement section 987. However, no such package has actually become law yet.

Should the IRS and Treasury finalize these recently proposed regulations, taxpayers will be required to use the complex foreign exchange exposure pool method for calculating foreign currency gains or losses. This method, while intended to provide a standardized approach, may require substantial resources to ensure compliance, particularly for businesses that engage in numerous foreign transactions.

CONSIDER THIS

Making a current rate election and annual recognition election can simplify the calculation and compliance burden, depending on a taxpayer's fact pattern. Taxpayers should model the impact of the proposed section 987 changes to assess the potential tax and compliance costs.

Research and development: Section 174

Prior to Dec. 31, 2021, R&D expenditures, including software development, could be expensed as incurred, or electively capitalized and recovered over a period of not less than 60 months. As such, businesses that had been expensing their R&D expenditures may not have tracked all IRC section 174 expenditures.

Beginning in 2022, companies with foreign R&D expenditures have been required to capitalize and recover them over 15 years. This forces taxpayers to identify the R&D expenditures not only of their U.S. companies, but of their foreign subsidiaries as well.

Taxpayers continue to face hardships associated with implementation (i.e., identifying R&D costs of foreign subsidiaries), and should consider that these changes may have other unanticipated international tax consequences.

For instance, capitalization could drastically affect GILTI by increasing tested income, modifying the GILTI inclusion percentage and/or altering the ability to claim the high-tax exception. On the other hand, capitalization could be beneficial to a taxpayer claiming an FTC by increasing its foreign source income due to less apportionable section 174 R&D. Other income tax consequences could include changes to a taxpayer's subpart F inclusion, FDII deduction, quarterly estimates and/or year-end provisions.

Taxpayers should model the impact of section 174 changes to assess potential incremental tax and compliance costs. Depending on a taxpayer's fact pattern, these changes could produce widely different results.

LEARN MORE

RSM's **section 174 resource center** is a one-stop shop for guidance on the mandatory capitalization of R&D expenditures.

Passive foreign investment company (PFIC)

U.S. persons who invest in a foreign corporation (directly or indirectly through partnerships) are subject to adverse tax consequences on their investment unless they make a qualified electing fund (QEF) election with a timely filed return for the first year of their holding period (a pedigreed QEF). If the foreign corporation is publicly traded, a mark-to-market election may also be available.

For tax years starting in 2023, U.S. investors who through a U.S. partnership own less than 10% of a foreign corporation that is both a CFC and a PFIC will generally be subject to the PFIC rules and may no longer rely on the section 1297(d) overlap rule to shield their investment from those rules. In certain cases, the U.S. partnership may have been able to make a pedigreed QEF election for U.S. investors on a timely filed return for the 2023 tax year without making a purging election.

If the U.S. partnership failed to make the QEF election on a timely filed return for 2023, it may file a private letter ruling (PLR) request with the IRS to obtain consent to make a retroactive QEF election. Reduced PLR user fees may be available if multiple PFICs are held by the same U.S. partnership.

Although it is not considered a shareholder of a PFIC for purposes of applying the substantive PFIC provisions and the section 1297(d) overlap rule, a U.S. partnership continues to be treated as a shareholder for purposes of filing Form 8621 and making the QEF election. Proposed regulations would move the QEF election to the partner level.

U.S. taxpayers, including partnerships that invest in foreign corporations, should perform a PFIC analysis on an annual basis to determine whether the foreign corporations are PFICs. When PFIC status is unclear based on available information, taxpayers may want to preserve their right to make a retroactive QEF election without submitting a PLR request by filing a protective statement with a timely filed return.

Business interest expense: Section 163(j)

As of Jan. 1, 2022, depreciation, depletion and amortization may no longer be added to a company's adjusted taxable income (ATI) calculation. ATI, which closely mimicked EBITDA (earnings before interest, taxes, depreciation and amortization), now more closely resembles EBIT (earnings before interest and taxes).

This change, which was scheduled as part of the TCJA, could significantly hinder a taxpayer's ability to deduct interest expense beginning after Dec. 31, 2021. The application of IRC section 163(j) is relevant when calculating tested income for GILTI purposes and/or in determining whether to make a CFC group election.

LEARN MORE

Learn more about planning opportunities to minimize section 163(j) liability: **Final section 163(j) regulations helpful for multinational businesses**.

Impact of the corporate alternative minimum tax (CAMT) on foreign-owned U.S. companies

With the passage of the Inflation Reduction Act, foreign-owned U.S. companies need to analyze whether the 15% CAMT applies in tax years beginning after Dec. 31, 2022.

In general, the CAMT provision imposes a minimum tax equal to the excess of 15% of a C corporation's adjusted financial statement income (AFSI) over its corporate AMT FTC. Applicability involves a three-year look-back period to determine whether a C corporation had average annual AFSI greater than $1 billion, and in the case of foreign-owned U.S. companies, whether the U.S. subgroup had AFSI of at least $100 million. Once a corporation is an applicable corporation, it remains an applicable corporation unless an exception applies.

Taxpayers should ask the following questions for tax years beginning after Dec. 31, 2022:

- Who is subject to the new CAMT rules?
- Are foreign-owned U.S. companies subject to special rules and provisions?
- Will a company's ETR be affected?
- Is the new CAMT considered a qualified income inclusion rule tax under Pillar Two?

Anti-hybrid rules

The implementation of the Anti-Tax Avoidance Directive II (ATAD II) in Europe (effective Jan. 1, 2020) introduced several anti-hybrid rules. If these apply, payments among related parties may cease to be deductible. The EU continues to evaluate and expand ATAD II reporting.

Existing global transaction structures should be reviewed to avoid negative tax impacts; new structures should take into account the new rules. In addition to the EU, several other jurisdictions have implemented anti-hybrid rules. Generally speaking, these rules disallow deductions for payments made to related parties when the payments are not taxed in the recipient's country because of the hybridity of an instrument or entity.

Taxpayers may be subject to the anti-hybrid regime if their business structure contains:

- Hybrid entities that are taxed as corporations locally but treated as fiscally transparent for U.S. tax purposes
- Hybrid financial instruments or payments that are treated as debt in one country and as equity in another country
- Hybrid entity payments (e.g., loans and licensing agreements)
- An entity in which a foreign jurisdiction views a U.S. entity as a hybrid entity

LEARN MORE

Learn more about the anti-hybrid rules:

- **European anti-hybrid laws target common U.S. holding structures**
- **The potential impact of Australia's imported hybrid mismatch rules**
- **The Netherlands: Impact of ATAD2 to U.S. multinationals**

Treaty analysis

U.S.-Russia tax treaty

Many key provisions of the U.S.-Russia tax treaty were suspended effective Aug. 16, 2024. These include Articles 1(4), 5-21, and 23, which provided for reduced withholding rates on dividends, interest, and royalties, as well as permanent-establishment protection for business profits. Thus, Russian residents will no longer qualify for reduced FDAP (fixed, determinable, annual or periodical) rates under the treaty and will be subject to tax in the U.S. on effectively connected income regardless of whether they have a permanent establishment in the U.S.

Other suspended articles pertain to artists and athletes, international transportation, independent personal services, employment, real property, and pensions.

Article 4 (Residency) continues in force. Individuals who are treated as residents of both the U.S. and Russia may apply the residency tiebreaker rule in Article 4 to assign residency to one of the countries.

Although Article 22 (Double Taxation) also remains in force, it is no longer excluded from the scope of the savings clause. As a result, U.S. residents may not apply its provisions to determine the ability to claim an FTC for Russian taxes. However, because Article 22 does not include a resourcing rule, it is unlikely to have a material impact on the FTCs that would otherwise be available under domestic U.S. law.

U.S.-Hungary and U.S.-Chile tax treaties

The U.S.-Hungary tax treaty has been fully terminated. For withholding taxes, the termination is effective for payments made on or after Jan. 1, 2024. With respect to other taxes, the termination is effective for tax years beginning on or after Jan. 1, 2024.

The U.S.-Chile tax treaty entered into force Dec. 19, 2023. The treaty is effective Feb. 1, 2024, for withholding taxes and on or after Jan. 1, 2024, for other taxes. Chile is the second South American country (the other is Venezuela) that has a double tax treaty with the U.S.

The U.S.-Chile tax treaty is generally based on the 2006 U.S. model treaty, but has higher rates on dividends, interest and royalties. The lowest rate on dividends is 5% for corporate shareholders, other than real estate investment trusts, with substantial holdings. Tax on interest is generally reduced to 10%, with a lower 4% rate applied to certain types of taxpayers, including primarily financial institutions and insurance companies. Rates on royalties are reduced generally to 10%, with a lower 2% rate for payments for the right to use industrial, commercial or scientific equipment.

In Notice 2024-11, the IRS and Treasury removed the U.S.-Russia and U.S.-Hungary treaties from the list of U.S. tax treaties that satisfy the requirements of IRC section 1(h)(11)(C)(i)(II) and added Chile. As a result, individual shareholders receiving dividends from Russian or Hungarian corporations generally will not qualify for capital gains rates under section 1(h)(11). However, dividends received from Chilean corporations may now qualify.

Value-added tax (VAT) and mandatory e-invoicing

E-invoicing is becoming more common as tax authorities seek ways to control and ensure VAT data and collections. It provides the tax authority with visibility into each transaction and the ability to track the amount of VAT each taxpayer owes.

Regulations around e-invoicing apply to invoices issued by a taxpayer through its billing and accounts receivable functions as well as invoices received from a vendor through its accounts payable function.

A critical requirement of e-invoicing is establishing a direct connection with the tax authority portal to enable the transmission of data. Taxpayers may need new technology and processes to comply with current and upcoming e-invoicing regulations in a number of countries.

In 2024, taxpayers should be prepared to:

- Understand where e-invoicing is mandatory and the timetable for countries to come onstream.
- Assess invoicing data quality and internal systems to ensure they meet the data requirements.
- Establish new processes and technology to enable timely compliance.
- Consider outsourcing the task to a third party.

All internationally active companies should be monitoring e-invoicing mandates around the world. Next is Germany, where companies established in that country must be able to receive e-invoices effective Jan. 1, 2025.

GLOBAL INFORMATION REPORTING

Data requirements and compliance programs

The Biden administration's tax plan includes comprehensive measures focused on information reporting that could have a significant impact on companies—including banks, brokers and other financial institutions—for the upcoming year. These measures will significantly affect the data required to comply with information reporting and withholding obligations and should be considered as businesses develop budgets for systems and compliance programs next year.

More specifically, the provisions:

- Require "brokers" to report sales of cryptocurrency and other digital assets on new IRS Form 1099-DA starting Jan. 1, 2026, for certain transactions that take place on or after Jan. 1, 2025; they also expand the definition of broker in IRC section 6045 to include "any person who (for consideration) is responsible for regularly providing any service effectuating transfers of digital assets on behalf of another person."
- Mandate electronic filing of certain information returns, such as Forms 1042, 8886 and 8300, to increase their accuracy.
- Clarify that forgiveness of certain student loan debt will not be reportable on the 2024 Form 1099-C.
- Require businesses receiving any crypto-assets with a fair market value over $10,000 to report those assets.
- Require increased reporting and disclosure of information on cryptocurrency and crypto-asset-denominated transactions through information exchange agreements with other participating jurisdictions.
- Delay lowering the federal reporting threshold for filing Form 1099-K, Payment Card and Third Party Network Transactions, from $20,000 and 200 or more transactions to over $600 with no minimum number of transactions.

These changes may result in increased volumes of reportable data with different naming conventions across multiple systems, which businesses should consider as they develop budgets for changes to systems and compliance plans next year.

Digital asset reporting and enforcement

The U.S. has taken several important steps over the past year to increase compliance with and strengthen enforcement of regulations on reporting income in connection with transactions involving digital assets, including cryptocurrency, non-fungible tokens (NFTs) and stablecoins. Organizations will need to consider the following when managing risk and exposure in 2025:

- In July 2023, the Treasury Inspector General for Tax Administration released a report encouraging increased enforcement of reporting requirements for digital assets, noting that the IRS has established "Operation Hidden Treasure" to identify taxpayers that omit digital assets, such as cryptocurrency, from their tax returns.
- In July 2024, Treasury issued final regulations (Treasury Decision 10000) clarifying reporting requirements for certain brokers of digital assets, which will undoubtedly affect systems and procedures for custodial brokers going forward.

- The IRS published an initial draft of Form 1099-DA in 2023 and a revised draft in August 2024. It is the first IRS form created specifically for reporting digital asset transactions and is part of the broader regulatory effort to enhance tax compliance in the rapidly growing digital asset market. The revised draft reflects the final Treasury regulations for custodial brokers of digital assets and provides the transitional relief described in IRS Notices 2024-56 and 2024-57 and in Rev. Proc. 2024-28.

The final Treasury regulations require brokers to file information returns and furnish payee statements reporting gross proceeds and the adjusted basis on dispositions of digital assets such as cryptocurrency and NFTs in certain sale or exchange transactions that take place on or after Jan. 1, 2025. An aggregate reporting method is optional for certain sales of stablecoins and NFTs over a de minimis threshold.

Certain brokers must also report the cost basis for transactions occurring on or after Jan. 1, 2026, and real estate reporting persons must file information returns and furnish payee statements with respect to purchasers who use digital assets to acquire real estate on or after that date.

Importantly, the guidance addresses only digital asset brokers providing custodial services; it delays extending the definition of broker to include noncustodial brokers or decentralized exchanges that provide facilitative services. We await additional guidance on noncustodial brokers.

Under the regulations, custodial brokers of digital assets will be required to use Form 1099-DA to report information on sales or exchanges of digital assets that take place on or after Jan. 1, 2025, with the first forms due after Jan. 1, 2026.

Brokers, digital trading platforms, payment processors and hosted wallet providers must issue Form 1099-DA for all digital asset sales or exchanges starting Jan. 1, 2025. Real estate reporting entities must report digital assets used by purchasers as payment for property transactions as of that date.

Changes in the revised draft of Form 1099-DA include removal of the initial draft's boxes relating to wallet addresses and hashes. Brokers are still required to collect this information, but are not required to include it on the form. The comment period is still open, but the draft gives brokers enough information to begin surveying their systems and procedures now to ensure they are ready to begin reporting.

TAKE ACTION

Given the need to collect and report information for transactions occurring on or after Jan. 1, 2025, with cost basis reporting beginning in 2026, custodial brokers of digital assets should confirm now that their existing systems have the functionality to capture data that will be reportable on Form 1099-DA and to calculate and track cost basis as required under the regulations.

Organizations should also evaluate their structures to identify any potential "brokers," as defined under the regulations, that may be required to comply with the new reporting requirements. Consider performing a readiness assessment to identify any gaps in systems and processes for capturing 1099-DA reportable data. Companies should plan for and request budget for any modifications needed to remediate potential gaps in systems and processes that are quick hits and can be easily addressed now.

The final regulations adopt many long-standing concepts that apply to sales of securities, but also expand on and redefine certain key terms, such as "broker" and "digital assets," and introduce a new "in a position to know" standard as opposed to the usual "knows or has reason to know" standard for brokers. These definitions and standards are not typically used in other parts of the tax code and regulations governing reporting requirements; they will apply uniquely to digital assets and should be considered when evaluating the impact of the regulations on operations for next year and going forward.

The OECD's CRS and final CARF

While custodial brokers of digital assets that are considered U.S. payors must be concerned about 1099-DA reporting going forward, non-U.S. financial institutions in countries that have adopted the OECD's Common Reporting Standard (CRS) should keep a close watch on new developments for CRS reporting of transactions involving digital assets. These entities should evaluate their structures to identify entities that may have new CRS reporting obligations.

The OECD published the finalized International Standards for Automatic Exchange of Information in Tax Matters: Crypto-Asset Reporting Framework (CARF) and 2023 update to the CRS. With the U.S. publishing final regulations on digital asset reporting and other jurisdictions following suit, the OECD continues to evaluate the ever-changing landscape for the global reporting framework.

The CARF is the OECD's new global tax transparency framework, which provides for the automatic exchange of tax information on crypto-asset transactions in a standardized manner.

While crypto-assets have not historically been in scope for the CRS, many banks, exchanges and other financial market participants offering products or services in connection with digital assets could be significantly affected by the CARF.

TAKE ACTION

Companies in countries that participate in the CRS and sell or exchange crypto-assets should evaluate their structure, products, systems and controls now to identify and address any gaps in their ability to comply with the proposed rules under the CARF and the CRS amendments.

In the meantime, financial institutions that include brokers who participate in transactions involving crypto-assets and who are residents of jurisdictions participating in the CRS should have a plan for monitoring and complying with requirements under the CARF going forward.

E-filing update

Treasury finalized regulations amending e-filing requirements and thresholds for numerous information returns that will likely continue to affect processes for filing information returns, such as Forms 1099 and 1042, due in 2025. Prior rules required withholding agents filing 250 or more information returns to file the forms electronically. The new rules changed the threshold to 10 or more returns for 2023 filings and beyond.

Additionally, Form 1042 must now be filed electronically via the IRS' Modernized e-File system. While the IRS granted administrative relief from the requirement to electronically file Form 1042 for tax year 2023, the form must be filed electronically for tax year 2024 using one of only nine IRS-approved software vendors.

The rules are particularly burdensome for partnerships, as there is no minimum filing threshold for those with more than 10 partners. As such, all partnerships should be prepared to file all information returns electronically. Notably, the final rules leave little room for exceptions, but hardship waivers may still be requested; corrected returns must be filed in the same fashion as original returns.

TAKE ACTION

Companies should confirm that they are ready to file information returns electronically via the IRS' FIRE system or its new IRIS system (for 1099s only) in 2025. Filers must obtain a valid transmitter control code (TCC) by completing an IR Application for TCC (formerly Form 4419, Application for Filing Information Returns Electronically). The TCC is a five-digit code that identifies the business transmitting the electronic returns.

Lower 1099-K reporting thresholds delayed

As online sales have increased and the gig economy and payment platforms have evolved, the tax reporting requirements for these payments have also become more complex. Form 1099-K is used to report payment card transactions and payments from third-party settlement organizations. As such, taxpayers who sell items online, drive for a ride-sharing service, or own a business that accepts payments via credit or debit cards likely have a Form 1099-K filing obligation and will be affected by anticipated changes in the rules.

The American Rescue Plan Act of 2021 lowered the 1099-K reporting threshold for third-party settlement organizations, such as payment platforms, from $20,000 and more than 200 transactions to over $600 with no minimum number of transactions.

However, the IRS has temporarily delayed implementation of the lower reporting threshold until further notice, so we await further guidance. Notably, for some states that adopted the lower threshold and have not delayed implementation, it is now in effect, so companies should still plan to file returns equivalent to 1099-K in certain states.

TAKE ACTION

Companies should plan for significant increases in the number of 1099-K forms they are required to file, and update their budgets and systems accordingly. Likewise, withholding agents must collect taxpayer identification numbers (TINs) or W-9 forms to ensure they have the information required to file 1099-K forms. Backup withholding at a rate of 24% may apply to recipients with missing or incorrect TINs.

The Joint Committee on Taxation estimates that the change in the 1099-K reporting threshold, which aims to better track income for the gig economy, will raise $8.4 billion over a 10-year period. Some states have already reduced state-equivalent Form 1099-K reporting thresholds to match the federal threshold, which has proved burdensome for taxpayers to track.

Companies also should review their controls for tracking reporting thresholds and enhance their TIN matching processes now in anticipation of increased 1099-K volume. In addition, they should expect increased volumes of reportable data across multiple systems, and factor them into budgets for system changes and compliance plans going forward.

New W-9 forms with special field for partnerships and flow-throughs

In March 2024, the IRS published a new final version of Form W-9, Request for Taxpayer Identification Number and Certification. Companies should revise their policies and procedures to ensure they are collecting the new version of the form.

The most significant change on the final version is the addition of a checkbox on line 3b for partnerships (including limited liability companies classified as partnerships for U.S. tax purposes), trusts, or estates that have direct or indirect foreign partners, beneficiaries, or owners.

The new checkbox is intended to explicitly inform withholding agents of the presence of indirect foreign connections within flow-through entities. Instructions state that a partnership that provides a Form W-9 and checks box 3b may be required to complete Schedules K-2 and K-3 of Form 1065. Thus, by mandating the completion of line 3b, the IRS aims to provide entities with a clearer means of indicating the status of their indirect foreign partners, beneficiaries, or owners.

This is a significant development for flow-through entities and the asset management industry in particular, as it may trigger divestiture of non-U.S. persons and additional onboarding procedures for funds with non-U.S. investors.

Withholding agents are required to accept the new version of the Form W-9 going forward for any new vendors, investors and account holders onboarded after March 2024, but can still rely on W-9 forms already on file for existing vendors, investors or account holders.

TAKE ACTION

Withholding agents must be prepared for these changes and should update their systems and processes for collection and review of the new Form W-9 accordingly. Likewise, U.S. partnerships, trusts and estates opening new bank accounts should be prepared to complete the new form and complete line 3b.

Companies may also need to update substitute W-9 forms, including those on signature cards or in subscription documents, to include changes from the new Form W-9. Finally, domestic partnerships, including asset managers and other financial institutions considering admitting foreign partners or new account holders, should evaluate the impact of changes to the form on their operations and consider divesting themselves of interests in partnerships with foreign partners if appropriate.

Debt forgiveness reporting implications

Lenders canceling or restructuring debts this year should consider the reporting implications going forward and plan accordingly. The American Rescue Plan Act of 2021 exempted federal student loan forgiveness from taxation at the federal level until the end of 2025. The exemption includes federal student loans forgiven under various programs in 2024, which lenders will not be required to report on Form 1099-C, Cancellation of Debt.

The IRS clarified in Notice 2020-12 that lenders were not required to file Form 1099-C to report the amount of qualifying forgiveness with respect to covered loans made to small businesses under the Paycheck Protection Program (PPP) administered by the Small Business Administration under Title I of the CARES Act.

IRC section 6050P and Reg. sections 1.6050P-1 and 1.6050P-2 generally require certain entities that discharge at least $600 of a borrower's indebtedness to file a Form 1099-C with the IRS and furnish a copy of the form to the borrower.

However, according to Notice 2020-12, when all or a portion of the stated principal amount of a PPP loan is forgiven because the eligible recipient satisfies the forgiveness requirements of the CARES Act, for federal income tax purposes only, the lender is not required to, and should not, file a Form 1099-C as a result of the qualifying forgiveness.

Lenders should therefore evaluate student loans and PPP loans forgiven in 2024 to confirm reporting requirements as soon as possible before year-end to avoid issuance of Form 1099-C when not required.

Nonresident aliens and FATCA exams

The Large Business and International Division of the IRS announced several compliance campaigns focused on enforcement of withholding, deposit and reporting requirements for payments made to U.S. nonresident aliens that are expected to continue. The campaigns are being enforced through a variety of mechanisms, including examinations and penalty assessments.

The IRS also announced the launch of a campaign focused on identifying U.S. and foreign financial institutions that have failed to file Foreign Account Tax Compliance Act (FATCA) reports. Examinations have already begun, which means that companies have a very narrow window of opportunity to become compliant and should file any missing returns as soon as possible. Additionally, we anticipate increased enforcement of CRS requirements, as several jurisdictions have introduced new penalty regimes this year.

TAKE ACTION

Companies should spend the close of the year identifying and remediating any gaps in processes, submitting any unfiled returns, and implementing policies and procedures for ongoing compliance with these rules. The IRS has indicated that it will accept voluntary disclosures regarding noncompliance before institutions receive notices. However, penalty abatement will not be an option once a notice has been received, so act now.

FATCA and CRS status of entities in a group

To the extent that companies have acquired or created new legal entities, restructured their group this year, moved into jurisdictions that have adopted the CRS, or entered into an intergovernmental agreement under FATCA, they should plan to reevaluate or confirm the FATCA and CRS status of legal entities in the group. Entities that accept deposits, have custody of assets, perform investment activities, or serve as captive insurance companies or certain holding companies may be considered foreign financial institutions and may have FATCA and CRS reporting obligations.

Collection of new W-8s

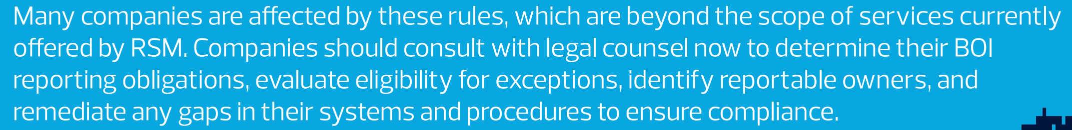
To manage withholding and due diligence requirements, companies should begin requesting new or updated W-8 forms and CRS self-certifications from their customers, shareholders, or investors opening new accounts, or from those with forms that will expire after Dec. 31, 2024.

Note, however, that valid, unexpired W-8 forms can still be relied on and do not need to be replaced until they expire (generally within three years), unless there is a change in circumstances that mandates collection of a new form.

The IRS published a revised Form W-8EXP in October 2023, which includes new certifications for qualified foreign pension funds. Companies should continue to monitor changes and developments with respect to tax withholding certificates and should update fields in their onboarding systems to address any changes in the forms now.

Beneficial ownership information (BOI) reporting

As of Jan. 1, 2024, regulations implementing rules under the U.S. Corporate Transparency Act require certain companies organized or doing business in the U.S. to disclose information about the underlying beneficial owners and organizers of those entities to the U.S. Financial Crimes Enforcement Network (FinCEN). Those that fail to do so may be subject to civil penalties of up to $500 per day or criminal penalties of up to $10,000 and imprisonment if willful intent is found for failing to comply with the rules. Refer to FinCEN's website for additional details.



Many companies are affected by these rules, which are beyond the scope of services currently offered by RSM. Companies should consult with legal counsel now to determine their BOI reporting obligations, evaluate eligibility for exceptions, identify reportable owners, and remediate any gaps in their systems and procedures to ensure compliance.

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