



# ANNUAL TAX UPDATE FOR EXEMPT ORGANIZATIONS

December 5, 2023

## Today's presenters



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Senior Manager, Washington National Tax

Morgan Souza is a senior manager in the exempt organization's group of the Washington National Tax office of RSM US LLP.



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Erica is a senior manager and part of RSM's Washington metro market's state and local tax group at RSM US LLP.



**David Packman**

Manager, Washington National Tax

David is a manager and part of the Washington National Tax international tax services practice at RSM US LLP.

## Learning objectives

By the end of this presentation, participants will be able to:

- Discuss key tax considerations for exempt organizations
- Describe recent updates in the areas of federal, state and local, and international tax

# Agenda

Topic	Minutes
<b>Federal tax updates</b> <ul style="list-style-type: none"><li>• News from the IRS</li><li>• Recent guidance and developments</li><li>• Anticipated developments</li></ul>	35
<b>State and local tax updates</b> <ul style="list-style-type: none"><li>• Sales and use tax: what have we heard?</li><li>• Recent developments and legislative guidance</li></ul>	20
<b>International tax updates</b> <ul style="list-style-type: none"><li>• Payments to foreign persons</li><li>• Corporate Transparency Act and exempt organizations</li><li>• Exempt organization's reporting of foreign activity</li></ul>	30
<b>Questions and answers</b>	5



# FEDERAL TAX UPDATES



# NEWS FROM THE IRS

Federal tax updates

# 2023-2024 Priority Guidance Plan

Guidance year: July 1, 2023 – June 30, 2024

## Ten items directly affecting exempt organizations

- Guidance revising Rev. Proc. 80-27 regarding group exemption letters (Notice 2020-36 published May 18, 2020)
- **Final regulations on supporting organizations (published Oct. 16, 2023)**
- UBTI regulations on allocation of expenses and NOL carrybacks
- Secure 2.0 Act changes to section 529 plans
- Guidance addressing self-dealing issues relating to partnerships where disqualified persons are also partners
- Donor advised fund (DAF) guidance
  - **Regulations under section 4966 regarding DAFs (proposed regulations published Nov. 14, 2023)**
  - Regulations under section 4967 regarding prohibited benefits
  - Regulations under section 4958 regarding DAFs and supporting organizations
  - Guidance regarding the public support computation with respect to distributions from DAFs
- Section 7611 church audit regulations (proposed regulations published Aug. 5, 2009)

[RSM Tax Alert](#)

## Compliance program and priorities

IRS's [website](#) updated quarterly

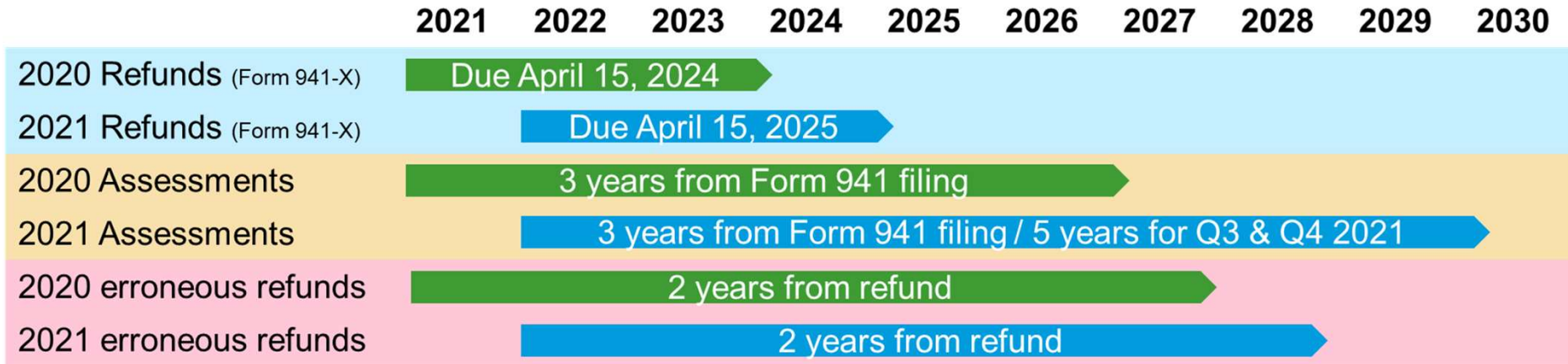
### Current TE/GE priorities

- Education and outreach regarding clean energy credit elections
- Employee retention credit (ERC) claims
- Collaborate across IRS on highly complex and emerging issues including examinations of employee stock ownership plans (ESOPs), tax-exempt hospitals and high income/high wealth individuals
- Additional items for employee plans and tax-exempt bonds

[RSM Tax Alert](#)



# ERC exams are here to stay



IRS moratorium on processing ERC claims through at least December 31, 2023



# Technical issues raised on ERC exams

## Governmental orders

- Actual orders, not recommendations
- “Stay at home” must be substantiated as to why remote work was not sufficient

## Qualified wage calculations

- Reductions for other COVID incentives (e.g., PPP forgiveness, SVOG, etc.)
- Large employers must exclude PTO, severance, HSAs

## Properly limiting to \$10,000 per employee

## Small employers

- Aggregation with related organizations
- Utilizing FTE to determine headcount

# Updates to Form 990-series

**2022**

E-file: Short period returns required to be e-filed  
Part VII: Management company/common law employee reporting

**2023**

No changes to forms released as of October 15, 2023  
Most forms and instructions still in draft  
Form 8940 subject to e-file mandate

## 2023 inflation adjustments

Items affecting tax exempt organizations	2024 inflation adjustment
Exemption of annual dues paid to agricultural or horticultural organizations	\$201
Low-cost articles, for purposes of defining an unrelated trade or business	\$13.20
Insubstantial benefits that may be received by a donor without reducing the value of the charitable contribution deduction	\$13.20, \$66, and \$132
Dues limitation for the reporting exception for nondeductible lobbying expenditures	\$140
Penalty for failure to file a 2024 Form 990-T	Lesser of \$510 or 100% of the amount required to be shown as tax
Penalty for failure to file a 2024 Form 990, Form 990-EZ or Form 990-PF (organizations with gross receipts of \$1,274,000 or less)	\$25 per day, not to exceed the lesser of \$12,500 or 5% of gross receipts
Penalty for failure to file a 2024 Form 990, Form 990-EZ or Form 990-PF (organizations with gross receipts over \$1,274,000)	\$125 per day, not to exceed \$63,500

[Rev. Proc. 2023-34](#)

## Energy credits & direct pay

Tax-exempt organizations engaged in clean energy projects

Certain tax credits eligible as refundable credits

Electronic registration portal

- Prefiling required
- Separate registration number for each project

## Credits eligible for direct pay

Alternative fuel  
vehicle refueling  
property  
(e.g., EV chargers)  
(section 30C)

Qualified  
commercial clean  
vehicle (section  
45W)

Energy credit  
(e.g., solar, wind)  
(section 48)

Qualifying advanced  
energy project  
(section 48C)

Clean electricity  
investment  
(section 48E)

Renewable  
electricity production  
(section 45)

Carbon oxide  
sequestration  
(section 45Q)

Zero-emission  
nuclear power  
production  
(section 45U)

Clean hydrogen  
production facility  
(section 45V)

Advanced  
manufacturing  
production  
(section 45X)

Clean electricity  
production  
(section 45Y)

Clean fuel  
production (section  
45Z)



# RECENT GUIDANCE AND DEVELOPMENTS

Federal tax updates

## Court cases of interest to exempt organizations

*Memorial Hermann  
Accountable Care  
Organization v.  
Commissioner*

ACO participating in both MSSP and commercial insurance shared savings programs denied exemption

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*Buckeye Institute v.  
Internal Revenue  
Service*

Challenging constitutionality of donor disclosure requirement for section 501(c)(3) organizations

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*Iowaska Church of  
Healing v. U.S.*

Taxpayer denied exemption due to participation in activities contrary to public policy

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## Final regulations: supporting organizations

Largely adopt/clarify proposed regulations issued in 2016

Define “control” for purposes of section 509(f)(2)

### Type III supporting organizations

- Must satisfy the responsiveness test for all (rather than just one) supported organization
- Functionally integrated by reason of supporting governmental supported organizations
- Type III-NFI may not use UBIT to reduce distributable amount
- Exclusive list for what counts toward the Type III-NFI distribution requirement

Effective October 16, 2023

[Final Regulations](#)

## Proposed regulations: donor advised fund taxable distributions

### Primarily define key terms and provide examples

- Donor-advisor
- Advisory privileges and advisory committees
- Exceptions from the definition of donor advised fund (DAF)

### Items of interest

- Personal investment advisors as donor-advisors
- Advisory privileges exist even where there are multiple donors or where a donor has privileges with respect to only a portion of the fund/account
- List of facts and circumstances demonstrate a “separately identified” fund
- Exception for scholarship funds established by 501(c)(4) organizations

### [Proposed regulations](#)

## GLAM 2023-004: name/image/likeness and section 501(c)(3)

IRS concluded most NIL collectives will not qualify as an organization described in section 501(c)(3)

- Activities primarily serve the private interests of the student-athletes
- Private benefits are not qualitatively or quantitatively incidental to exempt purposes

NIL collectives may qualify as section 501(c)(3) organizations if the activities are primarily educational or conducted for the relief of the poor or distressed

- Example: Payments to student-athletes that are reasonably calculated to meet financial needs could satisfy a charitable exempt purpose

IRS is reconsidering previous determinations of exempt status

- Any revocations will be prospective

See [RSM article](#)

## 2023 Audit technique and technical guides

TEGE continuing to update and create new [Technical Guides](#)

### New in 2023:

- [TG 3-1 Overview, Applications, Exemption Requirements - IRS Section 501\(c\)\(3\)](#)
- [TG 3-3 Exempt Purpose, Charitable IRC 501\(c\)\(3\)](#)
- [TG 3-4 Exempt Purpose, Scientific Organizations 501\(c\)\(3\)](#)
- [TG 3-10 Disqualifying and Non-Exempt Activities - Trade or Business Activities – IRC Section 501\(c\)\(3\)](#)
- [TG 1 Instrumentalities of the United States, Government Corporations, and Federal Credit Unions - IRC 501\(c\)\(1\)](#)
- [TG 5 Labor, Agricultural, and Horticultural Organizations – IRC Section 501\(c\)\(5\)](#)
- [TG 13: Cemetery Companies - IRC Section 501\(c\)\(13\)](#)
- [TG 17 Supplemental Unemployment Benefit Trusts](#)
- [TG 44 Qualified Tuition Program – IRC Section 529](#)
- [TG 65 Excise Taxes - Excess Benefit Transactions - IRC Section 4958](#)

## Electronic signature for tax returns

IRS updated the Internal Revenue Manual to expand and make permanent authorizations for the use of digital signatures  
([IRM 10.10.1](#))

Includes forms commonly filed by exempt organizations

- Forms 8879, IRS e-file Signature Authorization Forms

Currently excludes Form 1120-POL

- Ongoing updates to list of returns are anticipated



# ANTICIPATED DEVELOPMENTS

Federal tax updates

## Guidance in high demand

Section 4967  
regulations  
on prohibited  
benefits from  
DAFs

UBTI  
regulations  
on allocation  
of expenses

Group  
exemption  
ruling  
guidance

## Biden administration budget proposals

### Increase corporate income tax rate to 28%

- Would affect unrelated business income tax and section 4960 excise tax on excess executive compensation

### Private foundation distributions to DAFs would not constitute qualifying distributions

- Exception for DAFs meeting pass-through rules

### Private foundation payments to disqualified persons would not constitute qualifying distributions

- No exception for transactions permitted under the self-dealing rules

[FY24 Green Book](#)



# Proposed legislation

## Election integrity proposals affecting exempt organizations

- Donor disclosure requirements for organizations making political contributions
- Criminalize disclosure of donors to exempt organizations, other than section 527 organizations
- Eliminate Form 990-N
- No section 501(c)(4) guidance based on political activities
- Prohibit section 501(c)(3) organizations from funding state/local election board
- Prohibit section 501(c)(3) organizations from funding election organizations through donations or donated services

## Volunteer mileage rate proposals

- Various proposals to increase the charitable mileage rate

## Charitable giving proposals

- Make permanent deduction for non-itemizers
- Eliminate income tax deduction for contributions to NIL collectives



# Continued focus on tax-exempt hospitals

## Holding Nonprofit Hospitals Accountable Act ([H.R. 2859](#))

- Would require exempt hospitals to spend 100% of tax exemption benefit on community benefit activities

## Congressional hearings and inquiries

- House Ways and Means Committee Oversight Subcommittee [hearings](#) ([written testimony](#)).
- Sen. Warren and Sen. Wyden send [letter](#) to McKinsey consulting firm questioning their role in predatory patient collections process
- Senators send [letter](#) to IRS and TIGTA requesting information regarding oversight of nonprofit hospitals
- Senate Health, Education, Labor, and Pensions (HELP) Committee [report](#)

## In the news

- [Why Nonprofit Hospitals Can't Fix the Health Care Crisis](#) (Jill Horowitz, UCLA Law)
- [Critics say many Virginia hospitals offer little charity care](#) (Sandy Hausman, Radio IQ)
- [The Estimated Value of Tax Exemption for Nonprofit Hospitals Was About \\$28 Billion in 2020](#) (Kaiser Family Foundation)
- [U.S. nonprofit hospitals receive billions more in tax breaks than they invest in their communities](#) (Lown Institute)



# STATE AND LOCAL TAX UPDATES



# SALES AND USE TAX: WHAT HAVE WE HEARD?

State and local tax updates

## What we are hearing in the market

Exemption  
qualification  
process

New  
employees –  
what does that  
mean?

Why am I  
getting this  
notice from this  
state?

# Collecting customers' exemption certificates

Selling taxable items = tax collection or exempt certificate

Is good faith acceptance enough?

Does one state certificate work for all?

Multistate tax type risk

Automated versus manual



# RECENT DEVELOPMENTS & LEGISLATIVE GUIDANCE

State and local tax updates

## District of Columbia – exemption qualifications

### What types of organizations qualify?

- “Semipublic institution”: any corporation, and any community chest, fund, or foundation, organized exclusively for religious, scientific, charitable, or educational purposes, including hospitals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.
- Essentially a 501(c)(3) – read between the lines.
- Exemption application requires IRS Determination Letter of 501(c)(3) status.



## District of Columbia – exemption process

- Exemption must be renewed every 5 years
  - Previously a one-time requirement – DC began sending out expiration notices in 2019
- Exemption application requires IRS Determination Letter of 501(c)(3) status
- If Determination Letter is more than 5 years old, IRS Affirmation Letter required for exemption application
  - This can hold up DC exemption applications

## Iowa – exemptions going away

- Since 1985, Iowa has had an exemption from sales tax for “[c]omputers used in processing or storage of data or information by an insurance company, financial institution, or commercial enterprise.”
- Available to most for-profit businesses
  - Businesses and manufacturers conducted for profit, for-profit and nonprofit insurance companies, for-profit and nonprofit financial institutions, and public utilities, but excludes other nonprofits and professions and occupations
- Included peripherals as well, such as keyboards, mice, printers, etc.

## Iowa – exemptions going away

- Repealed effective 1/1/2024
- Exemption will still be available for manufacturers
- Things to consider:
  - Make purchases before year-end
  - Evaluate historic purchases for sales tax erroneously paid. The state accepts refund claims made within the three-year statute of limitations period.

## Pennsylvania – online application for exemption

- New online application for nonprofit orgs seeking or renewing sales and use tax exemption
- PA standard for tax exemption: “an institution of purely public charity” (more requirements than federal 501(c)(3))
  - Charitable Purpose: The institution must advance a charitable purpose
  - Private Profit Motive: The institution must operate entirely free from private profit motive
  - Community Service: The institution must donate or render gratuitously a substantial portion of its services
  - Charity to Persons: The institution must benefit a substantial and indefinite class of persons who are legitimate subjects of charity
  - Government Service: The institution must relieve the government of some of its burden
- Exemption must be renewed every 5 years

## Pennsylvania nonprofit property tax exemption nixed

- In four cases covering three hospital appeals, the Pennsylvania Commonwealth Court ruled that three hospitals were not exempt from local property taxes because they failed to prove they were operating as purely public charities
- [RSM Tax Alert](#)

## Pennsylvania nonprofit property tax exemption nixed, continued

- Three hospitals involved were owned by a section 501(c)(3) exempt organization, Tower Health, LLC.
- Hospitals applied for exemption from property tax - Denied
- “Millions” of dollars in management fees paid to Tower Health
- Executive bonuses and interest payments
- Implied **profit motive** between Tower Health and the hospitals
- Insufficient demonstration of qualifying as a purely public charity



# INTERNATIONAL TAX UPDATES




# PAYMENTS TO FOREIGN PERSONS


International Tax Updates



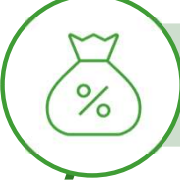
# High level overview of Chapter 3 reporting & withholding



In general, payments to foreign persons are subject to US reporting and withholding under chapter 3 and chapter 4 of the Internal Revenue Code, depending on the character and sourcing of the payment.



US sourced income is subject to reporting and withholding; foreign sourced income is generally not.



The default withholding under chapter 3 is 30%, unless reduced by another IRC code section or an applicable tax treaty.



Common EO examples:

- Foreign students receiving grants scholarships
- Payments for foreign speakers
- Payments to foreign interns

## High level overview of Chapter 3 reporting & withholding



To the extent the exempt organization is making the payment (control of the payment) it is the withholding agent.



A withholding agent has joint and several liability for the withholding tax.



This liability is a gross tax of the foreign payee and cannot be reduced by the EO's UBI losses or NOLs.



Failure to properly withhold may result in an income tax liability under ASC 740 or FAS 5.



It is best practice to ensure that the Exempt Organization has policies and procedures in place to address payments to foreign persons. Such procedures starts with determining the character and sourcing of the payment and the collection of the applicable Forms W-8BEN, W-8BEN-E, W-8IMY, W-8ECI, or W-8EXP. It ends with the Exempt Organization filing the required Forms 1042-S and Form 1042.

## Updates to Form W-8EXP

- Form W-8 EXP is used by a foreign tax-exempt organization or a foreign private foundation to claim a reduced rate of, or exemption from, withholding.
- The IRS published a new version of Form W-8EXP dated October 2023 which includes a new chapter 3 status for “Withholding qualified holder under section 1445” as well as additional certifications for qualified foreign pension funds and those claiming an exemption from withholding under section 1445.
- New instructions to the Form W-8EXP were also published in November 2023 and include additional information on when a foreign TIN is required to be included on Form W-8EXP. In addition, these instructions include information about the use of electronic signatures and the new status and certifications referenced above.
- A US TIN is generally required if a foreign exempt organization is claiming an exemption or reduced rate of withholding based solely on its claim of tax-exempt status under section 501(c) or private foundation status.
- The instructions now state that a withholding agent may allow a foreign payee providing the form to electronically sign the Form W-8EXP. The electronic signature must indicate that the form was electronically signed by a person authorized to do so (for example, with a time and date stamp and statement that the form has been electronically signed). Simply typing your name into the signature line is not an electronic signature.



# CORPORATE TRANSPARENCY ACT AND EXEMPT ORGANIZATIONS

# Corporate Transparency Act

The Department of Treasury issued final regulations implementing the Corporate Transparency Act, effective January 1, 2024.

- Companies formed in the U.S. or registered to do business in the U.S. before January 1, 2024, are required to report beneficial owners by January 1, 2025.
- Companies formed in the U.S. or registered to do business in the U.S. after January 1, 2024, are required to report within 30 days that regulation becomes effective.

The CTA will require certain companies formed or organized in the U.S. or registered to do business in the U.S. to report to FinCen certain information about their owners, beneficial owners and related individuals.

## Corporate Transparency Act – reporting companies and information reported

The “reporting company” subject to these regulations are domestic corporations, LLCs, limited partnerships. It also includes foreign entities that are registered to do business in the U.S., by filing a registration document with any state’s Secretary of State.

Reporting companies will have to report the following about their beneficial owners:

- Full legal name
- Date of birth
- Address
- Identifying number

## Corporate Transparency Act - exceptions

Under the U.S. Code and regulations, certain entities are exempt from reporting obligations under the CTA. Exempt entities include (but not limited to):

- Accounting firms,
- Organizations exempt from tax under IRC section 501(a),
- An entity that operates exclusively to provide financial assistance or hold governance over a IRC section 501(c) entity,
- Any subsidiary whose ownership interests are owned or controlled by any other exempt entity (such as a registered IRC section 501(c) tax exempt organization).

**Organizations should consult with their legal counsel on their obligations, if any, under CTA.**



# EXEMPT ORGANIZATION'S REPORTING OF FOREIGN ACTIVITY



## Form 990 reporting of foreign activities

Foreign Activity is reported in a number of places on the Form 990:

1. Form 990, Part IV, Checklist of required schedules
2. Form 990, Schedule F, Parts I-III, Statement of Activities Outside the United States
3. Form 990, Schedule F, Part IV, Statement of Activities Outside the United States
4. Form 990, Schedule R, Parts I-IV

The IRS was allocated new funds and invested in updated technology. This will likely increase the number of examinations and notices for international filings.

# Form 990, “core” form

## Form 990, Part IV, Checklist of required schedules

- (Lines 14–16)

Form 990 (2020) Page 3

<b>Part IV Checklist of Required Schedules</b>		Yes	No
<b>14a</b>	Did the organization maintain an office, employees, or agents outside of the United States? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>
<b>b</b>	Did the organization have aggregate revenues or expenses of more than \$10,000 from grantmaking, fundraising, business, investment, and program service activities outside the United States, or aggregate foreign investments valued at \$100,000 or more? <i>If “Yes,” complete Schedule F, Parts I and IV.</i> . . . . .	<input type="checkbox"/>	<input type="checkbox"/>
<b>15</b>	Did the organization report on Part IX, column (A), line 3, more than \$5,000 of grants or other assistance to or for any foreign organization? <i>If “Yes,” complete Schedule F, Parts II and IV.</i> . . . . .	<input type="checkbox"/>	<input type="checkbox"/>
<b>16</b>	Did the organization report on Part IX, column (A), line 3, more than \$5,000 of aggregate grants or other assistance to or for foreign individuals? <i>If “Yes,” complete Schedule F, Parts III and IV.</i> . . . . .	<input type="checkbox"/>	<input type="checkbox"/>

# Form 990, Schedule F, Parts I-III

## Statement of activities outside the United States

### Part I – General Information

- Report foreign activities by region (column (a))
- Report expenditures to nearest \$1,000 (column (f))

**3** Activities per Region. (The following Part I, line 3 table can be duplicated if additional space is needed.)

(a) Region	(b) Number of offices in the region	(c) Number of employees, agents, and independent contractors in the region	(d) Activities conducted in the region (by type) (such as, fundraising, program services, investments, grants to recipients located in the region)	(e) If activity listed in (d) is a program service, describe specific type of service(s) in the region	(f) Total expenditures for and investments in the region
(1)					

### Part II & III – Grants and Other Assistance

- Complete for each recipient that received more than \$5,000
- Include payments to U.S. recipients for foreign activities

# Form 990, Schedule F, Part IV

## Statement of activities outside the United States

### Checklist of foreign forms that may be required

Schedule F (Form 990) 2020 Page **4**

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**Part IV Foreign Forms**

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1 Was the organization a U.S. transferor of property to a foreign corporation during the tax year? *If "Yes," the organization may be required to file Form 926, Return by a U.S. Transferor of Property to a Foreign Corporation (see Instructions for Form 926)* . . . . .  Yes  No

2 Did the organization have an interest in a foreign trust during the tax year? *If "Yes," the organization may be required to separately file Form 3520, Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts, and/or Form 3520-A, Annual Information Return of Foreign Trust With a U.S. Owner (see Instructions for Forms 3520 and 3520-A; don't file with Form 990)* . . . . .  Yes  No

3 Did the organization have an ownership interest in a foreign corporation during the tax year? *If "Yes," the organization may be required to file Form 5471, Information Return of U.S. Persons With Respect to Certain Foreign Corporations (see Instructions for Form 5471)* . . . . .  Yes  No

4 Was the organization a direct or indirect shareholder of a passive foreign investment company or a qualified electing fund during the tax year? *If "Yes," the organization may be required to file Form 8621, Information Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund (see Instructions for Form 8621)* . . . . .  Yes  No

5 Did the organization have an ownership interest in a foreign partnership during the tax year? *If "Yes," the organization may be required to file Form 8865, Return of U.S. Persons With Respect to Certain Foreign Partnerships (see Instructions for Form 8865)* . . . . .  Yes  No

6 Did the organization have any operations in or related to any boycotting countries during the tax year? *If "Yes," the organization may be required to separately file Form 5713, International Boycott Report (see Instructions for Form 5713; don't file with Form 990)* . . . . .  Yes  No

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Schedule F (Form 990) 2020

# Form 990, Schedule R, Parts I-IV

Foreign disregarded entities, corporations, partnerships, tax exempt organizations, and trusts are also reported on Schedule R. See below.

<b>SCHEDULE R</b> <b>(Form 990)</b>  Department of the Treasury Internal Revenue Service	<b>Related Organizations and Unrelated Partnerships</b>  Complete if the organization answered "Yes" on Form 990, Part IV, line 33, 34, 35b, 36, or 37. Attach to Form 990. Go to <a href="http://www.irs.gov/Form990">www.irs.gov/Form990</a> for instructions and the latest information.	OMB No. 1545-0047  <b>2022</b>  <b>Open to Public Inspection</b>					
Name of the organization		Employer identification number					
<b>Part I Identification of Disregarded Entities.</b> Complete if the organization answered "Yes" on Form 990, Part IV, line 33.							
(a) Name, address, and EIN (if applicable) of disregarded entity	(b) Primary activity	(c) Legal domicile (state or foreign country)	(d) Total income	(e) End-of-year assets	(f) Direct controlling entity		
(1)							
<b>Part II Identification of Related Tax-Exempt Organizations.</b> Complete if the organization answered "Yes" on Form 990, Part IV, line 34, because it had one or more related tax-exempt organizations during the tax year.							
(a) Name, address, and EIN of related organization	(b) Primary activity	(c) Legal domicile (state or foreign country)	(d) Exempt Code section	(e) Public charity status (if section 501(c)(3))	(f) Direct controlling entity	(g) Section 512(b)(13) controlled entity?	
(1)						Yes	No

# Form 990, Schedule R, Parts I-IV

Foreign disregarded entities, corporations, partnerships, tax exempt organizations, and trusts are also reported on Schedule R. See below.

**Part III Identification of Related Organizations Taxable as a Partnership.** Complete if the organization answered "Yes" on Form 990, Part IV, line 34, because it had one or more related organizations treated as a partnership during the tax year.

(a) Name, address, and EIN of related organization	(b) Primary activity	(c) Legal domicile (state or foreign country)	(d) Direct controlling entity	(e) Predominant income (related, unrelated, excluded from tax under sections 512–514)	(f) Share of total income	(g) Share of end-of-year assets	(h) Disproportionate allocations?		(i) Code V—UBI amount in box 20 of Schedule K-1 (Form 1065)	(j) General or managing partner?		(k) Percentage ownership
							Yes	No		Yes	No	
(1)							<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	

**Part IV Identification of Related Organizations Taxable as a Corporation or Trust.** Complete if the organization answered "Yes" on Form 990, Part IV, line 34, because it had one or more related organizations treated as a corporation or trust during the tax year.

(a) Name, address, and EIN of related organization	(b) Primary activity	(c) Legal domicile (state or foreign country)	(d) Direct controlling entity	(e) Type of entity (C corp, S corp, or trust)	(f) Share of total income	(g) Share of end-of-year assets	(h) Percentage ownership	(i) Section 512(b)(13) controlled entity?	
								Yes	No
(1)								<input type="checkbox"/>	<input type="checkbox"/>

# Form 990, Schedule R, Part V

Part V provides for a disclosure of related party transactions, like a disclosure on the Form 5471 Schedule M or Form 8865 Schedule N. See below.

**Part V Transactions With Related Organizations.** Complete if the organization answered "Yes" on Form 990, Part IV, line 34, 35b, or 36.

**Note:** Complete line 1 if any entity is listed in Parts II, III, or IV of this schedule.

	Yes	No
<b>1</b> During the tax year, did the organization engage in any of the following transactions with one or more related organizations listed in Parts II-IV?		
<b>a</b> Receipt of (i) interest, (ii) annuities, (iii) royalties, or (iv) rent from a controlled entity	<b>1a</b>	
<b>b</b> Gift, grant, or capital contribution to related organization(s)	<b>1b</b>	
<b>c</b> Gift, grant, or capital contribution from related organization(s)	<b>1c</b>	
<b>d</b> Loans or loan guarantees to or for related organization(s)	<b>1d</b>	
<b>e</b> Loans or loan guarantees by related organization(s)	<b>1e</b>	
<b>f</b> Dividends from related organization(s)	<b>1f</b>	
<b>g</b> Sale of assets to related organization(s)	<b>1g</b>	
<b>h</b> Purchase of assets from related organization(s)	<b>1h</b>	
<b>i</b> Exchange of assets with related organization(s)	<b>1i</b>	
<b>j</b> Lease of facilities, equipment, or other assets to related organization(s)	<b>1j</b>	
<b>k</b> Lease of facilities, equipment, or other assets from related organization(s)	<b>1k</b>	
<b>l</b> Performance of services or membership or fundraising solicitations for related organization(s)	<b>1l</b>	
<b>m</b> Performance of services or membership or fundraising solicitations by related organization(s)	<b>1m</b>	
<b>n</b> Sharing of facilities, equipment, mailing lists, or other assets with related organization(s)	<b>1n</b>	
<b>o</b> Sharing of paid employees with related organization(s)	<b>1o</b>	
<b>p</b> Reimbursement paid to related organization(s) for expenses	<b>1p</b>	
<b>q</b> Reimbursement paid by related organization(s) for expenses	<b>1q</b>	
<b>r</b> Other transfer of cash or property to related organization(s)	<b>1r</b>	
<b>s</b> Other transfer of cash or property from related organization(s)	<b>1s</b>	

**2** If the answer to any of the above is "Yes," see the instructions for information on who must complete this line, including covered relationships and transaction thresholds.

(a) Name of related organization	(b) Transaction type (a-s)	(c) Amount involved	(d) Method of determining amount involved
<b>(1)</b>			



# Specific International Tax Forms

The most common international tax forms attached to a Form 990/Form 990-T are:

- Form 5471, *Information Return of U.S. Persons With Respect To Certain Foreign Corporations*, which is used to report ownership or control in a controlled foreign corporation (“CFC”s), and certain acquisitions or disposals of interests in a foreign corporation.
- Form 926, *Return by a U.S. Transferor of Property to a Foreign Corporation*, which is used to report transfers of cash or property to a foreign corporation by a US person.
- Form 8865, *Return of U.S. Persons With Respect to Certain Foreign Partnerships*, which is used to report ownership or control in a controlled foreign partnership (“CFP”s) and certain contributions, acquisitions, disposals, and changes of ownership interest in a foreign partnership.
- Form 8858, *Information Return of U.S. Persons With Respect to Foreign Disregarded Entities (FDEs) and Foreign Branches (FBs)*, which is used to report a US person’s interest in a foreign disregarded entity or a foreign branch that it operates.

Less common forms you may see:

- Form 8621, *Information Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund*, which reports a tax-exempt entity’s interest in a debt-financed Passive Foreign Investment Company.
- Form 5713, *International Boycott Report*, which is used to report Operations in or related to boycotting countries and the receipt of boycott requests and boycott agreements made.



## Form 5471 filing for foreign charitable entity

From a US reporting perspective, the IRC and regulations do not differentiate between a foreign charitable entity or a foreign taxable entity.

An exempt organization (EO) has a Form 5471 filing requirement if:

1. An entity was formed in foreign jurisdiction.
2. The entity is a separate legal entity with limited liability for members/ shareholders/ board and is not a branch in foreign jurisdiction.
3. Meets vote or value requirements
  - Ownership test is met if the entity has stock or shares and the EO is a “US Shareholder” (has a 10% or greater interest in it by vote or value); OR
  - Meets the control requirements, further described in the next slide.
- If you answer “Yes” on Form 990 Part IV or disclose a foreign entity on Form 990 Schedule R, the IRS would expect foreign filings.

# Control and consolidation for controlled foreign corporations

The definition of control (for US international tax reporting) and the requirements of consolidating a corporation into a parent entity's financial statement do not always align with financial reporting.

## Control

- “Control” exists with majority membership ownership, or majority of all classes of shares of the foreign corporation. This is by voting rights or value of the shares. This means *more than exactly 50.0% results in control*. This analysis considers all the facts and circumstances.
- “Control” exists if a person (or entity) has certain powers such as:
  - The power to elect, appoint, or replace a majority of the board of directors (or the foreign equivalent)
  - The power to break ties for the board of directors, or
  - Exercises power ordinarily exercised by the board of directors that has the power to elect, appoint or replace directors.
- Any shifting of formal voting power away from a US Shareholder is not respected if real voting power is retained.

## Consolidation

- When a US organization has majority control of a foreign entity the financials of the foreign entity it may be consolidated into the financial statements of the US parent. If the foreign entity is material, then consolidation is required. You should consult with your auditors for GAAP consolidation determination.
- Generally, the US tax regulations limit consolidated returns to domestic entities. Foreign subsidiaries' financial information is reported separately and to the extent reported in a consolidated audited financial statements, they are carved out for US tax reporting.



## Control and consolidation for controlled foreign corporations

	Audit Reporting	Form 990 Schedule R Reporting	International Tax Reporting
Wholly-owned foreign corporate subsidiary	Consolidated into audited financial statements of EO	Reported on Schedule R. If subsidiary is recognized as a foreign EO, then reported in Schedule R Part II, otherwise Part IV.	Reported on a Form 5471. Income is excluded from the Form 990 financials, although investment in subsidiaries is reflected in the balance sheet.
Own 10% < 50% of a Foreign Corp	If ownership is greater than 20% parent company may consolidate financials of both domestic and foreign entities. Ownership of less than 20% must use equity method accounting	No control of foreign corporation and not reported on Schedule R	This would trigger a Form 5471, category 5 filing for a stock company
Own < 10% of a Foreign Corp	Does not differentiate between a CFC or non-CFC.	No control of foreign corporation and not reported on Schedule R	Generally , no Form 5471 requirement (unless triggered by a change in ownership percentages).

## Form 5471 filing for foreign charitable entity

### Related Form 8992, U.S. Shareholder Calculation of Global Intangible Low-Taxed Income (GILTI), Filing Obligation:

A U.S. Shareholder of a CFC is required to file a Form 8992, even if there is no GILTI tax payable.

### Failure to file forms 5471 could result in substantial penalties.

\$10,000 for each Form 5471;

Additional \$10,000 for failure to file Schedule O of Form 5471.

### Delinquent International Information Return Submission Procedures ([DIIRSP](#))

Taxpayers may be able to remedy failed filings for prior years through this program.

- Attach delinquent returns to the amended return and file in accordance with instructions for the amended return.
- Penalties may still be assessed regardless of reasonable cause and organization may still need to respond to questions from the IRS regarding the delinquent filings.

# Form 5471 filing for foreign charitable entity

## Potential alternatives

### Entity Classification Election

- Organizations considered to be U.S. Shareholders and control or wholly-own subsidiaries may want to consider “checking the box” for the entity and treat it as an FDE.
  - File Form SS-4 (if entity does not already have an EIN)
  - File Form 8832 (one time filing) to make an election to treat the foreign entity as a FDE for US tax purposes.
  - As a FDE, income and expenses would flow-through to the parent organization.
  - Form 8858 would need to be filed for FDE
  - **Note: if there is a chance that UBI would flow through from the foreign entity to the U.S. organization, treating the foreign entity as a FDE may not be beneficial. Also consider local jurisdiction anti-hybrid rules.**

## Reminders: Form 5471, Schedule M and Form 5713

Schedule M update on Form 5471.

- Grants need to be included on line 14 “other amounts received” along with an attachment.

Form 5713 – International Boycott

- Digital services : NFPs such as associations or schools and universities should be aware of organizations or students logging on and buying services from countries on the boycotted country [list](#). This could trigger a Form 5713 filing requirement.

## Form 8858 – foreign disregarded entity & foreign branch

- A US exempt organization that directly owns a foreign disregarded entity (FDE) has a Form 8858 filing requirement.
- A US exempt organization that operates in a foreign country *may* create a reportable foreign branch. The determination of whether a foreign branch is created is a facts and circumstances analysis.
- Even if foreign operations do not create a reportable foreign branch, for US tax purposes, the EO may still have local filing and tax obligations. Aside from foreign income tax, there are still potential issues of local payroll, social contributions, and VAT/ GST taxes.

## Form 8858 – indirect partner

### Does an indirect partner in a FDE have to file the Form 8858?

- A U.S. person that indirectly/constructively owns a foreign disregarded entity (FDE) through a tiered structure (partnerships or FDEs), has a Form 8858 filing requirement.
- A U.S. corporation that is a partner in a U.S. partnership must file as it is a deemed “tax owner” of the FDE.
  - U.S. Corp - must complete information related to its distributive share related to dual consolidated loss (DCL), pursuant to Regulations sections 1.1503(d)-1 through 1.1503(d)-8, on Schedule G.





## Form 8858 filing from K-1 footnote information – multiple filer exception



### **Does the multiple filer exception automatically apply if the direct tax owner files the return?**

- The multiple filer exception only applies - instances where there is a Form 5471 and 8865
- Category 4 or 5 filers of Form 5471 and Category 1 filers of Form 8865 may be eligible for the exception
- Purpose for requiring this filing for an indirect owner - capture information relating to dual consolidated losses (DCL)

# Passive foreign investment companies

## What is a PFIC?

A PFIC is:

A foreign corporation, that either:

1. 75% or more of the gross income of the corporation is passive income, or
  2. At least 50% of the average assets held by the foreign corporation during the year are passive assets or held to produce passive income.
- Passive income are generally income such as dividends, interests, rents, royalties. Passive assets includes securities, non-active business receivables, and most importantly - cash.

## Passive foreign investment companies

If a tax-exempt organization owns a non-controlling interest in a foreign corporation directly, indirectly, or constructively, it needs to consider:

1. Is the foreign corporation a Passive Foreign Investment Company (PFIC)?
  - Generally reported on Schedule K-1/ K-3
2. If the foreign corporation is a PFIC, is the PFIC debt-financed?
  - The debt financed status of the PFIC is not only determined at the EO level, but includes at each level of investing partnership – amount of debt allocated to the EO partner
  - Additional follow-up with fund manager may be required to make this determination

# Passive foreign investment companies

## PFIC Reporting

PFICs are reported on the Form 8621, *Information Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund*.

If a PFIC is not debt financed at all, then there is no Form 8621 filing obligation. If there is any amount of debt-financing, then the Form 8621 is required. The debt-financed portion of the PFIC is reported.

A non-debt financed PFIC owned by a private foundation is not reported on a Form 8621, even if the income from the PFIC is subject to the excise tax.



# POTENTIAL ISSUES FOR 2024

## Potential items in 2024

In 2024 there are a number of international tax items that are increasingly relevant to exempt organizations:

- Address increased IRS scrutiny and examinations
- Priorities List that IRS indicated in September 2023, including:
  1. Downward Attribution reporting
  2. Outbound transfers of intangibles
  3. *Transfer Pricing*
  4. *Chapter 3 withholding and requirements for withholding agents*
  5. *Foreign Trust reporting*

## Additional resources

Visit RSM's [email and subscriptions preference center](#) to subscribe to our newsletters and other thought leadership.

**Tax News and Insights for Exempt Organizations** brings you the latest updates on tax regulatory issues, planning ideas and specialty tax topics as they relate to tax exempt entities.

The screenshot shows the RSM email preferences and subscription form. At the top, the RSM logo is displayed. Below it, the heading reads "Manage your RSM email preferences and subscribe to RSM newsletters". A sub-heading states "Information tailored by our experience and customized to your needs." A paragraph explains that the form will recommend valuable insights based on user interests and business goals. A disclaimer follows, stating that users do not sell, rent, trade, or otherwise disclose personal information about their subscription. Below this, there are three main sections for selection:

- My topics of interest:** A list of checkboxes for various topics such as "Economic trends that are affecting my business", "Reducing risk to my business", "Technology helping my business", "Maximizing my assets needs", "Capitalizing on business opportunities", "Outsourcing or co-sourcing resources for my business", "The planning and preparation issues for my business", "Managing my personal wealth", "Managing high net-worth", and "Family Office".
- My industries of interest:** A grid of checkboxes for various industries including "Business and professional services", "Financial institutions", "Government", "Industrial products", "Native American", "Private equity", "Consumer products", "Financial services", "Government contracting", "Life sciences", "Nonprofit", "Real estate", "Education", "Energy", "Health care", "Manufacturing", "Private clubs", and "Technology, media and entertainment, and telecommunication companies".
- Types of communications:** A list of checkboxes for "Thought leadership", "Investment opportunities", "RSM news", "Surveys", "Webinar invitations", "Regulatory or industry news", and "Service and product".

Below these sections, there is a "Relevant Newsletters" section with a link to "Go here to manage your newsletter subscriptions". The bottom section is titled "Confirm your contact information" and contains a form with fields for "First name", "Last name", "Company", "Title", "Street address", "City", "State", and "Country". A "Please Select" dropdown menu is located below the "Country" field. A "Submit" button is at the bottom of the form.



# QUESTIONS AND ANSWERS





THANK YOU  
FOR YOUR TIME  
AND ATTENTION



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