March 30, 2020

Traps for the Unwary: COVID-19 Tax Relief Fails to Extend Certain Foreign Information Return Filing Deadlines

On March 20, in response to the COVID-19 pandemic, the secretary of the Treasury extended the due date to file all income tax returns originally due on April 15 until July 15 (as discussed in our advisory here). While this extension applies to all tax returns, it is important to recognize that it does not necessarily apply to *information* returns that are due on April 15. Failure to timely file information returns may result in substantial penalties, especially in the context of foreign filings.

Whether or not the filing deadline for an information return is affected by the income tax return filing extension largely depends on whether the information return's due date is explicitly tied to the taxpayer's income tax return due date. Day Pitney has evaluated whether the due dates for the foreign information returns listed below have been extended.

Please note that this guidance is applicable *only for taxpayers whose income tax returns would otherwise be due on April 15*. If a taxpayer's circumstances are such that the taxpayer's income tax return had a due date other than April 15 (such as most partnerships and S-corporations), then the original due date of the information returns listed below still applies.

Form	Description	Extended?
Form 3520: Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts	Filed by U.S. persons to report certain transactions with foreign trusts, ownership of foreign trusts, or receipt of gifts or bequests from foreign persons	**No.** The due date remains April 15 but can be extended to October 15 if an income tax return extension is timely requested. To ensure timely filing, you should file either Form 3520 or a protective Form 4868 by April 15.
Form 3520-A: Annual Information Return of Foreign Trust With a U.S. Owner	Annual information return filed by a foreign trust with a U.S. owner	**No.** The due date for filing Form 3520-A or an extension request (Form 7004) was March 15 and has already passed. However, in instances where a foreign trust fails to file Form 3520-A by March 15, the U.S. owner must file a substitute Form 3520-A with its Form 3520. As a result, a substitute Form 3520-A is subject to the Form 3520 rules discussed above.
FBAR: Report of Foreign Bank and Financial Accounts (FinCEN Form 114)	Filed by U.S. persons to report financial interests in or signature	**N/A.** The due date for filing the FBAR remains April 15, but pursuant to previously issued

Form	Description	Extended?
	authority over financial accounts located outside the U.S.	guidance, an automatic extension is granted until October 15.
Form 926: Return by a U.S. Transferor of Property to a Foreign Corporation	Filed by U.S. citizens or residents, domestic corporations, and domestic estates and trusts to report certain transfers of property to a foreign corporation	**Yes.** You should file Form 926 with your 2019 federal income tax return on or before July 15 (or as extended by a timely requested filing extension).
Form 5471: Information Return of U.S. Persons With Respect to Certain Foreign Corporations	Filed by U.S. citizens and residents who are officers, directors or shareholders in certain foreign corporations	**Yes.** You should file Form 5471 with your 2019 federal income tax return on or before July 15 (or as extended by a timely requested filing extension).
Form 5472: Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business	Filed by U.S. corporations and certain U.S. disregarded entities with foreign owners to report specified transactions involving foreign or domestic related parties	**Yes.** You should file Form 5472 with your 2019 federal income tax return (or pro forma return in the case of a disregarded entity) on or before July 15 (or as extended by a timely requested filing extension). This extension applies to corporations as well as to disregarded entities filing pro forma returns.
Form 8621: Information Return by a Shareholder of a Passive Foreign Investment Company (PFIC) or Qualified Electing Fund (QEF)	Filed by U.S. persons who are direct or indirect shareholders of a PFIC or QEF	**Yes.** You should file Form 8621 with your 2019 federal income tax return on or before July 15 (or as extended by a timely requested filing extension). If you are not filing an income tax return, you should file Form 8621 separately on or before July 15.
Form 8858: Information Return of U.S. Persons With Respect to Foreign Disregarded Entities (FDEs) and Foreign Branches (FBs)	Filed by U.S. persons who own a foreign disregarded entity or operate a foreign branch	**Yes.** You should file Form 8858 with your 2019 federal income tax return on or before July 15 (or as extended by a timely requested filing extension).
Form 8865: Return of U.S. Persons With Respect to Certain Foreign Partnerships	Filed by U.S. persons to report information regarding controlled foreign partnerships, transfers of foreign partnerships, and acquisitions, dispositions and	**Yes.** You should file Form 8865 with your 2019 federal income tax return on or before July 15 (or as

Form	Description	Extended?
	changes in foreign partnership interests	extended by a timely requested filing extension). If you are not filing an income tax return, you should file Form 8865 separately on or before July 15.
Form 8938: Statement of Specified Foreign Financial Assets	Filed by certain "specified persons" to report interests in certain foreign financial assets	**Yes.** You should file Form 8938 with your 2019 federal income tax return on or before July 15 (or as extended by a timely requested filing extension).

In addition, the IRS has publicly indicated that it expects to extend the deadline for Form 8966 (FATCA Reporting) from March 31 to July 15, though official guidance has not yet been issued.

Day Pitney is closely monitoring the IRS' response to the COVID-19 pandemic. These rules continue to evolve and depend on each taxpayer's unique circumstances, so we strongly suggest that you consult with your own tax adviser. If you have any questions about how these changes impact you, our attorneys are available to assist.

For more Day Pitney alerts and articles related to the impact of COVID-19, as well as information from other reliable sources, please visit our COVID-19 Resource Center.

COVID-19 DISCLAIMER: As you are aware, as a result of the COVID-19 pandemic, things are changing quickly and the effect, enforceability and interpretation of laws may be affected by future events. The material set forth in this document is not an unequivocal statement of law, but instead represents our best interpretation of where things stand as of the date of first publication. We have not attempted to address the potential impacts of all local, state and federal orders that may have been issued in response to the COVID-19 pandemic.

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