

AN ALERT FROM THE BDO INTERNATIONAL TAX PRACTICE

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INTERNATIONAL TAXATION



► SUBJECT

NEW LAW EXPANDS LIMITATIONS PERIOD WITH RESPECT TO THE FAILURE TO REPORT CERTAIN FOREIGN ACTIVITIES

► AFFECTING

Taxpayers with certain foreign activities

► DETAILS

Section 513(c) of the Hiring Incentives to Restore Employment ("HIRE") Act provides that the three-year period of limitations during which the Service may assess additional tax does not begin to run until all of the information required under sections 6038, 6038A, 6038B, 6046, 6046A, and 6048 is filed (*e.g.*, Forms 5471 or 8865), and that the limitations period extension is not limited to adjustments related to the information required to be reported by these sections, but will apply to all items for the taxable period. Section 513(c) of the HIRE Act also authorizes a new six-year period of limitations for the assessment of tax related to an income omission in excess of \$5,000 attributable to foreign financial assets required to be reported under new section 6038D.

► BACKGROUND

Taxes generally are required to be assessed within three years of the filing of the return, regardless of whether the return was timely filed. There are several exceptions to the general three-year rule. These exceptions include,

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for example, instances where a return is false or fraudulent (unlimited limitations period), there is a substantial omission of gross income (six-year limitations period), or a taxpayer fails to include on any return a Form 8886, Reportable Transaction Disclosure Statement, with respect to a listed transaction (limitations period does not expire before the date which is one year after the earlier of (a) the date Service is furnished with such information or (b) the date a material advisor furnishes the taxpayer's name under the list-maintenance rules).

Prior to enactment of the HIRE Act, section 6051(c)(8) provided that the three-year limitations period did not expire until three years after the date on which the Secretary of the Treasury was provided with information required, for example, on Forms 5471, 5471, or 926. The suspended limitations period generally has been applied only to the issues or items related to the foreign information reporting - not the entire tax return.

Section 513(c) of the HIRE Act provides that the three-year period of limitations does not begin until the foreign reporting information has been furnished to the Service. The provision clarifies that the period of limitations is suspended for all items on the return, not just items related to the omitted information reporting required under sections 1295(b), 1298(f), 6038, 6038A, 6038B, 6046, 6046A, and 6048. Thus, it applies to any reporting required under the authority of these sections and the regulations thereunder (including Forms 926, 3520-A, 5471, 5472, 8621, 8858, and 8865).

Section 513(c) of the HIRE Act further provides a new six-year limitations period for the assessment of tax on understatements of income attributable to foreign financial assets. For this purpose, an understatement of income attributable to foreign financial assets is an omission from income in excess of \$5,000 and the omitted income is attributable to an asset with respect to which information reporting is required under new section 6038D. New section 6038D requires individual taxpayers with an interest in a "specified foreign financial asset" during the taxable year to attach a disclosure statement to their income tax return for any year in which the aggregate value of all such assets exceeds \$50,000.

Impact on financial statement reporting. The period of limitations may also affect accounting for income taxes under ASC 740 (formerly known as FAS 109), such as tax liabilities that a taxpayer may have recorded with respect to uncertain tax positions. For example, in the case of a failure to comply with the foreign information reporting provisions referred to in section 6051(c)(8), a previously recorded uncertain tax position liability that may have been released due to the expiration of the statute of limitations may be required to be recorded again as a result of the suspension of the limitations period under section 6051(c)(8).

Implications. Taxpayers must be diligent in ascertaining the extent to which foreign operations and information is gathered and reported as required. The failure to identify and properly include such information as required may suspend the start of the limitations period, such that the Service may assess additional tax for the reporting period until three years after the required information is provided.

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