

**Obama administration proposals for new tax legislation**  
**Items particularly affecting Accounts Payable area**  
**Excerpts from the federal fiscal year 2010 GreenBook issued by Department of the Treasury**  
**(May 11, 2009)**

(None of these proposals yet introduced in the current Congress)

**REQUIRE INFORMATION REPORTING ON PAYMENTS TO CORPORATIONS**

**Current Law**

Generally, a taxpayer making payments to a recipient aggregating to \$600 or more for services or determinable gains in the course of a trade or business in a calendar year is required to send an information return to the IRS setting forth the amount, as well as name and address of the recipient of the payment (generally on Form 1099). Under a longstanding regulatory regime, there are certain exceptions for payments to corporations, as well as tax-exempt and government entities.

**Reasons for Change**

Generally, compliance increases significantly for payments that a third party reports to the IRS. In the case of tax-exempt or government entities that are generally not subject to income tax, information returns may not be necessary. On the other hand, during the decades in which the regulatory exception for payments to corporations has become established, the number and complexity of corporate taxpayers have increased. Moreover, the longstanding regulatory exception from information reporting for payments to corporations has created compliance issues. Although the exception for information reporting to corporations is set forth in existing regulations, because it has been in place for many years and because Congress, during that time period, has made numerous changes to the information reporting rules, elimination of the exception should be made by legislative change.

**Proposal**

A business would be required to file an information return for payments aggregating to \$600 or more in a calendar year to a corporation (except a tax-exempt corporation).

The proposal would be effective for payments made to corporations after December 31, 2009.

**REQUIRE A CERTIFIED TAXPAYER IDENTIFICATION NUMBER FROM CONTRACTORS AND ALLOW CERTAIN WITHHOLDING**

**Current Law**

In the course of a trade or business, service recipients (“businesses”) making payments aggregating to \$600 or more in a calendar year to any non-employee service provider (“contractor”) that is not a corporation are required to send an information return to the IRS setting forth the amount, as well as name, address, and taxpayer identification number (TIN) of the contractor. The information returns, required annually after the end of the year, are made on Form 1099-MISC based on identifying information furnished by the contractor but not verified by the IRS. Copies are provided both to the contractor and to the IRS. Withholding is not required or permitted for payments to contractors.

Since contractors are not subject to withholding, they may be required to make quarterly payments of estimated income taxes and self-employment (SECA) taxes near the end of each calendar quarter. The contractor is required to pay any balance due when the annual income tax return is subsequently filed.

**Reasons for Change**

Without accurate taxpayer identifying information, information reporting requirements impose avoidable burdens on businesses and the IRS, and cannot reach their potential to improve compliance.

Estimated tax filing is relatively burdensome, especially for less sophisticated and lower-income taxpayers. Moreover, by the time estimated tax payments (or final tax payments) are due, some contractors will not have put aside the necessary funds. Given that the SECA tax rate is 15.3 percent (up to certain income

limits), the required tax payments can be more than 25 percent of a contractor's gross receipts, even for a contractor with modest income.

An optional withholding method for contractors would reduce the burdens of having to make quarterly payments, would help contractors automatically set aside funds for tax payments, and would help increase compliance.

#### **Proposal**

A contractor receiving payments of \$600 or more in a calendar year from a particular business would be required to furnish to the business (on Form W-9) the contractor's certified TIN. A business would be required to verify the contractor's TIN with the IRS, which would be authorized to disclose, solely for this purpose, whether the certified TIN-name combination matches IRS records. If a contractor failed to furnish an accurate certified TIN, the business would be required to withhold a flat-rate percentage of gross payments. Contractors receiving payments of \$600 or more in a calendar year from a particular business could require the business to withhold a flat-rate percentage of their gross payments, with the flat-rate percentage of 15, 25, 30, or 35 percent being selected by the contractor.

The proposal would be effective for payments made to contractors after December 31, 2009.

## **REQUIRE INCREASED INFORMATION REPORTING FOR CERTAIN GOVERNMENT PAYMENTS FOR PROPERTY AND SERVICES**

### **Current Law**

Businesses, governments, and other taxpayers are subject to a number of information reporting and withholding requirements. Generally, a taxpayer making payments aggregating to \$600 or more for services or determinable gains in the course of a trade or business in a calendar year is required to send an information return to the IRS (except if the recipient is a corporation) setting forth the amount, as well as the name and address of the recipient of the payment (generally on Form 1099). In addition, any service recipient engaged in a trade or business is required to file an information return if the aggregate of payments for services is \$600 or more in a calendar year. This requirement specifically applies to government agencies, even if the service provider is a corporation. Moreover, Federal agencies must file information returns with respect to contractors, generally on Form 8596 (Information Return for Federal Contracts) and Form 8596A (Quarterly Transmittal of Information Returns for Federal Contracts). Under recently enacted legislation that will take effect in 2012, Federal, State and local government agencies generally must withhold 3 percent of payments for goods or services. Exceptions apply to certain payments such as those actually subjected to backup withholding, wages and public assistance.

### **Reasons for Change**

Generally, compliance increases significantly for payments that a third party reports to the IRS. Some government vendors fail to meet their tax filing and payment obligations.

### **Proposal**

The IRS and Treasury Department would be authorized to promulgate regulations requiring information reporting on all non-wage payments by Federal, State and local governments to procure property or services. It is expected that certain categories of payments would be excluded from the new information reporting requirements, including payments of interest, payments for real property, payments to tax-exempt entities or foreign governments, intergovernmental payments, and payments made pursuant to a classified or confidential contract.

The proposal would be effective for payments made after December 31, 2009.

## **INCREASE INFORMATION RETURN PENALTIES**

### **Current Law**

There are a number of information reporting requirements under the Code. When these requirements are not followed, penalties may apply based on whether and when a correct information return is filed. If a person subject to the information reporting requirements files a correct information return after the prescribed filing date, but on or before the date that is thirty days after the prescribed filing date, the

amount of the penalty is \$15 per return (the “first-tier penalty”), not to exceed \$75,000 per calendar year. If such a person files a correct information return more than thirty days after the prescribed filing date but on or before August 1, the amount of the penalty is \$30 per return (the “second-tier penalty”), not to exceed \$150,000 per calendar year. If such a person does not file a correct information return on or before August 1, the amount of the penalty is \$50 per return (the “third-tier penalty”), not to exceed \$250,000 in a calendar year. For certain small filers whose average annual gross receipts do not exceed \$5,000,000, the maximum calendar year limit is \$25,000 (instead of \$75,000) for the first-tier penalty, \$50,000 (instead of \$150,000) for the second-tier penalty, and \$100,000 (instead of \$250,000) for the third-tier penalty. If a failure is due to intentional disregard of a filing requirement, the minimum penalty for each failure is \$100, with no calendar year limit.

### **Reasons for Change**

Generally, compliance increases significantly with respect to amounts reported on information returns. In some cases, filers may have failed to comply with existing information reporting requirements because the amount of the potentially applicable penalties is too small to discourage non-compliance. Increasing the penalty amounts, which were established in 1989 and have not been increased, will help to ensure the timely filing of accurate information returns.

### **Proposal**

The first-tier penalty would be increased from \$15 to \$30, and the calendar year maximum would be increased from \$75,000 to \$250,000. The second-tier penalty would be increased from \$30 to \$60, and the calendar year maximum would be increased from \$150,000 to \$500,000. The third-tier penalty would be increased from \$50 to \$100, and the calendar year maximum would be increased from \$250,000 to \$1,500,000. For small filers, the calendar year maximum would be increased from \$25,000 to \$75,000 for the first-tier penalty, from \$50,000 to \$200,000 for the second-tier penalty, and from \$100,000 to \$500,000 for the third-tier penalty. The minimum penalty for each failure due to intentional disregard would be increased from \$100 to \$250. The proposal would also provide that every five years the penalty amounts would be adjusted to account for inflation.

The proposal would be effective for information returns required to be filed after December 31, 2010.

## **REQUIRE WITHHOLDING ON PAYMENTS OF FDAP INCOME MADE THROUGH NONQUALIFIED INTERMEDIARIES**

### **Current Law**

In general, payments of U.S.-source fixed or determinable annual or periodical gains, profits, or income (FDAP income) to nonresident alien individuals and foreign entities are subject to withholding tax at a rate of 30 percent. This 30-percent withholding tax may be reduced or eliminated pursuant to certain statutory provisions or pursuant to the terms of a tax treaty.

To determine whether the recipient of a payment is exempt from withholding tax or eligible for a reduced rate, withholding agents generally must rely on beneficial ownership documentation provided by the payee certifying that the payee is entitled to an exemption from withholding tax or a reduced rate of withholding tax under a Code provision or relevant tax treaty. In general, withholding agents are entitled to rely on the self-certification they receive absent actual knowledge or reason to know that the information provided is incorrect or unreliable. In the case of payments made through an intermediary, the intermediary generally provides to the withholding agent the appropriate documentation on behalf of the payment’s beneficial owners.

### **Reasons for Change**

The Administration is concerned that some persons that are not entitled to an exemption from withholding tax or a reduced rate of withholding tax may attempt to avoid U.S. tax by arranging to receive payments through foreign intermediaries that are not qualified intermediaries (nonqualified intermediaries). The proposal would discourage U.S. and foreign persons from attempting to avoid U.S. tax or to obtain a lower rate of withholding tax by providing incorrect self-certification or otherwise relying on the lack of information reporting associated with using nonqualified intermediaries. The proposal would also encourage use of the strengthened qualified intermediary system, by requiring

withholding of tax on payments made through nonqualified intermediaries.

### **Proposal**

Any withholding agent making a payment of FDAP income to a nonqualified intermediary would be required to treat the payment as made to an unknown foreign person (and therefore to withhold tax at a rate of 30 percent). The Treasury Department would receive regulatory authority to provide exceptions, including exceptions for payments collected by nonqualified intermediaries for foreign government, central bank, foreign pension fund, and foreign insurance company payees, and other similar investors, and for payments that the Treasury Department concludes present a low risk of tax evasion. The rules will be designed so as not to disrupt ordinary and customary market transactions. Foreign persons that are subject to over-withholding as a result of this proposal would be permitted to apply for a refund of any excess tax withheld.

The proposal would be effective for payments made after December 31 of the year of enactment.

## **NEGATIVE PRESUMPTION REGARDING WITHHOLDING ON FDAP PAYMENTS TO CERTAIN FOREIGN ENTITIES**

### **Current Law**

In general, payments of U.S.-source fixed or determinable annual or periodical gains, profits, or income (FDAP income) to nonresident alien individuals and foreign entities are subject to withholding tax at a rate of 30 percent. This 30 percent withholding tax may be reduced or eliminated pursuant to certain statutory provisions or pursuant to the terms of a tax treaty.

To determine whether the recipient of a payment is exempt from withholding tax or eligible for a reduced rate, withholding agents generally must rely on beneficial ownership documentation provided by the payee certifying that the payee is entitled to an exemption from withholding tax or a reduced rate of withholding tax under a Code provision or relevant tax treaty. In general, withholding agents are entitled to rely on the self-certification they receive absent actual knowledge or reason to know that the information provided is incorrect or unreliable. In the case of payments made through an intermediary, the intermediary generally provides to the withholding agent the appropriate documentation on behalf of the payment's beneficial owners.

### **Reasons for Change**

Persons that are not entitled to an exemption from withholding tax or a reduced rate of withholding tax may arrange to receive payments through entities that appear to qualify for an exemption or a reduced rate. A withholding agent making a payment to such an entity is unlikely to be in a position to determine whether the entity's self-certification regarding its qualification is accurate.

### **Proposal**

Any withholding agent making a payment of FDAP income to a foreign entity would be required to treat the payment as made to an unknown person (and therefore subject to 30 percent gross-basis withholding tax), unless the foreign entity provides documentation of the entity's beneficial owners. Exceptions would be provided for payments to publicly traded companies and their subsidiaries, foreign governments, and pension funds. In addition, the Treasury Department would receive regulatory authority to provide additional exceptions for payments to entities engaged in the active conduct of a trade or business in their country of residence, charities, widely-held investment vehicles, entities that enter into an agreement with the IRS to collect documentation for all owners and report all U.S. non-exempt owners to the IRS, and for any other payment that the Treasury Department concludes presents a low risk of tax evasion. The proposal would be effective for payments made after December 31 of the year of enactment.