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IRS Revisions to Internal Revenue Manual Clarify Who Is Eligible for Late Filing Penalty Relief

On Aug. 29, the IRS released a new section to the Internal Revenue Manual (IRM), 20.1.1.3.3.2.2, providing penalty relief for certain taxpayers filing 2019 and 2020 returns in response to Notice 2022-36, issued Aug. 24, 2022. See [GT Alert](#), “[The IRS Grants Penalty Relief for 2019 and 2020, But...](#)”

[Notice 2022-36](#) provides penalty relief from certain failure-to-file penalties, certain international return penalties, and certain information return penalties for the tax years 2019 and 2020, if the returns are filed on or before Sept. 30, 2022. However, the Notice is ambiguous as to who is eligible for relief from late filing international information returns and which specific international information returns are subject to relief. For example, the Notice states that penalty relief is available for Forms 5471 and 5472 attached to a late filed Form 1120 or 1065, but the Notice does not make clear if relief is available for all Form 1120 series filers and makes no mention of Forms 5471 and 5472 attached to late filed Forms 1040 and 1041.

The revisions to the IRM confirm that only the following international information returns are eligible for penalty relief under the Notice:

- Form 5471, *Information Return of U.S. Persons With Respect to Certain Foreign Corporations*;
- Form 5472, *Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business*;

- Form 3520, *Annual Return to Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts*; and
- Form 3520-A, *Annual Information Return of Foreign Trust With a U.S. Owner* (under section 6048(b)).

Because the IRM does not include any limiting examples as to which filers are entitled to relief from these specific international informational return penalties, the relief is available to all taxpayers that file returns in the Form 1040 series, Form 1120 series, including Forms 1120-S and 1120-F, Forms 1065 and Forms 1041. In addition to the exceptions provided in the Notice, the IRM provides that relief will only be granted for penalties assessed by an IRS service center or campus, not penalties assessed as a result of an IRS examination.

The IRM revisions follow the Notice in excluding any other international informational returns from penalty relief under Notice 2022-36. For example, neither Form 8938, *Statement of Specified Foreign Financial Assets*, nor Form 8865, *Return of U.S. Persons With Respect to Certain Foreign Partnerships*, is eligible for relief. No explanation is provided as to why certain international information returns were excluded.

The IRM revisions also address whether first time penalty abatement (FTA) will take precedence over relief provided under the Notice. The IRM clarifies that relief under Notice 2022-36 will take precedence, preserving the FTA for future use.

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