

SUPPORTING STATEMENT  
(EE-14-81)

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

Section 404A of the Internal Revenue Code (26 USC 404A) allows a foreign subsidiary of a domestic corporation to reduce earnings and profits by the amount of its foreign deferred compensation expense. A reduction in a foreign subsidiary's earnings and profits increases the indirect foreign tax credit allowed to the domestic parent corporation under section 902 of the Internal Revenue Code (26 USC 902). Similarly, section 404A allows a domestic corporation to deduct foreign deferred compensation expense incurred by its foreign branch. Without the relief afforded by section 404A, a taxpayer may not ordinarily reduce a foreign subsidiary's earnings and profits or deduct these expenses. A taxpayer may elect to apply section 404A to certain foreign deferred compensation plans (i.e., "qualified funded plans" and "qualified reserve plans") maintained by a foreign subsidiary or by a foreign branch. At a taxpayer's election, section 404A may apply prospectively, or retroactively, to taxable years beginning after December 31, 1970.

This information is required by the Internal Revenue Service to accurately determine the correct deductions and reductions in earnings and profits attributable to deferred compensation plans maintained by foreign subsidiaries and foreign branches of domestic corporations. The collection of this information is necessary in order to administer section 404A.

The collection of information is authorized by sections 404A and 7805 of the Internal Revenue Code (26 USC 404A and 7805) and sections 1.404A-5, 1.404A-6 and 1.404A-7 of the proposed regulation. A copy of the cited statutes and sections of the proposed regulation is attached to this supporting statement.

2. USE OF DATA

The information is to be used by the Internal Revenue Service in the examination of corporate income tax returns of domestic corporations. The information is necessary to

accurately determine the correct deductions attributable to deferred compensation plans maintained by foreign branches. This information is also used to determine reductions in earnings and profits of foreign subsidiaries of domestic corporations in connection with the foreign tax credit under section 902. Proper administration of the provisions of section 404A as a deduction to compute taxable income and as a part of the foreign tax credit under section 902 requires the Service to obtain information from taxpayers regarding the election under section 404A.

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

IRS Publications, Regulations, Notices and Letter are to be electronically enabled on an as practicable basis in accordance with the IRS Reform and Restructuring Act of 1998.

4. EFFORTS TO IDENTIFY DUPLICATION

We have attempted to eliminate duplication within the agency wherever possible.

5. METHODS TO MINIMIZE BURDEN ON SMALL BUSINESSES OR OTHER SMALL ENTITIES

Not applicable.

6. CONSEQUENCES OF LESS FREQUENT COLLECTION ON FEDERAL PROGRAMS OR POLICY ACTIVITIES

Not applicable.

7. SPECIAL CIRCUMSTANCES REQUIRING DATA COLLECTION TO BE INCONSISTENT WITH GUIDELINES IN 5 CFR 1320.5(d)(2)

Not applicable.

8. CONSULTATION WITH INDIVIDUALS OUTSIDE OF THE AGENCY ON AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, CLARITY OF INSTRUCTIONS AND FORMS, AND DATA ELEMENTS

A notice of proposed rulemaking was published in the **Federal Register** on May 7, 1993 (58 FR 27219) and a public hearing was held on October 5, 1993.

We received no comments during the comment period in

response to the **Federal Register** notice (75 FR 53739), dated September 1, 2010.

9. EXPLANATION OF DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS

Not applicable.

10. ASSURANCE OF CONFIDENTIALITY OF RESPONSES

Generally, tax returns and return information are confidential as required by 26 USC 6103.

11. JUSTIFICATION OF SENSITIVE QUESTIONS

Not applicable.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

Section 1.404A-5(b) of the regulations requires taxpayers that elected section 404A treatment for qualified foreign plans (see section 1.404A-6(a) below) for any taxable year in which a qualified foreign plan has United States tax significance, must attach a statement to Form 1120 for each qualified foreign plan, listing each plan, the name and country of organization of the employer maintaining the plan, the cumulative United States amount, cumulative foreign amount, aggregate amount, and (1) a statement from the foreign tax authorities specifying the amount of the deduction allowed under appropriate foreign tax law or (2) the foreign tax return, or (3) a certified statement setting forth the cumulative foreign amount, excerpts from the employer's books and records and the computation of the foreign deductions relating to the plan. We estimate that 1,250 corporations will file the required statements and that it will take them 500 hours each to comply with this requirement. The total burden for this reporting requirement is 625,000 hours.

Section 1.404A-6(a) of the regulations permits taxpayers to elect to apply section 404A with respect to qualified foreign plans maintained by foreign subsidiaries and by foreign branches. Sections 1.404A-6(b)(3) and 1.404A-6(b)(4) of the regulations requires that, in order to make the

election, taxpayers must attach a statement to Form 1120 listing the qualified foreign plans, and for each listed plan, indicating whether each plan is a qualified funded plan or qualified reserve plan, designating a plan year, the adjustment under 26 USC 481(a), the initial cumulative United States amount, the initial cumulative foreign amount, and the initial aggregate amount. We estimate that 1,250 corporations will notify the Commissioner that they are electing under section 404A and that it will take them 1 hour each to comply with this requirement. The total burden for this reporting requirement is 1,250 hours.

Section 1.404A-6(c) of the regulations requires taxpayers that have elected section 404A treatment for qualified foreign plans to notify the Commissioner if a section 404A election terminates, by attaching a statement to Form 1120. We estimate that 200 corporations will notify the Commissioner that section 404A elections have terminated and that it will take them 1 hour each to comply with this requirement. The total burden for this reporting requirement is 200 hours.

Section 1.404A-6(d) of the regulations requires taxpayers that elected under section 404A to apply to obtain the Commissioner's express consent to changes in methods of accounting (including revocation of a section 404A election, re-election under section 404A, changing the treatment of a qualified foreign plan from a qualified funded plan to a qualified reserve plan (or the converse) or changing the actuarial funding method used to determine costs under a qualified funded plan) or to change a plan year. To request a change in method of accounting for foreign branch plans, taxpayers must file Form 3115. We estimate that 500 corporations will file Form 3115. The burden for this requirement is reflected in the burden of Form 3115. To request a change in method of accounting for foreign subsidiary plans, taxpayers must file a written statement pursuant to sections 1.964-1 and 1.964-1T of the regulations. We estimate that 500 corporations will file such written statements and that it will take them 1 hour each to comply with this requirement. The total burden for this reporting requirement is 500 hours.

Sections 1.404A-7(a)(1) and 1.404A-7(b)(1) of the regulations permit taxpayers to make retroactive effective date elections to apply section 404A with respect to qualified foreign plans maintained by foreign subsidiaries

and by foreign branches. Section 1.404A-7(b)(2) of the regulations requires that, in order to make this retroactive election, taxpayers must attach a statement to Form 1120X listing the open years, the taxable year for which the retroactive election is perfected (or revoked), identifying the qualified foreign plans, and for each plan, indicating whether the plan is a qualified funded plan or qualified reserve plan, designating a plan year, showing the adjustment under section 481(a), the initial cumulative United States amount, the initial cumulative foreign amount, and the initial aggregate amount. We estimate that 1,250 corporations will notify the Commissioner that they are electing under section 404A and that it will take them 1 hour each to comply with this requirement. The total burden for this reporting requirement is 1,250 hours.

Section 1.404A-7(b)(3) of the regulations requires that taxpayers making retroactive effective date elections file Form 1120X (in addition to filing the Form 1120X required by section 1.404A-7(b)(2) of the regulations) to conform the treatment of all items affected by a retroactive effective date election under section 404A, pursuant to sections 1.404A-7(a)(1) and 1.404A-7(b)(1) of the regulations. Taxpayers must attach a statement to Form 1120X listing the qualified foreign plans, and for each listed plan, indicating whether the plan is a qualified funded plan or qualified reserve plan, designating a plan year, showing the adjustment under section 481(a), the initial cumulative United States amount, the initial cumulative foreign amount, and the initial aggregate amount. We estimate that 1,250 corporations will notify the Commissioner that they are electing under section 404A and that it will take them 1 hour each to comply with this requirement. The total burden for this reporting requirement is 1,250 hours.

Sections 1.404A-7(a)(1) and 1.404A-7(c)(1) of the regulations permit taxpayers to make retroactive plan-by-plan elections to apply section 404A with respect to qualified foreign plans maintained by foreign subsidiaries. Section 1.404A-7(c)(2) of the regulations requires that, in order to make this retroactive election, taxpayers must attach a statement to Form 1120X listing the qualified foreign plans, and for each listed plan, indicating whether the plan is a qualified funded plan or qualified reserve plan, designating a plan year, showing the adjustment under section 481(a), the initial cumulative United States amount, the initial cumulative foreign amount, and the initial aggregate amount. We estimate that 1,250 corporations will

notify the Commissioner that they are electing under section 404A and that it will take them 1 hour each to comply with this requirement. The total burden for this reporting requirement is 1,250 hours.

Section 1.404A-7(c)(3) of the regulations requires that taxpayers making retroactive plan-by-plan elections with respect to foreign subsidiaries file Form 1120X (in addition to filing the Form 1120X required by section 1.404A-7(c)(2) of the regulations) to conform the treatment of all items affected by a retroactive plan-by-plan election under section 404A, pursuant to sections 1.404A-7(a)(1) and 1.404A-7(c)(1) of the regulations.

Taxpayers must attach a statement to Form 1120X listing the qualified foreign plans, and for each listed plan, indicating whether the plan is a qualified funded plan or qualified reserve plan, designating a plan year, showing the adjustment under section 481(a), the initial cumulative United States amount, the initial cumulative foreign amount, and the initial aggregate amount. We estimate that 1,250 corporations will notify the Commissioner that they are electing under section 404A and that it will take them 1 hour each to comply with this requirement. The total burden for this reporting requirement is 1,250 hours.

Sections 1.404A-7(a)(1) and 1.404A-7(d)(1) of the regulations permit taxpayers to make retroactive plan-by-plan elections to apply section 404A with respect to qualified foreign plans maintained by foreign branches. Section 1.404A-7(d)(4)(i) of the regulations requires, in order to make this retroactive election, taxpayers must attach a statement to Form 1120X listing the qualified foreign plans, and for each listed plan, indicating whether the plan is a qualified funded plan or qualified reserve plan, designating a plan year, showing the adjustment under section 481(a), the initial cumulative United States amount, the initial cumulative foreign amount, the initial aggregate amount and agreeing to the assessment of tax. We estimate that 1,250 corporations will notify the Commissioner that they are electing under section 404A and that it will take them 1 hour each to comply with this requirement. The total burden for this reporting requirement is 1,250 hours.

Section 1.404A-7(d)(4)(ii) of the regulations requires that taxpayers making retroactive plan-by-plan elections with respect to foreign branches file Form 1120X (in addition to

filing the Form 1120X required by section 1.404A-7(d)(4)(i) of the regulations) to conform the treatment of all items affected by a retroactive plan-by-plan election under section 404A, pursuant to sections 1.404A-7(a)(1) and 1.404A-7(d)(1) of the regulations. Taxpayers must attach a statement to Form 1120X listing the qualified foreign plans, and for each listed plan, indicating whether the plan is a qualified funded plan or qualified reserve plan, designating a plan year, showing the adjustment under section 481(a), the initial cumulative United States amount, the initial cumulative foreign amount, and the initial aggregate amount. We estimate that 1,250 corporations will notify the Commissioner that they are electing under section 404A and that it will take them 1 hour each to comply with this requirement. The total burden for this reporting requirement is 1,250 hours.

The total burden for the above requirements is 634,450 hours.

Estimates of the annualized cost to respondents for the hour burdens shown are not available at this time.

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

As suggested by OMB, our **Federal Register** notice dated September 1, 2010, requested public comments on estimates of cost burden that are not captured in the estimates of burden hours, i.e., estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. However, we did not receive any response from taxpayers on this subject. As a result, estimates of the cost burdens are not available at this time.

14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

Not applicable.

15. REASONS FOR CHANGE IN BURDEN

There is no change in the paperwork burden previously approved by OMB. We are making this submission to renew the OMB approval.

16. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION

Not applicable.

17. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE

We believe that displaying the OMB expiration date is inappropriate because it could cause confusion by leading taxpayers to believe that the regulation sunsets as of the expiration date. Taxpayers are not likely to be aware that the Service intends to request renewal of the OMB approval and obtain a new expiration date before the old one expires.

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT ON OMB FORM 83-I

Not applicable.

**Note:** The following paragraph applies to all of the collections of information in this submission:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.