

SUPPORTING STATEMENT
Internal Revenue Service
Section 6662-Imposition of the Accuracy-Related Penalty
(INTL-21-91 - TD 8656)
OMB Control Number 1545-1426

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

Section 6662(e) of the Internal Revenue Code ("Code") defines a substantial valuation misstatement under chapter 1 of the Code for purposes of the accuracy-related penalty imposed under section 6662(a). The penalty is imposed on underpayments of tax, including those caused by a substantial valuation misstatement for transactions subject to section 482. Section 6662(e)(3)(B) provides, in general, that certain adjustments are excluded in determining whether the penalty applies if a taxpayer demonstrates that it followed certain requirements in analyzing its transfer pricing, documented that analysis, and provided that documentation to the Internal Revenue Service upon request. Consistent with the statute, these regulations require that taxpayers contemporaneously document their transfer pricing analysis, notify the Service of the use of certain methods for determining an arm's length price, and provide that documentation to the Service upon request.

2. USE OF DATA

The information will be used upon request to administer and enforce the Internal Revenue Code by reviewing taxpayers' contemporaneous documents for their transfer pricing analysis, for determining an arm's length transfer price.

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

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

There are no plans to provide electronic filing for this collection of information in this submission because this is a record keeping requirement.

4. EFFORTS TO IDENTIFY DUPLICATION

The information obtained through this collection is unique and is not already available for use or adaptation from another source.

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

These regulations provide that a substantial valuation misstatement may arise under two circumstances. These regulations minimize the burden on small businesses or other small entities under one of these circumstances by providing, consistent with section 6662(e)(1)(B)(ii), that a substantial valuation misstatement exists only if the taxpayer has a net section 482 adjustment that exceeds the lesser of five million dollars or ten percent of gross receipts. These regulations minimize the burden on small businesses or other small entities by recognizing that the size of transactions are relevant in determining the extent of analysis and documentation required to avoid the penalty.

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

If this information is not appropriately reported to the IRS upon request, a substantial misstatement has the potential to occur. Small businesses/entities would not be able to minimize their burden by acknowledging that the size of transactions are relevant in determining the extent of analysis and documentation required to avoid the penalty.

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

There are no special circumstances requiring data collection to be inconsistent with guidelines in 5 CFR 1320.5(d)(2).

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

In response to the *Federal Register* notice dated February 26, 2019, (84 FR 6198), we received no comments during the comment period regarding TD 8556.

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

No payment or gift has been provided to any respondents.

10. ASSURANCE OF CONFIDENTIALITY OF RESPONSES

Generally, tax returns and tax return information are confidential as

required by 26 USC 6103.

11. JUSTIFICATION OF SENSITIVE QUESTIONS

No personally identifiable information (PII) is collected.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

Under section 1.6662-6(d) of the regulations, an amount is excluded from the penalty if certain requirements are met and a taxpayer maintains documentation of how a transfer price was determined. These amendments to the existing regulations under section 6662(e) clarify the documentation and reporting requirements in two specific situations--lump sum payments for intangibles and profit split methods.

The estimated annual burden per recordkeeper varies from 5 hours to 15 hours, depending on individual circumstances, with an estimated average of 10 hours. The estimated number of recordkeepers is 2,000. Accordingly, the estimated total annual recordkeeping burden is 20,000 hours.

There are three reporting requirements in §§1.6662-6(d)(2)(iii)(D) and (d)(3)(iii)(C). If a profit split method or an unspecified method is used to determine an arm's length price, the use of the method must be disclosed on a statement attached to a timely filed U.S. tax return. The purpose for this disclosure requirement is to alert the Service to the use of methods which are potentially less reliable in determining an arm's length result. If consideration for the controlled transfer of an intangible is in the form of a lump sum payment, that fact must be disclosed on a timely filed U.S. income tax return for each taxable year throughout the useful life of the intangible. The purpose for this requirement is to ensure that a lump sum payment is no less than the amount required under the "commensurate with income" standard of I.R.C. section 482. The annual number of respondents making such disclosures is estimated to be 500, one response per respondent. It is anticipated that each response will take fifteen minutes, and that the total annual burden will thus be 125 hours.

The estimated reporting burden estimates are:

Authoritie s (IRC)	Docume nt	# Respondents	# Responses Per Respondent	Annual Responses	Time Per Response	Total Burden
6662(e)	TD 8656	2000	1	2000	10hrs.	20,000 hrs.

482	TD 8656	500	1	500	15 mins	125 hrs.
Totals		2500	1	2500	8hrs 3min	20,125 hrs.

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

To ensure more accuracy and consistency across its information collections, IRS is currently in the process of revising the methodology it uses to estimate burden and costs. Once this methodology is complete, IRS will update this information collection to reflect a more precise estimate of burden and costs.

14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

To ensure more accuracy and consistency across its information collections, IRS is currently in the process of revising the methodology it uses to estimate burden and costs. Once this methodology is complete, IRS will update this information collection to reflect a more precise estimate of burden and costs.

15. REASONS FOR CHANGE IN BURDEN

There are no changes to the paperwork burden hours previously approved by OMB. We are making this submission for renewal purposes only.

16. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION

There are no plans for tabulation, statistical analysis and publication.

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

There are no exceptions to the certification statement.

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.