

SUPPORTING STATEMENT
Internal Revenue Service (IRS)
TD 8400 - Taxation of Gain or Loss from Certain Nonfunctional Currency Transactions
(Section 988 Transactions)

OMB Control Number 1545-1131

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

Treasury Decision (TD) 8400 contains previously approved final regulations regarding the taxation of gain or loss from certain foreign currency transactions under Internal Revenue Code (IRC) section 988 and applies to taxpayers engaging in such transactions. Such gains and losses are characterized as ordinary income or loss. However, under IRC section 988(a)(1)(B), taxpayers may elect to characterize exchange gain or loss on certain transactions as capital gain or loss. Treasury Regulations section 1.988-3(b) provides the procedure for making the election. Under IRC section 988(c)(1)(D)(ii), taxpayers may elect to have regulated futures contracts and certain options (which generally are not subject to section 988) treated as section 988 transactions. Treasury Regulations sections 1.988-1(a)(7)(iii) and (iv) provide the procedure for making that election. Under IRC section 988(c)(1)(E)(iii), a qualified fund may elect out of section 988 with respect to certain financial transactions. Treasury Regulations section 1.988-1(a)(8)(iv) provides the procedure for making that election. Under IRC section 988(d), taxpayers may receive special treatment allowing integration with respect to certain borrowings and property if the transactions are properly identified. The identification rules are in Treasury Regulations sections 1.988-5(a)(8), 1.988-5(b)(3), and 1.988-5(c)(2). Treasury Regulations section 1.988-2(a)(2)(v) allows an accrual basis taxpayer to make an election that provides special translation rules regarding the purchase and sale of stock or securities traded on an established securities market. Treasury Regulations section 1.988-2(b)(2)(iii)(B) provides an election allowing the translation of interest income and expense using a spot accrual convention.

2. USE OF DATA

The data obtained by the IRS from the various elections and identifications is used to verify that taxpayers have, in fact, elected special treatment under IRC section 988.

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

There is no plan to offer electronic filing for this collection due to the low volume of filers complying with reporting requirements in Treasury Regulations sections 1.988-1, 1.988-2, and 1.988-3. The procedures outlined in the remaining regulations are record keeping requirements.

4. EFFORTS TO IDENTIFY DUPLICATION

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

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

The collection of information requirement will not have a significant economic impact on a

substantial number of small entities.

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

The information will be used by the IRS to verify that taxpayers have, in fact, elected special treatment under section 988. If this information is collected less frequently, it would compromise the Agency's ability to determine the tax treatment of certain foreign currency denominated transactions and enforce tax compliance. Tax compliance is a vital part of the government's ability to meet its mission and serve the public.

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

We received no comments during the public comment period in response to the Federal Register notice (87 FR 22629), dated April 15, 2022.

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 U.S.C. 6103.

11. JUSTIFICATION OF SENSITIVE QUESTIONS

A privacy impact assessment (PIA) has been conducted for information collected under this request as part of the "Individual Master File (IMF)" and "Business Master File (BMF)" systems. A Privacy Act System of Records notice (SORN) has been issued for these systems under Treasury/IRS 24.030 - Customer Account Data Engine (CADE) Individual Master File; Treasury/IRS 24.046 - CADE Business Master File (BMF); and Treasury/IRS 34.037 - IRS Audit Trail and Security Records. The Internal Revenue Service PIAs can be found at <https://www.irs.gov/privacy-disclosure/privacy-impact-assessments-pia>.

Title 26 U.S.C. 6109 requires inclusion of identifying numbers in returns, statements, or other documents for securing proper identification of persons required to make such returns, statements, or documents and is the authority for social security numbers (SSNs) in IRS systems.

The statements required by these regulations are attachments to the Federal tax return. The

15. REASONS FOR CHANGE IN BURDEN

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

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

The IRS believes that displaying the OMB expiration date is inappropriate because it could cause confusion by leading taxpayers to believe that the regulations sunsets as of the expiration date. Taxpayers are not likely to be aware that the IRS 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.