

SUPPORTING STATEMENT
Internal Revenue Service
Foreign Tax Credit: Notification of Foreign Tax Redeterminations
TD 9922 (REG-105495-19) and TD 9959 (REG-101657-20)
OMB # 1545-1056

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

Section 905(c) of the Internal Revenue Code requires a taxpayer to notify the Internal Revenue Service (IRS) of a foreign tax redetermination (FTR), which is a change in the taxpayer's foreign tax liability that may affect the taxpayer's foreign tax credit as described in §1.905-3(a). Final regulations at §§1.905-4 and 1.905-5, issued under TD 9922 in November 2020, provide rules concerning the time, manner, and contents of such notification.

When a redetermination of U.S. tax liability is required by reason of an FTR, the final regulations generally require the taxpayer to notify the IRS of the FTR and provide certain information necessary to redetermine the U.S. tax due for the year or years affected by the FTR. If there is no change in the U.S. tax liability as a result of the FTR, the taxpayer may attach a statement containing information described in §1.904-2(f) to the original return for the taxpayer's taxable year in which the foreign tax redetermination occurs.

However, taxpayers are generally required to file an amended return (or an administrative adjustment request in the case of certain partnerships) for the year or years affected by the FTR along with an updated Form 1116 Foreign Tax Credit (Individual, Estate, or Trust) (covered under OMB Control Number 1545-0074 individual, or 1545-0121 and 1545-0092 estate and trust) or Form 1118 Foreign Tax Credit-Corporations (OMB Control Number 1545-0123), and a written statement providing specific information relating to the FTR described in §1.905-4(c).

Since the burden for filing amended income tax returns and the Forms 1116 and 1118 is covered under the other OMB control numbers listed above, the burden estimates for OMB Control Number 1545-1056 only cover the burden for the written statements.

The final regulations at §§1.905-4 and 1.905-5, issued under TD 9922 in November 2020, in large part retained the information collection contained in former temporary regulations at §1.905-4T, which is reflected in the previous Information Collection Requests (ICR) submitted for OMB Control No. 1545-1056. Final §§1.905-4 and 1.905-5, as compared to §1.905-4T, only marginally increases the reporting burden for FTRs. Specifically, TD 9922 expands the definition of an FTR in §1.905-3(a) (and, as a result, the reporting requirements in §1.905-4(b)) to cover, in addition to changes that may affect a taxpayer's foreign tax credits which was already part of the FTR definition, the effect of a change in foreign tax liability on the amount of certain inclusions (under sections 951, 951A, or 1293) and the application of the high-tax exception described in section 954(b)(4). Given the expanded definition, there may be unusual instances where a taxpayer has an FTR that changes the amount of its inclusion and US tax liability but does not also change the amount of its foreign tax credit. Although these taxpayers would be subject to the reporting burdens in §1.905-4(b), the agency believes the marginal increase in burden attributable to this small class of additional respondents to be negligible, and the IRS does not have data available to estimate this incremental impact.

New final regulations at §§1.901-1(d)(2) and 1.905-3, issued under TD 9959, treat a taxpayer's change from claiming a deduction to claiming a credit, or vice versa, for foreign income taxes as a foreign tax redetermination and require taxpayers to comply with the notification requirements of §1.905-4. However, because taxpayers making this change under current rules must already file amended returns, along with Form 1116 or 1118, the treatment of the change in election as a foreign tax redetermination and the §1.905-4 filing requirements, is not

a significant change or addition to the existing reporting requirements.

New regulations at §§1.905-1(c)(3) and 1.905-1(d)(4), issued under TD 9959, allow taxpayers to make an election to claim a provisional foreign tax credit for a contested foreign income tax liability to the extent that the taxpayer has paid the contested tax to the foreign country. These new final regulations require taxpayers who make the election to file an annual notification with the IRS notifying the IRS whether the contest is ongoing or whether it's been resolved. The IRS is modifying the schedules for Form 1116 and 1118 to enable taxpayers to comply with this annual reporting requirement.

2. USE OF DATA

The Internal Revenue Service will use the information to be collected under the provisions of section 905(c) for audit purposes to determine whether taxpayers have correctly redetermined their U.S. tax liability and foreign tax credit after an FTR.

The Internal Revenue Service will also use the information collected under the provisions of sections 901 and 905 to audit whether a contested foreign income tax for which taxpayer has claimed a provisional foreign tax credit is ultimately creditable. In particular, the IRS will monitor and assess whether taxpayer meets the requirement to exhaust all effective and practical remedies to minimize its foreign income tax liability with respect to the contested tax.

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

The IRS has no plans to offer electronic filing as these are narrative statements sent to the IRS.

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. The final regulations at §1.905-4, consistent with former temporary regulations, provide an exception to the general notification rule that allows Large Business and International (LBI) taxpayers to notify the IRS of certain FTRs that occur prior to or during an audit of the affected year, by providing the written statement to the examiner in lieu of filing an amended return.

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

If the Internal Revenue Service (IRS) did not collect this information, the IRS would not be able to use the information to be collected under the provisions of section 905(c) for audit purposes to determine whether taxpayers have correctly redetermined their U.S. tax liability and foreign tax credit after an FTR. A less frequent collection will not enable the IRS to verify the tax treatment in accordance could result in being unable to meet its mission.

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 January 4, 2022 (87 F.R. 276), we received no comments.

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

A privacy impact assessment (PIA) has been conducted for information collected under this request as part of the "Business Master File (BMF)" system and a Privacy Act System of Records Notice (SORN) has been issued for this system under IRS 24.046-Customer Account Data Engine Business Master File. The Department of Treasury PIAs can be found at <http://www.treasury.gov/privacy/PIAs/Pages/default.aspx>.

Title 26 USC 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.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

The burden estimate for estate and trust filers is below:

Authority	Description	Number of Respondents	Number of Responses per Respondent	Annual Responses	Hours per Response	Total Burden
1.901-1, 1.905-3, 1.905-4	Foreign Tax Redetermination	13,500	1	13,500	4.153	56,065
1.905-1	Annual reporting for provisional foreign tax credit	11,400	1	11,400	0.25	2,850
Totals	Foreign Tax Redetermination	13,500	1	24,900		58,915

The following regulations impose no additional burden. Please continue to assign OMB number 1545-1056 to these regulations 1.905-4, 1.905-5.

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

There are no capital/start-up or ongoing operation/maintenance cost associated with this information collection.

14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

There is no estimated annual cost to the federal government.

15. REASONS FOR CHANGE IN BURDEN

This submission updates OMB Control Number 1545-1056 to reflect the issuance of TD 9959 (REG-101657-20), which increases burden hours by 4,915 due to agency discretion.

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 agency believes 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 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 for this collection.

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.