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By Electronic Delivery to TFAO@irs.gov

February 26, 2020

Charles Rettig
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Michael J. Desmond
Chief Counsel
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

RE: Taxpayer First Act: Form 8802, Application
for United States Tax Residency Certification

Dear Mr. Rettig and Mr. Desmond:

The Investment Company Institute¹ recommends changes to improve Form 8802 and the process for issuing Form 6166, Certifications of US Tax Residency (“CoRs”) as part of the Internal Revenue Service’s (IRS) Taxpayer First Act initiative. These improvements will make the IRS more taxpayer-friendly through improved, cost-saving customer service and modernized technology. Further, these changes are critical to the ability of US investors to obtain treaty benefits to which they are entitled. The US Treasury ultimately bears the cost for foreign taxes that cannot be recovered to the extent that US investors claim foreign tax credits. These credits reduce investors’ US tax liability on a dollar-for-dollar basis.

Specifically, the ICI recommends the following:

1. Accelerate the availability of Forms 6166.
2. Permit electronic filing of Forms 8802.
3. Improve communications between filers and the IRS regarding processing delays and rejections.

¹The [Investment Company Institute](#) (ICI) is the leading association representing regulated funds globally, including mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and similar funds offered to investors in jurisdictions worldwide. ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. ICI’s members manage total assets of US\$25.2 trillion in the United States, serving more than 100 million US shareholders, and US\$7.0 trillion in assets in other jurisdictions. ICI carries out its international work through [ICI Global](#), with offices in London, Hong Kong, and Washington, DC.

4. Permit filers to pay for multiple taxpayers (such as RICs) with a single electronic payment.

Background

Many US treaty partners require investors to provide an IRS issued CoR demonstrating that the person claiming treaty benefits is a resident of the United States for federal tax purposes. The IRS requires that taxpayers complete Form 8802, the application for a CoR, and submit it no earlier than December 1 of the prior year for which it seeks certification. The IRS then processes the Form 8802s and issues CoRs beginning January 1 that are valid until December 31 of the relevant year. The typical processing time ranges from 8-12 weeks, resulting in some taxpayers not receiving CoRs until March.²

Receipt of valid Forms 6166 takes longer when the IRS makes clerical errors, such as misspelling a taxpayer's name on the Form, that require correction before treaty relief can be claimed. These errors often arise from the manual processing of Forms 8802. The delays are exacerbated because there is no streamlined method for taxpayers to request a correction or check the status of Form 8802.

The delay in receiving CoRs can cause a permanent loss of treaty benefits for income received prior to the date on which the CoR can be furnished to the withholding agent. This permanent loss arises in those countries that require valid CoRs to be furnished to the withholding agent before the payment date for an income event and do not allow for retroactive treaty relief through tax reclaims.³

Even when a CoR can be provided after an income event, the time period can be very short. In certain markets, for example, interest payments are received on January 15th, and CoRs must be provided to the local custodian by January 31st to apply a reduced treaty rate. This problem is more severe for taxpayers that do not receive a CoR before first-quarter dividends are paid, which typically occurs around March 15.

This cost of lost treaty relief ultimately is borne by the US Treasury to the extent US investors claim foreign tax credits for the foreign tax withheld. For tax-exempt investors, including individuals owning US retirement accounts investing through regulated investment companies (RICs), the cost is borne directly through lower returns.

We believe that the recommendations below will improve significantly the processing of Form 8802/Form 6166 and better enable taxpayers to claim the treaty benefits to which they are entitled.

² We understand that processing times are significantly delayed this year, even more so than last year during the government shut-down. For example, as of February 24, 2020, the IRS was still processing applications submitted on or before December 10, 2019.

³ These countries that permit only at-source treaty relief, either as a legal or practical matter, include Egypt, Indonesia, Italy, Mexico, Philippines, Romania, Russia, Ukraine, and Venezuela.

These improvements are consistent with the aims of the Taxpayer First Act to enhance customer service and the modernization of technology.

Accelerate the Availability of Forms 6166 and Increase the Validity Period.

We have two recommendations for accelerating the availability of Forms 6166 and improving taxpayers' ability to obtain valid CoRs. Specifically, the IRS should:

1. Establish a submission date for Form 8802 that is earlier than December 1 to provide the IRS with additional processing time.

Currently, the IRS does not accept Form 8802s that are postmarked earlier than December 1 of the prior year. An earlier acceptance date would provide the IRS with additional processing time. We suggest that a date in August or September would ensure that CoRs are processed in a timely manner for issuance in the following year as close to January 1 as possible.

2. Issue CoRs throughout the year that are valid for at least 12 months.

A 12-month validity period on a CoR issued on March 31 of Year 1, for example, would enable a taxpayer to claim treaty relief during the first three months of Year 2 while the IRS processes the Form 8802 for the current year. Many, if not most, treaty partner countries accept CoRs issued in the prior calendar year provided they are not more than 12 months old and are valid under the laws of the country that issued the CoR. This recommendation is a simple solution that still would enable the IRS to annually certify that a taxpayer has met all tax filing obligations.

Reduce processing errors that lead to rejections and improve communications between filers and the IRS.

The number of Form 8802 rejections has increased significantly in recent years. Many of these Forms should not have been rejected. Others could have been supplemented to correct errors or omissions. For example, taxpayers have experienced the following:

- A CoR has been issued the same way for several years using the same documents attached to Form 8802. Although nothing has changed, the IRS advises that they are unable to locate the taxpayer's name or Taxpayer Identification Number (TIN) in the database of US taxpayers that file returns or previously obtained CoRs.
- Although a CoR has been issued in previous years, the IRS advises that there is an issue with the taxpayer's name that prevents issuance of a CoR.
- Despite having included required documentation in the initial submission of the Form 8802, the IRS claims the documentation is missing and the taxpayer must resubmit.

1. Permit electronic filing of Forms 8802

Electronic filing of Forms 8802 would address many of these issues, accelerate resolution of others, and in all cases speed the Form 6166 issuance process. Perhaps most importantly, electronic filing would prevent human error, such as incorrectly inputting a taxpayer's name onto a Form 6166, from delaying receipt of a valid Form 6166. Electronic filing also would simplify communication between taxpayers and the IRS.

2. Modify rejection letters to improve issue resolution

We also recommend that rejection letters be modified to include standard reasons for rejections that IRS personnel can select as well as a free format field for IRS personnel to specify a reason for non-standard rejections. Rejection letters often lack this information and thus require a taxpayer to call the IRS to understand the reason for a rejection, which can take many hours. Moreover, rejection letters that do specifically request additional documentation must be sent to a fax number. It then typically takes an additional two weeks to receive an IRS response.

3. Establish a Form 8802 status website

Finally, we recommend that the IRS establish a website where filers can check the status of a Form 8802 application (similar to "Where's My Refund?" for individual income tax filers) and receive information about the reasons for a rejection and status of efforts to resolve issues with a submitted Form 8802. When a taxpayer receives neither a CoR nor a rejection from the IRS, the filer must call the IRS and may have to resubmit a new Form 8802 (which restarts the waiting period for a CoR).

Improve the electronic payment portal.

An electronic payment feature would also improve the Form 8802 process. This is especially true for asset managers that complete Forms 8802 on behalf of the RICs that they manage and for global custodians that do the same on behalf of their clients. We understand that the existing electronic payment option available through www.pay.gov requires a separate payment to be made for each Form 8802 submitted. Because asset managers and global custodians make high volume submissions on behalf of their RICs or clients (often hundreds or thousands at a time), the need to separately log into the electronic payment portal and enter payment information for each individual application makes the use of this portal prohibitively time-consuming, versus the alternative of including checks to accompany multiple paper applications. We recommend that the electronic payment be permitted to be made for and associated with multiple Forms 8802.

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If we can provide you with any additional information regarding these issues, please contact the undersigned at 202-326-5826 or katie.sunderland@ici.org.

Kind regards,

A handwritten signature in cursive script that reads "Katie Sunderland".

Katie Sunderland
Assistant General Counsel – Tax Law

CC: Douglas O'Donnell
Nikole Flax
Deborah Palacheck