

[TEXT OF THE FATCA COMMENT LETTER SUBMITTED BY
THE FLORIDA BAR TAX SECTION]

November 1, 2010

Internal Revenue Service
CC:PA:LPD:PR (NOT-121556-10)
Room 5203
PO Box 7604
Ben Franklin Station
Washington, DC 20044

RE: Comments to *Notice 2010-60*

Dear Sir or Madam:

I am pleased to submit The Florida Bar Tax Section's comments on *Notice 2010-60*. We commend the Treasury and the Internal Revenue Service ("Service") for their attention to the complicated issues posed by *Notice 2010-60*.

Principal responsibility for these comments was exercised by Daniel Bensimon, Daniel Martinez, Steven Hadjiligiou, Abrahm Smith and Shawn Wolf. The comments were reviewed by James Barrett.

Although the members of The Florida Bar Tax Section who participated in preparing these comments may have clients who would be affected by *Notice 2010-60*, no such member has been engaged by a client to make a government submission with respect to, or otherwise to influence the development or outcome of, the specific subject matter of these comments.

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The Florida Bar Tax Section is comprised of approximately 2,000 members. These materials were prepared by the Comment Projects Subcommittee of the Tax Section.

As always, we will be pleased to provide additional commentary as requested. If you have any questions regarding our comments, please do not hesitate to contact us.

Sincerely,

Guy Whitesman, Chair
The Florida Bar
Tallahassee, FL

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The Tax Section has the following comments and recommendations regarding *Notice 2010-60* (New Information Reporting Rules for Foreign Financial Institutions, Entities):

I. We recommend that the Service clarify the definition of Financial Institution by defining the term “substantial portion” and providing a safe harbor for entities that hold financial assets for the account of others either temporarily or in insignificant amounts.

Section 1471(d)(5) defines Financial Institution to include an entity that (A) accepts deposits in the ordinary course of a banking or similar business, (B) as a substantial portion of its business, holds financial assets for the account of others, or (C) is engaged (or holds itself out as being engaged) primarily in the business of investing, reinvesting, or trading in various financial items.

Section 1471(d)(5)(B) is of a particular concern because the term “substantial portion” is not defined in the Code, in the legislative history, or in the *Notice 2010-60*. In the absence of a definition, the withholding agents, the FFIs, and their respective tax advisers are left guessing whether holding small amounts of financial assets for the account of others may push an entity into the FFI status make it subject to costly and time consuming withholding and reporting obligations. For example, a foreign construction company that constructs a residential building in a foreign country may accept pre-payment deposits from its customers and hold such deposits in escrow until the buildings reach a certain level of completion. In the absence of a well-defined safe harbor, such construction company may find itself unsure whether “a substantial portion of its business” is holding financial assets for the account of others. In the absence of a well-defined safe harbor, the U.S. withholding agent seeking to minimize its potential withholding tax liability may chose to withhold even on payments to entities that are not FFIs. The refund provisions of *Section 1474(b)(3)* may make it very difficult for the foreign entity to obtain a refund for taxes withheld by overly cautious U.S. withholding agents.

Relying solely on all relevant facts and circumstances is not a prudent approach in this area. The taxes are withheld by U.S. withholding agents who do not have access to all of the facts and circumstances of the foreign entity. Additionally, because facts and circumstances are open to different interpretations, the U.S. withholding agents seeking to minimize their potential withholding tax liability have a strong incentive to withhold even from non-FFI entities. The severe consequences of erroneous withholding ~ 30% withholding on the gross amount without a possibility of claiming a refund ~ will result in many foreign entities choosing not to invest in U.S. assets or open accounts at participating FFIs.

Recognizing the need for investment safe harbors, Congress provided statutory safe harbors in *Sections 864(b)(2)* (for trading in securities or commodities) and *871(h)* (portfolio interest exemption). We recommend that the Service define the term “substantial portion” and provide a safe harbor. The definition of the term “substantial portion” should separate financial institutions from other non-financial entities that may be (1) temporarily holding some financial assets in the ordinary course of business or (2) customarily hold a small amount of financial assets for the account of others.

The Department of Treasury has carved out safe harbors from the definition of “substantial” in other similar contexts:

1. *Treasury Regulations 1.954-2(b)(4)(iv)* define “substantial” for purposes of exempting from Foreign Personal Holding Company Income dividends and interest from a related corporation with substantial part of its assets used in a trade or business located in the same foreign country. For this purposes, the regulations provide that substantial part of assets “equals more than 50 percent of the average value of all the assets of the payor (including assets not used in a trade or business).”
2. For purposes of *Section 409A*, a change in the ownership of a substantial portion of a corporation’s assets is a “change in control event” that is a permissible payment event under the nonqualified deferred compensation rules of *Section 409A(a)*. For this purpose, a “substantial portion” of the assets is a portion that has a total gross fair market value equal to or more than 40% of the total gross fair market value of all of the corporation’s assets immediately before the acquisition.
3. *Treasury Regulations 1.954-3(a)(4)(iii)* define “substantial” for purposes of determining if a foreign company is a manufacturer of the goods from purchased components or is merely a reseller who slightly modifies the goods being resold. The regulations provide a safe harbor “if in connection with such property conversion costs (direct labor and factory burden) of such corporation account for 20 percent or more of the total cost of goods sold.”
4. The term “substantial” is defined in several U.S. tax treaties. For example, the tax treaty between the United States and Ireland contains a provision

designed to limit the benefits of the treaty to companies whose trade or business in Ireland is substantial in relation to the activity in the United States. Although the treaty provides that substantiality is determined based on all the relevant facts and circumstances, it also provides a safe harbor ~ “trade or business will be deemed substantial if, for the preceding fiscal year, or for the average of the three preceding fiscal years, the asset value, the gross income and the payroll expense that are related to the trade or business in [Ireland] equals at least 7.5 percent of the asset value, the gross income and the payroll expense, respectively, that are related to the activity that generated the income in the [United States], and the average of the three ratios exceeds 10 percent.” See Article 23, Paragraph 3 of the U.S./Ireland Treaty.

We note that for new entities, the PFIC statute exempts entities for the first year. See Code section 1298(b)(2). We recommend that this exemption be adopted.

Accordingly, we recommend that the Service adopt the following safe harbor:

An entity that holds financial assets for the account of others will be deemed not to hold such assets as a substantial portion of its business if for the preceding fiscal year, or for the average of the three preceding fiscal years, the average asset value during the relevant period of its financial assets does not exceed [40% (or such other number as the Service deems appropriate)] percent of the average asset value, of the entity. Entities in their first fiscal year will be deemed not to hold financial assets for the account of others as a substantial portion of their business.

II. Comments on Section II.B.3 of Notice 2010-60. With respect to certain “small FFIs”, and in particular as to the application of the Notice to a trust, the Tax Section submits the following comments:

1. The Section appreciates that the Service recognizes in the Notice that the administrative burdens of being an FFI on “small FFIs” (such as personal trusts) may be excessive in many cases. The Section believes

that certain “small FFIs” should be treated as NFFEs and not be treated as FFIs (and thus should be exempt from the more detailed, complex and burdensome proposed requirements to be treated as a deemed-compliant FFI).

2. In particular, a foreign trust that could be otherwise classified as an FFI should be considered to be an NFFE if it meets the following criteria:

a. It is classified as a trust under Treasury Regulation Section (“Reg. section”) 301.7701-4 and not as a business entity under Reg. 301-7701-2. The Section believes that it is important to clarify this because there may be civil law jurisdiction entities, such as foundations or other financial and custodial arrangements that are not common law trusts but are classified as such for U.S. tax purposes. Furthermore, the Section believes that it is important that the Service clarify the term “business” as used in *section 1471 - 1474*, as a trust that is engaged in “business” may be classified as a business entity.

b. It is beneficially settled and funded by one or more individuals. Although the Notice indicates that a “small FFI” might include a trust settled by “a single person”, the Section believes that it is important that the Service recognize that a trust can have more than one settlor, and in many situations it may be required in order to minimize certain complexities in planning where community property or possibly other non-U.S. based laws apply.

c. It has, as beneficiaries, only individuals or excepted NFEs. Although the Notice indicates that a “small FFI” might include a trust established for an individual’s “children”, the Section does not believe that limiting the beneficiaries to family members or to a specific number of beneficiaries should be relevant to this determination.

3. Finally, the Section believes that the additional filing requirements associated with a trust having FFI status are duplicative and burdensome in light

of the existing statutory filing requirements applicable to foreign trusts with U.S. person tax owners and/or U.S. beneficiaries (e.g., Forms 3520 and 3520-A, Forms W-8 BEN and W-IMY, the new “foreign financial asset” reporting under *section 6038D*, etc.).

III. Collection of Information and Identification of Persons by Financial Institutions under *Section 1471* and *1472*.

Section 1471 generally requires FFIs to enter into FFI Agreements to avoid withholding under *section 1471(a)*. An FFI Agreement provides that the participating FFI agrees, among other requirements, to: (i) obtain such information regarding each holder of each account maintained by the FFI as is necessary to determine which (if any) of such accounts are U.S. accounts; (ii) comply with due diligence procedures the Secretary may require with respect to the identification of U.S. accounts; and (iii) report certain information with respect to U.S. accounts maintained by the FFI.

Section III of *Notice 2010-60* outlines the requirements for accounts that pre-existed a participating FFI's entry into its FFI Agreement and for new accounts entered after the entry of the FFI Agreement. Further, the requirements vary depending on whether the account holder is an individual or an entity.

1. III.B.2.a. Pre-existing Individual Accounts (attached as Exhibit A are the requirements of a Participating FFI for pre-existing Individual Accounts)

- III.B.2.a.4). - This section provides that if an individual account holder that is not already documented as a US resident or citizen was born in the United States or has an address in the United States listed with the Participating FFI as a residence address or correspondence address, that individual would be required to provide a Form W-8BEN plus additional evidence to prove that the individual is not a U.S. person. The requirement to provide additional information is unduly burdensome on a Participating FFI. The Form W-8BEN is a form that is filed by an individual under penalties of perjury. Thus, the Participating FFI should be allowed to solely rely on a W-8BEN, unless it has reason to know otherwise.

2. III.B.2.b. New Individual Accounts (attached as Exhibit B are the requirements of a Participating FFI for New Individual Accounts)

- III.B.2.b. - this section is largely duplicative of the previous section III.B.2.a. The Service should

streamline the two sections to reduce the administrative burdens on Participating FFIs.

3. III.B.3.a Pre-existing Entity Account (attached as Exhibit C are the requirements of a participating FFI for pre-existing Entity Accounts)

- This section (III.B.3) is stated to apply to all accounts held by “persons” other than individuals. The regulations should clarify what is meant by persons. For example, a partnership is not listed as a “person” in the WG&L Tax Dictionary. Furthermore, the Service should consider how a grantor trust is treated for these purposes. We think that in the case of a grantor trust, the trust should be treated under the same regime as an individual (i.e. under III.B.2.).
- III.B.3.a.1: ~ This section requests guidance on presumptions to prove whether a US Person is or is not a specified US Person.

According to *Section 1473(3)* the term “specified United States person” means any United States person other than

- (A) any corporation the stock of which is regularly traded on an established securities market,
- (B) any corporation which is a member of the same expanded affiliated group (as defined in section 1471(e)(2) without regard to the last sentence thereof) as a corporation the stock of which is regularly traded on an established securities market,
- (C) any organization exempt from taxation under section 501(a) or an individual retirement plan,
- (D) the United States or any wholly owned agency or instrumentality thereof,
- (E) any State, the District of Columbia, any possession of the United States, any political subdivision of any of the foregoing, or any wholly owned agency or instrumentality of any one or more of the foregoing,
- (F) any bank (as defined in *section 581*),

(G) any real estate investment trust (as defined in *section 856*),

(H) any regulated investment company (as defined in *section 851*),

(I) any common trust fund (as defined in *section 584(a)*), and

(J) any trust which ~

(i) is exempt from tax under *section 664(c)*, or

(ii) is described in *section 4947(a)(1)*.

We submit that the following documents provide reliable indicia to establish that a US person is not a “Specified US Person”:

- Listed as a tax-exempt organization in Service publications
- Copies of tax or information returns filed with the Service, that establish that entity is:
 - a charitable remainder trust,
 - a tax-exempt 501(a) or individual retirement plan,
 - a *Section 581* Bank,
 - a REIT,
 - a RIC,
 - a *Section 584* common trust fund, or
 - a 4947(a)(1) charitable trust.
- a statement by a publicly traded corporation’s officer stating the stock exchange that it is publicly traded on.
- III.B.3.a.3.b & .c -these sections apply when the

Participating FFI has already presumed that the entity is foreign and the Participating FFI has indicia that indicates the entity is an FFI. These sections mandate that the Participating FFI first make a request for the FFI EIN and certification of its Participating FFI status. If documents are so provided, the Participating FFI must confirm this information with the Service. This extra confirmation with the Service is unduly burdensome on the Participating FFI as it would have already received the FFI EIN number and additional certification of its Participating FFI status.

Furthermore, under III.B.3.a.3).(c), the Participating FFI is to wait for the entity to provide the FFI EIN and additional certification documentation under the requirements of III.B.3.a.3).(b). If the information is not provided by the entity within 9 months of the entry of the FFI Agreement, then the Participating FFI is required to make a second request of the entity to provide information to determine whether the entity is a participating FFI, a deemed-compliant FFI, a non-participating FFI, an entity described in section 1471(f), or an NFFE. This extra step is unnecessary. All information should be requested at the same time. Thus, III.B.3.a.3(b)&(c) should be consolidated so that the Participating FFI only need make one request for the entity to provide a copy of its FFI EIN and certification of participation or otherwise provide documentary evidence that it is a deemed-compliant FFI, a non-participating FFI, an entity described in *section 1471(f)*, or an NFFE.

- III.B.3.a.4).a. This section applies when an entity account holder is presumed to be foreign and evidence indicates that the entity conducts an active trade or business. When both criteria are met, the entity is treated as an excepted Non-financial foreign entity. The section does not elaborate whether the active business of subsidiaries is attributed to the foreign entity. It is quite common for multi-national enterprises to operate through multiple related entities. Such a corporate structure is not one that presents significant danger of taking part in tax evasion. Thus, the activities of subsidiaries should be imputed to a direct or

indirect parent in determining whether the entity conducts an active trade or business.

- III.B.3.a.4).c. This section provides that a Participating FFI is to obtain documentary evidence to establish that the entity is an “excepted NFFE,” or must (i) specifically identify each individual and each other specified U.S. person that has an interest in such entity directly or indirectly, other than through ownership in an excepted NFFE, a participating FFI, a deemed-compliant FFI, or an entity described in *Section 1471(f)*, and (ii) if a specified US person is identified in (i), the participating FFI is to treat the account as a US Account and obtain with respect to each such person the documentation that the participating FFI would be required to obtain from such person if such person were a new account holder and report any such specified US person to the Service.

The underlined phrase indicates that if a specified US person owns any interest in a foreign entity account holder, the account should be treated as a US Account. According to *Section 1471(d)(1)(A)* U.S. accounts are financial accounts which are held by one or more specified U.S. persons or U.S.-owned foreign entities. A U.S.-owned foreign entity is any foreign entity which has one or more substantial U.S. owners. *Section 1471(d)(3)*. A substantial U.S. owner is generally defined in *section 1473(2)* to include a specified U.S. person whose ownership interests in an entity exceed certain thresholds. This section violates 1471(d)(3) and 1473(2) by treating the entity as a US person regardless of the threshold of ownership of a “specified US Person.” Thus this section should be amended so that that entity account is treated as a US Account only if the 1473(2) ownership thresholds are met.

IV. Comments on Section IV of *Notice 2010-60*: Reporting on U.S. Accounts

IRC section 1471(c)(1)(C) provides that a participating FFI must provide the Service with “the account balance or value (determined *at such time and in such manner as the Secretary may provide*).” Section IV of *Notice 2010-60* provides that the “Treasury and IRS are considering requiring reporting of the highest of the month-end balances during the year . . .” The Tax Section believes that annual reporting of quarter end balances should suffice.

With respect to the FBAR, U.S. investors are required to report the highest value of an account during the calendar year, and the highest value is the value that appears on any quarterly or more frequent account statement issued for the applicable year. Such an imposition on participating FFIs would create a matching filing requirement that would allow the IRS the ability to readily cross-check the FBAR.

It should be noted that the Service has additional backup mechanisms for the provision of such accounts, such as:

1. *Section 1471* now requires FFIs to report such accounts;
2. U.S. taxpayers are required to include an attachment to their tax return, if the foreign account is over \$ 50,000 (under *IRC section 1471(d)*);
3. Forms 5471, 8621
4. The ability of the U.S. to extract information through tax information exchange agreements;
5. The FFI's know-your-customer and anti-money laundering rules.

These mechanisms should provide a sufficient backup mechanism to the FBAR and annual Participating FFI reporting requirement. As such, the Tax Section believes that the I.R.S. does not need the FFI to provide the highest monthly balance each year.

If for some reason the Service becomes suspicious of an account's activities, then Section IV of *Notice 2010-60* states that "the FFI will be required to provide additional account-related information (e.g., copies of account statements including monthly or quarterly balances and daily receipts and withdrawals) to the Service upon request." We are advised by banks that their reporting obligations will be materially increased if they are required to comply with the monthly reporting requirements. Such an increase may reduce the number of foreign banks who are willing to service U.S. persons and are willing to invest (or assist in the investment) in U.S. securities.

1471(c)(1)(C) Institutions

Notice 2010-60 states that U.S. accounts held at FFIs described in *section 1471(c)(1)(C)* already have monthly or quarterly statements produced internally. However, even though FFIs have such taxpayer information internally (i.e., for annual or quarterly reporting) transmitting such information to the Service will be cumbersome. We understand that the current program will require some banks to generate hundreds of thousands of such statements. The paperwork would be too time consuming and might lead such FFIs to the conclusion that it is not financially worth it to do business with U.S. customers. As noted above, a simple, yet effective, way to monitor U.S. accounts in FFIs, is for FFIs to provide the I.R.S. with year-end (i.e., 12/31) balances coupled with U.S. taxpayers listing the highest amount in their foreign account on their FBAR form.

IRC Section 1471(c)(1)(D)

Furthermore, *IRC section 1471(c)(1)(D)*, requiring non-electing (see below) participating FFIs to report the gross receipts and gross withdrawals of their U.S. accounts, should only be applied if the Service has a suspicion related to a U.S. account in a FFI (i.e., an audit). Such a suspicion can arise if the FFI provides information on the ultimate beneficial owner of the account and such ultimate beneficial owner does not report the account on his FBAR and/or Form 1040, Schedule B, or through any of the five (5) mechanisms listed above. At that point, the Service can further investigate, and the FFI is on notice that the Service will be requesting a log of the gross receipts and gross withdrawals of the U.S. account (whether individual or entity).

Section 1471(c)(2) Elections

Section 1471(c)(2) allows an FFI to elect to be treated as a U.S. entity, and in the process, exempts the FFI from reporting the account balance or value or the gross receipts and gross withdrawals of the U.S. account. Instead of forcing an FFI to make the election for a block of its accounts (e.g., all of its U.S. individual accounts or all of its entity accounts), it is our suggestion that the participating FFI should be able to make this election on a case-by-case basis, as it can best determine if the U.S. account warrants more detailed information being given over to the Service. This case-by-case election privilege should be placed with the FFI, because the participating FFI has the incentive to cooperate so that it does not jeopardize its ability to competitively deal with U.S. clients (i.e., the Service labeling it as a non-participating FFI and this subjecting all payments to it to be subject to a 30% withholding).

In a situation where the Service feels that it wants to know the gross receipts and gross withdrawals of such U.S. account and the FFI already elected (or wishes to elect) to be treated as a U.S. entity for such account, then two solutions exist:

1. The Service could reject the FFI's election upfront;
or
2. If the FFI already elected to be treated as a U.S. entity and subsequently the Service wants to know the gross receipts and gross withdrawals of such U.S. account, then the I.R.S. request will trump the FFI's election.

This proposed solution will eliminate the need for the FFI to produce the gross receipts and gross withdrawals for all its U.S. accounts or for a block of its U.S. accounts (whether entity accounts or individual accounts) as *Notice 2010-60* suggested. Furthermore, the election, once made, should be revocable, as this will allow the electing FFI to adjust to the nature of the account.

For example, when an individual U.S. account at a FFI is opened, the FFI might initially label it as non-threatening to U.S. tax evasion or other criminal related activities, and initially elect to be

treated, with respect to this account, as a U.S. entity. However, at a later time, this account's activities might raise some red flags and the bank might want to protect itself (from the Service revoking its "participating FFI" label) by revoking its election and keeping a better record of this account's gross receipts and gross withdrawals if or when the Service requests them. This will provide participating electing FFIs flexibility to deal with changes (from mundane to threatening) on an account by account basis, while not inundating FFIs with the paperwork required to report the gross receipts and gross withdrawals on all (or a block of) its U.S. accounts,

V. Disclosure of Information with respect to Foreign Financial Assets

Section 511 of the Act adds a new reporting requirement to the Code for individuals who have an interest in a "specified foreign financial asset". An individual with an interest in a specified foreign financial asset must attach to his or her tax return certain information, if the aggregate value of all such assets exceeds \$ 50,000 (or such higher dollar amount as the Secretary may prescribe). We have a number of comments with respect to this new reporting requirement, including the following:

A. Citizens or Residents of the United States

As currently drafted, the new reporting requirement applies to any individual, including nonresident aliens. We recommend limiting the applicability of the new reporting requirement to individuals who are citizens or residents of the United States.

B. Definition of "Specified Foreign Financial Asset"

The Act requires individuals to report any interest they have in a specified foreign financial asset. The Act defines specified foreign financial asset to mean:

- (1) any financial account maintained by a foreign financial institution; and
- (2) any of the following assets which are not held in an account maintained by a financial institution:
 - (a) any stock or security issued by a person other than a U.S. person;
 - (b) any financial instrument or contract held for investment that has an issuer or counterparty which is other than a U.S. person; and
 - (c) any interest in a foreign entity.

The term "specified foreign financial asset" includes stock or other interest in foreign companies, regardless of the underlying assets of such companies. This broad language will require individuals to

report interests in companies with any type of assets, provided that the threshold amount (i.e., \$ 50,000) is exceeded. For example, if a company owns a home, artwork, an operating business, or any other type of asset, the individual would be required to report his or her interest in the company. We recommend limiting this definition by limiting the reporting to companies that own “financial accounts” (as defined in *Section 1471(d)(2)*). This will ease the administrative burdens on the Service and individuals.

To avoid questions of valuation, we recommend that the \$ 50,000 threshold apply to the value of the “financial accounts” held by the companies and not to the value of the companies themselves. For example, if an individual owns a minority interest in a foreign company that owns a financial account worth \$ 50,000, the individual’s interest in the company could be valued at less than \$ 50,000 because of the minority interest. However, it is clear that the value of the financial account is greater than \$ 50,000. Thus, if the reporting requirement looks through to the underlying financial assets of the company, questions regarding value should be greatly simplified for both the Service and individuals.

A “specified foreign financial asset” also includes any financial instrument or contract held for investment that has an issuer or counterparty which is other than a U.S. person. We recommend that the Service provide examples of such instruments or contracts.

With respect to foreign companies that are treated as disregarded entities for purposes of U.S. federal income tax, we recommend that the Service specifically set forth in the Treasury Regulations that disregarded entities will be disregarded for purposes of the new reporting requirement.

C. Any Interest

The new reporting requirement applies to “any interest” in a specified foreign financial asset. As with Form TD F 90-22.1 (“FBAR”), we recommend limiting the new reporting requirement to any “financial interest” in a specified foreign financial asset, as such term is used in the FBAR. As currently drafted, an individual will report “any interest” in a specified foreign financial asset, including interests such as ownership, voting, creditor and nominee interests.

D. Value

The new reporting requirement requires an individual to report the maximum value of the asset during the taxable year. We recommend providing guidance with respect to valuation. For example, is value to be determined at fair market value or book value? Can book value be used? Is value calculated at the shareholder level or the company level? In short, there are many questions regarding valuation. As noted above, for this reason we recommend that the Service implement a look through rule to look through the company to the underlying financial accounts of the company. If an individual looks through to the financial accounts of the company, valuation becomes more manageable. Individuals will report only those companies where the financial accounts of companies exceed the threshold amount.

E. \$ 50,000 Threshold Amount

The new reporting requirement applies to specified foreign financial assets with an aggregate value exceeding \$ 50,000 or such higher dollar amount as the Secretary may prescribe. The FBAR reporting threshold is currently \$ 10,000. Because the heart of the new reporting requirement is to report foreign financial accounts, which is similar to the FBAR reporting requirement, the threshold amounts should be the same.

A \$ 50,000 threshold amount is very low. We recommend the Service raise the threshold amount to a much higher level to ease the administrative burden on the Secretary and individuals. From experience, foreign investment accounts tend to have balances much greater than \$ 500,000. Generally, individuals with foreign account balances less than \$ 500,000 have foreign accounts for convenience rather than investments (e.g., non-interest bearing checking accounts used for convenience while living or traveling abroad). Because the reporting requirement applies to the aggregate value of all accounts, the Service can take comfort in knowing that individuals cannot circumvent the threshold amount by establishing a number of smaller accounts.

F. FBAR

The new reporting requirement seems to be similar to the reporting requirement of the FBAR. In order to avoid duplicative disclosures, we recommend combining the FBAR with the new requirement so that taxpayers simply fill out one form. Alternatively, we recommend that the new form mirror as close as possible the FBAR, with the ability to attach the FBAR to avoid duplicative disclosures.

FOOTNOTES:

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See Treas. Regs. section 1.897-2(b)(2).