

TaxNewsFlash

United States

No. 2017-243

June 19, 2017

IRS practice unit: “Substantial compliance” doctrine, international information return penalties

The IRS Large Business and International (LB&I) division today publicly released a “practice unit” that addresses what the term “substantially complete” means with reference to international information return penalties.

The practice unit is part of a series of IRS examiner “job aides” and training materials intended to describe for IRS agents leading practices for specific international and transfer pricing issues and transactions.

It is available on the IRS practice unit [webpage](#) (release date of June 19, 2017).

Substantial compliance doctrine

International information returns must be substantially complete in order for the filer to have met its filing requirement. However, the terms “substantially complete” and “substantially incomplete” are not defined in the Code or regulations.

As noted in the practice unit, if the filer of an information return did not submit a substantially complete return, then penalties under sections 6038, 6038A, and 6046 may apply. The practice unit provides informal guidance for IRS agents examining a U.S. entity with foreign ownership or foreign-owned U.S. businesses, for purposes of determining whether the required international information return is substantially complete so that the filing requirement is met.

The practice unit begins by explaining the substantial compliance doctrine—a judicial concept that applies to certain tax returns, elections, and the substantiation of certain deductions. In some cases, courts require strict compliance with the statutory or regulatory requirements, but in other situations, the courts will accept substantial compliance. While the concept of substantially complete has not been the subject of judicial review, the body of case law concerning the substantial compliance doctrine provides guidance as to how a court may interpret whether an international

information return is substantially complete. This background can be applied to supplement existing informal guidance on substantial completeness or, when the IRS has not provided specific informal guidance, this background can suggest a general approach for the IRS agent to follow.

KPMG observation

Tax professionals have observed that the practice unit released today provides valuable insight into the IRS viewpoint on application of the substantial compliance doctrine, and the meaning of "substantially complete" for purposes of imposing penalties related to international information return obligations and associated filing requirements. In this practice unit, the IRS discusses these terms and instructs agents how to interpret and apply them—specifically with regard to Form 5471 and Form 5472 filing obligations—and notes how these principles might apply to other international information return penalties. The practice unit also provides guidance regarding when a strict compliance requirement is to apply. Taxpayers with international information return obligations might find it helpful to review this practice unit.

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