

TaxNewsFlash

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IRS practice unit: Failure to file Form 5471, penalties for Category 2 and 3 filers

The IRS Large Business and International (LB&I) division today publicly released a “practice unit” that provides guidance concerning certain failures to file Form 5471, “Information Return of U.S. Persons With Respect to Certain Foreign Corporations.” The title of the practice unit released today is:

- Failure to File the Form 5471 – Category 2 and 3 Filers – Monetary Penalty

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](#) (released date of October 10, 2017).

Overview

The practice unit explains that when a U.S. person is required to file a Form 5471 (an international information return) under section 6046(a), it is filed by attaching it to an individual income tax return, a partnership return, a corporation return, an estate return or a trust return. It must be filed by the due date including extensions for that return.

Category 2 and Category 3 filers are defined as a U.S. person who is: (1) a citizen or resident of the United States, (2) a domestic partnership, (3) a domestic corporation or (4) an estate or trust that is not a foreign estate or trust defined in section 7701(a)(31).

Under section 6679(a), any U.S. person required to file an information return under section 6046(a) who fails to file the return at the time provided in such section—or who files a return which does not show the information required pursuant to such section—is subject to a penalty of \$10,000, unless it is shown that the failure is due to reasonable cause.

In addition, a continuation penalty of \$10,000 per Form 5471 may be assessed for every 30-day period (or fraction thereof) beginning 90 days after the U.S. person was notified that a failure exists. The maximum continuation penalty for Form 5471 is \$50,000. These penalties may apply to each required Form 5471 on an annual basis. In certain instances, criminal penalties may also apply for failure to file the information required by section 6046.

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