



# GMS Flash Alert



2022-153 | August 26, 2022

## United States - IRS Provides Penalty Relief for Certain Returns

On August 24, 2022, the U.S. Internal Revenue Service (IRS) announced sweeping penalty relief that applies to taxpayers who failed to timely file certain 2019 and 2020 tax and information returns. The relief, which is provided in Notice 2022-36 (“the Notice”), waives certain failure-to-file penalties for 2019 and 2020 tax returns that are filed on or before September 30, 2022.<sup>1</sup> Furthermore, the Notice also provides relief from certain information return penalties for employers who failed to timely file certain information returns, such as Form W-2, with respect to (1) tax year 2019 returns that were filed on or before August 1, 2020; and (2) tax year 2020 returns that were filed on or before August 1, 2022.<sup>2</sup>

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### WHY THIS MATTERS

The provided relief has significant implications for global mobility programs with tax-equalized assignees. Since tax-equalization programs generally require that their tax-equalized assignees remit any tax refunds to their employer, any refunds received by tax-equalized assignees as a result of the relief should generally be remitted to their employer. As such, global mobility programs with tax-equalized assignees may want to work with their tax service provider to implement processes to not only identify assignees who are eligible for the relief and due a refund, but also calculate and track the amount of refunds owed to the company to help ensure the company recoups the full amount of refunds owed to them, especially with respect to assignees who are no longer on assignment or employed by the company.

Furthermore, as the failure-to-file penalty will not be assessed on 2019 or 2020 Form 1040 series tax returns that are filed on or before September 30, 2022, global mobility programs with tax-equalized assignees who have yet to file their 2019 or 2020 U.S. federal income tax returns and are in a “balance due” position may want to encourage such assignees to do so on or before September 30, 2022, in order to avoid incurring the failure-to-file penalty.

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## More Details

The relief provided by the Notice “is designed to allow the IRS to focus its resources on processing backlogged tax returns and taxpayer correspondence to help return to normal operations for the 2023 filing season.”<sup>3</sup>

The penalty relief provided by the Notice is automatic, as penalties to which relief applies will be automatically abated, refunded, or credited, without any need for taxpayers to request relief. Taxpayers who have already paid eligible penalties will automatically receive refunds or credits, and “many of the [refund] payments will be completed by the end of September.” The relief is estimated to result in nearly 1.6 million taxpayers receiving more than \$1.2 billion in refunds or credits.

## Waiver and Abatement of Certain Penalties

The IRS will not impose the below-noted penalties with respect to the specified tax returns for tax years 2019 and 2020 that are filed on or before September 30, 2022.

### Additions to Tax for Failure to File the Following Income Tax Returns

Returns filed in the Form 1040 series including:

- Form 1040, *U.S. Individual Income Tax Return*;
- Form 1040-C, *U.S. Departing Alien Income Tax Return*;
- Form 1040-NR, *U.S. Nonresident Alien Income Tax Return*;
- Form 1040-NR-EZ, *U.S. Income Tax Return for Certain Nonresident Aliens With No Dependents*;
- Form 1040 (PR), *Federal Self-Employment Contribution Statement for Residents of Puerto Rico*;
- Form 1040-SR, *U.S. Tax Return for Seniors*;
- Form 1040-SS, *U.S. Self-Employment Tax Return (Including the Additional Child Tax Credit for Bona Fide Residents of Puerto Rico)*.

In general, if one of the returns listed above is not timely filed, a taxpayer will be subject to the failure-to-file penalty, at a rate of 5 percent per month, up to a maximum of 25 percent of the balance of tax due, subject to an exception for reasonable cause. However, such penalty will not be assessed for the 2019 and 2020 tax returns in the Form 1040 series provided they are filed on or before September 30, 2022.

### Certain Penalties for Failure to Timely File Certain International Information Returns

- Penalties systematically assessed when a Form 5471, *Information Return of U.S. Persons With Respect To Certain Foreign Corporations*, and/or Form 5472, *Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business*, is attached to a late-filed Form 1120 or Form 1065;
- Penalties assessed by the campus assessment program with respect to filings on Form 3520, *Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts*, and on Form 3520-A, *Annual Information Return of Foreign Trust With a U.S. Owner (Under section 6048(b))*;

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## KPMG NOTE

Many assignees are surprised to learn that they are subject to these international information returns and have difficulty timely complying with what can be onerous reporting requirements. The penalty for failure to timely file these returns is quite severe, so this relief provides assignees an opportunity to avoid being assessed late-filing penalties. Taxpayers have until September 30, 2022, to file the abovementioned forms for the 2019 and 2020 tax years without incurring a late-filing penalty. If a taxpayer already paid a late-filing penalty as a result of not timely filing any of the above forms with respect to the 2019 and 2020 tax years, the penalty will be automatically refunded to the taxpayer as long as the forms were filed by September 30, 2022.

While this relief will be welcome news to international assignees, it is noteworthy that the relief does not provide penalty relief for failure to timely file two of the more common international information disclosure forms: Form 8938, *Statement of Specified Foreign Financial Assets*, and FinCEN Form 114, *Report of Foreign Bank and Financial Accounts (FBAR)*.

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### Other Penalty Information

The IRS will also not impose the penalties for failure to timely file any information return (as defined in section 6724(d)(1)) that meets the following criteria:

- 2019 returns that were filed on or before August 1, 2020, with an original due date of January 31, 2020; February 28, 2020 (if filed on paper) or March 31, 2020 (if filed electronically); or March 15, 2020;
- 2020 returns that were filed on or before August 1, 2021, with an original due date of January 31, 2021; February 28, 2021 (if filed on paper) or March 31, 2021 (if filed electronically); or March 15, 2021.<sup>4</sup>

Examples of information returns that may qualify for this relief include Form W-2, *Wage and Tax Statement*, and those in the Form 1099 series.

## Exceptions

The penalty relief described in the Notice:

- does not apply to any penalties that are not specifically listed in the Notice;
- is not available with respect to any return to which the penalty for fraudulent failure to file or the penalty for fraud applies;
- does not apply to any penalties in an accepted offer in compromise;
- does not apply to any penalty settled in a closing agreement or finally determined in a judicial proceeding.

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## KPMG NOTE

Due to the nature of its release, there are open questions regarding – among other things – the exact tax periods to which the general relief applies, and the process(es) for providing the “automatic” penalty abatement relief to taxpayers based on the stage in which a penalty has been imposed upon or may be applicable to a taxpayer. It is expected that the IRS will issue additional guidance to provide some clarity to these and other questions.

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## FOOTNOTES:

1 [IRS Notice 2022-36](#).

2 [IR-2022-155, “COVID tax relief: IRS provides broad-based penalty relief for certain 2019 and 2020 returns due to the pandemic; \\$1.2 billion in penalties being refunded to 1.6 million taxpayers.”](#)

3 Per IR-2022-155: “Because both of these deadlines fell on a weekend, a 2019 return will still be considered timely for purposes of relief provided under the notice if it was filed by Aug. 3, 2020, and a 2020 return will be considered timely for purposes of relief provided under the notice if it was filed by Aug. 2, 2021.”

4 *Id.*

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**The above information is not intended to be "written advice concerning one or more Federal tax matters" subject to the requirements of section 10.37(a)(2) of Treasury Department Circular 230 as the content of this document is issued for general informational purposes only.**

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