

The Impact of Notice 2020-18 on Information Returns

March 30, 2020

In response to the COVID-19 crisis, the Internal Revenue Service (the “Service”) has initiated programs to help taxpayers during these difficult times. On March 20, 2020, the Service published Notice 2020-18, superseding its previously-issued Notice 2020-17. Notice 2020-18 provides taxpayers with information on newly extended filing and payment deadlines. Further, on March 24, 2020, the Service published FAQs related to the relief provided in Notice 2020-18.

Notice 2020-18 postpones federal income tax payments and federal income tax returns due April 15, 2020, to July 15, 2020. However, neither the Notice nor the FAQs mention a postponement of information return deadlines. By excluding information returns from the automatic extensions granted under Notice 2020-18, the Service has created unnecessary confusion with respect to certain information returns that are filed contemporaneously with income tax returns. This is especially significant for Form 3520, Annual Return to Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts. **Because of the current negative environment with respect to information return penalties, we recommend that taxpayers obligated to file information return(s) file an extension on or before April 15, 2020.**

Below is an overview of the Service’s COVID-19 guidance, along with details specific to information returns.

Notice 2020-18

- All federal income tax payments and returns for the 2019 year that would have been due on April 15, 2020 will be automatically extended to July 15, 2020.
- Estimated tax payments for the 2020 tax year, including payments for tax on self-employment income, that otherwise would have been due on April 15 are extended to July 15, 2020.
- There is no limitation on the dollar amount of postponed tax payments extended through July 15, 2020.
- For taxes postponed by Notice 2018-18, the period from April 15, 2020 through July 15, 2020 will be disregarded for purposes of calculating interest, penalties, or additions to tax for failure to file income tax returns or to pay income taxes.
- The extension applies only to federal income tax returns and payments due on April 15, 2020. The extension does not apply to other tax types or to returns with other due dates. Please note that on March 27, 2020, the Service published Notice 2020-20, extending to July 15, 2020 the filing deadline for Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return, along with any associated gift of generation-skipping transfer tax payments.

FAQs

- The extension outlined in Notice 2020-18 applies only to the following tax forms, which otherwise would have been due on or before April 15, 2020:
 - Form 1040, 1040-SR, 1040-NR, 1040-NR-EZ, 1040-PR, 1040-SS;
 - Form 1041, 1041-N, 1041-QFT;
 - Form 1120, 1120-C, 1120-F, 1120-FSC, 1120-H, 1120-L, 1120-ND, 1120-PC, 1120-POL, 1120-REIT, 1120-RIC, 1120-SF;
 - Form 8960;
 - Form 8991; and
 - Form 990-T (but only if the form was due to be filed on April 15, 2020 and not May 15, 2020).
- The extension does not apply to any returns that were due on March 16, 2020, including Form 1065, Form 1065-B, Form 1066, and Form 1120-S for calendar year taxpayers.
- The extension does not alleviate past non-compliance for the failure to make estimated tax payments for the 2019 tax year. However, first quarter estimated tax payments for 2020 are extended until July 15, 2020.
- Notice 2020-18 does not extend the deadline for filing a claim for refund.
- Notice 2020-18 does not extend the deadline for filing information returns.

Information Returns

The FAQs make clear that the extension does not apply to information returns. FAQ 10 states that the relief provided in the Notice does not apply to the filing of information returns.

Yet the instructions to Form 3520 provide that while the Form must generally be filed contemporaneously with the income tax return, “[i]f a U.S. person is granted an extension of time to file an income tax return, the due date for filing Form 3520 is the 15th day of the 10th month (October 15) following the end of the U.S. person’s tax year.”

The language of Notice 2020-18, together with the instructions to Form 3520, create significant ambiguity because, while the FAQs explicitly exclude information returns from the July 15 extension, the instructions to the Form couple the extension to file the Form to the income tax return filing extension, without requiring a separate filing. Although additional guidance may be forthcoming, at this juncture, in light of the ambiguity, it is prudent to either file the Form or file an income tax extension on or before April 15, 2020, to avoid potential penalties. By

requesting an extension to file the income tax return to October 15, 2020, a taxpayer would automatically trigger an extension for filing a Form 3520 to that same date.

Notably, this advice does not extend to the filing of Form 3520-A, Annual Information Return of Foreign Trust With a U.S. Owner (or the extension request), as that filing was due on March 15, 2020. If the foreign trustees did not file the Form 3520-A by the due date, and the U.S. owner intends to file a substitute Form 3520-A with his or her return to avoid the penalties, he or she should file an extension as well.

[Caplin & Drysdale's Tax Controversy Group](#) has decades of experience representing individuals and businesses before the Internal Revenue Service and helping taxpayers obtain needed relief and positive resolutions to their tax issues. Our attorneys will continue to monitor federal and state policies intended to help taxpayers during the COVID-19 crisis.

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