

#40 ALLOW A PERIOD OF NOTICE AND COMMENT ON NEW INTERGOVERNMENTAL AGREEMENTS AND REQUIRE THAT THE IRS NOTIFY TAXPAYERS BEFORE THEIR DATA IS TRANSFERRED TO A FOREIGN JURISDICTION

Present Law

Present law does not require a period for notice and comment before the U.S. government enters into new intergovernmental agreements (IGAs) and does not provide for the notification of taxpayers before their data is transferred to foreign jurisdictions.

Reasons for Change

The Foreign Account Tax Compliance Act generally requires foreign financial institutions (FFIs) to provide the U.S. with information regarding foreign accounts held by U.S. taxpayers. Typically, this information exchange occurs via IGAs, under which FFIs furnish the information to their local tax authority, which in turn transfers it to the U.S. These IGAs also generally incorporate reciprocity, pursuant to which the U.S. agrees to provide the foreign jurisdiction with information regarding accounts maintained in the U.S. regarding its citizens.

We are concerned that the IRS cannot ensure the data on U.S. taxpayers transferred by FFIs is used properly by IGA partners. We are also concerned that the data transfers to foreign recipients do not conform to cybersecurity standards established by the National Institute of Standards and Technology.

The IRS has identified the risks inherent in its data transfers to IGA partners, but has determined that these risks are acceptable. The data being disclosed and potentially breached, however, relate to taxpayers, not to the IRS. Taxpayers, rather than the IRS, are exposed to the consequences of data theft or misuse potentially arising during or after information transfers to foreign partners pursuant to IGAs. These taxpayers could, among other things, be the victims of identity theft or the targets of persecution within foreign jurisdictions, with outcomes ranging from substantial inconvenience to serious economic damage to harassment, and even physical danger. Currently, taxpayers have no voice in these IGAs and receive no specific notification that their personal information is being transferred outside of U.S. jurisdiction. If informed that IGA negotiations or data transfers were pending, taxpayers would have an opportunity to provide the U.S. government with potentially important information to minimize risks to their property and physical safety.

Recommendation

Amend IRC § 1474 to add a new subsection (g)(1) to require the public announcement of IGAs for notice and comment by taxpayers; a new subsection (g)(2) to require that, as part of this announcement, the IRS specify the extent to which the proposed IGA partner jurisdiction complies with the cybersecurity standards to which U.S. federal agencies are held and the taxpayer privacy standards that govern the IRS; and a new subsection (g)(3) to require that, barring unique and compelling circumstances, taxpayers be informed prior to the transfer of their individual information pursuant to the terms of an IGA.