

**SUPPORTING STATEMENT**  
**Internal Revenue Service (IRS)**  
**Form 8858 and Form 8858 Sch M**  
**(Information Return of U.S. Persons With Respect To Foreign Disregarded Entities; and**  
**Transactions Between Foreign Disregarded Entity of a Foreign Tax Owner and the Filer)**  
**OMB Number 1545-1910**

**10208. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION**

Form 8858 is used by certain U.S. persons that own a foreign disregarded entity (FDE) directly or, in certain circumstances, indirectly or constructively.

A U.S. person (user of the form) is:

- \* A citizen or resident alien of the United States (see Pub. 519, U.S. Tax Guide for Aliens, for guidance on determining resident alien status),
- \* A domestic partnership,
- \* A domestic corporation,
- \* Any estate (other than a foreign estate, within the meaning of section 7701(a)(31)(A)), and
- \* Any domestic trust (a domestic trust is any trust if: a court within the United States is able to exercise primary supervision over the administration of the trust and one or more U.S. persons have the authority to control all substantial decisions of the trust).

The Form and schedules are used to satisfy the reporting requirements of sections 6011, 6012, 6031, and 6038, and related regulations.

These forms also now implement the relevant provisions of PL 115-97 (Schedule M (Form 8858)). Section 14302 of PL 115-97 (IRC 904(d)(1)(B)--FTC category for foreign branch income) requires additional reporting by a foreign branch (FB) owned by a U.S. person.

**10209. USE OF DATA**

The IRS uses the information to verify that the reporting requirements of sections 6011, 6012, 6031, and 6038, and related regulations have been followed as prescribed.

**10210. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN**

The IRS is currently offering electronic filing on Form 8858 and Form 8858 Sch M.

**10211. EFFORTS TO IDENTIFY DUPLICATION**

The information obtained through this collection is unique and is not already available or use or adaption from another source.

**10212. METHODS TO MINIMIZE BURDEN ON SMALL BUSINESSES OR OTHER SMALL ENTITIES**

There is no burden on small businesses or other small entities due to the inapplicability of the

authorizing statute to this type of entity.

6. **CONSEQUENCES OF LESS FREQUENT COLLECTION ON FEDERAL PROGRAMS OR POLICY ACTIVITIES**

The information required is needed to verify compliance with Sections 6011, 6012, 6031, and 6038, of the Internal Revenue Code of the Treasury Regulations. A less frequent collection of taxes and tax information could adversely affect the government's effectiveness and would reduce the oversight of the public in ensuring compliance with Internal Revenue Code and hinder the IRS from meeting its mission.

7. **SPECIAL CIRCUMSTANCES REQUIRING DATA COLLECTION TO BE INCONSISTENT WITH GUIDELINES IN 5 CFR 1320.5(d)(2)**

There are no special circumstances requiring data collection to be inconsistent with Guidelines in 5 CFR 1320.5(d)(2).

8. **CONSULTATION WITH INDIVIDUALS OUTSIDE OF THE AGENCY ON AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, CLARITY OF INSTRUCTIONS AND FORMS, AND DATA ELEMENTS**

In response to the Federal Register notice dated June 12, 2018 (83 FR 27376), we received no comments during the comment period regarding these regulations.

9. **EXPLANATION OF DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS**

No payment or gift has been provided to any respondents.

10. **ASSURANCE OF CONFIDENTIALITY OF RESPONSES**

Generally, tax returns and tax return information are confidential as required by 26 USC 6103.

11. **JUSTIFICATION OF SENSITIVE QUESTIONS**

A privacy impact assessment (PIA) has been conducted for information collected under this request as part of the "Business Master File (BMF)" and a Privacy Act System of Records notice (SORN) has been issued for these systems under IRS 22.062 - Electronic Filing Records; IRS 24.030 - Customer Account Data Engine (CADE) Individual Master File; IRS 24.046 - CADE Business Master File (BMF); IRS 34.037 - IRS Audit Trail and Security Records. The Internal Revenue Service PIAs can be found at

<https://www.irs.gov/uac/Privacy-Impact-Assessments-PIA>

Title 26 USC 6109 requires inclusion of identifying numbers in returns, statements, or other documents for securing proper identification of persons required to make such returns, statements, or documents and is the authority for social security numbers (SSNs) in IRS systems.

This is an attachment to the Federal tax return. The Privacy Act statement associated with this attachment is listed in the Federal tax return instructions.

**12. ESTIMATED BURDEN OF INFORMATION COLLECTION**

| Form            | Description   | # Respondents | # Responses Per Respondent | Total Annual Responses | Hours Per Response | Total Burden |
|-----------------|---|---------------|----------------------------|------------------------|--------------------|--------------|
| Form 8858       | Information Return of U.S. Persons With Respect To Foreign Disregarded Entities                               | 20,000        | 1                          | 20,000                 | 35.99              | 719,800      |
| Form 8858 Sch M | Transaction Between Foreign Disregarded Entity of a Foreign Tax Owner and the Filer on Other Related Entities | 8,000         | 1                          | 8,000                  | 24.75              | 198,000      |
| Totals          |   | 28,000        | 1                          | 28,000                 |                    | 917,800      |

**13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS**

To ensure more accuracy and consistency across its information collections, IRS is currently in the process of revising the methodology it uses to estimate burden and costs. Once this methodology is complete, IRS will update this information collection to reflect a more precise estimate of burden and costs.

**14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT**

The Federal government cost estimate is based on a model that considers the following three cost factors for each information product: aggregate labor costs for development, including annualized start up expenses, operating and maintenance expenses, and distribution of the product that collects the information.

The government computes cost using a multi-step process. First, the government creates a weighted factor for the level of effort to create each information collection product based on variables such as; complexity, number of pages, type of product and frequency of revision. Second, the total costs associated with developing the product such as labor cost, and operating expenses associated with the downstream impact such as support functions, are added together to obtain the aggregated total cost. Then, the aggregated total cost and factor are multiplied together to obtain the aggregated cost per product. Lastly, the aggregated cost per product is added to the cost of shipping and printing each product to IRS offices, National Distribution Center, libraries and other outlets. The result is the Government cost estimate per product.

The government cost estimate for this collection is summarized in the table below.

| <b>Product</b>  | <b>Aggregate Cost per Product (factor applied)</b> | <b>Printing and Distribution</b> | <b>Government Cost Estimate per Product</b> |
|---|--|----------------------------------|---|
| Form 8858   | \$ 11,917  |                                  | \$ 11,917                                   |
| Form 8858 Instructions  | \$ 2,979   |                                  | \$ 2,979                                    |
| Form 8858 Sch M   | \$ 10,924  |                                  | \$ 10,924                                   |
| <b>Grand Total</b>  | <b>\$25,820.00</b>                                 |                                  | <b>\$25,820.00</b>                          |
| Table costs are based on 2016 actuals obtained from IRS Chief Financial Office and Media and Publications |  |                                  |   |
| * New product costs will be included in the next collection update.                                       |  |                                  |   |

#### 15. REASONS FOR CHANGE IN BURDEN

On page 1, we changed the title to include foreign branches as Form 8858 will be used to collect information from foreign branches as required by new sections 91 and 904(d)(1)(B). References to foreign branches are added throughout the Form 8858, and foreign disregarded entities and foreign branches are abbreviated as FDE and FB; (2) Also, on page 1, for purposes of filtering, we added checkboxes to identify whether the FB or FDE is owned by a U.S. person, controlled foreign corporation (CFC), or controlled foreign partnership (CFP), and whether this is the initial or final Form 8858 filed; (3)

On page 2, Schedule C, we added several additional income line items, and one for income tax expense, to correspond to items reflected on Form 1118, as modified, for FTC reporting by FBs pursuant to section 14302 of PL 115-97; (4) Also, on page 2, Schedule C-1, we made changes requested by CC:INTL to clarify reporting of gains and losses on remittances by FDEs and FBs; (5)

On page 3, Schedule G, we deleted old questions 4 and 5a to 5c, and added new questions 6 to 8, and 10 to 13. Questions 6 and 7 were added to address base erosion under sections 59A(d) and 59(c)(2). Question 8 was added to identify whether the FB or FDE was a qualified business unit under IRC 989(a), which will enhance reporting of FB activities and remittances under IRC 987. Questions 10 to 13 are modifications of old questions 4 and 5a to 5c, regarding dual consolidated losses, to provide more transparent and accurate reporting of DCLs incurred by FBs or FDEs of a U.S. owner; (6)

On page 4, we added Schedule I, Transferred Loss Amounts, which will indicate whether section 91 (section 14102 of PL 115-97) applies. Also, Schedule I will indicate whether a domestic corporation transferred foreign branch assets to a foreign corporation, which would invoke section 91, and require the inclusion of the transferred loss amount into income; (7) Also, on page 4, we added Schedule J, Income Taxes Paid or Accrued, which will provide additional information on the foreign taxes paid or accrued by the FB or FDE, converted to U.S. dollars and classified into separate FTC categories, including the new category under section 904(d)(1)(B) (section 14302 of PL 115-97).

The above changes will result in a program change increase of 184,800 hours and a new total burden of 917, 800 hours.

|  | Requested | Program Change Due to New Statute | Program Change Due to Agency Discretion | Change Due to Adjustment in Agency Estimate | Change Due to Potential Violation of the PRA | Previously Approved |
|--|-----------|-----------------------------------|---|---|--|---------------------|
| Annual Number of Responses for this IC | 28,000    | 0                                 | 0                                       |   | 0  | 28,000              |
| Annual IC Time Burden (Hours)          | 917,800   | 184,800                           | 0                                       |   | 0  | 733,000             |

**16. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION**

There are no plans for tabulation, statistical analysis, and publication.

**17. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE**

The IRS believes that displaying the OMB expiration date is inappropriate because it could cause confusion by leading taxpayers to believe that the form sunsets as of the expiration date. Taxpayers are not likely to be aware that the Service intends to request renewal of the OMB approval and obtain a new expiration date before the old one expires.

**18. EXCEPTIONS TO THE CERTIFICATION STATEMENT**

There are no exceptions to the certification statement.

**Note:** The following paragraph applies to all of the collections of information in this submission:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.