

Supporting Statement
Taxation of Gain or Loss from Certain Nonfunctional Currency Transactions
(Section 988 Transactions)
TD 8400
1545-1131

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

Section 988 concerns the taxation of exchange gain or loss on certain foreign currency denominated transactions. Such gains and losses are characterized as ordinary income or loss. However, under section 988(a)(1)(B) taxpayers may elect to characterize exchange gain or loss on certain transactions as capital gain or loss. Section 1.988-3(b) of the regulations provides the procedure for making the election. Under section 988(c)(1)(D)(ii), taxpayers may elect to have regulated futures contracts and certain options (which generally are not subject to section 988) treated as section 988 transactions. Sections 1.988-1(a)(4)(iii) and (iv) provide the procedure for making that election. Under section 988(c)(1)(E)(iii), a commodity fund may elect special treatment under section 988. Section 1.988-1(a)(5)(iv) provides the procedure for making that election. Under section 988(d) taxpayers may receive special treatment if they identify certain transactions. The identification rules are in sections 1.988-5(a)(8), 1.988-5(b)(3), 1.988-5(c)(2) and 1.988-5(d)(2)(i)(A).

2. USE OF DATA

The data obtained by the IRS from the various elections and identifications is used to verify that taxpayers have, in fact, elected special treatment under section 988.

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

Because there are no reporting requirements associated with TD 8400, electronic filing is not possible. IRS publication, regulations, notices and letters are to be electronically enabled on an as practicable basis in accordance with the IRS Reform and Restructuring Act of 1998.

4. EFFORTS TO IDENTIFY DUPLICATION

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

5. METHODS TO MINIMIZE BURDEN ON SMALL BUSINESSES OR OTHER SMALL ENTITIES

The collection of information requirement will not have a significant economic impact on a substantial number of small entities.

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

The data obtained by the IRS from the various elections and identifications is used to verify that taxpayers have, in fact, elected special treatment under section 988. If the information is not collected or collected less frequently, there would be no way to determine taxation of exchange gain or loss on certain foreign currency denominated transactions resulting in possible under or over payments. This would result in additional costs and could negatively impact revenue.

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

We received no comments during the comment period in response to the Federal Register Notice dated December 10, 2018, (83 FR 63558).

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 "Individual Master File (IMF)" system and a Privacy Act System of Records notice (SORN) has been issued for this system under IRS Treas/IRS 24.030 CADE Individual Master File, and Treas/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.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

Section 1.988-3(b) generally provides that a taxpayer may elect to treat gain or loss on a section 988 transaction as capital gain or loss by identifying the transaction on its books and records on the day it was entered into and verifying the election in a statement attached to the taxpayer’s return. Sections 1.988-1(a)(4)(iii) and (iv) and 1.988-1(a)(5) (iv) provide that a taxpayer makes the relevant election by mailing a statement regarding such election to the Kansas City IRS Service Center. This election is generally a lifetime election. The rules of section 1.988-5T(a), (b), (c) and (d) provide that a taxpayer elects hedging treatment by clearly identifying a hedging transaction on its books and records on the day the transaction is entered into. The total burden for these requirements is estimated to be 3,333 hours. This includes the time needed to make the elections and to comply with the identification rules.

Reporting respondents	5,000	
Time per response		40 minutes

Total burden		3,333
	hours.	

Authority	Description	# of Respondents	# Responses per Respondent	Annual Responses	Hours per Response	Total Burden
§1.988	TD 8400	5000	1	5000	.67	3,333
Totals						

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

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.

15. REASONS FOR CHANGE IN BURDEN

There is no change in the paperwork burden previously approved by OMB. We are making this submission to renew the OMB approval.

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

IRS believes that displaying the OMB expiration date is inappropriate because it could cause confusion by leading taxpayers to believe that the regulation 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. EXCEPTION 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.