

# IRS Hot Topics

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## IRS implements Unique Reference Identification Number requirement

The Internal Revenue Service (IRS) created a webpage on its website entitled, *New Identification Number Implemented for Certain Form Information Returns*, describing a new requirement of Unique Reference Identification Numbers. The webpage states that reporting this reference number is optional for tax years of foreign entities beginning in 2011, but will be mandatory in subsequent tax years.

Beginning with US federal tax returns filed for the 2012 tax year, taxpayers who file a Form 5471 (*Information Return of US Persons With Respect To Certain Foreign Corporations*), a Form 8858 (*Information Return of US Persons With Respect To Foreign Disregarded Entities*), or a Form 8865 (*Return of US Persons With Respect to Certain Foreign Partnerships*) will be required to provide a Unique Reference Identification Number

(URI) or Employer Identification Number (EIN) for all foreign entities reported on these forms. A URI is a taxpayer-selected number that must be alphanumeric (no special characters) and limited in length to 50 characters or less. The IRS will neither require that the taxpayer "apply" for a URI (as with an EIN) nor that the URI be approved by the IRS once selected.

Once the taxpayer selects the URI, it must remain the same for the foreign entity to which it is assigned for subsequent years. The webpage further states that if a URI ceases to be needed for an entity, due to liquidation or other disposition, the URI used for that entity may not be used again.

The webpage does not suggest that where multiple taxpayers each have an independent filing requirement with respect to a single foreign entity, that the URI established by the two



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taxpayers needs be the same. To the contrary, the limited guidance available suggests that each taxpayer will establish its own URI for the foreign entity.

Additionally, the webpage provides that should ownership of the foreign entity change, the URI may need to be "correlated." URIs are to be "correlated" by reporting the new URI followed by the previous URI on the particular reporting form. The webpage provides two examples of when a new URI should be "correlated" with a previous URI for a foreign entity.

- Where there is a merger or acquisition, the first example provides that a taxpayer filing a Form 5471 must "correlate" a new URI assigned to the foreign corporation by the acquirer with the previous URI used by the target.
- Where an entity classification on a Form 8832 is made to become disregarded, the second example provides that the URI previously used on the Form 5471 must be correlated to the new URI used on the Form 8858.

## *Observation*

The first example indicates that URIs for foreign entities are unique to the taxpayer reporting the entity. Thus, if a new taxpayer begins to report the foreign entity, a new URI must be established. The second example suggests the IRS wants the ability to trace a foreign entity when its entity

classification changes. However, the second example overlooks the fact that a foreign entity must have an EIN to file a processable Form 8832 (*Entity Classification Election*). Thus, if a foreign entity changes its entity classification, it presumably would have no reason to establish a new URI but, instead, would report its EIN.

## *Form updates*

The 2011 forms 5471, 8858, and 8865 and their respective instructions have been updated to include a line for reporting of the URI. For the 2011 tax year, a URI may be entered on the form if no EIN is reported; however, filers are permitted to enter both an EIN and a URI for an entity. The instructions state the use of the URI is mandatory for tax years beginning in 2012. Although it is not applicable to the 2011 tax year, the IRS website states that failure to provide the required URI may result in a penalty. While the website does not elaborate on the applicable penalty, it appears likely that any such penalty will be asserted under the existing penalty provisions associated with the Code section that gives rise to the form filing obligation.

## *Additional observations*

It appears that the implementation of URIs is part of the IRS's continued enforcement efforts in the international arena. URIs will allow the IRS to identify more easily a taxpayer's foreign entities and compare the activities, or lack of activities, of those entities from year to year.

The establishment and implementation of URIs could pose varied obstacles for taxpayers who are unprepared. Taxpayers who presently have a numbering system for their foreign entities will want to determine whether their naming system complies with URI requirements. This change could be complicated if a taxpayer's prior numbering system is embedded in other company processes. Because

the URI implementation has not been extensively publicized by the IRS, affected taxpayers will want to determine if action is needed on their part during the optional 2011 year so they are prepared for their 2012 tax returns.

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