TAX EXECUTIVES INSTITUTE – TREASURY DEPARTMENT –
OFFICE OF TAX POLICY
LIAISON MEETING
June 5, 2014
AGENDA

I. Welcome and Introductions

II. 2014 Priorities and Challenges

We invite a discussion of the Office of Tax Policy's (OTP) priorities, as well as the challenges OTP is facing in the current environment of declining budget and staffing resources and increasing workloads.

III. Capitalization Issues

Final regulations on the treatment of expenditures for tangible property include many helpful revisions and clarifications. Among the changes is the addition of an elective $5,000 per item (or per invoice) AFS safe harbor *de minimis* rule in Treas. Reg. § 1.263(a)-1(f), the elimination of the ceiling rule on such expenditures, and the extension of the repair and maintenance safe harbor to buildings under Treas. Reg. § 1.263(a)-3(i). We commend the IRS and Treasury Department for these changes. Contemporaneously with the final capitalization rules, re-proposed regulations on dispositions of tangible depreciable property [REG-110732-15] were issued. TEI invites a discussion of two issues and invites an update on the re-proposed disposition rules.

First, although many taxpayers will be able to avail themselves of the new AFS *de minimis* safe harbor rule to minimize or eliminate examinations of *de minimis* expenditures for tangible property, some taxpayers may have an AFS dollar threshold that exceeds the regulations' cap on the AFS *de minimis* policy. As with the temporary regulations, the preamble to the final regulations notes that the *de minimis* threshold for deductions of expenditures for tangible property is not intended to prevent a taxpayer and examining agents from reaching an agreement that certain items will not be reviewed. Taxpayers must be prepared to show that their AFS policy clearly reflects income. Have there been any discussions between the IRS and Treasury about what taxpayers must show to demonstrate that their policies "clearly reflect income"? Is the issue solely one for taxpayers and IRS examiners to work out administratively or will the Treasury Department actively monitor administration of the $5,000 AFS cap?

Second, some taxpayers have executed closing agreements with the IRS in respect of methods of accounting for capitalization, repairs, dispositions or other items affected by the final tangibles regulations or the re-proposed disposition regulations. Are methods subject to closing agreements also subject to the new rules and the transition guidance for automatic changes in the revenue procedures? In some cases, taxpayers may have "traded" a closing agreement on an accounting method to resolve another significant issue. The binding agreement and issue resolution that taxpayers thought they had achieved may now be mooted.

More generally, what is the status of the re-proposed regulations on dispositions (and any related guidance to implement the rules)? Will there be any significant changes to the re-proposed rules?

IV. Research Expenditures

A. Research Credit—Intragroup Gross Receipts

In December 2013, the IRS and Treasury Department issued proposed rules creating an “exception” to the “single taxpayer” rule of the research credit regulations. Under the proposed rule, U.S. taxpayers would be required to include gross receipts from transactions between U.S. controlled group members and foreign group members where there is a subsequent transaction between a foreign group member and a third party involving the same property or services sold by a U.S. group member and that sale does not give rise to effectively connected gross receipts.

The proposed rules are contrary to the statute[1] and would overturn the result in *Procter & Gamble Co. and Subsidiaries v. United States*, 733 F. Supp. 2d 857 (S.D. Ohio, 2010); No. 1:08-cv-00608-TSB (Jun. 25, 2010), which decided that the plain language of section 41(f) requires the exclusion of sales to foreign affiliates from gross receipts. Specifically, the court said that section 41(f)(1)(A) plainly requires that “in determining the amount of the credit . . . all members of the same controlled group shall be treated as a single taxpayer. . . .” The court also relied on U.S. Treasury Department regulations which provided: “[b]ecause all members of a group under common control are treated as a single taxpayer for purposes of determining the research credit, *transfers between members of the group are generally disregarded*.” (The court cited Treas. Reg. § 1.41-6T(i) (2005); see also Treas. Reg. § 1.41-6(i) (2010)).

Given the plain language of the statute and the court’s interpretation of that statute in *Proctor & Gamble*, it is surprising that the government is proposing a rule that can only limit the availability of the research credit for taxpayers using the traditional method of calculating the research credit. Congress has repeatedly re-enacted the section 41 credit as an incentive to support domestic research and experimentation activities without any change to the single taxpayer rule or to rule excluding foreign corporations’ gross receipts. The proposed rule will undermine that incentive because the inclusion of intra-group sales in the gross receipts factor will directly and significantly impair the research credit claimed by many domestic companies. We believe that by enacting section 41(f)(1)(A) Congress purposefully provided the “single taxpayer” rule to preclude

[1] Section 41(f)(1) states that controlled group members are to be treated as a single taxpayer. Section 41(c)(7) states that a foreign corporation’s gross receipts that are not effectively connected with a U.S. trade or business are not gross receipts for purposes of the research credit. We do not believe there is any ambiguity in the statute — any gap in the statutory scheme — that the Treasury Department or IRS need to fill with the proposed regulatory “exception.”

domestic and foreign sales within the controlled group from reducing the research credit. We invite a discussion of the Treasury Department's view of the proposed rule and especially whether it undermines the incentive effect that Congress intends for the research credit.

B. Section 174 Proposed Regulations

On September 6, 2013, the IRS and Treasury Department issued proposed regulations affecting taxpayers that incur section 174 research and experimental (R&E) expenditures. The proposed regulations primarily address the eligibility of pilot model costs and whether the subsequent sale or business use of the pilot model created to resolve design uncertainties affects the eligibility of the costs for section 174 treatment. In addition, a "shrinking-back" rule similar to Treas. Reg. §1.41-4(b)(2) is added where the research requirements of §1.174-2(a)(1) are met only with respect to a component part and not with respect to the overall product of which the component is a part.

The proposed rules are generally helpful in resolving the treatment of pilot model costs, however, TEI is concerned about the application of the "shrinking back" rule of Prop. Reg. § 1.174-2(a)(5). Prop. Reg. § 1.174(a)(5) states, "[t]he presence of uncertainty concerning the development or improvement of certain components of a product does not necessarily indicate the presence of uncertainty concerning the development or improvement of other components of the product or the product as a whole." While true, the line between components or subcomponents and the product is not always clear. Indeed, the performance of the product or other components can be significantly affected by the redesign or changes to one component. Hence, the language may be cited by IRS examiners using hindsight to challenge expenditures incurred to test whether an improved, refined, or re-designed component can be successfully integrated with other components or sub-systems, or the product as a whole.

In many complex products, such as automobiles and aircraft, taxpayers must expend considerable amounts to validate whether a new subcomponent or component can be successfully integrated with a product to improve the product's design or efficiency.[2] A redesign or improvement of a component often requires extensive testing to eliminate uncertainty with respect to other components or the product as a whole. Hence, the taxpayer's testing of the entire product with the improved or refined component should be considered qualified research expenditures. We believe that the costs of integration testing and validation of components, subcomponents, and materials used in a product are clearly R&E expenditures and the proposed rules should be clarified to include them and minimize controversies.

[2] Example 8 of the proposed rule illustrates the shrinking-back rule, and suggests that only the costs relating to the production of the component (the compressor blade) can be treated as research expenditures whereas the cost of the jet engine (the product) cannot be so treated even though all the expenditures in the example are likely part of a process to discover and eliminate the cause of the compressor blade fatigue. The example assumes the tested component (the compressor blade) can be incorporated into the product (the jet engine) without affecting the overall design of the product itself (which may be the engine or the aircraft as a whole). In many cases, that will not be true because the design, materials used in, utility of, or manufacturing of the component will affect the overall product performance.

We invite a discussion of TEI's proposed clarification of the shrinking-back rule and its effect on qualifying research expenditures.

V. FATCA

A. Notice 2014-33

TEI welcomes the transition period and other relief provided by Notice 2014-33 and commends the IRS and Treasury Department for responding to taxpayer comments regarding the practical problems presented by FATCA compliance. Will any additional formal guidance be forthcoming on what constitutes "good faith efforts" to comply with the chapter 4 regulations and the temporary coordination regulations? Non-financial institutions, in particular, would benefit greatly from additional details on good faith compliance with their FATCA obligations as withholding agents.

B. Asset Test for Defining a "Nonfinancial Group"

Under Treas. Reg. § 1.1471-5T(e)(5)(i)(B)(1), an expanded affiliated group (EAG) will be a nonfinancial group if the EAG satisfies certain passive income and asset tests (among other things). The asset test reads in relevant part that, to be a nonfinancial group, "no more than 25 percent of the value of assets held by the [EAG] (excluding . . . assets resulting from transactions between related members of the expanded affiliated group) are assets that produce or are held for the production of passive income . . ." ("passive assets"). TEI invites a discussion of the following issues with respect to this portion of the test for nonfinancial group status:

1. This portion of the test does not specify how the "value" of the EAG's passives assets should to be measured, for example at fair market or book. It also does not specify the time for measuring asset value. Can taxpayers look to the methods specified in Treas. Reg. § 1.1472-1T(c)(1)(iv) regarding the definition of an Active NFFE? That definition permits value to be "determined based on the fair market value or book value of the assets that is reflected on the NFFE's balance sheet (as determined under either a U.S. or an international financial accounting standard)." The same section provides for measuring "the weighted average percentage of assets (tested quarterly) . . . ." This section of the regulations is cross-referenced by the portion of the nonfinancial group test for the definition of passive income, but it is unclear whether the asset value measurements should be incorporated into that cross reference.

2. To be a passive asset, the asset must "produce" or be "held for the production of" passive income. Passive income includes, among other things, royalties (other than royalties derived in the active conduct of a trade or business), dividends and interest. Treas. Reg. § 1.1472-1(c)(1)(iv)(A).

a. *Application to licensable assets*. It is unclear whether assets capable of producing royalties if licensed should be treated as passive assets under the nonfinancial group passive asset test if they are not, in fact, licensed. If licensed the assets would produce royalties, but because royalties can constitute passive or non-passive income, how should taxpayers apply the "held for the production of passive income" portion of the test? For example, many businesses hold patents but generate income through the sale of goods to customers that include the patented technology, rather than through licensing. Further, such patents (and other unlicensed intellectual property) may easily constitute 25 percent of a company's assets. How should taxpayers treat such assets under the nonfinancial group passive asset test? If the intellectual property is both passively licensed to third parties and incorporated into products sold to customers, is the underlying asset passive, active, or perhaps both? If both, how should the taxpayer divide the asset's value between the two categories for purposes of the test (if at all)?

b. *Application to accounts receivable from the provision of credit to customers*. Many companies provide credit to customers to use to purchase the company's products. Thus, such interest bearing receivables are passive assets for purposes of the nonfinancial group test. Depending on the amount of a business' products sold on credit, the interest bearing accounts receivable could exceed 25 percent of the business' assets (especially when combined with cash and working capital). Is this result intended? Should interest bearing receivables that arise from the sale of products to customers be excluded from the definition of a passive asset? The underlying rationale is similar to that for the exception to the definition of a withholdable payment under Treas. Reg. § 1.1473-1(a)(4)(iii) for "interest on outstanding accounts payable arising from the acquisition of goods or services . . . ."

c. *Application to stock*. The nonfinancial group asset test excludes "assets resulting from transactions between related members of the expanded affiliated group." This exclusion does not appear to apply to stock acquired from an unrelated party, and thus the passive or non-passive character of the stock must be assessed. Stock produces or is held for the production of dividends and therefore is generally a passive asset. Such stock might not be a passive asset because the nonfinancial group test excludes "income derived from transactions between members of the expanded affiliated group" for purposes of the two income tests. Treas. Reg. § 1.1471-5T(e)(5)(i)(B)(1). That exclusion, however, is not specifically applicable to the asset test, which simply refers to passive income without the exclusion for income from a member of the expanded affiliated group. Alternatively, to the extent the dividends are received from a related person (as defined) and properly allocable (under a method that is not specified) to income of the related person that is not passive, the dividends will not be considered passive income and, therefore, the stock would not be a passive asset. Treas. Reg. § 1.1472-1(c)(1)(iv)(B). How does this apply when determining the passive or active nature of the stock itself as an asset that produces or is held for the production of passive income? For example, suppose the related person earns 50 of active income and 50 of passive income and pays a dividend of 100. It seems the dividend should produce 50 each of passive and active income. Is the stock itself therefore a 50-percent passive asset and 50-percent active asset? This seems intuitively correct, but this is also a simple case and things quickly become more complicated. What if no dividends are paid? How would a dividend be allocated to income earned across multiple years? Perhaps a better approach would be to exclude stock in a related person (or a member of the EAG) from the 25percent passive asset test altogether. This could be accomplished by, *e.g.*, including in the parenthetical in the test the phrase "excluding . . . stock in a related person as defined in section 954(d)(3)." This would also avoid double counting assets in an EAG with a tiered structure (*e.g.*, suppose Parent owns 100 percent of the stock of Subsidiary, worth $100, which owns $100 in assets – is the value of the assets of the Parent-Subsidiary EAG $200 or $100?).

3. In general, the nonfinancial group exception is prone to "foot faults." The belated discovery of a single FFI in the group that is not FATCA compliant (either as a participating FFI, a deemed compliant FFI, or excepted under an IGA) will cause the entire group to fail the test. This could lead to disastrous and likely unintended consequences, particularly when the required withholding on gross proceeds becomes effective (*e.g.*, repayment of a debt to a foreign affiliate may be subject to 30 percent withholding). This makes it critical to provide a window for a formerly nonfinancial group to comply with its FATCA obligations (as discussed below).

C. Withholdable Payment Exception for Indemnity Payments

Many businesses make indemnity payments, which are typically not taxable to the recipient, on self-insured obligations or on behalf of third parties. The exception to the definition of a withholdable payment for an "excluded nonfinancial payment" does not specifically mention indemnity payments. It is unclear whether such payments are withholdable under FATCA. Does OTP consider such amounts to be withholdable payments? Would OTP entertain an exception for such payments by adding "amounts paid either by a company or an agent acting on behalf of a company for indemnity claims whether or not covered by insurance from an unrelated party" to the exception for excluded nonfinancial payments?

D. Changing FATCA Status

In a myriad of circumstances, an entity or group may change its status under FATCA. For example, an EAG may move from satisfying the nonfinancial group test to not satisfying it, an entity may move from active NFFE status to some other status, and an entity may move into and out of an EAG. These situations may arise from normal operations or from mergers and acquisitions. Are the IRS and Treasury Department considering providing a general grace period for entities or groups to test their FATCA status and adjust their FATCA compliance processes where their status under FATCA changes? For example, an EAG may not know that it has failed the 25-percent income test for nonfinancial group status until after its financials for the prior year are complete (*e.g.*, in February of the following year). Yet its nonfinancial group status would expire at the beginning of the following year (*i.e.*, before the EAG knew it failed the test). TEI suggests that such an EAG be given time to both make this determination and, once made, time to make any necessary compliance adjustments under FATCA.

VI. OECD Base Erosion and Profit Shifting Project

A. In General

The OECD's base erosion and profit shifting (BEPS) project is expected to result in fundamental changes to the international tax system. The BEPS action plan states this is necessary to avert "global tax chaos" that would result in the "massive re-emergence of double taxation" and warns that if the OECD fails to act then "some countries may be persuaded to take unilateral action for protecting their tax base, resulting in avoidable uncertainty and unrelieved double taxation." Regrettably, significant unilateral country actions have already begun. At the same time, countries continue to shape their tax systems to be "competitive" in the global marketplace through implementation of preferential rates and regimes for favored income and activity. In many cases, these are the same countries that are taking unilateral, BEPS-related actions.

With this as background, we invite the Treasury's view of what would constitute "success" in terms of the OECD's BEPS project, and a discussion of where the international tax system may be headed. Of particular interest are any potential changes to, or deviations from, the arm's length principle (so-called "special measures") for transfer pricing, as well as the accompanying required documentation and the proposed country-by-country reporting template. In addition, we would welcome Treasury's view of any transition relief that might be recommended for implementing the legal changes that flow from the BEPS action plan.

B. Status of BEPS Action Plan Items

TEI invites Treasury's views on what items in the BEPS action plan are likely to produce a consensus among the OECD Member States and other nations participating in the project and what items are unlikely to produce a consensus. What items does Treasury view as having the best possibility of success? What are the next steps for the BEPS actions with a September 2014 deadline after the final recommendations are made public? What is the status of the report due in September under action item 15 regarding the development of a multilateral instrument, which is of particular interest to TEI's membership?

C. Discussion Draft on Transfer Pricing Documentation and CbC Reporting

On January 30, 2014, the OECD released its discussion draft on transfer pricing documentation and country-by-country reporting, which falls under action item 13 of the action plan regarding transfer pricing documentation. Since publishing the discussion draft, the OECD has announced significant changes to the draft's content and distributed a revised working draft to certain stakeholders in advance of the public consultation on May 19. These changes include reducing the reporting required by the CbC template, separating the template from the proposed master file, requiring country level financial data but not entity-by-entity reporting, flexibility in preparing transfer pricing documentation, among other things. TEI submitted detailed comments with the OECD on the discussion draft in February and participated in the public consultation in May. (TEI did not receive a copy of the revised discussion draft.).

In TEI's view, the master file/local file approach set forth in the draft would force companies to keep and disclose a much greater amount of transfer pricing documentation than is currently required. In addition, there is great concern among our membership that country-by-country information reporting, even in the narrower form due to the changes announced after the draft's publication, will lead many tax authorities to use such information not for a transfer pricing risk assessment, as proposed by the draft, but rather as a shortcut for making transfer pricing adjustments on audit. Is Treasury concerned that other jurisdictions will use the country-by-country reporting template, whatever its final form, to apply a formulary apportionment approach, regardless of the recommendation of the OECD in that regard? Does Treasury view the OECD's endorsement of such a template as undermining the arm's length standard? Will the United States endorse the final CbC template?

D. Hybrid Discussion Drafts

The OECD released two discussion drafts on hybrid mismatch arrangements in March under BEPS action 2. Coordination of the recommendations of the draft across jurisdictions, especially the draft regarding changes to domestic laws, will be critical to avoid double taxation. This will also require domestic tax authorities to properly analyze and apply foreign law. What is the Treasury's view regarding how these changes will be implemented and coordinated if adopted? Will this put additional stress on the mutual agreement procedure (MAP)? Will the necessary resources be devoted to MAP in the United States to ensure taxpayers can have an efficient resolution of controversies that arise under the recommendations in the hybrid draft (and for all BEPS actions, for that matter)?

E. Tax Treaty Abuse Draft

The OECD released a draft regarding inappropriate grants of treaty benefits in March under BEPS action 6. The draft, along with proposed recommendations under other BEPS actions, signals a change in the traditional purposes of bilateral tax treaties of avoiding double taxation and preventing illegal fiscal evasion. Instead, it appears that the OECD proposes to use treaties as a tool to combat legal, albeit disfavored, tax avoidance. Does the Treasury agree with this perception? Why or why not? The Treasury has stated its opposition to the main purpose anti-abuse rule in the OECD recommendations, which would be in addition to the recommended addition of a limitation on benefits provision. A main purpose rule would introduce substantial uncertainty into the expected tax consequences of multinational enterprise operations. Does the Treasury believe the OECD will ultimately amend its model treaty to include such a provision? Would the Treasury endorse that position? Why or why not?

VII. Tax Treaty Update

TEI welcomes an update on the status of ongoing bilateral tax treaty and exchange of information negotiations.

VIII. Priority Business Plan Updates

TEI invites an update on the status of regulations under sections 367(d), 901(m), and 987.

IX. Other Policy Issues

A. FBAR Filing Requirements

Effective July 1, 2013, FinCEN mandated electronic filing of all *Reports of Foreign Bank Account* (FBAR) forms (formerly Form TD F 90-22.1, now FinCEN Report 114), including for filers that have signature authority over, but no financial interest in, certain accounts. However, on December 17, 2013, FinCEN again extended the FBAR filing deadline for such filers to June 30, 2015, from June 30, 2014, "in light of ongoing consideration of questions regarding the filing requirement and its application to individuals with signature authority over but no financial interest in certain types of accounts." This is at least the third extension for such individuals, which in many cases includes employees and officers who have signature authority over foreign accounts of their employers.

What issues are Treasury and FinCEN considering regarding the application of the FBAR filing requirement to individuals whose filing requirement arises because of signature authority over an employer's account, or an account that is owned by an entity related to the employer? Will consideration be given to exempting such individuals from filing their own FBAR in all cases? Alternatively, could such individuals be exempt if the account at issue is included in their employer's FBAR filing? These options would eliminate redundant reports and the attendant time and expense, both for filers and FinCEN. If the individuals are not exempted, will individuals eligible for the extension for their filing obligations for the past few years be given relief, for example, by requiring that they file on a prospective basis only, beginning with the forms for 2014? In many cases, the individuals will no longer have access to the needed information (*e.g.*, because they have changed employers, the account has been closed, the account is in a foreign jurisdiction with different record keeping requirements.). What is the time frame for resolving the questions surrounding the application of the FBAR filing requirement to these individuals?

The requirement for employees to personally file an FBAR solely because of their signature authority over an account of their employer creates unnecessary administrative compliance and recordkeeping burdens on individuals with little apparent benefit to FinCEN's work prosecuting international financial crime. While some exceptions do exist for certain employees of publicly held U.S. businesses, there is no exception available to employees in the following situations, even though the account will be included in the FBAR filed by the U.S. Parent:

- Where an employee of a U.S. parent has signature authority over an account held by a U.S. subsidiary.
- Where an employee of a U.S. subsidiary has signature authority over an account held by the subsidiary's U.S. parent.
- Where an employee of a U.S. subsidiary has signature authority over an account held by another U.S. subsidiary within the same affiliated group of entities.
- Where an employee of a foreign subsidiary of a U.S. parent has signature authority over an account held by either the employer foreign subsidiary or an account held by any other affiliated entity.

Also, the exceptions to FBAR filing and recordkeeping requirements applicable to publicly traded U.S. companies does not extend to privately held businesses, even though most larger private entities have robust internal controls and have books and records that are subject to external audit. Why do the standards differ for publicly and privately traded companies? Would Treasury and FinCEN be open to expanding the exception to FBAR filing to private entities, and to cover the situations set forth above?

X. Tax Reform

The Senate Finance Committee draft proposals on tax administration, cost recovery and tax accounting, international business tax reform, and energy tax reform and the release of the *Tax Reform Act of 2014* by Ways and Means Committee Chairman Dave Camp have added significantly to the tax reform discussion. Although the proposals differ, the competing visions present more concrete models for legislative action. In addition, renewed and substantial market-based pressures are being brought to bear compelling companies to consider the economics of inversion transactions. We invite a discussion of the Treasury Department's views of the prospects for tax reform in the coming year, its role, and the potential role that TEI can play given its membership's expertise in tax administration and financial reporting matters, and broad-base of industries represented in its membership. We also invite a discussion of the Administration's budget proposals. Finally, TEI invites a discussion of Treasury's views of the impact of the OECD's BEPS project on the prospect of reform of the U.S. system of taxing international business operations.

XI. Affordable Care Act (ACA)

A. Furnish Recipient Statements Electronically as Default Method

TEI urges the Treasury Department to reconsider the final regulations and permit applicable large employers (ALEs) to use electronic means as the default method to furnish recipient statements unless a recipient affirmatively elects out. The presumption in the regulations that favor furnishing paper statements to recipients should be reversed in favor of electronic reporting. Most employees at large employers subject to the ACA rules will have access to computers and email accounts (or else employers can make dedicated computers and printers available). We believe that making electronic reporting the default option will reduce employer costs without adversely affecting employee compliance with the employee shared responsibility payment.

B. Grace Period for Good Faith Compliance/Delay in Information Reporting Penalties

We commend the IRS and Treasury Department for announcing — in the preambles to the final section 6055 and 6056 regulations — a one-year delay in the imposition of information reporting penalties under sections 6721 and 6722 for good faith compliance with the reporting requirements of those sections for returns and statements filed in 2016 in respect of 2015. We respectfully suggest that taxpayers should be afforded a two-year grace period. Taxpayers will likely require up to two years of real-world, practical experience tweaking their data gathering and information reporting systems to achieve full compliance with section 4980H as well as the section 6055/6056 requirements. We understand that the Treasury and IRS have encouraged taxpayers to comply early with the reporting requirements in 2014, but we believe the fundamental requirements of the Affordable Care Act are so complex that many taxpayers will not have complete reporting mechanisms in place until 2016. We invite a discussion of TEI's recommendation.

C. Clarify Statute of Limitations

The information reported by employers under section 6056 is the critical first step in the ACA regime because it permits the IRS to determine, assess, and bill the employer for the employer's shared responsibility payment under section 4980H. Unlike other income and excise taxes levied under the Internal Revenue Code, employers will not file a form and self-assess the tax. As a result, it is unclear when the statute of limitations in respect of an employer's section 4980H liability begins to run. It is also unclear whether the IRS will issue a nil assessment to an employer where no shared responsibility payment is due.[3] TEI recommends clarifying that the statute of limitations for an employer's shared

[3] The preamble to the final section 4980H regulations (TD 9655, Feb. 12, 2014) notes that "any assessable payment under section 4980H is payable upon notice and demand and is assessed and collected in the same manner as an assessable penalty under subchapter B of chapter 68 of the Code. The IRS will adopt procedures that ensure employers receive certification . . . that one or more employees have received a premium tax credit or cost-sharing reduction. . . . The IRS will contact employers to inform them of their

responsibility payment under section 4980H begins to run from the date the information return required under section 6056 is filed with the IRS and further clarify the statute of limitations applicable to information reporting penalties under sections 6721 and 6722 in respect of information returns filed under sections 6055 and 6056 also begins with the filing of those information return with the IRS.[4]

TEI invites a discussion of its comments and recommendations in respect of the ACA.

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potential liability and provide an opportunity to respond before any liability is assessed or notice and demand for payment is made." Hence, the IRS and Treasury Department may intend to address the statute of limitations issue in connection with the additional expected procedural guidance.

[4] The current IRS position on the statute of limitations for penalties under sections 6721 is reflected in CCA 111814-13 (April 4, 2013). As expressed there, the assessment period for section 6721 is seemingly three years, but that CCA contradicts an earlier CCA (138637-08, dated Oct. 17, 2008) which said that section 6721 penalty assessment period never expires. Both CCAs conclude that the statute never expires on assessment of penalties on the payee statements furnished under section 6722.