

## **Section 6046A.—Returns As To Interests In Foreign Partnerships**

*26 CFR 1.6046A-1: Return requirement for United States persons who acquire or dispose of an interest in a foreign partnership, or whose proportional interest in a foreign partnership changes substantially.*

**T.D. 8851**

**DEPARTMENT OF THE TREASURY  
Internal Revenue Service  
26 CFR Parts 1 and 602**

## **Return Requirement for United States Persons Acquiring or Disposing of an Interest in a Foreign Partnership, or Whose Proportional Interest in a Foreign Partnership Changes**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document contains

final regulations under section 6046A of the Internal Revenue Code relating to the requirement that United States persons, in certain circumstances, file a return if they acquire or dispose of an interest in a foreign partnership, or if their proportional interest in a foreign partnership changes.

**DATES:** *Effective Date:* December 29, 1999.

*Applicability Dates:* For dates of applicability of §1.6046A-1, see §1.6046A-1(j).

FOR FURTHER INFORMATION CONTACT: Eliana Dolgoff, (202) 622-3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

### **Paperwork Reduction Act**

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545-1646. Responses to this collection of information are mandatory.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

The burden of complying with the collection of information required to be reported on Form 8865 is reflected in the burden for Form 8865, "Return of U.S. Persons With Respect to Certain Foreign Partnerships."

Suggestions for reducing the burden associated with this rule should be sent to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224, and to the **Office of Management and Budget**, Attn: Desk Officer of the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to this 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.

### **Background**

On September 9, 1998, the IRS published in the **Federal Register** (63 FR 48154(REG-209060-86, 1998-39 I.R.B. 18)) proposed regulations under section 6046A. A public hearing on the proposed regulations was held on November 10, 1998, even though no requests to speak at the hearing were received. Though no comments were made at the hearing, written comments were received. After consideration of all of the written comments, the proposed regulations under section 6046A are adopted as revised by this Treasury decision. The revisions are discussed below.

### **Explanation of Provisions and Summary of Comments**

Commentators requested that section 6046A reporting not be required of United States persons that are indirect partners in a partnership. For example, a United States person would not be required to report under section 6046A with respect to an interest in a foreign partnership that the person owned indirectly through another partnership. Unlike section 6038, section 6046A reporting may apply with respect to any foreign partnership, not just foreign partnerships controlled by U.S. persons. Accordingly, the IRS agrees that reporting should not be required for indirect acquisitions, dispositions, and changes in proportional foreign partnership interests, because it would be burdensome and difficult for some partners to discover and keep track of such events. Additionally, if section 6046A reporting were required for changes in indirectly owned foreign partnership interests, then a transfer of an interest in one entity in a chain of entities at the bottom of which is a foreign partnership could result in multiple, duplicative, section 6046A reporting obligations.

Thus, the final regulations substantially reduce the burden section 6046A would have imposed on taxpayers under the proposed regulations. The final regulations provide that under §1.6046A-1(a)(1), a United States person is only required to report pursuant to section 6046A if that person has a "reportable event." A person can only have a reportable event with respect to a particular foreign partnership if that person owns a direct interest in the partnership. More specifically, the United States person must acquire or dispose of a direct interest in the foreign partnership, or have a change in its direct proportional interest, in order to have a reportable event under section 6046A. See §1.6046A-1(b)(1).

Some commentators also requested that the final regulations exempt state and local government employee retirement plans from the section 6046A reporting requirements. The final regulations provide that trusts relating to state and local government employee retirement plans are not required to report under section 6046A, unless required to do so in the instructions to Form 8865, "Return of U.S. Persons With Respect To Certain Foreign Partnerships." The IRS and Treasury invite com-

ments regarding whether the section 6046A reporting obligation should also be reduced for other tax-exempt entities.

A United States person required to report information pursuant to section 6046A must do so by completing and filing Form 8865. A final version of Form 8865 will be released prior to January 1, 2000. Taxpayers will be able to download a copy of the form and its instructions from the IRS Internet website located at [www.irs.ustreas.gov](http://www.irs.ustreas.gov).

The final regulations apply to reportable events that occur on or after January 1, 2000. Acquisitions and dispositions of foreign partnership interests, and changes in proportional foreign partnership interests, occurring before January 1, 2000, are not required to be reported under section 6046A.

### **Special Analyses**

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required.

This Treasury decision finalizes a notice of proposed rulemaking published September 9, 1998. It has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to the final regulations issued pursuant to the notice of proposed rulemaking published on September 9, 1998. It is hereby certified that this Treasury decision will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the amount of time required to complete the form and file the information required under these regulations is brief and will not have a significant impact on those small entities that are required to provide notification. Furthermore, the number of small entities that will be required to file the form is not substantial. Accordingly, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required.

Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

## Drafting Information

The principal author of these final regulations is Eliana Dolgoff of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in their development.

\* \* \* \* \*

## Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

### PART 1—INCOME TAXES

Par. 1. The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Section 1.6046A-1 also issued under 26 U.S.C. 6046A. \* \* \*

Par. 2. Section 1.6046A-1 is added to read as follows:

*§1.6046A-1 Return requirement for United States persons who acquire or dispose of an interest in a foreign partnership, or whose proportional interest in a foreign partnership changes substantially.*

(a) *Return requirement—(1) General rule.* If a United States person has a reportable event (as defined in paragraph (b)(1) of this section) during the person's tax year, then, except as provided in paragraph (f) of this section, the United States person is required to complete and file Form 8865, "Return of U.S. Persons With Respect To Certain Foreign Partnerships," containing the information described in paragraph (c) of this section.

(2) *Separate return for each partnership.* If a United States person has a reportable event with respect to an interest in more than one foreign partnership, the United States person must file a separate Form 8865 for each foreign partnership.

(b) *Definitions—(1) Reportable event.* There are three categories of reportable events under section 6046A: acquisitions, dispositions, and changes in proportional interests.

(i) *Acquisitions.* A United States person that acquires a foreign partnership interest has a reportable event if—

(A) The person did not own a ten-percent or greater direct interest in the partnership and as a result of the acquisition the person owns a ten-percent or greater

direct interest in the partnership. For purposes of this paragraph (b)(1)(i)(A), an acquisition includes an increase in a person's direct proportional interest; or

(B) Subject to paragraph (b)(2) of this section, compared to the person's direct interest when the person last had a reportable event, after the acquisition the person's direct interest has increased by at least a ten-percent interest.

(ii) *Dispositions.* A United States person that disposes of a foreign partnership interest has a reportable event if—

(A) The person owned a ten-percent or greater direct interest in the partnership before the disposition and as a result of the disposition the person owns less than a ten-percent direct interest. For purposes of this paragraph (b)(1)(ii)(A), a disposition includes a decrease in a person's direct proportional interest; or

(B) Subject to paragraph (b)(2) of this section, compared to the person's direct interest when the person last had a reportable event, after the disposition the person's direct interest has decreased by at least a ten-percent interest.

(iii) *Changes in proportional interests not otherwise reportable as acquisitions or dispositions under paragraph (b)(1)(i)(A) or (b)(1)(ii)(A) of this section.*

A United States person has a reportable event if, subject to paragraph (b)(2) of this section, compared to the person's direct proportional interest the last time the person had a reportable event, the person's direct proportional interest has increased or decreased by at least the equivalent of a ten-percent interest.

(2) *Special rule for foreign partnership interests owned on December 31, 1999.* If a United States person owned a ten-percent or greater direct interest in a foreign partnership on December 31, 1999, then to determine whether the person has a reportable event under paragraph (b)(1)(i)(B), (b)(1)(ii)(B), or (b)(1)(iii) of this section, the comparison should be made to the person's direct interest on December 31, 1999. Once the person has a reportable event after December 31, 1999, future comparisons should be made by reference to the last reportable event.

(3) *Change in a proportional interest.* A partner's proportional interest in a foreign partnership may change for a number of reasons, for example, the change may be caused by changes in other partners'

interests resulting from a partner withdrawing from the partnership. A proportional change may also occur by operation of the partnership agreement, for example, if the partnership agreement provides that a partner's interest in profits will change on a set date or when the partnership has earned a specified amount of profits and one of those events occurs.

(4) *Ten-percent interest.* Under section 6046A(d) and this section, a *ten-percent interest* in a foreign partnership, as described in section 6038(e)(3)(C) and the regulations thereunder, means an interest equal to ten percent of the capital interest in such partnership, an interest equal to ten percent of the profits interest in such partnership, or an interest to which ten percent of the deductions or losses of such partnership are allocated.

(5) *United States person.* *United States person* means a person described in section 7701(a)(30).

(6) *Foreign partnership.* *Foreign partnership* means any partnership that is a foreign partnership under sections 7701(a)(2) and (5).

(7) *Examples.* The rules of paragraph (a) of this section and this paragraph (b) are illustrated by the following examples:

*Example 1. Acquisition of an indirect interest.* *FP*, a foreign partnership, has two partners, *FC1* and *FC2*, both foreign corporations. *FC1* owns a 40% interest in *FP*, and *FC2* owns a 60% interest in *FP*. No United States person owns an interest in *FP*, either directly, or constructively under section 6038(e)(3)(C) and section 267(c). On January 1, 2001, *US*, a United States person and calendar year taxpayer, acquires by purchase 100% of *FC2*'s stock. *US* has acquired an indirect interest of 60% in *FP*. See sections 6038(e)(3)(C) and 267(c)(1). However, *US* is not required to report the January 1, 2001 indirect acquisition under section 6046A. *US* did not own a 10% or greater direct interest in *FP* before the acquisition, and *US* does not own a 10% or greater direct interest as a result of the acquisition. (*US* must, however, comply with the reporting requirements under section 6038 (controlled foreign corporation and controlled foreign partnership reporting) with respect to *FC2* and *FP*.)

*Example 2. Acquisition of direct interests.* (i) Assume the same facts as *Example 1*. In addition, on June 1, 2001, *US* purchases a 5% direct interest in *FP* from *FC1*. *US* did not own a 10% or greater direct interest in *FP* before the acquisition. After the acquisition, *US* does not own a direct interest of 10% or more. *US* owns a 10% or greater total interest (direct and indirect), but only a 5% direct interest. Therefore, *US* is not required to report the June

1, 2001, acquisition under section 6046A.

(ii) On September 1, 2001, *US* purchases a 7% direct interest in *FP* from *FCI*. The September 1, 2001 acquisition constitutes a reportable event under paragraph (b)(1)(i)(A) of this section. Before the September 1 acquisition, *US* did not own a 10% or greater direct interest in *FP*. After the September 1 acquisition, *US* owns a 12% direct interest, and therefore, as a result of the September 1 acquisition, *US* now owns a 10% or greater direct interest in *FP*. Consequently, *US* must report its September 1 acquisition under section 6046A on Form 8865 filed with *US*'s 2001 income tax return.

(iii) On December 1, 2001, *US* acquires an additional 4% direct interest in *FP* from *FCI*, so that *US*'s total direct interest has increased from 12% to 16%. This acquisition does not constitute a reportable event. Compared to *US*'s direct interest when *US* last had a reportable event (12% on September 1, 2001), after acquiring the 4% interest *US*'s direct interest has not increased by at least a 10% direct interest (i.e., its direct interest increased by only 4%). Therefore, *US* does not have to report the December 1, 2001, acquisition under section 6046A. On April 1, 2002, *FC2* distributes a 6% direct interest in *FP* to *US*. *US* now owns a 22% direct interest in *FP*. Compared to *US*'s direct interest when *US* last had a reportable event (12% on September 1, 2001), after the April 1 acquisition *US*'s direct interest has increased by at least a 10% interest (12% to 22%). *US* must report the April 1, 2002 acquisition on a Form 8865 attached to *US*'s 2002 income tax return.

*Example 3. Change in proportional interest resulting from withdrawal of a partner.* Assume the same facts as *Example 3*. In addition, on January 5, 2003, *FC2* withdraws entirely from *FP*. As a result, the direct interests of *US* and *FCI* in *FP* each increase by at least the equivalent of 10% interests. Compared to *US*'s direct interest the last time *US* had a reportable event (22% on April 1, 2002), *US*'s direct interest has increased by at least the equivalent of a ten percent interest. Therefore, *US* has had a reportable event pursuant to paragraph (b)(1)(iii) of this section, and *US* must report the change in its interest resulting from *FC2*'s withdrawal from the partnership on *US*'s Form 8865 filed with *US*'s 2003 tax year income tax return.

*Example 4. Change in proportional interest constituting an acquisition.* *FP* is a foreign partnership that has no United States persons as direct or constructive partners. *US* is a United States person and a calendar year taxpayer. On January 1, 2001, *US* purchases an 8% direct interest in *FP*. *US* is not required to report this acquisition. *US* did not own a 10% or greater direct interest in *FP*, and *US* does not own a 10% or greater direct interest as a result of the acquisition. On March 1, 2001, *FC*, a foreign part-

ner of *FP*, withdraws from *FP*, and as result, *US*'s direct interest in *FP* increases by a 7% interest. The increase in *US*'s direct interest is considered an acquisition of an interest under paragraph (b)(1)(i)(A) of this section. *US* did not own a 10% or greater direct interest in *FP* before *FC* withdrew, and as a result of the increase in *US*'s direct interest because of *FC*'s withdrawal from *FP*, *US* now owns a 10% or greater direct interest in *FP*. Therefore, *US* must report under section 6046A the increase in *US*'s direct interest resulting from the withdrawal of *FC* from *FP* on Form 8865 filed with *US*'s tax return for *US*'s 2001 tax year.

(c) *Content of return.* The Form 8865 that must be filed under paragraph (a)(1) of this section must contain the following information in such form and manner and to the extent that Form 8865 and its instructions prescribe—

(1) The name, address, and taxpayer identification number of the United States person required to file the return;

(2) Information about other persons (foreign or domestic) whose interests in the foreign partnership the person reporting under section 6046A is considered to own under section 6038(e)(3)(C) and section 267(c);

(3) Information about all foreign entities that were disregarded as entities separate from their owners under §§301.7701-2 and 301.7701-3 of this chapter that were owned by the foreign partnership during the partnership's tax year ending with or within the tax year of the person filing Form 8865 pursuant to section 6046A;

(4) For each reportable event, the date of the event, the type of event (acquisition, disposition, or change in proportional interest), and the United States person's direct percentage interest in the foreign partnership immediately before and immediately after the event;

(5) The fair market value of the interest acquired or disposed of;

(6) Information about partnerships (foreign and domestic) in which the foreign partnership owned a direct interest, or a constructive interest of ten percent or more under sections section 267(c)(1) and (5) and the regulations thereunder, during the partnership's tax year ending with or within the tax year of the person filing Form 8865 pursuant to section 6046A; and

(7) Any other information required to be submitted by Form 8865 and its instructions.

(d) *Time and manner for filing returns.* The Form 8865 must be filed with the timely filed (including extensions) income tax return of the United States person for the tax year in which the reportable event occurs. If the United States person is not required to file an income tax return for its tax year in which the reportable event occurs, but is required to file an information return for that year (for example, Form 1065, "U.S. Partnership Return of Income," or Form 990, "Return of Organization Exempt from Income Tax"), the United States person should attach the Form 8865 to its information return filed for that tax year.

(e) *Duplicate returns.* If required by the instructions to Form 8865, a duplicate Form 8865 (including attachments and schedules) must also be filed.

(f) *Persons excepted from filing return—(1) Section 6038B overlap.* If a United States person acquires an interest in a foreign partnership as a result of a section 721 contribution required to be reported under section 6038B, and the person properly reports the contribution under section 6038B, then the United States person is not required to report the acquisition of the partnership interest under section 6046A(a) should it constitute a reportable event under paragraph (b)(1) of this section. The acquisition will still constitute a reportable event for purposes of making future comparisons pursuant to paragraphs (b)(1)(i)(B), (b)(1)(ii)(B) and (b)(1)(iii) of this section. A person that fails to properly report the section 721 contribution under section 6038B and the regulations thereunder and that fails to properly report the acquisition of the partnership interest under section 6046A may be subject to the penalties applicable to a failure to comply with the requirements of section 6038B, as well as the penalties applicable for a failure to comply with the requirements of section 6046A. See paragraph (h) of this section for more information about the penalties for failure to comply with the requirements of section 6046A.

(2) *Trusts relating to state and local government employee retirement plans.* The return requirement of section 6046A does not apply to trusts relating to state and local government employee retirement plans, unless the instructions to Form 8865 provide otherwise.

(3) *Reporting under this section not required of partnerships excluded from the application of subchapter K.* The reporting requirements of this section will not apply to any United States person in respect of an eligible partnership as described in §1.761-2(a) in which that United States person is a partner, if such partnership has validly elected to be excluded from all of the provisions of subchapter K of chapter 1 of the Internal Revenue Code in the manner specified in §1.761-2(b)(2)(i), or is deemed to have elected to be excluded from all of the provisions of subchapter K of chapter 1 of the Internal Revenue Code in accordance with the provisions of §1.761-2(b)(2)(ii).

(4) *Exclusion for satellite organizations.* The return requirement of section 6046A does not apply to the International Telecommunications Satellite Organization (or a successor organization) or the International Maritime Satellite Organization (or a successor organization).

(g) *Method of reporting.* Except as oth-

erwise provided on Form 8865, or the accompanying instructions, any amounts required to be reported under section 6046A and this section must be expressed in United States dollars, with a statement of the exchange rates used. All statements required on or with Form 8865 pursuant to this section must be in English.

(h) *Penalties for violating section 6046A.* For penalties for violating section 6046A, see sections 6679 and 7203.

(i) *Statute of limitations.* For exceptions to the limitations on assessment in the event of a failure to provide information under section 6046A, see section 6501(c)(8).

(j) *Effective date.* This section applies to reportable events occurring after December 31, 1999. No reporting under section 6046A is required for reportable events occurring on or before December 31, 1999.

**PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT**

Par. 3 The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 4 In §602.101, paragraph (b) is amended by adding an entry in numerical order to the table to read as follows:

*§602.101 OMB Control numbers.*

\* \* \* \* \*

(b) \* \* \*

Robert Wenzel,  
Deputy Commissioner  
of Internal Revenue.

Approved December 9, 1999.

Jonathan Talisman,  
Acting Assistant Secretary  
of the Treasury.

(Filed by the Office of the Federal Register on December 27, 1999, 8:45 a.m., and published in the issue of the Federal Register for December 28, 1999, 64 F.R. 72555)

---

CFR part or section where identified and described

Current OMB control No.

---

\* \* \* \* \*

1.6046A .....1545-1646

\* \* \* \* \*

---

**Section 7520.—Valuation Tables**

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of January 2000. See Rev. Rul. 2000–1, page 250.

**Section 7872.—Treatment of Loans with Below-Market Interest Rates**

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of January 2000. See Rev. Rul. 2000–1, page 250.